IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No.126 of 2014

Mohd. Salim ..... **Petitioner**

Versus

State of Uttarakhand & others ... **Respondents**

Mr. M.C. Pant, Advocate, for the petitioner.
Mr. Sanjay Bhatt, Standing Counsel, for the Union of India.
Mr. N.P. Shah, Standing Counsel, for the State of Uttarakhand.

Dated: March 20, 2017

Coram: Hon'ble Rajiv Sharma , J.
Hon'ble Alok Singh, J.

Per: Hon. Rajiv Sharma, J.

Vide judgment dated 5.12.2016, this Court had issued the following mandatory directions to the respondents: -

"*1. Respondent nos. 3 to 7 are directed to evict the respondent nos. 8 & 9 from the Government land within a period of twelve weeks from today.*

2. The respondent no.11 i.e. Central Government is directed to take final decision on the basis of the settlement arrived at between the State of Uttar Pradesh and the State of Uttarakhand, regarding the division of assets/properties on 02.02.2016, within a period of three months from today.

3. The Central Government is also directed to constitute a Ganga Management Board, under Section 80 of the Act, and make it functional within a period of three months. The Central Government shall also induct State

of Uttarakhand as member of the Upper Yamuna Board within three months.

4. The mining in river bed of Ganga and its highest flood plain area is banned forthwith. The District Magistrate and Sub-Divisional Magistrate shall be personally responsible to implement this direction."

2. In sequel to order dated 6.3.2017, Mr. Virendra Sharma, Senior Joint Commissioner, Ministry of Water Resource & Ganga Rejuvenation, is present in person along with the records.

3. The Court has a very meaningful interaction with Mr. Virendra Sharma. He has made a startling revelation that despite long correspondence, neither the State of U.P. nor the State of Uttarakhand is cooperating with the Central Government for the constitution of Ganga Management Board.

4. According to Section 80(2)(b) of the U.P. Re-organization Act, 2000 (*hereinafter to be referred as 'the Act'*), two full time members, one from each of the successor States, are to be nominated by the respective State Government as Members of the Ganga Management Board. As per Section 80(4)(c) of the Act, four part- time members, two from each of the successor States are to be nominated by the respective State Government. The Chairman is to be appointed by the Central Government in consultation with the successor States along with two representatives.

5. Mr. Virendra Sharma, Sr. Joint Commissioner, has undertaken that even if there is no cooperation from both the State Governments, the Ganga Management Board shall be constituted within a period of eight weeks

from today by appointing the Chairman and two members by the Central Government. However, he further submits that in case the State Governments respond within two weeks from today, the Members shall also be appointed as nominated by the successor States as per Section 80 of the Act to Ganga Management Board.

6. As far as direction no.1 in judgment dated 5.12.2016 is concerned, respondent nos.3 to 7 were directed to evict the respondent nos.8 and 9 from the Government land within twelve weeks from the date of order. However, Mr. M.C. Pant, Advocate for the petitioner, apprises that respondent nos.8 and 9 have not been evicted till date. Consequently, there shall be a direction to the District Magistrate, Dehradun to evict the respondent nos.8 and 9 from the government land within seven days from today, if there is no stay granted by the Hon. Apex Court, failing which the District Magistrate, Dehradun shall be deemed to be put under suspension for not evicting the respondent nos.8 and 9.

7. Vide judgment dated 5.12.2016, the Central Government was directed to take a final decision on the basis of the settlement arrived at between the State of U.P. and State of Uttarakhand regarding the division of assets/properties on the basis of Memorandum of Understanding (MoU) dated 2.2.2016. Mr. Virendra Sharma, however, submits that the MoU arrived at between the States of U.P. and Uttarakhand on 2.2.2016 has not been supplied to the Central Government.

8. Accordingly, there shall be a direction to the Chief Secretaries of both the States to supply the MoU

arrived at on 2.2.2016 to the Central Government within 72 hours. Thereafter, the Central Government shall take its final decision within 10 weeks.

9. The Court shows its serious displeasure about the manner in which the State of U.P. and State of Uttarakhand have acted in this matter. It is a sign of non-governance. We need not remind the State Governments that they are bound to obey the orders passed by the Central Government failing which the consequences may ensue under Article 365 of the Constitution of India. Consequently, the Chief Secretaries of the State of U.P. and State of Uttarakhand are directed to cooperate with the Central Government in a right earnest manner for the constitution of Ganga Management Board by appointing the Members, failing which it shall be open to the Central Government to constitute the Ganga Management Board without the Members of the successor States, as directed hereinabove.

10. The extraordinary situation has arisen since Rivers Ganga and Yamuna are loosing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna.

11. Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep spiritual connection with Rivers Ganges & Yamuna. According to Hindu beliefs, a dip in River Ganga can wash away all the sins. The Ganga is also called 'Ganga Maa'. It finds mentioned in ancient Hindu scriptures including 'Rigveda'. The river Ganga

originates from Gaumukh Glacier and River Yamuna originates from Yamnotri Glacier.

12. In 1969 (1) SCC 555 their Lordships of Hon. Supreme Court in '*Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta*' have held that a Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebaits who are entrusted with the possession and management of its property. In paragraph no.6, their Lordships have held as under: -

> "6. That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case, I.L.R. 12 Bom. 247 which Mr. Prannath Saraswati, the author of the 'Tagore Lectures on Endowments' rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharanee Shibessourec Dehia v. Mothocrapath Acharjo 13 M.I.A. 270 and Prosanna Kumari Debya v. Golab Chand Baboo L.R. 2 IndAp145 Such ascription of legal personality to an idol must however be incomplete unless it be linked of human guardians for them variously designated in Debya v. Golab Chand Baboo L.R. 2 IndAp145 the Judicial Committee observed thus : 'It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must be necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir'-words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: 'A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law', Volume I, 483."

13. In 1999 (5) SCC 50, their Lordships of Hon. Apex Court in the case of "*Ram Jankijee Deities & others v. State of Bihar & others*" have held that Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu or self-existent or self-revealed, while the other is Pratisthita or established. 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. 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. It was further held that the deity/idol are the juridical person entitled to hold the property. In paragraph nos.14, 16 and 19, their Lordships have held as under: -

"14. Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu 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.

16. 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 requirement 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.

19. 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 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 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 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 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 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."

14. In AIR 2000 SC 1421, their Lordships of Hon. Supreme Court in the case of '*Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others*' have held that the concept 'Juristic Person' arose out of necessities in the human development- Recognition of an entity as juristic person- is for subserving the needs and faith of society. In paragraph nos.11, 13 and 14, their Lordships held as under: -

"11. The very words "Juristic Person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "Slave" was not a person.

He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition 'Person' it is stated that the word "person," in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.
Corpus Juris Secundum, Vol. VI, page 778 says:

Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.
Salmond on Jurisprudence, 12th Edn., 305 says:

A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination.... Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. ... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention...

1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....1

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....

3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate...

Jurisprudence by Paton, 3rd Edn. page 349 and 350 says:

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties...

...Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical Jurisprudence, 3rd Edn. At page 357 describes "person";

We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an Idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

15. In AIR 1972 Allahabad 287, learned Single Judge of Allahabad High Court in case of 'Moorti Shree Behari ji v. Prem Dass 7 others' has held that a deity can sue as a pauper. In paragraph no.6, it was held as under: -

> "6. The question then that arises is why a deity who is juristic person and can sue or be sued through its Pujari, Shebait or any other person interested, cannot sue as a pauper? To my mind when an incorporated limited company has been held by this Court capable of suing as a pauper, a fortiori it follows that a deity can also sue as a pauper. The learned Judge of the court below was in error in explaining away the Full Bench decision of this Court in the case of AIR 1959 All 540 (FB) (supra) on the observation that It related to a joint stock company, hence not applicable. The court below thus was in error in rejecting the application of the deity for that reason.

16. With the development of the society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, as their Lordships have held in the judgments cited hereinabove, that for a bigger thrust of socio-political-scientific development, evolution of a fictional personality to be a juristic person becomes inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. *This recognition is for subserving the needs and faith of the society. Corpus Juris Secundum, Vol.6, page 778 explains the concept of juristic persons/artificial persons thus: "Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." A juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Juristic*

persons being the arbitrary creations of law, as many kinds of juristic persons have been created by law as the society require for its development. (See Salmond on Jurisprudence 12th Edition Pages 305 and 306). Thus, to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/living persons.

17. All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea.

18. The constitution of Ganga Management Board is necessary for the purpose of irrigation, rural and urban water supply, hydro power generation, navigation, industries. There is utmost expediency to give legal status as a living person/legal entity to Rivers Ganga and Yamuna r/w Articles 48-A and 51A(g) of the Constitution of India.

19. Accordingly, while exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna. The Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of

Uttarakhand are hereby declared *persons in loco parentis* as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. These Officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well being of these rivers.

20. The Advocate General shall represent at all legal proceedings to protect the interest of Rivers Ganges and Yamuna.

21. The presence of the Secretary, Ministry of Water Resources, River Development & Ganga Rejuvination is dispensed with.

22. Let a copy of this order be sent by the Registry to the Chief Secretary of the State of Uttarakhand forthwith.

(Alok Singh, J.) **(Rajiv Sharma, J.)**

Rdang