REPORTABLE

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

I. **Appeal Decree No.3471/2001/TA/Chittorgarh** :

State of Rajasthan, through Tehsildar Chittorgarh, through Guardian (Landholder) Shri Hanumanji Maal Ka Sthan Nagri, Tehsil & District Chittorgarh.

… Appellant.

Versus

1. Bhairudas S/o Shri Gopidas
2. Bali Bai widow of Shri Gopidas
3. Roopdas S/o Shri Khemdas (Deceased), through legal representatives :-
   3/1. Sohni widow of Shri Roopdas
   3/2. Kamla D/o Shri Roopdas
   All are by caste Bairagi, residents of Nagri, Tehsil & District Chittorgarh.
4. Devsthan Department, through Commissioner, Devsthan Department, Udaipur.

… Respondents.

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II. **Appeal Decree No.3472/2001/TA/Chittorgarh** :

State of Rajasthan, through Tehsildar Chittorgarh, through Guardian (Landholder) Shri Thakurji Patelon Ka Mandir Murti Sthan, Nagri.

… Appellant.

Versus

1. Bhairudas S/o Shri Gopidas
2. Bali Bai widow of Shri Gopidas
3. Roopdas S/o Shri Khemdas (Deceased), through legal representatives :-
   3/1. Sohni widow of Shri Roopdas
   3/2. Kamla D/o Shri Roopdas
   All are by caste Bairagi, residents of Nagri, Tehsil & District Chittorgarh.
4. Devsthan Department, through Commissioner, Devsthan Department, Udaipur.

… Respondents.

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D.B.

Shri Bajrang Lal Sharma, Member
Shri Rajendra Singh Chaudhary, Member

Present :

Shri Hagami Lal Chaudhary : Dy. Government Advocate for the State
Shri Purna Shanker Dashora : counsel for respondents no.1 & 2.
Shri Shokind Lal Gurjar : counsel for impleading as a party through application under Order 1 Rule 10 CPC in appeal no.3472/2001.

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Dated : 26 July, 2013

J U D G M E N T

These two second appeals have been preferred under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as 'the Act') against the judgments & decrees dated 17.02.2001 passed by the Revenue Appellate Authority, Chittorgarh in appeals no. 126/2000, 127/2000 respectively whereby the learned Revenue Appellate Authority has rejected the appeals and maintained the judgment & decree passed by the Sub Divisional Officer, Chittorgarh on 26.7.2000 in cases no.126/1997, 128/1997 respectively by which the learned Sub Divisional Officer had given khatedari rights over the land in dispute to present respondents no.1 to 3. Both the appeals contain similar facts & law points, therefore, are being disposed of by this common judgment.

2. The brief facts of the appeal no. 3471/2001 & 3472/2001 are that plaintiff-respondents Bhairudas and Bali Bai presented two suits for declaration of khatedari rights & permanent injunction against defendant-appellant on the land bearing khasra no. 400 area 0.50 hectare in appeal no. 3471/2001 and khasra nos. 524, 525, 405/1, 405/3, 407/1, 407/3, 409/2, 410/1, 410/3, 409/2582/2 total area 2.10 hectare in appeal no. 3472/2001 situated at Village Nagri Tehsil & District Chittorgarh (later on will be called disputed land). The land bearing above khasra numbers was entered in the name of Hanumanji Maal Ka Sthan and Thakurji Patelon Ka Mandir Sthan Deh respectively and *Muafi Khadamdar* Naraindas S/o Motidas in

Jamabandi for Samvat 2025 to 2028. Later on, mutation no. 299 was sanctioned in the name of plaintiffs' father/ husband Gopidas and his brother Roopdas. Till the settlement of 1982, Gopidas and Roopdas were entered as khatedar in revenue records. Both the brothers had compromised and the said land was given solely to Gopidas. After the death of Gopidas, the plaintiffs have been cultivating the land in dispute for last 40-50 years. As the disputed land came solely in the share of Gopidas, Roopdas had no rights & possession on the said land for 40 years, so only the plaintiffs are entitled to be declared as khatedar tenant. The plaintiffs stated that in the year 1951-52, the names of Gopidas & Roopdas were deleted from the revenue record without any notice and without decree or order of any competent court. Therefore, the entries in the name of Mandir Murti be deleted and plaintiffs be declared khatedar-tenant and defendants should be prohibited by the decree of permanent injunction. After presenting the written statement by the defendants, the learned trial court framed issues. Later on, at the stage of final argument, respondent Roopdas submitted an application for early disposal of the case and to implead him as plaintiff in both the cases. Learned trial court allowed the application and made Roopdas as plaintiff no.3. After hearing the arguments of plaintiffs, learned trial court decreed the suit. Aggrieved by the judgment & decree of the trial court, defendants preferred appeals before the learned Revenue Appellate Authority, Chittorgarh, who dismissed the appeal and upheld the judgment & decree of the trial court by its impugned judgment dated 17.02.2001. Being aggrieved by the judgment of the learned Revenue Appellate Authority, Chittorgarh, this second appeal has been presented by the State on behalf of the defendants (temple idols) in this court.

3. We heard the learned counsels for the parties and.

4. Learned Dy.Government Advocate for the State argued that the disputed lands belong to the temple idols. Gopidas is mentioned as Pujari not as khatedar in Ex.P-2. Mandir Murti is a perpetual minor and pujari cannot claim khatedari rights on the disputed land as per the protection provided in section 46 of the Rajasthan Tenancy Act to the

minors. Both the learned lower courts misinterpreted the provisions of law while confering khatedari rights to the plaintiffs over the holdings of Mandir Murti. There are numerous pronouncements of the superior courts on this point that khatedari rights cannot be given to the pujaries or any other person over the land belonging to Mandir Murties even on *muafi* land. He further argued that as per the provisions of Section 2(K), 9 and 19 of Jagir Act, the disputed lands were personally cultivated by the temple idols even in absence of their personal supervision. He finally argued that both the appeals be accepted and decrees by the the judgments of lower courts be quashed.

5. Learned counsel for respondents no.1 & 2 argued that sections 37 & 38 of the *Kanoon Maal Mewar*, 1947 and Jagirs Act provide heritable & transferable rights to the *Khadamdar*s. As per the provisions of both the laws, plaintiff-respondents had the entitlement to be conferred tenancy rights on the land in dispute. He argued that the disputed land was not in the *khudkasht* of the temples. The provisions of section 46 of 'the Act' do not apply in these matters. Settlement Officers had no right to change the revenue records. Before settlement, Gopidas and Roopdas were entered as khatedar-tenants in the revenue records. Later on, Settlement Officers changed the record without any lawful authority in favour of the temple idols. Both the lower courts have passed reasoned and lawful judgments and there is no illegality in the impugned judgments passed by both the lower courts. The learned counsel also contended that applicant Ramlal, so-called president of Thakurji Patelon Ka Mandir Trust is not a necessary party in this matter. He cannot be allowed to be a party at this stage. Appellant State Govt. is fully competent to pursue the matter on behalf of the Mandir Murties. Though, the Assistant Devsthan Commissioner has accepted the application of Ram Lal & others for registration of the trust, but on filing of the appeal against the impugned registration of the trust the Devsthan Commissioner accepted the appeal and remanded the matter to decide it afresh to the Assistant Devsthan Commissioner; therefore, at present the matter of registration of the trust is still pending before the competent authority. He further stated that applicant Ram Lal & any other

member of the trust were not party before both the lower courts and the State Government is competent to defend the interests of Mandir Murties. Therefore, the application under Order 1 Rule 10 Code of Civil Procedure for impleading Ram Lal as party be rejected. He finally urged the court to dismiss both the appeals and uphold the concurrent findings of the lower courts.

6. Mr. Shokind Lal Gurjar, counsel for the applicant argued that Ram Lal- President, Thakurji Patelon Ka Mandir Trust is a necessary party in this case as the officers of State Government could not pursue the matter properly. Plaintiffs have not mentioned in both the plaints about the revenue record of Samvat 2005. Both the lower courts considered the record of Samvat 2025 to 2028 and did not care to consider the record of Samvat 2005. He further argued that the authorities on behalf of the State Govt. could not produce any evidence on behalf of the defendant idols nor they objected impleading Roopdas as plaintiff. Assistant Devsthan Commissioner accepted the application of applicant & others regarding registration of the trust. Therefore, the president of the temple trust is necessary party to look after the welfare and interest of the Mandir Murti. In these circumstances, the application under Order 1 Rule 10 Code of Civil Procedure filed by Ram Lal, the President of the trust be allowed and the applicant be impleaded as party in appeal No. 3472/2001.

7. We have given our earnest consideration to the rival contentions advanced by learned counsels for the parties and scanned the available record carefully. We have also carefully perused the legal pronouncements referred by both the counsels at the time of arguments.

8. Before going into the merits of the appeals, firstly we would like to decide the application under Order 1 Rule 10 of the Code of Civil Procedure filed by Mr. Ram Lal. Though, the Assistant Devsthan Commissioner had accepted the application of Ram Lal & others for registration of the trust, but the argument of the learned counsel for the respondents seems justifiable that the Devsthan Commissioner has quashed and set aside the registration of the trust in appeal and remanded the matter

to decide it afresh to the Assistant Devsthan Commissioner; therefore, at present the matter of registration of trust is still pending before the competent authority. Applicant Ram Lal & any other members of the trust were not party before both the lower courts and the State Government is fully competent to pursue the appeals filed on behalf of the temple idols in an appropriate manner. In these circumstances, we are of the considered opinion that applicant Ram Lal or so called trust, which do not exist as on today, is not a necessary party in this matter and the application of Ram Lal filed under Order 1 Rule 10 of the Civil Procedure Code for impleading him as an appellant, is not maintainable. Hence, the application under Order 1 Rule 10 Civil Procedure Code presented by Ram Lal is rejected accordingly.

9. Before deciding the matters on merits, we would like to discuss some irregularities committed during the trial of both the cases. By bare perusal of the order-sheets dated 04.4.2000 of the learned trial court, it appears that evidence of plaintiffs PW-1 & PW-2 were recorded but neither the appearance of learned counsel for defendants was recorded nor the witnesses of plaintiffs were cross examined by the defence counsel. The learned trial court did not order to proceed ex-parte in both the cases after recording the statements of PW-1 & PW-2 and proceeded further without giving any opportunity to produce evidence to the defendants. The learned trial court adjourned both the cases on next date for final arguments. After giving three opportunities of final arguments to the counsel of the plaintiffs and without recording absence or passing any other order against the defendants, the learned trial court accepted the application of Roopdas to be impleaded as plaintiff on 17.7.2000. At that time too, the learned trial court neither gave the opportunity to defendants to protest the application of Roopdas nor ordered the plaintiffs to file amended plaints in both the matters.

10. The plaintiffs Bhairudas and Bali Bai have stated in their plaints that Gopidas and Roopdas had entered into a compromise and the disputed lands were given solely to Gopidas. Roopdas had no any share in

any part of the disputed lands. It was also stated that Roopdas had no possession and any share over the lands for 40 years, so the plaintiffs Bhairudas and Bali Bai are to be declared khatedar tenant over the disputed lands. Newly impleaded plaintiff Roopdas did not file the plaint nor he requested for any amendment in the plaints regarding declaration of his share. Consequently, both the plaints did not disclose any relief for Roopdas. Even though, learned trial court decreed both the suits in favour of Roopdas as well and declared Roopdas the khatedar-tenant of the disputed lands. Before passing the judgment, it was the duty of the learned trial court to get the plaints amended and to provide an opportunity to defendants to defend their interests in the cases. But the learned trial court failed to consider and comply with the legal provisions of the Code of Civil Procedure.

11. By bare perusal of the plaints and judgment of learned trial court, it reveals that Roopdas was impleaded as plaintiff on 17.7.2000, but no amended title was presented by the plaintiffs before the trial court. Learned trial court had decided the matters on 26.7.2000, but as the plaints were not amended accordingly, learned trial court did not mention the name of Roopdas in the title of both the judgments. Prima facie, bare perusal of the trial court judgments makes it evident that name of Roopdas was added after the dictation & pronouncement of the judgments and accordingly the name of Roopdas was also added in the title page of both the suits.

12. On perusal of order sheets of both the files of learned trial court it is manifestly clear that defendants and their advocates were not present before the trial court from 04.4.2000 to 27.7.2000 till the final judgment of the cases; therefore, it also appears that learned trial court was in a hurry to decide the cases without giving proper opportunities to the defendants and complying with the mandatory provisions of law.

13. As mentioned above, it is evident that the learned trial court committed some irregularities while deciding these cases and the learned

first appellate court also did not take any note of the irregularities committed by the learned trial court. This court is aware that section 227 of the Rajasthan Tenancy Act, 1955 provides that no decree or order shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any misjoinder of parties or causes of action or any error or irregularity in proceedings, not effecting the matters of the case. Therefore, we choose to decide both the appeals on the legal issues involved and the broad spectrum infirmities in the impugned judgments. There is a legal question in both the appeals to be decided by this court is that whether khatedari rights can be given to the '*Khadamdar*s' or any other persons over the *muafi* lands belonging to the temple idols? So it is desirable by this court to deliberate and decide these appeals on merits. The issues framed in both the suits are almost similar. The issues framed in both the suits are as under:-

In suit No. 126/1997

Issue No.1: Whether the forefathers of the plaintiffs were in peaceful possession of disputed land of khasra No. 40 area 0.50 hectare (old khasra No. 436 measuring 2 bighas and 13 biswas). Therefore, the plaintiffs are entitled for declaration of tenancy rights in their favour?

...Plaintiffs.

Issue No.2: Whether the forefathers of the plaintiffs are *khadamdars* of the disputed land prior to the commencement of the Rajasthan Tenancy Act, therefore, the plaintiffs have become tenants by operation of law?

...Plaintiffs

Issue No.3: Whether the defendants are bent upon dispossessing the plaintiffs from the disputed land, therefore, the defendants be restrained by a decree of perpetual injunction?

...Plaintiffs.

Issue No.4: Whether the disputed land is *muafi pujnarth* and the plaintiffs are pujaries of the temple, therefore, cannot be conferred khatedari rights?

...Defendant

Issue No. 5: Relief

Suit No. 128/1997

Issue No. 1: Whether the plaintiffs are in peaceful possession on the disputed land since the time of their forefathers and are entered as *khadamdars* in Mewar State record. Therefore they are entiled for declaration of tenancy rights?

...Plaintiffs.

Issue No.2: Whether the defendant No. 1 is bent upon dispossession of the plaintiffs therefore the defendant is required to restrain by a decree of perpetual injunction?

...Plaintiffs.

Issue No.3: Whether the disputed land is *muafi* land and the plaintiffs are pujaris of the disputed land and cannot be conferred tenancy rights?

...Defendant.

Issue No.4: Relief

The issuewise inference of this court is as under:-

14. Issue No. 1 :-

In both the suits, issue no.1 was similar and it was to be decided whether the plaintiffs are entitled to be declared khatedar-tenant over the disputed lands? In both the suits, the burden of issue no.1 was on the plaintiffs. Learned trial court decided issue no.1 in favour of plaintiffs while heavily relying upon 1987 RRD 261 and 1995 RRD 191. Learned trial court has held that according to the provisions of section 9 of Jagirs Act and section 37 of *Kanoon Maal Mewar*, plaintiffs had heritable & full transferable rights over the disputed lands. The learned trial court also inferred that on the basis of oral evidence, it is established that the plaintiffs are in continuous possession over the disputed lands. Learned first appellate court also concurred with the conclusion of learned trial court and held that plaintiffs are entitled to be declared khatedar tenant according to sections 37 & 38 of *Kanoon Maal Mewar*. Both the learned lower courts considered the fact that under Kanoon Maal Mewar and Jagirs Act, the *Khadamdar*s have heritable & full transferable rights over the Mandir

Muafi lands but the approach of both the lower courts was not correct while deciding the issue no.1 in favour of plaintiffs.

15. This is not disputed that deity or Mandir Murti is a perpetual minor and it has the right to hold properties in its own name. This is also an accepted fact that the plaintiffs were the pujaries of these temples. Therefore, they had a fiduciary relationship with the temple idols. Pujaries are trustees and guardians of the lands and properties held by the temple idols and are under obligation to protect the interests of the deity. As per Rajasthan Public Trust Act, 1959 every temple is a public trust which is open for the community at large for worship. The pujaries are the guardians of the temple idol and if they act adversely to the interest of temple idol, it will tantamount to breach of trust. In these cases, the respondent-plaintiffs were the pujaries and they have filed suits for declaration of tenancy rights on the disputed land which belonged to the deity. Hon'ble Rajasthan High Court has very explicitly held in 'Temple of Thakur Ji Vs. State of Rajasthan and ors' (1998 AIR (Raj.) 85):-

Para 22-

II. The provisions of section 46 of the 1955 Act are based on public policy and have been enacted to secure a laudable object. The provisions of any other act cannot override the special protection accorded to the class of persons mentioned therein. Thus, the protection/ exemption granted to deity a perpetual minor/ permanently disabled/ infirm person cannot be taken away by the provisions of any other Act.

III. It is the solemn duty of and legal obligation on the State Administrative Authorities and Courts to protect the interest of minor, disabled person and the deity being perpetual minor, physically disabled and infirm, is entitled to special protection of law.

The same view has been reiterated in Aidan Vs. State of Rajasthan (2001(3) WLN 363) wherein the Hon'ble Rajasthan High Court took the view that under no circumstances, the land of the deity can be subject matter of transfer, nor any person even having cultivatory possession, can claim khatedari rights over it. The said judgment of the Hon'ble Single Bench of the High Court was challenged before the Division Bench in D.B.

Civil Special Appeal No. 767/2000 and the same view has been affirmed by the Hon'ble D.B. of the Rajasthan High Court on 12.9.2000.

16. Before deciding main issue, we would like to reproduce some provisions of *Kanoon Maal Mewar*, 1947 and Notification dated 12.9.1946 of Mewar Government. The notification dated 12.9.1946 of Mewar Government provides regarding *muafi* lands as follows :-

Section 4 provides the categories of *muafi* lands as under :

दफा-4.	नाम अकसाम	बलिहाज उस गरज व मकसद के जिसके लिये माफी दी गयी हो माफी को मुनदर्जे जैन अकसाम में तकसीम की जाती है । 1. सासनिक (पुन्यार्थ) 2. इनामिया । 3. चाकराना । 4. देवस्थानी । 5. षट्दर्शन ।

Sub Section 4 of Section 4 defines the *muafi* of Devsthan as under :

4. जो माफी देवस्थान के भेंट हो या देवस्थान की सेवा पूजन या दीगर कारोबार के लिये अता की गयी हो वह देवस्थानी माफी कहलायगी ।

Section 7 provides regarding entries of *muafi* land as under :

दफा-7.	देवस्थानी माफी के इन्द्राज के मुताल्लिक	देवस्थान ताल्लुक की माफी देवस्थान के नाम दर्ज होगी और पुजारी व मुखाबिर सरबराकार तसव्वुर किये जावेंगे।

Section 13 and Section 15 provide that the *muafi* will continue till Devsthan exists, which read as under :

दफा-13.	देवस्थान ताल्लुक	देवस्थानी माफी जो कामिल सनद पर मवनी हो या

	की माफी की बहाली	जिसका बक्षीखाने इन्द्राज हो वह माफी तब तक देवस्थान कायम रहेगा बहाल रक्खी जावेगी ।

दफा-15.	गांवाई देवस्थान ताल्लुक की माफी की बहाली	गांवाई देवस्थान ताल्लुक की वह मुतफर्रिक माफी जो देवस्थान की सेवा पूजन या बालभोग के लिये हो उसकी सनद न हो या बक्षीखाने इन्द्राज न हो ताहम देवस्थान के कायम रहने तक बहाल रक्खी जावेगी ।

Section 22 & Section 23 provide regarding the mutation of Devsthan *muafi* land as under :

दफा-22.	देवस्थान ताल्लुक की माफी के इन्तकाल होने पर कार्यवाई	माफी देवस्थान का भोग व खडम का इन्तकाल ख्वाह वह किसी किस्म का व किसी वक्त का हो नाजायज शुमार होगा और मुन्तकिल–अलेह का कब्जा होने की हालत में माफी वापस देवस्थान ताल्लुक करायी जावेगी नीज ऐसा इन्तकाल करने वाले का मुनासिब तवारूक

किया जावेगा जिसकी तादाद 501 रूप्ये तक होगी । अगर इन्तकाल के जरिये कोई मतालवा हासिल किया गया हो तो उसका वार माफी के भोग व खडम पर नहीं होगा ।

दफा-23.	माफी षट्दर्शन के इन्तकाल के बारे में कार्रवाई	माफी षट्दर्शन का इन्तकाल ख्वाह किसी किस्म व किसी वक्त का हो नाजायज शुमार होगा और मुन्तकिल अलेह का कब्जा होने की हालत में माफी वापस स्थान ताल्लुक कराई जावेगी नीज ऐसा इन्तकाल करने वाले का मुनासिब तवारूक किया जावेगा जिसकी तादाद

501 रूप्ये तक होगी । अगर इन्तकाल के जरिये कोई मतालवा हासिल किया गया हो तो उसका वार माफी की खडम भाग पर नहीं होगा ।

Section 35 reads as under :

दफा-35.	कार्रवाई निस्बत देवस्थानी माफी जिसकी सनद में तशरीह न हो	सनद में देवस्थान का तजकरा न हो लेकिन ऐसी सूरत पाई जाए कि वह माफी देवस्थान के साथ है और उसका अमल जारी है तो ऐसी माफी देवस्थानी माफी शुमार होगी ।

Section 42 provides regarding recovery of rent as under :

दफा-42	माफी पर सरकारी सनद बगैर जागीर-	जागीरदार या दूसरा माफीदार भोमिया वगैरा को यह हक नहीं है न होगा कि माफी अतीया सरकार

	दार वगैरा कोई लागतें वसूल नहीं कर सकेगें	पर कोई लागत वसूल करें जब तक कि उसके पास ऐसी लागत वसूल करने की कोई सनद सरकारी मौजूद न हो ।

Section 53 provides regarding position of pujaries as under :

दफा-53.	पुजारी व मुजावीर की बेतरफी व नये पुजारी व मुजावीर की तकर्रुरी	सरकार से जो पुजारी व मुजावीर मुकर्रर किया गया हो उसकी या उसके खानदान वालों की तरफ से सेवा-पूजन में खामी होने या दीगर कोई माकूल वजह पेश आने पर उस पुजारी या मुजावीर को अलहदा कर नया पुजारी या मुजावीर मुकर्रर किया जा सकेगा ।

17. Section 3 of *Kanoon Maal Mewar*, 1947 also provides that the provisions regarding lands which were in existence prior to commencement of this Act will be considered as framed under this Act, if they are not in contravention of this Act. Sub Section 2 of Section 3 also provides that every order, circular and notification issued prior to this Act will be considered in the manner as if they have been issued under this Act.

17. *Kanoon Maal Mewar* Act No.5 Samvat 2003 Year 1947 provides regarding rights of minors and *Khadamdar*s. Section 4 of this Act provides definitions :

Sub Section 7 of Section 4 provides definition of minor as under :

नाबालिग	7. नाबालिग का अर्थ उस व्यक्ति से है जिसकी उम्र 18 वर्ष से कम हो ।

Section 52 of this Act protects the rights of minors as under :

52.	नाबालगान की आराजी का इंतकाल	नाबालिग काश्तकार के संरक्षक को उसकी जमींन बिला मन्जूरी कलेक्टर या किसी प्रकार से इंतकाल करने का अधिकार न होगा।

Section 37 provides the types of tenants as under :

37.	काश्तकारान व उनकी श्रेणी	1. काश्तकार नीचे लिखे प्रकार के होंगे । 1. खडमदार या बापीदार 2. खातेदार 3. मुस्तकिल शिकमी 4. शिकमी 2. कच्ची तहसील के गांवों में जहां दफा 38/1 या 39/1 में

दिये हुये कागजात नहीं हो गांव के जमींदार के हक के अमल हक से जमींन के खडम या खातेदारी के हक का कयास किया जायेगा ।

Section 38 provides the rights of *Khadamdar* tenant as under :

38. खडमदार काश्तकार व उसके हक

1. खडमदार या बापीदार काश्तकार उसे कहते हैं जिसका नाम गांव के खसरे या जमाबन्दी में या जमींन के पट्टे में उसकी जमींन के मुतअल्लिक खडमदार या बापीदार ही हैसीयत से दर्ज किया गया हो ।

2. खडमदार को अपने खडम की जमींन में नीचे लिखे हक होंगे :-
   1- ऐसी जमींन खडमदार के जाति कानून या रिवाज के अनुसार उसके वारिसों को विरासत में मिल सकेगी ।
   2- ऐसी जमींन को बेचने, बख्शीश देन, रहन रखने, वसीयत देने वगैरह के पूरे हक खडमदार को होंगे ।
   3- जहां तक जमींन का लगान बराबर अदा करता रहे खडमदार काश्तकार को बेदखल नहीं किया जा सकेगा ।

18. It will be quite appropriate to reproduce the provisions of section 2(i), (K), Section 9 and section 10 of Rajasthan Land Reforms and Jagir Resumption Act, 1952 and Section 15 of Rajasthan Tenancy Act, 1955 for ready reference:

(i) *Khudkasht* means any land cultivated personally by a jagirdar and includes-

(i) any land recorded as *khudkasht*, Sir, or Hawala in settlement record; and

(ii) any land allotted to a jagirdar as *khudkasht* under Chapter IV.

2(K) **'Land cultivated personally'** with its grammatical variations and cognate expressions means land cultivated on one's own account-

(i) by one's labour; or

(ii) by the labour of any member of one's family; or

(iii) by servants on wages payable in cash or in kind (but not by way of a share in crops) or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Provided that in the case of a person who is a widow or a minor or is subject to any physical or mental disability or is a member of the Armed Forces of the Union, or who being a student of an educational

institution recognised by the Government is below the age of twenty five years, land shall be deemed to be cultivated personally even in the absence of such personal supervision.

"<u>Jagirs Act – Section 9 – Khatedari rights in jagir lands</u> -

Every tenancy in a jagir land who at the commencement of this Act is entered in the revenue records as a khatedar, pattedar, *khadamdar*, or under any other description implying that the tenant has heritable and full transferable rights in the tenancy shall continue to have such rights and shall be called a khatedar tenant in respect of such land."

Jagirs Act- section 10- Khatedari rights in *khudkasht* land:

As from the date of resumption of any jagir land, any *khudkasht* land of a jagirdar (.....) shall be deemed to be held by the jagirdar (.....) as a khatedar tenant and shall be assessed at the village rate.

"<u>Rajasthan Tenancy Act, 1955 – Section 15</u> – <u>Khatedar tenants :-</u>

(1) Subject to the provisions of section 16 and clause (d) of sub-section (1) of section 180 every person who, at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant of *Khudkasht* or who is, after the commencement of this Act, admitted as a tenant otherwise than a sub-tenant or tenant of *Khudkasht* or an allottee of land under, and in accordance with, rules made under section 101 of the Rajasthan Land Revenue Act,1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari rights in accordance with provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (Rajasthan Act VI of 1952) or of any other law for the time being in force shall be a khatedar tenant and shall, subject to the provision of this Act be entitled to all the rights conferred; and be subject to all the liabilities imposed on Khatedar tenants by this Act:
Provided that no Khatedari rights shall accrue under this section to any tenant, to whom land is or has been let out temporarily in Gang Canal, Bhakra, Chambal or Jawai project area or any other area notified in this behalf by the State Government."

19. According to provisions of Section 38 of *Kanoon Maal Mewar*, *Khadamdar* or Bapidar is a person whose name is entered in the Khasra or Jamabandi or in the lease of a village as *Khadamdar* or Bapidar. The *Khadamdar* has not been defined in the *Kanoon Maal Mewar* or in the Tenancy Act. In general parlance *Khadamdar* is a person who cultivates the land for his own or for any other person. *Khadamdar* is not defined as a Shebait or Pujari of a deity or Mandir Murti. He is simply a cultivator of land who cultivates the land and it does not necessarily mean that the *Khadamdar* is an owner or tenant of the land belonging to deity or Mandir *Muafi*.

20. Not only in the *Kanoon Maal Mewar* but in other relevant laws of the land, the rights of a minor have been protected since time immemorial. It is the duty of the courts also to protect the rights of minors. As the *Kanoon Maal Mewar* provided the protection to minors under Section 52, no person can claim the tenancy rights over the land of deity or Mandir *Muafi*. Though Section 38 gives the heritable & full transferable rights to the *Khadamdar*s, but it does not provide the heritable & transferable rights over the *muafi* land of Mandir Murti (Devasthan land). According to Section 38, *Khadamdar* can transfer his rights of his own land. This section also does not provide that the *Khadamdar* has the rights to transfer the land of Mandir Murti. Section 4 of Notification of Mewar Government 1946 provides that the *muafi* made for worshipping of Devsthan is called Devsthan *Muafi*. Sections 13 & 15 of this notification clearly provide that the Devsthan *muafi* will remain in existence till the existence of the Devsthan. Sectins 22 & 23 provide punishment for persons who transfer the *muafi* land or who make the mutation of *muafi* lands in any other name or in any other manner. Section 35 provides that if no entry is made in the documents but *muafi* is attached with Devsthan and it is continued with the Devsthan, then the *muafi* will be entered in the name of Devsthan. Section 42 provides that no tax will be recovered from the *muafi* land. Section 53 provides that if any pujari who is nominated for the deity does not offer worships or does not have any reasonable grounds

for that, he will be terminated from being a pujari and some other person will be nominated as pujari.

21. The Jagir Act has defined the land cultivated personally in section 2(k) which reads that the land held in deity's *muafi* will always be considered as land cultivated personally even in the absence of its personal supervision likewise section 9 and 10 of Jagirs Act also provides that every tenant in Jagir land who at the commencement of this Act is entered in revenue record as khatedar, pattedar, *khadamdar* or under any other description implied that the tenant has heritable & full transferable rights in the tenancy, shall continue to have such rights and shall be called as khatedar tenant in respect of such land. The words used in section 9 'under any other description includes *muafi* also because the definition of jagir land includes *muafi* as per the definition provided in section 2h of the Act read with first schedule appended with the Act. Section 10 manifestly reads that the lands which are in *khudkasht* will continue to be in tenancy of the jagirdar or *muafi*dar. The Jagirs Act has not provided that the lands belonging to deity or Mandir Murti will not continue in their names and the Shebaits or Pujaries will have the tenancy rights over such lands. Even the Rajasthan Tenancy Act has no provision which debars the deity of Mandir Murties who at the time of commencement of this Act were in cultivation & possession of lands in their own name. Contrary to this, Section 46 of the Tenancy Act provides protection to the minors and other juristic persons. Section 10 of Jagirs Act ensures khatedari rights in *khudkasht* lands of Jgirdars and it does not debar the juristic persons or minors from holding the *muafi* lands in their own name.

22. The learned trial court and first appellate court have erroneously decided issue no.1 in favour of the plaintiffs on the basis of provisions of Sections 37 & 38 of *Kanoon Maal Mewar* and Section 9 of Jagirs Act. The provisions of law do not restrict the rights of deities from holding the lands in their own names. Though the deity or Mandir Murti cannot cultivate the land personally, but it does not mean that any person who is cultivating over the land of deity on behalf of such juristic person

will debar the perpetual minors from their rights. Learned lower courts have held that *Khadamdar*s have heritable & full transferable rights under Sections 37, 38 of *Kanoon Maal Mewar*, but they failed to consider this vital fact that who is the *Khadamdar*, how he can claim the Khadam and whether the *Khadamdar* has heritable or transferable rights over the *muafi* land held by the deity or Mandir Murti? According to Section 51 of Kanoon Maal Mewar, a person or Shikmi khatedar can claim the right of Khadam over any piece of land by depositing Nazrana and by receiving Bapi Patta from the Land Revenue Officer. For the convenience of reading of Section 51, we would like to reproduce it as under :-

51. काश्तकार को हक खडम देना	मुस्तकिल शिकमी खातेदार या कोई दीगर काश्तकार जब नजराना अदा कर जमींन का बापी पट्टा माली अफसर मजाज से प्राप्त करे तब उसे खडमदार के हक जमीन पर प्राप्त होंगे ।

23. As the provisions of Notification of Mewar Government dated 12.9.1946 were saved as it is, under Section 3 of Kanoon Maal Mewar, the *Khadamdar*s or any other person who is cultivating the land of deity or Mandir Murti cannot claim the tenancy rights over the land of deity or Mandir Murti.

24. It was also argued before us on behalf of the respondents that when the *muafi* lands were resumed the temple idols were sanctioned annuity as compensation against the land so resumed. In this case there is no such evidence produced by the respondents/ plaintiffs about the payment of annuity and there has not been any averment of this kind made by the plaintiffs either. In our opinion a perpetual minor cannot be divested of its rights on *muafi* land in lieu of a paltry amount to be paid annuity. The protection provided by various laws of the land cannot be taken away in any circumstance.

25. It is well settled position of law that the natural born minor person will get majority at some point of time, but it is universally true that a juristic person will never get majority. The deity or Mandir Murti will

always remain minor and physically infirm, it will never become major to protest & protect its rights against all of the world. Keeping in view the provisions of Notification of Mewar Government 1946 and *Kanoon Maal Mewar*, 1947 providing full protection to the minors and deity. Section 9 and section 10 of Jagirs Act do not provide that a person who is cultivating the land on behalf of the deity or Mandir Murti at the time of commencement of Jagirs Act, will be entitled to claim tenancy rights over the land belonging to deity or Mandir Murti. The Rajasthan Tenancy Act itself does not give rights to any person to claim tenancy rights over the land of perpetual minors, then it is clear that by mistake if any entries in revenue record were made in the name of any person even who is cultivating the land for or of deity or Mandir Murti, cannot claim the tenancy rights over such lands. We would like to reproduce the observations & findings of learned Larger Bench of this Board in the matter of 'Gurdayal Vs. Mandir Shri Shanishcharji Maharaj' reported in RRD 1984 page 1 and 'Shri Shivram Vs. Shri Mishru' reported in RRD 1987 page 261. In both the judgments, learned Larger Benches of this Revenue Board observed and concluded the questions of law relating the lands held in the name of deity or Mandir Murti as follows:-

> "(1) A Hindu Deity is a perpetual minor in the eyes of law and, consequently, for purposes of the Rajasthan Tenancy Act, 1955 and the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 also.
> (2) Lands held in *Muafi* by a deity, but cultivated by a person, other than by a Shebait of the deity himself, or by hired labour or servant engaged by its Shebaid, as a tenant of the deity, will still be regarded as lands in the personal cultivation of the deity, and khatedari rights shall not accrue to the person cultivating the land.
> (3) A person who, immediately preceding the commencement of the Jagirs Act, is validly and in conformity with the provisions of law, entered in the revenue records as a khatedar, pattedar, *khadamdar* or under any other description implying that he is a tenant having heritable and full transferable rights in the tenancy of the *Muafi* land of a Hindu Idol or deity, shall become a khatedar tenant of such land on resumption of the *muafi* for purposes of the Rajasthan Land Reforms & Resumption of Jagirs Act, 1952 and the Rajasthan Tenancy Act, 1955 or under any other law for the time being in force. However,

> if he is not so entered or did not enjoy both heritable and full transferable rights immediately prior to the commencement of the Jagirs Act on 18.2.1952, then khatedari rights cannot accrue to him on lands held by a Hindu Idol after the commencement of the Jagirs Act."

26. By bare reading of the provisions of Notification of Mewar Government 1946 and *Kanoon Maal Mewar*, 1947, we are of the opinion that *Khadamdar*s have heritable & full transferable rights of Khadam issued in their name by a competent Land Revenue Officer of Mewar Government after depositing Nazrana on ordinary lands belongings to individuals, but *Khadamdar* has no right of inheritance & transfer of land belonging to the deity or Mandir Murti who is a perpetual minor and disabled. In above enactments, both the Notification and Act of Mewar Government have protected the rights of deity or Mandir Murti and it was provided in the Notification and the Act as well that the *muafi* land will remain in the name of Devsthan till the existence of Devsthan. This is not the case of plaintiff-defendants that there is no existence of Hanumanji Maal Ka Sthan and Thakurji Patelon Ka Mandir Murti Sthan in Village Nagri Tehsil & District Chittorgarh. According to the Jamabandi for Samvat 2005, Ex.2 in suit no.126/97 and Ex.3 in suit no.128/97, Hanumanji Maharaj Maal Ka Sthan Deh and Thakurji Patelon Ka Mandir Murti Sthan Deh were entered as Malik (owner) of said lands and Khemdas & Naraindas were recorded as Aasami and Kaluram was entered as Shikmi. In the last column of Ex.2 & Ex.3, category of the lands was recorded as '*Muafi Pujnarth'*.

27. At the stage of hearing of both the appeals one Mr Ram Lal had filed an application under Order 1 Rule 10 of the Code of Civil Procedure and submitted some documents. These documents were not exhibited but are public documents and relevant to this case. Therefore, we would like to take note of these documents in larger interest of justice. Jamabandi of Svt. 2012-15 shows the Mandir Murties as tenant cultivator. According to jamabandi of Svt. 2012-15 the defendants-appellants Mandir Murti was holding the land in dispute as tenant and pujari *khadamdar* was cultivating

the land for Mandir Murti. In these circumstances, provision of section 10 of the Jagirs Act comes to succor to the appellants-defendants for accural of khatedari rights on the disputed *muafi* lands. The learned lower courts failed to consider Ex.2 & Ex.3 in a justfiable manner and observed that pujaries or the legal representatives of pujaries had heritable & full transferable rights over the lands owned by the Mandir Murti Sthan Deh.

28. In our view the Indian Majority Act, 1875 Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956 which are the central laws governing and regulating the rights of the minor have the constitutional mandate and the protection provided to a minor under these laws cannot be taken away by any other legislation or any court. In the circumstances mentioned hereinabove both the lower courts are not justified in deciding issue no.1 in favour of plaintiffs. In our view, issue no.1 in both the suits cannot be decided in favour of plaintiffs. As discussed above, we decide this issue in favour of the defendants-appellants and against the plaintiffs-respondents in both the cases.

29. Issue No.2 of Appeal no.3471/2001 is regarding claiming khatedari rights by plaintiffs on the basis of *Khadam*. As we have discussed above, though Khemdas & Naraindas pujaries were entered as *Khadamdar* in Jamabandi of Samvat 2005 but the land was *muafi* land for the purpose of '*Muafi Pujnarth'* and the *Khadamdar*s who were the pujaries of the temples were not given heritable & full transferable rights on such lands even under *Kanoon Maal Mewar,* so the plaintiffs cannot claim tenancy rights over that land after commencement of the Tenancy Act. In our considered opinion the protection provided to the minors in the Jagir Act of 1952 itself is absolute and it explicitly provides that the minors are not capable of cultivating their lands therefore lands held by the deity shall be deemed to be the land cultivated personally even without personal supervision. It is a well settled position of law that temple idol is perpetually disabled and minor juristic person and the law cannot compel a person to do what he cannot possibly perform nor expects from a person to perform an act which is impossible (doctrine of *lex non cogit* and

impossibillia, impossibilium nulla obligatio est). Hon'ble Apex Court has considered both these concepts of law in Mohd. Gazi Vs. State of M.P. and ors. (2004 SCC 342) and in Chandra Kishan Jha Vs. Mahaveer Prasad and ors. (1999 (8) SCC 266). In light of the age old doctrines of law there is an obligation on the court and legislature not to compel a person to act what he is not physically able to perform.

30. This is also noteworthy that the plaintiffs were the pujaries of the defendant temples. Their relationship with the idol was based on mutual trust. Specifically in this case the plaintiffs, being pujaries cannot even bring the suit against the defendant idols because role of pujaries is to protect the interest of the idol and they themselves cannot file such a suit. Hence, issue no.2 of suit no.126/97 is decided against the plaintiff-respondents.

30. Issue no.3 of suit no.126/97 and issue no.2 of suit no.128/97 was regarding seeking permanent injunction. The burden of these issues was upon plaintiffs. Both the lower courts decided these issues against the plaintiffs as there were no evidence that the defendants are trying to dispossess plaintiffs. This is also beyond our comprehension that how a Mandir Murti who is perpetually disabled and physically non-living can threaten, interfere or dispossess the plaintiffs? In our view the land held by the deity is considered as the land cultivated personally as per the definition of section 2(K) of the Act of 1952. Such a protection provided in law is absolute in favour of a minor and a widow. Section 46 of the Rajasthan Tenancy Act also provide that a minor can sub-let his holding to another person and such cultivation even without his personal supervision shall be deemed to be his own cultivation. In such circumstances the land held by the deity shall be viewed as it is in the cultivation of the deity and no decree of perpetual injunction can be passed against a minor by any court. The plaintiff-defendants in both the matters did not file cross appeals regarding these issues which were decided against them. So, we do not find any infirmity in the judgments of lower courts about these issues.

31. A Division Bench of Hon'ble Rajasthan High Court in Mangi Lal Vs. State of Rajasthan (1997 (3) RLW 2017) considered the scope of section 46 of Rajasthan Tenancy Act, 1955 and took this view that deity is a perpetual minor and as per the provisions of section 46 of the Act, its interest is to be protected by the State, Revenue Authorities and the courts. The transfer of its properties is not permissible under the law. The same view was taken by the Division Bench in Ram Lal and anr. Vs. Board of Revenue and ors. (1990 (1) RLR 161) which was based on Hon'ble Supreme Court's judgment in Bishwanath and anr Vs. Thakur Radha Vallabh Ji and ors' (AIR 1967 (SC) 1044) and the same view was reiterated by Hon'ble Apex Court in Budha Vs. Ami Lal (1991 (2) SCC 41) and in Beer Singh Vs. Pyare Singh [(2000) 3 SCC 652]

32. This is also very pertinent to observe here that in seventeen writ petitions filed by Ram Pratap and others under Article 226 of the Constitution of India were filed before Hon'ble Division Bench of High Court which were decided by a common order on 6.1.1993 wherein the Hon'ble High Court dismissed all the writ petitions and manifestly held that even in *muafi* lands the rights of idols/ temples were not extinguished as the lands held by these idols were deemed to be in personal cultivation. The court also observed that the lands which were mentioned in section 23(2) of the Jagirs Act were not subject to resumption under this Act. If the deity is considered as *jagirdar* of *muafidar* of such land, it cannot be resumed as per the definition provided under section 2(K) of the Jagirs Act about the land cultivated personally. This judgment of Hon'ble High Court has been reported in 1994 RRD 1 and finally affirmed by Hon'ble Supreme Court in Civil Appeal No. 12624/1996 filed by Prithvipal on January 29, 2004.

33. We are also fortified by the observations made by Hon'ble Supreme Court in A.A. Gopalkrishnan V. Cochin Devaswom Board (2007) 7 SCC 482. It was indicated as under: -

The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/ archakas/ shebaits/ employees. Instances are many where persons entrusted with

the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/ trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious charitable institutions from wrongful claims or misappropriation.

(emphasis supplied)

34. Issue no.4 of suit no.126/97 and issue no.3 of suit no.128/97 were decided by the trial court against the defendants as they have not produced any evidence to prove the fact that the lands in dispute are *muafi* pujnarth and pujari cannot claim tenancy rights. This is purely a legal issue that whether pujari can claim tenancy rights over the land of deity or Mandir Murti? This is factually true that the defendants did not produce any evidence on this issue and the trial court also did not give any chance to produce any evidence on these issues to defendants but as has been discussed in issue no.1 by us, we are of the considered opinion that deity or Mandir Murties are perpetual minors. Notification of Mewar Government 1946 and *Kanoon Maal Mewar,* 1947 and section 10 of the Jagir Act and section 46 of the Rajasthan Tenancy Act provide absolute protection to the minors. Both the important legal statutes of Mewar Government have provided that any piece of land which is given in *muafi* to Mandir Murti or any Devsthan will remain forever in the name of that Devsthan or Mandir Murti till the Devsthan exists. It has been provided under Section 9 of this Act that a person who is entered in the revenue record as khatedar, pattedar, *khadamdar* at the time of commencement of this Act, that tenant has heritable & full transferable rights in the tenancy, shall continue to have such rights, but this section does not provide that any person recorded as *khadamdar* of the *muafi* lands held in the name of deity or Devsthan or Mandir Murti shall get the rights of tenancy on the commencement of this Act. This Section also does not provide the heritable & full transferable

rights to the *Khadamdar*s in the tenancy of deity or Devsthan Mandir *Muafi* entered in the revenue record in the name of such deity or *muafi* Devsthan. Therefore, the learned lower courts were not justified in deciding these issues against defendants. According to the discussion made hereinabove, pujaries who are recorded even as *khadamdar* cannot claim tenancy rights over the *muafi* lands recorded in the name of deity or Mandir Murti. Hence, these issues in both the suits are decided in favour of defendant-appellants.

35. In view of above discussions and our inference expressed on the issues framed in both the suits, we are of the considered opinion that the judgments passed by both the lower courts are arbitrary, perverse and against the established principles of law. Hence, these appeals are accepted and the judgment & decree of learned Sub Divisional Officer, Chittorgarh dated 26.7.2000 (suit No. 126/97 and 128/97) and that of learned Revenue Appellate Authority, Chittorgarh dated 17.02.2001 (Appeal No. 126/2000 and 127/2000) are hereby set aside. The suits filed by the respondents-plaintiffs fail and hence are dismissed. Consequently, both these appeals are disposed of accordingly with no order as to costs.

Pronounced in open court.

(**RAJENDRA SINGH CHAUDHARY**)
Member

(**BAJRANG LAL SHARMA**)
Member

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