

AFRCourt No. - 3Reserved

Case :- MISC. SINGLE No. - 3066 of 2011

Petitioner :- Aliganj Sri Mahaveer Ji Trust Through Its C.E.O. Namely Mr.

Respondent :- The District Judge, Lucknow And Ors.

Counsel for Petitioner :- S/Sri Saharsh Srivastava, Alok Sharma, Neeraj Srivastava, Raj Vikram Singh, Srideep Chatterjee, Srideep Chatterji

Counsel for Respondent :- S/Sri Akhilesh Kumar, B.P. Pandey, Girdhari Lal Yadav, H.G.S. Parihar, Karunesh Singh Pawar, Manish Kumar, Radhika Singh, Ramendra Kumar Misra, Vivek Raj Singh

Hon'ble Attau Rahman Masoodi,J.

A. Relevance of worship in Temples and management

Faith in God is a universal phenomenon. The belief of people in the deity Lord Hanuman is well acclaimed in the world and mostly in India i.e. Bharat. Aliganj Sri Mahaveer Ji Mandir in the city of Lucknow, is a place of worship for Hindus where people from all sects, castes and creed come to offer prayers. The centuries old history tells that people from diversities come to make offerings and perform Pooja. The spiritual belief of getting rid of fatal diseases like leprosy is something unique the temple is known for. It is this belief that has led countless to reach the epitome of success in business, professions and other walks of life. For all these characteristics the temple has assumed the significance of a public place of worship. The temple is famous for holding the Pooja of Bada Mangal and large sale fairs on the occasion of festivals are also organised in the precincts of temple.

Aliganj Sri Mahaveer Ji temple came to be regulated as a public trust ever since framing of a scheme of management under the judgment reported in **AIR 1920 Oudh 244 (Gauri Nath Kakaji and others vs Ram**

Narain and others). The Court while dealing with the lis, first of all dealt with the question as to whether the charitable and religious endowments attached to the deity are a trust private or public. The ingredients of public trust were found dominant, hence it was decided that it is a public religious charitable Trust. The management of the Trust was accordingly designed of which the salient features can be gathered from the scheme of administration embodied in the judgement as under:

“The Scheme of Management

- (1) The endowment shall be called the Aliganj Shri Mahabirji Trust,
- (2) Trust shall comprise the temple of Mahabirji in Aliganj, Lucknow, with the lands, buildings, groves trees, wells and other properties moveable and immovable appertaining or belonging thereto and shall include any offerings that may be made at the temple on any grants or gifts made therefor and any property that may hereafter be acquired by the trust or be given or dedicated to it.
- (3) The objects of the trust shall be
 - (a) to maintain the temple of Shri Mahabirji and the properties appertaining thereto in a proper state of repair and in a good sanitary condition,
 - (b) to arrange for the regular performance of the customary religious services and worship thereat,
 - (c) to look after and arrange for the convenience of pilgrims or visitors visiting the temple for worship or devotion
 - (d) to do such other acts, religious, educational or charitable, as may be considered desirable by the committee, for the advancement of learning or religious instruction or for the support of sadhus, fakirs or indigent students visiting or staying in the precincts of the temple for such instruction.
- (4) The Trust shall be administered by a committee consisting of five Hindu residents of Lucknow as members of whom one shall be a representative of the family of Mahant Gopi Nath, related by blood or adoption, so long as such a representative is available, with power to appoint a secretary

and to elect a chairman from amongst themselves for one year or for such period as the committee may fix.

(5) The first committee shall consist of (a) Lachhman Das, representing the family of Mahant Gopi Nath, (b) Babu Basudeo Lal Bhargava, advocate, (c) Babu Lachhman Prasad Srivastava, vakil (d) Bahtt Gur Prasad, contractor, and (e) Babu Dalli Sah cloth merchant, Aliganj.

(6) The committee shall meet at least once in every three months to examine accounts, check receipts and expenditure for the preceding months and to devise and adopt measures for carrying out the purposes of the trust and the protection of the trust-property. It shall also hold an annual meeting, in the month of Jeth as far as practicable, to pass the annual accounts and to frame the budget for the succeeding year and also to elect a secretary and a chairman for the succeeding year or for such period as the committee may fix.

(7) A book showing the proceedings of the committee and the members attending each meeting shall be maintained by the secretary.

(8) The secretary shall also maintain at the main gate of the temple a visitor's book open to the public in which any suggestions which any member of the public or any person interested in the Trust may have to make for the better administration of the Trust and any complaint which he may have against the servants or employees or managers of the Trust could be recorded. The secretary shall lay the visitor's book for the consideration of the committee of management at its meetings, or earlier when necessary.

(9) Subject to the control and direction of the committee, the member of the family of Mahant Gopi Nath appointed, or hereafter elected on the Committee shall, for the time being, be in immediate charge of the worship and religious services to be daily conducted at the temple and shall keep a regular and accurate account of the offerings received and the expenditure incurred in connection with such worship and religious services from day to day in such manner as the committee may prescribe, and in lieu of such services shall receive for the maintenance of himself and the other members of the family of Mahant Gopi Nath, so long as they or any of them exist and continue faithfully to discharge those duties, an allowance equal to 50 per cent, of the total income of the Trust, such allowance being liable to forfeiture or reduction for non fulfillment, neglect or improper discharge of any of the obligations herein imposed or unwillingness of the members of the said family to undertake the same, on an application made to the principal Court of original jurisdiction by any two members of the committee.

(10) If the arrangement referred to in the preceding rule is at any time found to be unsatisfactory it will be open to the secretary, subject to the control and direction of the committee of management, to adopt such measures as may

be considered necessary for the performance of the duties therein referred to.

(11) Subject to R. 9, the entire management of the Trust shall be vested in the committee of management who shall be empowered to make such arrangement as may be considered necessary for the keeping and examination of accounts, the realization of the rents and income of the Trust property, the collection and disposal of the daily offerings at the temple and the other dues connected therewith, the engagement, dismissal and punishment of servants and the safe custody or investment of the trust property and funds as may from time to time be considered necessary. Every matter coming up before the committee, shall, except as hereinafter provided, be decided by a majority of votes. In the absence of the chairman any member present at the meeting may be elected as chairman for the time being and in the case of equality of votes the president or chairman for the time being shall have a second or casting vote.

(12) Three members shall form a quorum, but when a meeting has been adjourned for want of a quorum the adjourned meeting shall not, except as hereinafter provided, be governed by this rule,

(13) If any member fails to attend the sittings of the committee for four consecutive meetings or is absent from Lucknow for a period of more than one year he shall be deemed, if the committee so declares, to have resigned his seat on the

(14) A member of the committee found guilty of any malfeasance, misfeasance or other improper conduct or otherwise rendered unfit by any physical ailment shall be liable to removal at the instance of any two members of the Committee or any two persons interested in the Trust by an application made to the principal civil Court of original jurisdiction.

(15) On the occurrence of any vacancy in the Committee by death, resignation, removal, or otherwise, the remaining trustees, if not less than three in number, may, subject to the condition laid down in R. 4, by mutual concurrence, fill up the vacancy out of the Hindu residents of Lucknow. In case of their failure or disagreement or in any other event, the principal civil Court of original jurisdiction, Lucknow, may, on the application of any two persons interested in the Trust, select and appoint a person to fill up the vacancy in the manner aforesaid.

(16) Till an appointment is made to fill up a vacancy, any act done by the remaining member or members shall, notwithstanding anything contained in Rr. 4 and 12, be as effectual and binding as if it had been done by the committee itself.

(17) The Committee shall sue and be sued in the name of the Trust through its Secretary and shall have power to do

all acts which might be reasonable and proper for the realization, protection, or benefit of the Trust property or for the protection of the title thereto, and for carrying out the object of the Trust, including an authority to compromise, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or any other thing relating to the Trust, and to execute any agreements, instruments or composition, release and other things as may in the interest of the Trust seem expedient.

(18) Any application arising out of this, scheme or connected with the Trust shall be made in continuance of these proceedings in the principal civil Court of original jurisdiction at Lucknow, and it shall be within the competence of that Court at any time to amend and modify this scheme or any of its provisions in any manner it thinks fit either of its own motion or on an application made by not less than two persons interested in the trust and also to issue further or other directions as may appear necessary from time to time."

Before elaborating on the necessity of a management scheme in supersession to the one reproduced above, it is desirable to have a bird's view on the aspect of veneration of a particular deity in constructed temples which practice is unknown to Vedic period and for a long time. The Gods worshipped are personified forms of forces of nature such as Varuna (water), Prithvi (earth), Rivers, Vayu (air), Agni (fire), Surya (Sun) etc. The Fire God was considered as intermediary between the Gods and people. The process observed for worship was yagna or yagya. It consists in offering of milk, ghee, flesh and 'soma' (ritual drink) to God through fire. This is gathered from the Hindu Religious Endowment Commission Report (1960-62) drawn under the Chairmanship of C.P. Ramaswami Aiyar.

James Heitzman a known historian traces historical significance of Hindu temples not only in the worship of God but more importantly as the centers of culture and social interaction and conglomeration which gave support and patronage to the livelihoods of priests, sculptors, artisans, gardeners and others. They were not epicenter of merely

worship and religion but the epicenter of culture, civilisation, economic, social, political and educational activities. This is gathered from the article “Temple Urbanism in Medieval South India” published in the journal of Asian Studies Vol. 46 No. 4 (Cambridge University Press Association for Asian Studies).

This understanding, in my humble view, is well supported by examples like Ankorwat Temple City, Vijayanagar Temple City etc. These temples served as producer, consumer of goods, employer and redistributor of income. The performance of their respective duties by the members of the society was itself the way to spiritual attainment.

The above understanding, in my respectful consideration, is consistent with Srimad Bhagwat Geeta in its Chapter 18, Shloka 45 and 46 which are reproduced as under:

स्वे स्वे कर्मण्यभिरतः संसिद्धिं लभते नरः ।

स्वकर्मनिरतः सिद्धिं यथा विन्दति तच्छृणु ॥ 45॥

(Each man, devoted to his own duty, attains perfection. How he attains perfection while being engaged in his own duty, hear now.)

यतः प्रवृत्तिर्भूतानां येन सर्वमिदं ततम् ।

स्वकर्मणा तमभ्यर्च्य सिद्धिं विन्दति मानवः ॥ 46॥

(He from whom all the beings have evolved and by whom all this is pervaded, worshipping Him with his own duty, man attains perfection)

The Shlokas extracted above plainly mean that, “man attains perfection by worshipping the lord through the performance of his own duty, that is, he becomes qualified for the dawn of self knowledge.”

The Mitakshara School in Hinduism is dominant in the States other than West Bengal and Assam where the leaning

of people is more towards Dayabhaga. The Mitakshara School provides for three kinds of religious rites:

1. The Sanskaras (personal law subjects)
2. The worship of Ganpati (Lord Ganesha)
3. The propitiation of Planets (Grah Shanti)

The above rites give no presumption as to the construction or management of temples, in any form, trust or otherwise. In fact, there is probably no mention of temples and the mankind by himself is a manifestation of God.

The deification of God i.e. worship of a particular God in temples built as place of God (Devsthan) is historically traced to Gupta Period. The ruling class made Religious and Charitable Endowments. They often carried out construction and renovation of the temples at places of religious importance. Such conduct is not only the manifestation of the devotion of the person to deity, but also his duty to maintain the places which hold special religious, spiritual and cultural importance for the subjects believing in uniformity.

The point is well supported by recovery of various inscriptions relating to endowments made e.g. Udaigiri Cave inscription, Lumbini inscription. These endowments served to benefit the religious as well as charitable purposes.

The temples built for public worship were usually managed by Shebaites under the authority granted by the king, however, the kings left them as independent units and interfered exceptionally. Therefore, the only traceable trustee of such endowments of the community was the king. The deity was personified but had no legal personality as such.

It may be beneficial here to point out that the kingdoms usually had a religious identity, as such, the

secular character as it grew with the expansion of empires or exists today, did not come in the way. Therefore, it is wrong to presume that the religious endowments may had the singular pious purpose of worship of an idol and maintenance of a system facilitating public worship alone.

The purpose of religious endowments was not welfare of temple through people, but welfare of the people through temple. Such welfare could be religious, spiritual, cultural, social or economic.

In the present context, where theory of legal personality and the perpetual minority of the deity has developed over the years, the next friend of deity or the *parens patriae* of the deity or any Trust made for such purpose or the Shebait of the temple or any other Committee of Management are not serving the obligation to maintain the interest of deity (which certainly no human agency can interfere with, being a matter of religious belief), but the interest of people for whose benefit the endowment was made i.e. the devotees of deity.

The secular State undoubtedly is bound to remain equidistant from all the religions, however, the endowments that have attained the beneficent character for devotees or people i.e. citizens in a State by evolution and successive silting over the years must utilise the freedom to use its resources for the purposes of inclusive growth viz. spirit of democracy.

B. The Dispute & its Resolution

Coming to the dispute at hand, it may be noted that the scheme of management extracted above became in-operative on account of the fact that it could not be traced to any legitimate succession, resultantly, a resolution passed by the

so called committee of management of the trust on 30.03.1981 gave rise to an application under Rule 14 and 18 of the Scheme of Management in Regular Suit No.1 of 1919 for confirmation of the said resolution. The application so filed was registered as Misc Case No.236 of 1981 titled as Dr. C.S Pandey vs. Sri Narayan Gupta. This application remained pending for about 8 years without any order being passed thereon and ultimately a further application was made for withdrawal of Misc. Case No.236 of 1981 which was allowed on 08.04.1989.

Later on Regular Suit No. 48 of 1994 (Anil Kumar Srivastava and Ors. vs. Sri Narain Gupta and Ors.) was filed for constitution of the committee of management after the death of Late C.S Pandey with some further reliefs. An interim injunction order was passed under Order 39 Rule 1 and 2 CPC restraining the defendants/trustees from functioning as such and they were further restrained to operate the bank account of the trust. Late Hari Krishna Awasthi, former vice-chancellor of Lucknow University and Shri Sharad Narain Saxena, then Reader in the faculty of law, Lucknow University both were appointed as "Receiver" to manage the affairs of the trust. The order passed was assailed before this Court in FAFO No. 80 of 1994 wherein the record of the civil suit was summoned. The civil revision was decided under a compromise, however, the compromise unclear in terms of its authority and contents has culminated the suit proceedings of Regular Suit No. 48 of 1994 accordingly by order of the Additional District Judge (Court No.3) Lucknow passed on 09.09.2013.

In the meantime Regular Suit No. 3 of 1999 also came to be filed before the court of District Judge, Lucknow

(Ganga Charan Tripathi and four Ors. Vs Shri Mahabeer Ji Temple Trust and Ors.) seeking *inter alia* a relief for streamlining the management in accordance with the original judgment of 1920 and yet another suit which was registered as Regular Suit No. 33 of 2000 (Shri Narain Gupta and Ors. vs. Collector Lucknow and Ors.). The later suit i.e. Regular Suit No.33 of 2000 has come to be dismissed for want of prosecution on 17.09.2003, whereas, in Regular Suit No.3 of 1999 several orders were passed. Two orders passed in Regular Suit No.3 of 1999 are significant of which the first order was passed on 28.08.2003 whereby a seven member committee to manage the affairs of the trust was constituted and the second order passed on 30.08.2006 whereby one Sri Rajesh Kumar Singh alias Guddu Singh was removed from the managing committee of the trust constituted by the District Court under its earlier order.

The order passed on 30.08.2006 gave rise to Civil Revision No.148 of 2006 before this Court, wherein an order was passed on 22.09.2010 issuing some directions to the Court below with the consent of parties contrary to which a further order was passed by the District Judge on 20.12.2010 giving rise to the present petition. The Civil Revision No. 148 of 2006 filed against the order dated 30.8.2006, it is informed, was dismissed as infructuous on 27.3.2018.

The present petition filed under Article 227 of the Constitution of India arose out of the order passed by the court below on 20.12.2010 which was heard many times and orders were passed. The orders passed in exercise of supervisory jurisdiction focused on the constitution of a legitimate management committee in the spirit of original verdict rendered on 6th May, 1920 as noted earlier.

This Court looking to the fact that the Trust in question is a public charitable and religious Trust went ahead to constitute a five-member committee for conducting the day-to-day affairs of the Trust and an advisory committee of eminent persons was also named to aid the functioning of the five-member committee.

The five-member committee as per order dated 30.5.2017 consists of the following persons:

1. Justice O.P. Srivastava (Retd.)(President)
2. Sri S.K. Kalia, Senior Advocate, Allahabad High Court, Lucknow Bench, Lucknow (member).
3. Sri Anil Kumar Tiwari, Senior Advocate, Allahabad High Court, Lucknow Bench, Lucknow (member).
4. Sri Jaideep Narain Mathur, Senior Advocate, Allahabad High Court, Lucknow Bench, Lucknow (member).
5. Sri Navneet Sahgal, I.A.S. officer of U.P. cadre (member).

In order to aid and advice the five-member committee, a seven-member advisory committee was also constituted which comprised of the following members by name and designation:

1. Justice Khem Karan(Retd.)(Chairman)
2. Sri Shri Prakash Singh, I.A.S.(Retd.)(member).
3. Sri R. N. Tripathi, I.A.S.(Retd.)(member).
4. Secretary, Religious Affairs, Lucknow (member).
5. Inspector General of Police, Lucknow(member).
6. Divisional Commissioner, Lucknow(member).
7. C.J.M. Lucknow or a nominee of District Judge (member).

Some members of the advisory committee have passed away in the meanwhile but the actual management continues to be carried out by the five-member committee.

This Court in its endeavour to finalise a scheme of management, passed several orders and lastly by order dated 9.3.2021, Hon'ble Mr. Justice Kamleshwar Nath (Retd.) was nominated to draft a scheme of management and it is pursuant to the above request that a final draft scheme of management (Annexure-F) alongwith the letter dated 29.6.2021 was submitted by the most revered nominee whose contribution in this regard deserves to be acknowledged. The Scheme of Administration so framed has thus been placed before the Court by the Senior Registrar alongwith his letter dated 30.6.2021.

This Court after reserving the judgement has given an anxious consideration to the final draft of the scheme of management as well as the reasons in support thereof. The Court is of the considered opinion that the scheme of management formulated and placed on record is wisely designed to serve the purpose of the public charitable and religious trust viz. Aliganj Mahabirjji Trust, as such, the scheme of management flagged as Annexure-F is approved and substituted in supersession of the scheme embodied in the judgement reported in **AIR 1920 Oudh 244 (Gauri Nath Kakaji and others vs Ram Narain and others)**. To the above extent, particularly what is extracted under Part-A hereinabove, the judgement reported in **AIR 1920 Oudh 244 (Gauri Nath Kakaji and others vs Ram Narain and others)**, shall stand modified. It is ordered accordingly.

It is also clarified that any future dispute in relation to the management of the Trust shall be settled keeping in view the provisions of the scheme of management finalised in terms of this judgement. This Court has already taken note of the composition of five-member committee and the advisory

committee. However, in order to streamline the administration of the Trust as per the 'Aliganj Mahabirji Trust Scheme of Management' approved and substituted above, the Court proceeds to nominate a three-member committee comprising of (1) *Hon'ble Mr. Justice Kamleshwar Nath (Retd)* (2) *Hon'ble Mr. Justice S.V.S. Rathore (Retd)* and (3) *Hon'ble Mrs. Justice Rekha Dixit (Retd)* for drawing a list of eleven trustees from amongst the respectable Hindus living in Lucknow who shall occupy each of the offices specified in the scheme of management. It shall also be open to the three-member Committee to nominate any of the eligible persons from amongst the two Committees mentioned above. A copy of the scheme of management flagged 'Annexure-F' shall be sent to the three-member Committee by Senior Registrar of this Court for necessary guidance. The list of eleven trustees drawn and finalised by the three-member Committee against each office shall be deemed to be the initial legitimate body for taking over the management of the Trust from the specified day mentioned hereinafter. The three-member Committee is requested to finalise the list of trustees within two months. The list of trustees named against each office as well as the Scheme of Management flagged as 'Annexure-F' shall be forwarded to the District Judge by the Senior Registrar of this Court within a period of two weeks from the date of receipt of the list of trustees from the three-member Committee. The District Judge, Lucknow shall notify on the notice board of the Trust, the entire 'Aliganj Mahabirji Trust Scheme of Management' inclusive of the list of trustees within six weeks from the date of its receipt. The interim five-member Executive Committee shall hand over complete charge of the record and properties, movable or immovable, to the Committee constituted above within a period of three

months from the date of publication of the management Scheme flagged as 'Annexure-F' inclusive of the list of trustees. The account of all the income/donation and expenditure incurred by the Trust from the date of this judgement up to the date of handing over charge shall also be accounted for and intimated to the District Judge, Lucknow every month by the interim five-member Committee. The District Judge shall ensure compliance of this order within a period of three months from the date of publication of scheme flagged as 'Annexure-F' alongwith the list of trustees nominated against each office. Any order passed by the District Court below or any subordinate court in relation to the management and administration of 'Aliganj Mahabirji Trust' is hereby declared null and void and the present petition is accordingly allowed. The cost is made easy.

The record of objections considered by Hon'ble Mr. Justice Kamleshwar Nath (Retd.) as well as the entire folder of rule making proceedings from page 1 to 61 shall be treated as a part of the record and preserved in the Court.

Order Date :- February 17, 2022

Fahim/-