



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 611/1995

Narain Lal (since deceased 06.12.1986)

By his legal representatives:

1. Bhagwan Das Jain Palliwal (now dead) S/o Shri Narainlal Palliwal
2. Late. Uttamchand Palliwal through its legal representatives.
2/1 Shrimati Laxmi Devi W/o Late Shri Uttamchand Palliwal
age about 74 years, R/o Chakshi ka Chowk, Ghee
walo ka rasta, Chowkri Chat darwaza, Jaipur.
2/2 Shri Sanjeev Palliwal S/o Late Shri Uttamchand Palliwal
age about 42 years, R/o Chakshu ka Chowk, Ghee
walo ka rasta, Chowkri Chat darwaza, Jaipur.
2/3 Shri Rajeev Palliwal S/o Late Shri Uttam Chand
Palliwal age about 40 years R/o Chakshu ka Chowk,
Ghee walo ka rasta, Chowkri Chat darwaza,
Jaipur.
3. Smt. Tara Devi Jain (now dead) D/o Shri Narainlal Palliwal
and W/o Shri Gumanmalji Jain R/o Nasia Colony, Gangapur City,
Distt. Sawaimadhopur.

.....Appellants

Versus

Prabandhkarini Committee, Digamber Jain Atishaya Kshetra,
Shree Mahaveerji and Anr.

----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No. 575/1995

Shri Jain Swetambar (Moortipujak) Mahaveerji Tirth Raksha
Samiti, Jaipur, Registered Office Palliwal House, Chaksu-Ka-
Chowk, Jaipur City

.....Petitioners-Appellants

Versus

Prabandhkarini Committee Digambar Jain Atishaya Kshetra Shri
Mahaveerji in the town of Shri Mahaveerji, District
Sawaimadhopur by-

Shri Kapoor Chand Patni, Secretary, Prabandhkarini Committee
Digambar Jain Atishaya Kshetra Shri Mahaveerji C/o Patni Jain &





Company, Johari Bazar, Jaipur

-----Respondents



For Appellant(s) : Mr. S.S. Hora
Assisted by:
Mr. Shashwat Purohit
Mr. Jaivardhan Joshi

For Respondent(s) : Mr. M.M. Ranjan, Sr. Advocate
Mr. R.K. Agrawal, Sr. Advocate
Mr. J.P. Goyal, Sr. Advocate
Assisted by:
Mr. Hemant Sogani
Ms. Sukriti Kasliwal
Ms. Suruchi Kasliwal through VC
Mr. Rupin Kala
Ms. Jyoti Swami
Ms. Ronak Bansal
Mr. Vikram Singh
Mr. Yashwant Singh
Mr. Adhiraj Modi

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

Date of hearing and conclusion of arguments	22.01.2026
Date on which the judgment was reserved	22.01.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	20.02.2026

1. Since, these civil misc. appeals arise out of a common order dated 27.10.1994, passed by the learned Additional District and Sessions Judge, No.2, Jaipur Nagar, in case No.45/1985 and 44/1985, whereby, the case pending under Section 40 of the Rajasthan Public Trust Act, 1959 (hereinafter referred to as "the Act of 1959") were ordered to be abated, on application of respondent under Section 4 of the Places of Worship (Special Provisions) Act, 1991 (hereinafter referred to as "the Act of 1991") and hence, are being decided together.



2. Shorn of the facts, deceased-appellant Shri Narain Lal, a votary of the Shwetambar Sect of the Jain Community filed an application under Section 38 of the Act of 1959 before the learned Assistant Commissioner, Devasthan Department to grant permission to make an application before the learned District Court to seek direction against the respondent-Prabandhkarini Committee Digambar Jain Atishaya Kshetra Shri Mahaveerji (hereinafter referred to as the 'Digambar Samiti') with respect to the management and administration of the well-known Jain Temple known as the temple of Mahavirji, situated in the town of Mahavirji in Sawai Madhopur.

3. The application was allowed by the Sub-Divisional Officer vide order dated 23.12.1970, and the deceased-appellant was directed to file application as prayed for. The order dated 23.12.1970 was challenged by the respondent before this Court in writ petition bearing No. S.B. Civil Writ Petition No. 60/1971, which was dismissed by a Co-ordinate Bench of this Court vide order dated 08.01.1972. Against the said order, a D.B. Civil Special Appeal was also preferred before the Division Bench, which came to be dismissed vide order dated 10.05.1972.

4. In pursuance of the order dated 23.12.1970, the deceased-appellant Narain Lal filed an application under Section 40 of the Act of 1959, before the learned District Court, Bharatpur, seeking removal of President and Secretary of the respondent-Digambar Samiti from the management of the public trust of Jain Temple and for appointment of a new management committee from amongst the votaries of the Swetambar Sect.



5. During the pendency of the aforesaid application, the Swetambar Sect of the Jain Community formed a society known as 'Shri Jain Swetambar (Moorti Poojak) Shri Mahaveerji Tirth Raksha Samiti, Jaipur (hereinafter referred to as the 'Swetambar Samiti') i.e. the present appellant. Considering the fact that deceased-appellant Narain Lal, being a mortal, may not survive to see the result of the aforesaid application, the Swetambar Samiti moved another application under Section 38 of the Act of 1959, on its own and also, obtained an order dated 23.07.1974 on their application from learned Assistant Commissioner, Devasthan Department to file an application under Section 40 of the Act of 1959.

6. In pursuance of the said permission, another application under Section 40 of the Act of 1959 was filed by Swetambar Samiti. Both were numbered as 35/1979 and 36/1979. The two proceedings were consolidated vide order dated 23.10.1979 and the learned District Court framed as many as twenty issues. Thereafter, vide order dated 08.02.1980, the learned District Court dismissed the applications as not being maintainable on two issues.

7. Aggrieved by the same, deceased-appellant Narain Lal and Swetambar Samiti filed an appeal before this Court bearing No. S.B. Civil Misc. Appeal Nos. 55 and 71 of 1980, which came to be allowed vide order dated 15.05.1984. Both the applications were remanded to the learned District Court, to decide the applications afresh and in accordance with law. The applications were renumbered as Nos. 45/1985 (filed by Shri Jain Swetambar



(Moorti Poojak) Mahaveerji Tirth Raksha Samiti, Jaipur) and 44/1985 (filed by Narain Lal).

8. In the meanwhile, the order dated 15.05.1984, passed by this Court was also challenged before the Division Bench of this Court in appeals bearing No. D.B. Civil Special Appeal Nos. 13/1984 and 14/1984, which came to be dismissed vide order dated 30.01.1985.

9. Aggrieved by the order dated 30.01.1985, the respondent preferred an appeal before the Hon'ble Supreme Court bearing No. Civil Appeal Nos. 4141 and 4142/1985, arising out of Special Leave Petitions No. 9522 and 7259 of 1985, wherein the Hon'ble Supreme Court while disposing of the appeals directed the learned District Court not to consider the question relating to the validity of the permission granted by the learned Assistant Commissioner under Section 38 of the Act of 1959 and that the learned District Court shall now try all the other issues including the issue as to whether any of the reliefs can be granted in the suit under Section 40 of the Act of 1959.

10. When the proceedings were midway and the evidence of the applicants-appellants were being recorded, at that point of time, an application under Section 4 of Act of 1991, came to be filed by the respondent-Prabandhkarini Committee Digambar Jain Atishaya Kshetra Shri Mahaveerji (hereinafter referred to as "Digambar Samiti").

11. Thereafter, the learned trial Court vide order dated 27.10.1994 abated the suit proceedings, by applying Section 4 of the Act of 1991.



12. Aggrieved by the order dated 27.10.1994, the present civil misc. appeals have been preferred.

13. Learned counsel for the applicants-appellants submitted that the learned trial Court has committed gross illegality in applying Section 4 of the Act of 1991. It was contended by the learned counsel for the applicants-appellants that there was no claim seeking conversion of the worship place and thus, the provisions of the Act of 1991 are not applicable to the present proceedings as the same are applicable only in those scenarios where the suits, appeals or other proceedings are in respect to conversion of the religious character of any place of worship. Moreover, the suit was simpliciter under Section 40 of the Act of 1959 and therefore, limited jurisdiction was available with the learned Courts below.

13.1 It was also contended by learned counsel for the applicants-appellants that during the course of arguments, on being asked by this Court, the applicants-appellants have already submitted an affidavit to the effect that the applicants-appellants have sought no declaration for converting the religious character of the idol-Shri Mahaveerji of the Jain Temple.

13.2 Learned counsel for the applicants-appellants thus submitted that it was crystal clear that no relief or prayer was sought before the learned District Court regarding the conversion of religious character of the place of worship. However, without considering the limited jurisdiction provided under Section 40 of the Act of 1959, the learned District Court, circumventing the judgment of Hon'ble Apex Court dated 10.09.1985, dismissed the applications,





without there being full fledged consideration of the issues and the relief which could be granted as per the provisions of Act of 1959.

13.3 Learned counsel for the applicants-appellants, with regard to the maintainability of the appeal, submitted that the order dated 27.10.1994 abating the proceeding has been passed under Section 40 of the Act of 1959, and under Clause (3) of the said section, any order passed by the Court is deemed to be a decree and is appealable to the High Court. Moreover, the invocation of provisions under Section 3 and 4 of the Act of 1991, does not alter the appellate forum and the consequences of the abatement of the applications is in fact dismissal of the applications under Section 40 of the Act of 1959. Therefore, the impugned order dated 27.10.1994, squarely falls within Section 40(3) and is appealable.

13.4 Learned counsel for the applicants-appellants also submitted that while exercising its power in appeal jurisdiction, the High Court is confined to examine only the correctness of the order and the issues decided by the learned Courts below and cannot travel beyond the scope of the appeal. Thus, the only question for consideration in the present appeals is that whether the abatement of the proceedings pending under Section 40 of the Act of 1959 was legally correct or not.

13.5 Learned counsel for the applicants-appellants further submitted that at this stage, there is no requirement to question the correctness of the orders dated 23.12.1970 and 23.07.1974, passed by learned Assistant Commissioner, Devasthan Department, under Section 38 of the Act of 1959, as in the earlier round of litigation, the same have already been upheld by this



Court as well as the Hon'ble Supreme Court. Now, by way of defence, the respondent cannot agitate the same issue again before this Court.

13.6 Learned counsel for the applicants-appellants contended that the mere registration of the respondent-Digambar Samiti as a 'Public Trust' in 1966, by itself cannot be a clinching factor to decide the title of the property. Further, a society registered under the Registration Act cannot create a public trust. Moreover, learned counsel argued that even for the wrong registration of the trust, the provisions under Section 40 of the Act of 1959 could be invoked.

13.7 Learned counsel for the applicants-appellants submitted that the provisions of Section 92 CPC are *pari materia* to Section 40 of the Act of 1959. Further, learned counsel for the applicants-appellants also submitted that the Hon'ble Apex Court in this very case itself had passed direction vide order dated 10.09.1985, whereby, the Hon'ble Court had directed the learned trial Court to decide all the issues, including the issue that whether any of the reliefs as claimed could be granted under Section 40 of the Act of 1959.

13.8 Learned counsel for the applicants-appellants, therefore, submitted that the learned trial Court has committed gross illegality in applying Sections 3 & 4 of the Act of 1991 in the proceedings under Section 40 of the Act of 1959 and therefore, prayed that the order passed by the learned trial Court may be quashed and set aside and the matter may be remanded back to the learned trial Court to decide the proceedings under Section 40





of the Act of 1959, on merits as already directed by the Hon'ble Apex Court in its order dated 10.09.1985.

13.9 Learned counsel for the appellants-applicants relied upon the following judgments to buttress his arguments:

(i) **Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan**, (2014) 5 SCC 530.

(ii) **Raj Kumar Shivhare v. Assistant Director, Enforcement Directorate**, (2010) 4 SCC 772.

(iii) **Niranjan Nath v. Afzal Hussain**, 1916 SCC OnLine Lah 177.

(iv) **Acchar v. Koond**, 1958 SCC OnLine J & K 8.

(v) **Anna Tatoba v. Anna Bhau Chougale**, MANU/MH/0206/1982.

(vi) **Goswami Brij Jivan Lal v. Goswami Shiam Lal**, 1949 SCC OnLine All 139.

(vii) **Mahendra Saree Emporium v. G.V. Srinivasa Murthy**, (2005) 1 SCC 481.

(viii) **Radhe Shyam Soni v. State of Rajasthan**, (1990) 2 RLW (Raj) 294.

(ix) **Rama K.T. Barman v. Md. Mahim Ali**, Civil Appeal No. 3500 of 2024.

(x) **Suraj Mal Singhvi v. State of Rajasthan**, 1966 RLW 566.

(xi) **Shiromani Gurdwara Prabandhak Committee v. Som Nath Dass & Ors.**, (2000) 4 SCC 146.

(xii) **Kanbi Manji Abji & Ors. v. Kanbi Vaghji Mavji & Ors.**, 1993 Supp (4) SCC 351.

(xiii) **Shah Chhotalal Lallubhai v. Charity Commissioner, Bombay**, AIR 1965 SC 1611.



(xiv) **N. Adithayan v. Travancore Devaswom Board & Ors.**, (2002) 8 SCC 106.

(xv) **Vallabh Darshan Hotel Pvt. Ltd. & Ors. v. State of Rajasthan & Ors.**, MANU/RH/0296/2007.

(xvi) **Operation Asha v. Shelly Batra & Ors.**, Civil Appeal No. 10048 of 2025.

(xvii) **Temple Achleshwar v. Temple Shri Achleshwar Trust**, (1997) Supreme Today MP 86.

(xviii) **In re: Pinochet**, MANU/UKHL/0031/1999.

(xix) **Rattan Lal Sharma v. Managing Committee, Hari Ram**, MANU/SC/0320/1993.

(xx) **K.P. Mathachan v. V.P. Joy**, 2020 SCC OnLine Ker 7999.

(xxi) **Committee of Management, Anjuman Intezamia Masjid v. Smt. Rakhi Singh**, 2023 SCC OnLine All 208.

(xxii) **Bhagwan Shrikrishna Virajman at Katra v. U.P. Sunni Central Waqf Board**, Original Suit No. 01/2023

(xxiii) **Sharad Zaveri v. Union of India**, W.P. (Civil) No. 339 of 2022.

(xxiv) **Naiknaware & Associates v. Union of India**, 2006 SCC OnLine Bom 660.

(xxv) **Rajni Tandon v. Dulal Ranjan Ghosh**, (2009) 14 SCC 782.

(xxvi) **Super Agrotech Ltd. v. State of Uttar Pradesh**, (2006) 9 SCC 203.

(xxvii) **Municipal Corporation of Delhi v. Tek Chand Bhatia**, (1980) 1 SCC 158.

(xxviii) **Most Rev. P.M.A. Metropolitan & Ors. v. Moran Mar Marthoma & Anr.**, 1995 Supp (4) SCC 286.



14. Per contra, learned Senior Counsel for the respondent submits that the trust is a duly registered public trust under the Act of 1959 on 26.04.1966. He further, submitted that the applications were filed before the learned District Court under the provisions of Section 40 of the Act of 1959 and not under the provisions of Code of Civil Procedure, 1908.

14.1 Learned Senior Counsel for the respondent also submitted that the appeals itself are not maintainable as the applications were allowed under Section 4 of the Act of 1991 and as there is no provision of appeal in the Act of 1991 therefore, the applicants-appellants ought to have filed writ petitions before the High Court.

14.2 Learned Senior Counsel for the respondent further submitted that since the applicants-appellants in his affidavit have already categorically taken stand that they are not seeking conversion, therefore, the issues which have been framed seeking conversion does not survive and therefore, such issues may be deleted.

14.3 It is contended by learned Senior Counsel for the respondent that if the main relief is of conversion and mismanagement being consequential relief, therefore, as per the affidavit of the applicants-appellants if they are not seeking conversion and if this Court deletes such issues, then the consequential or ancillary relief does not survive and remanding of the matter would be a waste of time of the Court and would amount to riding of a dead horse.

14.4 Learned Senior Counsel for the respondent also submitted that the applicants-appellants are also not an interested person as per Section 2(9) of the Act of 1959 and therefore also, the petition



was not maintainable for the mismanagement of a Trust by a person having no interest in the Trust as they had no *locus standi* and therefore, the appeals deserve to be rejected. Moreover, the registration of the trust is not under challenge therefore, at this stage, the applicants-appellants have no right to raise the issue relating to conversion, rituals, form of worship etc.

14.5 Learned Senior Counsel for the respondent also submitted that it is an admitted fact, based on record that as on 15.08.1947, the affairs of the Deity, Temple and attached properties were in possession, control and management of the Digamber Jain Sect of the Jain religion and therefore, prayer made by the applicants-appellants could not be granted.

14.6 It is contended by learned Senior Counsel for the respondent that the applicants-appellants have not disclosed as to how the remand is necessary, when the learned trial Court has decided the matter considering all the evidences and material available on record.

14.7 Lastly, learned Senior Counsel for the respondent submits that since the applicants-appellants are having adverse interest to the Trust therefore, they are not to be considered as an interested persons and therefore, they are not entitled to invoke the provision of Section 40 of the Act of 1959.

14.8 In support of his case, learned Senior Counsel for the respondent relied upon the following judgments:

(i) **Abdul Karim Khan & Ors. v. Municipal Committee, Raipur**, 1965 SCC OnLine SC 381; AIR 1965 SC 1744.



(ii) **Gheesu Das v. Narsingh Kansara & Ors.**,
1999 SCC OnLine Raj 55; AIR 1999 Raj 298.

(iii) **Syeda Rahimunnisa v. Malan Di (Dead)**
through LRs & Anr., (2016) 10 SCC 315.

15. Heard learned counsel appearing for both the parties and perused the material available on record.

16. After perusal of the material available on record, the first question that arises for consideration before this Court, as raised by learned counsel for the respondent which pertains to the maintainability of the present appeals.

17. A perusal of the impugned order, passed by the learned District Court reveals that, while adjudicating the applications filed under Section 40 of the Act of 1959, the learned District Court, on an application preferred by the respondent herein under Sections 3 and 4 of the Act of 1991, ordered abatement of the proceedings. It is worthwhile to reproduce Section 40 of the Act of 1959, for better understanding of the issue involved herein. The relevant provision reads as under:

"40. Powers of the court on application under section 38 or section 39.- (1) *On receipt of an application made under or in pursuance of section 38 or section 39, the court shall make or cause to be made such inquiry into the case as it deems necessary and pass such orders thereon as it may consider appropriate.*

(2) *While exercising the powers under sub-section (1), the court shall, besides other powers, have power to make an order for-*

(a) *removing any trustee;*

(b) *appointing a new trustee;*



(c) *declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*

(d) *providing a scheme of management of the trust property;*

(e) *directing how the funds of a public trust whose original object has failed shall be spent, having due regard to the object for which the trust was created;*

(f) *issuing such other direction as the nature of the case may require.*

(3) *Any order passed by the court under sub-section (2) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court."*

18. Section 40 of the Act of 1959 thus, itself provides that the Court may pass appropriate orders while deciding the proceedings thereunder. Sub-section (3) of Section 40 of the Act of 1959 further stipulates that any order passed by the Court under Section 40 of the Act, shall be deemed to be a decree and the same is appealable before the High Court.

19. The expression "any order" used by the Legislature thus, does not restrict the right of appeal of any particular type or nature of order. Thus, the legislative intent is manifestly clear that every order passed in exercise of jurisdiction under Section 40 of the Act of 1959 is appealable.

20. Therefore, while adjudicating an application under Section 40 of the Act of 1959, the learned trial Court is required to determine the *lis* between the parties strictly within the four corners of the said provision. This Court is of the considered view that, irrespective of the nature of the conclusion i.e. whether the proceedings were terminated on account of abatement or the



relief under Section 40 of the Act of 1959 was granted or not, the order so passed would nevertheless amount to an order under Section 40 of the Act of 1959.

21. Consequently, against any order passed under Section 40 of the Act of 1959, a specific statutory remedy of appeal is available under Section 40(3) of the Act of 1959.

22. Since the present order has been passed in proceedings under Section 40 of the Act of 1959, merely because the abatement has been ordered on the basis of the provisions contained in the Act of 1991, the same would neither divest the order of its character as one passed under Section 40 of the Act of 1959, nor it would deprive the aggrieved party of the statutory remedy of appeal provided therein.

23. Therefore, this Court finds that the contention of learned counsel for the respondent that the appeal against the impugned order is not maintainable and that a writ petition ought to have been filed, is devoid of merit and accordingly stands rejected.

24. The next question that arises for consideration is that whether the learned trial Court was justified in abating the proceedings under Section 40 of the Act of 1959. For deciding the aforesaid issue, it is necessary to examine the scope and ambit of the powers exercisable under Section 40 of the Act of 1959.

25. As quoted above, Section 40 of the Act of 1959 does not confer upon the learned trial Court any power to permit conversion of any religious place. Both the parties do not dispute that such power is neither contemplated nor exercisable in proceedings under Section 40 of the Act of 1959.



26. Furthermore, the appellant, in the affidavit filed before this Court, has categorically stated on oath that no relief seeking conversion of the religious place of worship of idol-Shri Mahavirji has been sought. In the counter affidavit, the respondent has also stated that since no declaration has been sought, the entire exercise under Sections 38 and 40 of the Act of 1959 is futile.

27. In light of the affidavits placed on record, once both parties are *ad idem* that change in the nature of a religious place of worship does not fall within the jurisdiction of the Court exercising powers under Section 40 of the Act of 1959, it remains unexplained as to how the learned trial Court, on the basis of the respondent's application under Sections 3 and 4 of the Act of 1991, passed the impugned order directing the abatement.

28. This Court further notes that, on the basis of the pleadings of the parties, the learned trial Court framed the following issues in both the applications:

In Narain Lal Vs. Prabhandhkarini the said issues were framed:-

- "1. *Whether the applicant belongs to the Jain Svetamber Moorti Poojak Denomination and is a person "interested" in terms of the Rajasthan Public Trust Act in relation to the temple and properties of Shri Mahavirji and is entitled to file this petition?* (P)
2. *Whether the Temple of Shri Mahavirji was not built in or about Sambat 1826 by Shri Jodhraj Paliwal a follower of Svetamber Sangh and Deewan of Earst-while Bharatpur?* (P)
3. *Whether the principal deity of Shri Mahavirji is a Svetamber idol?* (P)



4. Whether the said temple and Katla around it constituted a Jain Swetamber Public Charitable Trust? (P)

5. Whether initially the sewa puja and management of the affairs of the said temple and its properties was done by Yaties who later on upon confinement of Jagirs by the State came to be known as Bhattaraks? (P)

5-A (Substituted on 15-1-74)

Whether sewa puja was done by Bhattarak Mahendra Kirtiji according to the Swetamber creed and tenets till 1918 and it continued to be so till 1941-42? (P)

6. Whether worship, observances and other rituals followed at the said temple were in accordance with this Swetamber tenets from the very inceptions and whether on second day of Mela, i.e., Saisak Badi 1, at the time of Rathyatra, Swetambers used to wave white hair Chanwars on both sides of the idol and a garland was placed on the idol and the Swetambers used to walk in front of the chariot golden sticks in their hands? (P)

6a – Whether Swetamber mostly Paliwals as trustees of the trust applied the revenue of the village for the purpose of sewa puja keeping of tahalbas sadabrit from Sambat 18939 to 1923 A.D.? (P)

6b – Whether Swetambers mode of sewa puja was followed during the management of the Court of Wards from 1923 to 1930 A.D.? (P)

6c – Whether upto Bikram Sambat 1973 the idol used to be garlanded around the neck during Rathyatra? (P)

6d – Whether on Bhado Sudi 5th every year Swetambers used to wash the idol with milk, curd





and water and also used to garland the main idol according to their tenets? (P)

6e – Whether the Swetambers used to offer 'Laddus' on every Dipawali according to their tenets? (P)

7 – Whether the non-applicant No.1 Society having come into existence in 1956 have usurped the management of the said temple from the Bhattarakas who managed and had been incharge of the temple and its properties? (P)

8 – Whether the Digambers idols have been installed in the temple by removing the old Swetamber idols? (P)

8a – Whether the Digambers have began to put obstracle in the Swetambers at the temple? (P)

8b – Whether there had been drawings on Hathi Mahal and Chatri showing that the temple belonged to the Swetambers and both these have been demolished by the Digambers? (P)

8c – Whether several old engravings in or about the temples depicting that the temples belonged to the Swetambers have been rubbed off and recently the pedestal has also been removed?

9 – Whether the Trust property is not being properly managed or administered and direction of this Court for proper administration there of is expedient? (P)

9a – Whether the non-applicants are misappropriating misusing and otherwise sqandering the money and properties of the trust for their personal gains with the resule that the original object of the trust has failed? (P)

10 – Whether the non-applicants-trust is registered under the Rajasthan Public Trust Act and if so what is its effect on this petition? (N.A.)





11 – Whether the petitioner's claim has been lost by lapse of time and if so what is its effect on this petition? (N.A.)

12 – Whether the permission was granted by the Asstt. Devasthan Commissioner to the petitioner U/S 38 of the Rajasthan Public Trust Act without holding the requisite enquiries and is invalid and without jurisdiction and if so what is its effect on this petition? (N.A.)

13 – Whether the Swetambers remained absolutely quiescant from 1919 onwards and had submitted to the Digamber mode of worship without any complaint and if so what is its effect on this petition? (N.A.)

14 – Whether the present petition does not conform to the application filed for obtaining permission U/S 38 before the Asstt. Commissioner and if so what is its effect on this petition? (N.A.)

15 – Whether no cause of action accrued to the petitioner to file this petition and this petition is liable to be rejected? (N.A.)

16 – Whether the words "and others" in the title do not disclose the names of the other petitioners and, as such, this petition is liable to be rejected? (N.A.)

17 – To what relief is the petitioner entitled?

In Jain Swetamber Mahavirji Vs. Prabhandhkarini Samiti, the said issues were framed on 10.03.1976:-

1. Whether the disputed temple was built in Samvat year 1826 or nearabout by Shri Jodhraj Paliwal? If so, whether the said Jodhraj Paliwal was a follower of Swetamber Sangh? (P)

2. Whether the main deity of Shri Mahavirji in the temple is of Jain following Swetamber Sangh? (P)





3. Whether the properties attached with the temple were built by the donations and presents to the idol of Shri Mahavirji by the Jain community as a whole? (P)

4. Whether the said temple and the properties appertenant to it are Jain Swetamber Public Charitable Trust for the spiritual benefit of Jain Sangh as a whole? (P)

5. Whether in the matter of worship and observance of other rituals in the temple and carrying out of the procession it has always been the practice to follow the tenets of Swetamber Sect? and whether this practice continued even after the release of the temple from the management of court of wards in the year 1930? (P)

6. Whether the petitioner is a person interested in the trust and as such has got a right to file or maintain the petition under the provisions of the Rajasthan Public Trusts Act? (P)

7a. Whether this Court has jurisdiction to see as to whether the registration of the society under the Rajasthan Societies Registration Act, 1958 is valid? If the answer is in favour of the opposite parties, then whether the petitioner could not be registered under the Rajasthan Societies Registration Act, 1958? (P)

7a- If the answer to the above issue is against the opposite parties, whether even then the petitioner has no locus standi to apply U/S 38 or 40 of the Rajasthan Public Trusts Act? (O.P.)

8. Whether the trustees of the temple were Swetambers mostly Palliwals from Samvat-year 1839 A.D.? (P)

9. Whether from Samvat-year 1826 upto Samvat-year 1839 the Sewa Puja of the temple





was done by yatees, who were also managing the affairs of the temple and its properties? If so, whether later on the said Yatees came to be known as Bhattarakas and their succession was being recognised by sanction of Matmi by the then Ruler of the Jaipur State? (P)

10. Whether from Samvat-year 1839 till the death of Bhattarak Shri Mahendra Kirtiji in 1918 A.D., and also from 1918 A.D. to 1923 A.D., the Digamber were not managing the temple and only usurped the temple and its property after the release of the same from the management of the court of wards during the time of last Bhattarak Shri Chandra Kirtiji? (P)

11. Whether before the release of the temple and its property from the management of court of wards the method of sewa-puja continued to be according to Swetamber sect in between Samvat-year 1839 upto the year 1930 A.D.? (P)

12. Whether simultaneous to the settlement of Baishakh Budi 1st, 1974, the then Bhattarak Shri Mahendra Kirtiji executed a document as reproduced in para 14 of the petition in favour of Panch Palliwalan Swetamber Jains, If so, what is its effect? (P)

13. Whether the petitioners are estopped from claiming the Sewa Puja and management of the temple and its properties for the reasons contained in para 6 of the reply of the opposite parties? (O.P.)

14(a) Whether in these proceedings this Court has jurisdiction to see the validity or otherwise of the permission granted by the Assistant Devasthan Commissioner to the petitioner U/S 38 of the Rajasthan Public Trusts Act?

14(b) If the answer to issue 14(a) is against the opposite parties, then whether the permission





granted by the Assistant Commissioner, Devasthan, by his order dated 31-7-74 is not valid for the reasons given in paras 5(a) to (g) of the preliminary objections of the opposite parties? (O.P.)

15. Whether the petitioner's claim is not within limitation? (O.P.)

16. If this Court holds that the temple belongs to Swetamber Denomination (SANGH), then whether the rights of followers of Swetamber Sangh have extinguished because the trustees appointed by the opposite parties have been in adverse possession to the exclusion of the followers of Swetamber Sangh? (O.P.)

17. Whether the petition does not conform to the application made by the petitioner before the Assistant Commissioner, Devasthan and as such is not maintainable? (O.P.)

18. Whether the petition is malafide and vexatious and, if so, whether the opposite parties are entitled to special costs U/S 35 Civil P.C.? If so, to what amount? (O.P.)

19. Whether the petition is beyond the scope of S.38 and S.40 of the Rajasthan Public Trusts Act and is not maintainable? (O.P.)

20. RELIEF."

29. With regard to the contention raised by the learned Senior Counsel appearing for the respondents, to delete certain issues pertaining to the conversion of the religious place, from bare perusal of the record it transpires that two applications under Section 40 of the Act of 1959 were filed which were numbered as 35/1979 and 36/1979 and were consolidated vide order dated 23.10.1979. Thereafter, vide order dated 08.02.1980, the learned





District Court dismissed the applications as not being maintainable. It was held that proper permission had not been obtained and furthermore, the reliefs that were prayed for were beyond the scope of Section 40 of the Act of 1959.

30. Aggrieved by the same, the applicants preferred appeals before this Court, which came to be allowed vide order dated 15.05.1984, wherein a Co-ordinate Bench of this Court remanded the matter back to the learned District Court for deciding the application afresh on merits under Section 40 of the Act of 1959.

31. Being aggrieved by the order dated 15.05.1984, the respondents herein preferred a special appeals before the Division Bench of this Court, which was dismissed vide order dated 30.01.1985, and upheld the remand order passed by the learned Single Judge.

32. Thereafter, an appeal was preferred before the Hon'ble Apex Court in Civil Appeals No. 4141 and 4142/1985, wherein the Hon'ble Apex Court passed the following orders:

"Special Leave granted.

After hearing learned counsel for the parties we set aside the orders passed by the High Court and by the District Judge and pass the following order:

The District Judge shall not consider the question relating to the validity of the permission granted by the Assistant Commissioner under section 38 of the Rajasthan Public Trust Act, 1959 since the said question is outside the scope of this suit. He shall now try all the other issues including the issue as to whether any of the reliefs can be granted in the suit under section 40 of the Act. The case remanded to the District Judge with the above direction.



District Judge is requested to dispose of all the cases within one year. The appeals are accordingly disposed of. The parties shall appear before the District Judge on October 1, 1985."

33. A perusal of the order passed by the Hon'ble Apex Court clearly reflects that the finding of the learned trial Court regarding the non-maintainability of the suit on the ground that proper permission under Section 38 of the Act of 1959 had not been granted and that the reliefs sought were beyond the jurisdiction of the authority under Section 40 of the Act of 1959, were set aside.

34. Accordingly, this Court finds that the contention of learned Senior Counsel for the respondent that certain issues are liable to be deleted on the ground that no relief of conversion has been sought cannot be accepted in light of the order dated 10.09.1985.

35. This Court is of the firm opinion, in view of the said order passed by the Hon'ble Apex Court, whereby while disposing of the appeals, it was directed that the learned District Court shall try all the issues that were framed including what relief could be granted under Section 40 of the Act of 1959. Accordingly, in such circumstances, at this stage, it would not be appropriate for this Court to delete or amend any of the issues already framed as it cannot overreach the directions that have already been issued by the Hon'ble Apex Court.

36. The other submissions advanced by the learned Senior Counsel for the respondent are with regard to the validity of the permission granted under Section 38 of the Act of 1959 and the maintainability of the reliefs claimed under Section 40 of the Act of



1959 on the ground that applicants-appellants are not interested persons. Such contentions cannot be entertained by this Court at this stage, particularly when the Hon'ble Apex Court, vide its order dated 10.09.1985, has already directed the learned trial Court to decide all issues except the issues of validity of permission under Section 38 of the Act of 1959. Therefore, the submissions made on behalf of the learned Senior Counsel for the respondent do not merit acceptance.

37. Upon examining the factual background of the case, it is evident that from 1970 onwards, and even subsequent to the order dated 10.09.1985 passed by the Hon'ble Apex Court, the respondent has, in one manner or another, continued to interfere with the proceedings aimed at determination of the issues as specifically directed by the Hon'ble Apex Court in its order dated 10.09.1985. In view of the subsistence and binding nature of the said order of the Hon'ble Apex Court, the learned Trial Court acted illegally and without jurisdiction in passing an order on the application filed by the respondent under Sections 3 and 4 of the Act of 1991, disregarding the mandate contained in the Apex Court's order dated 10.09.1985.

38. Furthermore, in the admitted factual matrix where both parties unequivocally acknowledge that no prayer seeking grant of such permission could have been entertained by a Court exercising jurisdiction under Section 40 of the Act of 1959, the very basis of the impugned order becomes unsustainable. Additionally, in light of the specific affidavit filed by the applicants-appellants before this Hon'ble Court categorically asserting that no



claim whatsoever for conversion of any religious place has ever been raised, the substratum of the impugned order stands fundamentally vitiated and liable to be set aside.

39. For the aforesaid reasons, the present appeals are **allowed**.

The order dated 27.10.1994, passed by the learned trial Court is hereby quashed and set aside.

40. The learned trial Court is directed to decide all the issues framed in the suit, except the issue relating to the validity of the permission granted under Section 38 of the Act of 1959. The trial Court shall also specifically determine the issue as to whether any of the reliefs prayed for in the suit can be granted under Section 40 of the Act of 1959 or not, strictly in terms of and in faithful compliance with the directions issued by the Hon'ble Apex Court vide order dated 10.09.1985.

41. The aforesaid exercise shall be carried out strictly in accordance with the judgment and directions of the Hon'ble Apex Court dated 10.09.1985.

42. Pending application(s), if any, stands disposed of.

(BIPIN GUPTA),J

Sudha/