

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12121 of 2018

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Vishnu Kant Das discipline of Late Mahant Kishori Das, resident of RamJanaki Thakurbari, situated at Tiwari Pokhar, Bhauwara, P.S. and District- Madhubani.

..... Petitioner

Versus

1. The Bihar State Board of Religious Trust through its Chairman, situated at VidyaPati Marg, Town & District-Patna.
2. The State of Bihar through the Principal Secretary, Revenue and Land Reform Department, Government of Bihar, Secretariat, Patna.
3. The Collector, Madhubani, Town and District- Madhubani.
4. The Additional Collector, Madhubani, Town and District- Madhubani.
5. The Deputy Collector, Land Reform, District- Madhubani.
6. The District Land Acquisition Officer, Land Reform, Town and District- Madhubani.
7. The Circle Officer, Rahika, District- Madhubani.
8. Bibi Nuzhat Khatoon, wife of Motiur Rehman, resident of Village- Kamtaul, P.S.- Kamtaul, District- Darbhanga.
9. Motiur Rehman son of Late Ali Akbar, resident of Village- Kamtaul, P.S.- Kamtaul, District- Darbhanga.
10. Md. Noorullah, son of Late Md. Razique Hussain, resident of Bhowara Manihar, Mohalla/ Ward No. 23, P.S. and District- Madhubani.
11. Md. Samiullah, son of Late Md. Ashique Hussain, resident of Bhowara Manihar, Mohalla/ Ward No. 23, P.S. and District- Madhubani.
12. Md. Iftikhar Ahmed, son of Late Md. Ashique Hussain, resident of Bhowara Manihar, Mohalla/ Ward No. 23, P.S. and District- Madhubani.
13. Md. Amantullah Ansari son of Late Abdul Wadid, resident of Village- Bhowara, Town and District- Madhubani.
14. Abdul Mannan son of Abdul Badood, resident of Village- Bhowara, Town and District- Madhubani.
15. Satish Prasad Mahaseth son of Raghunandan Mahaseth, resident of Village- Bhowara, Town and District- Madhubani.

..... Respondents

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Constitution of India--- Article 226---Bihar Board Miscellaneous Rules, 1958--- Rule 356, 357, 358, 361---Bihar Hindu Religious Trusts Act, 1950---Section 28(1), 43---Religious Trusts and Estates----writ petition to challenge an order dated 22.02.2018 passed by the Collector, Madhubani, whereby the claim of the petitioner of he being successor of Mahant Ram Kishori Das and a Trustee of Sri Ram Janki Thakurbari (“Thakurbari”) stood rejected---further prayer to restrain State authorities from interfering with the property of Thakurbari---plea that without there being any valid proceeding or public notice, the land of Thakurbari has been declared as escheat property.

Held: Irrespective of the fact that the land of Thakurbari sought to be protected by any Trustee or Shebait and the debutter property belonged to Mahant, but the ultimate owner of the land is said to be the deities themselves---if the temple is a public temple, under Hindu Law, the idol of a Temple/Thakurbari is a juridical person and so, the ownership of the temple and all its endowments including offerings made before the idol constitute the property of the idol---In the absence of an expressly appointed or identified shebait, the law has ensured the protection of the properties of the idol by the recognition of a de facto shebait---since Religious Trust Board and some other stake holders have not been given adequate opportunity to place their cases, the impugned order is set aside reserving liberty to the Religious Trust Board to take recourse under Section 43 of the Bihar Hindu Religious Trusts Act---writ disposed. (Para 2, 6, 42, 43, 44, 50)

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- 14. Abdul Mannan son of Abdul Badood, resident of Village- Bhowara, Town and District- Madhubani.
- 15. Satish Prasad Mahaseth son of Raghunandan Mahaseth, resident of Village- Bhowara, Town and District- Madhubani.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Y V Giri, Sr. Advocate Mr. Rajeev Prakash, Advocate
For the State	:	Mr. Raj Kishore Roy, GP-18
For the BSBRT	:	Mr. Ganpati Trivedi, Sr. Advocate
For the Resp. Nos. 10-12	:	Mr. Neeraj Kumar, Advocate
For the Res. No. 15	:	Mr. Ranjeet Kumar Mishra, Advocate



CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
Date : 10-05-2024

Heard Mr. Y.V. Giri; learned senior counsel for the petitioner; Mr. Raj Kishore Roy, learned counsel for the State; Mr. Ganpati Trivedi, learned counsel for the Bihar State Board of Religious Trust; Mr. Neeraj Kumar, learned counsel for the respondents no. 10 to 12 and Mr. Ranjeet Kumar Mishra, learned counsel for the respondent no.15.

2. The challenge in the present writ petition is made to an order dated 22.02.2018 passed by the Collector, Madhubani, whereby the claim of the petitioner of he being successor of Mahant Ram Kishori Das and a Trustee of Sri Ram Janki Thakurbari (for short “Thakurbari”) stood rejected. The petitioner further sought a direction to issue a writ of prohibition restraining respondent no.3, the Collector, Madhubani from anyway interfering with the property of Thakurbari, situated at Tiwari Pokhar, Bhaura, Madhubani. Further to restrain the official respondents from distributing the land of Thakurbari to respondents no. 8 to 15 in lieu of acquisition of the land, treating the land of Thakurbari Trust as a government land by declaring it as escheat by the respondent/State in terms of provisions of Rule, 356 of the Bihar Board Miscellaneous Rules, 1958 (for brevity “the Rules 1958”).

3. The short facts, which led to the filing of the



present writ petition, are that Sri Ram Janki Thakurbari situated at Tiwari Pokhar, Bhaura, Madhubani, is a Trust registered under the Bihar State Board of Religious Trust (hereinafter referred to as “the BSBRT”). One Mahant Ram Kishori Das was the Trustee of the Thakurbari. Mahant Ram Kishori Das, died leaving behind him the petitioner, who was his disciple/shebait and his legal successor and thus inherited and came in possession of Thakurbari and its property as Mahant duly recognized by the BSBRT. The petitioner since then has been continuously performing *Pooja* and maintaining the Thakurbari and also made renovation of it as shebait/legal successor, from the proceeds of landed property of the Thakurbari with the help and donation of other deities.

4. While the petitioner was peacefully performing *Pooja* and rituals, all of a sudden, the Collector, Madhubani issued letter dated 28.11.1979 to the Chairman of BSBRT, Patna, seeking information with respect to control of the estate of Late Mahant Ram Kishori Das, stating therein that Mahant Ram Kishori Das has died without nominating his successor, hence, there was no control upon the Thakurbari. The Board was also directed to intimate as to whether the Thakurbari was registered with the Board or not. If it was not registered, then what action is taken by the Board for management of Thakurbari after the death of Mahant Ram Kishori Das and if no



steps are taken as yet, then the State Government will take control of it.

5. In response to the afore-noted letter, the Board vide its letter dated 19.12.1979, intimated that since the Board had no knowledge about the death of Late Mahant Ram Kishori Das, hence, there was no question of supervision of the Trust through the Board. The Superintendent of the Board, acknowledging the supervisory power of it over all religious trust in terms of Section 28(1) of the Bihar Hindu Religious Trusts Act, 1950 (for short “the Act, 1950”) requested the Collector, Madhubani to send the name of any government official to act as temporary Trustee.

6. It is the case of the petitioner that after correspondences noted hereinabove, no communication was made on the part of respondent no.3 and, all of a sudden, without there being any valid proceeding or public notice, the land of Thakurbari has been declared as escheat property.

7. Mr. Y.V. Giri, learned senior counsel representing the petitioner, adverting to the aforesaid facts, vigorously contended that the State, surprisingly, knowing very well that Thakurbari Trust is out-and-out a public Trust registered under the BSBRT, has arbitrarily treated the land of Thakurbari as a government land by virtue of alleged declaration of the land/estate of Late Mahant Ram Kishori Das as escheat. It is



further submitted that the Collector, Madhubani, subsequently, brought out a letter as contained in Memo No. 9 Mu/Ra dated 09.01.1987, disclosing the fact that the estate of Sri Ram Janki Trust in the name of Late Mahant Ram Kishori Das, has already been taken over by the government and declared escheat and, subsequently, for construction of a stadium over the Trust property, the adjacent land measuring 4.22 acres belonging to the private respondents herein, were also acquired. On demand by the land owners, an approval was sought from the Revenue Department for exchange of the acquired land from the land situated outside the stadium, appurtenant to the Thakurbari, which was allegedly claimed to be taken over by the Government of Bihar in the year 1983 by declaring the land as escheat in accordance with the provisions of Rules 356 and 361 of the Rules, 1958.

8. Learned senior counsel, thus, submitted that the Notification as contained in Memo No. 9 Mu/Ra dated 09.01.1987 issued by respondent no.3, is wholly arbitrary and illegal, without there being any valid proceeding for declaring the land in question as escheat nor any order in this regard has ever been issued by the respondent authorities.

9. It is worth noting that the petitioner during the pendency of the writ petition by filing an Interlocutory Application No. 1 of 2023, has also assailed the Draft



Notification dated 01.11.1983 published in Madhubani District Gazette, whereby an objection was invited with respect to any claim of the property, comprising an area of 14.08 acre land, belonging to Late Mahant Ram Kishori Das, within a period of thirty days.

10. The challenge has been made on various grounds, *inter alia*, that the said Notification by which the property was declared escheat under the provision of Rule 356/361 of Rules, 1958, that Notification was neither published in local newspaper nor any final gazette publication has been produced by respondent no.3 and thus it is not a valid declaration of escheat, conferring any legal right to the State upon the land of Late Mahant Ram Kishori Das. It is also contended that the petitioner has been working as Shebait being legal successor of Late Mahant Ram Kishori Das, thus, any declaration of property of the Thakurbari as escheat is illegal, arbitrary and against all the principles of law.

11. Subsequently, the Collector, Madhubani intimated the Secretary Revenue and Land Reforms that a stadium was constructed over the land, which was declared as escheat property in the year 1983 on account of absence of legal successor under the Rules, 1958. It is further informed that besides the land declared as escheat, the lands of six other persons were acquired for construction of the stadium, the total



area of which comes to 4.22 acres. The persons whose lands were acquired made a claim for exchange of their acquired land. Thus, the Collector, Madhubani made a proposal to the Secretary, Revenue and Land Reforms for exchange of the acquired land from the land of Late Mahant Ram Kishori Das, so that the same may be given to the persons whose lands were acquired after getting approval of the stadium.

12. The Deputy Secretary to the Government (Revenue and Land Reforms Department) sought further instructions in the matter. In the meantime, the writ-petitioner being aggrieved by the action of the Collector, Madhubani with respect to exchange of the land, filed CWJC No. 995 of 1996 seeking a direction upon the respondent-authorities to restrain them from making further construction over the property in question and not to give effect to the letters dated 23.01.1993 and 21.03.1994. The matter was finally heard and disposed of vide order dated 30.01.2015 with a direction to the respondent/State to take a fresh decision in the matter by giving opportunity of hearing not only to the petitioner but also to the BSBRT.

13. While disposing of the writ petition, the Court further observed that the land of the Thakurbari sought to be protected by the petitioner did not belong to the Mahant. The Mahant was only managing the affairs of the Thakurbari and, in



fact, the deities themselves were said to be the owner of the land. If that be so, there would be no question of the property of the Thakurbari becoming escheat. This vital aspect of the matter has not at all been considered by anyone, including the Collector, Commissioner or the Revenue Department and everyone has simply proceeded on the assumption that the land of the Thakurbari after the date of death of Mahant has become escheat. The learned Court had further been pleased to make the interim order passed on 04.02.1998 absolute to the extent that the respondent State of Bihar and its Authorities would stand restrained from making further construction on the property in question.

14. Pursuant to the order of this Court date 30.01.2015 in CWJC No. 995 of 1996 and the order dated 29.10.2015 in CWJC No. 23573 of 2012 filed by respondents no. 8 to 11, whereby the liberty was given to the respondents to file a fresh comprehensive representation before the respondent-District Collector, Madhubani with all supporting documents raising all the pleas in the writ petition, the notices were issued to all the concerned. However, the process server endorsed a report on the notice that the petitioner was not residing at the said address. The District Collector, Madhubani after giving opportunity of hearing to all the concerned, passed a reasoned and speaking order on 22.02.2018, which order is put to challenge in the



present writ petition.

15. Mr. Y. V. Giri, learned senior counsel for the petitioner, assailing the impugned order dated 22.02.2018, has submitted that respondent no.3, failed to consider the observation of the Hon'ble Court and completely ignored the documents submitted by the BSBRT. It is also the contention of the petitioner that the respondent-Collector in order to defeat the claim of the petitioner has taken into account an affidavit submitted by the petitioner on 06.02.2018 regarding his no objection to the construction of a stadium, which in the humble submission of the petitioner, was taken by the Additional Collector, Madhubani by making false promise. Further, the notice of hearing before the Collector, had knowingly not been served upon him and the Process Server has made a false declaration. He submitted that even as per the stand of the State respondent, the petitioner was himself available before the Additional Collector to swear an affidavit, then what was the reason or occasion not to inform him with regard to the date of hearing before the Collector.

16. Learned senior counsel further contended that the plea of the State Officials that the petitioner was appointed as Chowkidar in the stadium on daily wages vide Memo No. 2470 dated 25.09.1987 and despite knowing all the facts, the petitioner had never made any objection until the objection was



made by the BSBRT, is nothing but a move to defeat the claim of the petitioner.

17. Adverting to the aforesaid facts, it is thus submitted that by the impugned order, the petitioner is deprived from the estate of the Trust held by him as shebait of Late Mahant Ram Kishori Das, on the basis of a proceeding which was nonest in the eyes of law. Moreover, the action of the respondent(s) in acquiring the Trust property without giving any compensation claiming the land of the Trust vested in government by declaring the property in question as escheat property, is wholly illegal, unjustified and gross violation of the settled principle of law.

18. Learned senior counsel also heavily relied on a decision rendered by this Court in the case of **Shree Alakh Narayan Darad and Others v. The State of Bihar and Others [(1995) 2 PLJR 375]**, in support of his contention that the Collector cannot take possession, if his action is opposed by any person and in such cases he has to institute a suit for escheat of rights of government. He has also placed reliance on various other judgments on other issues, including **State of U.P. and Others v. Manohar [(2005) 2 SCC 126]**, **Hazrat Makhdum Jahan Sheikh Sharfuddin Ahmad Yahiya Maneri through its Sajjadansahin and Mutawalli Syed Shah Mohammad Saifuddin Firdausi v. The State of Bihar... Intervenor and**



Others [(2012) 4 PLJR 112], M Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das and Others [(2020) 1 SCC 1] and Sukh Dutt Ratra and Another v. State of Himachal Pradesh and Others [(2022) 7 SCC 508].

19. A counter affidavit has been filed by the BSBRT in support of the contention of the writ petitioner.

20. Mr. Ganpati Trivedi, learned senior counsel for the BSBRT, has contended that the primal question to be decided in the present writ petition is as to whether the property of deity represented through Mahant can be declared escheat under Rule 356 of the Rules, 1958, after death of the Mahant or even in absence of any successor to the said Mahant to represent to the estate/property of the deity. The said Thakurbari was registered with the BSBRT under Section 34 of the Act of 1950 having its registration number as 3107. It is also the contention of the BSBRT that Mahant in a temple is akin to the owner of the property of the deity and he holds the property as owner in trust with the deities consecrated in the temple. The property vests in the pious purpose at the heart of the endowment which is recognized as legal person. The idol consecrated in the temple forms material manifestation of the pious purpose and the consequent centre of jural relations.

21. It is further contended that with regard to debutter



properties as has been held by the Constitution Bench of the Apex Court in the case of **M Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) (supra)**, it is not only compendious of expression but a material embodiment of the pious purpose. The idol constitutes the embodiment and expression of the pious purpose upon which legal personality is conferred. The destruction of the idol does not result in termination of the pious purpose and consequently the endowment. Even when the idol is destructed or the presence of idol is itself intermittent or entirely absent, the legal personality crated by endowment continues to subsist.

22. The learned senior counsel, has taken this Court to para-148 of the afore-noted case of **M Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) (supra)**. He further contented that supervision and administration of a religious Trust vest with the BSBRT under Section 28 of the Act and hence before making any declaration of any property as escheat, the Collector should have issued notice to the BSBRT and in absence thereof, such declaration is wholly without jurisdiction. He further contended that the respondent/BSBRT has not been allowed proper opportunity of hearing and in this regard specific averments made in the counter affidavit filed on behalf of the BSBRT. He has also made reliance on a judgment rendered by the Hon'ble Apex



Court in **Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust v. Collector, Haridwar and Others [(2017) 16 SCC 418]**, specially para-25 thereof. It is lastly contended that the respondent/State Officials cannot rely upon a concession made by a Shebait or Mahant of a public Trust contrary to the embodiment of purpose of the Trust without prior approval of the BSBRT.

23. A counter affidavit has also been filed on behalf of respondents no. 8 and 9, stating therein that they had preferred CWJC No. 23573 of 2012 along with others for release of their raiyati land, which was taken by the respondent/State in the year 1980-81 for construction of the stadium appertaining to the plots of which they were exclusive owner and in possession thereof. However, during the pendency of the present writ petition, the respondents no. 8 and 9 have been allotted the land in exchange of their land acquired by the State Government vide letter no. 531 dated 15.02.2023 (Annexure-A to the counter affidavit).

24. Likewise, another counter affidavit has been filed on behalf of respondents no. 10, 11 and 12 but with the contention that they have not been allotted any land in exchange of their land acquired by the State Government despite the fact that the claim of the respondents and other six raiyats have been found genuine and true. Apart from the aforesaid contention, it has further been contended that the writ-petitioner was earlier



employed in the stadium as Chowkidar and had been receiving his wages but later on after obtaining a certificate from BSBRT, started claiming himself as *chela* of Mahant Ram Kishori Das. It is also their contentions that Late Mahant Ram Kishori Das also lost Title Suit/Title Appeal from the ancestor of the present respondents vide judgment and decree dated 22.03.1976 in Title Appeal No. 55/13 of 1962/75 arising out of judgment and decree dated 30.04.1962 passed in Title Suit No. 44/7 of 1962/75.

25. Now coming to the stand of the State which would be relevant for deciding the issue posed before this Court.

26. Mr. Raj Kishore Roy, learned Government Pleader No. 18, submitted that the claim of the petitioner, based upon the fact that the Thakurbari in question is a public Trust, stands demolished for the simple reason that the BSBRT in response to the query made by the State Officials had produced letter no. 2722 dated 24.11.2015 and further letter no. 3182 dated 01.01.2016, but in both the letters two different registration numbers without disclosing the year of registration have been furnished, which creates serious doubt over the *bona fide* of the petitioner. It is further submitted that being no legal representative/successor of Late Mahant Ram Kishori Das, the properties led by him was taken over by the government and declared escheat property under Rule 356 of the Rules, 1958



vide Gazette Notification dated 01.11.1983, but there had never been any objection/claim made on the part of the BSBRT or the petitioner within the statutory period. Moreover, the declaration of the property of Mahant Ram Kishori Das as escheat made in the year 1983 and after a long period of time, the BSBRT vide its letter no. 730 dated 27.04.1989 gave recognition to the petitioner as the Trustee of the Thakurbari.

27. The learned Government Advocate also contended that there is nothing on the record to show that the petitioner is the successor of Late Mahant Ram Kishori Das and, in fact, the petitioner was appointed as a daily wager Chowkidar to look after the stadium vide Memo No. 2470 dated 25.09.1987.

28. So far as the claim of the private-respondents whose lands were acquired for the purposes of construction of the stadium is concerned, after proper deliberation, a decision was taken to provide alternate land to them. Pursuant thereto, the Collector, Madhubani after various correspondences and making certain rectification in the record, sent the entire record to the Commissioner, Darbhanga Division for approval of exchange of the land, which was subsequently forwarded by him vide letter no. 1415 dated 21.11.2002 for approval from the Revenue and Land Reforms Department, Bihar, Patna. The Revenue and Land Reforms Department, however, granted sanction for providing alternate land to only two raiyats, namely,



Moti-ur- Rahman and Bibi Nuzhat Khatoon and the proposal for other raiyats is still pending before the Department. While concluding the submissions, learned Government Advocate, refuted the contention of the petitioner that he had ever been asked by the Additional Collector to submit any affidavit; rather the petitioner himself voluntarily submitted an affidavit that he has no objection over the land in question.

29. This Court has carefully heard the learned senior counsels for the respective parties as well as the learned Government Advocate. In the canvas of the controversy put forth before this Court, the primal issue for consideration is as to whether the properties which were exclusively belonged to the deity represented through Mahant can be declared escheat under Rule 356 of the Rules, 1958 in absence of any successor to the Mahant to represent the estate/property of the deity.

30. Before answering the question posed before this Court, it would apposite to deal with the provisions relate to escheat. Chapter-XX of the Rules, 1958 deals with escheat.

31. Rule 356 of the Rules, 1958, clearly stipulates that all property, whether real or personal, to which there is no legal claimant, belongs to the State.

32. Rule 357 contemplates the Civil Court's Jurisdiction when real property is left without a claimant it does not appear that the intervention of the Courts is in any way



necessary; or can be, by any law, involved.

33. The Duties of the Board and the Collectors have been prescribed under Rule 358. By Section 8, Regulation XIX of 1810, the Board is vested with the general superintendence of all escheats, and is required to inform itself fully through the local agents of any property of that description, and to direct whether it should, in its opinion, be sold on the public account, or in what other mode it should be disposed of. The Collector being an *ex officio* local agent, should report, for the orders of the Commissioner and the Board, in all cases, subject to the exception mentioned in Rule 359, in which he learns the existence of unclaimed real property. He should take immediate possession of such property on the part of Government, take measures at the same time to invite claimants to the property as publicly as possible. Should the Collector's action be opposed by any person actually in possession, he must desist from occupying the property and report the circumstances, with the opinion, in regard to the property of instituting a suit for the establishment of the right of Government. Notices inviting claimants to the property should remain open for six months.

34. The import of the afore-noted Rules were duly considered by this Court in the case of **Shree Alakh Narayan Darad (supra)**, wherein the learned Court in no uncertain term held that the intervention of the Civil Court is not required



unless the action of the Collector is opposed by any person having interest in the property said to be left without a claimant.

35. In **Shree Alakh Narayan Darad (supra)**, the objection of the petitioner was that he was a *bona fide* purchaser of land by virtue of a registered sale deed executed by Late B.K. Biswas for valuable consideration. Late B.K. Biswas was the owner of the property mentioned in the Gazette Notification whose property was declared to be property of the State by law of escheat. In the objection the objector-petitioner had sold some land to different persons and the remaining land are in his possession. Thus, the learned court taking note of the Rule 357 and 358 of Rules, 1958 have held the order of the Collector *ultra vires* Rule 358 of the Rules, 1958 and directed that the Collector should have acted under this Rule instead of declaring disputed property to the escheat by means of a summary proceeding.

36. A similar issue was also raised in the case of **Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust (supra)**, where the point for determination was as to whether the Collector had jurisdiction to decide a question of title by assuming to himself the power to an adjudicatory forum. The order of the Collector indicating that the issue as to whether the property would vest in the state government as a result of a failure of heirs within the meaning of Section 29 was a serious



disputed issue turning upon an adjudication of conflicting claims. In such circumstances, the Hon'ble Supreme Court held that to allow administrative authorities of the State, including the Collector as in the present case to adjudicate upon the matters of title involving civil disputes would be destructive of the rule of law. The Collector is an officer of the State. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. It was concluded that the Collector acted manifestly in excess of his jurisdiction and launched upon an adjudicatory exercise, which power was not vested upon him.

37. Now coming to the question posed before this Court as to whether the properties belong to the deity represented through Mahant can be declared escheat under Rule 356 of the Rule 1958 on the demise of Mahant or in absence of successor to the said Mahant to represent the Estate/property to deity. The identical issue was considered in **Sri Marthanda Varma (Dead) through legal representatives & Anr. Vs. State of Kerala & Ors., reported in (2021) 1 SCC 225**. The Hon'ble Supreme Court while dealing with the matter referred the book, Hindu Law of Religious Endowments and Charitable Trusts which, *inter alia*, dealt with Extinction of the life of Shebait. It is duly observed when the line of Shebait laid down by the founder is extinct, or when the Shebait to whom a power of



nomination is given does not exercise the power, the managership reverts to the founder who endowed the property or his heirs. However, in case the line of Shebait is extinct, there is always an ultimate reversion to the founder or his heirs and strictly speaking, no escheat arises so far as the devolution of Shebaitship is concerned. But cases may theoretically be concerned where the founder also has left no heirs; and in such cases the founder's properties may escheat to the State together with the endowed property. In very rare circumstances like these, the right of the State would possibly be the same as those of the founder himself, and it would be for the State to appoint a Shebait for the Debutter property. It cannot be said that the State receiving a dedicated property by escheat can put an end to the trust and treat it as secular property.

38. The Hon'ble Supreme Court referring to the decision of **Mallan v. Purusothoma**, reported in **(1889) ILR 12 Mad 287** said that the Government getting the property by right of escheat can put an end to an arrangement made by the original owners under which a certain property was kept undivided for being used for the worship of a deity. There is, however, no finding in this case that the property was actually dedicated to the deity, and from the observations of the High Court it appears that there was only a personal arrangement between the co-sharers under which it was excluded from



partition. The deity is the recipient of the gift only in an ideal sense; the dedicated property belongs to the deity in a similar sense; in reality the property dedicated is in the nature of an ownerless thing. In ancient times, except in cases of property dedicated to a brotherhood of sanyasis, all endowments ordinarily were administered by the founder himself and after him his heirs.

39. In the case of **Sital Das Vs. Sant Ram**, [AIR 1954 SC 606], the Hon'ble Supreme Court elucidated that the succession to Mahantship of a Math or religious institutions is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment.

40. Further the Apex Court summing up the principles in this regard in the decision of **Profulla Chorone Requitte & Ors. Vs. Satya Chorone Requitte**, reported in (1979) 3 SCC 409 dealing with the expression of Shebaitship held that the legal character of a *shebait* cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense,



because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait.

41. Recently the Constitution Bench of the Hon'ble Supreme in the case of **M Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) (supra)**, *inter alia*, dealt with the role and position of a shebait. Considering the decisions on the point, it was held in para. 425 and 429, which are as follows:

“425. Courts recognise a Hindu idol as the material embodiment of a testator's pious purpose. Juristic personality can also be conferred on a Swayambhu deity which is a self-manifestation in nature. An idol is a juristic person in which title to the endowed property vests. The idol does not enjoy possession of the property in the same manner as do natural persons. The property vests in the idol only in an ideal sense. The idol must act through some human agency which will manage its properties, arrange for the performance of ceremonies associated with worship and take steps to protect the endowment, *inter alia* by bringing proceedings on behalf of the idol. The shebait is the human person who discharges this role.

429. The recognition of a person or a group of persons as shebait is a substantive



conferment of the right to manage the affairs of the deity. A necessary adjunct of the status of a shebait, is the right to bring actions on behalf of an idol and bind it and its properties to the outcomes. The purpose for which legal personality is conferred upon an idol as the material embodiment of the pious purpose is protected and realised through the actions of the human agent, that is, the shebait. The shebait is entrusted with the power and the duty to carry out the purpose of the donor in respect of the idol and its properties. In the vast majority of cases, a shebait is appointed in accordance with the terms of a deed of dedication by which property is endowed to an idol. It is for the protection of this property that the law recognises either the donor or a person named in the deed of endowment as the shebait. In the absence of an expressly appointed or identified shebait, the law has ensured the protection of the properties of the idol by the recognition of a de facto shebait. Where a person is in complete and continuous management of the deity's affairs coupled with long, exclusive and uninterrupted possession of the appurtenant property, such a person may be recognised as a shebait despite the absence of a legal title to the rights of a shebait. This will be adverted to in the course of the judgment.”



(emphasis supplied)

42. It would be worth to be observed that if the temple is a public temple, under Hindu Law, the idol of a Temple/Thakurbari is a juridical person and so, the ownership of the temple and all its endowments including offerings made before the idol constitute the property of the idol.

43. In the absence of an expressly appointed or identified shebait, the law has ensured the protection of the properties of the idol by the recognition of a de facto shebait. In **M Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) (supra)**, the Hon'ble Supreme Court observed that when the idol is installed and the temple is constructed or an endowment is created, the shebaitship is vested in the founder and unless the founder himself has disposed of the shebaitship in a particular manner or there is some usage or custom or circumstances showing a different mode of devolution, the shebaitship like any other species of heritable property follows the line of inheritance from the founder; and it is not open to the court to lay down a new rule of succession or alter the rule of succession.

44. On the touch stone of this settled principles, if the instant case in hand is considered it is clear that there is neither any endowment nor covenant on record. However, the State



itself recognized the Thakurbari, in question and in the year 1979 wrote a letter to the BSBRT seeking information with respect to death of said Mahant Ram Kishori Das and also directed to intimate as to whether Thakurbari was registered with the Board or not. Irrespective of the fact that the land of Thakurbari sought to be protected by any Trustee or Shebait and the debutter property belonged to Mahant, but the ultimate owner of the land is said to be the deities themselves. Despite, of the aforementioned facts that in absence of any endowment or covenant, there shall be no law of succession; no objection is made from any corner, the date on which the land was declared as escheat.

45. So far as the contention of the petitioner and the respondent/BSBRT are concerned, they are one and the same to the effect that the Thakurbari in question was a Trust property duly registered as public Trust with the BSBRT. However, admittedly, for the first time, the petitioner had given recognition as a Trustee in the year 1989 when the correspondences have been made by the State Officials.

46. For the first time, the BSBRT also came out with the registration number vide letter no. 2722 dated 24.11.2015 where the registration number has been mentioned as 3107. Subsequently, the registration number of Trust had been furnished as 1664 vide letter no. 3182 dated 01.01.016 but



without disclosing on which year the registration was made. Subsequently, when the State Officials suspected such registration, the BSBRT has come out with a certified copy of registration certificate of Thakurbari through Annexure R/1 to the counter affidavit duly sworn on 12.09.2023, disclosing the registration number as 3107. The certificate of registration though discloses the registration number but without any year. However, in the remarks column, the date of registration appears to be 06.04.1989, i.e. much after the letter issued by the Collector, Madhubani vide letter no. 765 dated 28.11.1979, disclosing about the death of Mahant Ram Kishori Das. For the first time, the BSBRT issued certificate granting recognition to the petitioner as *chela* of Late Mahant Ram Kishori Das vide certificate dated 27.04.1989.

47. The writ-petitioner also filed CWJC No. 995 of 1996 to restrain the respondent/State Officials not to make any construction over the land of the Thakurbari. Nevertheless, the writ-petitioner and the BSBRT acknowledging the fact of declaration of escheat way back in the year 1983 or at least, at the time when the lands of the private-respondents were acquired for the purposes of construction of a stadium or when a proposal was given for exchange of the land of private-respondents from the land of Late Mahant Ram Kishori Das, which was declared escheat in the year 1983, but the decision of



the Collector, Madhubani, declaring the property as escheat has not been questioned on any occasion or even in CWJC No. 995 of 1996 filed by the writ-petitioner. For the first time, the writ-petitioner, in the present writ petition, by way of I.A. No. 1 of 2023 has sought quashing of the Draft Notification Dated 01.11.1983 published in Madhubani District Gazette, whereby an objection was sought for regarding any claim over the property within one month of publication of the said impugned draft in relation to take over 14.09 acres land of the Thakurbari.

48. This Court, on the other hand, cannot loss sight of the fact that the State respondents failed to bring on record the Gazette notification inviting objection from all concerned before declaring the property to be the escheat, as required under Rule 356 and 358 of the Rules, 1958.

49. This Court also finds that the action of the BSBRT claiming the property to be a public trust and recognizing the petitioner as shebait or trustee lacks bonafide and not free from suspicion. All the actions either registration of the Thakurbari or appointment of the petitioner as shebait/trustee is taken place after the information given by the State officials to the BSBRT. The genuineness of the petitioner claiming himself as shebait/trustee does not find merit overboard.

50. Further the Court after perusing the impugned order comes to the conclusion that the issue as was framed by



the learned court in C.W.J.C. No. 995 of 1996 has neither been dealt with/considered nor answered it in any manner. The record also reveals that the BSBRT and some other stake holders have not been given adequate opportunity to place their cases.

51. In such circumstances, this Court left with no option but to set aside the impugned order dated 22.02.2018 passed by the Collector, Madhubani, as contained in Annexure-11 to the writ petition, reserving liberty to the BSBRT to take recourse under Section 43 of the Bihar Hindu Religious Trusts Act in accordance with law. The Tribunal shall decide all the disputes, *inter alia*, between the parties after giving proper notice to all concerned in view of the observation made herein above. The parties shall be at liberty to place their cases with all the evidences.

52. It is further clarified that every action of the State or its officials during the interregnum period shall be guided by the resultant order of the Tribunal.

53. The writ petition stands disposed of to the extent indicated hereinabove.

(Harish Kumar, J)

rohit/uday-

AFR/NAFR	AFR
CAV DATE	23-02-2024
Uploading Date	13-05-2024
Transmission Date	

