Before, J. V. Gupta and Ujagar Singh, JJ.

KIDAR NATH,—*Appellant.*

versus

MADHO SINGH AND OTHERS,—*Respondents.*

L.P.A. No. 1169 *of* 1985

February 21, 1989.

Code of Civil Procedure (V of 1908)—*S.* 92—*Mohtim of a Charitable Institution and Public Trust—Appointment order of Mahant not challenged—Title of property not claimed by Mahant—Usufruct of property attached with the office—Such enjoyment not less than that of Shebait—Office and benefit cannot be detached from each other—Withdrawal of beneficial interest—Amounts to destroying the character of Mahant—However, reasonable restriction can be imposed.*

Held, that the Administrator of the property attached to the temple of which he is the shebait and both the elements of office and property or duties and personal interest are blended together in the conception of shebaitship and neither can be detached from the other. So far as property of the temple is concerned Shebait is in the position of a trustee. It is further pointed out that it would be wrong to regard the shebait as a mere pujari or arohak. The Mohunt is described as a spiritual head of the institution but the property may by the usage and custom of the institution vest in trustees other than the spiritual head. In any case the property is held solely in trust for the purposes of the institution. The functions and duties of the Mohunt are regulated by custom and he has a very wide discretion as to the application of the income and this discretion is subject to the obligations to manage the property so as to serve effectively the objects thereof. In the conception of Mohuntship also both the elements of office and property are blended together and neither can be detached from the other. (Para 12)

Appeal under Clause 10 *of the Letters Patent against the judgment and orders of Hon'ble Mr. Justice G. C. Mital, dated 4th November,* 1985 *in R.F.A. No.* 150 *of* 1976.

Cross Objections 4 *of* 1986

Cross objections under order 41 *Rule* 22 *read with Section* 151 *CPC praying that the cross objections be allowed issue No.* 4 *be decided in favour of the applicant-respondents and suit be decreed in toto.*

H. L. Sibal, Senior Advocate with Harmohan Singh Sethi, Advocate, *for the Appellant.*

M. S. Jain, Senior Advocate with Sanjay Majithia, Advocate, *for the Respondent.*

JUDGMENT

Ujagar Singh, J.—

(1) This Letters Patent Appeal and Cross-Objection No. 4 of 1986 arise out of the judgment of the learned Single Judge in Regular First Appeal No. 150 of 1976, decided on 4th November, 1985, *vide* which the judgment and decree of the trial Court was partly allowed and after modification a new decree was passed containing conditions Nos. 1 to 15 incorporated in the last paragraph of the judgment. Kidar Nath appellant has challenged the decree and judgment of the learned Single Judge through this Letters Patent Appeal and the plaintiffs-respondents have preferred the cross objections. The Letters Patent Appeal and Cross-Objections are being disposed of by this judgment.

(2) Plaintiffs-respondents filed this suit against defendant-appellant for his removal from Mohitmimship of temple Thakur Dwara Shivala Adhwala situated at Patiala-Sanour Road, Patiala. The allegations made in plaint are : that the said institution is a religious and charitable institutoin and there are two temples therein; one Harjas Rai was the founder of the temple to which 85 Bighas and 6 Biswas of Agricultural land is attached, after the death of said founder mutation was entered in favour of his two daughters Mst. Hukmi Devi and Mst. Sampati Devi. These two daughters died and mutation was entered in favour of one Din Dayal, who was a Jamadar of Maharaja Patiala. After the death of Din Dayal Mohitmim the mutation was entered in favour of Kidar Nath defendant-appellant, residents of the locality and neighbouring villages as also the members of the community and collaterals and members of the family of Harjas Rai are worshippers of the deities and Murtis in the temple and they take part in the festivals and offerings and used to do prayer daily, it was open to the public prayers and offerings; Sadhus and Sants and members of the community and the family attended the temple on all important occasions and festivals; defendant-appellant was a Government servant posted outside Patiala on different stations including Chandigarh and Simla; he continuously remained out of Patiala for the last more than 20 years and recently he had been transferred to Haryana Government from where he retired during the pendency of the inquiry under Section 92 of the Code of Civil Procedure; after retirement defendant-appellant is residing at Chandigarh; defendant-appellant closed the temple and did not allow the plaintiffs-respondents and the public at large,

sadhus and Brahmins to enter the premises for the worship and prayer and to celebrate the important festival defendant-appellant also does not perform sewa dhupdip rather the temple has been locked and its building has almost fallen down and is in a dilapidated condition; defendant-appellant has converted the above temple and its agricultural land as his personal property and the vast income from the agricultural land is being used for his personal benefit and as a matter of fact he has constructed a house of his own; defendant-appellant was appointed Mohitmim on the condition that he shall perform sewa dhup dip and give all possible facilities to the pilgrims and that income of the land be spent on betterment of the temple but he does not do so; immovable property attached to the temple is always to remain the property of the temple and shall on no account be treated as the personal property of the defendant-appellant and income thereof shall not be used for his personal benefit and he was also required to maintain the accounts. The defendant-appellant earned about more than Rs. 4,000 a year from the agricultural land and he comes only to collect the amount and then goes back to Chandigarh. It is further alleged in the plaint that not even a single paise is being utilised for the construction and repair of the temple property and for its betterment. Thus, the defendant-appellant is said to have misappropriated the income of the temple and has committed a breach of the trust and the conditions attached thereto. With these allegaions removal of the defendant-appellant from Mohtmimship is sought. Plaintiff-respondent No. 1 claims to be the grandson of the founder of the temple and the plaintiffs-respondents Nos. 2 to 5 are said to be worshippers of the deities and murtis but they are not allowed to enter in the premises of the temple.

(3) The averments in the plaint were controverted in the written statement,—*vide* which the defendant-appellant admitted the facts leading to his appointment as Mohtmim. It is averred that no offerings in the shape of cash and kind were ever made by the members of the public or by the plaintiffs-respondents. The defendant-appellant further admitted that he was already in service when he was appointed as Mohtmim and he retired only on 16th of September, 1967 and since then was residing in the premises adjoining the Mandir. Income of the land was meagre and whatever income was available the same was utilised for dup dip and up-keep of the temple. The defendant-appellant got the land vacated from the persons who were in possession illegally and were not paying anything. The land was developed by spending huge amounts, old well was repaired, a persian wheel was put on it and thereafter a tubewell

was installed. Thus, defendant-appellant is said to have spent huge amount on repairs and improvement of the mandir and improvement of the land besides mandir having been got electrified. *Locus-standi* of the plaintiffs-respondents was also denied. It is specifically asserted that the defendant-appellant was not required to maintain the accounts nor any accounts could be maintained because of the income being meagre. As a matter of fact, it is said that sometimes the defendant-appellant was to spend some amount for the maintenance of the Mandir from his own pocket. The plaintiffs-respondents filed replication reiterating the facts mentioned in the plaint.

(4) Out of the pleadings, the trial court framed the following issues:—

1. Whether the Thakur Dawara in dispute is a charitable institution ? OPP.
2. Whether the Thakur Dawara was open to public for worship and offerings were made ? OPP.
3. Whether the defendant was appointed Mohtmim on conditions mentioned in para No. 11 of the plaint ? OPP
4. Whether the defendant is liable to be removed from Mohtmimship for the reasons given in para 14 of the plaint ? OPP.
5. Whether the plaintiff has *locus-standi* to file the suit ? OPP.
6. Whether the Thakur Dwara in question is not covered by the provisions of Section 92 of the Code of Civil Procedure ? OPD.
7. Whether the defendant was appointed by His Highness the Maharaja of Patiala. If so, its effect ? OPD.
8. Relief.

(5) The parties went to trial on the above issues and the plaintiffs-respondents examined PW-1, Norata Ram, PW-2, Atma Singh, PW-3, Sarwan, PW-4, Chet Ram, PW-5, Kundan, PW-6 Ganga Ram, PW-7, Om Parkash, PW-8, Ramjas, PW-9, Gurbux Singh, PW-10, Jai Gopal and PW-11, Madho Sarup, one of the plaintiffs-respondents. Another witness Gajinder seems to have also been examined as a PW but it appears from the record that he has not been given any number. The plaintiffs-respondents also tendered in evidence documents which will be referred to at the relevant place in this judgment.

(6) The defendant-appellant examined DW-1, Harsaran Dass, DW-2, Raunki Ram, DW-3, Rulda Ram, DW-4, Amar Singh, DW-5, Balkar Singh, DW-6, Birj Nand, DW-7, Jyoti Ram, DW-8 Tilak Ram and the defendant himself appeared in the witness box as DW-9. Defendant-appellant also proved certain documents to be referred to hereinafter in this judgment.

(7) After hearing arguments oral and written of the learned counsel for the parties the trial Court found the institution to be a charitable institution, under issue No. 1. The trial Court under issue No. 2 also found the institution to be a public trust. Issue No. 3 was decided in favour of the plaintiffs-respondents and it was held that the defendant-appellant was appointed as a Mohtmim as per conditions laid down in paragraph 11 of the plaint. The trial Court decided issue No. 4 against the plaintiffs-respondents holding that the defendant-appellant was not liable to be removed. Issues Nos. 5, 6 and 7 were found in favour of the plaintiffs-respondents. The trial Court found that the defendant-appellant was appointed as Mohtmim by His Highness the Maharaja Patiala and, therefore, his appointment could not be challenged and he could not be removed from the said office as the original order of appointment was not challenged. The plaintiffs-respondents had sought removal of the defendant-appellant only on the ground of the alleged violation of conditions laid down in the order of appointment and ultimately, the trial Court dismissed the suit although directing the defendant-appellant to keep proper accounts of the temple and income of the agricultural property attached to it in future. The trial Court noticed that Madho Sarup plaintiff-respondent No. 1, alongwith others had filed the suit in order to vindicate his personal rights so as to succeed as a Mohtmin and relied upon *Swami Parmatman and Saraswati* v. *Ramji Tripathi* (1).

(8) Madho Sarup and others plaintiffs-respondents filed Regular first Appeal No. 150 of 1976 challenging the decree and judgment of the trial Court. The learned Single Judge after hearing the learned counsel for the parties and going through the facts of the case modified the decree and judgment of the trial Court with the modifications Nos. 1 to 14 mentioned in the last paragraph of the judgment.

(9) We have heard the learned counsel for the parties at a considerable length and have gone through the evidence produced in the trial Court.

(1) Unreported judgments (S.C. 1975) short Note 4.

(10) The learned Senior Advocate for the appellant had laid stress that the institution is not a charitable institution and the appellant had been appointed as a Mohtmim of the institution and, therefore, was no less than a Shebait. He has referred to commentaries of Hindu Law to support his argument. It has been further argued by him that the conditions laid down by the learned Single Judge are onerous and uncalled for. With these conditions he argues that the defendant-appellant has been completely deprived of the management of the institution to which he was entitled to under the said orders of the Maharaja of Patiala. So far as removal from Mohtmimship is concerned the trial Court has not thought this case to be fit for removal and this finding has not been set aside by the learned Single Judge. Various authorities have been referred to.

(11) The learned Senior Advocate for the plaintiffs-respondents has mostly referred to the conduct of the defendant-appellant during pendency of the Regular First Appeal with reference to 8 reports made by the Local Commissioners, with regard to the management of the land and also to land acquisition proceedings. He further argues that the conduct of the defendant-appellant has been such that his removal from Mohtmimship is called for. He has also referred to various authorities in support of his arguments.

(12) A reference to Article 414 of Hindu Law by Mulla 14th Edition makes it clear that a Shebait is, by virtue of his office, the Administrator of the property attached to the temple of which he is the shebait and both the elements of office and property or duties and personal interest are blended together in the conception of shebaitship and neither can be detached from the others. So far as property of the temple is concerned Shebait is in the position of a trustee. It is further pointed out that it would be wrong to regard the shebait as a mere purjari of arohak. The Mohunt is described as a spiritual head of the institution but the property may by the usage and custom of the institution vest in trustees other than the spiritual head. In any case the property is held solely in trust for the purposes of the institution. The functions and duties of the Mohunt are regulated by custom and he has a very wide discretion as to the application of the income and this discretion is subject to the obligations to manage the property so as to serve effectively the objects thereof. In the conception of mohuntship also both the elements of office and property are blended together and neither can be detached from the other. In *The Commissioner, Hindu,*

Religious Endowments, Madras v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur, Mutt* (2), a Bench of seven Judges of the Supreme Court laid down:—

> "Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect of endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. It is true that the Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply.
>
> There is no reason why the word "property" as used in Art. 19(1) (f) of the Constitution, should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether.
>
> It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which

(2) AIR 1954 S.C. 282.

he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State Department. It is from this standpoint, that the reasonableness of the restrictions should be judged."

(13) In *Sree Sree Ishwar Sridhar Jew* v. *Sushila Bala* (3) it was observed as under :—

"It is true, that a dedication may be either absolute or partial. The property may be given out and out to the idol, or it may be subjected to a charge in favour of the idol. "The question whether the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, these heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the will",——

(14) What we find here in Clause 3 of the will is an absolute dedication of the premises No. 41 Grey Street to the idol as its permanent habitation with only the right given to the sevayats to reside in the said premises for the purposes of carrying on the daily and periodical seva and the festivals etc. of the deity. The said premises are expressly declared as dedicated to the deity. They are to be registered in the Municipal records in the name of the deity, the Municipal bills have got to be taken also in his name and none of the testator's representatives, heirs, successors, executors, administrators or assigns is to have any manner of interest in or right to the said premises or is to be competent to give away, or effect sale, mortgage etc. of the said premises. There is thus a

(13) AIR 1954 SC 69.

clear indication of the intention of the testator to absolutely dedicate the said premises to the deity and it is impossible to urge that there was a partial dedication of the premises to the deity."

In the present case, there is no dispute that the institution in question is absolutely dedicated and there is no question of any detraction therefrom. Reliance was placed on *Har Narayan* v. *Surja Kunwari* (4) wherein it was held that although the will may provide that the whole property shall be considered to be the property of the idol, yet, circumstances such as that the will provides for the balance of the proceeds of the estate after defraying the expenses of the idol being enjoyed by the testator's heirs and the fact that the expenses of the idol are fixed by the will and would require only a small proportion of the income, may indicate that the property was to be that of the testator's heirs with a charge in favour of the idol. According to this view, question can only be settled by a conspectus of the entire provisions of the will.

(15) In *Deoki Nandan* v. *Murlidhar* (5) the question which arose for decision was whether the institution was a private or a public trust, but in the present case it is not relevant.

(16) In another authority reported as *Kalenka Devi Sansthan* v. *The Maharashtra Revenue Tribunal,* (6) the distinction between a manager or a Shebait of an idol and a trustee where a trust has been created was held to be well recognised. It was held that the properties of the trust in law vest in the trustee whereas in the case of idol or a SANSTHAN , they did not vest in the manager or Shebait, as it is the deity or the Sansthan which owns and holds the properties. Only the possession and the management vest in the manager. In the present case also, the ownership of the temple has not been denied. It is also not disputed that the defendant-appellant was appointed as a Mohitmim and therefore, the defendant-appellant can safely be held to be in possession and the management vests in him. This point needs no further discussion to show as to whether the dedication is absolute or not. The temple was founded by Harjas Rai. To that extent, it can be held that it is a religious endowment. So far as the land is concerned, it was given to the Mohitmim by the Maharaja of Patiala for particular purpose

(4) AIR 1921 PC 20.
(5) AIR 1957 SC 133.
(6) AIR 1970 SC 439.

mentioned in the order. On the basis of that order, it is not difficult to hold that it was a charitable institution to the extent mentioned therein.

(17) In *The Bihar State Board of Religious Trust* v. *Mahanth Sri Biseshwar Das* (7) it was held as under :

> "Evidence that the mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public. The celebration of festivals is, according to Hindu belief, part and parcel of the puja of the deity. Such festivals are celebrated in family and other private temples also. The fact that members of the public used to come to the temple without any hindrance also does not necessarily mean that the temple is a public temple, for, members of the public do attend private temples. It is against Hindu sentiments to turn away persons who come to do worship and darshan. The mere fact, therefore, that no instance had occurred when persons from the public were asked to go away or the absence of proof that they were allowed on permission or invitation only cannot be conclusive of the temple being one in which the public have by user acquired interest."

The facts of the present case are entirely different from those of the above case. In the present case, there is no such dispute and nobody has claimed the institution in dispute on the basis of hereditary claim or as owner thereof. Even there is no claim that the institution in dispute is a private trust.

(18) The learned counsel for the defendant-appellant then argues that the admission of the learned counsel for the defendant in the Regular First Appeal to the effect that the present institution was a charitable trust was only to the limited extent the charitable purposes are mentioned in the order of appointment. The said admission cannot be extended to say that the institution in dispute was a charitable institution. In this case, the nature of the institution, even if it is religious, will not change the concept that it also serves

(7) AIR 1971 SC 2057.

as a charitable institution to that extent. It has been further argued that the trial Court and the learned Single Judge have decided against the removal of the defendant-appellant from Mahantship. The only argument left is as to whether the conditions mentioned in the judgment of the learned Single Judge can be imposed or not on the defendant-appellant as Mohitmim of the institution.

(19) On the other hand, the learned Senior Advocate for the plaintiffs-respondents has relied upon :

Kalipade v. *Palani Bala*, (8) *M. Dasaratharami Reddi* v. *D. Subba Rao*, (*S*) (9), *Ram Saroop Dasji* v. *S. P. Sahi*, (10), *Bhagwan Dass & Ors.* v. *Jai Ram Das*, (11) *Mohinder Singh* v. *Ved Nath*, (12) *and Shambhu* v. *Ladli Radha Chandra Madan Gopalji*, (13).

These authorities are distinguishable on facts; inasmuch as the points discussed therein are entirely different from points involved herein. Two of these authorities are somewhat similar and the same relate to a question as to whether a Mohitmim who claims ownership and refuses to render accounts can be removed from his office. In *Mohinder Singh's case* (supra) the facts were that the land, measuring 217 kanals and 11 Marlas had been made over by the village community to the idol for the income of Shivdwala. A part of this land was acquired by the State of Punjab in the Industries Department. Ved Nath defendant-respondent No. 1, who was acting for the time being as a Pujari of Shivdwala executed a power of attorney each in favour of Ajmer Singh and Jawala Singh for receiving the compensation amount in respect of the land acquired. An application for compensation money had gone into wrong hands and the Director of Industries wrote to the SHO of the Police Station for the registration of the case. The case was registered, but, in the meantime, four respectables of the village brought a petition under sections 73 and 74 of the Indian Trust Act in the name of the Shiv Ling for the appointment of new trustees of its properties after the removal of Ved Nath, who claimed to be the trustee and Mohitmim of the Shivdwala. Ajmer Singh and

(8) AIR 1953 SC 125.
(9) AIR 1957 SC 797.
(10) AIR 1959 SC 951.
(11) 1964 PLR 1050.
(12) 1982 CLJ (Civil) 55.
(13) AIR 1985 SC 95.

Jawala Singh attornies received amounts of Rs. 1,70,680-50 and Rs. 1,90,003-13 respectively from out of the compensation money. The allegation further was that previously Sham Bharti was the Mohitmim of this Shivdwala and he was insulted and forcibly turned out of the village by a group of persons of the party of Ajmer Singh and Jawala Singh. These amounts were withdrawn and deposited in the names of other persons in the bank. Another amount of Rs. 62,558 out of the compensation amount was withdrawn by one Baldev Singh, who deposited the same in the name of Sucha Singh. The result was that no amount out of the compensation was paid to Ved Nath. Ved Nath earlier admitted that the amount had been paid to him, but later denied this payment to him and came out with a negative version. M. R. Sharma, J. (as he then was) held that Ved Nath did not receive the amount and he, rather, alleged that Ajmer Singh and Jawala Singh got his signatures on blank papers and deposited the money and in the name of their relatives and interested people and did not pay to him. It, was also asserted by him that the said Ajmer Singh and Jawala Singh had embezzled this amount without paying the same to him. Oral evidence was considered to be also consistant with the existence of a trust and this embezzlement. Ultimately, it was found that Ved Nath was a figure head merely to facilitate the withdrawal of money and he was hardly interested in having his spiritual advancement by serving as a Pujari and after withdrawal, he seems to have eventually deserted the temple. Finding that, for the reasons mentioned therein, Ved Nath was guilty of such acts of misconduct as would disentitle him to continue as a Mahant of the temple, the order of removal was passed, directing the Gram Panchayat to take over for the time being and recover the amount from the persons who had withdrawn. The facts of that case are entirely different from those of the present case. The trial Court has given no finding against the defendant-appellant on account of his alleged misconduct, but has only directed him to maintain the accounts of the income. The learned Single Judge has also not disturbed the findings of the trial Court except that the decree has been modified with the conditions mentioned in the judgment.

(20) In *Bhagwan Dass'* case (supra) a Division Bench of this Court, in the circumstances of the case, held the facts of that case to be sufficient for removal of Mahant Jairam Das and the case was remanded to the Court below for further proceedings under section 92 of the Code of Civil Procedure on the matter of determining, whether a new trustee should be appointed or a scheme should be

settled and also considering the question of directing the accounts and inquiries and granting such further relief as the nature of the case may require. The facts of that case were that plaintiffs instituted a suit under section 92 of the Code of Civil Procedure for removal of Mahant Jairam Das and for the appointment of Mukand Lal plaintiff as Mahant and Manager in place of the defendant. Income of the institution was described to be Rs. 500 p.m. and the defendant was alleged to have kept no account of the income, nor was he prepared to render the accounts. In the written statement, several preliminary objections were raised and the most important and glaring objection being the denial of the existence of any trust property. It was averred that the property and the land in dispute were owned by the defendant himself. The existence of the Dera was denied and the disputed property being attached thereto was said to be incorrect. Rather, the property was claimed to belong to the defendant. The question of running any Langar or supplying food and amenities to sadhus was, therefore, said to be out of question. The finding was that the place in dispute was a Dera of Udasis and the land in dispute was the property of that Dera. Jairam Das was a mere Mahant and manager thereof. The trial Court came to a positive conclusion that the Mahant was not competent to grant the lease in question, as the alienations were unauthorised. It was claimed in the written statement that Mahants of the Dera were absolute owners and not merely managers. Reference to an earlier judgment *Juggar Singh* v. *Kartar Singh* (14), was made wherein some observations were made to the effect that the defendant's predecessor was not shown to have ever kept the accounts or that the plaintiff or the residents of the village had ever scrutinised or examined any accounts kept by the Mahant who had held office prior to the defendant. With these observations, the Bench in the case, referred to in this judgment, considered it proper to direct the defendant henceforth to maintain regular accounts. According to the Division Bench, the observations made in the referred case had to be construed to be confined to the facts and circumstances of that case. In the present case, no title has been claimed by the defendant-appellant. The history of the institution, as also the previous litigation, does not disclose that the defendant-appellant ever claimed title in himself. Rather, it is apparent from Ex. P 14, a judgment in a suit *Mahant Madho Sarup* v. *Din Dial and Smt. Hukmi Devi* daughter of Harjas Rai for possession of one-half of the property in dispute on the basis that he was entitled to inherit the same as the

(14) 1961 (63) P.L.R. 117.

only heir of Mahant Harjas Rai. Mahant Madho Sarup plaintiff-respondent No. 1 claimed that Mahant Harjas Rai was his grand-father from his mother's side. This suit was decided on 30th November, 1996 BK. Earlier, according to P 15, a copy of *Jama-bandi* shows that Smt. Hukmi and Smt. Sampati daughters of Smt. Mann Kaur were shown to be the owners of the property and on the death of Smt. Sampati, Madho Sarup got recorded a report in the Roznamcha claiming ownership of one, of the properties as a successor of Smt. Sampati. Mutation was sanctioned by the Revenue authorities. After sometime, the matter came to the notice of the authorities and Sardar Hazura Singh Dhillon, Sardar Sahib, Deori Mohalla, Patiala sent his report Ex. P 9, mentioning therein that the institution and the land in dispute were mutated in favour of the collaterals of Pandit Harjas Rai and Smt. Hukmi Devi and Smt. Sampati became the owners thereof after the mutation was sanctioned and Madho Sarup got one-half of the property as a successor of Smt. Sampati. Smt. Hukmi Devi died issueless and succession to her share was in question. The reports state that all these revenue entries were against the Furman-e-Shahi. Therefore, the Nazim of the District got a mutation entry No. 4079 made in the revenue record, directing that the property be mutated in the name of the Mandir. Smt. Hukam Devi had executed a will in favour of Din Dial, her husband's younger brother and Din Dial presented a petition, averring that he was doing Dhup Dip Sewa of the temple and therefore, he should be appointed as a Mohitmim. On this application, District Nazim recommended the name of Din Dial and name of Madho Sarup, present plaintiff-respondent No. 1 was not recommended, because he was residing at Sangrur. Ultimately,—*vide* this report Pandit Din Dial was recommended to be appointed as a Mohitmim of the institution in dispute. Some restrictions were sought to be imposed in this report and the same are that Pandit Din Dial would perform Dhup Dip Sewa and provide facilities to the pilgrims passing by the side of the institution in dispute. Another condition was recommended to be laid down that income of the property deposited in the treasury be withdrawn and spent for the betterment of the Mandir. On this report, order Ex. P 10 was passed and the same is reproduced as under :

> "We are hereby pleased to sanction the appointment of Pt. Din Dayal, son of Har Bhagwan, resident of Patiala as Mohitmim of the Thakurwara named "Adhwala Temple", situated on the Patiala Sanaur Road and the mutation of 85 Bighas 6 Biswas of land and Rs. 57 p.a. as

Muafi in the name of the said Temple till its existence and his Mohitmimship on the express condition and understanding :—

1. That he will remain of good behaviour and conduct throughout the tennure of his office as such.
2. That he will carry out faithfully the object for which the said Temple was founded.
3. That the immovable property attached to the said Temple shall always remain the property of the Temple and shall on no account, under any condition be treated as his personal property and the income thereof shall not be used for his personal benefit. He shall have no power to alienate such property.

(21) We are further pleased to sanction the withdrawal of the arrears of Muafi which shall be spent on the betterment of the Temple through the Deorhi Mualla Department.

(Sd.) Maharaja Dhiraj,
Mohendra Bahadur"

After the death of Pandit Din Dial on 13th Asoj, 1999 BK name of the defendant-appellant was recommended by the Nazim for Mohitmimship. Orders were sought from the concerned Department. Ex. DW9/13 shows that by the order of the Maharaja, the defendant-appellant was appointed as Mohitmim. In this order, no restrictions were laid down. In these circumstances, the conditions laid down in the earlier orders of appointment of Din Dial as Mohitmim Ex. P10 had to be continued. The Mohitmim was required to be of good behaviour throughout his tenure and had to faithfully carry out the objects for which the said temple was founded. Another restriction was that immovable property attached to the said temple had always to remain the property of the temple and on no account or under any condition, to be treated as his personal property and the income thereof was not to be used for his personal benefit. The Mohitmim had no power to alienate the property. Withdrawal of the arrears of Muafi was allowed and the amount so withdrawn was directed to be spent on the betterment of the temple through Deorhi Mualla Department.

(22) It is not denied that the land in dispute was not rendering any substantial income and keeping in view the circumstances, existing earlier to the green revolution in this region, it can be

assumed that the defendant-appellant was not having any substantial income from the land. The land was under the tenants and the defendant-appellant had to best them through litigation and he was able to get possession of the land somewhere in the year 1970. The order of the Advocate General, Punjab Ex. P. 11 indicates that Kidar Nath defendant-appellant was kept busy right from 1968-69 in the proceedings under section 92 of the Code of Civil Procedure, initiated at the instance of Madho Sarup plaintiff-respondent No. 1 and some others. This litigation seems to be a result of frustration, as Madho Sarup earlier claimed the property to be his own property and at some stage he was also successful in the litigation against Pandit Din Dial, and succeeded in getting relevant entries made in the Department. Madho Sarup attempted to get him appointed as a Mohitmim, but his name was not recommended, because of his claiming, hostile title to the institution in dispute. On the basis of order Ex. P. 11, the present suit was filed on 19th January, 1970 and since then, the defendant-appellant has been involved at the instance of Madho Sarup plaintiff-respondent No. 1 and some others.

(23) The learned Single Judge has given a detailed history of the institution in the impugned judgment. Pending Regular First Appeal, a local commission was given oral instructions on 4th November, 1985 by the learned Single Judge and eight reports were submitted by him. The first report is dated 5th November, 1985. The Local Commissioner reported his visit to the property in dispute and having seen some crops sown on 1/3rd Batai by one Raghbir Ram. Thrashed paddy and other crops were offered for sale and persons present at the spot gave bids. Ultimately, Onkar Krishan happened to be the highest bidder for Rs. 22,000, which was accepted. An amount of Rs. 2,000 was paid to the local commissioner and the same was deposited in fixed deposit. Some other directions had been given,—*vide* this report. Thereafter, the local commissioner went to the spot for arranging a bid for lease for a period of 1½ years and this auction has been arranged for 17th November, 1985 at 11.00 a.m. The highest bid by Amarjit Singh Lambardar of Sanur was accepted and an amount of Rs. 16,250 was paid at the spot. The remaining amount was to be paid as under:—

(i) Rs. 16,250 on or before 1st May, 1986;

(ii) Rs. 16,250 on or before 1st November, 1986; and

(iii) Rs. 16,250 on or before 1st May, 1987.

Rs. 451 as sale price of vegetables was received and the share of the institution amounting to Rs. 147 was brought by the local commissioner. This report (the second report) is dated 18th November, 1985.

(24) The third report is dated 17th January, 1986,—*vide* which a demand draft for Rs. 34,050 dated 30th December, 1985 in the name of the Additional Registrar, High Court was sent. This amount related to a pronote for Rs. 30,000 dated 5th March, 1985 with an interest at 18 per cent per annum on it. This amount was to be deposited as per directions issued,—*vide* the impugned judgment. According to this report, a copy of the judgment was made available to the local commissioner only on 19th December, 1985. Therefore, an amount of Rs. 16,250 on account of 1/4th of the bid money could not be deposited. A cheque was also sent and it was reported that Onkar Krishan, who had given the bid for Rs. 22,000 for standing crops was reported to have not paid the remaining amount of Rs. 20,000 till the report was made.

(25) The local commissioner made his fourth report on 18th February, 1986 wherein fixed deposit receipts were reportedly entrusted to him by this Court,—*vide* order dated 15th January, 1986. Two fixed deposit receipts for Rs. 50,000 one for Rs. 20,000 and the second for Rs. 30,000, were got prepared by the Oriental Bank of Commerce, Patiala. Two fixed deposit receipts of Rs. 50,000 were handed over to the Additional Registrar.

(26) The fifth report was sent by the local commissioner on 22nd April, 1986 wherein it was reported that Onkar Krishan had still not paid the said balance amount of Rs. 20,000. This amount was allowed to be paid by the defendant-appellant by two instalments, i.e., Rs. 10,000 by 31st January, 1986 and the remaining Rs. 10,000 by 28th February, 1986. The defendant-appellant moved Civil Miscellaneous No. 332-CI/1985 on 5th February, 1986 seeking time for payment of first instalment upto 19th February, 1986 and this Civil miscellaneous was allowed. In spite of this order, the amount was not paid and this fact was brought to the notice of the learned Single Judge,—*vide* this report.

(27) The sixth report does not bear any date. It refers to the bid of Rs. 65,000 made by Amarjit Singh Walia of Sanaur. The second instalment of this bid amount was to be paid on 1st May, 1986, but full payment was not made. A promise was made to

clear the amount by paying Rs. 10,000 on or before 6th June, 1986 and Rs. 6,250 by 14th June, 1986. An amount of Rs. 10,000 was paid, but the remaining payment was tried to be put off on one pretext or the other. The application given by Amarjit Singh Walia was perused by the learned Single Judge and an order cancelling the lease in favour of Amarjit Singh Walia was made on 16th June, 1986. The land was given on licence to Som Parkash, son of Madho Sarup, one of the plaintiffs-respondents on the payment of Rs. 38,000, as licence fee to be paid by due dates, mentioned in the order, i.e. (1) Rs. 18,000 on that date agreed to be paid and Rs. 10,000 each to be paid on 1st November, 1986 and 1st April, 1987. He was allowed to pay as under:

Rs. 10,000 by 18th June, 1986 ;

Rs. 10,000 by 1st November, 1986 ; and

Rs. 10,000 by 1st April, 1987.

He was allowed to keep with him an amount of Rs. 8,000 for expenses of the tubewell etc. Som Parkash did not start cultivation on the plea that he had not been handed over possession. Therefore, one Dewan Chand Sharma agreed to take lease from 16th June, 1986 till 15th June, 1987 for a sum of Rs. 36,000 to be paid in instalments. An amount of Rs. 10,000 was tendered in Court as the first instalment and the amount given by Som Parkash towards first instalment was given back to him through his counsel.

(28) The seventh report is dated 15th April, 1987. In this report, the fact of payment of Rs. 20,000 having not been paid, had been mentioned. Proceedings against Amarjit Singh Walia were sought to be revived. Vouchers tendered by the defendant-appellant had been handed over to Messrs S. C. Thapar & Co., Chartered Accountants, for audit, as disclosed in this report. This firm of Chartered Accountants prepared its report on five sheets, relating to the period from 1st January, 1972 to 31st December, 1985. The bill for this job in the amount of Rs. 7,000 was reduced by Rs. 2,000, as desired by the local Commissioner, i.e. bill for payment of Rs. 5,000 was sent by the said firm of the Chartered Accountants. For the years 1987-88 and 1988-89 a bid of Rs. 64,000 was given by Sukhdev Singh and Jaswant Singh who deposited an amount of Rs. 16,000.

(29) In the eighth report dated 30th March, 1988, the local commissioner sent afixed deposit receipt for Rs. 50,000 prepared in the name of Thakurdwara, which sought to be deposited,— *vide* the said fixed receipt. Another amount of Rs. 51,048.32 paise was said to be lying in deposit in the account of Thakurdwara in State Bank of Patiala, High Court Branch, Chandigarh. The local commissioner also reported some withdrawals out of the compensation amount and reported the submission of bills by the licencee about the amount of Rs. 8,000 which had been left with Dewan Chand licencee out of the lease money for setting up a tubewell. These reports have also been dealt with by the learned single Judge after impugned judgment.

(30) Regular First Appeal come up before the learned Single Judge in September, 1984 and according to the opinion expressed, the income of the agricultural land was not being properly utilised. In order to safeguard the income, it was considered proper that the land be given for cultivation by the Court till 15th June, 1986. Auction was conducted in Court and the highest bid of Rs. 68,000 was given by one Dewan Chand Sharma. On 7th September, 1984 an amount of Rs. 6,000 was paid and an undertaking to pay the balance in two instalments of Rs. 28,000 on 8th October, 1984 and Rs. 34,000 on 2nd January, 1985 was given. The bidder was allowed to use two tubewells and the tractors owned by the temple. The defendant-appellant filed LPA 876/1984 and the Division Bench was of the view that the said auction stood frustrated on account of interim stay issued therein, as the highest bidder was not given possession of the land.

(31) The first report dated 5th November, 1985 mentions about the bid of Rs. 22,000 for the crops already standing. An amount of Rs. 2,000 was paid by Onkar Krishan and the remaining amount was to be paid later on.

(32) The second report mentions the highest bidder for Rs. 65,000 as Amarjit Singh, Lamberdar for three crops expiring on 15th July, 1987. 1/4th of the bid amount i.e. Rs. 16,250 was paid at the spot and the remaining amount was to be paid as mentioned in the report. A small amount of Rs. 147 was obtained by sale of vegetables by the local commissioner.

(33) Third report dated 17th January, 1986 mentions about a demand draft having been sent and the amount of the pronote for

Rs. 30,000 dated 5th March, 1985 with interest at 18 per cent per annum was to be deposited as per directions. The fact of Onkar Krishan having not paid the remaining amount of Rs. 20,000 was also mentioned in the report.

(34) Fourth report dated 18th February, 1986 mentions about the same, amount deposited in fixed deposits to have been handed over to the Additional Registrar.

(35) Fifth Report dated 22nd April, 1986 mentions the amount of Rs. 20,000 having not been paid by Onkar Krishan though the same was allowed to be paid by two instalments. The period was extended for payment.

(36) Sixth report talks about the bid of Rs. 65,000 by Amarjit Singh Walia and his having not paid the second instalment which was to be paid on 1st May, 1986. Promise to pay was made and an amount of Rs. 10,000 was paid, but an attempt to obtain the remaining payment was made, but it was put off on one pretext or the other. The order of cancelling his bid was made on 15th June, 1986 and the land was given on licence to Som Parkash one of the plaintiffs-respondents on payment of Rs. 38,000. Details of that amount and the method of payment are mentioned in this report.

(37) 7th report is dated 15th April, 1987. It talks about the said amount of Rs. 20,000 having not been paid. Proceedings against Amarjit Singh Walia were sought to be revived for the recovery of payment as M/s. S. C. Thapar & Co., Chartered Accountants had sent a bill and the report mentions about the arrangement of bill and it also refers to a bid of Rs. 64,000 as having been given by Sukhdev Singh and Jaswant Singh for two years, i.e., 1987-88 and 1988-89 and deposit of Rs. 16,000 having been made by them.

(38) Eigth report concerns with the fixed deposit receipt and some withdrawals out of the compensation amount.

(39) The reports, read as a whole, do not involve the defendant-appellant. The facts mentioned therein disclose the difficulties in recovering the remaining amount of the bids and it can be safely said that, in the circumstances, management of agricultural land is not that easy. The bidder is to be provided with a working tractor for ploughing and tubewells for irrigation. The costs have

to be incurred on behalf of the institution. In this situation, the defendant- appellant cannot be blamed for maintaining accounts like an expert and that account cannot be expected to be in accordance with the rules or principles on which the chartered accountants work.

(40) Another fact with regard to be the compensation amount received by the defendant-appellant may be mentioned here. According to the facts, an amount of Rs. 1,47,169.60 paise was received by the defendant-appellant on account of compensation for part of the land acquired. Statement of account about this compensation amount has been reproduced at page 8 of the impugned judgment and this account shows that Fixed Deposit Receipts to the extent of Rs. 63,000 were produced and another amount of Rs. 30,000 was accounted for as loan given to Onkar Krishan on the basis of pronote with interest at 18 per cent per annum. An amount of Rs. 17,000 was said to have been spent on the construction of floor around the temple. Another amount of Rs. 6,407 was said to have been spent on overhauling of the tractor. The learned Single Judge observes that in this manner, the receipt of compensation amount stood explained.

(41) The conditions by which the decree of the trial Court has been modified by the learned Single Judge narrate the earlier history of leasing out the land, the procedure for auctioning the land in future, depositing the amount in F.D.Rs., getting the account-books from the defendant-appellant from 1972 and getting the same checked and verified by the Chartered Accountant on payment for this job, to assess the cost of construction and repairs said to have been made by defendant-appellant from 1970, to find out if the land in dispute has been pledged with any bank by defendant-appellant, allowing defendant-appellant, his son Onkar Krishan and his family members to continue residing in the premises adjacent to the temple as before and in case the amount of Rs. 30,000 with interest due from Onkar Krishan is not recovered within a month from the date of the impugned judgment. Onkar Krishan and his family members would not be allowed to stay in the premises of the temple and would immediately leave the premises, defendant-appellant and his wife would vacate the premises and would not stay there any longer in case the amount of Rs. 30,000 alongwith interest due from Onkar Krishan is not recovered within two months of the judgment, in the event of the defendant-appellant and his wife vacating the premises for non-payment of the said

amount within two months the Local Commissioner would entrust the management of the temples to some other suitable person for which appropriate orders have to be obtained from the Court, for the amount of Rs. 24,169.60 remaining unexplained out of the said compensation amount defendant-appellant to furnish accounts to the Local Commissioner, Local Commissioner to take assistance of the respectables of the town to suggest as to how the income received from the agricultural land be utilised for religious and charitable purposes, the Local Commissioner to send a report listing the names of institutions mentioned therein for providing funds for the institutions as directed by the Court and F.D.Rs. seemingly in the joint name of Kidar Nath defendant-appellant as Mohitmim and Shri Onkar Krishan except one for Rs. 30,000 in the name of defendant-appellant as Mohitmim Thakur Dwara Shivala and the total amount of the F.D.Rs., regarding compensation being Rs. 93,000 wherein defendant-appellant has been described as Mohitmim were to be prepared afresh or to be converted in the name of the institution itself through Shri P. K. Palli as Local Commissioner. Lastly, it was left open to the parties or any other respectable persons of the locality to place suggestions for still better management and working of the institution and its properties regarding which appropriate orders will be passed from time to time. All these conditions in our view are nothing but displacing the defendant-appellant from Mohitmimship and management of the institution. As stated in the earlier part of our judgment, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office and to take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether.

(42) In view of the discussion above, this appeal is accepted and the impugned judgment is set aside to the extent as indicated below. The Maharaja of Patiala whose orders were final in those days had appointed the defendant-appellant as the Mohitmim of the institution in dispute,—*vide* Ex. DW9/13 and this order placed no restriction on the powers of the Mohitmim. However, in an earlier order Ex. P. 10,—*vide* which Shri Din Dayal the predecessor-in-interest of the defendant-appellant was appointed as Mohitmim of the institution in dispute, that order contained the following restrictions on the powers of the Mohitmim, (i) The Mohitmim was required to be of good behaviour and conduct throughout his tenure and to faithfully

carry out the objects for which the said temple was founded, (ii) Immovable property attached to the temples had always to remain the property of the temple and on no account or under any condition to be treated as his personal property, (iii) Income from the property of the institution was not to be used for his personal benefit and he had no power to alienate the same, (iv) On withdrawal of the arrears of the muafi the same was to be spent on the betterment. of the temple through Deodi Muhalla department. We find from these conditions that there is no direction as to in what manner the income from the agricultural land was to be spent by the Mohitmim. The restriction No. (i) above, is being adhered to and there is no challenge about it. Restrictions Nos. (ii) and (iii) are also being fulfilled because the immovable property has not been claimed to be personal property and income thereof is not *prima facie* being used for his personal benefit. There is also no allegation that the defendant-appellant has made any alienation of the property. Restriction No. (iv) above is no longer relevant because the said amount may have been by now withdrawn and spent in a proper manner and in any case, there is no allegation or evidence on the file that Shri Din Dayal or the defendant-appellant had actually withdrawn the amount and if withdrawn by either of them had spent the amount in any other manner than laid down in this condition. The objects for which the temple was founded are not mentioned specifically and, therefore, we can fall back upon on the general religious practice which is normally to maintain the dignity of the temples according to tenets of Hindu Law. We do not find anything in the evidence and nothing has been brought to our notice, to show that the defendant-appellant is not keeping in view the dignity and the religious tenets of the temple in dispute. From the general practice we can assume that any religious place like temples has some charitable purpose attached thereto and to that extent this institution can be said to be charitable also and in that view of the matter income out of the immovable property, if not required for the betterment of the temples, can be spent on religious education like opening of a school for teaching children, construction of a Dharamshala according to the requirements of the institution for stay of pilgrims and such like other purposes according to the discretion of the Mohitmim and spending of the surplus income for such purposes will not be against the restrictions laid down in order Exhibit DW9/13. Mohitmim shall maintain the accounts of the whole of income from agricultural land and expenses incurred by him and place these accounts before the District Judge, Patiala or

any Court to which the matter is entrusted by him six monthly but if expenses to be incurred exceed Rs. 5,000 the Mohitmim shall bring the matter in the notice of the said Court before spending the amount. The agricultural land shall be auctioned on a licence per year or in cast he obtains the permission of the said Court earlier licence can be auctioned for a period of more than one year. However, proper record will be kept for auction including the names of the bidders and their bids showing the names of the persons present at the time of auction. The Mohitmim may take the assistance of two respectables of integrity, after having brought this fact to the notice of the said court, for conducting the auctions for licence spending the amount for the improvement of the temples and for spending the surplus income on the above said charitable purposes.

(43) The Local Commissioner already appointed will submit his report for the period from 4th November, 1985 till date giving the amounts already deposited and the amounts yet to be recovered to the District Judge, Patiala or the Court to which the matter is entrusted. The defendant-appellant will deposit all amounts received by him in a proper account with a nationalised Bank in the name of the institution in dispute. Instructions in Paras Nos. 1 to 15 contained in the impugned judgment are thus, substituted by the above directions. In case some problems rise hereinafter and the matter is not covered by the above directions the Mohitmim shall seek the directions from the District Judge or the said Court. Cross Objections No. 4 of 1986 are dismissed. Parties to bear their own costs.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JULLUNDUR,—*Applicant.*

versus

ROSHAN LAL SETH,—*Respondent*

Income Tax Reference No. 149 *of* 1979.

November 21, 1988.

Income Tax Act (XLIII of 1963)—Ss. 147(b), 148—*Wealth Tax Act (XXVII of* 1957)—*S.* 16-*A—Value of cost of construction—Investment disclosed by assessee—commensurate with estimate of approved valuer—Re-assessment based on fair market value determined by valuation officer under S.* 16-*A is unjustified.*