(1987) 11 MP CK 0012

Madhya Pradesh High Court

Case No: S.A. No. 331 of 1981

Hemraj Shriripali Prasad and Others		APPELLANT
	Vs	
Ravi Prakash Pujari and Others		RESPONDENT

Date of Decision: Nov. 17, 1987

Acts Referred:

- Madhya Pradesh Public Trust Act, 1951 - Section 5

Citation: (1990) ILR (MP) 289 : (1992) JLJ 698 : (1992) 2 MPJR 285 : (1992) 37 MPLJ 852 : (1992) MPLJ 852

Hon'ble Judges: G.C. Gupta, J

Bench: Single Bench

Advocate: A. Usmani, for the Appellant; N.S. Kale, for the Respondent

Judgement

G.C. Gupta, J.

This judgment shall also govern disposal of Second Appeal No. 509 of 1981 (Ravi Prakash and Ors. v. Hemraj and Ors.), which has been filed by the respondents and involves common questions of facts and law.

This appeal, filed u/s 100, CPC is directed against the judgment and decree dated 23-3-1981 passed by II Additional District Judge, Raipur in Civil Appeal No. 13-A/8.0 arising out of judgment and decree dated 27-1-1970 passed by II Civil Judge, Class-I, Raipur in Civil Suit No. 10-A/64. Second Appeal No. 509 of 1981 arises out of judgment and decree dated 23-3-1981 passed by the same learned lower appellate Court in Civil Appeal No. 12-A/80 arising out of judgment and decree passed by the same trial Court in Civil Suit No. 2-A/65.

The dispute between the parties is about the legal status and character of Somnath Temple, Ram-Janki Temple and Radha-Krishna Temple situated at village Lakhana, Tahsil and District Raipur. The appellants in this appeal wanted declaration, that

Somnath Temple is also a public trust within the meaning of M. P. Public Trusts Act (hereinafter referred to as the Act). In Second Appeal No. 509 of 1981, the appellants defend the verdict of the Courts below that Ram-Janki Temple and Radha-Krishna Temple are public trusts. The respondents are contending that all the three temples are their private temples and, therefore, not liable to be declared public trust under the Act. The facts, which are by now clear, are that the deity in Somnath Temple, the Lord Shiva, is an ancient one and it is the respondents'' claim that it has been installed by their ancestors. About a hundred years back, the temple was constructed by one Padum Banjara, Subsequently, Jankidas and Gaibinath also constructed the two other temples in 1920 and 1922. The land on which these temples have been constructed belonged to the Malguzari of the respondents'' great grand-father. Appellants Hemraj and others applied to the Registrar of Public Trusts, Raipur u/s 26 of the Act, for removal of Badrinath. an ancestor of respondent Ravindra Prakash. The said application was decided by the Registrar on 11-8-1959 holding that since the temple was not registered as a public trust, the application u/s 26 of the Act was not maintainable. Thereafter, an application u/s 5 of the Act was filed which was decided by the Registrar vide his order dated 25-8-1964 (Ex. '' P-21 in S. A. No. 509 of 1981). The Registrar, by his order held that Somnath Temple was a private trust and not public trust and, therefore, could not be registered as such. He, however, held that Ram-Janki Temple and Radha-Krishna Temple were public trusts and were therefore declared as such. Being aggrieved by* this order, the appellants filed their Civil Suit No. 10-A/64 seeking a declaration that even Somnath Temple was a public trust and was liable to be declared as such. Original respondents Bulakilal Pujari and Rameshwardas filed their Civil Suit No. 2-A/65 challenging the order of the Registrar relaning to Ram-Janki Temple and Radha-Krishna Temple and sought a declaration that these temples were also their private trusts and, therefore, were wrongly declared as public trust. The learned trial Judge, however, upheld the appellants'' contention and decreed that even Somnath Temple was a public trust The learned Trial Judge agreed with the Registrar and held that Ram-Janki Temple and Radha Krishna Temple were public trusts and were rightly declared as such. On these findings, the suit filed by the appellants was decreed, whereas, the suit filed by the respondents was dismissed by the trial Court.

The respondents/defendants preferred two separate appeals challenging the judgment of the trial Court in the two suits. The learned appeal Judge agreed with the Registrar and disagreed with the learned trial Judge and held that Somriath Temple was a private trust and not a public trusts and was rightly declared as such by the Registrar. The learned Judge further held that Ram-Janki Temple and Radha-Krishna Temple were public trust and were rightly declared as such by the Registrar. That is how the present two appeals have been filed. The original plaintiffs in this appeal insist that Somnath Temple is also a public trust. The original defendants, who are now dead and are respresented by legal representatives, also insist that all the three temples are their private trusts and not liable to be

registered as public trusts.

The aforesaid narration of judicial history would indicate that the question for consideration of this Court is "whether the three temples are private trusts of the respondents or public trusts liable to be registered under the Act?" Idol worship by Hindus is really legendary and is a part of Hindu culture. Temples and Mutts are two principal religious institutions of Hindus and are most important forms of religious and charitable endowments. Every temple has a presiding deity which is established by following an elaborate ritual. The idol is established either for a particular object, which, the founder may have in view or simply for the love of God and is known as Sankalp. The question as to the rituals that may be performed in the consecretion of a temple and the installation of an idol was considered by the Supreme Court in Deoki Nandan Vs. Murlidhar, . After observing that there could be a valid dedication of a temple without the performance of any particular ceremony, the Supreme Court held that the ceremonies relating to dedication are Sankalp, Utsarg and Pratishtha. Sankalp means determination and is really a formal declaration by the settler of his intention to dedicate the property. Utsarg is formal renunciation by the founder of his ownership in the property, the result whereof that it becomes embraced with the Trust for which he dedicates it. The Court, therefore, held that if Utsarg is proved to have been performed, the dedication must be held to have been to the public. It was then pointed out that Utsarg had to be performed only for charitable endowments like construction of tanks, rearing of gardens and the like and not for religious intention and that Pratishtha takes the place of Utsarg in dedication of the temples. It was, therefore, held that where there was Pratishtha, i.e., formal installation of the deity, the dedication was complete and valid, notwithstanding that Utsarg had not been performed. There is good deal of judicial authority of Courts in India that the Hindu idol is a juristic person in whom the dedicated property vests. For this very reason, the question arises from time to time about the nature and character of the trust created by such a dedication. In Hindu Law, it is competent for a donor to create a religious trust, the benefit of which is confined to the members of a particular family or the disciples of a particular religious order. So far as debuttar endowment is concerned, the essential lest for distinguishing a private from a public place of worship is whether the right of worshipping the idol is limited to the members of a particular family or group or extends to all persons professing the Hindu religion. In Deokinandan''s case (supra), the Supreme Court observed as under :- .

"The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or class thereof. While in the former, the beneficiaries are persons, who are ascertained or capable of being ascertained, in the latter they are the general public or a class thereof. While in the former, the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter, they constitute a body, which is incapable of ascertainment."

The aforesaid observations were followed by the Supreme Court in Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, . A scrutiny of several judicial pronouncements, most of them have been relied upon by the parties, to this appeal, indicates the followings are the important considerations to determine whether any particular temple is a public temple : -

(i) User by public. In Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others, , it was held that the fact that by long user and acceptance the public were visiting a temple, performing pujas therein and participating in processions and daily pujas, by itself, raises a strong presumption against the private character of the temple;

(ii) Repairs and maintenance by public funds. If ii can be established that repairs and additions to the temple buildings were made with public subscription and festivals in temples were performed with the aid of public funds, the same would justify the inference that the temple is a public one. Ramchandra v. Rajendra ILR (1956) (Cuttack) 689 and Gulabchand Joshi and Others Vs. Shri Balaji Deity and Others, .

(iii) The nature of the land on which the temple is built may also be a factor to be taken into consideration to decide whether the temple was a public temple. In Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, , it was held that the fact that the temple was built on land given by the Peshwa was an important factor and indicated that the temple was dedicated to the public;

(iv) Association of strangers in the management of institution is treated to be a strong circumstance suggesting that the beneficiaries were the public. In Deokinandan''s case (supra), this factor really tilted the balance. In The State of Bihar and Others Vs. Charusila Dasi, , this was held to be an important circumstance indicating that endowment was public.

(v) Location of the temple :

In Deokinandan''s case (supra), the fact that the idol was installed not within the precinct of residential quarters, but in a separate building constructed for that very purpose on a vacant site was taken to be a circumstance giving rise to an inference of the temple being a public temple. However, in Charushila Dasi''s case (supra), the Supreme Court held that this circumstance would not be a strong circumstance relating to temples in Bengal. In Mundan Cheri v. Achutan Nair (1934) 61 LA. 405, the Judicial Committee of the Privy Council had held that in the Presidency of Madras, the presumption is that temples and their endowments form public religious trust. However, this presumption is not applied to Malabar or Bengal where private temples are numerous and outnumber public shrines. It would, therefore, appear that there are various factors that might be taken into account in determining whether a trust is public or private. The weight attached to these factors would depend on the facts and circumstances of each case.

In spite of it, it would be proper to note some of the characteristics of a private trust or private temple. In Hindu Law, the institution of a family idol is regarded as a valid religious trust. In Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, Ahmedabad, , the Supreme Court held that (i) the land on which the temple was built belonged to the family, as it is private property, (ii) Mutt constructed from family funds and (iii) location within its residential area, endowed the temple with the private character. Since these factors were existing in the said case, it was held that the disputed temple was a private temple and not the public temple. In Heir of Deceased Maharaj Purshottam-lalji Maharaj, Junagad Vs. Collector of Junagad District and Others, , the Supreme Court considered this question in the context of Vallabh Sect and held that even when the offerings were made by devotees at the feet of the Guru in the temple known as Charan-Seva and also when he is on move and, therefore, these gifts were personal, the temple could not be presumed to be private temple only because it was a Vallabh Temple.

The decisions of the Supreme Court in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, , Shankar Narayan Ranade Vs. Union of India (UOI), and The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, , are some other decisions emphasising aforesaid tests. The cumulative effect of these cases is to clarify the law on the subject and give clear guidelines to determine the dispute between the parties. Under the circumstances, the facts of the case may be looked into to ascertain whether the temples in question are public or private?

Since Somnath Temple is the oldest and has been held to be a private temple, it may first be examined if the said conclusion is correct. The trial Court had held that this temple was built by Padum Banjara about 100 and 125 years before and was maintained and managed by donations from public and, therefore, it was a public trust. The learned lower appellate Court, however, found that there was no evidence, oral or documentary to establish the purpose, which prompted Padum Banjara to construct this temple. According to the learned lower appellate Court, the land on which the temple was constructed belonged to the ancestors of the respondents and this was an important factor pointing that it was not a public trust. Is this conclusion correct? It is not in dispute that the ancestors of respondents were Malguzars of the village. Case of the respondents as set out in para 2 of the written statement is that the idol of Somnath was founded and installed by the great grandfather of defendant No. 1, Ganga Bishanji on a big plot belonging to and owned by him after constructing a huge platform over it about 200 years ago. It is also his case that the temple was built at that very place about 100 years before. In para 7 of the written statement, it is further stated that the land at village Lakhana and the land on which the temple of Somnath stands are the properties of Shankerji. Originally, this land, according to the respondents/defendants belonged to the forefathers of defendant No. 1. Late Shri B. L. Pujari as P.W.I in the other suit, has asserted the correctness of these statements. The order dated 25-8-1964 of the Registrar of Public Trusts, which is the basis of these two suits, however, indicates

that Shri B. L. Pujari in para 3(a) of his written statement had admitted that the temple around the idol was built by a Banjara for his own satisfaction and spiritual benefit. The said order further shows that Bulakilal Pujari as NAW-5 has supported this pleading in his evidence on oath (para-7). This, therefore, indicates that the assertion of Shri Bulakilal Pujari in these suits that the temple was built by his great grandfather Ganga Bishanji is not correct. This conclusion is also supported by judgment dated 2-7-1891 (Ex.P-8) wherein Badri Prasad, the late father of Shri Bulkilal Pujari had pleaded that the temple was built by one Pandu Nath Banjara about twenty-five years before. Statement of Shri Bulakilal Pujari is not based on his personal knowledge, but is based on information, which he claims to have received from his father. It is not understood how his father could have given him the information, which was contrary to his own plea in the aforesaid case. Be that as it may, the fact that Shri Bulakilal Pujari did not depose anything based on his personal knowledge is sufficient to hold that the documentary evidence on record clearly establishes that the present Somnath Temple was built by Padum Banjara and not by the ancestors of the appellants. In view of this finding, it will require some explanation as to how the respondents or their ancestors claimed this temple to be belonging to them. Their simple assertion that they have become the owner of the temple cannot be accepted as sufficient for this purpose.

In spite of it, it is clear that Lakhana village formed part of the Malguzari of Late Ganga Bishenji son of Purushottam (Ex.P-10 in the other suit). A Malguzar, as is well understood, is only the proprietor of the village. His ownership of the entire holding in the village has not been recognised under any law. Indeed, the M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 specifically does not recognise such a right. Section 4 of this Act which provides for consequence of vesting of proprietary rights in the estate free from all encumbrances, specifically provides for vesting of such right in haat, bazars or melas and barren land. Section 5(a) of this Act specifically provides that places of worship shall continue to belong to and be held by such proprietor or other person as the case may be, but the land thereof with the areas appurtenant thereto shall be settled with him by the State Government. There is no evidence to show that the area or the land appurtenant to this temple has been settled with the respondents. As far as personal rights of a Malguzar are concerned, they have been recognised only over those lands, which were under his personal cultivation. It would, therefore, appear that the proprietary right of a Malguzar over the land not in his personal cultivation is not recognised by this Act. Indeed, in Rani Zamit Kuwar v. Narsingh 1958 MPLJ 350, a Division Bench of this Court, deciding in the context of this Act, went to the extent of holding that an ex-proprietor is not entitled to a decree for possession of an abadi site after the abolition of proprietary rights even though a house stands on it. It may, therefore, appear that granting a decree in favour of the respondents, treating this temple to be their personal property, would really be granting them something more than the aforesaid Act had already granted.

There is good deal of dispute about the origin of the idol. The documents indicate that no one has put the idol at that place and it is generally believed that it has come out of the land. Ram Rao (P.W.2) and Makhan (P.W.3) also prove that this is the legend in that area. Though Shri Bulakilal Pujari asserts that the Ling was established by his great grand-father, he does not deserve to be taken seriously. Considering the fact that the great grand-father was the Malguzar of that village, it is unthinkable that he would only establish the idol and not built even a small temple. It is also unthinkable that a person of his status would have permitted Padum Banjara to build the temple at his place. In those good old days, a Malguzar has a status of his own and would not like to be a party to any deal, which may prove to the villagers that he was in any manner inferior to an outsider. Under the cirsumstances, it appears reasonable to hold that the idol of Lord Shiva or Ling had been on the spot from times immemorial and was not put up by Ganga Bishanji, the great grand-father of the respondents.

The certified copy of the map of the place (Ex.P-7) indicates that there are lot of trees in and around the temple, which is situated by the side of river Shivnath. Document dated 124-1894 (Ex.P-7 in the other suit) is written by Ghanshyamdasji in favour of Badriprasad Pujari and proves that the land at that time was banjar or uncultivable and Ghanshyamdas had put trees over it. By this document, he had agreed that he will be the owner and the person in possession of these trees during his life time. But, after his death, the ownership would pass on to Malguzar Badriprasad. He has also admitted that during his life time, the family of Malguzar may take fruits from the trees without his objection. From the document, it further appears that Ghanshyamdas also agreed that in case he left the place and went away somewhere, the ownership of Bagicha would revert to the family of Badriprasad. This document would prove that Ghanshyamdas was not acting for or on behalf of the respondents or else, he could not have asserted his title to the trees planted by him. It also indicates that the land was not under cultivation of the Malguzar but was banjar, over which the trees had been planted by Ghanshyamdas. That Ghanshyamdas was the person in possession of this land is also proved by other documents on record. Certified copy of bandobast 1906-1907 (Ex.P-2) proves that the land was held by Ghanshyamdas in Maafi Khairat, i.e., free of land revenue and for charitable purposes. Column 13 of this document shows that the land revenue was eight rupees and two annas, which had been exempted from payment. Bandobast of Samvat 1988-89 (Ex.D-1 in the other suit) indicates that the land was recorded as grass land on which the temple and a house for Pujari and certain fruit-bearing trees existed. Garibdas is recorded as a Pujari. Another important document is a will executed by Jankidas on 9-6-1928, filed as Ex.P-1 in this suit and Ex.P-9 in the other suit. From this document it appears that Jankidas had succeeded Ghanshyamdas, who is shown as his Guru. This document has been relied upon by the learned lower appellate Court in the impugned judgment to hold that Jankidas was nothing, but a Pujari. That he was a Pujari of this temple cannot be disputed

and is otherwise obvious from this document. The document, however, further indicates that besides being a Pujari, he was also the manager for purposes of managing the property of the temple. The document indicates that Jankidas reserved this right for himself during his life time and after his death passed on this right to Badriprasad Pujari the Malguzar for management either by himself or by some one appointed by him. There is no revenue record of a date prior to this document to show that Badriprasad or his father before him managed this property in any manner. All revenue records are of a period subsequent to it. It may, therefore, appear that Badriprasad was not managing this property during the life time of Jankidas. Jankidas''s name is in fact recorded upto the year 1929-30 (Ex.P-15) after which the name of Rameshwardas has been brought in revenue records presumably because no one was appointed as Pujari or Manager by Badriprasad on the basis of the will of Jankidas (Ex.P-1). It is, therefore, reasonable to hold that the management of this temple or the land attached thereto was never in the hands of the respondents or their ancestors.

There is ample evidence, oral and documentary, to indicate that the temple is visited by public in general, who also make offerings in cash and kind. There is no evidence to indicate that residential house of the respondents or their ancestors is located anywhere near this temple. As found earlier, the temple is situated on the bank of Shivnath river and built on the land which was recorded as grass land and regarded as banjar or uncultivable. It is common knowledge that during the last century, such a land had really no market value and no one, therefore, paid any attention to it or asserted any right, title or interest over it. If the Hindu Social Ethos are also to be taken into consideration such a temple, particularly, one built by a banjara could not have been claimed as his own by the Malguzar. In the context, even if the evidence of Bulakilal Pujari (P.W.2) in other case is to be believed that whenever his family members visited the temple for pujas, others were stopped entry, it will not lead to the inference that the temple had become private temple of the Malguzar. A Malguzar, as we know, was the most important person of the village excluding others from puja at the time when Malguzar''s family was performing puja can only mean treating them as very important persons and nothing else. It is not the respondents'' claim that they ever closed the temple to assert their authority or any one accepted their authority as such. Under the circumstances, it is reasonable to hold that the temple was open to public who used to freely visit the same and perform pujas and make offerings.

Though, there is no documentary evidence in this case to indicate who appropriated cash offerings. Shri Bulakilal Pujari has produced his Khatas (Exs.P-90, 91 and 92) in the other suit, which sufficiently indicate that the offerings to Somnath Mahadeo were obtained by him. These Khatas are for Samvat 1988 and thereafter and would only indicate that they are of recent origin. Other Khatas further prove that some money has been spent by the respondents on account of Somnathji Temple during this very period (Exs.P-22 to P-85). If a person receives offerings and keeps an

account thereof, it only indicates that he did not wish to appropriate the said income for his personal use. The fact that the amount has been spent on account of the temple itself, would further indicate that the respondent''s father Bulakilal Pujari only acted as a trustee. Under the circumstances, the fact that Shri Bulakilal Pujari obtained the offerings which he kept in a separate account of the temple itself would not be consistent with his ownership. This would, on the contrary, indicate that he treated this income as a trust and kept o an account so that he may not be accused of mismanagement thereof.

From the aforesaid, it is clear that : (i) the idol at the temple was not installed by any member of the family of the respondents; (ii) the temple itself was not built by the respondents'' ancestors, but was built by Padum Banjara; (iii) earlier sarvarakars, Pujari and Manager, namely, Ghanshyamdas and Jankidas were not appointed by the respondents or their ancestors; (iv) garden or bagicha put around the temple was put by Ghanshyamdas giving no right to the respondents during his life time; (v) the land over which the temple stands formed part of the Malguzari of Ghangabishanji, but was held by Ghanshyamdas in Maafi Khairati; (vi) the temple was visited by Hindus in general who performed pujas therein without any claim of exclusion by the family of the respondents and (vii) even when Bulakilal Pujari started obtaining money offerings of the temple, he did not appropriate them for his personal use or deposit them in his account, but kept an account thereof in the name of Somnath Temple as a trustee thereof.

Now, if these facts are considered in the context of the law discussed earlier, it would appear that all ingredients of a public endowment or temple are fully satisfied and none of the ingredients of a private temple really exists. It, However, appears that the learned Registrar of Public Trusts and the lower appellate Court unnecessarily placed reliance on the fact that the land belonged to Gangabishenji, the great grandfather of respondent No. 2. Even if the land had belonged to Gangabishenji, which appears to be doubtful, the aforesaid circumstances will still clearly indicate that the temple was not his private temple. In this view of the matter, it is not possible to sustain the impugned judgment and decree, which are hereby set aside. As a necessary consequence, this appeal is allowed decreeing the suit of the appellants and declaring that the Somnath Temple is a public temple and liable to be registered as such under the M. P. Public Trusts Act, 1951.

This takes us to Second Appeal No. 509/81, which is filed by the respondents and is in relation to Ram-Janki Temple and Shri Radha-Krishna Temple. Not only the trial Court and the lower appellate Court, but also the Registrar of Public Trusts has held these temples to be public temples. The Registrar in his order dated 25-8-1964 (Ex.P-21) has concluded that Ram-Janki Temple was built by Jankidas in the year 1920 with the money realised from public subscriptions and partly with the money received as offerings in Somnath Temple. A perusal of para 12 of this document indicates that Badriprasad Pujari in his written statement in Revenue Case No.

15-XXX/9 of 1953-54 had admitted that he was appointed Sarvarakar of this temple in 1928 by Jankidas, who had no chela. The learned trial Judge has also reached this very conclusion based on the admission of Late Badriprasad in a written statement referred to in the order of the Registrar of Public Trusts (Ex.D-11). This finding has been confirmed by the learned lower appellate Court. Case of the respondents (appellants in the other appeal) as appearing in para 9 of their plaint is that this temple is a subsidiary to the main temple of Somnath and was built by Jankidas by the accumulated income of Somnath Temple with the express permission of the Sarvarakar of Somnath Temple. It has already been held that neither the respondents nor any one of their ancestors were Sarvarakars of Somnath Temple in 1920 when this temple was constructed. Under the circumstances, it is difficult to hold that the permission to construct this temple was taken by Jankidas from the respondents or their ancestors. Then it cannot be overlooked that the question whether the permission was so taken or not is a question of fact. A concurrent finding on such a conclusion would be binding upon this Court in this second appeal. Since the said finding, in the opinion of this Court,is also the good finding because of the documentary and oral evidence, it will have to be accepted that the temple was constructed by Jankidas who did not act under instructions or authority of the respondents or their ancestors. Then, if it is to be held that this temple is subsidiary to Somnath Temple, it will have to be held to be a public temple, in view of the finding that even Somnath Temple is a public temple. Document (Ex.P-9) on which reliance has been placed has been considered earlier in the context of Somnath Temple. In the opinion of this Court, anyone who does not have right or title would not claim the right to remain in the management of the property during his life time. Under the circumstances the inevitable conclusion is that Ram-Janki Temple is not the personal or private temple of the respondents, but is a public temple liable to be registered as such under the M. P. Public Trusts Act.

The third temple, i.e., Radha Krishna Temple, was admittedly built by Gaibinath Tiwari. In the order of the Registrar (Ex.P-21), he is described as Malguzar, Achcholi (Paras 15). It is the respondents'' own case, as would appear from para 10(1) of the plaint in the other suit that Gaibinath had built this temple on being persuaded by Jankidas for his own spiritual satisfaction and installed the idol of Radha-Krishnaji as religious gift. The respondents claim this temple to be their own because it was, according to them, attached to Somnath Temple. Even if this was to be taken seriously, this temple will have to be declared as public temple, in view of the finding regarding Somnath Temple. Sewakram, son of Gaibinath has been examined as D.W.4 in the other suit and has claimed that his father built this temple for the benefit of public. His evidence has been accepted by the learned trial Judge. The respondents have not shown their relationship with the said Gaibinath and it is, therefore, not clear as to why they claim ownership of this temple, which has been built by an outsider. There appears to be no legal or moral justification for such a claim. Why should a Malguzar of another area spend his money for the benefit of

family members of the respondents? Under the circumstances, it is obvious that the claim of the respondents to Radha-Krishna Temple has no legs to stand up.

Much stress was laid on the conduct of Rameshwardas (D.W.7). A perusal of his evidence indicates that he is a previous convict and has suffered imprisonment for a period of six months. His personal conduct, however, is not relevant to decide the controversy in these two suits. Once a temple has been declared to be a public trust, the Registrar will get jurisdiction to appoint trustees to manage the same in accordance with a scheme given by him. This Court has no doubt that the Registrar while so doing will consider not only the conduct, but reputation of persons under consideration and will only appoint such of them as may carry on the purpose of the trust further, It is also true that while appointing the board of trustees, it will be open to the Registrar to consider appointing the respondents or any member of their family for the said purpose. Indeed, this Court would think that a person, who has played some part in the establishment of public trust would be interested in protecting the same and would therefore, be a fit person to be appointed as a trustee. This, however, will differ from case to case and in each case, it will be the obligation of the Registrar to decide it in a just and proper manner. While taking such a decision, the previous conduct of the respondents, particularly their efforts to obtain ownership of these temples for their own benefit will also require to be taken into consideration. If, in spite of it, the Registrar thinks that they would be in a position to manage the trust to the best benefit of the trust itself, he will be free to appoint them as well.

The upshot of the discussion aforesaid is that Second Appeal No. 331 of 1981 succeeds and is allowed. The impugned judgment and decree passed by the lower appellate Court are set aside. The judgment and decree dated 27-1-1970 passed by II Civil Judge, Class-I, Raipur in Civil Suit No. 10-A/64 are, however, restored. Second Appeal No. 509/81 fails and is dismissed with costs. Counsel fee, as per schedule.