

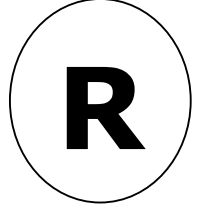
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.18752 OF 2018 (GM-R/C)



BETWEEN :

SRI GURU DATTATREYA PEETA DEVASTHANA
SAMVARDHANA SAMITHI
DHARMASHREE, NO.91
SHANKARAPURA
BENGALURU-560 004
REPRESENTED BY ITS TRUSTEE
SRI. YOGISH RAJ ARUS
S/O SRI. NAGARAJ ARUS
AGED ABOUT 45 YEARS
RESIDENT OF KARTHIKERE
CHIKKAMAGALURU-577 101

... PETITIONER

(BY SHRI. ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SHRI. N. JAGADISH BALIGA, ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT
M.S.BUILDING
BENGALURU-560 001
2. THE COMMISSIONER OF RELIGIOUS
AND CHARITABLE ENDOWMENTS
IN KARNATAKA
MAHADESHWARA BHAVANA
ALUR VENKATARAO ROAD
CHAMARAJAPETE
BENGALURU-560 018

3. THE DEPUTY COMMISSIONER
CHIKKAMAGALURU DISTRICT
CHIKKAMAGALURU-577 101
 4. THE TAHSILDAR
CHIKKAMAGALURU TALUK
CHIKKAMAGALURU-577 101
 5. SRI. SYED GHOUSE MOHIUDDIN
SHAH KHADRI
S/O LATE PEER MOHAMMED SHAH KHADRI
AGED ABOUT 48 YEARS
SAJJADA NASHEEN
HAZRATH DADA HAYETH
MEER KAHALANDAR
RESIDENT OF JAMIA MASJID ROAD
CHIKKAMAGALURU-577 101
- ... RESPONDENTS

(BY SHRI. PRABHULING K. NAVADAGI, AG A/W
SHRI. R. SUBRAMANYA, AAG A/W
SMT. RASHMI PATEL, HCGP FOR R1 TO R4-THROUGH
VIDEO CONFERENCE;
SMT. NEELA GOKHALE, ADVOCATE FOR R5- THROUGH
VIDEO CONFERENCE)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS FROM THE 1ST RESPONDENT IN PROCEEDINGS NO.RD 14 MUZARAI 2009 BENGALURU AND QUASH ANNEXURE-A DATED 19.03.2018 PASSED BY THE 1ST RESPONDENT NO.RD 14 MUZARAI 2009 BENGALURU AND THEREBY DIRECT THE 1ST RESPONDENT TO IMPLEMENT THE REPORT DATED 10.03.2010 SUBMITTED BY THE 2ND RESPONDENT VIDE ANNEXURE-P.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.08.2021, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Shri Guru Dattatreya Peetha Samvardhana Samithi¹ has presented this writ petition with a prayer *inter alia* to issue a writ of certiorari and to quash the impugned Government Order²; and to direct the State Government to implement Endowment Commissioner's Report dated 10.03.2010.

FACTS OF THE CASE

2. As per petition averments, petitioner is a religious and charitable Trust registered under the provisions of the Indian Trust Act *inter alia* with aims and objectives to protect and develop Shri. Guru Dattatreya Peetha Devasthanam, the Cave Temple at Inam Dattatreya Peetha village in Chandradrona Parvatha, Chickmagalur.

3. The 'Peetha' is a major Muzarai Temple under Mysore Religious and Charitable Institutions Act, 1927. On 06.04.1973, the Karnataka State Board of Wakf took over the management of the Peetha. Two devotees namely

¹ Petitioner - Trust

² No.RD 14 Muzarai 2009 dated 19.03.2018

Sriyuths. B.C. Nagaraja Rao and C. Chandra Shekar filed a suit before the learned Civil Judge, Chickmagaluru for a declaration that plaint schedule Institution is a holy place of worship belonging to Hindus and Mohammedans and upon transfer to the Court of learned District Judge, it was registered as O.S. No.25/1978; and decreed on 29.02.1980. The Karnataka State Board of Wakf challenged the judgment and decree in RFA No.119/1980 before this Court and it stood dismissed vide judgment dated 07.01.1991. The SLP (Civil) No. 17040/1991 filed thereon, also stood dismissed on 01.11.1991.

4. The Tahasildar, Chickmagaluru called upon fifth respondent's father to submit accounts with regard to the rents collected during the festivals. Fifth respondent's father challenged the same in W.P. No.2294/1984 contending *inter alia* that he was the Sajjada Nasheen of Shri Guru Dattatreya Bababudan Swamy Darga and the direction issued by the Tahasildar, infringed his right of management of the Institution. This Court noticed that the

decree passed in suit was not challenged by the State Government, but the RFA filed by the Wakf Board was pending consideration in this Court. It also noted that the State Government and the Muzarai Officers were required to act in terms of the decree and as such, the State Government had directed on more than one occasion that the Institution be restored to the Sajjada Nasheen to be administered as per practice prevailing prior to 1975, but no enquiry was made with regard to practices prevailing prior to June 1975. On 01.03.1985, this Court has disposed of the writ petition with following directions:

"The Commissioner for Religious and Charitable Endowments in Karnataka shall have the matter enquired into through the Muzrai Officer and report made to him, regarding the practice that was being followed or prevailing prior to June, 1975 in respect of management of the affairs of "Sri Guru Dattathreya Swamy Peeta" otherwise known as "Sree Gurudattathreya Bababudnaswamy Dargha" including conducting of Urs or festival, its property and all other matters pertaining to the institution. The Petitioner and devotees of the institution shall be afforded an opportunity in the course of the enquiry. A Public Notice shall also be issued in this regard. The commissioner shall on receipt of the report, take a decision after affording an opportunity of hearing to the Petitioner and other persons concerned, if any.

On such decision being taken by the Commissioner, it is open to the Petitioner to challenge the same in accordance with law. The enquiry shall be completed and the decision shall be taken on or before the end of August 1985."

5. Pursuant to the above directions, the Endowment Commissioner, submitted a Report dated 25.02.1989 codifying the religious practice prior to 1975.

6. Petitioner filed a public interest writ petition registered as W.P. No.31580/2000 with a payer *inter alia* for a direction against the Deputy Commissioner, Chickmagaluru to handover the management of the Temple to the petitioners. This Court, while disposing of the said petition, has observed that steps were taken by the authorities to appoint the Managing Committee and the same had been challenged in Writ Petitions No.52801 & 38148/2000, and it was open for the petitioner to implead itself in the said proceedings. Petitioner got itself impleaded in W.P. No.38148/2000 and also filed a separate writ petition registered as W.P.No.43621/2003 challenging Endowment

Commissioner's order dated 25.02.1989. It was considered along with W.P. No.38148/2000 and W.P. No.4262/2002; and disposed of by common order dated 14.02.2007. The order passed by the Endowment Commissioner was quashed. The matter was remitted to the Endowment Commissioner to pass fresh orders. The State Government challenged the said order in Writ Appeal No.886/2007 and the same stood dismissed vide order dated 04.08.2008.

7. An organization by name 'Citizens for Justice and Peace' challenged the order passed by the Division Bench in SLP. No.29429/2008. The Hon'ble Supreme Court of India passed an interim order on 01.12.2008 and directed the Endowment Commissioner to submit his Report and directed to maintain status-quo as per earlier report of the Endowment Commissioner dated 25.02.1989.

8. The Endowment Commissioner submitted his Report dated 10.03.2010 before the Apex Court suggesting *inter alia* that a Hindu Archak be appointed by the

Management Committee for performing daily pooja. The Sajjada Nasheen and some contesting respondents raised objections to the said Report. The State Government took a stand before the Apex Court that in view of the sensitive nature of the issues involved in the case, it was required to be considered by the State Cabinet and a decision would be taken thereafter. The Civil Appeal No.2685/2010 (SLP No.29429/2008) and Civil Appeal No.2686/2010 were disposed of on 03.09.2015 with the following order:

"2. Objections to the said Report have been raised by the appellant in C.A No.2686 of 2010 who claim to be Sajjada Nashin and also by some of the contesting respondents in the present appeal i.e. C.A No.2685 of 2010.

3. Shri Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the State has submitted that in view of the sensitive nature of the issues involved the Report of the Commissioner is required to be considered by the State Cabinet and a decision thereon will be taken after considering the various pros and cons of the matter. Having regard to the issues involved and the stand taken by Shri. Patil on behalf of the State, we are of the view that, at this stage, the State should be left free to take its decision on the result of the Enquiry of the Commissioner as indicated in his Report. The State Government will naturally be duty bound to take into account all objections that may be raised against the said Report including the objections raised by the parties to the present appeals, as indicated above. Thereafter, the State

Government will decide the matter. In case any of the contesting parties have any grievance against such decision that the State Government may take, it will be open for them to seek recourse to the legal remedies as may be available.

4. In view of the aforesaid directions, we do not consider it necessary to keep the civil appeals pending any longer. Both the civil appeals and the contempt petition shall stand disposed of in terms of the above.

5. Status quo granted by this Court on 1st December, 2008 will continue until the State Government decides the matter in accordance with the present directions."

(Emphasis supplied)

9. The State Government appointed a High level Committee consisting of a former Judge of this Court and two others, to consider among other things, the recommendation made by the Endowment Commissioner in his order dated 10.03.2010. The High Level Committee submitted its Report on 03.12.2017 with a recommendation to continue the nature and character of religious practices, which were prevailing as on 15th August 1947. Pursuant thereto, State Government have issued the impugned order.

10. Shri. Ashok Haranahalli, learned Senior Advocate for the petitioner submitted that:

- Having undertaken before the Apex Court that the cabinet would take appropriate action, the State Government have appointed the High Level Committee to examine the Report and such delegation is bad in law and therefore constitution of the High Level Committee is illegal;
- The Hon'ble Supreme Court of India has directed that the State Government was duty bound to take into account all objections raised by the parties against the report submitted by the Endowment Commissioner and thereafter take decision in the matter. The State Government have not issued notice to the petitioner before passing the impugned order;
- As per the terms of reference, the High level Committee was required to examine the Report and to consider the objections submitted by the parties;

- The Endowment Commissioner has considered the statements of as many as 1,015 persons/associations. He has also considered the book '*Kalandar E Barak Hazarath Dada Hiyath Meer Kalandar Shri Guru Dattatreya Baba Bundan Swami*' written by Shri S.A.Jabbar and published by Shri Shah Khadri. The High level Committee has discarded the statements of individuals as 'oral statements and hear say' and the book as 'hear say evidence and myth'.
- The High level Committee has, on one hand recorded a finding that legal and factual aspects relating to the Institution have attained finality and the findings of the Courts are binding on all persons; and on the other hand applying the provisions of 'The Places of Worship (Special Provisions) Act, 1991' has held that the practices prevailing as on 15th August, 1947 must continue. Therefore, the report is untenable in law;
- One of the members of the High level Committee is a memorialist, who has filed his affidavit on 17.01.2009

before the Endowment Commissioner in the enquiry ordered by this Court in W.P.No.43621/2003. Being a memorialist, he has favoured the interest of a particular community and hence, the report of the High level Committee suffers from the vice of bias.

11. Thus in substance, Shri Haranahalli argued that appointment of the High Level Committee is contrary to the stand taken by the State Government before the Hon'ble Supreme Court of India and the impugned order has been passed without hearing the petitioner which is also contrary to the directions of the Apex Court. Further, the State Government have simply accepted the High Level Committee without independently considering Endowment Commissioner's report.

12. State Government have filed their statement of objections contending *inter alia* that the judgment and decree in O.S.No.25/1978 and RFA.No.119/1980 could be true; that after disposal of the matter in the Apex Court,

the State Government have constituted a cabinet sub-committee comprising of Law Minister, Home Minister, Minister for WAKF and Minister for Primary and Higher Education. The said Sub-Committee decided that an expert body was required to examine the Endowment Commissioner's report and accordingly the High level Committee was constituted. The Cabinet Sub-Committee has considered the report of the High Level Committee and thereafter, the Cabinet has met and taken an independent decision as per the directions of the Apex Court.

13. Shri Prabhuling K. Navadagi, learned Advocate General, argued in support of the impugned order. He submitted that there are two distinct aspects in this case namely, the secular and the religious. The State Government have very carefully handled this matter by appointing a High Level Committee to examine the report of the Endowment Commissioner. In reply to Shri. Haranahalli's argument that petitioners were not heard by the State Government before passing the

impugned order, it was conceded by him that the original file does not contain any evidence that notices were issued to the petitioner.

14. Smt.Neela Ghokhale, learned advocate for fifth respondent submitted that, in its order dated 06.04.2018, the Apex Court has recorded the statement made on behalf of the State Government that impugned order would be notified in the Official Gazette and in that view of the matter, the orders of the Apex Court dated 22.09.2017 and 27.03.2017 had stood complied with. Therefore, the only remedy for the petitioner is to seek review of the said order. She further submitted that petitioners' Trust Deed is not on record and therefore, it does not have *locus standi* to prosecute this Writ Petition.

15. I have carefully considered rival contentions and perused the records.

16. In the conspectus of facts of this case, the point that arises for consideration is whether the decision making

process adopted by the State Government while passing the order dated 19.03.2018 suffers from any legal infirmity?

17. Undisputed facts of the case are, suit in O.S.No.25/1978 has been decreed on 29.02.1980 in following terms;

"This suit coming on for final disposal before Sri.P.Jayaram, B.A., LL.B., District Judge, Chikmagalur in the presence of Sri. D. Lakshmikanta Iyengar, Advocate for the plaintiffs and by Sri. K. Durgoji Rao, Government Pleader for D-1 and D-3 and by Pleader Sri. M.D. Vasantha Kumar for D-4 and D-2 absent. It is ordered and decreed that not only in favour of plaintiffs, but also in favour of the Hindu Devotees or disciples of "Sri Guru Dathathreya Swamy Peeta" declaring that the plaint schedule Institution is a religious institution being a holy place of worship belonging to or of the Hindus and Mohammadans alike where they worship, it is not a Wakf property and therefore, the inclusion of the plaint schedule property in the list of wakfs by the second defendant is improper and illegal, and such inclusion will not affect the rights of the plaintiffs or the Hindus, and that the 2nd defendant has no right to control or manage the suit schedule institution, the administration, management and control of the said suit schedule property be retransferred from the control of the second defendant to the third defendant as it was being managed prior to June 1975, the 2nd defendant is hereby restrained by means of a permanent injunction not to interfere with the plaintiffs' or Hindus' rights in respect of the plaint schedule institution or property. Since it is a suit on behalf of the entire community of Hindus and it is against the order of

the Government in transferring the suit schedule property from its Muzrai Department to the Wakf board and as it is not the fault of the 2nd defendant in including the suit schedule property in the list of wakfs, I feel that in the circumstances to direct the parties to bear their own costs of the suit. Advocate fee of Rs.100/-

(Emphasis Supplied)

18. RFA No.119/1980 filed against the judgment and decree in O.S. No.25/1978 has been dismissed with following observation:

"..... What is more heartening and commendable is the attitude of the 4th defendant Sajjada who is said to be a Muslim not to challenge the averments of his Hindu brother in the plaintiffs that this shrine belongs to both Hindus and Muslims. Equally heartening is the spirit of Hindu plaintiffs in not claiming the shire as exclusively belonging to the Hindus for the reasons that there are "Paduka" and Nandadeepa" maintained and protected since ancient time and it is also known as "Guru Dathatreya Peeta". It is only the Wakf Board that wants to lay claim on it taking advantage of its own unilateral acts in 1964 without the very Muslim community people offering prayer since hundred of years making any claim on it as their exclusive shrine. The suit institution "the Guru Dathatreya Bababudan Swamy" stands aloft as a shining example of true secularism in this world divided so sharply on narrow caste, communal or religious considerations."

(Emphasis supplied)

19. Thus, the Civil Court has decreed Shri Guru Dattatreya Swami Peetha as a religious institution being a

holy place of worship belonging to or of the Hindus and Mohammadans and it is not a WAKF property. The said judgment and decree has been affirmed by this Court³ and the Apex Court⁴. The Civil Court has recorded that, according to the plaintiff, during March 1976, the State Board of WAKF had seized the *Paduke* of Shri Guru Dattatreya Swami and the *Nandadeepa* kept for worship. On a representation made by the leaders of Chikkamagaluru town, the Deputy Commissioner of Chikkamagaluru got back the *Paduke* and *Nandadeepa*. After this incident, plaintiff learnt that Shri Guru Dattatreya Swami Peetha and properties attached to it were published in Gazette dated 16.10.1964 as 'WAKF' property and one Ghouse Mohiddin was named as 'Mutawalli' of the said WAKF.

20. Pursuant to direction in W.P. No.2294/1994, the Endowment Commissioner submitted his Report dated

³ In RFA No.119/1980 disposed of on 07.01.1991

⁴ In SLP (Civil) No.17040/1991 disposed of on 01.11.1991

25.02.1999 and it has been set-aside by this Court⁵. The Writ Appeal filed thereon has been dismissed⁶. The Civil Appeal has also been disposed of by recording the stand taken by the State Government⁷.

21. The original file produced by the State Government reveals that the Cabinet in its meeting held on 19.04.2017 decided to appoint a Sub-Committee to examine the report. The Sub-Committee recommended for appointment of a Committee consisting of an Hon'ble Judge of the High Court or the Supreme Court of India. The Cabinet in its meeting held on 30.05.2017 decided to appoint a Committee of three members. Pursuant thereto, the High Level Committee was constituted.

22. The High Level Committee has recorded that it has noticed the *sanad* dated 24.05.1798 of Tippu Sultan, the Archeological Survey of Mysore, 1916 and the decree in

⁵ Common order dated 14.02.2007 in W.Ps.No.38148/2000 c/w. 4262/2002 & 43621/2003

⁶ W.A No.886/2007 disposed of on 04.08.2008

⁷ C.A. No.2685/2010

O.S.No.25/1978 and other material. In its concluding remarks at para 39, the High Level Committee has held that the Endowment Commissioner had failed to consider the historic documents such as *sanad* and archeological records. In para 40, it has held that no amount of oral evidence shall dislodge the documentary evidence. In para 41, it has held the book '*Kalandar E Barak*' by S.A.Jabbar as an individual opinion based on hear say evidence and myth.

23. In the impugned order, after recording the facts leading till the appointment of the High Level Committee and its conclusions, the decision/recommendations of the Cabinet Sub-Committee have been noticed and they read as follows:

"Decision/Recommendation

1. *As per the recommendations of the High Level Committee, the report of Endowment Commissioner dated 10.03.2010 to be rejected.*
2. *Having regard to the above it is decided to recommend that the same practices shall continue to be followed which would be in due compliance of the Hon'ble High court single Bench order dated:14.02.2007 in clubbing writ petition nos.38148/2000, 4262/2002 & 43621/2003 as noticed below:-*

(1) "There is a Muzwar appointed by the Shah Khadri to perform daily rites (Pooja) inside the cave and he alone enters inside the sanctum-sanctorum of the institutions and distributes Tabaru/Theertha to the devotees of both communities;

(2) He alone puts flowers to the Paduka/Khadave/lits the Nanda Deepa;

(3) The recognized Hindu Gurus of different mutts are also taken inside the cave gate to offer their respects to the Paduka/Khadava;

(4) Persons who do not take food prepared in the Langarakhana are given 'padi' i.e., the provisions like Rice, Dhal etc., for preparing their food'

(5)the Muzawar takes Lobana (Sambrani) and perform religious rituals inside the main shrine between 7 pm and 8 pm daily;

(6) The above practices include certain practices which are found in Hindu temples also, such as;-

- i. offering of flowers to Padukas*
- ii. lighting the Nanda Deepa*
- iii. giving theerta to pilgrims*
- iv. breaking of coconuts*
- v. taking Hindu Gurus of religious mutts with respect'*
- vi. giving padi to the pilgrims."*

24. The proceeding of the meeting of the Cabinet Sub-Committee held on 20.01.2018 is found between pages No.917 and 919 of the original file and the Report of the Cabinet Sub-committee between pages No.920 and 937.

The decision/recommendation of the Cabinet Sub-Committee are between pages No. 921 and 922 of the file. It is relevant to note that the recommendation of the Cabinet Sub-Committee in the original file reads as follows:

"22. Having regard to the above, it is decided to recommend that the same practices shall continue to be followed which would be in due compliance with the direction of the Court which is noticed below."

25. Surprisingly, what is extracted in the impugned order does not match with the original recommendation and it reads as follows:

"2. Having regard to the above, it is decided to recommend that the same practices shall continue to be followed which would be in due compliance of the Hon'ble High Court Single Bench order dated 14.02.2007 in clubbing writ petition nos.38148/2000, 4262/2002 & 43621/2003 as noticed below."

(Emphasis Supplied)

26. Therefore, it leads to an irrefutable inference that when the matter was discussed by the Cabinet, it was under the incorrect impression that the recommendation is in compliance with the order passed by this Court⁸. It is

⁸ Common order dated 14.02.2007 in W.Ps.No.38148/2000 c/w. 4262/2002 & 43621/2003

also relevant to note that the recommendations of Sub-Committee (at sub-paragraphs No. 1 to 6 of para 2 in the impugned order), are precisely the same contained in the first Report of the Endowment Commissioner dated 25.02.1989, which has been quashed by this Court⁹. The impugned order gives an impression that it is in consonance with the directions issued by this Court¹⁰, which is factually incorrect. Therefore, the reasons recorded in the impugned order are without proper application of mind.

27. It was argued by Shri. Ashok Haranahalli that one of the members of High Level Committee, Shri. Rahmath Tarikere, has deposed before the Endowment Commissioner. Therefore, the Report is biased.

28. In his Report¹¹, the Endowment Commissioner has considered statements of as many as 1,015 persons/institutions. He has recorded at para 143(f) that

⁹ Common order dated 14.02.2007 in WPs No.38148/2000 c/w. 4262/2002 & 43621/2003

¹⁰ Common order dated 14.02.2007 in WPs No.38148/2000, c/w. 4262/2002 & 43621/2003

¹¹ dated 10.03.2010

as per the annual report of the Mysuru Archeological Department, 1932, Shri Guru Dattatreya Swami Peetha is a small cave in Baba Budangiri, which is sacred to both Hindus and Mohammadans. He has rightly recorded that Shri Dattatreya is well known as son of Sage Athri by his virtuous wife Anasuya and embodiment of Hindu trinity, the Gods, Brahma, Vishnu and Shiva.

29. The Endowment Commissioner has further recorded that 1,861 Acres of land was granted to Shri Dattatreya Devaru and 111.25 Acres to Shri Baba Budan Dharga separately by the then Maharaja of Mysore. After the enactment of Karnataka Inams Abolition (Religious and Charitable) Act, 1955, the inam lands of the Institution have vested with the Government and upon such vesting, the tastik amounts of Rs. 1,16,207/- and Rs.69,360/- have been fixed in favour of Shri. Dattatreya Devaru and Baba Budan Darga respectively.

30. The Endowment Commissioner has further recorded that in the book '*Kalandar E Barak Hazarath Dada Hiyath Meer Kalandar Shri Guru Dattatreya Baba Bundan Swami*' written by Shri. S.A. Jabbar and published by Shri. Shah Khadri contains a reference at page 113 that 'early in the morning the next day, a Brahmin and a Jangama entered the cave as per the custom to worship etc. He has rejected the argument that there is no basis for the said literature, as untenable, on the ground that the book has been published by Shah Khadri himself and he has not denied this aspect in the pleadings. Further, in pages 94 and 95 of that book, it is mentioned that there was a big stone idol in the cave having three heads and it was being worshipped as Brahma, Vishnu and Maheshwara.

31. The Endowment Commissioner has also adverted to a literature, '*Karnataka Dattatreya Aradhane*' by Dr. Suryakantha Kamath.

32. With regard to the rituals performed in the Peetha/Darga, the Endowment Commissioner has recorded that as per Mysore Gazetteer Volume V (pages 1134-1136), Shri Dattatreya had resided here at the end of his life and disappeared in this peetha. Further, as per the Macanzi Chronicle, this peetha came into the possession of Muslims for administration after the regime of Hyder Ali. There were padukas with silver covering and Shri Dattatreyaswamy with Deepasthambha.

33. The Endowment Commissioner has recorded the versions contained in the statement of 1,015 persons/institutions. According to him, the members of the Communal Harmony Front(deponent No. 143) have stated that in Baba Budangiri, it is believed that Baba and Datta are one and the same.

34. One Shri. Ramachandra Rao and others (deponents No. 434 to 451) have stated in their Affidavits that there were *padukas*, *trishoola*, *danda kamandala*,

deepastambha with *nandadeepa* and pooja was performed as per Hindu customs.

35. It is further recorded that one Shri. M.N. Bhasha (deponent No.809) has stated that he was working as Mujawar incharge for the period between 1969 and 1975. There are samadhis of his parents on right side of the steps. The devotees were allowed to enter the cave and proceed upto Peetha. Shri Gurudattatreya and his four disciples were said to have performed meditation on this Peetha. Dada Hayat Meer Khalander who came from Mecca-Madeena had mediated here. Two Nandadeepas were burning in front of the Peetha along with Hanathes. (Deepa made out of mud). The water flowing from the fountain was treated as theertha. The fountain was widened with plastering during the time of Peer Mohammed Shah Khadri and thereby the natural flow of water had stopped and water was allowed to flow through a pipe connection from outside.

36. On the left side of the cave, Anasuya Devi was said to be preparing Roti out of the mud which were converted into Roti and the same were given to the disciples. The Muslims believed that it is the Peetha of Mama Jigni, who was the disciple of Dada Hayat. Hindu devotees were performing the pooja with Arasina Kumkuma, blouse piece and bangles. The burning of camphor was in practice. The local people were bringing the idols from their places in celebration and worshipping the same on the peetha. Some of the devotees were cleaning the idol and padukas out of the water brought from Manikyadhara, Galikere and Dattapeetha. They were worshipping as per Hindu customs and '*padi*' was given to them by Shah Khadri and the sweet prasada was distributed to the devotees. The devotees were allowed to worship the Padukas through Brahmin or Lingayat Archaks according to their custom with Bhajans and offering of flower, garland and udusticks and camphor. Shah Khadri was taking the Mathadhispatis inside the cave and arranging

to worship peetha with honour and 'Swetha chathri'. Everyday in the morning and evening Shah Khadri was sanctifying the cave with Dhupa and lobana and offering coconut.

37. The Audumbara tree outside the cave was also worshipped by devotees after pradakshina. The peetha found at Manikyadhara is said to be the place where Dattatreya had mediated. The devotees were offering in cash and in kind, such as gold articles, cow, buffalo and cocks which were sold by Shah Khadri unauthorisedly. Silver items such as horse, hasta and cradles were also being offered.

38. According to the Endowment Commissioner, the Mujawar has also stated that removal of stone threshold and replacing it by steel door at the entrance has led to erosion of cave. After 1975 disputes arose with regard to rituals (pooja) among Hindus and Muslims and the old practice must be restored.

39. In substance, according to the Endowment Commissioner both Hindus and Muslims have been visiting Baba Budangiri and offering their pooja and prayers and it was a centre of worship of Hindus prior to arrival of Dada Hayath Meer Kalandhar.

40. It is recorded by the Endowment Commissioner that Shri. Rahmath Tarikere, Professor, Kannada University, Hampi (deponent No.433), has stated that Baba Budangiri is a centre of Sufis. The non-vedic Datta pantha had friendship with the Sufis and muslims and hindus of lower caste jointly worshipped; and that there is no precedent of upper caste Hindus having devotion to Baba Budan. Admittedly, he is a Member of the High Level Committee.

41. It is settled principle of law that justice should not only be done but be seen to be done. Nearly, a century back, *Lord Hewart, CJ*, has stated that it is not merely of some importance, but of fundamental importance that

justice should both be done and be manifestly seen to be done¹².

42. Shri. Haranahalli has imputed bias against the Report of the Committee, which is not a judicial body. Nonetheless, the recommendation contained in the Report has influence upon the decision making process by the State Government. The consequential orders emanating therefrom impact the citizen with vigor of unmatched Executive power. Therefore, a decision by the Executive shall, without any exception, be free from even the risk of bias. In this context, it may be apt to recall the following words of Lord Esher noted¹³.

"The question is not, whether in fact he was or was not biased. The court cannot inquire into that. . . . In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."

¹² R Vs. Sussex Justices (1923) All ER 233 at 234

¹³ Ranjit Thakur Vs. Union of India (1987)4 SCC 611 (para 18)

43. The recommendations of the High Level Committee have been accepted. Though Shri. Rahmath Tarikere, has stated before the Endowment Commissioner that Hindus and Muslims were jointly worshipping, the Committee has recommended for rejection of second Report of the Endowment Commissioner. The Government have permitted appointment of only a Mujawar. Therefore, Shri. Haranahalli's argument that the Report of the High Level Committee suffers from the vice of bias is well founded.

44. The High Level Committee has recorded in paragraph No.35 as follows:

"35. The institution in question, called as Sri Guru Dattatreya Baba Budan Swamy Dargah is in existence for several centuries. This institution Sri. Guru Dattatreya Baba Budan Swamy Dargah is an ancient place of pilgrimage venerated by both the Hindus and Muslims. This institution is managed by Shah Khadri and the prayers inside the cave are offered through the Muzavar appointed by Sajjada Nasheen. They Prayers offered in this institution are a mixture of both the Islamic and Hindu religious traditions. The Commissioner, in his report, ignored the constitutional protection guaranteed to these type of institutions and committed a grave error, while recommending the appointment of a Hindu Archak, to offer prayers in

accordance with the Agama and such other things. Therefore, the report of the Commissioner as recommended to be rejected as the same is unconstitutional."

(Emphasis supplied)

45. Thus, the High Level Committee has accepted that the Institution has been in existence since several centuries and it is an ancient place of pilgrimage and it has been venerated by both Hindus and Muslims. In para 37 it has observed that there is no scope to convert the place of worship as per the provisions of 1991 Act¹⁴ and the Endowment Commissioner has refused to abide by it. It is further stated in the report that the Endowment Commissioner's suggestion of appointment of Hindu Archak to offer prayers as per agamas amounts to interfering with the religious nature of the place of worship and its violation is punishable under Section 6 of the 1991 Act¹⁵. It is relevant to note that Sub-section (3) of Section 4 makes it clear that nothing contained in Sub-section (1) & (2) shall apply to any suit, appeal or other proceedings with respect

¹⁴ The Places of Worship (Special Provisions) Act, 1991

¹⁵ The Places of Worship (Special Provisions) Act, 1991

to any matter referred to Sub-section (2) finally decided or disposed of by a Court. The relevant provision reads as follows:

"(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

(a) xxxxxxxx

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act."

46. The 1991 Act has come into force on 18th September 1991. The suit in O.S. No.25/1978 has been decreed on 29.02.1980. The RFA and the SLP have been dismissed. Thus, the decree of the Civil Court has attained finality. Parties are bound by the decree of the Court. Therefore, Sub-sections (1) & (2) of Section 4 of 1991 Act have no application.

47. The Endowment Commissioner's report indubitably demonstrates that as many as 1,015 persons/institutions have been heard by him and the

common factor in their version is, both Hindus and Muslims offer pooja and prayers.

48. Out of the persons who have deposed before Endowment Commissioner, the statement of Shri. M.N. Bhasha (Deponent No.809) is very relevant. He was the Mujawar between 1969 and 1975. According to him, Hindus were allowed to worship the *Padukas* through Brahmin or Lingayat Priest as per their custom. He has also given details of Pooja and Bhajans. He has expressed his opinion that the old system must be restored. The Report also shows that endowments and grants were given to the Institution both in the name of Dattatreya Devaru and Shri. Baba Budan Darga separately by the Maharaja of Mysore. Upon abolition of Inams in the year 1995, the tastik amounts have been separately fixed.

49. The impugned order permits only a Mujawar to be appointed by Shah Khadri to enter the sanctum of the cave and to distribute 'teertha' to both Hindus and Muslims.

He is also required to offer flowers to the paduka and light the nandadeepa. On the face of it, this portion of the order runs counter to the practices adopted by the Muslim community because, the idol worship is not recognized by them.

50. Article 25 of the Constitution guarantees Freedom of Conscience and free profession, practice and propagation of religion. By the impugned order, firstly, the State have infringed upon the right of Hindu Community to have the pooja and archana done in the manner as per their faith. Secondly, State have imposed upon the Mujawar to perform 'paduka pooja' and to light 'nanda deepa' contrary to his faith. Both these acts amount to flagrant violation of rights of both communities guaranteed by Article 25 of the Constitution of India.

51. Though the versions of large number of devotees recorded by the Endowment Commissioner including that of the Mujawar who was working during 1975, demonstrate

that both Hindus and Muslims were worshipping as per their respective customs, the State Government have chosen to accept the High Level Committee's recommendation to reject Endowment Commissioner's Report. As recorded hereinabove, the High Level Committee Report is not free from the vice of bias.

52. The Constitution Bench of the Hon'ble Supreme Court of India, in *M.Siddique Vs. Mahanth Suresh Das*, the Ram Janma Bhumi Temple case¹⁶ has held that faith is a matter for the individual believer. Once the Court has intrinsic material to accept that the faith or belief is genuine, it must defer to the belief of the worshipper. The relevant portion in the passage reads thus:

"809. Faith is a matter for the individual believer. Once the court has intrinsic material to accept that the faith or the belief is genuine and not a pretence, it must defer to the belief of the worshipper. This, we must do well to recognise, applies across the spectrum of religious and their texts, Hinduism and Islam being among them. The value of a secular Constitution lies in a tradition of equal deference."

(Emphasis supplied)

¹⁶ (2020)1 SCC 1 (para 809)

53. Therefore, the impugned order is unsustainable in law for more than one reason:

- Firstly, because, contrary to the stand taken before the Hon'ble Supreme Court of India that the Cabinet would consider the *pros and cons* and take a decision, the State Government have delegated the consideration to a High Level Committee;
- Secondly because, the recommendation of the Sub-Committee, has been incorrectly extracted in the impugned order. The recommendation extracted gives an impression that the practices recommended are in consonance with the order of this Court¹⁷, which is factually incorrect because, the six recommendations recorded in the impugned order are those contained in the earlier Report of the Endowment Commissioner dated 25.02.1989 which has been quashed by this Court. Therefore, the decision arrived at, is on an incorrect premise and hence vitiated;

¹⁷ Common order dated 14.02.2007 in W.Ps. No.38148/2000, 4262/2002 & 43621/2003

- Thirdly because, the High Level Committee has mis-directed itself with regard to the 1991 Act, when the issue in dispute has attained finality as per the decree in O.S. No.25/1978;
- Fourthly because, it is nobody's case that the place of worship is being converted. On the other hand, it is the common case of both communities that it is a place of worship for both Hindus and Muslims;
- Fifthly, because, the High Level Committee Report is not free from bias, as Shri. Rehamat Tarikere, one of its Members has deposed before the Endowment Commissioner and the Committee has recommended rejection of his Report;
- Sixthly, because, the impugned order infringes the right of both communities guaranteed under Article 25 of the Constitution by preventing Hindus from performing pooja as per their faith and compelling the Mujawar to offer pooja contrary to his faith.

54. So far as the contentions urged by Smt. Neela Gokhale are concerned, the same are noted only to be rejected because, according to her, the only option for the petitioner is to seek review of the order of the Apex Court dated 06.04.2018. That order was passed on the contempt side and Hon'ble Supreme Court of India, in its order dated 03.09.2015 has granted liberty to any contesting party to seek recourse to a legal remedy as may be available. Her next contention with regard to the *locus standi* is also untenable because, petitioner was a party respondent in SLP No.29429/2008.

55. In the light of the above discussion, the question formulated by this Court at para 16 is answered in the affirmative. Resultantly, the impugned order is clearly unsustainable in law and liable to be quashed. Hence, the following:

ORDER

(a) Writ Petition is ***allowed***.

(b) The order dated 19.03.2018 passed by the first respondent, State Government is quashed.

(c) The matter is remitted to the State Government with a direction to reconsider the matter afresh in accordance with law without reference to the Report of the High Level Committee.

No costs.

**Sd/-
JUDGE**

SPS/AV