8. For these reasons we hold that there is no merit in these appeals which are accordingly dismissed with costs. There will be one hearing fee.

1969 (1) Supreme Court Cases 555

(*From Calcutta*)

[BEFORE J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

YOGENDRA NATH NASKAR .. Appellant;

Versus

COMMISSIONER OF INCOME-TAX, CALCUTTA .. Respondent.

Civil Appeal Nos. 690-694 of 1968, decided on 18th February, 1969

Indian Income Tax Act, 1922—Section 3—Liability of persons in possession of Idol's property—'Individual' Meaning of—If includes 'Deity'.

Hem Chandra Naskar and Yogendra Nath Naskar were appointed Shebaits of two deities under a will and certain properties were given as debutter to the deities. For the years 1952-53 and 1953-54 the Income-tax Officer completed the assessments on the deities in the status of an individual and through the Shebaits after rejecting their claim for exemption under Section 4(3)(*i*) of the Income Tax Act, 1922. The Appellate Assistant Commissioner upheld the Assesssment orders. The Appellate Tribunal held that though the Shebaits were managers for the purpose of Section 41, they were not so appointed by or under any order of the Court and therefore the second condition of Section 41 was not satisfied and Shebaits could not be proceeded with. It further held that the case of the trustee having been given up the further attempt to assess the Shebaits as managers under Section 41 could not be upheld. The question of law referred by the Tribunal and modified by the Supreme Court was whether on the facts and in the circumstances of the case, the assessments on the deities through the Shebaits were in accordance with law.

Held, that a Hindu idol is a jurisdic entity capable of holding property and of being taxed through its Shebaits who are entrusted with the possession and management of its property. (Para 6)

Manohar Ganesh v. *Lakshmiram*, ILR 12 Bom 247; *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami*, ILR 27 Mad 435; *Maharanee Shibbessouree Debya* v. *Mathooranath Acharjo*, 13 MIA 270; *Prasanna Kumari Debya* v. *Golab Chand Baboo*, 2 IA 145; *Pramatha Nath Mullick* v. *Pradyamna Kumar Mullick*, 52 IA 245, *followed*.

Bhupati v. *Ramlal*, 10 CLJ 365; *Hindu Law of Religious and Charitable Trust by Mr. B. K. Mukherjee, Institute of Roman Law, 3rd Edition, pp. 197-198, referred to.*

A Hindu deity falls within the meaning of the word "individual" under Section 3 of the Act and can be treated a unit of assessment under that section. The term 'individual' is not restricted to human beings. (Para 6)

The Commissioner of Income Tax v. *Sodra Devi*, 1958 SCR 1, *followed*.

The language employed in 1961 Act may be relied on as a Parliamentary exposition of the earlier Act even on the assumption that the language employed in Section 3 of the earlier Act is ambiguous. It is clear that the word "individual" in Section 3 of the 1922 Act includes within its connotation all artificial juridical persons and this legal position is made ex facie and beyond challenge in the 1961 Act.

Cape Brandy Syndicate v. *I. R. C.*, (1921) 2 KB 403, *followed*.

Appeal *dismissed*.

M. C. Chagla, Senior Advocate (*B. P. Maheshwari*, Advocate with him) .. for Appellants ; (In all the Appeals)

S. T. Desai, Senior Advocate (*G. C. Sharma* and *B. D. Sharma*, Advocates with him) .. for Respondent. (In all the Appeals)

The Judgment of the Court was delivered by

RAMASWAMI, J.—These appeals are brought from the judgment of the Calcutta High Court, dated 3rd, 4th and 5th April, 1965, in Income-tax Reference No. 50 of 1961, on a certificate granted under Section 66-A of the Indian Income-tax Act, 1922 (hereinafter called the Act).

2. One Ram Kristo Naskar left a will, dated 17th May, 1899, by which he left certain properties as debutter to two deities Sri Sri Iswar Kubereswar Mahadeb Thakur and Sri Sri Anandamoyee Kalimata in the land adjoining his residential house at 74/75, Beliaghata Main Road. He appointed his two adopted sons Hem Chandra Naskar (since deceased) and Yogendra Nath Naskar as the Shebaits. Elaborate provision was made as to the manner in which the income from the property was to be spent. For a long time the income from the property was assessed in the hands of the Shebaits as trustees. In respect of the assessment years 1950-51 and 1951-52, the two Shebaits contended that there was no trust executed in the case and as such the income from the property did not attract liability to tax and particularly the assessments made in the name of Hem Chandra Naskar and his brother Yogendra Nath Naskar as trustees of the debutter estate could not be sustained. The Appellate Assistant Commissioner accepted this contention on appeal and set aside the assessments. Finding that the assessments have been set aside on the footing that the status of the assessees had not been correctly determined the Income-tax Officer initiated proceedings for the assessment years 1952-53 and 1953-54, against Hem Chandra Naskar and Yogendra Nath Naskar, the Shebaits of the two deities and completed the assessments on the deities in the status of an individual and through the Shebaits. The claim for exemption under the proviso to Section 4 (3)(*i*) of the Income-tax Act was rejected. On appeal the Appellate Assistant Commissioner upheld the assessment orders of the Income-tax Officer. The assessee appealed to the Appellate Tribunal and contended that the deities were not chargeable to tax under Section 3 of the Act ; that Section 41 of the Act did not apply to the facts of the case. Though the Shebaites were the managers who could come under the ambit of Section 41, they had not been appointed by or under any order of the court and therefore the assessments were invalid and should be set aside. It was also contended that the case of the trustee having been specifically given up it would not be open to the Incom-tax Department to bring the Shebaits under any of the categories mentioned in Section 41. The departmental representative contended that the assessments had been made on the Shebaits not under Section 41 as trustees or managers but that the deities had been assessed as individuals and that Section 41 was a surplusage in making the assessments. The Tribunal held that though the Shebaits were the managers for the purpose of Section 41, they were not so appointed by or under any order of the court, and, therefore, the second condition required by Section 41 was not fulfilled, and the Shebaits could not be proceeded against. The Appellate Tribunal added that the specific provision which the Tribunal first relied was that of trustee under Section 41, but that case having been given up the further attempt to assess the Shebaits a managers under Section 41 could not be upheld. At the instance of the Commissioner of Income-tax, the Appellate Tribunal referred the following question of law for the opinion of the High Court under Section 66(1) of the Act :

"Whether on the facts and in the circumstances of the case, the

assessment on the deities through the Shebaits under the provisions of Section 41 of the Indian Income-tax Act were in accordance with law ?''

3. After having heard learned counsel for both the parties we are satisfied that in the question referred by the Appellate Tribunal the words 'under the provisions of Section 41 of the Indian Income-tax Act' should be deleted as superfluous and the question should be modified in the following manner to bring out the question in real controversy between the parties :

> ''Whether on the facts and in the circumstances of the case, the assessments on the deities through the Shebaits were in accordance with law ?''

4. The main question hence presented for determination in these appeals is whether a Hindu deity can be treated as a unit of assessment under Sections 3 and 4 of the Income-tax Act, 1922.

5. It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests. In *Manohar Ganesh* v. *Lakshmiram*,[1] called the *Dakor temple case*, West and Birdwood, JJ., state :

> ''The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation apart from its individual members but also juridical persons called foundations. A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception or morality. A trust is not required for the purpose ; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English Law. In early law a gift placed as it was expressed on the altar of God, sufficed it to convey to the Church the lands thus dedicated. It is consistent with the grants having been made to the juridical person symbolised or personified in the idol.''

The same view has been expressed by the Madras High Court in, *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami and Others*[2] in which Mr. Justice Subrahmania Ayyar stated :

> ''It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter, as is implied in the felicitious observation made in the work already cited ''Perhaps the oldest of all jurisdic persons in the God, hero or the saint'' (Pollock and Maitland's History of English Law, Volume I, 481).

6. That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in *Manohar Ganesh's case* (supra), 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 Shibessoureea Debia* v. *Mathooranath Acharjo*[3] and *Prosanna Kumari Debya* v. *Golab Chand Baboo*[4]. Such ascription of legal personality to an idol must however be incomplete unless it be linked to a natural person with reference to the preservation and management of the property and the provision of human guardians for them variously

1. ILR 12 Bom 247.
2. ILR 27 Mad 435.
3. 13 MIA 270.
4. LR 2 IA 145.

designated in different parts of the country. In *Prosanna Kumari Debya* v. *Golab Chand Baboo* (supra) 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 of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its porperty at least to as great a degree as the manager of an infant heir"—words which seem to be almost an 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."

In *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick and Others*.[5] Lord Shaw, observed :

> "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."

It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada I, Sabara Swami states :

> देवग्रामो, देवक्षेत्रमिति, उपचारमात्रम् । यो यदभिप्रेत विनियोक्तुमर्हति, तत्तस्य स्वम् । न च ग्रामं क्षेत्रं वा यथाभिप्राय विनियुक्तडे । तस्मान्न संप्रयच्छातीति । देवपरिचार काणां तु तत्रो भूतिर्भवति, दवतामुद्दिश्प यत् त्यक्तम् ।

"Words such as 'village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which he can be said to belong to a person which he can make use of as be desires. God, however, does not make use of the village or lands, according to its desires". Likewise, Medhathithi in commenting on the expression 'Devaswam' in Manu, Chapter XI, verse 26, writes :

> देवानुद्धिश्य, यागादि क्रियार्थं धनं यदुत्सृष्टं, तद्धेवस्वम् मुख्यस्य स्वस्वामिसबंन्धस्य, देवाना असंभवात् ।

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods". Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (*Gaunartha*). The correct

5. 52 IA 245.

legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests. As observed by Mr. justice B. K. Mukherjea :

> "With regard to debutter, the position seems to be somewhat different. What is personified here is not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view. 'The dedication to deity', said Sir Lawrence Jenkins in *Bhupati* v. *Ramlal*[6], 'is nothing but a compendious expression of the pious purpose for which the dedication is designed'. It is not only a compendious expression but a material embodiment of the pious purpose and though there is difficulty in holding that property can reside in the aim or purpose itself, it would be quite consistent with sound principles of Jurisprudence to say that a material object which represents or symbolises a particular purpose can be given the status of a legal person, and regarded as owner of the property which is dedicated to it."[7]

The legal position is comparable in many respects to the development in Roman Law. So far as charitable endowment is concerned Roman Law as later developed recognised two kinds of juristic persons. One was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed, *e. g.*, feeding the poor, or giving relief to the poor or distressed. The recipient corporation would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder, provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation. As observed by Sohm :

> "During the later Empire from the fifth century onwards foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a '*pia causa*' ('*pium corpus*'), *i. e.* were devoted to 'pious uses', only in short, if they were charitable institutions. Wherever a person dedicated property—whether by gift *inter vives* or by will in favour of the poor, or the sick, or prisoners, orphans, or aged people, he thereby created *ipso facto* a new subject of legal rights—the poor-house, the hospital, and so forth—and the dedicated property became the sole property of this new subject ; it became the sole property of the new juristic person whom the founder had called into being. Roman Law, however, took the view that the endowments of charitable foundations were a species of church property. *Piae causas* were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A *pia causa* was regarded as an ecclesiastical, and consequently, as a public institution, and as such it shared that corporate capacity which belonged to all ecclesiastical institutions by virtue of a general rule of

6. 10 CLJ 355 at 369.
7. Hindu Law of Religious and Charitable Trust by Mr. B. K. Mukherjea.

law. A *pia causa* did not require to have a juristic personality expressly conferred upon it. According to Roman law the act—whether a gift *inter vives* or a testamentary disposition—whereby the founder dedicated property to charitable uses was sufficient, without more, to constitute the *pia cuasa* a foundation in the legal sense, to make it, in other words, a new subject of legal rights''.[8]

We should, in this context, make a distinction between the spiritual and the legal aspect of the Hindu idol which is installed and worshiped. From the spiritual stand point the idol may be to the worshipper a symbol (*pratika*) of the Supreme God-head intended to invoke a sense of the vast and intimate reality, and suggesting the essential truth of the Real that is beyond all name or form. It is a basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of one Supreme Spirit and in whichever name or form the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

इन्द्र मित्रं वरुणम् अग्निम् आहुर्—
एकं सद् विप्रा वहुधा वदन्ति । (Rig Veda I-164)

(They have spoken of him as Agni, Mitra, Varuna, Indra ; the one Existence the sages speak of in many ways). The Bhagavad Gita echoes this verse when it says :

वायुर यमोऽ ग्निर वरुणः शशाङ्क
प्रजापतिस् त्वं प्रपितामहश्च । (Chap. XI-39)

(Thou art Vayu and Yama, Agni, Varuna and Moon ; Lord of creation art Thou, and Grandsire).

Sankara, the great philosopher, refers to the one Reality, who, owing to the diversity of intellects (Matibheda) is conventionally spoken of (Parikalpya) in various ways as Brahma, Visnu and Mahesvara. It is, however, possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a Court of law again in the ideal sense. Our conclusion is that the 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. It was argued on behalf of the appellant that the word 'individual' in Section 3 of the Act should not be construed as including a Hindu deity because it was not a real but a juristic person. We are unable to accept this argument as correct. We see no reason why the meaning of the word 'individual' in Section 3 of the Act should be restricted to human beings and not to juristic entities. In *The Commissioner of Income-tax, Madhya Pradesh and Bhopal* v. *Sodra Devi*,[9] Mr. Justice Bhagwati pointed out as follows :

''The word 'individual' has not been defined in the Act and there

8. Institute of Roman Law, 3rd Edition, pp. 197-198.

9. (1958) SCR 1 at p 6.

is authority, for the proposition that the word 'individual' does not mean only a human-being but is wide enough to include a group of persons forming a unit. It has been held that the word 'individual' includes a corporation created by a statute, *e. g.*, a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act."

We are accordingly of opinion that a Hindu deity falls within the meaning of the word 'individual' under Section 3 of the Act and can be treated as a unit of assessment under that section.

7. On behalf of the appellant Mr. Chagla referred to Section 2, sub-section (31) of the Income-tax Act, 1961 (Act No. 49 of 1961), which states :

"2. In this Act, unless the context otherwise requires—

× × ×

(31) 'person' includes—

(*i*) an individual,

(*ii*) a Hindu Undivided Family,

(*iii*) a company,

(*iv*) a firm,

(*v*) an association of persons or a body of individuals, whether incorporated or not,

(*vi*) a local authority, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses."

Counsel also referred to Section 2(9) and Section 3 of the Income-tax Act, 1922, which state :

"2. In this Act, unless there is anything repugnant in the subject or context—

× × ×

(9) 'person' includes Hindu Undivided Family and local authority."

"3. Where any Central Act enacts that Income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

On a comparison of the provisions of the two Acts counsel on behalf of the appellant contended that a restricted meaning should be given to the word 'individual' in Section 3 of the earlier Act. We see no justification for this argument. On the other hand, we are of the opinion that the language employed in 1961 Act may be relied upon as a Parliamentary exposition of the earlier Act even on the assumption that the language employed in Section 3 of the earlier Act is ambiguous. It is clear that the word 'individual' in Section 3 of the 1922 Act includes within its connotation all artificial juridical persons and this legal position is made explicit and beyond challenge in the 1961 Act. In *Cape Brandy Syndicate* v. *I. R. C.*,[10]

10. (1921) 2 KB 403.

Lord Sterndale, M. R., said :

> "I think it is clearly established in *Attorney-General* v. *Clarkson*[11] that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation ; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier Act."

For the reasons expressed we hold that the question of law referred by the Income-tax Appellate Tribunal and as modified by us should be answered in the affirmative and in favour of the Commissioner of Income-tax. We accordingly dismiss these appeals with costs. One hearing fee.

1969 (1) Supreme Court Cases 562

(From Jammu and Kashmir)

[BEFORE J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

SAMPAT PRAKASH .. Petitioner ;

Versus

STATE OF JAMMU AND KASHMIR .. Respondent.

Writ Petition No. 361 of 1968, decided on 6th February, 1969

Constitution of India—Article 22(5), (6), (7)—Jammu and Kashmir Preventive Detention Act 13 of 1964, Section 10(1) as amended by Section, 13-A—Detention without obtaining opinion of Advisory Board whether valid—Grounds of detention whether vague and indefinite.

The original order, dated 16-3-1968, detaining the petitioner under the Jammu and Kashmir Preventive Detention Act, 1964, was revoked by order, dated 16-9-1968, and the petitioner was served with the grounds of detention on 24-9-68. The Advisory Board to whom his case was referred on 24-10-68, recommended the detention of the petitioner on 30-10-68. The petitioner moved the Supreme Court for a writ of *habeous corpus* on the following grounds :—(1) that the Government was bound to refer the case of the petitioner within sixty days from the date of detention and since no reference was made, the detention of the petitioner under order, dated 16-3-1968, was unauthorised ; (2) that the authorities acted *mala fide* in making the order and (3) that the grounds of detention were vague and indefinite.

Held, dismissing the Writ Petition, that the Government may decide not to refer the case of the detenue to the Advisory Board because the period for which he is to be detained is not to exceed six months. Section 13-A is an exception to Section 10 and in case of conflict, Section 13-A prevails. It was intended when the order was passed detaining the petitioner that he was not to be kept in detention for a period longer than six months and his case fell within the terms of Section 13-A(1) and on that account, it was not necessary to obtain the opinion of the Advisory Board. (Para 5)

The protection of clauses (5), (6) and (7) of Article 22 insofar as the provisions of the Act enacted by the Jammu and Kashmir Legislature are inconsistent therewith does not avail the petitioner [*vide* Article 35(*c*)]. (Para 4)

11. (1900) 1 KB 156, 163, 164.