®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8th DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

REGULAR FIRST APPEAL NO.23 OF 2017 (INJ)

Between:

1. Sena Vihar Owners Welfare Association (R)
Kammanahalli Main Road,
Kalyan Nagar Post,
Bengaluru - 560 043
Represented by its President

2. Sena Vihar Temple Trust (R)
Kammanahalli Main Road,
Kalyan Nagar Post,
Bengaluru -560 043
Represented by its President

…Appellants

(By Sri. B. V. Nidhishreee, Advocate)

And:

1. Sri. Bandarappa Bhakthadigala Sangha (R)
Fire Light House,
No.43, Sena Vihar
Kammanahalli Main Road,
Kalyan Nagar Post,
BEngaluru -560 043
Represented by its General Secretary,
Mr. Chaman K. Sehsaya

2. Brigadier (Retd.) P.T. Monappa,
Aged about 68 years,
Son of Late Mr. P.B. Thimmaya,
President, Sri. Bandarappa Bhakthadigala Sangha (R)
Fire Light house,
No.43, Sena Vihar,

Kammanahalli Main Road,
Kalyan Nagar Post,
Bengaluru -560 043.

3. Mr. Chaman K. Sehsaya,
Aged Major,
Father's name not known to appellants,
Secretary, Sri. Bandarappa Bhakthadigala Sangha (R)
Fire Light House,
No.405, 4th B Cross,
2nd Block, HRBR Layout,
Kalyan Nagar,
Bengaluru -560 043.

4. Lt. Col. (Retd)., S.K. Chakravarthy,
Aged about 65 years,
Son of Mr. S.K. Chakravarthy
Organising Secretary
Sri. Bandarappa Bhakthadigala Sangha(R)
No. 403, 2nd Cross, 8th Main,
5th Block, HRBR Layout,
Bengaluru -560 043.

…Respondents

(By Sri. T. Seshagiri Rao, Advocate for R3; R1, R2 and R4 served)

This Regular First Appeal is filed under Section 96 read with Order XLI of CPC, against the judgment and decree dated 09.09.2016 passed in O.S.No.2374/2012 on the file of the XIV Additional City Civil Judge, Bengaluru (CCH 28), dismissing the suit for permanent injunction.

This Regular First Appeal having been heard through physical hearing/video conferencing hearing and reserved on **26.07.2023**, coming on for pronouncement of judgment, this day, the Court delivered the following:

J U D G M E N T

This is a plaintiffs' appeal. The present appellants as plaintiffs had instituted a suit in O.S.No.2374/2012, in the Court of the XIV Additional City Civil Judge at Bengaluru (hereinafter for brevity referred to as "the Trial Court"). against defendants seeking the relief of permanent injunction restraining the defendants, their members, agents, servants, henchmen and any other persons claiming under them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property in any manner whatsoever.

2. The summary of the case of the plaintiffs in the trial Court was that, Army Welfare Housing Organisation, New Delhi (hereinafter for brevity referred to as 'AWHO') was formed and registered as a Society under Societies Registration Act, 1860 before the Registrar of Societies, New Delhi. Its aims and objectives *inter-alia* included procuring, developing and providing dwelling units of flats to serving and retired personnel of Army and every Defence Sector who are

its member registrants. In pursuance of its aims and objectives AWHO framed Army Welfare Housing Organisation Rules, 1987. In furtherance of its objectives, the AWHO approached Bengaluru Development Authority (hereinafter for brevity referred to as 'BDA') for allotment of land in Bengaluru City for construction of flats/houses for its member registrants. Accordingly, BDA has allotted lands in Sy.No.24/2, 25, 34/1, 34/3, 35/1, 35/2, 35/3, 36/1 and 36/2 situated in Kacharakanahalli village, Bengaluru North Taluk, Bengaluru totally measuring to an extent of 14 acres 22 guntas, in favour of the AWHO, by executing an Agreement dated 28.09.1985. The Possession Certificate with regard to these lands was issued by BDA on 20.03.1986 on Lease cum Sale Agreement for a period of thirty (30) years.

Further, upon receipt of entire cost of land purchased and after fulfilling all formalities in that regard for formation of layouts in the aforesaid lands, an absolute Sale Deed dated 18.11.1992 came to be registered by BDA in favour of AWHO. Thus, the AWHO became the absolute owner, lawfully ceased

and possessed the above lands by forming plots for construction of residential buildings and further constructed apartment blocks consisting of various types of flats for its member registrants. The said residential complex of AWHO is also known as 'Sena Vihar Complex'.

3. It is further contended by the plaintiffs that the member registrants/owners of apartments and independent plots/houses having purchased the same from AWHO in Sena Vihar Complex, initially formed Sena Vihar Housing Co-operative Society Ltd., registered under Karnataka Co-operative Societies Act, 1959 on 20.05.1994. The same was later converted into Sena Vihar Owners Welfare Association (Regd.,) which is the first plaintiff, under the Karnataka Societies Registration Act, 1960, to administer, maintain and manage the Sena Vihar Complex promoted by AWHO.

The bylaws were framed by erstwhile Sena Vihar Housing Co-operative Society Ltd., According to the bylaw, all the common areas and facilities jointly owned by all the 435 owners shall be managed, administered and maintained by the

Society on behalf of all the owners. Further a Relinquishment Deed dated 18.04.1994 came to be executed by AWHO in favour of BDA by relinquishing only the internal roads, culverts and drains parallel to the roads mentioned in the schedule to the Relinquishment Deed. However, the remaining land situated in Sena Vihar Housing Complex i.e., schedule property of Sale Deed made in favour of AWHO, still jointly owned by all members of the first plaintiff.

4. The plaintiffs have further stated that there is a Muneshwaraswamy Temple situated at the entrance of the Sena Vihar Residential Complex near the Western Gate, which is under the maintenance and administration of the first plaintiff and its predecessor Society and its member registrants are offering daily prayers to the Almighty. The said Temple is situated upon the land which is paid and purchased by the owners of the flats and independent plots/houses owners through AWHO from BDA.

It is also averred that, the same is duly registered in the names of owners along with their undivided share, right, title,

interest and possession over the common areas of the residential complex, including the Temple and hence, the Temple along with all other common areas are maintained, managed and administered by the first plaintiff -Association.

5. The plaintiffs have further contended that the second plaintiff is a registered Trust vide a Deed of Trust dated 15.09.2011 which is formed by the President of the first appellant -Association in the capacity as a settler by creating and establishing spiritual and charitable Trust in the property jointly owned by all the owners of the first plaintiff- Association and comprises first five Trustees. The said Trust has various objectives, amongst which, are renovation and maintenance of the suit schedule property mainly for the benefit of all the residents by improving upon the present construction of the Temple by giving utmost importance to its aesthetics in its present form and receive donations from some devotees and to establish a proper Temple with proper idols of God, photographs, books about various Hindu Gods and various other pictures as donated by the devotees, including the Pooja and

Havan materials. The President of first plaintiff-Association is also the Managing Trustee of second plaintiff - Trust which is made co-terminus with his tenure of office therein.

6. The plaintiffs further contend that when the things stood thus, defendant No.3 along with his followers made entry to the Sena Vihar Complex near the suit schedule property on 22.07.2011, at 10.00 a.m., with a *malafide* intention of encroaching common areas belonging to the first plaintiff on the pretext that they want to build upon the existing Temple, thereby to gain access to the private property which is a part and parcel of the common areas under maintenance, management and administration of the first plaintiff, which is only with a *malafide* intention to cause nuisance and further to create Law and Order problem by claiming false and frivolous right over the common areas of Sena Vihar Complex and started taking possession of the suit schedule property without any authority. This made the first plaintiff to lodge a complaint on 22.08.2011 before the Banasawadi police station.

The plaintiffs further contend that despite the plaintiffs lodging the complaint, the defendants continued their attempts in interfering with the affairs of suit schedule Temple by claiming to have formed a Temple Association and to claim ownership of the suit schedule Temple and further to carry out renovation, reconstruction of the same.

7. The third defendant by colluding with defendants No.2 and 4, continued his acts against the plaintiffs in the affairs of the Temple. The second defendant despite of being an independent house owner in the Sena Vihar Complex refrained from becoming a member of the first plaintiff and has not paid any maintenance charges apart from causing other interference with the functions of the first plaintiff - Association. The plaintiffs further contend that since the third defendant continued his unauthorised and illegal venture, the first plaintiff once again lodged a complaint on 21.09.2011 to the jurisdictional police seeking to initiate stringent action against defendant No.3 and others. In the meanwhile, the first defendant said to be a registered Association represented by

defendant No.3, vide its letter dated 21.07.2011, informed the first plaintiff about the formation and registration of the first defendant - Association with an objective of reconstruction of the existing suit schedule Temple to conduct Pooja and other religious functions on a massive and grand scale. A similar letter dated 17.09.2011 was also sent by third defendant to the first plaintiff. The plaintiffs contend that the Temple in question absolutely belongs to the owners of the apartments and independent houses situated in Sena Vihar Complex and maintained, managed and administered by the plaintiffs, as such, the defendants have got no right or manner to interfere in the administration, management and maintenance of the said Temple. This made the plaintiffs to issue a legal notice dated 28.09.2011 to defendant No.3 to refrain from interfering with the first plaintiff's management, maintenance and administration of the Temple. However, the defendants sent an untenable reply on 13.02.2012 and shown their intention to interfere with the authority of the plaintiffs in managing and administering the suit schedule Temple.

The plaintiffs further contend that the defendants are provoking the residents staying near Sena Vihar Complex to come in large numbers and offer prayers in the suit schedule Temple. On 27.02.2012, and 28.02.2012 the third defendant with huge number of supporters has deliberately come to the suit schedule Temple under the guise of offering Pooja and tried to cause Law and Order problem, including traffic chaos, like parking within the Sena Vihar Complex. The plaintiffs further stated in their plaint that they have so-far not objected to any persons who have come to offer prayers or worship to the suit schedule Temple. However, plaintiffs apprehend that defendants may attempt to demolish and reconstruct the suit schedule Temple thereby affecting the suit schedule Temple and the adjoining apartment, A-Block of Sena Vihar Complex thereby affecting its aesthetics and also plan to conduct mass religious functions gathering huge number of public by distant places thereby creating nuisance, parking problems and traffic chaos.

The plaintiffs also stated that the first defendant joined by the other defendants, are planning to gather near the suit schedule Temple on 02.04.2012 and to hold a hungama and they are likely to take Law into their hands and dispossess the plaintiffs from their peaceful possession and enjoyment of the suit schedule Temple. Reiterating that members of the first plaintiff are the absolute owners of the schedule property with every manner of the right, title and interest to uninterrupted and peaceful possession and the enjoyment of the same, which is being maintained, administered and managed by the first plaintiff - Association, they contended that the defendants have no manner of right with peaceful possession and enjoyment of the schedule property by the plaintiffs, its members and beneficiaries. With this, they prayed for the relief of permanent injunction restraining the defendants, their members, agents, servants, henchmen and any other persons claiming under them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property in any manner whatsoever.

8. The suit schedule property is described as all the part and parcel of Muneshwaraswamy Temple located within the premises of Sena Vihar Residential Complex, near the Sena Vihar Western Gate, Kammanahalli Main Road, Kacharakanahalli Dakle, Kalyan Nagar P.O., Bangalore - 560 043 admeasuring from East to West: 12 feet and North to South: 12 feet, and bounded on

East by : Remaining property of Sena Vihar Complex.
West by : Remaining property of Sena Vihar Complex.
North by : 40 feet road,
South by : Apartment Block A of Sena Vihar Complex.

9. In response to the suit summons served upon them the defendants appeared through their counsel and filed their written statement. In their written statement defendants contended that though the Government acquired lands in several survey numbers of Kacharakanahalli Village, Bengaluru North Taluk and handed over about 14 acres 22 guntas of land to AWHO, however, noticing the existence of Muneshwaraswamy Temple within the area notified and acquired, more precisely in an extent of one gunta in Sy.No.25

of Kacharakanahalli Village, the Government excluded that one gunta from acquisition and kept the same for public purpose treating the said one gunta of land as a kharab land and showed the existence of Muneshwaraswamy Temple therein. As such, the contention of the plaintiffs that while handing over the land measuring 14 acres 22 guntas in favour of AWHO, the Government has handed over the Temple also is not correct. Thus, the Society was and is not the owner of Muneshwaraswamy Temple. The plaintiffs being the beneficiaries under the Society, cannot claim exclusive ownership on the ground that the Temple is situated within their compound.

The defendants further contended that the property under dispute is a place of worship which is an ancient Temple of more than hundred years old. Thus, being a place of worship, one cannot exclude others from worshipping the same. It was also contended by them that the plaintiffs have not claimed any ownership in respect of Temple in question, which is a public property. As such, without taking

the leave of the Court under Order I Rule 8 of CPC, the suit is not maintainable.

It further contended that in view of the bylaw of the plaintiffs Society, the President and Secretary are not authorised to present the suit, as such, the suit is not maintainable.

10. In addition to the above contentions, the defendants submitted their parawise remarks, wherein, they did not deny that at the request of AWHO it was granted with a land measuring 14 acres 22 guntas in different survey numbers including Sy.No.25 of Kacharakanahalli Village and that possession certification was also issued and layout plan was sanctioned by the BDA. The defendants also admitted that, pursuant to allotment of land by the Government to the Society, residential buildings and apartment blocks of various types were constructed on the property.

They also admitted that on 25.09.1994, the first plaintiff Society was registered under The Karnataka Societies Registration Act, 1960. The AWHO relinquishing internal roads,

culverts and drains on 18.04.1994 in favour of the Government is also not disputed by the defendants. However, it reiterated that the Temple in question i.e., suit schedule property is not a common area and is not a part of the land which was allotted to the AWHO. The said Temple has been left out for the purpose of public use while acquiring the lands situated in and around the same. It specifically denied that Muneshwaraswamy Temple is under the maintenance, management and administration of the first plaintiff and its predecessor Society and also that its member residents are offering daily prayers to the Almighty.

Defendants contended specifically that Muneshwaraswamy Temple is not the property of the people of Sena Vihar Residential Complex, but, it is a public property. The Temple was not handed over by the Government to AWHO. The award passed by the Land Acquisition Officer makes it clear that Muneshwaraswamy Temple is a Temple meant for public use. Defendants also denied that Temple is situated at a land which is paid and purchased by the owners

of the flats/independent plot/house through AWHO from BDA. They reiterated that while handing over 14 acres 22 guntas of land to the Society, the Government took note of existence of Temple and excluded the said Temple and reserved it for the public purpose. Thus, the members of the Society cannot and shall not claim that they have got exclusive right in respect of the Temple and defendants have no right over the same.

The defendants contended that though the formation of the Trust by the plaintiffs may be a fact, however, the plaintiffs' contention that five Trustees figured in the Trust Deed dated 15.09.2011 are trying to improve the schedule property for the benefit of all the residents is indirectly laying the claim of ownership in respect of the Temple. It reiterated that the BDA did not transfer the ownership of the Temple to the Society and it had reserved the Temple for the use of the general public. The defendants also denied that, on the date 22.07.2011, they with a *malafide* intention to encroach the common areas belonging to first plaintiff and with a pretext that they want to build the existing Temple gained access to

the private property and caused nuisance and created Law and Order problem. They denied the plaintiffs' allegation that defendants continued with their attempts to interfere with the affairs of the suit schedule property. The defendants contended that defendant No.1 is an organisation formed by them of which, defendants No. 3 and 4 are the office bearers.

'Bhandarappa' means Lord 'Muneshwara'. The defendants' Association with an intention to uplift Muneshwaraswamy Temple have formed an Association and in order to rejuvenate the Temple they are working out. The plaintiffs in order to see that the Temple is not rejuvenated, have approached the Court through the suit.

The defendants also contended that the said Temple is more than Hundred (100) years old and is in a dilapidated condition, as such, it requires rejuvenation. If it is not rejuvenated immediately, it may fall down at any time. The defendants also contended that they are the devotees of Lord Muneshwara since several decades. Taking note of the existing situation they have made up their mind to rejuvenate the Temple. Defendants contended

that though the said Temple is situated within the compound of Sena Vihar Residential Complex, the plaintiff Association has no business to come in the way of the people who come to offer Pooja to the said deity. They admitted it as a fact that these defendants have sent a letter to the plaintiff Association on 21.07.2011 stating that they have formed an Association with fourteen (14) office bearers with an object to rejuvenate the existing Temple and also with regard to continuing Pooja and religious functions. They denied the plaintiffs contention that, defendants with a *malafide* intention initially to demolish the Temple and to reconstruct the Temple have formed the Association.

The defendants further contended that the people living in the vicinity of the Temple have taken a decision to rejuvenate the Temple since it is in a dilapidated condition. The plaintiffs also can join their hands with the defendants in rejuvenating the Temple. The defendants have not claiming any exclusive right in respect of the Temple. What they are interested is, up-keeping the Temple, arrange regular Poojas

to the deity and rituals and not interested in grabbing the property.

The defendants specifically contended that they are the devotees of Lord Muneshwara and they have got every right to perform Pooja to the said deity and they have got every right to enter into the Temple and offer pooja to the deity. Though they admitted that a notice was served upon them, however, stated that they have sent a suitable reply to the same. The defendants denied that they have caused any interference either on 27.02.2012 or on 28.02.2012. On the other hand, they stated that during the 3rd week of February 2011, there was 'Mahashivarathri', which is more auspicious day for the Hindus and on that particular day, they offer Poojas to Lord Muneshwara. The deity in question is in reality Lord Eshwara and it is being called as Lord Muneshwara.

The defendants further contended that, it was a fact that thousands of people have visited the Temple on 20.02.2012 and offered poojas to Lord Muneshwara. Thus, the plaintiffs have no right to contend that defendants and its supporters committed nuisance in front of

Sena Vihar Residential Complex. The plaintiffs by virtue of making such statement intends to contend that they are prepared to rejuvenate the Temple and restrict the entry only to the residents of Sena Vihar Residential Complex, which cannot be accepted, since plaintiffs have no exclusive right to contend that the Temple is only for the residents of Sena Vihar Residential Complex. The defendants also denied that on 02.04.2012, they with their men are planning to gather hungama, in that process, they would take Law and Order in their hands and dispossess the plaintiffs from their alleged peaceful possession of the suit schedule property. They denied that the Temple is situated in a common area. With this, they prayed to dismiss the suit with exemplary cost.

11. Based upon the pleadings of the parties, the trial Court framed the following issues.

Issues

1. *Whether the plaintiffs prove, they have got right to sale a suit for*

Permanent Injunction in respect of the suit property?

2. *Whether the plaintiff to prove the alleged interference made by the defendants as pleaded in plaint?*
3. *Whether the plaintiffs are entitled for relief claimed in the suit?*
4. *What order or decree?*

12. To prove its case, the President of plaintiff No.1 - Society got examined as PW-1 and got marked Ex.P.1 to Ex.P.44. The defendant No.3 was examined as DW-1 and got marked Ex.D.1 and Ex.D.2.

13. After hearing both side, the Trial Court under its impugned judgment and decree dated 09.09.2016 while answering issues No.1 to 3 in the negative, proceeded to dismiss the suit of the plaintiffs. Aggrieved by the same, the plaintiffs have preferred the present appeal.

14. The Trial Court records were called for and the same are placed before this Court.

15. Heard the arguments of the learned counsel for the plaintiffs/appellants herein and learned counsel for the defendants /respondents No.1, 2 and 4 herein.

16. Perused the material placed before this Court including the impugned judgment, memorandum of regular first appeal and the Trial Court records.

17. For the sake of convenience, the parties herein would be henceforth referred to as per their rankings before the Trial Court.

18. Learned counsel for the plaintiffs in her opening statement of the argument submitted that the plaintiffs have no objection for any member of the general public as a devotee of Muneshwara visiting the Temple, which is the suit schedule premises and worshipping the Lord. However, the contention of the plaintiffs is only that in the guise of worshipping, the general public, including the defendants, take the control and administration of the Temple in their hands

and alter the structure of the Temple or affect any changes alleging that they are rejuvenating the same. While concluding her reply argument also, the learned counsel for the appellants reiterated the same submission which has been recorded in the order sheet dated 26.07.2023.

She further submitted that the document marked at Ex.D.1, which is a copy of the Award shows that the entire land in Sy.No.25, measuring 5 acres 36 guntas, including the Temple, was acquired and possession was delivered to AWHO. Since the Temple and stone Mantapa are left for public use, they are not valued and compensation is not determined. However, the land value upon which the Temple stands is assessed at ₹575/- and the same is paid by the plaintiff No.1 to the Tahasildar as per the Award. Therefore, the plaintiff No.1 is not only the person in possession of the suit schedule property, but, also the owner of the land.

19. Learned counsel for respondent No.3 in his argument submitted that plaintiffs have not produced any material to show the details of the extent of land given to the

plaintiffs in each of the survey numbers. He also submitted that the suit schedule property is classified as pot kharab land, as such, as per Rule 21(ii)(b) of the Karnataka Land Revenue Rules, 1966 (for brevity KLR Rules), it is reserved for public purpose. Therefore, the plaintiffs neither can claim their ownership nor the possession over the suit schedule property. He also submitted that the suit schedule Temple is not a notified Temple under Section 23 of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (for brevity referred to as Hindu Religious Endowments Act).

He further submitted that the suit schedule property is not even a family Temple as defined under Section 2(14)(b) of Hindu Religious Endowments Act, since, admittedly, it is not belonging to any one family, as such, it is only a Temple. He also submitted that there are no materials to show that land measuring 5 acres 36 guntas in Sy.No.25 of Kacharakanahalli village that was given to AWHO includes the suit schedule property also. He further submitted that by virtue of Section 67 of KLR Rules, the suit schedule property, which is a Temple,

vests with the Government. He submitted that by virtue of Relinquishment Deed dated 18.04.1994 at Ex.P.3, the plaintiffs have no right of any manner with respect to suit schedule property. He further submitted that plaintiffs cannot claim a superior right with respect to a place of worship against others. However, while concluding his argument, he submitted that the defendants would not have any objection for forming a joint Committee involving the representatives of the plaintiffs and other devotees for the maintenance, management and development of the suit schedule Temple.

20. In her reply argument, learned counsel for the appellants/plaintiffs relying upon few judgments of different High Courts and giving more emphasis on a judgment of a coordinate Bench of this Court in ***Shivappa Vs. General Manager and others in W.P.No.106515/2015 (LA-RES) and connected writ petitions, disposed of on 07.03.2023*** submitted that plaintiffs are the owners of the land in the suit schedule property even though it is pot kharab land and has paid the land value to the Government. Thus, plaintiffs are in

lawful possession of the suit schedule land, including the Temple existing thereupon, constituting the suit schedule property. Those judgments would be considered at the appropriate stage hereafterwards.

21. After hearing the learned counsels from both parties, the points that arise for my consideration in this appeal are :

1) *Whether the plaintiffs have proved that they are in possession of the suit schedule property and as such can maintain the suit for permanent injunction?*

2) *Whether the plaintiffs have proved the interference by the defendants in their alleged possession of suit schedule property?*

3) *Whether the plaintiffs are entitled for the relief as sought for?*

4) *Whether the impugned judgment and decree warrants any interference at the hands of this Court?*

22. From the pleadings of the parties the undisputed fact remains that, AWHO was formed as a registered Society under Societies Registration Act, 1860, which has its Brochure as per Ex.P.1. The contention of the plaintiffs that AWHO was formed with the aim and objectives of procuring, developing and providing dwelling units, flats, plots etc., to serving retired personnel of Army and other defence sectors who are its member registrants, is also not disputed by the defendants. It is also not in dispute that, at the request of AWHO, BDA has allotted lands to the said Society in different survey numbers, including Sy.No.25 in Kacharakanahalli village, measuring in total to an extent of 14 acres 22 guntas, in which regard an absolute Sale Deed was executed by BDA in favour of AWHO as per Ex.P.2 which is a certified copy of the registered Sale Deed dated 18.11.1992. It is also not in dispute that AWHO was given with the possession of the lands allotted to it under Possession Certificate at Ex.P.37. Thereafter, AWHO developed the lands by constructing various types of flats for its member registrants, who were allotted either individual flats or

apartment flats in this residential complex formed by AWHO, which complex was known as 'Sena Vihar Complex'. It is also not in dispute that the member registrants/owners of the apartment/independent flats/ houses duly purchased from AWHO in Sena Vihar Complex initially formed Sena Vihar Housing Cooperative Society Ltd., registered under Karnataka Cooperative Societies Act, 1959 (for brevity KSRA) which was later converted into first plaintiff Welfare Association under KSRA as evidenced in Ex.P.4.

Ex.P.5 is the layout plan pertaining to Sena Vihar Complex and Ex.P.6 is the bylaws of Sena Vihar Housing Cooperative Society Ltd., and they are not in dispute. AWHO executed a Relinquishment Deed dated 18.04.1994 in faovur of BDA relinquishing certain roads, culverts, drains which are mentioned in detail in Clause (a) of the Schedule to the said Relinquishment Deed, which is marked as Ex.P.3, by the plaintiffs is also not in dispute. The existence of the suit schedule property which is a Muneshwaraswamy Temple as shown in photographs with CD from Exs.P.9 to P.14 said to

have been situated at the entrance of Sena Vihar Residential Complex is also not in dispute. It is in the light of these admitted facts, the evidence led by both sides is required to be analysed.

23. On behalf of the first plaintiff, its then President Brig. Retd. P. Subramanya was examined as PW-1 who in his examination-in-chief reiterated the contentions taken up by the plaintiffs in their plaint. In support of his evidence he got marked documents at Ex.P.1 to P.44.

Defendant No.3 who got himself examined as DW-1 also reiterated in his evidence the contentions taken up by the defendants in their written statement and got marked copy of the Award passed by the Land Acquisition Officer in LAC No.235/1980-81 as Ex.D.1 and an authority letter shown to have been given to him by defendant No.1 to represent defendant No.1 -Sangha in the litigation at Ex.D.2.

24. Even though the evidence of PW-1 is that by virtue of the Sale Deed at Ex.P.2, BDA has sold the entire extent of land measuring 14 acres, 22 guntas in favour of AWHO and put

AWHO in possession of the property, however, defendants have taken a contention that suit schedule property which is measuring one gunta of land has not been either sold or given in possession to the plaintiffs.

25. DW-1 in his cross-examination has denied a suggestion that the entire extent of 14 acres 22 guntas of land was delivered to the possession of the plaintiffs. On the other hand, he stated that except one gunta of land where the Temple is situated, the remaining entire land was given in possession to the plaintiffs. From the defendants' side a suggestion was made to PW-1 in his cross-examination that said one gunta in Sy.No.25 of land was not given to AWHO and that the said land with Temple was retained as public property and for public use, however, PW-1 has not admitted the said suggestion as true. Still the undisputed fact as admitted by both side remains that upon the said one gunta of land in Sy.No.25, there is a Muneshwaraswamy Temple. PW-1 admitted a suggestion in his cross-examination as true that the public are using that Temple.

26. A perusal of the Possession Certificate at Ex.P.37 would go to show that AWHO was put in possession of the land to an entire extent of 14 acres 22 guntas, spread over into different survey numbers, including Sy.No.25 of Kacharakanahalli village. However, it does not mention the measurement of the land in each of the survey numbers individually. Further, the registered Sale Deed executed by BDA in favour of AWHO dated 18.11.1992, a certified copy of which is at Ex.P.2, also gives the total extent of lands sold by BDA to AWHO as 14 acres 22 guntas. The said extent of land includes the land in Sy.No.25 at Kacharakanahalli village. Therefore, the contention of defendants that entire extent of land in total measuring 14 acres 22 guntas, was not given in possession to AWHO, but, one gunta short of said land was given to AWHO does not find force in it.

The Relinquishment Deed at Ex.P.3 executed by AWHO in favour of BDA, whereunder AWHO has relinquished their rights and handed over some of the properties to BDA which are more fully described in the schedule in the said document,

though mentions several of the main roads, cross roads, internal roads and culverts across those roads, but, does not mention anything about the suit schedule property. Thus, based upon these documents though the contention of the plaintiffs that they are the owners in possession of the entire extent of land measuring 14 acres 22 guntas, including the suit schedule property, p*rima facie* appears to be corroborated with the documentary evidence, however, the copy of the Award passed by the Additional Land Acquisition Officer, BDA, Bengaluru dated 17.09.1983, which is at Ex.D.1 and which pertains to land at Sy.No.25 of Kacharakanahalli village, having an extent of 5 acres 36 guntas, introduces a break to some extent and halts the case of the plaintiffs in rushing ahead with their contention.

27. The contention of the plaintiffs that the total land measuring 14 acres 22 guntas allotted to it by BDA, the possession of which is given to it under Possession Certificate at Ex.P.37, and the same was sold to it through the registered Sale Deed dated 18.11.1992, as could be seen in a certified

copy of the Sale Deed which is at Ex.P.2, also includes the land bearing Sy.No.25 of Kacharakanahalli village, is not in dispute. It is also not in dispute that total extent of land in Sy.No.25 of Kacharakanahalli village was measuring 5 acres 36 guntas. The said fact is clear from the recitals of page No.1 of Ex.D.1, however, the acquisition is shown to have been made in favour of BDA for the formation of Hennur road and Banasawadi road layout. However, later the same land came to be allotted and sold to AWHO as a part of lands in several other survey numbers of Kacharakanahalli village and the said sale was, as already observed, evidenced and registered under Ex.P.2.

28. Ex.D.1 which is the award in LAC No.235/1980-81 passed by the Land Acquisition Officer and which document is not in dispute from the plaintiffs side, mentions that total extent of the land in Sy.No.25 of Kacharakanahalli village of Bengaluru North Taluk was measuring 5 Acres 36 guntas, in which zero acres 11 guntas was kharab land. The Land Acquisition Officer's Award has noticed the existence of two structures in the said land bearing Sy.No.25 of

Kacharakanahalli village which structures are shown to be of Muneshwaraswamy Temple and a Stone Mantapa. Thus, the total extent of 5 acres 36 guntas of land in Sy.No.25, according to Ex.D.1, within it includes the above mentioned two structures i.e., Muneshwaraswamy Temple and Stone Mantapa. Undisputedly, it is the very same Muneshwaraswamy Temple and Stone Mantapa and the land beneath it is the suit schedule property in the instant case. The Land Acquisition Officer's award at Ex.D.1 clearly and specifically mentions that the above said two structures i.e., Muneshwaraswamy Temple and Stone Mantapa are left for public use, as such, they were not valued and the compensation was not determined. Thus, excluding the building structure i.e., Muneshwaraswamy Temple and stone Mantapa the compensation was calculated and awarded by the Land Acquisition Officer under Ex.D.1, the operative portion of the Award reads as below:

> " *AWARD*
>
> *(under Section 11 of the Land Acquisition Act.1 of 1894)*
>
> *"Whereas an extent of land in Survey No.25 measuring 5-36 gts. of dry land situated in the village of Kacharakanally in the Bangalore North*

Taluk in the Registration, district of Bangalore and registration the name of or occupied by the persons specified below has been declared by Govt. at pages 110 to 141 of the Karnataka Gazette on 12-06-80 on due consideration of the various circumstances connected with the the acquisition as here before set forth makes the following award under my hand.

a) The True area of land is 5A-36 Gts.

b) The compensation allowed for the land is at Rs.28,000/- per acre of dry land for 5-25 gts.	*1,57,500=00*
S.A. @ 15%	*23,625=00*
	1,81,125=00
Value of 0-01 gts. of un-reserved kharab @Rs.20,000/- per acre.	*5,000=00*
S.A. @ 15%	*750=00*
	5,750=00
Value of 0-01 gts. of reserved kharab land at. 20,000/= Rs. Per acre.	*500=00*
S.A. @15%	*75=00*
	575=00
	1,87,450=00

Further page No.10 of the very same award reads as below:

> *"The sum of ₹575/- being the value of 0.01 guntas of reserved kharab land may be sent to the Tahasildar Bengaluru North taluk"*

29. From the above, it is clear that the entire land measuring 5 acres 36 guntas including 11 guntas of kharab land in Sy.No.25 of Kacharakanahalli village, was acquired by the BDA. Therefore, the argument of the learned counsel for the respondent No.3 that one gunta of land in Sy.No.25 which was pot kharab land was not acquired by the BDA, is not acceptable. The argument of learned counsel for respondent No.3 that since the compensation has not been determined with respect to one gunta of land, upon which, the Muneshwaraswamy Temple and stone Mantapa stands would not make it an acquisition, is also not acceptable, for the reason that since the said structure of Muneshwaraswamy Temple with stone Mantapa was shown to have been located on the kharab land measuring one gunta and those building structures since had been left for public use, they were not valued for compensation. As such, the loser of the land who was one Sri. Ramaiah S/o. Chikkanna though was awarded compensation with respect to the land measuring 5 acres 36 guntas, however, he was not granted any

compensation towards the structures i.e., Muneshwaraswamy Temple and stone Mantapa.

Further, the very same Award shows that, out of 11 guntas of kharab land in the Sy.No.25, 10 guntas were considered as unreserved kharab land and one gunta of kharab land, upon which, the Muneshwaraswamy Temple and stone mantapa were existing, was considered as reserved kharab land. However, the value of both those lands i.e., 10 guntas + 1 gunta = 11 guntas, was also calculated. Out of which, the land value of one gunta of reserved kharab calculated at ₹500/- together with S.A. @ 15%, which comes to a sum of ₹75/-. Thus, in total a sum of ₹575/- was ordered to be payable to the Tahasildar, Bengaluru North Taluk. The BDA is shown to have paid that amount of ₹575/- to the Tahasildar, Bengaluru North Taluk, as has been admitted by DW-1 in his cross-examination dated 10.03.2016. He has admitted as true that Ex.P.1 is the evidence for the same. In turn, it is the contention of the plaintiffs that they have paid the said sum of ₹575/- awarded by the Land Acquisition Officer

as per Ex.D.1 as the land value of one gunta of reserved kharab land.

30. The argument of the learned counsel for respondent No.3 was also that the reserved kharab land under Rule 21(2)(b) vests with the Government and it cannot be owned or possessed by any individual.

The RTCs at Ex.P.33 with respect to the land in Sy.No.25 of Kacharakanahalli village which from the year 1966-67 till the year 1985-86 shown the name of the possessor and cultivator as Sri. C. Ramaiah S/o Chikkanna and later, from the year 1988-89 till the year 1996-97, shown the name of BDA as the possessor in possession of land and have also shown the total extent of the land as 5 acres 36 guntas and after deducting 11 guntas of pot kharab 'B' land, have shown the remaining land at 5 Acres 25 guntas. The Award passed by the Land Acquisition Officer, which is at Ex.D.1, also describes the nature of the land in the same manner and further mentions that out of 11 guntas of kharab land, 10 guntas was unreserved kharab and the remaining one gunta was reserved

kharab land. It is in the said one gunta of land the structures i.e., Muneshwaraswamy Temple and stone Mantapa are shown to have been existed. Rule 21 of KLR Rules speaks about classification of the land with respect to their productive qualities for the purposes of assessment. Under Rule 21(2) of KLR Rules land included as unarable is directed to be treated as 'pot kharab'. Further the said pot kharab land is classified as follows:

> *"21 (1) x x x*
>
> *(2) During the process of classification, land included as unarable shall be treated as "Pot Kharab". Pot Kharab lands may be classified as follows, -*
>
> *a) That which is classified as unfit for agriculture at the time of survey including the farm building or threshing floors of the holder;*
>
> *b) That which is not assessed because,*
>
> *(i) It is reserved or assigned for public purpose;*
>
> *(ii) It is occupied by a road or recognized footpath or by a tank or stream used by persons other than the holders for*

irrigation, drinking or domestic purposes;

(iii) Used as burial ground or cremation ground;

(iv) Assigned for village potteries."

In the instant case, Ex.D.1 shows that Muneshwaraswmy Temple and stone Mantapa were left for public use. Thus, it falls under the category of pot kharab under Rule 21(2)(b)(i) of KLR Rules.

31. Learned counsel for respondent No.3 vehemently submits that since Muneshwaraswamy Temple is not a family Temple under Section 2(14)(b) of Hindu Religious and Endowments Act, it would be a mere Temple.

Section 2(14)(b) of Hindu Religious and Endowments Act defines family Temple as below:

" "Family Temple" means any temple established or maintained exclusively by the members of any family either by themselves or family trustees consisting of family members only;"

Section 2(27) of the same Act defines a Temple as below:

> *" "Temple" means a place by whatever name called, used as a place of public religious worship having separate existence and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship and includes a Mandira, Samadhi, Brindavana, Gadduge, Shrine, Sub-shrine, Utsav Mantapa, tank, Paduka-peetha, Daivasthana, Gudi, Garodi or other necessary appurtenances, structures and land;"*

32. Admittedly, it is nobody's case that Muneshwaraswamy Temple has been a family Temple. Even according to the plaintiffs, the said Temple was there in existence at the time of acquisition of land in Sy.No.25 of Kacharakanahalli village and delivering the possession of the said land to AWHO. As such, it would be a Temple under Section 2(27) of Hindu Religious and Endowments Act. It is neither the plaintiffs' case nor the defendants' contention as to whether the said Temple was notified under Section 23 of the

Hindu Religious and Endowments Act. It is also nobody's case that the Trustees, Manager or any other person in-charge of the management of the Temple, have within ninety days from the date of commencement of Karnataka Hindu Religious and Charitable Endowments (Amendment) Act, (Act No.27 of 2011), have made an application for its registration to the Assistant Commissioner, within whose jurisdiction the said Temple is situated.

Since neither any pleading nor any issues are there on this point and also since the suit is one for permanent injunction, it is not desirable to go in detail to decide as to whether Temple is notified under Section 23 of Hindu Religious and Endowments Act or is it registered under Section 53 Hindu Religious and Endowments Act or even about the applicability of the provisions of Hindu Religious and Endowments Act to the suit schedule property.

Thus, for the limited purpose of the present suit, suffice it to consider the main contention of the defendants that since the suit schedule property is on the "reserved kharab land"

with a Temple upon it for public use, can the plaintiffs claim its possession over the same.

33. In that regard learned counsel for the appellants has relied upon few judgments which are considered here below:

1) In ***State of Karnataka and Others Vs. V. Varadaraja*** *in* ***W.A. No.1969/2010 (KLR-CON)*** a Division Bench of this Court in its judgment dated 29.07.2013, Paragraph No.8 with respect to Kharab lands was pleased to observe as below:

> *"8. undisputedly there are two types of karab lands, namely, reserved and unreserved. With regard to reserved Karab, no individual can claim any right as the said Kharab is reserved for public purpose which is known as pot Kharab (B) Pot Kharab (A) will run along with the arable land and such land cannot be brought into cultivation on account of its topography and in the event the land owner brings the said land under cultivation, the Government is entitled to collect revenue from the owners of such land owners and not*

otherwise. However, it is necessary to reiterate that it is always open for the Government in any given case to establish the fact that the ownership of (A) Karab land as claimed by the land owners vests with the Government provided, the Government is able to substantiate the same by records to that effect. It is only in such cases that the Government is entitled to claim the market value and not otherwise."

2) In ***Smt. Venkatamma Vs. State of Karnataka and Others*** *in* ***W.P.No.46034/2016 (KLR-CON)*** a Coordinate Bench of this Court on 25.01.2017 relied upon and followed the observation made in the above extracted paragraph in ***V. Varadaraja's*** case (*supra*).

The above judgments would go to show that with respect to reserved kharab land, no individual can claim any right as the said kharab land is reserved for public purpose. According to Ex.D.1, Muneshwaraswamy Temple with stone Mantapa is situated on one gunta of reserved kharab land and the Temple and stone Mantapa are left for public use. Hence, according to

V. Varadaraja's case (*supra*), no individual, including AWHO or the plaintiffs can claim any right thereupon.

34. Learned counsel for the appellants also relied upon a judgment of High Court of Madhya Pradesh (Gwalior Bench) in ***Ramkrishna Sharma Vs. State of M.P. and others*** *reported in* ***MANU/MP/0958/2022.***

In the said case, the plaintiff had preferred an appeal challenging dismissal of his suit for declaration and permanent injunction against the respondents/defendants. It was the contention of the plaintiff that the property by way of house situated at house No.39/720, Jawaji Chowk, Bada Lashkar District, Gwalior, is his ancestral property, in which the deities Sri. Hanuman Ji, Sri. Ram Janki Ji and Sri. Mahadev Ji, were installed and anointed by his ancestors. A house was constructed around Two Hundred years back and thereafter, these deities were installed by their ancestors while bringing the statues from Rajasthan. This Temple is their personal Temple and since inception they are taking care of the Temple and whole management of the Temple is being undertaken by the

plaintiff. Prior to him, his ancestors were managing the Temple by their own funds and time to time constructions of different nature were raised by the plaintiff and his ancestors. All festivals were being organized by the plaintiff and earlier to him, their ancestors.

The defendants in their written statement admitted the fact about the existence of the Temple called 'Baade Ke Hanuman', but, denied the ownership of premises of plaintiff. The suit of the plaintiff came to be dismissed. Aggrieved by the same, plaintiff preferred First Appeal before the High Court. The Court after hearing both side and considering few judgments of Hon'ble Apex Court and also Section 110 of the Evidence Act, was pleased to observe in Paragraph no.56 of its judgment as below:

> *"56. Here, even if ancestors of plaintiff as Shebait are managing the temple and offering Pooja for more than 100 years and are discharging the duties and sharing responsibility of Shebait uninterruptedly and they are in lawful possession, then in that condition State as defendant which had no title*

> *cannot invade his possession. As discussed above, defendants nowhere pleaded and proved or discharged the presumption that temple in question is a State temple. Defendants pleaded that it is a public temple and they stopped then and there only. If public offers Pooja and come for Darshan of deities then also nature of property does not alter and it remains private property. On this count also case of defendants pales into insignificance and oblivion."*

With the above observation, though it allowed the appeal and decreed the suit of the plaintiff, however, it directed that plaintiff shall maintain the Temple with utmost care and undertake renovations and maintenance regularly by personal means and if volunteered by public, then, by public offering and no commercial use/sale/mortgage was permitted. The public were allowed to offer pooja regularly during the time of Temple uninterruptedly.

It is relying upon the above judgment, the learned counsel for the appellants vehemently submitted that the present case exactly resembles the above case, as such,

requires a similar order. A perusal of the contention taken up by the parties in the above case (***Ramkrishna Sharma's*** case) as could be gathered from the reported judgments, it has to be seen that the plaintiff has contended that the entire house property bearing house No.39/720 with Municipal Number was their ancestral property in which deities were installed and anointed by his ancestors. The house was said to be constructed more than Two Hundred years back and for more than Hundred years the ancestors of the plaintiff as a Shebait, were managing the Temple and offering pooja. There was no pleading by the defendants that Temple in question was a State Temple.

35. However, in the case at hand, admittedly, at the time of acquisition of land in Sy.No.25 of Kacharakanahalli village, there already existed Muneshwaraswamy Temple and stone Mantapa in one gunta of pot kharab land. As such, when the possession of the land was said to have been given to the plaintiffs through the Possession Certificate at Ex.P.37 and when the registered Sale Deed was executed on 18.11.1992

as per Ex.P.2, there was already existence of structure of Temple and stone Mantapa. Thus, there is some difference in facts and circumstances of the case between ***Ramkrishna Sharma's*** Case (supra) and the case on the hand.

36. Lastly, learned counsel for the appellants relied upon a judgment of Co-ordinate Bench of this Court in ***Shivappa Vs. The General Manager Upper Krishna Project and others*** *in* ***Writ Petition No. 106515/2015 c/w Writ Petitions No.106514/2015 and 106516/2015*** dated 07.03.2023.

In the said case, writ petitioners challenged the endorsement issued by the Special Land Acquisition Officer (for short SLAO), who was required to consider the claim of the petitioners for the compensation towards pot kharab land when the lands of the petitioners were said to have been submerged due to the execution of Upper Krishna Project and hence notified for acquisition. The SLAO had mentioned in the impugned endorsement that petitioners would not be entitled to compensation in respect of their lands, classified as pot

kharab, since they had not been granted lands which had been classified as 'A' kharab lands prior to the issuance of the Preliminary Notification issued under Section 4(1) of the Land Acquisition Act, 1894. The Court after discussing the concept of kharab land, the provisions of Karnataka Land Revenue Act, 1964, including Section 67 of the Karnataka Land Revenue Act, in Paragraphs No.95, 96, 99 and 100 was pleased to observe as below:

> *"95. Thus, as a result of this discussion, it is clear that every land which is measured and classified as a survey number, the title of the said survey number would always vest with the individual and no portion of it would be transferred in favour of the State merely because that portion has been classified as unarable. The mere fact that the portion of an individual's land is reserved for a public purpose or that the public in general are utilizing the land will also not divest the individual of his title over that portion of the land.*
>
> *96. At best, by virtue of permitting the public to use a portion of an individual's land,*

he may lose the right to have the exclusive use of that land. However, even in such cases that individual would not lose title in favour of the State. Thus, every land which is classified as a survey number would belong to an individual exclusively even if he is not permitted to use it exclusively.

99. It is also to be stated here that so long as a person owns the land the classification of the land as pot kharab, may deny his right to exclusively enjoy his property in its entirety. However, when this very land is acquired, the right that had been reserved to the members of the public to use that portion of the land would also be extinguished and the land would vest with the State free from all encumbrances.

100. Thus, the restriction imposed on the exclusive use of the land on the owner would also stand extinguished by the acquisition and this extinguishment of the rights of the public could only yield a benefit to the owner and it cannot be amount to a deprivation of compensation to the owner of the land. The owner of the land by reason of the acquisition would lose the entire land including the portion

that he was prohibited from using, but he would nevertheless be entitled to compensation over the entire land."

With the above observation, it proceeded to quash the impugned endorsement refusing to pay compensation and the Land Acquisition Officer was directed to determine the compensation payable for that portion of the survey numbers belonging to the petitioners which have been classified as pot kharab. Accordingly, the Writ Petitions were allowed.

37. In the instant case, the suit schedule property is in 'A' kharab land, but, it is a pot kharab 'B' land falling under Section 21(2)(b) of the KLR Rules. Further, though the land measuring 5 acres 36 guntas including the one gunta of pot kharab land, is a part of 11 guntas pot kharab in the said survey number, is shown to have been acquired by BDA and the entire extent of 5 acres 36 guntas has been delivered to AWHO, which later, has come to the hands of first plaintiff, however, the fact remains that from the date of acquisition, till date, structure in the form of Muneshwaraswamy Temple and

stone Mantapa are there in existence and those two structures have not been valued for the purpose of compensation.

As can be seen in Ex.D.1 the Muneshwaraswamy temple and stone mantapa have been left as it is for public use. Even if it is taken for argument sake that the plaintiffs have paid the land value of ₹575/- to the Tahasildar, Bengaluru North Taluk, through BDA, still, the value is only towards the lands but not to the super structure in the form of Temple and stone Mantapa existing on the said land. Thus, the judgment in ***Shivappa's*** case (supra) also would not enure to the benefit of the plaintiffs in full. However, the judgment in ***Ramkrishna Sharma's*** case (supra) and ***Shivappa's*** case (supra) would benefit the plaintiffs only to the extent to show that if plaintiffs have paid the land value of one gunta of land which is mentioned in the suit schedule property, irrespective of the fact that the Temple being there upon, they continue to have their claim of possession over the land. Thus, any act of any adult person including the defendants can be confined and limited only in visiting the Temple, offering the prayer and

worshipping the deity since the Temple is meant for public use and nothing beyond the same.

38. According to the plaintiffs, as stated in their pleading and in the evidence of PW-1, the defendant No.3 along with his followers made an entry into the Sena Vihar Complex near the suit schedule property on 22.07.2011 at 10.00 a.m. with a *malafide* intention of encroaching the common areas belonging to first plaintiff on the pretext that they want to build upon the existing Temple thereby to gain access to the said property. In that regard, the plaintiffs are said to have lodged a complaint in the Banasawadi police station on 22.08.2011. The evidence of PW-1 in that regard has corroborated by the copy of the complaint given to the police which is marked at Ex.P.15. The receipt of the said complaint is endorsed by Police Officer of Banasawadi Police Station. In the said complaint, the plaintiffs have given the details of the alleged interference said to have been made by the defendants on 22.07.2011 which is narrated in the plaint, as well, in the evidence of PW-1 also as observed above.

The plaintiffs in their plaint, as well in the evidence of PW-1 have further stated that despite the above complaint, the third defendant continued his attempts to interfere with the affairs of suit schedule Temple by claiming to have formed Temple Association. In fact, the defendants also have stated that they have formed an Association in the name of Sri. Bhandarappa Bhaktadigala Sangha, which is defendant no.1 in the instant case. As stated by the plaintiffs and PW-1, the said defendant No.1 has sent two letters to the plaintiffs, which are at Exs.P.17 and 19, which shows that defendant No.1 has informed the plaintiffs that defendant No.1 has been established and registered in order to rejuvenate and reconstruct Muneshwaraswamy Temple. They have clearly mentioned in their letter that as a preliminary stage of rejuvenation of the Temple they intend to offer poojas and wanted some space for installing statue of the God near the original deity. They have also mentioned that after the reconstruction of the Temple, they would install the Statue brought by them in the original place of the main deity. It is

thereafter, the plaintiffs lodged one more complaint with Banasawadi Police Station, Bengaluru on 22.09.2011, as could be seen in the copy of their complaint dated 21.09.2011 which is at Ex.P.16. It is thereafter, the plaintiff sent a legal notice to defendant No.3 on 28.09.2011 calling upon him to refrain from interfering with the first plaintiff's maintenance, management and administration of the Temple.

The same was replied by the defendant no.1 represented by defendant no.3 as its Secretary vide Ex.P.21, wherein they contended that plaintiffs are showing their high-handedness in preventing the public under the garb of security and they are placing gates and guards on a public road and thereby, denying the devotees of their fundamental rights.

39. According to the plaintiffs on 27.02.2012 and on 28.02.2012, the third defendant with huge number of

supporters deliberately came to the suit schedule Temple under the guise of offering pooja and tried to cause Law and Order problem. In that regard, a letter-cum-complaint dated 28.02.2012 is said to have been filed by the plaintiffs with jurisdictional police. The documents at Ex.P.21, 22, 23 and at the latest at Ex.P.26 would all go to show that several complaints were made by the plaintiffs to the jurisdictional police accusing the defendants of causing interference in the peaceful possession of the suit schedule property by the plaintiffs. However, it is to be noticed that the plaintiffs though in their letter correspondence and the complaint to the police have contended that plaintiffs are the absolute owners and in exclusive possession of the suit schedule property, have relaxed their stand and in their plaint at paragraph No.13, as well, in the evidence of PW-1, have stated that they have never objected to any person who have come to offer prayers or worship in the suit schedule Temple. However, they apprehend that the defendants may attempt to demolish and reconstruct the suit schedule Temple thereby, affecting the

suit schedule Temple and the adjoining apartment 'A' block of Sena Vihar Complex, thereby affecting to its aesthetics. However, they maintained their stand that they are the owners of the suit schedule property.

40. The above pleading, as well the evidence of PW-1, clearly establishes that the intention of the defendants is not just worshiping the deity in Muneshwaraswamy Temple in the suit schedule property, but, remodeling, renovating and rejuvenating, the said Temple structure and to a put-up a new construction in the place of the old one. This clearly go to show that apart from their right to worship the deity, since the Temple is shown as left for public use, have also attempted to take control of the Temple upon its management, maintenance and administration. This act of the defendants is not a mere act of worshipping the deity and offering the prayer as a devotee of Lord Muneshwara, but, something beyond the same and can be called an act towards taking the reins of the Temple including its management, administration and maintenance. It is for the said purpose, they are required to

be restrained from taking reins of the Temple, upon its management, maintenance and administration not in the manner and process known to Law. To this extent, an interference by this Court is required.

As such, when the plaintiffs claim that they are the owners of the land, upon which, Muneshwaraswamy Temple and stone Mantapa are located and in the light of the fact that Muneshwaraswamy Temple and stone Mantapa are meant for public use, neither the plaintiffs nor the defendants can take any decision on their own for removal of the original Statue or Mantapa, removing structures which are existing and putting up any new structure without the authority of Law. Any such act of rejuvenating, remodeling, renovation is required to be done only in a manner known to Law.

Since the defendants have not established that their act of approaching the plaintiffs and entering the Temple premises for the purpose and with an intention to renovate, remodeling and rejuvenating it and for the said purpose, the removal of the existing structure and putting up a new structure was in

accordance with law and in a manner known to law, they are required to be restrained from proceeding in carrying out any such works or acts, except visiting the Temple and as a devotee of Lord Muneshwara to offer prayers and worshipping the God. Thus, for their excesses which was beyond their right to worship the deity and offer prayer as a devotee and for their alleged attempt to take the reins of the Temple in the guise of renovation and rejuvenation, they are required to be restrained from doing the same. As such, the plaintiffs are entitled for the relief of partial injunction against the defendants.

41. However, the trial Court without appreciating the evidence placed before it in its proper perspective and of the fact that what was left for public use was only the structure, which is Muneshwaraswamy Temple and stone Mantapa, but, not the land of one gunta in pot kharab land out of 11 gunta in Sy.No.25 of Kacharakanahalli, has proceeded to assume certain doubts on its own, which resulted in dismissal of the suit of the plaintiffs. Since, the said finding is now proved to

be erroneous, the same warrants interference at the hands of this Court.

Accordingly, I proceed to pass the following order:

ORDER

(i) The Regular First Appeal is ***allowed in part***.

(ii) The Judgment and decree dated 09.09.2016 passed by the learned XIV Additional City Civil Judge in O.S.No.2374/2012 is ***set aside***.

(iii) The suit of the plaintiffs in O.S.No.2374/2012 is ***partially decreed***.

(iv) The defendants, their members, agents, servants, henchmen and any other person claiming under them are restrained from altering, remodeling, renovating, rejuvenating or doing any acts affecting or altering or damaging the existing structure of the Temple and stone mantapa in the suit schedule property, except in accordance with law and in a manner known to law. However, this order would not come in the way of the defendants, their

members, agent, servants, henchmen, and any other person claiming under them visiting the Muneshwaraswamy Temple and stone Mantapa in the suit schedule property as devotees and offering their prayer and worshipping the deity without causing any disturbance to the peace and tranquility of the surrounding and to the residents in the locality.

Draw modified decree accordingly.

Registry to transmit a copy of this judgment along with the Trial Court records to the concerned Trial Court, immediately.

Sd/-
JUDGE

BVK