RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 430/2010
CNR: RJHC010196222010 | URN: CW / 1031U / 2010

Rajasthan High Court
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Rameshwar Dass @ Babu Lal Vaishnav s/o Late Shri Chunni Lal, aged 57 years, R/o Village Pal, Tehsil & District Jodhpur

----Petitioner

Versus

1. State of Rajasthan through Secretary, Devesthan Department, Government of Rajasthan, Jaipur
2. Commissioner, Devesthan Department, Government of Rajasthan, Udaipur
3. Assistant Commissioner, Devesthan Department, Government of Rajasthan, Jodhpur

----Respondents

For Petitioner(s) : Mr. J.L. Purohit, Sr. Advocate assisted by Mr. Shashank Joshi

For Respondent(s) : Mr. Mahaveer Prasad Pareek, Addl. Government Counsel

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HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

27/11/2026

1. The instant writ petition has been preferred by the petitioner, assailing the judgment dated 10.12.2009 (Annx.5) passed by the Commissioner, Devasthan Department, Rajasthan, Udaipur in Appeal No. 16/1991, whereby the appeal under Section 20 of the Rajasthan Public Trust Act, 1959 (for short 'Act of 1959' hereinafter) preferred by the petitioner against the order dated 14.03.1991 (Annx.2) passed by the Assistant Commissioner, Devasthan Department, Jodhpur, directing registration of Shri Pal Balaji Temple, situated near Village Pal, District Jodhpur, as a

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public trust under the provisions of the Act of, 1959, was dismissed.

2. The brief facts of the case, which are germane for adjudication of the present writ petition, as set out in the writ petition, are that the petitioner claims to be a descendant of Shri Khushal Dass, who about 115 years ago, constructed a temple of Shri Hanumanji near Village Pal and installed his family deity therein. The petitioner has placed on record the pedigree table demonstrating his lineage from Shri Khushal Dass and has asserted that the temple was established by his ancestors on their personal property for the purpose of family worship.

2.1 It is the case of the petitioner that the management, maintenance and worship of the deity have continuously remained with his family for several generations and that the petitioner, being the descendant of the founder, is presently managing the temple as its hereditary Mahant. The members of the public have been permitted to visit the temple and offer prayers at the discretion of the petitioner and his predecessors, but such permission does not, according to the petitioner, confer upon the public any enforceable right of worship or alter the private character of the temple.

2.2 It is further averred that the complaints were made by Shri Sumer Singh and Shri Bhawani Singh before the Assistant Commissioner, Devasthan Department, Jodhpur, in the year 1985, alleging that the temple was a public trust and that its income and properties were being mismanaged. Proceedings were consequently initiated by issuing notices under Sections 17 and 18

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of the Act of 1959. The petitioner contested the proceedings, asserting that the temple was a private family temple and that its management and ownership had always remained with his family.

2.3 The Assistant Commissioner, after recording the statements of the witnesses produced by the respective parties and examining the documentary evidence, passed an order dated 14.03.1991, holding that the temple had been established by the petitioner's ancestor and that its management had remained with the petitioner and his predecessors for five generations. The Assistant Commissioner further held that the petitioner was the hereditary and sole trustee of the temple. However, principally taking into consideration the fact that annual income of the temple exceeded Rs.3,000/-, and that members of the public visited the temple and made voluntary offerings, the Assistant Commissioner declared the temple to be a public trust and directed its registration under the Act of 1959.

2.4 Being aggrieved by the aforesaid order, the petitioner preferred Appeal No.16/1991 before the Commissioner, Devasthan Department, Udaipur, which was dismissed vide order dated 01.07.1996. Aggrieved, the petitioner challenged the aforesaid appellate order by filing S.B. Civil Writ Petition No.3208/1996 before this Court. The said writ petition was allowed vide judgment dated 17.03.2009, whereby the order dated 01.07.1996 was set aside and the matter was remanded to the Commissioner, Devasthan Department, for fresh adjudication in accordance with law.

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2.5 This Court, while remanding the matter, specifically observed that the order passed by the Assistant Commissioner, insofar as the requirement of compulsory registration was concerned, was more or less cursory, and that the appellate order did not disclose adequate reasons for the conclusions arrived at. The Commissioner was, therefore, required to consider the contentions raised by the petitioner with reference to the material available on record and the applicable legal principles.

2.6 Upon remand, the Commissioner, Devasthan Department, reconsidered the appeal and, vide impugned judgment dated 10.12.2009, dismissed the same, affirming the order dated 14.03.1991 passed by the Assistant Commissioner. Aggrieved by the aforesaid judgment, the petitioner preferred the present writ petition.

3. Reply to the writ petition has been filed by the respondents, controverting the submissions made by the petitioner. The respondents have maintained that Shri Pal Balaji Temple has acquired the character of a public religious institution, being open to persons belonging to all communities and attracting a large number of devotees from Jodhpur and surrounding areas. It has further been contended that the temple is visited by thousands of devotees, particularly on Tuesdays and Saturdays, and substantial offerings are made by them.

3.1 The respondents have also relied upon the patta dated 03.05.1989, allegedly issued in the name of Shri Pal Balaji, contending that the petitioner cannot claim individual ownership over the temple property. It has been submitted that the

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authorities below have arrived at their conclusions after providing adequate opportunity of hearing to the petitioner and after considering the oral and documentary evidence available on record. Accordingly, dismissal of the writ petition has been prayed for.

4. Heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that impugned judgment dated 10.12.2009 is contrary to the material available on record and the settled principles of law governing the distinction between a private and a public religious endowment. It is contended that the Assistant Commissioner, in the original proceedings, recorded categorical findings that the temple was established by the petitioner's ancestor, that its management had remained with the petitioner's family for five generations and that the petitioner was its hereditary and sole trustee. The aforesaid findings were supported by the statements of several witnesses and documentary evidence produced during the enquiry.

5.1 Learned counsel further submits that the Commissioner, while deciding the appeal after remand, has failed to appreciate that mere admission of members of the public to a temple, voluntary offerings by devotees or the popularity of the temple cannot, by themselves, establish that the temple is a public religious endowment. There is no material to demonstrate that the public had acquired any right, as opposed to permission, to worship at the temple or that the founder or his descendants had ever dedicated the temple to the public at large.

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5.2 It is also contended that the Commissioner has fundamentally misread the patta dated 03.05.1989. According to learned counsel, the patta specifically records the ownership rights of Mahant Rameshwar Dass son of Chunni Lal, the founder and his descendants, and not of the deity independently of the petitioner's family.

5.3 It is further submitted that annual income of Rs.3,000/- is merely a statutory threshold prescribed by the notification dated 28.06.1962 for applicability of certain chapters of the Act of 1959 to public trusts. Such income cannot be treated as the criterion for determining whether a religious institution is public or private in character. Learned counsel submits that the Commissioner has failed to examine the aforesaid aspects in their proper perspective and has proceeded primarily on the basis of the number of devotees visiting the temple. Consequently, impugned judgment deserves to be quashed.

5.4 In support of his submissions, learned counsel for the petitioner has placed reliance upon the following judgments:

i. **Radhakanta Deb and another vs. The Commissioner of Hindu Religious Endowments, Orissa**; reported in **1981 Supreme (SC) 90**,

ii. **The Bihar State Board of Religious Trust, (Patna) vs. Mahanth Sri Biseshwar Das**; reported in **1971 Supreme (SC) 127**,

iii. **Gurpur Guni Venkataraya Narashima Prabhu and others vs. B.C. Achia, Asstt. Commissioner, Hindu Religious and Charitable Endowment Mangalore and another**; reported in **1977 Supreme (SC) 200**

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iv. **Deoki Nandan vs. Murlidhar and others**; reported in **AIR 1957 SC 133**

v. **Babu Bhagwan Din and others vs. Gir Har Swaroop and others**; reported in **1939 Supreme (SC) 46**

vi. **State of Bihar and others vs. Sm. Charusila Dasi**; reported in **AIR 1959 Supreme Court 1002**

vii. **Mahant Ram Swaroop Dasji vs. S.P. Sahi, Special Officer-in-charge of Hindu Religious Trusts and others**; reported in **AIR 1959 Supreme Court 951**

viii. **Radhakant Deb and another vs. The Commissioner of Hindu Religious Endowments, Orissa**; reported in **1981 Supreme (SC) 90**

ix. **Haribhanu Maharaj of Baroda vs. Charity Commissioner, Ahmedabad**; reported in **1986 Supreme (SC) 278**

x. **Ram Swaroop vs. Commissioner, Devasthan & Ors.**; reported in **1991 (2) RLW 361**

xi. **Kuldip Chand and another vs. Advocate General to Government of H.P. and others;** reported in **(2003) 5 Supreme Court Cases 46.**

6. Per contra, learned counsel for the respondents submits that impugned judgment has been passed after reconsideration of the entire material on record and in compliance with the directions issued by this Court vide judgment dated 17.03.2009. It is contended that the temple is situated in an independent building and is not merely a room within the residential premises of the petitioner. The patta was issued in the name of Shri Pal Balaji and, therefore, the property cannot be treated as the personal property of the petitioner. It is further submitted that thousands of

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devotees visit the temple, particularly on Tuesdays and Saturdays, and make offerings in cash and kind. The number of devotees is so substantial that traffic regulation is also required on such occasions.

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6.1 Learned counsel submits that the temple has acquired a distinct public character and the petitioner, being its hereditary pujari and manager, cannot claim exclusive ownership over the religious institution or its properties. It is, therefore, prayed that the writ petition be dismissed.

6.2 In support of the submissions, learned counsel for the respondents has relied upon the judgments in ***Narayan Bhagwantrao Gosavi Balajiwale vs. Gopal Vinayak Gosavi and others;*** reported in ***1959 Supreme (SC) 164***, and ***V. Mahadeva Gurukkal vs. The Commissioner for the Board of Hindu Religious Endowment, Madras***, reported in ***1955 Supreme (Mad) 103***.

7. I have considered the rival submissions advanced by learned counsel for the parties, perused the material available on record and examined the judgments cited at bar.

8. The controversy which arises for consideration in the present writ petition is whether Shri Pal Balaji Temple, established by the ancestors of the petitioner and managed by his family for several generations, can be declared to be a public trust merely on account of its accessibility to members of the public, the offerings made by devotees and the popularity acquired by the temple, notwithstanding the findings recorded by the Assistant Commissioner regarding its origin and hereditary management.

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9. The question also arises as to whether the Commissioner, while deciding the appeal pursuant to the remand order dated 17.03.2009, has properly considered the material on record and applied the settled legal principles governing the distinction between a private and a public religious endowment.

10. Before proceeding to examine the factual controversy, it would be appropriate to refer to the settled position of law.

11. Section 2(11) of the Act of 1959 defines a public trust as an express or constructive trust for either a public religious or charitable purpose or both, and includes a temple, math, dharmada or any other religious or charitable endowment or institution. Section 2(11) is reproduced as under :-

> *"2(11) "Public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, dharmada or any other religious or charitable endowment or institution and a society formed either for a religious or charitable purpose or for both;*

Mere existence of a temple or the performance of religious worship therein does not, by itself, establish that the institution is a public trust. The essential distinction between a private and a public religious endowment lies in the nature of the beneficial interest and the intention of the founder. In a public trust, the beneficiaries constitute an uncertain and fluctuating body of persons, whereas, in a private trust the beneficiaries are definite and ascertainable individuals.

12. In ***Deoki Nandan (supra)***, the Hon'ble Supreme Court explained the distinction between public and private religious trusts and held that the material consideration is whether the

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beneficiaries are specific individuals or the general public or a substantial section thereof.

"*It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private, and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertaintment. The position is thus stated in Lewin on Trusts, fifteenth edition, pp. 15-16:*

> *"By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained ..... "*

Vide also the observations of Mitter J. in Haji Mahammad Nabi Shirazi v. Province of Bengal, I.L.R.(1942)l Cal. 211 at pp. 227.228 : Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

6. Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefor? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment? Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties. Vide Prosunno Kumari Debya v. Gulab Chand Baboo, 2 Ind. App.145 at p. 152(P.C.) (C); Jagdindra Nath Roy v. Rani Hemanta Kumafi Debi, 31 Ind. App.203(P.C.) (D) and Pramatha Nath Mullick v. Pradyumna Kumar Mullick 52 Ind. App. 245: It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly laid down in the Sanskrit text. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami has the following:

> *"Words such as 'village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said*

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to belong to a person, which he can make use of as he desires. God however dose not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever, property is abandoned for Gods, brings prosperity to those who serve Gods."

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Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chap. XI., Verse 26 writes:

"Property of the Gods, Devaswam, means whatever is abandoned for Gods for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the properly owned, is impossible of application to Gods. For the Gods do not make use of the property according to their desire nor are they seen to act for protecting the same".

Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In Bhupati Nath Smrititirtha v. Ram Lal Maitra, I L R 37 Cal 128 (F), it was held on a consideration of these and other text that a gift to an idol was not be judged by the rules applicable to a transfer to a sentient being, and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins C.J. at p. 138 that "the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected" and that "the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedication is designed". Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In Hindu Religious Endowments Board v. Veeraraghavacharlu, AIR 1937 Mad 750 (G),Varadachariar J. dealing with this question, referred to the decision in ILR 37 Cal 128 (F), and observed:

"As explained in the case, that purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust".

7. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshipers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshipers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the

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general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

13. Similarly, in ***Sm. Charusila Dasi (supra)***, the Hon'ble Supreme Court held that the cardinal consideration in determining whether an endowment is public or private is the intention of the founder, namely, whether the right of worship was intended to be conferred upon specified individuals or upon the general public or a specified section thereof. The principles laid down in relevant paras of the judgment are reproduced as under :-

"11. In Deoki Nandan v. Murlidhar, 1959 SCR 756 at p. 762 this Court considered the principles of law applicable to a determination of the question whether an endowment is public or private, and observed:

"The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endoment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

One of the facts which was held in that case to indicate that the endowment was public was that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. We do not suggest that such a fact is by itself decisive of the question. The fact that the temple is outside the dwelling house is only a circumstance in favour of it being regarded a public temple, particularly in Madras (except Malabar); there are, however, private temples in Bengal which are built outside the residential houses of donors (see the Hindu Law of Religious and Charitable Trust, Tagore Law Lectures by the late Dr. B K. Mukherjea, 1952 edition, p. 188). In the case before us, the two temples were constructed outside the residential quarters, but that is only one of the

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relevant circumstances. We must construe the deed of trust with reference to all its clauses and so construed, we have no doubt that the trusts imposed constitute a public endowment. There is one other point to be noticed in this connection. The deed of trust in the present case is in the English form and the settlor has transferred the properties to trustees who are to hold them for certain specific purposes of religion and charity; that in our opinion is not decisive but is nevertheless a significant departure from the mode a private religious endowment is commonly made.

12. It is necessary now to refer to a decision of the Calcutta High Court, In re Charusila Dasi , ILR (1946) 1 Cal 473 relating to this very trust. The question for consideration in that case was the assessment of income-tax on the income of this trust estate for the accounting year1938-39. The trustees were assesse upon the whole income of the trust. The trustees appealed against the assessment and contended that the entire trust was for public, religious and charitable purposes and the whole income fell within Cl. (1) of subs. (3) of S. 4 of the Income-tax Act. The contention of the Commissioner of Income-tax was that the trust was no more than a private religious trust and the income did not enure for the public benefit, save with respect to that part of the income which was to be devoted to the hospital and dispensary and to which the latter part of Cl. (1) applied. A reference was accordingly made to the High Court and the question framed was whether on a proper construction of the deed of trust, so much of the income of the trust as was not applied for the purpose of constructing and maintaining the female hospital was exempt from tax under the provisions of S. 4(3) of the Indian Income-tax Act. It was pointed out before the High Court that no part of the income of the trust during the accounting year was devoted to the hospital and dispensary and it was conceded that part of the income which would be devoted to those institutions would fall within the exempting clause. It so happens that the learned counsel who argued the case on behalf of the trustees in the Calcutta High Court in the income-tax reference is the same counsel who has argued the case before us on behalf of Srimati Charusila Dasi. The contention now is that the trust in its entirety is a private religious trust. Eleven circumstances were referred to by learned counsel in the income-tax reference in support of his contention that the entire trust as ascertained from the trust deed was of a public nature. Gentle, J. with whom Ormond, J. agreed, held that on a proper construction of the deed of trust, so much of the income of the trust as was not applied for the purpose of constructing and maintaining the female hospital was not exempt from tax under the provisions of S. 4 (3) of the Indian Income-tax Act. This decision, it must be stated at once, does not wholly support the present respondent. So far as the hospital and the dispensary are concerned the trust was held to be a public trust. We are of the view that having regard to the main clauses of the trust deed to which we have already made a reference, the trusts in favour of the deity Iswar Srigopal and the image of Sri Balanand Brahmachari are also of a public nature. One of the points which was emphasised before

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the Calcutta High Court was the provision with regard to "pronamis" and perquisites to be offered to the deity and the image. The High Court said :

> *"This provision does not indicate the creation of a trust in favour of the public, but, on the contrary, it denies the right of any one, which must include any member of the public, having a right to the pronamis. In its terms, the deed negatives that benefit is conferred upon the public."*

The aforesaid observations appear to us, with respect or to be based on a misconception. When a member of the public makes an offering to a deity, he does not retain any right to what he has offered. What he offers belongs to the deity. When we talk of the right of members of the public or a considerable section thereof we refer to the right of worship or the right to make offerings in worship of the deity and not of the right to the offerings after they have been made. With regard to other clauses of the trust deed also we take a view different from that of the learned Judges who decided the income-tax reference. We have already explained our view in the preceding paragraphs and it is unnecessary to reiterate it. The conclusions at which we have arrived on a construction of the deed of trust is that it creates a religious and charitable trust of a public nature."

14. In ***Babu Bhagwan Din and others (supra)***, the Privy Council held that the mere fact that Hindu worshippers are freely admitted to a temple does not necessarily establish that the temple is a public temple. The relevant paras of observations in the judgment read thus :-

> *"Their Lordships agree with the Chief Court in holding that the grant of 1781 is not a grant to the idol, or an endowment of a temple, or a gift made by way of trust for a public religious purpose. The grant is to Daryao Gir and his heirs in perpetuity. Had it been intended as an endowment for an idol it would have been very differently expressed the reference to the grantees heirs, and the Arabic terminology " naslan ba'da naslin wa batnan ba'da batnin " (descendant after descendant and generation after generation) are not reconcilable with the view that the grantor was in effect making a wakf for a Hindu religious purpose, even if it be assumed that this is not otherwise an untenable hypothesis. While it is true that the origin of the idol is not completely traced—the respondents allegation that it was founded or set up by Kishore Gir, father of the grantee, not being established by evidence—the grant of 1781 discloses the existence of a fakir with an idol in a mud hut squatting upon waste land which did not belong to him, and which was given to him for the first time by the grant. It would, in their Lordships opinion, be an error in method if the*

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subsequent history of the little temple was not looked at in the light of this grant. While it is certainly possible that in the course of years the temple should have been so dealt with as to become dedicated for the benefit of the Hindu public as a public temple, such a dedication requires to be proved. Their Lordships consider that in suit No. 8/130, the Courts in India have followed, proper method and arrived at a correct conclusion upon the point. The decision of 1843 shows the position to have then been as in 1781, and the khasra at the time of the Settlement of Lucknow shows no variation—there is still a mud hut with an idol in it, and the " owners " are members of the respondents family, though described as " disciples of Daryao "Gir." The general effect of the evidence is that the family have treated the temple as family property, dividing the various forms of profit, whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting samadhs to the honour of its dead. In these circumstances it is not enough, in their Lordships opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away, or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such aas the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and, as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. Thus in Mundancheri Koman v. Achuthan Nair ((1934) L. R. 61 I. A. 405.) the Board expressed itself as being slow to act on the mere fact of the public having been freely admitted to a temple. The value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. Their Lordships do not consider that the case before them is in general outline the same as the case of the Madras temple, Pujari Lakshmana Goundan v. Subramania Ayyar ((1923) 29 C W. N. 112.), in which it was held that the founder, who had enlarged the house in which the idol had been installed by him, constructed circular roads for processions, built a rest house in the village for worshippers, and so forth, had held out and represented to the Hindu public that it was a public temple. The Chief Court have, in the opinion of the Board, correctly estimated the particular facts of the case before them, and have rightly negatived the

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contentions that the temple is a public temple and that the property in suit is impressed with a trust of a public religious character."

15. The principles governing the determination of the character of a religious endowment have been elaborately considered by the Hon'ble Supreme Court in ***Radhakanta Deb and another (supra)***. The relevant paras of the said judgment are reproduced thus :

"*6. The concept of a private endowment or a private trust is unknown to English law where all trusts are public trusts of a purely charitable and religious nature. Thus, under the English law what is a public trust is only a form of Charitable Trust. Dr. Mukherjea in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition) has pointed out that in English law the Crown is the constitutional protector of all properties subject to charitable trusts as these trusts are essentially matters of public concern. The learned author has further pointed out that one fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under the Hindu law which is not possible in English law. It is well settled that under the Hindu law, however, it is not only permissible but also very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to instal a family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founder and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment. Similarly, even the Mahomedan law recognises the existence of a private trust which is also of a charitable nature and which is generally called Waqf-allal-Aulad, where the ultimate benefit is reserved to God but the property vests in the beneficiaries and the income from the property is used for the maintenance and support of the family of the founder and his descendants. In case the family becomes extinct then the Waqf becomes a public waqf, the property vesting, in God. A public Waqf under the Mahomedan law is called Waqf-fi-sabi-lil-lah.*

7. The question as to whether the religious endowment is of a private nature or of a public nature has to be decided with reference to

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the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application. It is manifest that where the endowment is lost in antiquity or shrouded in mystery, there being no document or revenue entry to prove its origin, the task of the court becomes difficult and it has to rely merely on circumstantial. evidence regarding the nature of the user of the temple. In the instant case, however, as there are two documents which clearly show the nature of the endowment, our task is rendered easier. It is well settled that the issue whether a religious endowment is a public or a private one must depend on the application of legal concept of a deity and private endowment, as may appear from the facts proved in each case. The essential distinction between a private and a public endowment is that whereas in the former the beneficiaries are specified individuals, in the latter they are the general public or class of unascertained people. This doctrine is well-known and has been accepted by the Privy Council as also by this Court in a large catena of authorities. This being the essential distinction between the nature of a public or a private endowment, it follows that one of the crucial tests to determine the nature of the endowment would be to find out if the management of the property dedicated is in the hands of the strangers or members of the public or in the hands of the founders or their descendants. Other factors that may be considered would be the nature of right of the worshippers, that is to say, whether the right to worship in the temple is exercised as of right and not as a matter of concession. This will be the strongest possible circumstance to indicate that the endowment was a public one and the beneficiaries are the worshippers and not a particular family. After all, an idol is a juristic person capable of holding property and the property dedicated to the temple vests in the deity. If the main worshippers are the members of the public who worship as a matter of right then the real purpose is to confer benefit on God. Some of the circumstances from which a public endowment can be inferred may be whether an endowment is made by a person who has no issue and who after installing the deity entrusts the management to members of the public or strangers which is a clear proof of the intention to dedicate the temple to public and not to the members of the family. Where, however, it is proved that the intention of the testator or the founder was to dedicate the temple merely for the benefit of the members of the family or their descendants, the endowment would be of a private nature."

16. The principles emerging from the aforesaid judicial pronouncements indicate that the determination of whether a religious endowment is public or private must rest upon an assessment of the founder's intention, the nature of the dedication

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and the rights conferred upon the worshippers. In this regard, the following circumstances assume particular significance:

(i) Whether the members of the public use the temple as a matter of right or merely as invitees;

(ii) Whether the control and management of the temple vest in a large body of persons or members of the public, or remain with the founder and his descendants;

(iii) Whether the founder or his descendants have retained control and management of the institution, which is an important circumstance indicating the private character of the endowment; and

(iv) Whether the founder made any stipulation for offerings or contributions by members of the public, which may indicate the nature and character of the endowment.

These considerations are required to be examined cumulatively, having regard to the circumstances surrounding the origin of the institution, the conduct of the founder and his descendants, the nature of management and the manner in which the public has been permitted to participate in worship.

17. In ***Haribhanu Maharaj of Baroda (supra)***, the Hon'ble Supreme Court reiterated that where materials establish that a Math or Mandir was private in character at the time of its origin, its private character cannot be presumed to have disappeared merely because members of the public were subsequently permitted to visit the institution and worship at the temple. The relevant observations in the judgment are quoted as under :-

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"*10. We will now examine the evidence relating to the origin of the Math and how it was being managed by the members of the appellants family during a period of five generations. As per Exhibit 38 (Satara Kalmi Yadi.....17 Columnated questionnaire), to which we shall make a detailed reference later the Math was constructed in the year 1835 A.D. (S. Y. 1891) by Haribhat Maharaj. The Math then consisted of a Samadhi for Laxman Maharaj and a Mandir in front of the Samadhi. Another Samadhi came to be built after the death of Haribhat Maharaj himself. In the absence of evidence to show that the two persons whose bodies have been entombed under the Samadhis were renowned Sanyasis or religious heads or that they had a following of disciples, it has to be necessarily taken that the Samadhis and the Mandir had been built by the members of the family for showing their reverence to their ancestors and for their worship in the Mandir built near the Samadhis. As per the evidence of Sitaram Bhanu Maharaj (Exhibit 37) and the appellant (Exhibit 110) the land was acquired by their ancestors and the Samadhi for Laxman Maharaj and the Mandir were constructed by Haribhat Maharaj. They have further stated that the old construction became dilapidated in the year 1927 and thereafter Bhanu Purshottam reconstructed the Mandir and also put up a Sabha Mandap in front of it. The other portions of the building were constructed by the appellant between the years 1944 to 1950 with monies borrowed from some persons who have been examined as witnesses during the enquiry. The evidence of the appellant and his brother Sitaram Bhanu stands, unchallenged and furthermore there is no evidence to the contrary to show that the Samadhis and the Mandir were built by the public or from out of public funds. Once materials are found to warrant a conclusion that a Math or Mandir was private in character at the time of its origin, then unless there is clear and definite evidence to show that there had later been a dedication of the institution for the use of the public, the private character of institution will not get effaced. Even if at some subsequent point of time, the owners of the Math had permitted the members of the public to visit the Math and worship at the Mandir; it will only mean that the members of the public would have visited the Mandir as invitees and nothing more. This Court has laid down in Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas, (1969) 2 SCC 853 as follows :*

> *"If a temple is proved to have originated as a public temple nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple".*

This well-settled position of law has not been borne in mind by the High Court when it dealt with the appeal."

18. The Court recognised that permission granted to members of the public to visit a private religious institution may amount only

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to an invitation and does not, in the absence of clear and definite evidence of dedication, establish a public endowment.

19. Thus, the legal position which emerges from the aforesaid decisions is that the character of a religious institution is primarily dependent upon the intention of its founder and the nature of the dedication, if any. Mere public access, voluntary offerings and subsequent popularity cannot substitute the requirement of establishing a dedication of the institution for public religious purposes.

20. Reverting to the facts of the present case, it is noticed that the Assistant Commissioner, in the order dated 14.03.1991, recorded several significant findings after considering the evidence adduced by the parties. The Assistant Commissioner specifically recorded that:

(i) The temple was established by Shri Khushal Dass, the ancestor of the petitioner, by installing the deity of Shri Hanumanji;

(ii) The management and administration of the temple had remained with the petitioner and his ancestors for five generations;

(iii) The petitioner, Shri Rameshwar Dass, was the hereditary and sole trustee managing the temple;

(iv) The witnesses examined on behalf of the petitioner consistently stated that the construction, development and management of the temple had been undertaken by the petitioner's family;

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(v) The witnesses examined during the enquiry did not establish any interference by the general public, the Gram Panchayat or the erstwhile Jagirdar in the management of the temple;

(vi) The temple did not have any traditional donation box and offerings were not collected through receipts but were made voluntarily by visitors; and

(vii) The documentary material relating to the purchase of articles for worship, construction and maintenance of the temple indicated that its affairs were being managed by the petitioner.

The Assistant Commissioner also noticed the absence of any inscription or other documentary material establishing that the temple had been constructed through public contributions. It is pertinent to note that the aforesaid findings were not incidental observations but were recorded after examination of a substantial body of oral and documentary evidence. The witnesses examined on behalf of the petitioner included persons belonging to different communities and residents of Village Pal. Their statements substantially supported the petitioner's case regarding the origin, construction and management of the temple.

21. Of particular significance is the statement of the former Sarpanch, who categorically stated that the temple had always remained under the management of the petitioner's family and that no other person or institution had exercised control over its affairs. The record also contains a resolution of the Gram Panchayat, Pal dated 04.01.1991, indicating that the Panchayat had never exercised any management or administrative control

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over the temple and that its affairs had been managed privately by the petitioner and his predecessors.

22. The Assistant Commissioner also examined the objections raised by the former Jagirdar Shri Bhawani Singh and the Gram Panchayat and rejected them after considering the documentary and oral evidence. Thus, the findings recorded by the Assistant Commissioner themselves disclose substantial circumstances supporting the private origin and hereditary management of the temple. This Court is conscious of the fact that the original proceedings also contained evidence suggesting that members of the public visited the temple and made offerings. There was also material concerning the provision of certain facilities and occasional contributions associated with the erstwhile estate.

23. However, the mere existence of such circumstances cannot be considered in isolation. The decisive question is whether the public was granted a right of worship by the founder or whether the founder and his descendants merely permitted members of the public to visit the temple. The record does not disclose any express dedication of the temple by Shri Khushal Dass in favour of the general public. Nor has any document been brought to the notice of this Court demonstrating that the founder intended to divest himself or his descendants of the control and management of the temple or to confer an enforceable right of worship upon the public. On the contrary, the evidence recorded by the Assistant Commissioner consistently establishes that the temple was established by the petitioner's ancestor and that its management remained with the petitioner's family.

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24. Another important aspect which requires consideration is the patta dated 03.05.1989, which has been made a significant basis for the conclusion arrived at by the Commissioner. The petitioner has specifically contended that the patta records the ownership rights in favour of Mahant Rameshwar Dass son of Chunni Lal, the person who constructed the temple, and his descendants. The relevant recital, as reproduced in the writ petition, reads as under:

> "श्रीपाल बालाजी का मंदिर (निर्माणकर्ता) मेहन्त श्री रामेश्वरदास s/o चुनीलालजी जाति वैष्णव का व इनौके आल ओलाद का मालिकाना हक रहेगा निवासी पाल बालाजी का प्रार्थनापत्र वास्ते कब्जा शुद मकान व मौहल्ला पाल बालाजी।"

The Commissioner, however, proceeded on the premise that the patta had been issued exclusively in the name of Shri Pal Balaji and, therefore, the property belonged to the deity and could not be claimed by the petitioner. The Commissioner was required to examine the actual language of the patta and its legal effect, particularly when the petitioner had specifically raised this contention and relied upon the document in support of his claim.

25. Mere reference to the name of the temple in the patta cannot, without examining the entire recital and the rights expressly recorded therein, be treated as conclusive proof of a public dedication. The character of the institution cannot be determined merely by the nomenclature appearing in a revenue or municipal document. The nature of the grant, the intention of the grantor and the rights recorded in the document are material considerations. The Commissioner, therefore, could not have treated the mere mention of Shri Pal Balaji in the patta as conclusive evidence that the temple was a public trust.

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26. The next circumstance relied upon by the Commissioner is that a large number of devotees visit the temple, particularly on Tuesdays and Saturdays, and that traffic regulation is sometimes required due to the congregation of devotees. In the considered opinion of this Court, the aforesaid circumstance, by itself, is insufficient to establish the public character of the temple. The popularity of a religious institution and the number of persons visiting it may increase over a period of time. However, the subsequent popularity of a privately established temple does not automatically convert it into a public religious endowment. The relevant inquiry is not merely whether members of the public visit the temple, but whether they visit it as a matter of right arising out of a dedication by the founder or whether their entry and worship are permissive in nature.

27. The Commissioner has not identified any material establishing that the members of the public were entitled to demand entry into the temple as a matter of legal or customary right. No specific evidence has been referred to demonstrating that the founder or his descendants had dedicated the temple for unrestricted public worship. The mere fact that a large number of devotees visit the temple cannot replace the requirement of proving the intention to dedicate the institution to the public.

28. It is also significant that the Assistant Commissioner had specifically recorded that the offerings in the temple were made voluntarily by visitors and that no donation box or system of collecting contributions through receipts existed. Voluntary offerings made by devotees at a place of worship are not, by

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themselves, sufficient to establish that the institution is a public trust. Such offerings may also be made at a private temple by persons who visit the same with the permission of its owner or manager. The relevant consideration is whether the offerings form part of an established arrangement under which the public has a right to participate in the affairs of the institution or whether they are merely voluntary expressions of religious faith. In the present case, the Commissioner has not recorded any specific finding, supported by cogent evidence, demonstrating that the offerings were received pursuant to a public dedication or that the public had acquired any beneficial interest in the temple.

29. Another important aspect which requires consideration is the reliance placed upon the annual income of the temple exceeding Rs.3,000/-. It is pertinent to note that the respondents, in their reply to the writ petition, have not advanced any specific submission or pointed out any material to establish the public character of the temple on the basis of the aforesaid financial criterion. The only contention raised in this regard is that the gross annual income of the temple is substantially higher than Rs.3,000/- and, therefore, the temple is liable to be registered under the provisions of the Act of 1959. In this connection, the petitioner has relied upon the notification dated 28.06.1962, issued in exercise of the powers conferred under Section 1(4) of the Act of 1959, whereby the provisions of Chapters V, VI, VII, VIII and IX of the Act were made applicable to public trusts having a gross annual income of not less than Rs.3,000/- or a total

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valuation of assets of not less than Rs.30,000/-. The relevant section 1(4) of the Act of 1959 is reproduced as under :-

> "*(4) Chapters 2[V, VI, VII, VIII, IX and X] of this Act shall come into force on such late, and shall apply therefrom in relation to such class or classes of public trusts, as the State Government may, by notification in the Official Gazette, specify; and for the purpose of such application the State Government may classify such public trusts in the state on the basis of the income thereof or on the basis of the value of their total assets or In the basis of other financial factors.*"

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A bare reading of Section 1(4) makes it clear that such financial criteria are intended only for classifying public trusts for the purpose of applicability of the relevant provisions of the Act and not for determining whether an institution is public or private in character. The financial threshold, therefore, presupposes that the institution otherwise qualifies as a public trust. The public character of a religious institution must independently be established in accordance with the settled principles governing religious endowments, particularly with regard to dedication for public religious purposes. Therefore, merely because the annual income of the temple exceeds Rs.3,000/-, the same cannot establish its public character or constitute a legally sustainable ground for directing its registration as a public trust under the Act of 1959.

30. This Court also finds substance in the petitioner's contention that the Commissioner has not properly appreciated the findings recorded by the Assistant Commissioner concerning hereditary management and control. The Assistant Commissioner had specifically concluded that the petitioner and his predecessors had been managing the temple for five generations and that the

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petitioner was its hereditary and sole trustee. These findings were supported by the oral testimony of several witnesses and the documentary evidence produced during the enquiry. The Commissioner has not demonstrated how the aforesaid findings could be reconciled with the conclusion that the temple had become a public trust. Nor has he identified any particular act of dedication or relinquishment of control by the founder or his descendants.

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31. The fact that the petitioner has been managing the temple and performing its worship as a hereditary Mahant cannot, in the absence of other cogent circumstances, be disregarded while determining the original and continuing character of the institution.

32. It is true that hereditary management is not invariably conclusive of the private character of a religious endowment. A public temple may also be managed by a hereditary pujari or trustee. Nevertheless, where the origin of the institution, its continuous management, the control exercised by the founder's descendants and the absence of evidence of public dedication all point towards a private endowment, hereditary management assumes considerable evidentiary significance.

33. The judgment in *Haribhanu Maharaj of Baroda (supra)* assumes particular relevance in the facts of the present case. The principle laid down therein is that where an institution is established to be private in character at its origin, its character cannot be altered merely because members of the public are subsequently permitted to visit the institution and worship at the

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temple. For such a transformation, there must be clear and definite evidence establishing subsequent dedication for the benefit of the public. Applying the aforesaid principle to the material available on record, this Court finds that no such clear and definite evidence of subsequent dedication has been established in the present proceedings.

34. The Commissioner has primarily relied upon the number of devotees, the popularity of the temple and the voluntary offerings made therein. These circumstances, even when considered collectively, do not establish the necessary intention to dedicate the temple to the public, particularly in the face of the evidence concerning its origin and continuous hereditary management.

35. Coming to the judgment passed by this Court on 17.03.2009 in S.B. Civil Writ Petition No.3208/1996, it is evident that the matter was remanded to the Commissioner with a specific direction to reconsider the appeal by passing a reasoned order after examining the contentions raised by the petitioner and the material available on record. The Commissioner was, therefore, required to examine the correctness of the findings recorded by the Assistant Commissioner and determine whether the evidence actually established the public character of the temple in accordance with the settled principles of law.

36. However, a perusal of the impugned judgment dated 10.12.2009 reveals that the Commissioner has substantially proceeded on the basis of the number of devotees visiting the temple, the independent nature of the temple premises, the patta standing in the name of Shri Pal Balaji and the offerings made by

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devotees. Though, the Commissioner has elaborated upon these circumstances, the essential question as to whether there was an original or subsequent dedication of the temple for public worship has not been examined in the light of the principles laid down by the Hon'ble Supreme Court. The Commissioner has also failed to properly appreciate the significance of the findings recorded by the Assistant Commissioner regarding the origin and hereditary management of the temple.

37. An order does not become a legally sustainable speaking order merely because several reasons have been enumerated therein. The reasons must address the material issues arising for consideration and must have a rational nexus with the conclusions arrived at. In the present case, the Commissioner has failed to undertake the requisite examination of the most material issue governing the controversy, namely, the intention of the founder and the existence of a dedication in favour of the public.

38. It is well settled that the High Court, while exercising jurisdiction under Article 227 of the Constitution of India, does not ordinarily undertake a fresh appreciation of evidence as an appellate court. However, interference is justified where the findings of the statutory authority are vitiated by a misreading of material evidence, consideration of irrelevant circumstances, non-consideration of relevant material or application of an incorrect legal test.

39. In the present case, the Commissioner has attached decisive significance to circumstances which, in law, are not by themselves determinative of the public character of a religious institution,

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while failing to properly examine the evidence concerning the private origin, hereditary management and absence of any established dedication to the public. The impugned judgment, therefore, suffers from an error apparent on the face of the record and warrants interference in the supervisory jurisdiction of this Court.

40. The judgments relied upon by the respondents do not advance their case to the extent necessary to sustain the impugned order. The principles concerning the evidentiary value of public worship, religious offerings and the management of a temple must necessarily be applied in the factual context of each case. Even if the public has been visiting the temple and making offerings for a considerable period, such circumstances cannot dispense with the requirement of establishing that the temple was intended for public worship or was subsequently dedicated to the public. The mere fact that a temple is religious in character and is accessible to devotees does not necessarily make it a public trust within the meaning of Section 2(11) of the Act of 1959.

41. The material available on record establishes that the temple was founded by the petitioner's ancestor and that its management remained with the petitioner's family for several generations. The Assistant Commissioner himself recorded categorical findings in this regard. The subsequent popularity of the temple, the visits of devotees and voluntary offerings, without cogent evidence of dedication or an enforceable public right of worship, are insufficient to establish that the institution acquired the character of a public trust. The statutory authorities have, therefore, failed

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to apply the correct legal test while determining the nature of the institution.

42. In view of the foregoing discussion, this Court is of the considered opinion that the impugned judgment dated 10.12.2009 passed by the Commissioner, Devasthan Department, Rajasthan, Udaipur, cannot be sustained.

43. Consequently, the writ petition deserves to be and is hereby allowed. The judgment dated 10.12.2009 passed by the Commissioner, Devasthan Department, Rajasthan, Udaipuras well as as order dated 14.03.1991 passed by the Assistant Commissioner, Devasthan Department, Jodhpur, directing registration of Shri Pal Balaji Temple, situated near Village Pal, District Jodhpur, as a public trust, are hereby quashed and set aside.

44. It is clarified that the present judgment determines the character of the institution for the purpose of the proceedings initiated under the Rajasthan Public Trusts Act, 1959, on the basis of the material forming part of the present record. The question of title to any immovable property, if independently disputed, shall be governed by the remedies available under law.

45. Stay application as well as all pending application(s), if any, shall also stand disposed of.

46. The parties shall bear their own costs.

(MUKESH RAJPUROHIT),J

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