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Stolen Dancing Siva Judged Legal Person, Returned To India

Fifteen years ago a gang of artifact smugglers broke into a Siva temple in Pathur, Tamil Nadu, India, hustling off a 3-foot high, 1000-year-old Siva Nataraja. In 1982 it surfaced in London, when business executive Robert Borden bought it for US 500,000. Scotland Yard impounded the stolen artifact when Borden brought it to the British Museum for restoration. The legal battle between Borden and Indian authorities has lasted nine years. On Mahasivaratri - February 12th - 1991, the appeal court in London ruled that the Siva should be returned to the Tamil Nadu hinterland. The judgment upheld a ruling given in 1988-also on Mahasivaratri-that the Siva has a legal personae existence in Britain, as they do in India. Thus, the diety could sue.

The bronze image depicts the famed cosmic dancer-but in court Siva was represented as the Siva-lingam, also found at the temple. The Siva Nataraja is thought to have been buried at the Pathur temple for safety at the time of the Muslim invasion of South India in the sixteenth century.

In a 163-page document the court dismissed the appeal of Bumper Development Corporation, of which Robert Borden is the chairman. The company failed to prove its contention that its Nataraja was not the stolen one. Then they contested that the deity/temple had no right to sue, offering the slippery argument that the Queen was the highest power and hers was a Christian nation.

Representing Siva-and India-were Bhasker Ghorpade and Adrian Hamilton, guided by solicitor Lawrence Graham. Graham conjectured that the ruling could be applied to other religious artifacts that can be traced back to an active place of worship. But Britain's most famous foreign religious artifacts, the Elgin Marbles, removed from the Athens parthenon in the 1900's are unlikely to be affected, since the ancient Greek religion is no longer practiced.

A parallel case occurred in the US. In August 1989, US Federal Judge James E. Noland, heard a case concerning fourth century mosaics from Cyprus. The four religious works, were stolen from a small village church after Cyprus was invaded by Turkey in 1974. They were purchased in Switzerland in 1988 for US\$1.2 million by American art dealer Peg Goldberg. Judge Nolan made his decision in Indianapolis, US: the mosaics were the property of the Autocephalous Orthodox Church of Cyprus and not hers to sell. Noland accepted the claim of the Orthodox Church and the Greek Cypriot government that Goldberg should have suspected the mosaics were stolen and illegally offered for sale. Archbishop Chrysostomos of the Cyprus Church said: "This just decision by the American court will help put an end to the illegal marketing of looted archeological items worldwide." Experts at that time agreed that it set an important precedent for regulating trade in antiquities.

The precedent in the Nataraja case is from the Mallick v. Mallick case of 1925. A bedrock legal principle of Hindu law (1925) says, "a Hindu idol is according to the long established authority founded upon the religious customs of the Hindus, and the recognition thereof by the courts of law in India and the Privy Council a juristic entity. It has a judicial status with the power of suing and being sued."

Mr. Justice Kennedy remarked in his judgment, "If the English Courts admit a man or a woman to swear on oath by the supreme being of the Hindus, and they do, how consonantly with any notion of tolerance should they discountenance giving assistance to a foundation which seeks to promote the practice and teachings of that religion. Hinduism is practiced in Britain. What of an idol in a Hindu temple in England; if it should be stolen, would it be an answer to say that it is the symbol of God, and the temple can't sue in that capacity, this country? There may be spiritual discord between religions, but that should not affect the right to the return of the Nataraja."

Representing God - Talking With Siva's Lawyer

Rakesh Mathur spoke with Bhasker Ghorpade, the Hindu barrister on the team representing the Siva deity.

HT: What was this case's Hindu factor?

BG: We relied on the 1925 case in India-which was an English decision - that said the Hindu deity has a personality of its own. A Hindu god or goddess can sue or be sued in a court of law. Also we applied the principle of once a deity, always a deity; it remains a deity wherever it may be.

HT: Your thoughts on winning.

BG: Now it has become accepted that a Hindu temple can sue for stolen property in England. It is very novel because this is the first time this principle has been accepted.

HT: Are the museums reacting?

BG: So far there has been no reaction. They are reading the judgment very carefully.

HT: What kind of support came from the religious communities?

BG: Full support, wholehearted support both here in London and in Tamil Nadu-all over India. The Hindus felt strongly about it and probably know that both judgments in this case occurred on Mahasivaratri.

HT: Is this a coincidence?

BG: I don't know. God was working from somewhere.

HT: You have plans for the temple this Nataraja comes from.

BG: Yes. This temple in Tamil Nadu badly needs restoration. I think people in London can quite well look after it and build the temple again or see to the repairs. I shall shortly start fund raising.

HT: Will you be pursuing other cases in your personal capacity?

BG: I shall certainly be doing so because it is a topic I studied very carefully. I feel very strongly about it. We must claim our heritage.

HT: Is your Hinduness the main reason you fought for this?

BG: Not necessarily. I believe in India's prestige. Of course I am a Hindu and proud of it. In this case we had to do something extraordinary, and that was Hinduism, the principles and religious matters came into play to persuade the judges.

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