A RAM JANKIJEE DEITIES AND ORS.

v.

STATE OF BIHAR AND ORS.

MAY 11, 1999

B [M. JAGANNADHA RAO AND UMESH C. BANERJEE, JJ.]

Hindu law :

Deity—Whether a Juridical person—Two separate deeds of dedication
C *executed which a dedicating landed properties to deities located in two separate temples situated with the area of the land and put in possession through shebaits—Land ceiling—Claim for two separate units—Entitlement of—Held, both the deities are separate juristic entitled to individual grant—Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus*
D *Land) Act, 1961.*

Idols and Deities—Images of—Swayambhu or self—Existent and Pratisthita or established—No concept of fake deity existing in Hindu Law—God being formless and shapeless, its presence is felt not by reason of a particular form or image but by reason of the presence of the Omnipotent—
E *Hindu Law recognising Hindu idol as a juridical subject being capable in law of holding property in the same way as that of a natural person—It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.*

Judicial Propriety:—When there was an existing order of the Division
F *Bench, Single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed—It is a matter of Judicial efficacy and propriety though not a mandatory requirement of law—Practice and Procedure.*

G **A Mahanth executed two separate deeds of dedication thereby dedicating landed properties to two deities Ram Jankijee and Thakur Raja to the extent of 81.14 acres of land and were put in possession through the shebaits. The two deities were located in two separate temples situated within the area of the land. After the death of the Mahanth, petitioner No 3 became the shebait of both the deities. The properties of the deities were also duly registered**
H **and enlisted with the Religious Trust Board and were under its control and**

guidance. A

On the basis of an Inquiry Report, the Deputy Collector in the matter of fixation of ceiling area, allowed two units to the deities and declared only five acres as excess land to be vested on to the State under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961. The Collector of the District, however, held that the entitlement of the B trust would be one unit only. The revision petition subsequent thereto was rejected on the ground of being hopelessly barred by the laws of limitation. Against the order of the Member, Board of Revenue, wherein the rights and contentions of the appellants to hold two units for two separate deities were rejected, the appellant moved the High Court by way of a writ petition. The C High Court allowed the said petition granting the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties by reason of there being no appeal there from.

Subsequently, after about two years, a writ petition was filed before this Court under Article 32 of the Constitution for issuance of a mandatory order D as regards the allotment order in favour of the petitioner therein. The matter was, however, remitted to the High Court with a direction that the said petition be treated as a review petition.

In terms of the direction of this Court, the revision petition was placed E before the Division Bench of the High Court. The said petition was, allowed by the High Court and earlier was recalled. The matter was however, directed to be listed before the appropriate bench but the same was not placed in the list or heard for over two years. Finally the matter came up for hearing before the Single Judge who rejected the contention of the petitioner. Hence the present appeal. F

On behalf of the appellants, it was contended that there was a Division Bench judgment recording therein the entitlement of the appellants for exemption and judicial propriety required one Single Judge to follow a binding precedent of an earlier Division Bench judgment from the same G High Court and more so, in the same matter. The issue was no longer *res integra* and open for further discussion, but the Single Judge decided the issue once again notwithstanding the earlier finding as regards Idols' entitlement.

Allowing the appeal, this Court H

A **HELD : 1. The factum of two idols cannot be denied and as such question of deprivation of another unit to the second idol does not and cannot arise. In the event there are two idols capable of being ascribed of juridical personality, two units ought to be granted rather than one Appellant Nos. 1 and 2 are, thus, entitled to individual grant. [456-B-D]**

B *Shri Lakshmi Narain & Ors.* v. *State of Bihar & Ors.*, **(1978) BBCJ 489, referred to.**

2.1. Hindu Law recognises Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. C **There are two temples—In one there is 'Jankijee' and in the second there is 'Raja Rani' but by no stretch of imagination, the Deity can be termed to be in fake form and this concept of introduction of fake form, it appears is a misreading of the provisions of Hindu Law Texts. What is required is human consecration and in the event of fulfilment of rituals of consecration,** D **Divinity is presumed. [449-A-B; 454-D-E]**

Pramatha Nath Mullick v. *Pradyumna Kumar Mullick & Anr.*, **LR 521A 245, referred to.**

2.2. Images according to Hindu authorities, are of two kinds; the first E **is known as Syambhu or self-existent or self-revealed, while the other is Pratisthita or established. A Syambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image** F **may be painted on a wall or canvas. While usually an idol is consecrated in temple, it does not appear to be an essential condition. If people believe in the temples' religious efficacy no other requirement exists as regards other areas. Hindu have in Shastras "Agni" "Devta; "Vayu" Devta-these deities are shapeless and formless but "for every ritual" Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate. It is not a particular** G **image which is a juridical person but it is a particular bent of mind which consecrate the image. [450-G-H; 451-A-C; 452-G-H; 453-A]**

Addangi Nageswara Rao v. *Sri Ankamma Devatha Temple,* **(1973) 1 A.W.R. 379, affirmed.**

H *Bhupatinath* v. *Ramlal Maitra,* **ILR (37) Calcutta 128, referred to.**

B.K. Mukherjea-Hindu Law of Religious and Charitable Trusts: **5th Edn., referred to.** A

2.3. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. B The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him. There are two conceptions: In the first place, the property which is dedicated to the deity vests in an idol sense in the deity itself as a juristic person and in the second place, the C personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam Karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. [453-G-H; 454-B-C]

Golap Chandra Sarkear, Sastri's **Hindu Law : 8th. Edu., referred to.** D

3. When there was an existing order of the Division Bench, judicial propriety demands that the Single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed by the single Judge. It is a matter of judicial efficacy and propriety though not a mandatory requirement of law. The court while deciding the issue E ought to look into the records as to the purpose for which the matter has been placed before the court. Judicial discipline ought to have persuaded the Single Judge not to dispose of the matter in the manner as has been done, there being no reference even of the earlier order. [448-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.. 107 of 1992. F

From the Judgment and Order dated 23.5.91 of the Patna High Court in C.W. No. 5020 of 1984.

D. Goburdhan for the Appellants.

G

B.B. Singh for the Respondent.

Jitendra Sharma, (Ms. J. Ahmed) for P. Gaur, for the Respondent Nos. 6 to 27.

The Judgment of the Court was delivered by H

A **BANERJEE, J.** The core question that falls for consideration in this appeal, by the grant of special leave, is whether a Deity being consecrated by performance of appropriate ceremonies having a visible image and residing in its abode is to be treated as a juridical person for the purpose of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962).
B

On a reference to the factual backdrop, the records depict, that one Mahanth Sukhram Das did execute two separate deeds of dedication in December, 1950, and duly registered under the Indian Registration Act, dedicating therein the landed properties to the deities 'Ram Janki Ji' (Appellant
C No.1) and Thakur Raja (wrongly described in the records of the High Court as 'Raja Rani') (Appellant No. 2). Both the deities were separately given the landed property to the extent of 81.14 acres of land and in fact were put in possession through the shebaits. After however the death of the aforesaid Mahanth Sukhram Das, Petitioner No. 3 became the shebait of both the deities. The properties of the deities were also duly registered and enlisted
D with the Religious Trust Board and the same are under the control and guidance of the Board.

Be it noted that both 'Ram Janki Ji' and 'Raja Rani' (for convenience' sake since the High Court referred to the deity as such in place and stead
E of Thakur Raja) are located in two separate temples situated within the area of the land.

On the basis of an Inquiry Report, the Deputy Collector in the matter of fixation of Ceiling Area by his order dated 18th November, 1976 in Ceiling Case No.222/76-77 allowed two units to the Deities, on the ground that there
F are two temples to whom lands were gifted by means of separate registered deeds of Samarpan namas and declared only 5 acres, as excess land, to be vested on to the State. The Collector of the District however, came to a conclusion different to the effect that mere existence of two temples by itself can not be said to be a ground for entitlement of two separate units under
G the Act, since the entire property donated to the two units are being managed by a committee formed under the direction of the Religious Trust Board and prior conferment of the managerial right to only one person and there being no evidence on record to show that the property donated to the deities are to be managed separately, having separate account, question of recommendation for exemption under Section 5 and entitlement of two units
H would not arise. As a matter of fact the Collector passed an order recording

therein that the entitlement of the trust would be one unit only. The Revision Petition subsequent thereto however was rejected though on the ground of being hopelessly barred by the laws of limitation. A

The records depict that against the order of the Member Board of Revenue, wherein the rights and contentions of the petitioners to hold two units for two separate deities were rejected, the petitioner moved the Patna High Court in Writ Petition 5020 of 1984 for quashing of the orders passed by the Collector and Member Board of Revenue. The record further depicts that the High Court on 19th November 1984 allowed the Writ Petition and granted the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties by reason of the factum of there being no appeal therefrom. B C

Subsequently however, after about two years a Writ Petition was filed before this Court under Article 32 of the Constitution being Civil Writ No. 52563 of 1985 *(Badra Mahato* v. *State of Bihar)* wherein one Badra Mahato prayed for issuance of a mandatory order as regards the allotment order in favour of the petitioner (the aforesaid Badra Mahato). This Court, however, remitted the matter to the High Court with a direction that the petition before this Court be treated as a Review Petition before High Court and be disposed of accordingly. D

On 21st October, 1987 in terms of the direction of this Court the Division Bench of the High Court directed that the matter should be placed before the Division Bench on 23rd November 1987 subject to any part heard matter and on 25th November, 1987 as the chronology depicts the Review Petition was allowed and the order dated 19th November, 1984, was recalled. The matter was, however, directed to be listed before the appropriate Bench on 4th December, 1987. The matter was not however placed in the list or heard for over two years and finally the matter came up for hearing before the learned Single Judge who in turn has rejected the contention of the petitioner and hence the appeal before this Court. E F

Before proceeding with the matter any further, it would be convenient to note that while on a review of the order, the Division Bench of the High Court has been pleased to recall its earlier order dated 19th November, 1984, but the observations pertaining to the entitlement of two idols seems to be apposite. The High Court in its order dated 19th November, 1984 observed: G

"....This aspect of the matter has been considered by a Bench of this H

A Court in the case of *Shri Lakshmi Narain and Others* v. *State of Bihar and Others,* (1978) BBCJ 489 where it has been pointed out that once endowment is separate in the name of separate deities the legal ownership under the endowment vests in idols; the matter would have been different if the endowment was to any Math in which there were two deities. From the order of the learned Collector itself it appears that the two endowments were made by name of the two deities on whose behalf claims have been made. It is settled by several pronouncements of the Judicial Committee that under the Hindu Law images of the deities are juristic entities with the capacity of receiving gift and holding property. As such, when the gift is directly to an idol, each idol or deity holds it in its own right to be managed either by separate managers or by a common manager.

...."

It is on this score that Mr. Goburdhan, the learned Advocate appearing in support of the appeal very strongly criticised the judgment of the learned Single Judge both on the count of not being sustainable as per the provisions of Hindu law as also on the question of propriety.

Mr. Goburdhan contended that there is a Division Bench judgment recording therein the entitlement of the Appellants for exemption and judicial propriety requires one learned Single Judge to follow a binding precedent of an earlier Division Bench judgment from the same High Court and more so, in the same matter. The issue as a matter of fact according to Mr. Goburdhan was no longer *res integra* and open for further discussion but the learned Single Judge went on to decide the issue once again not withstanding the earlier finding as regards Idols' entitlement. We are constrained to record that we find some justification for such a criticism. It is true that the earlier Division Bench's order stands recalled and strictly speaking there may not be any necessity to refer to the same, but when there was an existing order of the Division Bench, judicial propriety demands that the learned Single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed by the learned Judge. It is a matter of judicial efficacy and propriety though not a mandatory requirement of law. The court while deciding the issue ought to look into the records as to the purpose for which the matter has been placed before the court. We are rather at pains to record here that judicial discipline ought to have persuaded the learned Single Judge not to dispose of the matter in the manner as has been done, there being no reference even of the earlier order.

Before proceeding with the matter any further apropos the judgment under appeal, it would be convenient to note however that Hindu law recognizes Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. The Privy Council in the case of *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick & Anr.*, LR 52 IA 245 observed:

> "One of the questions emerging at this point, is as to nature of such an idol, and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.
>
> A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji J. in *Rambrahma Chatterjee* v. *Kedar Nath Banerjee,* (1922) 36 CLJ 478/483, "We need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."
>
> The person founding a deity and becoming responsible for these duties is *de facto* and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or - as in the case of Sudras, to which caste the parties belonged - by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death, or his successor likewise, may confer the office of

A shebait on another."

The only question that falls for consideration is whether 'Ram Jankiji' and 'Raja Rani' can be termed to be Hindu deities and separate juristic entities and it is on this score the learned Judge in the judgment under appeal observed:

B

> ".....The image of the deity is to be found in Shastras. 'Raja Rani' is not known to Shastras. It is unknown in Hindu Pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any name or image not recognised by the Shastras. Here, in the present case, the petitioners
> C assert that the dedication is to both the deities 'Raja Rani' but none of these have been recognised by the Shastras.
>
> .....
>
> 11. The petitioners contended that the Raja Rani are the deities under
> D the Hindu Pantheon. The Upanishads are the highest sacred books of the Hindus. It was admitted that in Kaushitaki-Brahamana-Upanishad, IInd Chapter 'sloka 1' as translated in Hindi by Pt. Sriram Sharma Acharya, in the book styled as '108 Upanishads', the following has been said : -
>
> E "It is the statement of Rishi Kaushitaki that soul is God and the soul God is imagined as a king and the sound is his queen."
>
> 12. The above translation has been seriously challenged by the respondents-Parcha-holders.
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> F It may be noticed that Pt. Sriram Sharma Acharya is not an authority on the subject ....".

We are afraid the entire approach of the learned Single Judge was on a total misappreciation of the principles of Hindu law.

G Divergent are the views on the theme of images or idols in Hindu Law. One school propagates God having Sayambhu images or consecrated images: the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.

H Images according to Hindu authorities, are of two kinds: the first is

known as Syambhu or self-existent or self-revealed, while the other is Pratisthita or established. The Padma Purana says: "the image of Hari (God) prepared of stone earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images.....where the self- possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea - Hindu Law of Religious and Charitable Trusts: 5th Edn.) A Sayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a Shila - the shalagram form partaking the form of Lord of the Lords Narayana and Vishnu.

It is further to be noticed that while usually an idol is consecrated in temple, it does not appear to be an essential condition. In this context reference may also be made to a decision of the Andhra Pradesh High Court in the case of *Addangi Nageswara Rao* v. *Sri Ankamma Devatha Temple,* (1973) 1 A.W.R. 379. The High Court in paragraph 6 of the Report observed:-

> 6. The next question to be considered is whether there is a temple in existence. 'Temple as defined means a place by whatever designation known, used as a place of public religious worship, 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. That is the definition by the Legislature to the expression 'temple' in Act (II of 1927), Act (XIX of 1951) and Act (XVII of 1966). Varadachariar, J., sitting with Pandrang Row, J., in *H.R.E. Board* v. *Narasimham,* (1939) 1 MLJ 134, construing the expression 'a place of public religious worship' observed:
>
> "The test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship".
>
> To the same effect was the view expressed by Viswanatha Sastry, J., in *T.R.K. Ramaswami Sarvai and another* v. *The Board of*

Commissioner for the Hindu Religious Endowments, Madras, ILR (1950) Madras 799.

"The presence of an idol, though it is an invariable feature of Hindu temple, is not a legal requisite under the definition of a temple in Section 9(12) of the Act. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act."

A Division Bench of this Court consisting of Justice Satyanarayana Raju (as he then was) and Venkatesam, J., in *Venkataramana Murthi* v. *Sri Rama Mandhiram,* (1964) 2 An. W.R. 457, observed that the existence of an idol and a Dhwajasthambham are not absolutely essential for making an institution a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple.

Their Lordships of the Supreme Court in *P.F. Sadavarthy* v. *Commissioner, H.R. & C.E.,* AIR (1963) SC 510, held

"A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by the Hindu Community, or any section thereof, as a place of religious worship."

To constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some super human power which they should worship and invoke its blessings."

The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other reqtirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras - In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta - these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is

the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

One cardinal principle underlying idol worship ought to be borne in mind:

> "that whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else." (B.K. Mukherjea - on Hindu Law of Religious and Charitable Trusts - 5th Edn.).

In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of *Bhupatinath* v. *Ramlal Maitra,* ILR 37 Calcutta 128, wherein Chatterjee, J. (at page 167) observed:-

> "A Hindu does not worship the "idol" or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or according to some, the gratification of the deity."

God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords - it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then

A establishes the same in the temple upon however performance of the consecration ceremony. Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated B to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of C Raghunandan and Matsya and Devi Puranas though may not be uniform in its description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes D place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which E gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge.

On the factual score there are temples- In one there is 'Jankijee' and in F the second there is 'Raja Rani' but by no stretch of imagination, the Deity can be termed to be in fake form and this concept of introduction of fake form, it appears is a misreading of the provisions of Hindu Law Texts. What is required is human consecration and in the event of fulfilment of rituals of consecration, Divinity is presumed: There cannot be any fake deity: whole G concept of Hindu Law seems to have been misplaced by the High Court.

In more or less a similar situation Patna High Court in the case of *Shri Lakshmi Narain & Ors.* v. *State of Bihar & Ors.*, (1978) BBCJ 489, observed:

.....

H "5. In this court Mr. Balbhadra Pd. Singh, learned counsel appearing

in support of the application, strongly contended that the Revenue authorities have entirely misdirected themselves in allowing only one unit to the petitioners under an erroneous impression that they being installed in only one temple and there being only one document of endowment in their favour, they could not get more than one unit. Learned counsel contended that as a matter of fact, all the four deities were entitled to separate units in their own rights, notwithstanding the fact that no specified properties were endowed to them separately and that the endowment was made in their favour jointly.

9. On consideration of the facts of this case and the relevant position in point of law, I come to the conclusion that all the four petitioners are separate jurisdic entities, properties being endowed to them just like any other human being. Learned counsel appearing for the respondents rightly conceded that had it been a gift to four individuals, they were entitled to four units separately each of them being a 'land-holder' within the meaning of clause (g) of Section 2 of the Act and entitled to a separate unit. If that be so, I do not see any reason for taking a view that the position should be different as the beneficiaries in this case are idols. It could not be conceded that all the four petitioners would constitute one 'family' within the meaning of section 2 (ee) of the Act. The definition of 'family' in section 2 (ee) is as follows:-

> "'Family' means and includes a person, his or her spouse and minor children."

Even applying the above rigid test laid down in the Act, the first two petitioners, namely, Shri Lakshmi Narain and Shri Mahabirji must be treated as separate units. And even assuming that the fourth petitioner, namely, Shri Parbatiji is considered to be a spouse of the third petitioner namely, Shri Shivajee, even then both these petitioners were entitled to one unit. In that view of the matter, the petitioners were entitled to at least three units, being in the same position of Hindu co-parceners and, therefore, separate 'land holder' or "families" in the eye of law. The petitioners had, however, claimed only two units before the Revenue authorities. It is, therefore, not possible to grant them any larger relief of more than two units. Their purpose also will be served if only two units are allowed to them as the surplus land declared in this case is a little over 20 acres only.

It is needless to point out that even though admittedly there are two

A idols, but the learned Single Judge thought it fit to ascribe one of them as fake, which in our view is wholly unwarranted an observation and the finding devoid of any merit whatsoever. Quotations from English Authors unfortunately are totally misplaced and the meaning misappreciated. The quotes are not appropriate and not apposite, as such we refrain ourselves from dilating thereon.

B

In the view as above, The factum of two idols cannot be denied and as such question of deprivation of another unit to the second idol does not and cannot arise. As regards the provisions of the statute, be it noted that there is no amount of controversy involved that in the event there are two idols capable of being ascribed of juridical personality, two units ought to be granted rather than one as has been effected by the learned Single Judge.

C

We thus feel it expedient to record that petitioner Nos.1 and 2 (or Thakur Raja as the case may be) are entitled to individual grant and thus entitlement for two units to be noted in the records of the Government and exemption of 75 acres Taal land only would be made available to the Petitioners and the balance 5 acres of land be made available to the Government and the State Government would be at liberty to deal with the above noted five acres of land in accordance with the law.

D

Since no other issue was raised before us. The appeal is allowed. The order of the High Court stands set aside and quashed. No order however as to costs.

E

M.P. Appeal allowed.