

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**OWP No. 25/2018
Along with connected matters**

Prem Jay Mishra

... Petitioner/ Appellant(s)

Through: -

Mr Z. A. Qurashi, Senior Advocate with
Ms Razia Amin, Advocate;
Mr Altaf Haqani, Senior Advocate with
Mr Aasif Ahmad Wani, Advocate;
Mr Jahangir Iqbal Ganai, Senior Advocate with
Ms Mehnaz Rather, Advocate; and
Mr J. H. Reshi, Advocate.

V/s

State of J&K and Ors.

... Respondent(s)

Through: -

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with
Ms Maha Majeed, Assisting Counsel;
Mr B. A. Bashir, Senior Advocate with
Ms Falak Bashir, Advocate;
Mr N. A. Beigh, Senior Advocate with
Mr Sofi Manzoor, Advocate; and
Mr Manzoor Ahmad Dar, Advocate.

CORAM:

**Hon'ble Mr Justice Sanjeev Kumar, Judge
Hon'ble Mr Justice M. A. Chowdhary, Judge**

(ORDER)

09.07.2024

CM No. 741/2022 in OWP No. 83/2010:

Mr J. H. Reshi, Advocate for the Applicant.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel and Mr Z. A. Qurashi, Senior Advocate with Ms Raziya Amin, Advocate for the Non-Applicants (Respondents) and Non-Applicants (Petitioner), respectively.

01. This is an application filed on behalf of Shri Durga Naga Trust, Dalgate, Srinagar, through its Secretary, namely, Dr. R. Dhar S/o P. N.

Dhar R/o H. No. 346, Jawahar Nagar, Srinagar, At present House No. 132, Sector 4, Trikuta Nagar, Jammu, for seeking impleadment as party respondent to the Petition.

02. The application, for the reasons stated therein, is **allowed** and Shri Durga Naga Trust, Dalgate, Srinagar, through its Secretary, namely, Dr. R. Dhar S/o P. N. Dhar R/o H. No. 346, Jawahar Nagar, Srinagar, At present House No. 132, Sector 4, Trikuta Nagar, Jammu, is impleaded as party Respondent to the Petition. Registry to update the cause title of the Writ Petition, accordingly.

03. CM **disposed** of on the above terms.

OWP No. 83/2010:

Mr Z. A. Qurashi, Senior Advocate with Ms Razia Amin, Advocate for the Petitioner;
Along with Petitioner in person.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel; and Mr J. H. Reshi, Advocate for the Respondents.

04. The Petitioner-Parmeshwar Giri, who is present in person, makes a statement before the Court that he, for some time, was appointed as a Pujari of the Temple, namely, Ganesh Mandir Bonamsar, Sonawar, Srinagar, but later on removed and the property of the Temple taken over by the Government. He therefore, submits that he has no interest to pursue this Petition and that the same be dismissed as not pressed. The statement of the Petitioner is taken on record.

05. In view of above, this Petition is **dismissed** as not pressed. Interim direction(s), if any subsisting as on date, shall stand vacated.

WP (C) No. 07/2022:

Mr Z. A. Qurashi, Senior Advocate with Ms Razia Amin, Advocate for the Petitioner;
Along with Petitioner in person.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel; and Mr J. H. Reshi, Advocate for the Respondents.

06. The Petitioner-Parmeshwar Giri, who is present in person, makes a statement before the Court that he, for some time, was appointed as a Pujari of the Temple, namely, Mandir Shankar Swani (Ganesh Mandir), Bonamsar, Sonawar, Srinagar, but later on removed and the property of the Temple taken over by the Government. He therefore, submits that he has no interest to pursue this Petition and that the same be dismissed as not pressed. The statement of the Petitioner is taken on record.

07. In view of above, this Petition is **dismissed** as not pressed. Interim direction(s), if any subsisting as on date, shall stand vacated.

LPA No. 146/2023:

Mr J. H. Reshi, Advocate for the Appellant.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel for the Respondents.

08. This is an appeal filed by the Appellant, under Clause 12 of the Latent Patent, against the Judgment and Order dated 28th of May, 2018 passed by the learned Single Judge of this Court in OWP No. 1964/2015.

09. In view of the Order passed in OWP No. 83/2010 and WP (C) No. 07/2022, this appeal is rendered *infructuous*. The same is, accordingly, **dismissed**, along with the connected CMs. Interim direction(s), if any subsisting as on date, shall stand vacated.

CCP (S) No. 521/2021:

Mr Z. A. Qurashi, Senior Advocate with Ms Razia Amin, Advocate for the Petitioner.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel; and Mr J. H. Reshi, Advocate for the Respondents.

10. This Contempt Petition has been filed alleging violation of Order dated 28th of May, 2018 passed in OWP No. 1964/2015.

11. Mr Qurashi, the learned Senior Counsel, appearing for the Petitioner, does not wish to press this Contempt Petition in view of disposal of Writ Petitions bearing OWP No. 83/2010 and WP (C) No. 07/2022 hereinabove. The statement of the learned Senior Counsel is taken on record. Resultantly, the Contempt Petition is **dismissed** as not pressed. The proceedings are, accordingly, closed.

MA No. 52/2022:

Mr Z. A. Qurashi, Senior Advocate with Ms Raziya Amin, Advocate for the Appellant.

None for the Respondents.

12. The Appellant is aggrieved of and has challenged an Order dated 28th of April, 2012 passed by the Court of learned 1st Additional District Judge, Srinagar (for short "the Trial Court") in the Civil Suit titled '**Parshotam Lal v. Subash Shah & Anr.**', whereby the Trial Court has dismissed the application of the Appellant for interim injunction.

13. During the course of arguments, Mr Z. A. Qurashi, the learned Senior Counsel appearing for the Appellant, fairly submits that since the controversy raised in this appeal is entirely the same and identical as is the one involved for adjudication in OWP No. 25/2018 and, therefore, he does not press this appeal as also the Suit pending before the Trial Court. The statement of the learned Senior Counsel is taken on record.

14. In view of above, this appeal as well as the Suit titled '**Parshotam Lal v. Subash Shah & Anr.**', pending adjudication before the

Trial Court, is **dismissed** as not pressed. Interim direction(s), if any subsisting as on date, shall stand vacated.

15. Copy of this Order be sent to the Trial Court for information.

CM No. 7479/2021 in OWP No. 1800/2013:

Mr N. A. Beigh, Senior Advocate with Mr Sofi Manzoor, Advocate for the Applicant.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel and Mr Z. A. Qurashi, Senior Advocate with Ms Raziya Amin, Advocate for the Non-Applicants (Respondents) and Non-Applicant (Petitioner), respectively.

16. This is an application filed by one Mahant Subash Shah, Chella of Mahant Har Krishan Shah R/o Sutra Shahi Building Pakka Danga, Jammu (Sole Trustee), Shri Baba Dharam Das Ram Jeevan Das Trust, Sattu Barbarshah, Srinagar, for seeking impleadment as party Respondent to the Petition. It is submitted that the Applicant has stakes in the management of the property, being the sole trustee of Shri Baba Dharam Das Ram Jeevan Das Trust Sattu Barbarshah, Srinagar and, therefore, entitled to manage the affairs of the two Temples, namely, Shri Raghu Nath Mandir and Nagbal Gautam Nag Temple, Anantnag and the properties attached thereto.

17. The application is opposed by the Petitioner, who submits that the Applicant has nothing to do with the temples in question or the properties attached thereto. The Petitioner claims that he is the only person legally entitled to manage the properties in question, being the Chella of Mahant Madhav Das Ji since the year 1962.

18. Heard learned Counsel for the parties and perused the material on record.

19. The application, for the reasons stated therein, is **allowed** and Mahant Subash Shah, Chella of Mahant Har Krishan Shah R/o Sutra Shahi Building Pakka Danga, Jammu (Sole Trustee), Shri Baba Dharam Das Ram

Jeevan Das Trust, Sattu Barbarshah, Srinagar is arrayed as party Respondent to the Petition. Registry shall update the index of the Petition, accordingly.

20. CM No. is **disposed** of on the above terms.

OWP No. 1800/2013:

Mr Z. A. Qurashi, Senior Advocate with Ms Raziya Amin, Advocate for the Petitioner.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel and Mr N. A. Beigh, Senior Advocate with Mr Sofi Manzoor, Advocate for the Respondents.

21. In this Petition, there appears to be a claim and a counter claim by the Petitioner and the newly impleaded Respondent with respect to the management of Shri Raghu Nath Mandir and Nagbal Gautam Nag Temple, Anantnag. The Petitioner claims that he, having been appointed as Manager by Mahant Madhav Das Ji, is managing the affairs of both the temples since 21st of June, 2010. It is claimed that the newly impleaded Respondent, who is a stranger to the temples' properties, is only a busy body having no interest or stake in the management of the properties and the temples.

22. Having heard learned Counsel for the parties and perused the material on record, we are of the considered opinion that the two shrines, i.e., Shri Raghu Nath Mandir and Nagbal Gautam Nag Temple, Anantnag, along with the properties attached thereto, are neither vested in the Petitioner nor in the newly impleaded Respondent. The properties vest in the Deity and, therefore, are required to be managed in an effective and peaceful manner.

23. Keeping in view of the rival claims made by the two sides, it would be appropriate that both the aforesaid Temples and the properties attached thereto are put under the management of the Deputy Commissioner (District Magistrate), Anantnag, leaving the Petitioner as well as the newly impleaded Respondent free to agitate their rights before the Civil Court.

24. In view of above and with a view to preserve and protect the subject Temples and the properties attached thereto, this Petition is **disposed** of on the following terms:

- i. The District Magistrate, Anantnag shall immediately take over the management of both the Temples, i.e., Shri Raghu Nath Mandir and Nagbal Gautam Nag Temple, Anantnag and the properties attached thereto, if not already taken over. The District Magistrate shall also ensure that the properties belonging to these Temples are restored to the Temples after following due process of law. The District Magistrate may constitute a committee of responsible officers to manage the affairs of both the Temples and properties attached thereto in an effective manner;
- ii. The Petitioner as also the newly impleaded Respondent may agitate their rights of management before the Civil Court. In any such Suit filed by either the Petitioner or the newly impleaded Respondent, the District Magistrate, Anantnag shall be a necessary party and shall be heard in the matter before passing any Order; and
- iii. The final Decree, if any passed by the Civil Court, will govern the rights of the parties *vis-à-vis* the properties in question.

25. Writ Petition is, accordingly, **disposed** of on the above terms, along with the connected CM(s). It is, however, made clear that nothing said in this Order shall prejudice the rights of either parties claimed by them on the basis of documents, if any, in their possession.

RPOWP NO. 25/2017:

Mr Z. A. Qurashi, Senior Advocate with Ms Raziya Amin, Advocate for the Petitioner.

Mr B. A. Bashir, Senior Advocate with Ms Falak Bashir, Advocate.

26. This is a Review Petition filed against the Order/ Judgment dated 1st of August, 2017 passed by a Co-ordinate Bench of this Court in OWP No. 1597/2013. This case is, therefore, required to be listed before the concerned Bench.

27. In view of above, Registry is directed to detach this Petition and list it separately before the concerned Bench in the month of August, 2024.

CPOWP No. 171/2014:

None for the Petitioner.

Mr Q. R. Shamas, Advocate for the Respondents.

28. This Petition for initiation of contempt proceedings against the Respondents arises out of an Order dated 2nd of September, 2013 passed in OWP No. 1203/2013 titled '**Swami Shiyaratnanand Saraswati Trust v. Shri Murarji Koul & Ors.**'

29. From the perusal of the records of the Registry, it transpires that OWP No. 1203/2013 has been finally disposed of by this Court vide Order dated 30th of April, 2024. That being the position, the interim Order dated 2nd of September, 2013, contempt of which is alleged in this Petition, has merged with the final Order dated 30th of April, 2024. This Contempt Petition is, therefore, rendered *infructuous* and the same is, accordingly, dismissed. The proceedings are dropped.

OWP No. 1346/2015:

Mr Altaf Haqani, Senior Advocate with Mr Aasif Ahmad Wani, Advocate for the Petitioner.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel and Mr Manzoor Ahmad Dar, Advocate for the Respondents.

30. An adjournment is sought by Mr Manzoor Ahmad Dar, learned Counsel, on personal grounds.

31. Adjourned.

32. List again on 18th of July, 2024.

OWP No. 351/2012:

Mr Jahangir Iqbal Ganai, Senior Advocate with Ms Mehnaz Rather, Advocate for the Petitioners.

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with Ms Maha Majeed, Assisting Counsel for the Respondents.

33. Impugned in this Petition filed by the Petitioners under Article 226 of the Constitution of India is an Order dated 6th of January, 2009 passed by the District Magistrate (Additional Deputy Commissioner), Anantnag, whereby the Naib Tehsildar, Mattan and Station House Officer, Police Station, Mattan have been directed to proceed on spot, verify the matter and to remove the unauthorized occupation, if the encroachers fail to produce any written consent of the migrants.

34. The short grievance projected by the Petitioners is that the aforesaid Order is being used by the Naib Tehsildar, Mattan and Station House Officer, Police Station, Mattan as an Order of eviction against the Petitioners. The Petitioners claim that they are in possession of the said property pursuant to a lease deed/ rent agreement executed by one Manoj Koul, who was entitled to execute such deed in law. It is submitted that before passing the impugned Order, which has adversely affected the rights and interests of the Petitioners, the Petitioners were never provided an opportunity of being heard. It is further submitted that the District Magistrate has held the Petitioners as “unauthorized occupants” without complying with the principles of natural justice.

35. Having heard the learned Counsel for the parties and perused the pleadings on record, we are of the considered view that the impugned Order dated 6th of January, 2009 suffers for non-compliance with the principles of natural justice. The Petitioners, who are alleged to be in unauthorized occupation of the subject property, were neither party before the District Magistrate nor were they ever heard before passing the impugned Order. Undoubtedly, the impugned Order has visited the Petitioners with civil consequences and, therefore, the compliance with the principles of natural justice was mandatory.

36. Without going into the merits of the rival contentions, suffice it to say that the impugned Order cannot sustain in the eyes of law, as the same has been passed against the Petitioners without providing them an opportunity of being heard.

37. Since, the Order is vitiated for violation of principles of natural justice, the plea of alternative remedy of appeal available to the Petitioners before the Divisional Commissioner, as raised by Mr Qadri, the learned Senior Additional Advocate General, representing the Respondents, is not sustainable.

38. For the foregoing reasons, this Petition is **allowed** and the impugned Order dated 6th of January, 2009 passed by the District Magistrate (Additional Deputy Commissioner), Anantnag is quashed and the matter is remanded back to the District Magistrate, Anantnag to proceed in the matter strictly as per the provisions of the J&K Migrants Immoveable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. Needless to say, that before passing any Order adverse to the interests of the Petitioners, they shall be provided adequate opportunity of being heard. Let the Petitioners appear before the District Magistrate, Anantnag on 26th of July, 2024. The proceedings in the matter shall be completed by the District Magistrate within a period of two months from the aforesaid

date. Till the matter is finally decided, *status quo*, as it exists today, shall be maintained with regard to the subject property. The Petitioner shall be well within his right to raise the plea that the property as such is not amenable to the authorities under the Act of 1997.

39. Writ Petition is, accordingly, **disposed** of, along with the connected CM(s).

OWP No. 25/2018 along with connected matters:

40. List all other connected matters on 18th of July, 2024.

41. Registry to place a copy of this Order on all the connected files and detach the disposed of files, to be consigned to records.

(M. A. Chowdhary)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
July 9th, 2024
"TAHIR"

