IN THE SUPREME COURT OF INDIA

CIVIL'APPELLATE JURISDICTION

CIVIL APPEAL.; NO. 4768-71 OF 2011'

IN THE MAT'TER OF:

BHAGWAN SRI RAMA VIRAJMAN
AND ORS. ...APPELLANTS

:VERSUS

SRI RAJENDRA SINGH & ORS. ...RESPONDENTS

COMPILATION OF **JUDGMENTS**
BY SHRI **C.S. VAIDYANATHAN, SR.** ADV.

VOLUME-II

ADVOCATE FOR **THE** APPELLANTS: : MR. **P.V. YOGESWARAN**

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APPELLATE CIVIL

Before the Honourable B. Malik, Chief Justice and Mr. Justice Brij Mohan Lal

1952 February, 1.

SHRI THAKUR GOKUL NATHJI MAHARAJ AND ANOTHER (PLAINTIFFS)

v.

NATHJI BHOGI LAL (DEFENDANT)

Presumption—*Indian Evidence Act, 1872, s. 114—Self-revealed idol—Object of worship by a large sect of people for over three hundred years—Extensive properties owned and possessed by idol—Juristic person—Whether presumption can be raised.*

Where a self-revealed idol, as a symbol representing God himself, has been an object of worship by a large sect of people for over three hundred years and extensive properties are owned by and are in the possession of the said idol, it is impossible after this length of time to prove by any direct, affirmative evidence whether there was or there was no consecration, and a presumption can be raised that it was a juristic person recognised as such by the followers of that sect and thus capable of owning property.

Letters Patent Appeal no. 29 of 1944 from a decision of MATHUR, J. dated the 11th May 1943, in Second Appeal no. 972 of 1940.

The facts appear in the judgment.

N. P. Asthana, B. L. Dave and K. B. Asthana, for the appellants.

Harnandan Prasad, for the respondent.

The Judgment of the Court was delivered by

MALIK, C. J.:—This is a plaintiffs' appeal against the decree passed by a learned single judge of this Court allowing a Second Appeal and dismissing the plaintiffs' suit. The plaintiff-appellants are represented by

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Dr. N. P. *Asthana*, but learned counsel for the respondent, Sri *Harnandan Prasad*, states that he has received no instructions from his client. The suit was filed by Sri Thakur Cokul Nathji Maharaj, birajman at Cokul through plaintiff no. 2, who claimed to be the owner of the property in suit, but to prevent the defendant raising the question whether it was plaintiff no. 1 or plaintiff no. 2 who was the owner of the property it was said in the plaint that plaintiff no. 2 had joined plaintiff no. 1 also as a co-plaintiff and the suit was, therefore, filed, in the name of both the plantifls. The allegations in the plaint were that the land in suit belonged to the plaintiffs and one Dwarka Had his house on it; that in the floods of 1924 the house of Dwarka was washed away and: in 1933 the defendant took wrongful-possession of the materials worth Rs.100 lying on the site and built a Dhararnshala thereon. The reliefs claimed by the plaintiffs were for removal of the constructions made by the defendant and for vacant possession being given to them; an injunction to be issued to the defendant not to interfere in future with the plaintiffs' possession of the land; Rs.100 as damages for the price of the materials unlawfully used by the defendant; and for costs. The plaintiffs' claim for Rs.100 was dismissed by the lower appellate court on the ground that it was not proved that the defendant had utilised any part of the materials of Dwarka's house. The other reliefs were given to the plaintiffs.

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In appeal a learned single Judge of this Court held that plaintiff no. 1 was not a juristic person and could not own property, that plaintiff no. 2 had no right of ownership and that mandatory injunction could not be granted because the suit was filed almost three years after the constructions were made. He allowed the appeal and dismissed the plaintiffs' suit.

It has been urged by learned counsel for the appellants that as regards the first finding that plaintiff no,

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1 was not a juristic person the learned Judge was clearly in error.: The point was very carefully considered by the lower courts and we must say they wrote excellent judgments and took great care in the consideration of all the materials placed before them. The temple in question is a very old one rlating back to some year prior, to 1640 A. D. According to the traditions prevailing in the locality one Sri Ballabhacharya flourished in the sixteenth century of the Christian era. He was a devotee of Lord Krishna and was held in great esteem by the people. He had two sons, one of whom died issueless but the other had seven sons, To these seven grandsons Sri Ballabhacharya gave seven idols as representing Lord Krishna of whom he was a *Bhakta*. These seven idols which were given to each grandson were installed by them in various parts of northern and western India, To the grandson, Sri Gokul Narhji was given the idol which was installed in Gokul in the temple known under the same name, i.e, Gokul Nathji. Grandson Gokul Nathji was himself a very pious man and a great devotee of Lord Krishna, so much so that some people started worshipping him as the incarnation of the Lord Himself. Gokul Nathji, however, used to worship plaintiff no. 1 as the idol of Lord Krishna, and some followers, instead of worshipping Gokul Nathji, the grandson of Sri Ballabhachnrya, worshipped the idol and held that the idol as well as Gokul Nathji and his descendants were the representatives of God. These two sects that grew up were known as the *Bharuchis* and the *Nimar Yas* worshipped plaintiff no. 1, while the *Bharuchis* worshipped Gokul Nathji in his life-time and after his death they worshipped his, clothes, sandals, and such other things as were used by him and enshrined these articles of personal use in a temple.

The defendant challenged the plaintiffs' claim on several grounds but one of the grounds was that plain-

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tiff no. 1 was not a consecrated idol and was, therefore, incapable of holding properties. There was no serious dispute as to the facts already stated by us above and as a matter of fact those facts have been found by the lower courts on the evidence available on the record and thus they could not be made subject matter of challenge in this Court in second appeal. According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them. As it was pointed out by the learned Munsif in his very careful judgment that according to true Hindu belief the idol is not worshipped as such but it is the God behind the idol which is the object of worship. The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol. From the evidence it is clear that plaintiff no. 1 as such a symbol has been the object of worship by a large sect of people known as *Nimar Yas* for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to require the plaintiffs to prove affirmatively that

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such ceremonies were performed as would entitle the plaintiffs to claim to be a juristic personality.

From the fact that the idol was said to be self-revealed the learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed. After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol. On the facts found by the lower courts, the lower courts were right in coming to the conclusion that there was sufficient material for a presumption that plaintiff no. 1 was a juristic person recognised as such by the followers of that sect and, therefore, capable of owning property.

As regards the claim of plaintiff no. 2, no doubt some controversy was raised in the trial court whether the title vested in plaintiff no. 1 or plaintiff no. 2. The lower appellate court held that plaintiff no. 2 had failed to prove that he was the owner of plaintiff no. 1 or *Gaddinashin*, but that he had been managing the temple and its affairs since 1916 and was thus the *de facto Gaddinashin* of the temple. The learned Judge

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of the lower appellate court rightly held that: as the suit had been filed on behalf of both the plaintiffs it was not necessary to go further into the question about the rival claims between the plaintiffs *inter se*. The learned Judge has held as follows:

> "... the determination of this question (whether the owner is the plaintiff no. 1 or the plaintiff no. 2) in this case is *otiose*, as it is essentially a question between the plaintiffs themselves. At least one of them is such owner."

On the findings recorded by the learned Judge he might as well have held that it was the plaintiff no. I who was the owner of the property. The other findings recorded by the learned Civil Judge appear to us to be clear findings of fact based on evidence. The learned Judge held that the land in suit was in the possession of a tenant of the plaintiffs named Dwarka; that this *kachcha* house of Dwarka existed and was in his possession till 1924 when there was a flood and the house was washed away and the land lay vacant; that it was not till 1933 that the defendant took possession of the land and started building Dharamshala: and that there could, therefore, be no question of limitation as the suit was filed in 1936. On these findings the plaintiffs' suit for possession was rightly decreed.

The learned single Judge held that the defendant has not succeeded in proving that the plaintiffs have acquiesced in any way in the building of the Dharamshala and in the circumstances, therefore, there is no reason why the plaintiffs' suit for the other reliefs, except the claim for Rs.100 as damages, should not have been decreed.

The result, therefore, is that we set aside the decree of the learned single Judge and restore the decree

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passed by the lower appellate court, but as the respondent is not represented before us we make no order as to costs of this appeal.

Appeal allowed.

FULL BENCH (CIVIL MISCELLANEOUS)

Before the Honourable B. Malik, Chief Justice, Mr. Justice Sapru and Mr. Justice Bhargava

RAMAN DAS (APPLICANT)

1952 February, 13.

v.

THE STATE OF UTTAR PRADESH AND OTHERS (OPPOSITE-PARTIES)

United Provinces (Temporary) Control of Rent and Eviction Act, 1947—*Whether* ultra vires—*Right of a landlord—S. 7 imposes no unreasonable restriction-s-Constitution of India, Arts.* 31(2)" *14-Art.31 not applicable to said Act—Public purpose disclosed by its preamble—Proviso to s. 7 of the Act, whether infringes Art. 14.*

The Temporary Control of Rent and Eviction Act, 1947, is within the legislative competence of the United Provinces Legislature and is not *ultra vires* as it comes under Item no. 21 of List II and Item no. 8 of List no. III attached to the Government of India Act, 1935.

Art. 31(2) of the Constitution does not apply to the said Act, but its preamble sets out the public purpose.

Rex v. *Basdeva* (1), relied upon.

S. 7 of the said Act imposes no unreasonable restriction on the rights of a landlord and a power of allotment given to a District Magistrate under it does not amount to either acquisitioning or requisitioning of property by him.

Tan Bug Taim v. *Collector of Bombay* (2) approved.

(1) A.I.R. 1950 F. C. 67 (2) (1945) 47 Bom. L.R. 1010.

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the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India.

13. We hold that Section 2(*l*)(*iii*) of the Delhi Rent Control Act, 1958 is not open to attack on the ground that it is violative of Articles 14 and 21 of the Constitution of India. The said provision is not in any manner either unfair or unjust or absurd. There is no merit in this batch of cases. The writ petitions are dismissed with costs. The special leave petition is rejected.

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(BEFORE M.N. VENKATACHALIAH, C.J. AND A.M. AHMADI, J.S. VERMA, G.N. RAY, AND S.P. BHARUCHA, JJ.)

Transferred Case (C) Nos. 41, 43 and 45 of 1993

DR. M. ISMAIL FARUQUI AND OTHERS — Petitioners;

Versus

UNION OF INDIA AND OTHERS — Respondents.

With

Writ Petition (Civil) No. 208 of 1993

MOHD. ASLAM — Petitioner;

Versus

UNION OF INDIA AND OTHERS — Respondents.

With

Special Reference No. 1 of 1993† with I.A. No. 1 of 1994 in T.C. No. 44 of 1993

HARGYAN SINGH — Petitioner;

Versus

STATE OF U.P. AND OTHERS — Respondents.

With

Transferred Case (C) No. 42 of 1993

THAKUR VIRAJMAN SHOBHAGWAN BIRAJMAN MANDIR AND ANOTHER — Petitioners;

Versus

UNION OF INDIA AND OTHERS — Respondents.

† From the Court's Order dated 24-9-1993 of the Allahabad High Court in T.P. Nos. 669-75 of 1993

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With

Writ Petition (C) No. 186 of 1994

a JAMIAT-ULAMA-E-HIND AND ANOTHER Petitioners;

Versus

UNION OF INDIA AND OTHERS Respondents.

Transferred Case (C) Nos. 41, 43 and 45 of 1993 with Writ Petition (Civil) No. 208 of 1993 with Special Reference No. 1 of 1993 with I.A. No. 1 of
b 1994 in T.C. No. 44 of 1993 and Transferred Case (C) NO. 42 of 1993, decided on October 24, 1994

A. Acquisition of Certain Area at Ayodhya Act, 1993 - Constitutionality - Whether provisions of the Act contravene Arts. 14, 25 & 26 and principles of secularism and rule of law, and
c if within legislative competence of Parliament — Maintainability of the Presidential Reference 1 of 1993 in respect of Ram Janma Bhumi-Babri Masjid dispute - Held, per majority, S. 4(3) amounts to negation of rule of law and is therefore invalid, but being a severable provision, the remaining Act is valid - Special Reference No. 1 of 1993 made by the President under Art. 143(1)
d of the Constitution is superfluous and unnecessary and does not require to be answered - Consequently, all the pending suits and legal proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as Ram Janma Bhumi-Babri Masjid stood, stand revived for adjudication of the
e dispute relating therein - A mosque, like places of worship of other religions, can be acquired by State in exercise of its sovereign or prerogative power - Central Govt. will act as statutory receiver of the disputed area and will hand over the same to the entitled after adjudication of the dispute - But vesting of the area adjacent to the disputed area in Central Govt. was absolute with power of management thereof under S. 7(1) till further vesting in any authority or other body or trustees of any trust under S. 6 after a judicial verdict — Any surplus adjacent area shall be restored to real owners - Compensation shall be paid to undisputed owners of the adjacent area acquired which
g vests in Central Govt. absolutely - Status quo ante as on 7-1-1993 (when the Ordinance and Special Reference made) to be maintained as regards puja by Hindus which will continue at the make-shift temple existing at the disputed site - Right of Muslims to offer namaz at the disputed site not affected thereby
h - S. 7(2) which effectuates the status quo cannot be said to be slanted in favour of Hindus .

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Held, per Ahmadi and Bharucha, JJ., SSs 3, 4 and 8, which are the core provisions of the Act, are unconstitutional and, therefore, the entire Act is invalid and is struck down — Answer to the Special Reference under Art. 143(1) is declined - Secularism - Rule of law a

Held: :

Per majority

Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute-resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid. b
[Para 96(1)(a)]

The remaining provisions of the Act do not suffer from any invalidity. Sub-section (3) of Section 4 of the Act is severable from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except for sub-section (3) of Section 4, is rejected. [Para *96(1)(b)]* c

Irrespective of the status of a mosque under the Muslim Law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State, than that of the places of worship of the other religions. (Para 96) d

The *Special Reference No. 1 of* 1993 made by the President of India under Article 143(1) of the Constitution of India is superfluous and unnecessary and does not require to be answered and therefore, the same is returned. The question relating to the constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms. [Para 96(11)] e

The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood, stand revived for adjudication of the dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act. [Para 96(3)] f

It follows further as a result of the remaining enactment being upheld as valid that the disputed area has vested in the Central Government as a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining status quo therein by virtue of the freeze enacted in Section 7(2); and the Central Government would exercise its power of vesting that property further in another authority or body or trust in accordance with Section 8(1) of the Act in terms of the final adjudication in the pending suits. The power of the courts in the pending legal proceedings to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. The parties to the suits would be g h

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entitled to amend their pleadings suitably in the light of the present decision. [Paras 84 and 96(4)]

a The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in
b view of the purpose of its acquisition. [para 96(6)]

Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely
c the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits. [para 96(8)]

The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on
d adjudication of the dispute, must be restored to the undisputed owners. [Para 96(9)]

Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in case of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute. [Para 96(10)]

e If the entire Act had been held to be invalid and then the Court had declined to answer the Reference on that conclusion, then it would have resulted in revival of the abated suits along with all the interim orders made therein. It would also then have resulted automatically in revival of the worship of the idols by Hindu devotees, which too has been stopped from December 1992 with all its ramifications without granting any benefit to the Muslim community whose practice of worship in the mosque (demolished on 6-12-1992) had come to a stop, for whatever reason, since at least December 1949. This situation, unless altered subsequently by any court order in the revived suits, would, therefore, continue during the pendency of the litigation. This result could be no solace to the Muslims whose feelings of hurt as a result of the demolition of mosque, must be assuaged in the manner best possible without giving cause for any legitimate grievance to the other community leading to the possibility of reigniting communal passions
g detrimental to the spirit of communal harmony in a secular State. (Para 85)

The best solution in the circumstances, on revival of suits is, therefore, to maintain status quo as on 7-1-1993 when the law came into force modifying the interim orders in the suits to that extent by curtailing the practice of worship by Hindus in the disputed area to the extent it stands reduced under the Act instead of conferring on them the larger right available under the court order still intervention
h was made by legislation. (Para 86)

Section 7(2) achieves this purpose by freezing the interim arrangement for worship by Hindu devotees reduced to this extent and curtails the larger right they enjoyed under the court orders, ensuring that it cannot be enlarged till final adjudication of the dispute and consequent transfer of the disputed area to the party found entitled to the same. The provision does not curtail practice of right of worship of the Muslim community in the disputed area, there having been de facto no exercise of the practice or worship by them there at least since December 1949; and it maintains status quo by the freeze to the reduced right of worship by the Hindus as in existence on 7-1-1993. This being the purpose and true effect of Section 7(2), it promotes and strengthens the commitment of the nation to secularism instead of negating it. To hold this provision as anti-secular and slanted in favour of the Hindu community would be to frustrate an attempt to thwart anti-secularism and unwittingly support the forces which were responsible for the events of 6-12-1992. (Paras 87 and 53)

Per Ahmadi and Bharucha, JJ.

The core provisions of the Act are Sections 3, 4 and 8. The other provisions of the Act are only ancillary and incidental to Sections 3, 4 and 8. The core provisions of Sections 3, 4 and 8 are unconstitutional and therefore, the Act itself cannot stand. Accordingly, the Acquisition of Certain Area at Ayodhya Act, 1993, is struck down as being unconstitutional. The Presidential Reference is returned respectfully, unanswered. The issues in the suits in the Allahabad High Court withdrawn for trial to the Supreme Court are answered accordingly. (Paras 136, 158 and 159)

B. Civil Procedure Code, 1908 - S. 9 - Extinction of the judicial remedy for resolution of the dispute, held, amounts to negation of rule of law - Abatement of all pending suits and legal proceedings under S. 4(3) of Ayodhya Act, 1993 without providing an alternative dispute resolution forum, therefore, bad - Rule of law

C. Acquisition of Certain Area at Ayodhya Act, 1993 - S. 3 - Held, per majority (Ahmadi and Bharucha, JJ. contra), valid

D. Acquisition of Certain Area at Ayodhya Act, 1993 - S. 4(3) - Validity - Abatement of all pending suits and legal proceedings in respect of right, title and interest relating to property vested under S. 3 — Simultaneous Reference made under S. 143(1) to Supreme Court whether a Hindu temple/religious structure existed prior to construction of the disputed structure on the disputed site - After getting answer to the Reference, Central Govt. proposing to enter into negotiation with the rival claimants and to take any other appropriate step if negotiations fail — Held, per majority, Reference under Art. 143(1) not an effective alternate dispute resolution mechanism in substitution of the pending suits abated by S. 4(3) - Hence S. 4(3) invalid - But S. 4(3) being severable its invalidity would not affect validity of other provisions of the Act - Held, per Ahmadi and Bharucha, JJ. (concurring) S. 4(3) arbitrary, unreasonable and against principle of secularism - It deprives the Muslim community of the right to plead and establish adverse possession

E. Acquisition of Certain Area at Ayodhya Act, 1993 - S. 8 - Validity - Held, per majority, compensation is payable only in respect of acquisition of area adjacent to the disputed area, ownership of which is not in dispute — Compensation for the disputed area is payable only after adjudication of the dispute - Hence S. 8 cannot be invalidated on ground of impracticability of granting compensation in respect of the disputed area - Held, per Ahmadi and Bharucha, JJ. (dissenting), for establishing compensation claim, title to the acquired property has to be established before Claims Commissioner - Thus

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by virtue of S. 8, forum for adjudication of title shifted from courts, before which suits were pending, to Claims Commissioner - No right of appeal or
a reference to civil court provided, rendering deciston of Clalms Commissioner final, except for a remedy under Arts. 226/227 — S. 8 therefore, arbitrary, unreasonable and invalid

Held'

Per majority

(1) Section 3 provides for acquisition of rights in relation to the 'area' defined
b In Secnon *2(0),* It does not suffer from any invalidity.' [Paras 21 and 96(1)(b)]

(2) Since the Central Government proposes to resort to a process of negotiation between the rival claimants after getting the answer to the question referred, and if the negotiations fail, then to adopt such course as it may ftnd appropriare in the CIrcumstances, the Special Reference made under Article 143(1) of the Constitution cannot be construed as an effective alternate dispute-resolution mechanism to permit substitution of the pending suits and legal proceedings by Ihe mode adopted
c of making this Reference. Therefore. the abatement .of pending suits amounts to denial of the judicial remedy, This fact alone is sufficient to invalidate sub-section (3) of Section 4 of the Act. (Paras 62 and 61)

However, its invalidity is not an Impediment to the remaining statute being upheld as valid. (Para 62)

Indira Nehru Gandhi v *Raj Naratn.* 1975 Supp SCC 1 (1976) 2 SCR 347. *relied on*

d (3) Section 8 is meant only for the property acquired absolutely, other than the disputed area, being adjacent to, and in the vicinity of the disputed area, The disputed area being taken over by. the Central Government only as a statutory receiver, there is no question of payment of compensation for the same as it is meant to be handed over to the successful party in the suits, in terms of the ultimate judicial verdict therein. for the falrbful Implementarion of the judicial decision. The exercise of the power under Section 8. by the Central Government is to be made
e only. then in respect of the disputed area, in accordance with-the final judicial decision, preserving status quo therein in terms of Section 7(2) till then. [Paras 63 and 96(8)]

Per Ahmadi and Bharucha, JJ.

(1) The validity of the provisions of Section 3. by reason of which the whole bundle of property and rights stands transferred to and vests in the Central Government, and, therefore, "of the Act itself, depends upon the validity of the provisions that follow it, particularly, Section 4. (Para 130)

(2) The effect of Section 4 of the Act is that the Sunni Wakf Board, which administered the mosque that was housed in the disputed structure, and the Muslim community lose their right to plead adverse possession of the disputed site from *1528* until 1949, if notup-to-date, considering that the idols remained in the disputed structure' only under the orders of the. courts. Instead of judicial
g determination of the title to the dispured site on the basis of the law, the disputed site, along with surrounding land, has been acquired and a complex with a mosque and a'ternple thereon is planned What is to happen to the disputed site is to depend upon the answer to the question posed in the Reference and negotiations based thereon The dispute was that a Ram temple had stood on the disputed site and it was demolished to make place for the disputed structure; the question posed,
h however, is: Was there "a Hindu temple or any Hindu religious structure" on the disputed site? Secondly. the salient fact as to whether the temple, if any. was

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demolished to make place for the disputed structure is not to be gone into. The disputes as to title to the disputed site survive for consideration for the purpose of award of compensation. For this purpose title shall have to be established not before a court of law but before a Claims Commissioner to be appointed by the Central Government, who is entitled to devise his own procedure, Sections 4 therefore, must be held to be arbitrary and unreasonable, (Para 133) a

More importantly, the provisions of Section 4 of the Act, inasmuch as they deprive the Sunni Wakf Board and the Muslim community of the right to plead and establish adverse possession as aforesaid and restrict the redress of their grievance in respect of the disputed site to the answer to the limited question posed by the Reference and to negotiations subsequent thereto, and the provisions of Section 3 of the Act, which vest the whole: bundle of property and rights in the Central Government to achieve this purpose, offend the principle of secularism, which is a part of the basic structure of the Constitution, being slanted in favour of one religious community as against another. " (Para 134) b

(3) Section 8 gives to the owner of any land, building, structure or other property which is acquired compensation equivalent to the market value thereof. Claims in that behalf are to be entertained by a Claims Commissioner to be appointed by the Central Government, For the purposes of establishing his claim, the owner would have to establish his title to the property that has been acquired. The suits in the Allahabad High Court which abate by reason of Section 4(3) relate to the title of the disputed site. In other words, the forum for the adjudication of the title to the disputed site- is shifted from the courts to the Claims Commissioner; No right of appeal or reference to a Civil Court is provided for with the result that the decision of the Claims Commissioner would be final except for a remedy under Articles 226/227 of the Constitution. for the reasons aforesaid, Sections 4 and 8 must be held to be arbitrary and unreasonable. (Paras 127 and 133) c d

Therefore, Sections 3, 4 and 8, which are core provisions of the Act, are unconstitutional, . (Para 136) e

F. Acquisition of Certain Area at Ayodhya Act, 1993.- Ss, 7, 6, 3 and 2(a) & (b) - Validity, nature and effect of S. 7 - Whether secular -: Meaning of 'vest' and 'area' - Held, per majority, it is a transitory provision — Vesting of disputed area in Central Govt. is not absolute - Central Govt. acts as a statutory receiver with duty of maintaining status quo in the disputed area as on 7-1-1993 and proper management and administration thereof till resolution of dispute so as to hand over the disputed area as contemplated by S. 6 in terms of adjudication of the dispute - Word 'area' in S. 7(2) means the disputed area alone on which Ram Janma Bhumi-Babri Masjid stood and not as defined in S. 2(a) i.e. the entire area specified in the Schedule — But vesting of area adjacent to the disputed area is absolute - Central Govt. has to administer and manage such area in accordance with S. 7(1) till its further vesting in accordance with S. 6 - Acquisition of the adjacent area made with a view to make the same available to the Muslim community in case the dispute is resolved in their favour — Pursuant to such decision excess adjacent land, if any, liable to be returned to owners - In case that is not done, it would be open to owners to challenge the superfluous acquisition — Right of worship of Hindus restored as was in existence on '-1·1993 and no enlarged right of worship granted to them - S. 7 not slanted in favour of any religious community and hence not violative of secularism which is a basic feature of the Constitution - It is intended to check communal tension - Held, per Ahmadi and Bharucha, JJ., as whole bundle of property and rights vest in the Central f g h

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Govt., the same including the disputed site have to be managed by authorised person as an interim measure until vesting under S. 6 takes place - Therefore, in view of S. 7(2), the idols must be retained where they were before 7-1-1993
a and puja as carried on as before - S. 7 is of permanent nature and as such the idols shall remain at the disputed site and puja shall continue for indefinite period - Thus S. 7 is slanted in favour of Hindu community - Words and phrases - Interpretation of Statutes - Contextual meaning

G. Acquisition of Certain Area at Ayodhya Act, 1993 - S. 6 - Validity - Held, per majority, while the disputed area is being retained and managed by
b Central Govt. as a statutory receiver and it is not transferable till final adjudication of the dispute, the adjacent area acquired vests absolutely in Central Govt. and there is, no inhibition in transfer thereof - Held, per Ahmadi and Bharucha, JJ., S. 6 is an enabling provision - It applies to whole bundle of property and rights including the disputed area — Hence all the rights of Central Govt. in the whole bundle of property and rights or such part thereof as vested, shall be deemed to be transferred to the authority or body or
c trust in which it is vested - Words and phrases - "So far as may be"

Held:

Per majority

(1) The meaning of word 'vest' in Section 3 of the Act has different shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a
d limited vesting, being limited, in title as well as duration. Thus the meaning of 'vest' used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. If the vesting be absolute being unlimited in any manner, there can be no limitation on the right to transfer or manage the acquired property. In the event of absolute vesting, there is no need for a provision enabling the making of transfer after acquisition of the property, right to transfer being a necessary incident of absolute title. Enactment of Section 6 in the same statute as a
e part of the scheme of acquisition of the property vesting it in the Central Government is, therefore, contraindication of the vesting under Section 3 in the Central Government being as an absolute owner without any particular purpose in view. (Paras 41 and 21)

Maharaj Singh v. State of U.P., (1977) 1 SCC 155 (1977) 1 SCR 1072, *relied on*

Between Sections 6 and 7, it is Section 7 which imposes a greater restriction on the power of Central Government. Section 7(1) provides that in spite of any contrary provision in any contract or instrument or order of any court, tribunal or other authority, from the commencement of this Act, the management of the property vested in the Central Government under Section 3 shall be by the Central Government or by an authorised person, so authorised by the Government on its behalf and none else. This provision expressly supersedes any earlier provision relating to the management of the property so vested in the Central Government.
g Section 7(2) mandates that in managing the property so vested in the Central Government, the Central Government or the authorised person shall ensure maintenance of the status quo "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood". The construction that the word 'area' used in this expression has the same meaning as in the definition contained in
h Section 2(a), that is, the entire area specified in the Schedule to the Act cannot be accepted. Section 2 itself says that the definitions therein give the meaning of the words defined "unless the context otherwise requires". The context in which the

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word 'area' is used in the expression in Section 7(2) gives the clear indicanon that Its meaning is not the same as in Section 2(a) to mean the entire area specified in the Schedule since the words which fQJJQW qualify its meaning confining it only to the site on which this structure, commonly known as the Ram JanrnaBhumi-Babri Masjid stood, which site or area is undoubtedly smaller and withm "the area specrfied in the Schedule" Section? is a transitory provision, intended to maintain status quo in the disputed area, till transfer of the property is made by the Central Government on resolution of the dispute, This is to effectuate the purpose of that transfer and to make it' meaningful avoiding any possibility of frustration of the exercise as a result of any change in the existing situation in the dispured area during the interregnum, Unless .status quo is ensured" the final outcome on resolution ot the dispute may be frustrated by any change made in the disputed area which may frustrate the implementation of the result in favour of the successful party and render it meaningless. A'direction to maintain status quo In! the disputed property is a well-known method and the usual order made during tbe pendency of a dispute for preserving the property and protecting the interest of the true owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of the true owner, ye.t to be determined, This itself is a clear indication that the exercise made is to find out the true owner of the disputed area, to maintain status quo therein during the interregnum and to hand it over to the true owner found entitled to it. (Paras 44, 24 and 45)

The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited; as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 ot the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired. [Para 96(4)]

The power of the courts in making further Interim orders in the suits is' limited to, and circumscribed by, the area outvide the ambit of Section 7 of the Act, .
[Para 96(5)]

The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power ot management and administration thereof in accordance with 'sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesung of the adjacent area, other than the. disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in View of the purpose of its acquisitlen. [Para 96(6)]

A reference to the comparative use of the disputed area and "the right of worship practised therein, by the two communities on 7-1-1993 and for a significant penod immediately preceding it, would indicate whether the provision in Section 7 directing maintenance of status quo till resolution of the dispute and the transfer by the Central Government contemplated by Section 6 is slanted towards the Hindu community to render the provision violative of the basic feature ot secularism or the rights to equality and freedom of religion, The right of worship of the idols had been practised by Hindu devotees for a long time from much prior tel 1949 in the Ram Chabutra within the disputed site. That right had been interrupted since the act ot demolition on 6-12-1992 restricting the worship of the

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idols since then to only by one pujari, On the other hand, at least since December 1949, the Muslims have not been offering worship at any place in the disputed site
a though, it may turn out at the trial of the suits that they had a right to do so. Any step taken to arrest escalation of communal tension as a result of the demolition of the structure on 6-12-1992 and to achieve communal accord and harmony cannot be termed non-secular much less anti-secular or against the concept of secularism — a creed of the Indian people embedded in the ethos; (Paras 46, 47 and 48)

Even as Ayodhya is said to be of particular significance to the Hindus as a place of pilgrimage because of the ancient belief that Lord Rama was born there,
b the mosque was of significance for the Muslim community as an ancient mosque built by Mir Baqi in 1528 AD. As a mosque, it was a religious place of worship by the Muslims. This indicates the comparative significance of the disputed site to the two communities and also that the impact of acquisition is equally on the right and interest of the Hindu community, Therefore, the argument that the statute as a whole, not merely Section 7 thereof, is anti-secular being slanted in favour of the
c Hindus and against the Muslims cannot be accepted. (Para 51)

Section 7(2) of the Act freezes the situation admittedly in existence on 7-1-1993 which was a lesser right of worship for the Hindu devotees than that in existence earlier for a long time till the demolition of the disputed structure on 6-12-1992; and it does not create a new situation more favourable to the Hindu community amounting to conferment on them of a larger right of worship in the disputed site than that practised till 6-12-1992. Maintenance of status quo as on
d 7-1-1993 does not, therefore, confer or have the effect of granting to the Hindu community any further benefit thereby. The persons responsible for demolition of the mosque on 6-12-1992 were some miscreants who cannot be identified and equated with the entire Hindu community and, therefore. the act of vandalism so perpetrated by the miscreants, cannot be treated as an act of the entire Hindu community for the purpose of adjudging the constitutionality of the enactment.
e Strong reaction against; and condemnation by the Hindus of demolition of the structure in general bears eloquent testimony to this fact. Another effect of the freeze imposed by Section 7(2) of the Act is that it ensures that there can be no occasion for the Hindu community to seek to enlarge the scope of the practice of worship by them as on 7-1-1993 during the interregnum till the final adjudication on the basis that in fact a larger right of worship by them was in vogue up to 6-12-1992. The provision does not curtail practice of right of worship of the Muslim community in the disputed area, there having been de facto no exercise of the practice or worship by them there at least since December 1949; and it maintains status quo by the freeze to the reduced right of worship by the Hindus as in existence on 7-1-1993. However, this freeze enacted in Section 7(2) appears to be reasonable and just in view of the fact that the miscreants who demolished the mosque are suspected to be persons professing to practise the Hindu religion. The Hindu community must, therefore, bear the cross on its chest, for the misdeed of
g the miscreants reasonably suspected to belong to their religious fold. (Paras 52 and 53)

The acquisition of properties under the Act affects the rights of both the communities and not merely those of the Muslim community. The interest claimed by the Muslims is only over the disputed site where the mosque stood before its demolition. The objection of the Hindus to this claim has to be adjudicated. The
h remaining entire property acquired under the Act is such over which no title is claimed by the Muslims. A large part thereof comprises of properties of Hindus of

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which the title is not even in dispute. One of the purposes of the acquisition of the adjacent properties is the er-surement of the effective enjoyment of the disputed site by the Muslim community in the event of its success in the litigation; and acquisition of the adjacent area is incidental to the main purpose and cannot be termed unreasonable. The "Manas Bhawan' and "Sita ki Rasoi", both-belonging to the Hindus, are buildings which closely overlook the disputed site and, are acquired because they are strategic in location in relation to the disputed area. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to the disputed structure area, which forms a unique class by itself, is permissible. Even though, prima facie,. the acquisition of the adjacent area in respect of which there is no dispute of title and which belongs to Hindus may appear-to be a slant against the Hindus, yet on closer scrutiny it is not so since it is for the larger national purpose of maintaining and promoting communal harmony and in consonance with the creed of secularism. Once it is found that it is permissible to acquire an area in excess of the disputed area alone, adjacent. to it, to effectuate the purpose of acquisition of the disputed area and to implement the outcome of the final adjudication between the parties to ensure that in the event of success of the Muslim community in the dispute their success remains meaningful. The extent of adjacent area considered necessary is in the domain of policy and not a matter for judicial scrutiny or a ground for testing the constitutional validity of the enactment.
(Paras 49 and 57)

M. Padmanabha Iyengar v. *Govt. of A.P.*, AIR 1990 AP 357; *Akhara Shri Braham Butav*, *State of Punjab*, AIR 1989 P&H 198: (1988) 95 Punj LR 47, *approved*

However, at a later stage when the exact area acquired which is needed, for achieving the professed purpose of acquisition, can be determined, it would not merely be permissible but also desirable that the superfluous excess area is released from acquisition and reverted to its earlier owner. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the objective of settling the dispute relating to the disputed area cannot be examined at this stage but, in case the superfluous area is not returned to its owner even after the exact area needed for the purpose is finally determined, it would be open to the owner of any such property to then challenge the superfluous acquisition being unrelated to the purpose of acquisition. Rejection of the challenge on this ground to acquisition at this stage, by the undisputed owners of any such property situate in the vicinity of the disputed area, is with the reservation of this liberty to them.
(Para 50)

This is the proper perspective in which the statute as a whole and Section 7 in particular must be viewed. Thus the factual foundation for challenge to the statute as a whole and Section 7(2) in particular on the ground of secularism, a basic feature of the Constitution, and the rights to equality and freedom of religion is nonexistent. The statements of the Central Government soon after the demolition on 7-12-1992 and 27-12-1992 wherein it was said that the mosque would be rebuilt cannot limit the power of Parliament and are not material for adjudging the constitutional validity of the enactment. The validity of the statute has to be determined on the touchstone of the Constitution and not any statements made prior to it. Thus Section 7 does not suffer from the infirmity of being anti-secular or discriminatory to render it unconstitutional. (Paras 54 and 55)

(2) There is no infirmity in Section 6 also to render it unconstitutional.
(Para 58)

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Sub-section (3) of Section 6 enacts that the provisions of Sections 4, S, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the-Central Government. The expression "so far as may be" is indicative of the fact that all or any of these provisions may or may not be applicable to the transferee under sub-section (I). This provides for the situation of transfer being made, if necessary, at any stage and of any part of the property, since Section 7(2) is applicable only to the disputed area. The provision however does not countenance the dispute remaining unresolved or the situation continuing perpetually. The embargo on transfer till adjudication, and in terms thereof, to be read in Section 6(I), relates only to the disputed area, while transfer of any part of the excess area, retention of whlch till adjudication of the disphte relating to the disputed area.may not be necessary, is not inhibited till then, since the acquisition of the excess area is absolute subject to the duty to restore it to the owner if its retention is found, to be unnecessary. The meaning of the word 'vest' in Sections 3 and 6 has to be so construed differently in relation to the disputed area and the excess area in its vicinity. [Paras S6 and 96(7)]

PerAhmadi and Bharucha, JJ.

In view of Sections 2(*a*), 3 and 4(1), 'area' includes the whole bundle of movable and immovable property in the area speclfied in the Schedule and all other rights and interests therein or arising thereout. The whole bundle of property and rights vests, by reason of Section 4(2), in the Certral Government freed and discharged from all encumbrances. (Para 118)

Section 7(I) speaks of property vested in the Central Government under Section 3. It, theretore, speaks of the whole bundle: of property and rights. The provisions'relating to the management and administration of the whole bundle of property and rights contained in Section 7 are interim provisions, to operate until vesting under Section 6 has taken place. Section 7(1) says that the whole bundle of property and rights shall be managed by the Central Government'or by a person or body of persons, or trustees of any trust authorised by the Central Government. This, as Section 7(2) shows, Isthe "authorised person'lunder Section *2(b).* He or it may not be the authority or other body or trustees referred to in Section 6(1). The power to manage the whole bundle of property and rights maybe conferred upon any person or body of persons'or trustees of any trust even though he or they are not required to comply with the terms and conditions that the Central Government may deem fit to impose under Section 6(1). (paras J19, 129 and 120)

Section 7(2) relates only to that part of the area upon which the disputed structure stood (the disputed site), This provision requires the Central Government of the authorised person to ensure, in managing the whole bundle of property and rights, that the posinon existing on the disputed site before midnight on the night of 6-1-1993/7-1..1993 'is maintained. This implies that the Central Government or the authorised person is required to continue with the puja that was being performed on the disputed site before.7-1-1993. This is provided for even though, by reason of Section 4(2), the orders of the court in this behalf cease to have effect. The Central Government or the authorised person is, therefore, obliged to maintain the "position" in respect of the disputed site as it was before midnight on the night of 6-1-1993/7-1..1993, and it is required to do so in "managing" thewhole bundle of property and rights, 'This implies not only that the debris of the demolished structure must be maintained as it' stands but also that the idols which had been placed on the disputed site after the demolition had taken place must be retained

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where they are and the puja carried on before them must be continued.'
(Paras 119, 121, 122 and 125)

a There is no provision in the Act which indicates in clear terms what use the whole bundle of property and rights, including the disputed site, will be put to by the Central Government. An indication in this behalf is provided by Section 6. Since the Act does not spell out the use to which the whole bundle of property and rights is intended to be put and since the provisions of Section 7 are applicable even to the authority or body or trust in which the Central Government may vest the whole bundle of property and rights or any part thereof under the provisions of b Section 6, it is possible to read the provisions of Section 7 as being of a permanent nature. The Act read by itself, therefore, suggests that the idols shall remain on the disputed site for an indefinite period of time and puja shall continue to be performed before them. Section 7(2), thus, perpetuates the performance of pula on the disputed site. No account is taken of the fact that the structure thereon had been destroyed in "a most reprehensible act. The perpetrators of this deed struck not only against a place of worship but at the principles of secularism, democracy and the c rule of law ...". (White Paper, para 1.35.) No account is taken of the fact that there is a dispute in respect of the site on which Puja is to be performed; that, as stated in the White Paper, until the night of 22-12-1949/23-12-1949, when the idols were placed in the disputed structure, the disputed structure was being used as a mosque; and that the Muslim community has a claim to offer *namaz* thereon.
(Paras 123, 126 and 138)

d The submission that what had happened at Ayodhya on 6-12-1992, could never happen again overlooks the fact that the Indian Penal Code contains provisions in respect of offences relating to religion. Those who razed the disputed structure to the ground on 6-12-1992, were not deterred by these provisions. Others similarly minded are as little likely to be deterred by the provisions of the Places of Worship Special Provisions Act. (Para 139)

e Section 6 is an enabling provision. When the vesting takes place in respect of the whole bundle of property and rights or of any part thereof, all the rights of the Central Government in the whole bundle of property and rights or such part thereof as has been vested, shall be deemed to be transferred to the authority or body or trust in which it is vested. (Para 123)

The provisions of Section 6 apply to the whole bundle of property and rights; that is to say, they apply also to the disputed site. The disputed site may also be f vested in an authority or body or trust that is willing to comply with the terms and conditions that the Central Government might think fit to impose. Those terms and conditions are not specified in the Act, nor is there any indication in that behalf available. The only restriction imposed upon such authority or body or trust, apart from the terms and conditions that the Central Government may think fit to impose, are those provided in Section 7. This is set out in Section 6(3). The provisions of g Sections 4, 5 and 11 which are also mentioned in Section 6(3) are provisions that empower and protect the authority or body or trust.' (Para 124)

H. Acquisition of Certain Area at Ayodhya Act, 1993 — Legislative competence - Held, per majority, Act falls under Entry 42 of List III and not under Entry 1 of List II Seventh Schedule to the Constitution and hence Parliament is competent to enact - Constitution of India, Sch. VII List III Entry 42 and List II Entry 1

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Held :

Per majority

a The legislative competence is traceable to Entry 42, List III and the State of Uttar Pradesh being under President's rule at the relevant time, the legislative competence of Parliament, in the circumstances, cannot be doubted. That apart, the pith and substance of the legislation is "acquisition of property" and not 'public order' under Entry 1 of List III of Seventh Schedule to the Constitution. The comprehensive Entry 42 in List III as a result of the Constitution (Seventh Amendment) Act leaves no doubt that an acquisition Act of this kind falls clearly b within the ambit of this entry and, therefore, Parliament has the legislative competence to enact this legislation. (Para 30)

State of Bihar v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*, 1952 SCR 889 : AIR 1952 SC 252; *Deputy Commissioner and Collector* v. *Durga Nath Sarma*, (1968) 1 SCR 561 : AIR 1968 SC 394, *relied on*

Per Ahmadi and Bharucha, JJ.

c The argument that the Act was public order legislation and, therefore, beyond the competence of Parliament is very plausible. However, it is not necessary to discuss this matter. (para 154)

I. Constitution of India — Art. 143(1) - Reference - Court can decline to answer the question posed in Reference 1 of 1993 on Ram Janma Bhumi-Babri Masjid issue — Reference of question whether a Hindu temple/religious structure existed prior to construction of the disputed structure on the disputed d site - On the basis of the Court's opinion on the question, Central Govt. proposing to initiate negotiations with the rival claimants - Held, per majority, Reference becomes superfluous, S. 4(3) of Acquisition of Certain Area at Ayodhya Act, 1993 having been declared invalid resulting in revival of the pending suits and legal proceedings wherein dispute has to be adjudicated - Hence answer to the question posed in the Reference declined - Held, per Ahmadi and Bharucha, JJ. (concurring), the Act and the Reference opposed to e secularism and unconstitutional — Govt. proposes to use the Court's opinion in the Reference as basis for negotiations between the parties and does not propose to settle the dispute on the basis of the opinion - Court not competent to decide such question which would be based on expert evidence - Moreover, opinion may incur criticism of one or both the communities whose interests are involved in the issue on ground of not being heard or allowed to put evidence

Held :

Per majority

In the view taken on the question of validity of the Acquisition of Certain Area at Ayodhya Act, 1993 and as a result of upholding the validity of the entire statute, except Section 4(3) thereof, resulting in revival of the pending suits and legal proceedings wherein the dispute between the parties has to be adjudicated, the Reference made under Article 143(1) becomes superfluous and unnecessary. For g this reason, it is unnecessary for the Supreme Court to examine the merits of the submissions made on the maintainability of this Reference. Accordingly the answer to the question under Reference is declined and returned. (Para 83)

Per Ahmadi and Bharucha, JJ. (concurring)

The Supreme Court is entitled to decline to answer a question posed to it under Article 143 if it considers that it is not proper or possible to do so, but it must h indicate its reasons. The Reference must not be answered, for the following reasons: (Paras 147 and 148)

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Special Reference No. 1 of 1964, (1965) 1 SCR 413: AIR 1965 SC 745; *Special Courts Bill, 1978, Re"* (1979) 1 SCC 380· (1979) 2 SCR 476, *relied on*

The Act and the Reference, favour one religious community and disfavour another; the purpose of the Reference is, therefore, opposed to secularism and is unconstitutional. Besides, the Reference does not serve a constitutional purpose. (Para 149) a

Secondly, the fifth recital to the Reference states that.';'the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion", It is clear that the Central Government does not propose to settle the dispute in terms of the Court's opinion. It proposes to use the Court's opinion as a springboard for negotiations..Resolution of the dispute as a result of such negotiations cannot be said to be a resolution of the dispute "in terms of the said opinion", Even in the circumstance that the Supreme Court opines that no Hindu temple or Hindu religious structure existed on the disputed site before the disputed structure was built thereon, there is no certainty that the mosque will be rebuilt. (Para 150) b

Thirdly, there is the aspect of evidence in relation to the question referred. It cannot be said that a court of law is not competent to decide such a question, It can be done if expert evidence of archaeologists and historians is led, and is tested in cross-examination. The, principal protagonists of the two stands are not appearing in the Reference; they wal neither lead evidence nor cross-examine. The learned Solicitor General stated that the Central Government would lead no evidence, but it would place before the Court the material that it had collected from the two sides during the course of earlier negotiations, The Court being ill-equipped to examine and evaluate such material, it would have to appoint experts in the field to do so, and their evaluation would go unchallenged. Apart from the inherent inadvisability of rendering a judicial opinion on such evaluation, the opinion would be liable to the criticism of one or both sides that it was rendered without hearing them or their evidence. This would ordinarily be of no significance for they had chosen to stay away, but this opinion is intended to create a public climate for negotiations and the criticism would find the public ear, to say nothing of the fact that it would impair the Supreme Court's credibility. Ayodhya is a storm that will pass. The dignity and honour of the Supreme Court cannot be compromised because of it. (Paras 151 and 152) c d e

No observation made in this context is a reflection on the referring authority. The Court has the highest respect for the office of the President of India and for its present incumbent; his secular credentials are well known. (Para 153) f

J. Constitution of India - Preamble and Arts. 25, 26, 14, 15, 16, 27, 28, 30, 51-A, 300-A and 356 - Secularism - Concept and object of - A basic feature of the Constitution - Secularism is one facet of right to equality

K. Constitution of India - Arts. 25 and 26 - Compulsory acquisition of place of religious worship viz. Mosque - Constitutionality - Held, per majority, a mosque can be compulsorily acquired by Govt. in exercise of its sovereign or prerogative power, which is independent of Art. 300-A or Art. 31 (as it stood before its omission) — Status of mosque in secular India is same as and not higher than that of places of worship of other religions such as temple, church etc. - Right of worship does not include right of worship at any and every place or worship - What is protected under Art. 25 is the religious practice which forms an essential and integral part of religion - If significance of the place of the religious worship viz. the mosque is such that its acquisition would result in extinction of right to practise religion itself, then only acquisition would be invalid — Held, per Ahmadi and Dharocha, JJ., g h

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where members of majority **community make claim** upon place of worship of minority **community** and create public **disorder, State acquisition** of the place of **worship** to **preserve public** order, in **the circumstances** would **be against the**
a principle of **secularism** - Eminent domain - General Clauses Act, 1897, S. 3(26)

Held:

Per majority

It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith
b emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme
c in our Constitution. "The purpose of law in plural societies is not the progressive assimilation of the minorities in the majoritarian milieu. This would not solve the problem; but would vainly seek to dissolve it." The true concept of secularism, and the role of judiciary in a pluralist society, as also the duty of the court in interpreting such a law, have to be kept in mind. (Paras 37, 38 and 39)

"*Law in a Pluralist Society*" by M.N. Venkatachaliah, *J., relied on*

S.R. Bommai v. Union of India, (1994) 3 SCC 1, *relied on*

d *Kesavananda Bharati* v. *State of Kerala,* (1973) 4 SCC 225 : 1973 Supp SCR 1; *Indira Nehru Gandhi* v. *Raj Narain;* 1975 Supp SCC 1 : (1976) 2 SCR 347; *S.P. Mittal v. Union of India*, (1983) 1 SCC 51 : (1983) 1 SCR 729, *cited*

Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or
e own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an **essential or integral part of the religion, stand** on a different footing and have to be treated differently and more reverentially. (Paras 77 and 78)

Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat, (1975) 1 SCC 11 : (1975) 2 SCR 317, *relied on*

g *Raja Suryapalsingh* v. *U.P. Govt.*, AIR 1951 All 674: 1951 All LJ 365 : 1951 AWR (HC) 317, *approved*

Subject to the protection under Articles 25 and 26, places of religious worship like mosques, churches, temples etc. can be acquired under the State's sovereign power of acquisition. Such acquisition per se does not violate either Article 25 or Article 26. The decisions relating to taking over of the management have no
h bearing on the sovereign power of the State to acquire property. The power of acquisition is the sovereign or prerogative power of the State to acquire property.

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Such power exists independent of Article 300-A or the earlier Article 31 of the Constitution which merely indicate the limitations on the power of acquisition by the State. (Paras 74 and 72) a

Chiranjit Lal Chowdhuri v *Union of India,* 1950 SCR 869 : AIR 1951 SC 41; *State of W.B.* v. *Subodh Gopal Bose,* 1954 SCR 587: AIR 1954 SC 92; *Khajamian Wakf Estates* v *State of Madras,* (1970) 3 SCC 894: (1971) 2 SCR 790, *relied on*

Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every b immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection, unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and *nama;* (prayer) by Muslims can be offered anywhere, even in open, Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. c Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger d national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse e possession. (Paras 81 and 82)

Mulla's Principles of Mahomedan Law, 19th Edn., by M. Hidayatullah - Section 217, *relied on*

Muthialu Chetti v. Bapun Saib, ILR (1880) 2 Mad 140: 5 Ind Jur 23: 2 Weir 68; *Sundram Chetti v. Queen,* ILR (1883) 6 Mad 203 : 2 Weir 77 (FS); *Mosque known as Masjid Shahid Ganj* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar,* AIR 1938 Lah 369 : 40 PLR 319; *Mosque known as Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar,* AIR 1940 PC 116: 44 CWN 957 : 67 IA 251, *approved*

Per Ahmadi and Bharucha, JJ.

Secularism is a part of the basic features of the Constitution. Article 25(1) protects the rights of individuals. Exercise of the right of the individual to profess, practise and propagate religion is subject to public order. Secularism is absolute; the State may not treat religions differently on the ground that public order requires g it. The principle of secularism illumines the provisions of Articles 15 and 16. (Paras 135, 143 and 144)

Commissioner, Hindu Religious Endowments, Madras v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.,* 1954 SCR 1005: AIR 1954 SC 282; *S.R. Bommai* v. *Union of India,* (1994) 3 SCC 1; *Kesavananda Bharati* v. *State of Kerala,* (1973) 4 SCC 225 : 1973 Supp SCR 1, *relied on* h

Indira Nehru Gandhi v. *Raj Narain,* 1975 Supp SCC 1 : (1976) 2 SCR 347, *cited*

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Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, to place all religious communities on a par. When, therefore, adherents of the religion of the majority of Indian citizens make a claim
a upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the State to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of
b worship in such circumstances is to efface the principle of secularism from the Constitution. (Para 140)

If the title to the place of worship is in dispute in a court of law and public order is jeopardised, two courses are open to the Central Government. It may apply to the court concerned to be appointed Receiver of the place of worship, to hold it secure pending the final adjudication of its title, or it may enact legislation that makes it statutory Receiver of the place of worship pending the adjudication of its
c title by the court concerned. In either event, the Central Government would bind itself to hand over the place of worship to the party in whose favour its title is found. (Para 141)

L. Interpretation of Statutes - Literal construction - When should not be adopted

A construction which the language of the statute can bear and promotes a larger national purpose must be preferred to a strict literal construction tending to
d promote factionalism and discord. (Para 64)

R-M/13649/C

Advocates who appeared in this case:

Petitioner in person in T.C. (C) Nos. 41 and 44 of 1993.

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Satish Chandra, Rajeev Dhavan, O.P. Sharma, P.P. Malhotra, Jitendra Sharma, V.M. Tarkunde, Anil B. Divan, D.V. Sehgal, P.P. Rao, P.N. Duda, F.S. Nariman, Ashok H. Desai, Joseph Vellapally, B.P. Agarwal and P.L. Mishra, Senior Advocates (C.S. Ashri, R.P. Wadhwani, Arun Kumar Sinha, Zaki Ahmad Khan, Manoj Saxena, Irshad Ahmad, Ms Aparna Yiswanathan, Mustaq Ahmad, M.M. Kashyap, A. Subba Rao, Hemant Sharma, S.A. Syed, Shahid Rizvi, A.N'.M. Tayyab Khan, Ms Deepali Talwar, R.S. Massey Verma, M. Zakikhan, M.T. Khen, Abdul Mannan, Shakil Ahmad Syed, Z. Jilani, M.A. Siddiqui, Ms Ounwant Dara, Ms NiJofer Bhagwat, Ms P. Gaur, R.C. Verma, R.B. Misra, A.P. Dhamija, S.K. Jain, Siba Sankar Mishra, A. Bhattacharji, P.P. Singh, Randhir Jam, K.C. Dua, Dharam Das, S.S. Misra, Uma Nath Singh, Ashok Kumar Singh, S.K. Agnihotri, S.K. Bandyopadhyay, Pradip Kumar, Sarwa Mitter, M. Veerappa, S.C. Sharma, K.H. Nobin Singh, S.M. Jadhav,
g A.S. Bhasme, VIKI Beeran, MIT. George, B.P. Agarwal, Aruneshwar Gupta, G. Prakash, K.S. Bhati, S. Venkata Reddy, Krishna Koundinya, Ms Promila Choudhary, Nikhil Nayyar, T.V.S.N. Chari, N.K. Sharma, R.C. Misra, Dr Meera Aggarwal, S.N. Bhuyan, S.K. Nandy, Bada Ahmed, J.B. Dadachanji, Ms Tamali Sen Gupta, A.S. Panch, Advocates, for JBD & Co., S.N. Mehta, R.P. Singh, H.K. Pun, S.K. Puri, Deoki Nandan Agrawal, I.S. Goyal, Ms Indu Malhotra, A.K. Goel, A.S. Pundir, M.A. Firoz, Sanjay Pankh, L.K. Gupta, Ms K. Chaudhary Goodwill Indeevar, Ms Kusum Cheudhary, Ms Madhu Moolchanciani, Ms Rani Jethmalani,
h R.K. Mehta, S.K. Sabharwal, C.D. Singh, Anip Sachthey, Advocates, with them) for the other parties.

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effect, therefore, from December 1949 till 6-12-1992 the structure had not been used as a mosque."

a 6. The movement to construct a Ram Temple at the site of the disputed structure gathered momentum in recent years which became a matter of great controversy and a source of tension. This led to several parleys the details of which are not very material for the present purpose, These parleys involving the Vishwa Hindu Parishad (VHP) and the All India Babri Masjid Action Committee (AIBMAC), however, failed to resolve the dispute. A new b dimension was added to the campaign for construction of the temple with the formation of the Government in Uttar Pradesh in June 1991 by the Bhartiya Janata Party (BJP) which declared its commitment to the construction of the temple and took certain steps like the acquisition of land adjoining the disputed structure while leaving out the disputed structure itself from the acquisition. The focus of the temple construction movement from October c 1991 was to start construction of the temple by way of *kar sewa* on the land acquired by the Government of Uttar Pradesh while leaving the disputed structure intact. This attempt did not succeed and there was litigation in the Allahabad High Court as well as in this Court. There, was a call for resumption of *kar sewa* from 6-12-1992 and the announcement made by the organisers was for a symbolic *kar sewa* without violation of the court orders d including those made in the proceedings pending in this Court. In spite of initial reports from Ayodhya on 6-12-1992 indicating an air of normalcy, around midday a crowd addressed by leaders of BJP, VHP, etc., climbed the Ram Janma Bhumi-Babri Masjid (RJM-BM) structure and started damaging the domes. Within a short time, the entire structure was demolished and razed to the ground. Indeed, it was an act of "national shame". What was e demolished was not merely an ancient structure; but the faith of the minorities in the sense of justice and fairplay of majority. It shook their faith in the rule of law and constitutional processes, A five-hundred-year-old structure which was defenceless and whose safety was a sacred trust in the hands of the State Government was demolished.

7. After referring to the details en this tragedy, the White Paper in f Chapter I on 'Overview' concludes thus:

"1.35 The demolition of the Ram Janma Bhoomi-Babri Masjid structure at Ayodhya on 6-12-1992 was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution. In a move as sudden as it was shameful, a few thousand people managed to outrage the sentiments of millions of Indians of all communities who have reacted to this incident with anguish and dismay.

1.36 What happened on 6-12-1992 was not a failure of the system as a whole, nor of the wisdom inherent in India's Constitution, nor yet of the power of tolerance brotherhood and compassion that has so vividly h informed the life of independent India. It was, the Supreme Court

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observed on that day, 'a great pity that a constitutionally elected Government could not discharge its duties in a matter of this sensitiveness and magnitude'. Commitments to the Court and Constitution, pledges to Parliament and the people. were simply cast aside. Therein lay the failure, therein the betrayal. a

1.37 Today India seeks to heal, and not reopen its wounds; to look forward with hope, and not backwards with fear; to reconcile reason with faith. Above all, India is determined to press ahead with the National Agenda, undeterred by aberrations." b

8. It may be mentioned that a structure called the Ram Chabutra stood on the disputed site within the courtyard of the disputed structure. This structure also was demolished on 6-12-1992 (Appendix-V to the White Paper). Worship of the idols installed on the Ram Chabutra by Hindu devotees in general, it appears, had been performed for a considerable period of time without any objection by the Muslims to its worship at that place, prior to the shifting of the idols from the Ram Chabutra to the disputed structure in December 1949. As a result of demolition of Ram Chabutra also on 6-12-1992, the worship by Hindus in general even at that place was interrupted. Thereafter, the worship of idols is being performed only by a priest nominated for the purpose without access to the public. c

9. A brief reference to certain suits in this connection may now be made. In 1950, two suits were filed by some Hindus; in one of these suits in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in December 1949 and their puja by the Hindus continued. The interim order was confirmed by the High Court in April 1955. On 1-2-1986, the District Judge ordered the opening of the lock placed on a grill leading to the sanctum sanctorum of the shrine in the disputed structure and permitted puja by the Hindu devotees. In 1959, a suit was filed by the Nirmohi Akhara claiming title to the disputed structure. In 1981, another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board. In 1989, Deoki Nandan Agarwal, as the next friend of the Deity filed a title suit in respect of the disputed structure. In 1989, the aforementioned suits were transferred to the Allahabad High Court and were ordered to be heard together. On 14-8-1989, the High Court ordered the maintenance of status quo in respect of the disputed structure (Appendix-I to the White Paper). As earlier mentioned, it is stated in para 1.2 of the White Paper that: d e

"... interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December 1949 till 6-12-1992 the structure had not been used as a mosque." g

10. Prior to December 1949 when the idols were shifted into the disputed structure from the Ram Chabutra, worship by Hindu devotees at the Ram Chabutra for a long time without any objection from Muslims is also beyond controversy. A controversy, however, is raised about use of the h

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disputed structure as a mosque from 1934 to December 1949. One version is that after some disturbance, in 1934, the use of the disputed structure as a
a mosque had been stopped from 1934 itself and not merely from December 1949. The other side disputes the alleged disuse of the mosque for prayers prior to December 1949. The stand of the Uttar Pradesh Government in the suits was that the place was used as a mosque till 1949.

11. As a result of the incidents at Ayodhya on 6.12-1992, the President of India issued a proclamation under Article 356 of the Constitution of India
b assuming to himself all the functions of the Government of Uttar Pradesh, dissolving the U.P. Vidhan Sabha, The White Paper in Chapter II mentions the 'Background' and therein it is stated as under:

"2.1 At the centre of the RJB.BM dispute is the demand voiced by Vishwa Hindu Parishad (VHP) and its allied organisations for the restoration of a site said to be the birthplace of Sri Ram in Ayodhya. Till
c 6-12-1992 this site was occupied by the structure erected in 1528 by 'Mir Baqi' who claimed to have built it on orders of the first Mughal Emperor Babar, This structure has been described in the old government records as Masjid Janmasthan. It is now commonly referred to as Ram Janma Bhumi-Babri Masjid.

d 2.2 The VHP and its allied organisations base their demand on the assertion that this site is the birthplace of Sri Ram and a Hindu temple commemorating" this site stood here till it was destroyed on Baber's command and a Masjid was erected in its place. The demand of the VHP has found support from the Bhartiya Janata Party (BJP). The construction of a Ram temple at the disputed site, after removal or relocation of the existing structure, was a major plank in BJP's campaign
e during elections held in 1989 and 1991. Other major political parties, however, had generally opposed this demand and had taken the stand that while a temple should be built, the issues in dispute should be resolved either by negotiations or by orders of the Court.

2.8 During the negotiations aimed at finding an amicable solution to the dispute, one issue which came to the fore was whether a Hindu temple had existed on the site occupied by the disputed structure and whether it was demolished on Babar's orders for the construction of the Masjid. It was stated on behalf of the Muslim organisations, as well as by certain eminent historians, that there was no evidence in favour of either of these two assertions. It was also stated by certain Muslim leaders that if these assertions were proved, the Muslims would
g voluntarily handover the disputed shrine to the Hindus. Naturally, this became the central issue in the negotiations between the VHP and AIBMAC.

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2.12 The historical debate has thus remained inconclusive although
h much progress has been made in identifying the areas of agreement and difference. Conclusive findings can be obtained only by way of reference

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to a competent authority. However, as brought out elsewhere in this Paper the negotiations were disrupted at a crucial phase. Now, the entire evidence has disappeared along with the disputed structure. It is tragic and ironical that the Ram Chabutra and Kaushalya Rasoi, which continued as places of worship during periods of Muslim and British rule have disappeared along with the RJB-BM structure at the hands of people professing to be 'devotees' of Lord Ram.

Placing of idols in the disputed structure

2.13 As has been mentioned above, Hindu structures of worship already existed in the outer courtyard of the RJB-BM structure. On the night of 22/23-12-1949, however, Hindu idols were placed under the central dome of the main structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace, the civil administration attached the premises under Section 145 of the Code of Criminal Procedure. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure. The main events of this chain have been summarised in *Appendix-I*.

2.14 Soon after the installation of the idols two civil suits were filed by Hindu plaintiffs seeking to restrain the Administration from removing the idols from the disputed structure or placing any restrictions in the way of devotees intending to offer worship. Interim injunctions were issued by the civil court to this effect. These injunctions were confirmed by the Allahabad High Court in 1955.

2.15 The Hindu idols thus continued inside the disputed structure since 1949. Worship of these idols by Hindus also continued without interruption since 1949 and the structure was not used by the Muslims for offering prayers since then. The controversy remained at a low ebb till 1986 when the District Court of Faizabad ordered opening of the lock placed on a grill leading to the sanctum sanctorum of the shrine. An organisation called the Babri Masjid Action Committee (BMAC), seeking restoration of the disputed shrine to the Muslims came into being and launched a protest movement. The Hindu organisations, on the other hand, stepped up their activities to mobilise public opinion for the construction of a Ram temple at the disputed site."

12. After the imposition of President's rule in the State of Uttar Pradesh as a consequence of the events at Ayodhya on 6-12-1992, action taken by the Central Government is detailed in Chapter VIII of the White Paper with reference to the communal situation in the country which deteriorated sharply following the demolition of the RJB-BM structure on 6-12-1992 and spread of communal violence in several other States. Para 8.11 in Chapter VIII relating to the "ACTION TAKEN BY THE CENTRAL GOVERNMENT" is as under:

"8.11 Mention has been made above (Overview) of the decisions taken on 7th December by the Government to ban communal

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organisations, to take strong action for prosecution of the offences connected with the demolition, to fix responsibilities of various
a authorities for their lapses relating to the events of December 8, to rebuild the demolished structure and to take appropriate steps regarding new Ram temple. The last two decisions were further elaborated on 27th December as follows:

'The Government has decided to acquire all areas in dispute in the suits pending in the Allahabad High Court. It has also been
b decided to acquire suitable adjacent area. The acquired area excluding the area on which the disputed structure stood would be made available to two Trusts which would be set up for construction of a Ram Temple and a Mosque respectively and for planned development of the area,

c The Government of India has also decided, to request the President to seek the opinion of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood. The Government has also decided to abide by the opinion of the Supreme Court and to take appropriate steps to enforce the Court's opinion. Notwithstanding the acquisition of the disputed area, the Government would, ensure that the position
d existing prior to the promulgation of the Ordinance is maintained until such time as the Supreme Court gives its opinion in the matter. Thereafter the rights of the parties shall be determined in the light to the Court's opinion'.'

In pursuance of these decisions an ordinance named 'Acquisition of Certein Area at Ayodhya Ordinance' was issued on 7.1-1993 for
e acquisition of 67.703 acres of land in the Ram Janma Bhoomi-Babri Masjid complex. A Reference to the Supreme Court under Article 143 of the Constitution was also made on the same day, Copy of the Ordinance is at *AppendiX-XV* and of the Reference at *Appendix-XVI*."

13. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 (No. 8
f of 1993) has been replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993), the constitutional validity of which has to be examined by us.

14. The said Ordinance, later replaced by Act No. 33 of 1993 and the Special Reference under Article 143(1) of the Constitution of India were made simultaneously the same day on 7-1-1993. It would be appropriate at
g this stage to quote, in extenso, the Statement of Objects and Reasons for this enactment, the said Act No. 33 of 1993 and the Special Reference under Article 143(1) of the Constitution,

"STATEMENT OF OBJECTS AND REASONS

There has been a long-standing dispute relating to the erstwhile Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to
h communal tension and violence from time to time and ultimately led to the destruction of the disputed structure on 6-12-1992. This was

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followed by widespread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up.

2. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 was accordingly promulgated by the President on 7-1-1993. By virtue of the said Ordinance the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Ordinance stand transferred to, and vest in, the Central Government.

3. The Bill seeks to replace the aforesaid Ordinance.

S.B. CHAVAN.

NEW DELHI;
The 9th March, 1993."

"SPECIAL REFERENCE

Whereas a dispute has arisen whether a Hindu temple or any Hindu religious structure existed prior to the construction of the structure (including the premises of the inner and outer courtyards of such structure, commonly known as the Ram Janma Bhumi-Babri Masjid, in the area in which the structure stood in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

2. And whereas the said area is located in Revenue Plot Nos. 159 and 160 in the said Village Kot Ramchandra;

3. And whereas the said dispute has affected the maintenance of public order and harmony between different communities in the country;

4. And whereas the aforesaid area vests in the Central Government by virtue of the Acquisition of Certain Area at Ayodhya Ordinance, 1993;

5. And whereas notwithstanding the vesting of the aforesaid area in the Central Government under the said Ordinance the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion;

6. And whereas in view of what has been hereinbefore stated it appears to me that the question hereinafter set out has arisen and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

7. Now, therefore, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Shanker Dayal

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Sharma, President of India, hereby refer the following question to the Supreme Court of India for consideration and opinion thereon, namely:

a Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?

Sd/-
President of India

b New Delhi;
Dated 7th January, 1993."

"THE ACQUISITION OF CERTAIN AREA AT AYODHYA ACT, 1993
(NO. 33 OF 1993)

c [3rd April, 1993]

An Act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

Whereas there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri

d Masjid, situated in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

And whereas the said dispute has affected the maintenance of public order and harmony between different communities in the country;

e And whereas it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

And whereas with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;

Be it enacted by Parliament in the Forty-fourth Year of the Republic

f of India as follows:

CHAPTER I

PRELIMINARY

1. Short title and commencement.— (1) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

g (2) It shall be deemed to have come into force on the 7th day of January, 1993.

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

(a) 'area' means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

h (b) 'authorised person' means a person or body of persons or trustees of any trust authorised by the Central Government under Section 7;

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(c) 'Claims Commissioner' means the Claims Commissioner appointed under sub-section (2) of Section 8;

(d) 'prescribed' means prescribed by rules made under this Act. a

CHAPTER II

ACQUISITION OF THE AREA IN AYODHYA

3. Acquisition of rights in respect of certain area.— On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government. b

4. General effect of vesting.— (1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were c immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

(2) All properties aforesaid which have vested in the Central Government under Section 3 shall by force of such vesting be freed and d discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect. e

(3) If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under Section 3, is pending before any court, tribunal or other authority, the same shall abate.

5. Duty of person or State Government in charge of the management of the area to deliver all assets, etc.— (1) The Central Government may take all necessary steps to secure possession of the area which is vested in that Government under Section 3.

(2) On the vesting of the area in the Central Government under Section 3, the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before g such vesting shall be bound to deliver to the Central Government or the authorised person, all assets, registers and other documents in their custody relating to such vesting or where it is not practicable to deliver such registers or documents, the copies of such registers or documents authenticated in the prescribed manner.

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6. Power of Central Government to direct vesting of the area in another authority or body or trust.- (1). Notwithstanding anything contained in Sections 3, 4, 5 and 7, the Central Government may, if it is satisfied that any authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, Instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust either on the date of the notification or on such later date as may be specified in the notification.

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-section (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of Sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose, references therein to the 'Central Government' shall be construed as references to such authority or body or trustees.

CHAPTER III

MANAGEMENT AND ADMINISTRATION OF PROPERTY

7. Management of property by Government.— (1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under Section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf.

(2) In managing the property vested in the Central Government under Section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as Ram Janma Bhumi-Babri Masjid, stood in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Teshil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained.

CHAPTER IV

MISCELLANEOUS

8. Payment of amount.— (1) The owner of any land, building, structure or other property comprised in the area shall be given by the Central Government, for the transfer to and vesting in that Government under Section 3 of that land, building, structure or other property, in cash

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an amount equivalent to the market value of the land, building, structure or other property.

(2) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-section (1), by notification in the Official Gazette, appoint a Claims Commissioner. a

(3) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.

(4) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act: b

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter. c

9. Act to override all other enactments.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act or any decree or order of any court, tribunal or other authority. d

10. Penalties.— Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both. e

11. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against the Central Government or the authorised person or any of the officers or other employees of that Government or the authorised person for anything which is in good faith done or intended to be done under this Act.

12. Power to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that g h

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any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

a 13. *Repeal and saving.*— (1) Subject to the provisions of sub-section (2), the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (Ord. 8 of 1993), is hereby repealed.

(2) Notwithstanding anything contained in the said Ordinance,—

(a) the right, title and interest in relation to plot No. 242 situated in Village Kot Ramchandra specified against Sl. No. 1 of the

b Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government,

(b) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding

c (including the orders or interim orders of any court thereon) shall be deemed to have been restored to the position existing immediately before the commencement of the said Ordinance

(c) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have

d been taken or done.

(3) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See Section 2(a)]

Description of the Area

* *

15. At the hearing, it was strenuously urged that the question of fact referred under Article 143(1) of the Constitution is vague, the answer to it is by itself not decisive of the real controversy since the core question has not been referred; and it also gives no definite indication of the manner in which the Central Government intends to act after the Special Reference is answered, to settle the dispute. It was urged that the question referred is, therefore, academic, apart from being vague, and it does not serve any constitutional purpose to subserve which the advisory jurisdiction of this Court could be invoked; that the real object and purpose of the Reference is to take away a place of worship of the Muslims and give it away to the

g Hindus offending the basic feature of secularism; and that, therefore, we should decline to answer the Special Reference. The learned Solicitor General who appeared for the Union of India was asked to clarify the stand of the Central Government on this point. Initially, it was stated by the learned Solicitor General that the answer to the question would provide the

h basis for further negotiations, between the different groups to settle the controversy and the Central Government would then be able to decide the

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effective course available to it for resolving the controversy. On being asked to further clarify the stand of the Central Government about the purpose of the Special Reference, the learned Solicitor General made a statement in writing on behalf of the Union of India on 14-9-1994 as under: a

"Government stands by the policy of secularism and of even-handed treatment of all religious communities. The Acquisition of Certain Area at Ayodhya Act, 1993, as well as the Presidential Reference, have the objective of maintaining public order and promoting communal harmony and the spirit of common brotherhood amongst the people of India. b

Government is committed to the construction of a Ram temple and a mosque, but their actual location will be determined only after the Supreme Court renders its opinion in the Presidential Reference.

Government will treat the finding of the Supreme Court on the question of fact referred under Article 143 of the Constitution as a verdict which is final and binding. c

In the light of the Supreme Court's *(sic)* opinion and consistent with it, Government will make efforts to resolve the controversy by a process of negotiations. Government is confident that the opinion of the Supreme Court will have a salutary effect on the attitudes of the communities and they will no longer take conflicting positions on the factual issue settled by the Supreme Court. d

If efforts at a negotiated settlement as aforesaid do not succeed, Government is committed to enforce a solution in the light of the Supreme Court's opinion and consistent with it. Government's action in this regard will be even-handed in respect of both the communities. If the question referred is answered in the affirmative, namely, that a Hindu temple/structure did exist prior to the construction of the demolished structure, Government action will be in support of the wishes of the Hindu community. If, on the other hand, the question is answered in the negative, namely, that no such Hindu temple/structure existed at the relevant time, then Government action will be in support of the wishes of the Muslim community." e f

This statement in writing made by the learned Solicitor General on behalf of the Union of India forms a part of the record and has to be taken into account to indicate the purpose for which the Special Reference under Article 143(1) has been made to this Court.

16. The dispute and its background are mentioned in paras 2.1, 2.2 and 2.3 of Chapter II of the White Paper quoted earlier. This is the backdrop in which the constitutional validity of Act No. 33 of 1993 and the maintainability of the Special Reference made under Article 143(1) of the Constitution of India have to be examined. g

Validity of Act No. 33 of 1993

17. Broadly stated, the focus of challenge to the statute as a whole is on the grounds of secularism, right to equality and right to freedom of religion. Challenge to the acquisition of the area in excess of the disputed area is in h

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addition on the ground that the acquisition was unnecessary being unrelated to the dispute pertaining to the small disputed area within it. A larger
a argument advanced on behalf of some of the parties who have assailed the Act with considerable vehemence is that a mosque being a place of religious, worship by the Muslims, independently of whether the acquisition did affect the right to practise religion, is wholly immune from the State's power of acquisition and the statute is, therefore, unconstitutional as violative of Articles 25 and 26 of the Constitution of India for this reason alone. The
b others, however, limited this argument of immunity from acquisition only to places of special significance, forming an essential and integral part of the right to practise the religion, the acquisition of which would result in the extinction of the right to freedom of religion itself. It was also contended that the purpose of acquisition in the present case does not bring the statute within the ambit of Entry 42, List III but is referable to Entry 1, List II and,
c therefore, Parliament did not have the competence to enact the same. It was then urged by learned counsel canvassing the Muslim interest that the legislation is tilted heavily in favour of the Hindu interests and, therefore, suffers from the vice of non-secularism and discrimination in addition to violation of the right to freedom of religion of the Muslim community. It was also urged by them that the Central Government, after the Prime
d Minister's statement made on 7-12-1992, to rebuild the demolished structure (para 1.22 in Chapter I of the White Paper) resiled from the same and by incorporating certain provisions in the statute has sought to perpetuate the injustice done to the Muslim community by the act of vandalism of demolition of the structure at Ayodhya on 6-12-1992. On behalf of the Muslim community it is urged that the statute read in the context of the
e content of the question referred under Article 143(1) of the Constitution, as it must be, is a mere veiled concealment of a device adopted by the Central Government to perpetuate the consequences of the demolition of the mosque on 6-12-1992. The grievance of the Hindu opponents is that the mischief and acts of vandalism committed by a few are being attributed to the entire Hindu community the majority of whom is equally hurt by, and critical of, the shameful act. They urge that this disapproval by the majority community is evident from the result of the subsequent elections in which the Bhartiya Janata Party was rejected at the hustings by the Hindu majority. They also submit that the fact of demolition of Hindu structures like the Ram Chabutra and Kaushalya Rasoi which stood since ages in the disputed site resulting in interruption of even the undisputed right of worship of Hindus within that
g area is being ignored. It is also contended that there is no justification for acquisition of any property in excess of the disputed area and, therefore, the acquisition at least of the excess area belonging, admittedly, to Hindus is invalid.

18. On behalf of the Central Government, it is urged that in the existing situation and in view of the widespread communal flare-up throughout the
h country on account of the events at Ayodhya on 6-12-1992, the most appropriate course, in the opinion of the Central Government, was to make

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this acquisition along with the Special Reference to decide the question which would facilitate a negotiated solution of the problem, and if it failed, to enable the Central Government to take any other appropriate action to resolve the controversy and restore communal harmony in the country. It was made clear that acquisition of the disputed area was not meant to deprive the community found entitled to it, of the same, or to retain any part of the excess area which was not necessary for a proper resolution of the dispute or to effectuate the purpose of the acquisition. It was submitted that an assurance of communal harmony throughout the country was a prime constitutional purpose and avoidance of escalation of the dispute in the wake of the incident at Ayodhya on 6-12-1992 was an essential step in that direction, which undoubtedly promotes the creed of secularism instead of impairing it. It was submitted that the charge levelled against the Central Government of discrimination against any religious community or of anti-secularism is wholly unwarranted.

19. Another argument advanced on behalf of the Muslim community was that the defences open to the minority community in the suits filed by the other side including that of adverse possession by virtue of long possession of the disputed site for over 400 years since its construction in 1528 AD have also been extinguished by the acquisition, giving an unfair advantage to the other side. It was also urged that the core question in the dispute between the parties was not the subject-matter of the Special Reference made under Article 143(1) of the Constitution and, therefore, answer to the same would not result in a resolution of the dispute between the parties to the suits. It was accordingly urged, there is deprivation of the judicial remedy for adjudication of the dispute without the substitution of an alternate dispute resolution mechanism, which is impermissible under the Constitution.

20. It is appropriate at this stage to refer to the provisions of the statute before we deal with the arguments challenging its constitutional validity. The Statement of Objects and Reasons says that there is a long-standing dispute relating to the disputed structure in Ayodhya which led to communal tension and violence from time to time and ultimately has led to the destruction of the disputed structure on 6-12-1992 followed by widespread communal violence resulting in loss of many lives and destruction of property throughout the country. The said dispute has thus affected the maintenance of public order and communal harmony in the country. Obviously, it is necessary to maintain and promote communal harmony and fraternity amongst the people of India. With this objective in view it was considered necessary to acquire the site of the disputed structure and the requisite adjacent area to be utilised in an appropriate manner to achieve this object. For this purpose, the Acquisition of Certain Area at Ayodhya Ordinance, 1993 was promulgated by the President on 7-1-1993, and, simultaneously, on the same day, this Reference was also made by the President to this Court under Article 143(1) of the Constitution. The said Ordinance was replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) to the same effect. and Section 1(2) provides that the Act shall be deemed to

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have come into force on the 7-1-1993. The provisions of the said Act are now considered.

a 21. Section 3 provides for acquisition of rights in relation to the 'area' defined in Section 2(a). It says that on and from the commencement of this Act the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government. It is well-settled that the meaning of 'vest' takes colour from the context in which it is used and it is not necessarily the same in every provision or in every context.
b In *Maharaj Singh v. State of U.P.*[1], it was held: (SCR p. 1081 : SCC pp. 164-65, para 16)

> "Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of
> c meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions."

The meaning of 'vest' in Section 3 and in Section 6 is of significance in the context of the constitutional validity of the statute. It can vary in different parts of the statute or even the same section, depending on the context of its
d use.

22. Section 4 then provides the general effect of vesting. Obviously, the effect of vesting will depend on the meaning of the word 'vest' used in Section 3, and the kind of vesting in the present context. Sub-section (1) of Section 4 provides that the area shall be deemed to include all assets, rights, etc., specified therein of whatever nature relating thereto. Sub-section (2)
e further says that all properties aforesaid which have vested in the Central Government under Section 3 shall, by force of such vesting, be freed and discharged from all encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of the property shall cease to have effect. In other words, the effect of such vesting is to free all properties aforesaid which have vested in the Central Government under Section 3 of all encumbrances and the consequence of any order of any court or tribunal of any kind restricting their user in any manner. Sub-section (3) of Section 4 provides for abatement of all pending suits and legal proceedings. The meaning of the word 'vest' in Section 3 has a bearing on the validity of this provision since the consequence of abatement of suits etc. provided therein is
g relatable only to absolute vesting of the disputed area which is the subject-matter of the suits and not to a situation where the vesting under Section 3 is of a limited nature for a particular purpose, and is of limited duration till the happening of a future event. Section 5 indicates the duty of the person or State Government in charge of the management of the area to deliver all
h assets etc. to the Central Government on such vesting. Sub-section (1)

1 (1977) 1 SCC 155: (1977) 1 SCR 1072

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empowers the Central Government to take all necessary steps to secure possession of the area which is vested in the Central Government under Section 3. Sub-section (2) obliges the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting to deliver to the Central Government or the authorised person all assets etc. in their custody relating to such vesting. In short, Section 5 provides the consequential action to be taken by the Central Government with the corresponding obligation of the person or State Government in charge of the management of the area to deliver possession of the area, together with its management, to the Central Government, on such vesting.

23. Then comes Section 6, which is the last section in Chapter II, to which detailed reference would be made later. At this stage a general reference to its contents is sufficient. Section 6 contains the power of Central Government to direct vesting of the area in another authority or body or trust. Sub-section (1) provides that the Central Government may, notwithstanding anything contained in Sections 3, 4, 5 and 7, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust from the specified date, if it is satisfied that the same Is willing to comply with such terms and conditions as the Central Government may think fit to impose. In short, sub-section (1) empowers the Central Government to transfer its right, title and interest or any of them in the area or any part thereof to any authority or other body or trustees of any trust on such terms and conditions as it may think fit to impose, instead of continuing to retain the same itself. Sub-section (2) provides for the consequences of the action taken under sub-section (1) giving recognition to the statutory transfer effected by the Central Government to effectuate the purpose of such transfer by the Central Government by declaring that the transferee would then step into the shoes of the Central Government acquiring the same right, title and interest in the area or part thereof which by virtue of the enactment had earlier vested in the Central Government. Sub-section (3) is another consequence of the action taken under sub-section (1) and provides that Sections 4, 5, 7 and 11, so far as may be, would apply to such transferee as they apply in relation to the Central Government. It may here be recalled that Section 4 relates to the effect of vesting under Section 3; Section 5 to the duty of the person or State in charge of the management of the area to deliver possession etc. to the Central Government or the authorised person; Section 7 to the management and the administration of property by the Central Government on its vesting; and Section 11 gives protection to action taken in good faith by the Central Government or the authorised person or anyone acting on its behalf under this Act.

24. Chapter III contains Section 7 alone which would be considered at length later in view of the serious challenge made to its constitutional validity. This section deals with the management and administration of the

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property by the Central Government, on its vesting. Sub-section (1) provides for management of the property vested in the Central Government under
a Section 3 by the Central Government or by any authorised person, on such vesting, notwithstanding anything to the contrary contained in any contract or instrument or order of any court, tribunal or other authority. In other words, in spite of any contrary provision in any contract or instrument or order of any court, tribunal or other authority, from the commencement of this Act, the management of the property vested in the Central Government
b under Section 3 shall be by the Central Government or by an authorised person, so authorised by the Government on its behalf and none else. This provision expressly supersedes any earlier provision relating to the management of the property so vested in the Central Government. Sub-section (2) then provides for the manner of the management of the property by the Central Government or the authorised person. It mandates the Central
c Government or the authorised person, in managing the property vested in the Central Government under Section 3, to ensure; that the position existing before the commencement of this Act "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood" is maintained. This means that the power of management of the Central
d Government or the authorised person under sub-section (1) of Section 7 is coupled with the duty contained in the mandate given by sub-section (2). The mandate is that in managing the property so vested in the Central Government, the Central Government or the authorised person shall ensure maintenance of the status quo "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly
e known as the Ram Janma Bhumi-Babri Masjid, stood". There was some debate as to the meaning of the word 'area' in this context. One construction suggested was that the word 'area' used in this expression has the same meaning as in the definition contained in Section 2(*a*), that is, the entire area specified in the Schedule to the Act. Section 2 itself says that the definitions therein give the meaning of the words defined "unless the context otherwise requires". The context in which the word 'area' is used in the expression in Section 7(2) gives the clear indication that its meaning is not the same as in Section 2(*a*) to mean the entire area specified in the Schedule since the words which follow qualify its meaning confining it only to the site on which this structure, commonly known as the Ram Janma Bhumi-Babri Masjid stood, which site or area is undoubtedly smaller and within "the area
g specified in the Schedule".

25. Chapter IV contains the miscellaneous provisions. Therein Section 8 provides for payment of amount equivalent to the market value of the land, building, structure or other property by the Central Government for the transfer to, and vesting of the property in, the Government under Section 3, to its owner. Remaining part of Section 8 contains the machinery provisions
h for payment of the amount. Section 9 gives the overriding effect of the provisions of this Act on any other law or decree or order of any court,

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tribunal or other authority. Section 10 provides for penalties. It says that any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person the possession etc, required under this Act shall be punishable in the manner provided. Section 11 gives protection to the Central Government or the authorised person or anyone acting on its behalf for anything done or intended to be done under this Act in good faith. Section 12 contains the rule-making power of the Central Government to carry out the provisions of this Act and the manner in which the rules are to be made. Section 13 is the last section of the Act providing for repeal of the earlier Ordinance and savings.

26. The foregoing is a brief resume of the provisions of Act No. 33 of 1993, the constitutional validity of which has to be examined in the light of the grounds of challenge. The meaning of the word 'vest' in Section 3 and the kind of vesting contemplated thereby, the effect of vesting including abatement of all pending suits and legal proceedings, according to Section 4, the power of Central Government to direct vesting of the area or any part thereof in another authority or body or trust and its effect according to Section 6, and Section 7 providing for management of property by the Central Government or the authorised person are the provisions of particular significance for deciding the question of constitutionality. Section 8 also is of some significance in this context.

27. We may now proceed to consider the merits of the grounds on which the Act is assailed as constitutionally invalid.

Legislative Competence

28. The legislative competence is traceable to Entry 42, List III and the State of Uttar Pradesh being under President's rule at the relevant time, the legislative competence of Parliament, in the circumstances, cannot be doubted. That apart, the pith and substance of the legislation is "acquisition of property" and that falls squarely within the ambit of Entry 42, List III. Competing entry set up is Entry 1, List II relating to "public order". "Acquisition of property" and not "public order" is the pith and substance of the statute.

29. In *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*[2] it was pointed out that where the dominant purpose of the Act was that of transference to the State of the interests of the proprietors and tenure-holders of the land, the pith and substance of the legislation was the transference of ownership to the State Government and it was an 'acquisition" Act. In *Deputy Commissioner and Collector* v. *Durga Nath Sarma*[3] Bachawat, J. pointed out that a law for permanent acquisition of property is not a law for promotion of public health etc. since only the taking of temporary possession of private properties can be regarded as a law for promotion of public health.

2 1952 SCR 889 : AIR 1952 SC 252
3 (1968) 1 SCR 561 : AIR 1968 SC 394

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30. It is significant to bear in mind that Entry 42. List III, as it now exists, was substituted by the Constitution (Seventh Amendment) Act to read
a as under:

"Acquisition and requisitioning of property."

Before the Constitution (Seventh Amendment) Act, the relevant entries read as follows:

List I, Entry 33:

b "33. Acquisition or requisitioning of property for the purposes of the Union."

List II, Entry 36:

"36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List III."

List III, Entry 42:

c "42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose, is to be determined, and the form and the manner in which such compensation is to be given."

By the amendment so made. Entry 42, List III reads as extracted earlier while Entry 33, List I and Entry 36, List II have been omitted. The
d comprehensive Entry 42 in List III as a result of the Constitution (Seventh Amendment) Act leaves no doubt that an acquisition Act of this kind falls clearly within the ambit of this entry and, therefore, the legislative competence of Parliament to enact this legislation cannot be doubted. This ground of challenge is, therefore, rejected.

Secularism, Right to Freedom of Religion and Right to Equality

e 31. It would be appropriate now to consider the attack based on secularism which is a basic feature of the Constitution, with the two attendant rights. The argument is that the Act read, as a whole is anti-secular being slanted in favour of the Hindu community and against the Muslim minority since it seeks to perpetuate demolition of the mosque which stood on the disputed site instead of providing for the logical just action of rebuilding it, appropriate in the circumstances. It is urged that Section 4(3) provides for abatement of all pending suits and legal proceedings depriving the Muslim community of its defences including that of adverse possession for over 400 years since 1528 AD when the mosque was constructed on that site by Mir Baqi, without providing for an alternate dispute-resolution mechanism, and thereby it deprives the Muslim community of the judicial
g remedy to which it is entitled in the constitutional scheme under the rule of law. It is urged that the Special Reference under Section 143(1) of the Constitution to this Court by the President of India is not of the core question, the answer to which would automatically resolve the dispute but only of a vague and hypothetical issue, the answer to which would not help
h in the resolution of the dispute as a legal issue. It is also urged that Section 6 enables transfer of the acquired property including the disputed area to any

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authority, body or trust by the Central Government without reference to the real title over the disputed site. It is further contended that Section 7 perpetuates the mischief of the demolition of the. mosque by directing maintenance of the' status quo as on 7-1-1993 which enables the Hindus to exercise the right of worship of some kind in the disputed site: keeping the Muslims totally exciude ' '.om that area and this discrimination can be perpetuated t6 any length of time by the Central Government. The prevuion in Section 7, it is urged, has the potential of perpetuating tltis mischief. Reference was also 'made to Section 8 to suggest that, it is meaningless since the question of ownership over the disputed site remains to be decided and with the abatement of all pending suits and legal proceedings, there is no mechanism by which it can be adjudicated. The objection to Section 8 is obviously in the context of the disputed area over which the title is in dispute and not to the remaining area specified in the Schedule to the Act, ownership of which is not disputed. The validity of acquisition is also challenged by others including those who own some of the acquired properties and in whose case the title is not disputed. Their contention IS that acquisitien of their propeny, title to which is undispuied, is unnecessary. Parties to the pending suits which have .abated, other than the Sunni Central Wakf Board, have also challenged the validity of the Act, even though on other grounds, Violation of Articles Ic, 25 and 26 also is alleged on these grounds. This discussion, therefore covers these grounds.

32. For a proper consideration of the challenge based on the ground of secularism, it is appropriate to refer to the concept of secularism and the duty of the courts in construing a statute in this context.

33. The polity assured to the people of India by the Constitudon is described in the Preamble wherein the word 'secular' was added by the 42nd Amendment. It highlights the fundamental rights guaranteed in Articles 25 to 29 that the State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion of their own choice. In brief, this is the concept of secularism as a basic feature of the Constitution of India and the way of life adopted by the people of India as their abiding faith and creed. M.C. Setalvad in *'Patel Memorial Lectures - /965*; on secularism, referring to the Indian concept of secularism, stated thus:

> "The coming of the, partition emphasised the great importance of secularism. Notwithstanding the partition. a large Muslim minority, constituting a tenth of the population, continued to be the ,citizens of independent India. There were also other important minority groups of citizens. In the circumstances, a secular Constitution for independent India, under whieh all religions could enjoy equal freedom and all citizens equal rights, and which could weld together into one nation the different religious communities, became inevitable.
>
> (at pages 481-82)

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The ideal, therefore, of a secular State in the sense of a State which treats all religions alike and displays a benevolent neutrality towards
a them is in a way more suited to the Indian environment and climate than that of a truly secular State. (at page 485)

Secularism, in the Indian context, must be given the widest possible content. It should connote the eradication of all attitudes and practices derived from or connected with religion which impede our development and retard our growth into an integrated nation. A concerted and earnest
b endeavour, both by the State and citizen, towards secularisation in accordance with this wide concept alone lead to the stabilisation of our democratic State and the establishment of a true and cohesive Indian nationhood." (at pages 488-89)

34. A reference to the Address of the President of India, Dr Shanker Dayal Sharma, as the then Vice-President of India, on "*Secularism in the*
c *Indian Ethos*" while delivering *Dr Zakir Hussain Memorial Lecture* of Vishva-Bharati, Shantiniketan, on 29-4-1989 is useful. Therein, he referred to the difference between our understanding of the word 'secular' and that in the West or its dictionary meaning, and said:

"We in India, however, understand secularism to denote 'Sarva Dharma Samabhaav': an approach of tolerance and understanding of the
d equality of all religions.

* * *

This philosophical approach of understanding, coexistence and tolerance is the very spirit of our ancient thought.

* * *

e The Yajur Veda states:

मित्रस्य मा चक्षुषा सर्वाणि भूतानि समीक्षन्ताम्।
मित्रस्याहं चक्षुषा सर्वाणि भूतानि समीक्षे।
मित्रस्य चक्षुषा समीक्षामहे।।

f (युज : ३८-१८)

'May all beings look on me with the eyes of a friend; May I look on all beings with the eyes of a friend May we look on one another with the eyes of a friend.'

A very significant manifestation of secular outlook is contained in
g the Prithvi Sukta in the Atharva Veda:

जनं विभूति बहुधा विवाचसम्। नानाधर्माणं पृथ्वी यथौकसम्।

This Earth, which accommodates peoples of different persuasions and languages, as in a peaceful home — may it benefit all of us.

h ता नः प्रजाः बहुतां समग्रा वाचो मधु पृथिवि धेहि मह्यम्।

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-OS. Mother Earth, give to us, as your children the capacity to interact harmoniously; may we speak sweetly with one another.' a

And the Rig Veda emphatically declares:

'एकैव मानुषी जाति

'All human beings are of one race.'

Thus a philosophical and ethnological composite is provided by ancient Indian thought for developing *Sarva Dharma Samabhaav* or secular thought and outlook. This enlightenment is the true nucleus of what is now known as Hinduism."

Proceeding further, referring to the impact of other religions on the Indian ethos, he said:

"Two aspects in this regard are noteworthy. First, the initial appearance of Christianity or Islam or Zoroastrianism in India and their establishment on the mainland did not occur as a result of military conquest or threat of conquest. These religions were given a place by virtue of the attitude of accommodation and coexistence displayed by local authoruies - including the main religious authorities. The second aspect is even more important : Christianity, Islam and Zoroastrianism brought with them spiritual and humanistic thought harmonious and, in fact; identical to the core ideas of the established religious thQught in India as exemplified by the basic beliefs of Vedic, Vedantic, Buddhist and Jain philosophy." c d

The influence of saints and holy persons was indicated thus:

"There was natural interest, therefore, in Islam as a revealed religion brought forth by a Prophet of profound charisma who had faced adversities, and in Christianity, which spread the light of Jesus Christ who had suffered a terrible crucifixion for humanity's sake. The Quran moreover referred to great souls such as Abraham, Isaac, Ishmael, Jacob, Moses mentioned in the Old Testament of the Christian faith, and Jesus, Al-Fatiha or Fatiha To Alfatha which is also referred to as Ummul Quran or the essence of the Quran refers to 'Allah' as Rab-ul-Alamin or Lord of the entire universe. It does not confine him to Muslims alone. The Second Surah in the Quean, titled 'Al-Baqurah' gives a warning, which is repeated throughout the Quran, that it is not mere professing of one's creed, but righteous conduct, that is true religion. Verses 44, 81 and 82 from this Surah make this absolutely clear." e f g

35. Dr Sharma also adverted to the contribution made to growth of secularism by Akbar who founded 'Din-e-Ilahi' and the support he was given by Abdul Rahim Khane Khana in addition to the secularism of Dara Shikoh. Impact of Muslim mysticism on Hinduism and contribution of Kabir to the Indian ethos has been lasting. Secular ideals led to formation of the Sikh faith and the Gurus have made a lasting contribution to it. He said: h

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"Guru Gobind Singh further magnified the secular ideal of the Sikh faith. The following lines composed by Guru Govind Singh come to mind.

देहुरा मसीत सोई, पूजा ओ नमाज ओई,
मानस सभै एक पै अनेक को प्रभाव है।
अलह अभेख सोई, पुरान ओ कुरान ओई,
ए एक ही सरुप सभै, एक ही बनाव है।

'Mandir or Mosque, Puja or Namaz, Puran or Quran have no difference. All human beings are equal.'"

After adverting to the significant role of Mahatma Gandhi and Khan Abdul Gaffar Khan in recent times, Dr Sharma concluded:

"The Constitution of India specifically articulated the commitment of secularism on the basis of clear understanding of the desirable relationships between the Individual and Religion, between Religion and Religion, Religion and the State, and the State and the Individual.

* * *

I shall conclude with a few words, very meaningful words, from a speech by Dr Zakir Hussain:

'We want peace between the individual and groups within nations. These are all vitally interdependent. If the spirit of the Sermon on the Mount, Buddha's philosophy of compassion, the Hindu concept of Ahimsa, and the passion of Islam for obedience to the will of God can combine, then we would succeed in generating the most potent influence for world peace.'"

36. In *S.R. Bommai* v. *Union of India*[4], a nine-Judge Bench referred to the concept of "secularism" in the Indian context. Sawant, J. dealt with this aspect and after referring to the Setalvad Lecture, stated thus: (See pp. 147-48, para 151)

"As stated above, religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution."

Similarly, K. Ramaswamy, J. in the same decision stated: (SCC p. 163, para 178 and p. 168, para 183)

"Though the concept of 'secularism' was not expressly engrafted while making the Constitution, its sweep, operation and visibility are apparent from fundamental rights and directive principles and their

4 (1994) 3 SCC 1

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related provisions. It was made explicit by amending the preamble of the Constitution 42nd Amendment Act. The concept of secularism of which religious freedom is the foremost appears to visualise not only of the subject of God but also an understanding between man and man. Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantee individual and corporate religious freedom and dealt with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flaying at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life."

"It would thus be clear that Constitution made demarcation between religious part personal to the individual and secular part thereof. The State does not extend patronage to any particular religion, State is neither pro particular religion nor anti-particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provides equal protection to all religions subject to regulation and actively acts on secular part."

B.P. Jeevan Reddy, J. in the same context in the decision stated thus: (SCC p. 233, para 304)

"While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him—his rights, his duties and his entitlements? *Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.* This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. *What is material is that it is a constitutional goal and a basic*

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feature of the' Constitution as affirmed in *Kesavananda BhQrati*[5] and *Indira Nehru Gandhi* v. *Raj Narain*[6]. *Any step inconsistent with this constitutional policy is, in plain words, unconstitutional.* This does not mean that the State has no say whatsoever in matters; of religion. Laws can be made regulating the secular affairs of temples, mosques and other places of worships and maths. (See *S.P. Mittal* v. *Union of India*[7].")

(emphasis supplied)

Ahmadi, J. while expressing agreement with the views of Sawant, Ramaswamy and Jeevan Reddy, JJ. stated thus: (SCC p. 77, para 29)

"Notwithstanding the fact that the wqrds 'Socialist' and 'Secular' were added. in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best 'left undefined. By this amendment what was implicit was made explicit."

37. It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to, 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while' examining the constitutional validity of any legislation on' the touchstone of the Constitution, The concept of secularism is one facet of the right to equality woven as the central golden thread in the' fabric depicting the pattern of the scheme in our Constitution.

38. It is,' useful in this context to refer to some extracts from a paper on *"Law in a Pluralist Society"* by M.N. Venkatachaliah, J., as he then was, (one of us). Therein, he said:

"The purpose of' law in. plural societies Is not the. progressive assimilation of the minorities In the majontanan milieu, This would not solve the problem; but would vainly seek to dissolve-it, What then is its purpose? Again in the words of Lord Scarman *(Minority, Rights in a Plural Society*, p. 63):

'The purpose of the law must be 'not to extinguish the groups which- make the' society but to devise political. social and legal means- of preventing them from falling apart and so destroying the plural society of which they are members.'

In a pluralist, secular polity law is perhaps the greatest integrating force. A cultivated respect for law and its Institutions and symbols; a pride in the country's heritage and achievements; faith that people live under the protection of an adequate legal system are indispensable for

5 *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : 1973 Supp SCR 1
6 1975 Supp SCC 1 : (1976) 2 SCR 347
7 (1983) 1 SCC 51 : (1983) 1 SCR 729

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sustaining unity in pluralist diversity. Rawlsian pragmatism of 'justice as fairness' to serve as an 'overlapping consensus' and deep-seated agreements on fundamental questions of basic structure of society for deeper social unity is a political conception of justice rather than a comprehensive moral conception. a

* * *

What are the limitations on laws dealing with issues of pluralism? Law should not accentuate the depth of the cleavage and become in itself a source of aggravation of the very condition it intends to remedy. b

* * *

To those that live in fear and insecurity all the joys and bright colours of life are etched away. There is need to provide a reassurance and a sense of belonging. It is not enough to say: 'Look here .... I never promised you a rose garden. I never promised you perfect justice.' But perfect justice may be an unattainable goal. At least it must be a tolerable accommodation of the conflicting interests of society. Though there may really be 'royal road to attain such accommodations concretely'. Bentham alluded to the pursuit of equality as 'disappointment-preventing' principle as the principle of distributive justice and part of the security-providing principle." c

39. Keeping in mind the true concept of secularism and the role of judiciary in a pluralist society, as also the duty of the court in interpreting such a law, we now proceed to consider the submissions with reference to the provisions of the enactment. d

40. It is necessary to first construe the provisions of Act No. 33 of 1993 with reference to which the grounds of challenge have to be examined. e

41. The meaning of the word 'vest' as earlier stated has different shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration. Thus the meaning of 'vest' used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. If the vesting be absolute being unlimited in any manner, there can be no limitation on the right to transfer or manage the acquired property. In the event of absolute vesting, there is no need for a provision enabling the making of transfer after acquisition of the property, right to transfer being a necessary incident of absolute title. Enactment of Section 6 in the same statute as a part of the scheme of acquisition of the property vesting it in the Central Government is, therefore, contraindication of the vesting under Section 3 in the Central Government being as an absolute owner without any particular purpose in view. The right to manage and deal with the property in any manner of an absolute owner being unrestricted, enactment of Section 7 which introduces an express limitation on the power of management and administration of property comprising the disputed area till the transfer is effected in the manner indicated in Section 6, is a clear indication of the acquisition of only g h

a limited and not an absolute title in the disputed property by the Central Government. Sections 6 and 7 read together give a clear indication that the acquisition of the disputed property by this Act is for a particular purpose and when the purpose is achieved the property has to be transferred in the manner provided in Section 6; and the Central Government is obliged to maintain the status quo as in existence on 7-1-1993 at the site where the disputed structure stood, till the time of that transfer. The purpose to be effectuated is evidently the resolution of the dispute which has defied the steps taken for its resolution by negotiations earlier. The modes of resolution of the dispute contemplated are referable to, and connected with, the question referred for the decision of this Court under Article 143(1) of the Constitution. It is a different matter that the dispute may not be capable of resolution merely by answer of the question referred. That is material for deciding the validity of Section 4(3) of the Act which brings about the abatement of all pending suits and legal proceedings indicating that the alternate dispute-resolution mechanism adopted is only the Reference made under Article 143(1) of the Constitution.

42. If the Presidential Reference is incapable of satisfying the requirement of alternate dispute-resolution mechanism and, therefore, has the effect of denying a judicial remedy to the parties to the suit, this itself may have a bearing on the constitutional validity of Section 4(3) of the Act. In that event Section 4(3) may be rendered invalid resulting in revival of all pending suits and legal proceedings sought to be abated by Section 4(3), the effect being that any transfer by the Central Government of the acquired disputed property under Section 6 would be guided and regulated by the adjudication of the dispute in the revived suits. This is, of course, subject to the severability of Section 4(3).

43. It is, therefore, clear that for ascertaining the true meaning of the word 'vest' used in Section 3 we must first consider the validity of Sections 6 and 7 of the Act on which it largely depends. If Sections 6 and 7 of the Act, which limit the title of the Central Government cannot be sustained, the limitation read in Section 3 to the title acquired by the Central Government under the Act through this mode would disappear. For this reason, we proceed to examine the validity of Sections 6 and 7.

44. Between Sections 6 and 7, it is Section 7 which imposes a greater restriction on the power of Central Government. It gives the mandate that in management of the area over which the disputed structure stood, it has to maintain status quo as it existed at the time of acquisition on 7-1-1993. Such a limitation is clearly inconsistent with the acquisition of absolute ownership of the property. The validity of Section 7(2) of the Act must, therefore, be considered.

45. Section 7 as we read it, is a transitory provision, intended to maintain status quo in the disputed area, till transfer of the property is made by the Central Government on resolution of the dispute. This is to effectuate the purpose of that transfer and to make it meaningful avoiding any possibility

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of frustration of the exercise as a result of any change in the existing situation in the disputed area during the interregnum. Unless status quo is ensured, the final outcome on resolution of the dispute may be frustrated by any change made in the disputed area which may frustrate the implementation of the result in favour of the successful party and render it meaningless. A direction to maintain status quo in the disputed property is a well-known method and the usual order made during the pendency of a dispute for preserving the property and protecting the interest of the true owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of the true owner, yet to be determined. This itself is a clear indication that the exercise made is to find out the true owner of the disputed area, to maintain status quo therein during the interregnum and to hand it over to the true owner found entitled to it.

46. The question now is whether the provision in Section 7 containing the mandate to maintain the status quo existing at the disputed site as on 7-1-1993 is a slant in favour of the Hindu community, intended to perpetuate an injustice done to the Muslim community by demolition of the mosque on 6-12-1992 and, therefore, it amounts to an anti-secular or discriminatory act rendering the provision unconstitutional. For this purpose it is necessary to recall the situation as it existed on 7-1-1993 along with the significant events leading to that situation. It is necessary to bear in mind the comparative use of the disputed area and the right of worship practised therein, by the two communities on 7-1-1993 and for a significant period immediately preceding it. A reference to the comparative user during that period by the two communities would indicate whether the provision in Section 7 directing maintenance of status quo till resolution of the dispute and the transfer by the Central Government contemplated by Section 6 is slanted towards the Hindu community to render the provision violative of the basic feature of secularism or the rights to equality and freedom of religion.

47. As earlier stated, worship by Hindu devotees of the idols installed on the Ram Chabutra which stood on the disputed site within the courtyard of the disputed structure had been performed without any objection by the Muslims even prior to the shifting of those idols from the Ram Chabutra into the disputed structure in December 1949; in one of the suits filed in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in 1949 and worship of the idols there by the Hindu devotees continued; this interim order was confirmed by the High Court in April 1955; the District Judge ordered the opening of the lock placed on a grill leading to the sanctum sanctorum of the shrine in the disputed structure on 1-2-1986 and permitted worship of the idols there to Hindu devotees; and this situation continued till demolition of the structure on 6-12-1992 when Ram Chabutra also was demolished. It was only as a result of the act of demolition on 6-12-1992 that the worship by the Hindu devotees in general of the idols at that place was interrupted. Since the time of demolition, worship of the idols by a pujari alone is continuing. This is how the right of worship of the idols practised by Hindu devotees for a long

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time from much prior to 1949 in the Ram Chabutra within the disputed site has been interrupted since the act of demolition on 6-12-1992 restricting the worship of the idols since then to only by one pujari. On the other hand, at least since December 1949, the Muslims have not been offering worship at any place in the disputed site though, it may turn out at the trial of the suits that they had a right to do so.

48. The communal holocaust unleashed in the country disrupting the prevailing communal harmony as a result of the demolition of the structure on 6-12-1992, is well known to require further mention. Any step taken to arrest escalation of communal tension and to achieve communal accord and harmony can by no stretch of argumentation, be termed non-secular much less anti-secular or against the concept of secularism — a creed of the Indian people embedded in the ethos.

49. The narration of facts indicates that the acquisition of properties under the Act affects the rights of both the communities and not merely those of the Muslim community. The interest claimed by the Muslims is only over the disputed site where the mosque stood before its demolition. The objection of the Hindus to this claim has to be adjudicated. The remaining entire property acquired under the Act is such over which no title is claimed by the Muslims. A large part thereof comprises of properties of Hindus of which the title is not even in dispute. The justification given for acquisition of the larger area including the property respecting which title is not disputed is that the same is necessary to ensure that the final outcome of adjudication should not be rendered meaningless by the existence of properties belonging to Hindus in the vicinity of the disputed structure in case the Muslims are found entitled to the disputed site. This obviously means that in the event of the Muslims succeeding in the adjudication of the dispute requiring the disputed structure to be handed over to the Muslim community, their success should not be thwarted by denial of proper access to, and enjoyment of rights in, the disputed area by exercise of rights of ownership of Hindu owners of the adjacent properties. Obviously, it is for this reason that the adjacent area has also been acquired to make available to the successful party, that part of it which is considered necessary, for proper enjoyment of the fruits of success on the final outcome to the adjudication. It is clear that one of the purposes of the acquisition of the adjacent properties is the ensurement of the effective enjoyment of the disputed site by the Muslim community in the event of its success in the litigation; and acquisition of the adjacent area is incidental to the main purpose and cannot be termed unreasonable. The "Manas Bhawan" and "Sita ki Rasoi", both belonging to the Hindus, are buildings which closely overlook the disputed site and are acquired because they are strategic in location in relation to the disputed area. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to the disputed structure area, which forms a unique class by itself, is permissible. (See *M. Padmanabha Iyengar*

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v. *Govt. of A.P.*[8] and *Akhara Shri Braham Buta v. State of Punjab*[9].) We approve the principle stated in these decisions since it serves a larger purpose.

50. However, at a later stage when the exact area acquired which is needed, for achieving the professed purpose of acquisition, can be determined, it would not merely be permissible but also desirable that the superfluous excess area is released from acquisition and reverted to its earlier owner. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the objective of settling the dispute relating to the disputed area cannot be examined at this stage but, in case the superfluous area is not returned to its owner even after the exact area needed for the purpose is finally determined, it would be open to the owner of any such property to then challenge the superfluous acquisition being unrelated to the purpose of acquisition. Rejection of the challenge on this ground to acquisition at this stage, by the undisputed owners of any such property situate in the vicinity of the disputed area, is with the reservation of this liberty to them. There is no contest to their claim of quashing the acquisition of the adjacent properties by anyone except the Central Government which seeks to justify the acquisition on the basis of necessity. On the construction of the statute made by us, this appears to be the logical, appropriate and just view to take in respect of such adjacent properties in which none other than the undisputed owner claims title and interest.

51. It may also be mentioned that even as Ayodhya is said to be of particular significance to the Hindus as a place of pilgrimage because of the ancient belief that Lord Rama was born there, the mosque was of significance for the Muslim community as an ancient mosque built by Mir Baqi in 1528 AD. As a mosque, it was a religious place of worship by the Muslims. This indicates the comparative significance of the disputed site to the two communities and also that the impact of acquisition is equally on the right and interest of the Hindu community. Mention of this aspect is made only in the context of the argument that the statute as a whole, not merely Section 7 thereof, is anti-secular being slanted in favour of the Hindus and against the Muslims.

52. Section 7(2) of the Act freezes the situation admittedly in existence on 7-1-1993 which was a lesser right of worship for the Hindu devotees than that in existence earlier for a long time till the demolition of the disputed structure on 6-12-1992; and it does not create a new situation more favourable to the Hindu community amounting to conferment on them of a larger right of worship in the disputed site than that practised till 6-12-1992. Maintenance of status quo as on 7-1-1993 does not, therefore, confer or have the effect of granting to the Hindu community any further benefit thereby. It is also pertinent to bear in mind that the persons responsible for demolition of the mosque on 6-12-1992 were some miscreants who cannot be identified

8 AIR 1990 AP 357

9 AIR 1989 P&H 198 : (1988) 95 Punj LR 47

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and equated with the entire Hindu community and, therefore, the act of vandalism so perpetrated by the miscreants cannot be treated as an act of the
a entire Hindu community for the purpose of adjudging the constitutionality of the enactment. Strong reaction against, and condemnation by the Hindus of the demolition of the structure in general bears eloquent testimony to this fact. Rejection of Bhartiya Janata Party at the hustings in the subsequent elections in Uttar Pradesh is another circumstance to that effect. The miscreants who demolished the mosque had no religion, caste or creed
b except the character of a criminal and the mere incident of birth of such a person in any particular community cannot attach the stigma of his crime to the community in which he was born.

53. Another effect of the freeze imposed by Section 7(2) of the Act is that it ensures that there can be no occasion for the Hindu community to seek to enlarge the scope of the practice of worship by them as on 7-1-1993
c during the interregnum till the final adjudication on the basis that in fact a larger right of worship by them was in vogue up to 6-12-1992. It is difficult to visualise how Section 7(2) can be construed as a slant in favour of the Hindu community and, therefore, anti-secular. The provision does not curtail practice of right of worship of the Muslim community in the disputed area, there having been de facto no exercise of the practice of worship by them
d there at least since December 1949; and it maintains status quo by the freeze to the reduced right of worship by the Hindus as in existence on 7-1-1993. However, confining exercise of the right of worship of the Hindu community to its reduced form within the disputed area as on 7-1-1993, lesser than that exercised till the demolition on 6-12-1992, by the freeze enacted in Section 7(2) appears to be reasonable and just in view of the fact that the miscreants
e who demolished the mosque are suspected to be persons professing to practise the Hindu religion. The Hindu community must, therefore, bear the cross on its chest, for the misdeed of the miscreants reasonably suspected to belong to their religious fold.

54. This is the proper perspective, we say, in which the statute as a whole and Section 7, in particular must be viewed. Thus the factual foundation for challenge to the statute as a whole and Section 7(2) in particular on the ground of secularism, a basic feature of the Constitution, and the rights to equality and freedom of religion is non-existent.

55. Reference may be made to the statements of the Central Government soon after the demolition on 7-12-1992 and 27-12-1992, wherein it was said that the mosque would be rebuilt. It was urged that the action taken on
g 7-1-1993 to issue an Ordinance, later replaced by the Act, and simultaneously to make the Reference to this Court under Article 143(1) of the Constitution amounts to resiling from the earlier statements for the benefit of the Hindu community. It is sufficient to say that the earlier statements so made cannot limit the power of Parliament; and are not material
h for adjudging the constitutional validity of the enactment. The validity of the statute has to be determined on the touchstone of the Constitution and not any statements made prior to it. We have therefore no doubt that Section 7

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does not suffer from the infirmity of being anti-secular or discriminatory to render it unconstitutional.

56. We would now examine the validity of Section 6. Sub-section (1) of Section 6 empowers the Central Government to direct vesting of the area acquired or any part thereof in another authority or body or trust. This power extends to the entire acquired area or any part thereof. This is notwithstanding anything contained in Sections 3, 4, 5 and 7. Section 3 provides for acquisition of the area and its vesting in the Central Government. It is, therefore, made clear by sub-section (1) of Section 6 that the acquisition of the area and its vesting in the Central Government is not a hindrance to the same being vested thereafter by the Central Government in another authority or body or trust. Section 4 relates to the effect of vesting and Section 5 to the power of the Central Government to secure possession of the area vested, with the corresponding obligation of the person or the State Government in possession thereof to deliver it to the Central Government or the authorised person. Section 4(3) relating to abatement of pending suits and legal proceedings would be considered separately. Section 7 which we have already upheld, relates to management and administration of the property by the Central Government or the authorised person during the interregnum till the exercise of power by the Central Government under Section 6(1). Section 7 has been construed by us as a transitory provision to maintain status quo in the disputed area and for proper management of the entire property acquired during the interregnum. Thus, sub-section (1) of Section 6 read with sub-section (2) of Section 7 is an inbuilt indication in the statute of the intent that acquisition of the disputed area and its vesting in the Central Government is not absolute but for the purpose of its subsequent transfer to the person found entitled to it as a result of adjudication of the dispute for the resolution of which this step was taken, and enactment of the statute is part of that exercise. Making of the Reference under Article 143(1) simultaneously with the issuance of Ordinance, later replaced by the Act, on the same day also is an indication of the legislative intent that the acquisition of the disputed area was not meant to be absolute but limited to holding it as a statutory receiver till resolution of the dispute; and then to transfer it, in accordance with, and in terms of the final determination made in the mechanism adopted for resolution of the dispute. Sub-section (2) of Section (6) indicates consequence of the action taken under sub-section (1) by providing that as a result of the action taken under sub-section (1), any right, title and interest in relation to the area or part thereof would be deemed to have become those of the transferee. Sub-section (3) of Section 6 enacts that the provisions of Sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government. The expression "so far as may be" is indicative of the fact that all or any of these provisions may or may not be applicable to the transferee under sub-section (1). This provides for the situation of transfer being made, if necessary, at any stage and of any part of the property, since Section 7(2) is applicable only to the disputed area. The provision however

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does not countenance the dispute remaining unresolved or the situation continuing perpetually. The embargo on transfer till adjudication, and in
a terms thereof, to be read in Section 6(1), relates only to the disputed area, while transfer of any part of the excess area, retention of which till adjudication of the dispute relating to the disputed area may not be necessary, is not inhibited till then, since the acquisition of the excess area is absolute subject to the duty to restore it to the owner if its retention is found to be unnecessary, as indicated. The meaning of the word 'vest' in Sections 3
b and 6 has to be so construed differently in relation to the disputed area and the excess area in its vicinity.

57. Acquisition of the adjacent undisputed area belonging to Hindus has been attacked on the ground that it was unnecessary since ownership of the same is undisputed. Reason for acquisition of the larger area adjacent to the disputed area has been indicated. It is, therefore, not unrelated to the
c resolution of the dispute which is the reason for the entire acquisition. Even though, prima facie, the acquisition of the adjacent area in respect of which there is no dispute of title and which belongs to Hindus may appear to be a slant against the Hindus, yet on closer scrutiny it is not so since it is for the larger national purpose of maintaining and promoting communal harmony and in consonance with the creed of secularism. Once it is found that it is
d permissible to acquire an area in excess of the disputed area alone, adjacent to it, to effectuate the purpose of acquisition of the disputed area and to implement the outcome of the final adjudication between the parties to ensure that in the event of success of the Muslim community in the dispute their success remains meaningful, the extent of adjacent area considered necessary is in the domain of policy and not a matter for judicial scrutiny or
e a ground for testing the constitutional validity of the enactment, as earlier indicated. However, it is with the caveat of the Central Government's duty to restore it to its owner, as indicated earlier, if it is found later to be unnecessary; and reservation of liberty to the owner to challenge the needless acquisition when the total need has been determined.

58. We find no infirmity in Section 6 also to render it unconstitutional.

59. The status of the Central Government as a result of vesting by virtue of Section 3 of the Act is, therefore, of a statutory receiver in relation to the disputed area, coupled with a duty to manage and administer the disputed area maintaining status quo therein till the final outcome of adjudication of the long-standing dispute relating to the disputed structure at Ayodhya. Vesting in the Central Government of the area in excess of the disputed area,
g is, however, absolute. The meaning of 'vest' has these different shades in Sections 3 and 6 in relation to the two parts of the entire area acquired by the Act.

60. The question now is of the mode of adjudication of the dispute, on the final outcome of which the action contemplated by Section 6(1) of the
h Act of effecting transfer of the disputed area has to be made by the Central Government.

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61. Sub-section (3) of Section 4 provides for abatement of all pending suits and legal proceedings in respect of the right, title and interest relating to any property which has vested in the Central Government under Section 3. a
The rival claims to the disputed area which were to be adjudicated in the pending suits can no longer be determined therein as a result of the abatement of the suits. This also results in extinction of the several defences raised by the Muslim community including that of adverse possession of the disputed area for over 400 years since construction of the mosque there in 1528 AD by Mir Baqi. Ostensibly, the alternate dispute-resolution b
mechanism adopted is that of a simultaneous Reference made the same day under Article 143(1) of the Constitution to this Court for decision of the question referred. It is clear from the issues framed in those suits that the core question for determination in the suits is not covered by the Reference made, and it also does not include therein the defences raised by the Muslim community. It is also clear that the answer to the question referred, whatever c
it may be, will not lead to the answer of the core question for determination in the pending suits and it will not, by itself, resolve the long-standing dispute relating to the disputed area. Reference made under Article 143(1) cannot, therefore, be treated as an effective alternate dispute-resolution mechanism in substitution of the pending suits which are abated by Section 4(3) of the Act. For this reason, it was urged, that the abatement of pending d
suits amounts to denial of the judicial remedy available to the Muslim community for resolution of the dispute and grant of the relief on that basis in accordance with the scheme of redress under the rule of law envisaged by the Constitution. The validity of sub-section (3) of Section 4, is assailed on this ground.

62. To appreciate the stand of the Central Government on this point, we e
permitted the learned Solicitor General to make a categorical statement for the Union of India in this behalf. The final statement made by the learned Solicitor General of India in writing dated 14-9-1994 forming a part of the record, almost at the conclusion of the hearing, also does not indicate that the answer to the question referred would itself be decisive of the core question in controversy between the parties to the suits relating to the claim over the disputed site. According to the statement, the Central Government proposes to resort to a process of negotiation between the rival claimants after getting the answer to the question referred, and if the negotiations fail, then to adopt such course as it may find appropriate in the circumstances. There can be no doubt, in these circumstances, that the Special Reference made under Article 143(1) of the Constitution cannot be construed as an effective alternate g
dispute-resolution mechanism to permit substitution of the pending suits and legal proceedings by the mode adopted of making this Reference. In our opinion, this fact alone is sufficient to invalidate sub-section (3) of Section 4 of the Act. [See *Indira Nehru Gandhi v. Raj Narain*[6].] We accordingly declare sub-section (3) of Section 4 to be unconstitutional. However, sub-
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6 1975 Supp SCC 1 : (1976) 2 SCR 347

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section (3) of Section 4 is severable, and, therefore, its invalidity is not an impediment to the remaining statute being upheld as valid.'

a 63. There is no serious challenge to the validity of any other provision of the Act except a feeble attack on Section 8. For Section 8, it was urged, that performance of the exercise of payment of compensation thereunder would be impractical in respect of the property of which ownership is in dispute. This argument itself does not visualise any such difficulty in respect of the remaining undisputed property. In the view we have taken that the vesting in
b the Central Government by virtue of Section 3 in relation to the disputed area is only as a statutory receiver, and Section 4(3) being declared invalid results in revival of the pending suits and legal proceedings, the application of Section 8 would present no difficulty. Section 8 is meant only for the property acquired absolutely, other than the disputed area, being adjacent to, and in the vicinity of the disputed area. The disputed area being taken over
c by the Central Government only as a statutory receiver, there is no question of payment of compensation for the same as it is meant to be handed over to the successful party in the suits, in terms of the ultimate judicial verdict therein, for the faithful implementation of the judicial decision. The exercise of the power under Section 8, by the Central Government is to be made only
d then in respect of the disputed area, in accordance with the final judicial decision, preserving status quo therein in terms of Section 7(2) till then. No further discussion of this aspect is necessary.

64. A construction which the language of the statute can bear and promotes a larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord.

e MOSQUE — IMMUNITY FROM ACQUISITION

65. A larger question raised at the hearing was that there is no power in the State to acquire any mosque, irrespective of its significance to practice of the religion of Islam. The argument is that a mosque, even if it is of no particular significance to the practice of religion of Islam, cannot be acquired because of the special status of a mosque in Mahomedan Law. This argument was not confined to a mosque of particular significance without which right to practise the religion is not conceivable because it may form an essential and integral part of the practice of Islam. In the view that we have taken of limited vesting in the Central Government as a statutory receiver of the disputed area in which the mosque stood, for the purpose of handing it over to the party found entitled to it, and requiring it to maintain status quo
g therein till then, this question may not be of any practical significance since there is no absolute divesting of the true owner of that property. We may observe that the proposition advanced does appear to us to be too broad for acceptance inasmuch as it would restrict the sovereign power of acquisition even where such acquisition is essential for an undoubted national purpose,
h if the mosque happens to be located in the property acquired as an ordinary place of worship without any particular significance attached to it for the

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practice of Islam as a religion. It would also lead to the strange result that in secular India there would be discrimination against the religions, other than Islam. In view of the vehemence with which this argument was advanced by Dr Rajeev Dhavan and Shri Abdul Mannan to contend that the acquisition is invalid for this reason alone, it is necessary for us to decide this question. a

66. It has been contended that acquisition of a mosque violates the right given under Articles 25 and 26 of the Constitution of India. This requires reference to the status of a mosque under the Mahomedan Law.

67. Even prior to the Constitution, places of worship had enjoyed a special sanctity in India. In order to give special protection to places of worship and to prevent hurting the religious sentiments of followers of different religions in British India, Chapter XV of the Indian Penal Code, 1860 was enacted. This Chapter exclusively deals with the offences relating to religion in Sections 295, 295-A, 296, 297 and 298 of the Indian Penal Code. Lord Macaulay in drafting the Indian Penal Code, had indicated the principle on which it was desirable for all Governments to act and the British Government in India could not depart from it without risking the disintegration of society. The danger of ignoring the religious sentiments of the people of India which could lead to spread of dissatisfaction throughout the country was also indicated. c

68. In British India, the right to worship of Muslims in a mosque and Hindus in a temple had always been recognised as a civil right. Prior to 1950, the Indian courts in British India had maintained the balance between the different communities or sects in respect of their right of worship. d

69. Even prior to the guarantee of freedom of religion in the Constitution of India, Chief Justice Turner in *Muthialu Chetti v. Bapun Saib*[10] had held that during the British administration all religions were to be treated equally with the State maintaining neutrality having regard to public welfare. In *Sundram Chetti v. Queen*[11] approving *Muthialu Chetti* v. *Bapun Saib*[10], Chief Justice Turner said: e

> "But with reference to these and to other privileges claimed on the ground of caste or creed, I may observe that they had their origin in times when a State religion influenced the public and private law of the country, and are hardly compatible with the principles which regulate British administration, the equal rights of all citizens and the complete neutrality of the State in matters of religion.... When anarchy or absolutism yield place to well-ordered liberty, change there must be, but change in a direction which should command the assent of the intelligence of the country." f g

70. In *Mosque known as Masjid Shahid Ganj* v. *Shromani Gurdwara Parbandhak Committee, Amritsar*[12], it was held there that where a mosque has been adversely possessed by non-Muslims, it lost its sacred character as

10 ILR (1880) 2 Mad 140 : 217 : 5 Ind Jur 23 : 2 Weir 68
11 ILR (1883) 6 Mad 203 : 2 Weir 77 (FB)
12 AIR 1938 Lah 369 : 40 PLR 319 h

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mosque. Hence, the view that once a consecrated mosque; it remains always a place of worship as a mosque was not the Mahomedan Law of India as
a approved by Indian courts. It was further held by the majority that a mosque in India was an immovable property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession. The conclusion reached in the minority judgment of Din Mohd., J. is not the Mahomedan Law of British India. The majority view expressed by the learned Chief Justice of Lahore High Court was approved by the
b Privy Council in *Mosque known as Masjid, Shahid Ganj* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar*[13] in the appeal against the said decision of the Lahore High Court. The Privy Council held:

> "It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of a mosque whether the purpose be merely to provide money for the upkeep and conduct of a
> c mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as 'mosque' or unless the building is
> d razed to the ground or loses the appearance which reveals its original purpose."

71. It may also be indicated that the Land Acquisition Act, 1894 is applicable uniformly to all properties including places of worship. Right of acquisition thereunder was guided by the express provisions of the Land Acquisition Act, 1894 and executive instructions were issued to regulate
e acquisition of places of worship. Clause 102 of the Manual of Land Acquisition of the State of Maharashtra which deals with the acquisition of religious places like churches, temples and mosques, is of significance in this context.

72. The power of acquisition is the sovereign or prerogative power of the State to acquire property. Such power exists independent of Article 300-A of the Constitution or the earlier Article 31 of the Constitution which merely indicate the limitations on the power of acquisition by the State. The Supreme Court from the beginning has consistently upheld the sovereign power of the State to acquire property. B.K. Mukherjee, J. (as he then was) held in *Chiranjit Lal Chowdhuri* v. *Union of India*[14] as under: (SCR pp. 901-02)

> g "It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private

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13 AIR 1940 PC 116, 121 : 44 CWN 957 : 67 IA 251
14 1950 SCR 869 : AIR 1951 SC 41

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property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner."

73. Patanjali Sastri, C.J., in the *State of W.B. v. Subodh Gopal Bose*[15] held as under: (SCR p. 605) a

"... and among such powers was included the power of "acquisition or requisitioning of property" for Union and State purposes in Entry No. 33 of List I and No. 36 of List II respectively. Thus, what is called the power of eminent domain, which is assumed to be inherent in the sovereignty of the state according to Continental and American jurists and is accordingly not expressly provided for in the American Constitution, is made the subject of an express grant in our Constitution." b

74. It appears from various decisions rendered by this Court, referred later, that subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples etc. can be acquired under the State's sovereign power of acquisition. Such acquisition per se does not violate either Article 25 or Article 26 of the Constitution. The decisions relating to taking over of the management have no bearing on the sovereign power of the State to acquire property. c

75. *Khajamian Wakf Estates v. State of Madras*[16] has held: (SCR p. 797: SCC p. 899, para 12) d

"It was next urged that by acquiring the properties belonging to religious denominations the legislature violated Article 26(*c*) and *(d)* which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own or acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property." e

76. *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat*[17], has held: (SCR pp. 327-28: SCC p. 18, para 26)

"One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property. ... *If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a* g

15 1954 SCR 587 : AIR 1954 SC 92
16 (1970) 3 SCC 894 : (1971) 2 SCR 790 h
17 (1975) 1 SCC 11 : (1975) 2 SCR 317

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religious institution the question may have to be examined in a different light." (emphasis supplied)

77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.

79. A five-Judge Full Bench of the Allahabad High Court, in *Raja Suryapalsingh* v. *U.P. Govt.*[18], held:

> "Arguments have been advanced by learned counsel on behalf of certain waqfs and Hindu religious institutions based on Articles 25(1) & 26, clause (c) of the Constitution. ...
>
> It is said that a mutawalli's right to profess his religion is infringed if the waqf property is compulsorily acquired, but the acquisition of that property under Article 31 (to which the right conferred by Article 25 is expressly subject) has nothing to do with such rights and in no way interferes with this exercise."

80. It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.

81. Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts

18 AIR 1951 All 674, 690 : 1951 All LJ 365 : 1951 AWR (HC) 317

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this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspecnve, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions. a

82. The correct position may be summansed thus, Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See *Mulla's Principles 0/ Mahomedan Law*, 19th Edn.; by M. Hidayatullah - Section 217; and *Shahid Ganj* v. *Shiromani qurdwara*[13]). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship Of other religions in secular India to make it immune from acquisition" by exercise of the sove.reign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and *namqz* (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power; its status and immunity from acquisition' in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church; temple etc. It is neither more nor less than that of the places of worship of the other teligions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is riot at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right. b c e

Maintainability of the Reference

83. In the view that we have taken on the question of validity of the statute (Act No. 33 of 1993) and as a result of upholding the validity of the entire statute, except Section 4(3) thereof, resulting in revival of the pending suits and legal proceedings wherein the dispute between the parties has to be adjudicated, the Reference made under Article 143(1) becomes superfluous and unnecessary. For thls reason, it is unnecessary for us to examine the merits of the submissions made on the maintainability of this Reference. We, accordingly, very respectfully decline to answer the Reference and return the same. g

Result

84. The result is that all the pending suits and legal proceedings stand revived, and they shall be proceeded with, and decided, in accordance with h

13 AIR 1940 PC 116, 121 : 44 CWN 957 : 67 IA 251

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law. It follows further as a result of the remaining enactment being upheld as valid that the disputed area has vested in the Central Government as a
a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining status quo therein by virtue of the freeze enacted in Section 7(2), and the Central Government would exercise its power of vesting that property further in another authority or body or trust in accordance with Section 8(1) of the Act in terms of the final adjudication in the pending suits. The power of the courts in the pending legal proceedings
b to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. The parties to the suits
c would be entitled to amend their pleadings suitably in the light of our decision.

85. Before we end, we would like to indicate the consequence if the entire Act had been held to be invalid and then we had declined to answer the Reference on that conclusion. It would then result in revival of the abated suits along with all the interim orders made therein. It would also then result
d automatically, in revival of the worship of the idols by Hindu devotees, which too has been stopped from December 1992 with all its ramifications without granting any benefit to the Muslim community whose practice of worship in the mosque (demolished on 6-12-1992) had come to a stop, for whatever reason, since at least December 1949. This situation, unless altered subsequently by any court order in the revived suits, would, therefore,
e continue during the pendency of the litigation. This result could be no solace to the Muslims whose feelings of hurt as a result of the demolition of mosque, must be assuaged in the manner best possible without giving cause for any legitimate grievance to the other community leading to the possibility of reigniting communal passions detrimental to the spirit of communal harmony in a secular State.

f **86.** The best solution in the circumstances, on revival of suits is, therefore, to maintain status quo as on 7-1-1993 when the law came into force modifying the interim orders in the suits to that extent by curtailing the practice of worship by Hindus in the disputed area to the extent it stands reduced under the Act instead of conferring on them the larger right available under the court orders till intervention was made by legislation.

g 87. Section 7(2) achieves this purpose by freezing the interim arrangement for worship by Hindu devotees reduced to this extent and curtails the larger right they enjoyed under the court orders, ensuring that it cannot be enlarged till final adjudication of the dispute and consequent transfer of the disputed area to the party found entitled to the same. This
h being the purpose and true effect of Section 7(2), it promotes and strengthens the commitment of the nation to secularism instead of negating it. To hold this provision as anti-secular and slanted in favour of the Hindu community

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would be to frustrate an attempt to thwart anti-secularism and unwittingly support the forces which were responsible for the events of 6-12-1992.

General

88. Some general remarks are appropriate in the context. We must place on record our appreciation and gratitude to the learned members of the Bar who assisted us at the hearing of this matter of extraordinary and unusual importance to the national ethos. The learned Attorney General, the learned Solicitor General, the learned Advocate General of Madhya Pradesh, the learned Advocate General of Rajasthan, Shri F.S. Nariman, Shri Soli J. Sorabjee, Late Shri R.K. Garg, Dr Rajeev Dhavan, Shri Anil B. Divan, Shri Satish Chandra, Shri P.P. Rao, Shri Abdul Mannan, Shri O.P. Sharma, Shri S.N. Mehta, Shri P.N. Duda, Shri V.M. Tarkunde, Shri Ashok H. Desai, Shri Shakil Ahmed Syed, Ms N. Bhagwat and the other learned counsel who assisted them rendered their valuable assistance with great zeal after considerable industry in the highest traditions of the Bar. Shri Deoki Nandan Agarwal, one of the parties in a suit as the next friend of the Deity appeared in person and argued with complete detachment. Dr M. Ismail Frauqui also appeared in person. It was particularly heartening to find that the cause of the Muslim community was forcefully advocated essentially by the members of the Bar belonging to other communities. Their commitment to the cause is evident from the fact that Shri Abdul Mannan who appeared for the Sunni Central Wakf Board endorsed the arguments on behalf of the Muslim community. The reciprocal gesture of Shri Mannan was equally heartening and indicative of mutual trust. The congenial atmosphere in which the entire hearing took place was a true manifestation of secularism in practice.

89. The hearing left us wondering why the dispute cannot be resolved in the same manner and in the same spirit in which the maner was argued, particularly, when some of the participants are common and are in a position to negotiate and resolve the dispute. We do hope this hearing has been the commencement of that process which will ensure an amicable resolution of the dispute and it will not end with the hearing of this matter. This is a matter suited essentially to resolution by negotiations which does not end in a winner and a loser while adjudication leads to that end. It is in the national interest that there is no loser at the end of the process adopted for resolution of the dispute so that the final outcome does not leave behind any raneour in anyone. This can be achieved by a negotiated solution on the basis of which a decree can be obtained in terms of such solution in these suits. Unless a solution is found which leaves everyone happy, that cannot be the beginning for continued harmony between "we the people of India".

90. In 1893 World's Parliament of Religions was held in Chicago, the Chairman of Parliament John Henry Barrows indicated its object and observed:

"It was felt to be wise and advantageous that the religions of the world, which are competing at so many points in all the continents,

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should be brought together not for contention but for loving conference, in one room."

a In Parliament, Swami Vivekananda spoke of "Hinduism as the religion that has taught the world both tolerance and universal acceptance" and described the diversity of religions as "the same light coming through different colours". The assembly recited the Lord's Prayer as a universal prayer and Rabbi Emil Hirsch proclaimed: "The day of national religions is past. The God of the universe speaks of all mankind." At the closing session" Chicago
b lawyer Charles Bonney, one of Parliament's Chief visionaries, declared: "Henceforth the religions of the world will make war, not on each other, but on the giant evils that afflict mankind." Have we, during the *last* century, moved towards the professed goal?

91. "As 1993 began, communal violence returned to India, sparked by the controversy over a 16th century mosque said to stand on the ruins of an
c ancient Hindu temple honouring Lord Rama." It may be said that

"fundamentalism and pluralism pose the two challenges that people of all religious traditions face;"

and

"to the fundamentalists, the borders of religious certainty are tightly
d guarded; to the pluralist, the borders are good fences where one meets the neighbour. To many fundamentalists, secularism, seen as the denial of religious claims, is the enemy; to pluralists, secularism, seen as the separation of Government from the domination of a single religion, is the essential concomitant of religious diversity and the protection of religious freedom."

e The present state may be summarised thus:

"At present, the greatest religious tensions are not those between any one religion and another; they are the tensions between the fundamentalist and the pluralist in each and every religious tradition."

The spirit of universalism popular in the late 19th century was depicted by Max Muller who said:

"The living kernel of religion can be found; I believe, in almost every creed, however much the husk may vary. And think what that means: It means that above and beneath and behind all religions there is one eternal, one universal religion."

92. The year †1993 has been described as the "Year of Interreligious
g Understanding and Cooperation". Is that century-old spirit of conciliation and cooperation reflected in reactions of the protagonists of different religious faiths to justify 1993 being called the "Year of Interreligious Understanding and Cooperation"?" It is this hope which has to be realised in the future.

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† "*Reflections on Religious Diversity*" by Diana L. Eck in SPAN - September 1994

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93. A neutral perception of the requirement for communal harmony is to be found in the Bahai faith. In a booklet, *"Communal Harmony - India's Greatest Challenge"*, forming part of the Bahai literature, it is stated thus; a

"The spirit of tolerance and assimilation are the hallmarks of this civilization. Never has the question of communal harmony and social integration raised such a wide range of emotions as today."

* * *

Fear, suspicion and hatred are the fuel which feed the flame of communal disharmony and conflict. Though the Indian masses would prefer harmony between various communities.: it cannot be established through the accommodation 'separate but equal', not through the submergence of minority culture into majority culture — whatever that may be ...." b

Lasting harmony' between heterogeneous communities can only come through a recognition of the oneness of mankind, a realization that differences that divide us along ethnic and religious lines have no foundation. Just as there are no boundaries drawn on the earth of separate nations, distinctions of social, economic, ethnic and religious identity imposed by peoples are artificial; they have only benefited those with vested interests. On the other hand, naturally occurring diverse regions of the planet, or the country, such as mountain and plains, each have unique benefits. The diversity created by God has infinite value, while distinctions imposed by man have no substance." c d

94. We conclude with the fervent hope that communal harmony, peace and tranquillity would soon descend in the land of Mahatma Gandhi, Father of the Nation, whose favourite bhajan (hymn) was - e

"ईश्वर अल्लाह तेरे नाम,
सबको सन्मति दे भगवान।"

"Ishwar and Allah are both your names.
Oh God! Grant this wisdom to all."

95. We do hope that the people of India would remember the gospel he preached and practised, and live up to his ideals. f

"Better late than never."

Conclusions

96. As a result of the above discussion, our conclusions, to be read with the discussion, are as follows :

(1)(a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute-resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid. g

(b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of h

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Section 4 of the Act is severable from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except
a for sub-section (3) of Section 4, is rejected.

(2) Irrespective of the status of a mosque under the Muslim Law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or
b prerogative power of the State, than that of the places of worship of the other religions.

(3) The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood, stand revived for adjudication of the dispute
c therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act.

(4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited, as a statutory receiver with the duty for its management and administration according to Section 7
d requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

e (5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration
f thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

g (7) The meaning of the word 'vest' in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the
h disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver

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as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits.

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners. a

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in case of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute. b

(11) Consequently, the *Special Reference No. 1 of* 1993[19] made by the President of India under Article 143(1) of the Constitution of India is superfluous and unnecessary and does not require to be answered. For this reason, we very respectfully decline to answer it and return the same. c

(12) The questions relating to the constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms." d

97. These matters are disposed of, accordingly, in the manner stated above.

BHARUCHA, J., *(for Ahmadi, J. and himself) (dissenting)*— We have had the benefit of reading the erudite judgment of our learned brother, Verma, J. We are unable to take the view expressed by him and must respectfully dissent. e

99. It is convenient to deal with the validity of the Acquisition of Certain Area at Ayodhya Act, 1993, and the maintainability of the Presidential Reference dated 7-1-1993 under Article 143(1) of the Constitution of India in a common opinion.

100. The historical background, as now set out, is drawn from the White Paper on Ayodhya issued by the Government of India in February 1993. This was the basis upon which the Bill to bring the said Act upon the statute book was prepared and the Reference was made.

"Ayodhya ... has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhoomi-Babri Masjid was erected as a mosque by Mir Baqi in Ayodhya in 1528 AD. It is claimed by some sections that it was built at the site believed to be the birthspot g

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19 Ed.: For Order dated January 27, 1993 of the present Bench on the Reference *see* (1993) 1 SCC 642

of Shri Ram where a temple had stood earlier." (Para 1.1 of the White Paper.)

a The disputed structure was used by the Muslims for offering prayers until the night of 22-12-1949/23-12-1949, when

> "Hindu idols were placed under the central dome of the main portion of the disputed structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace the civil administration attached the premises under the provisions of
> b Section 145 of the Criminal Procedure Code. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure." (Paras 2.13 and 2.15)

In 1950 two suits were filed by Hindu gentlemen; in one of these suits, in January 1950," the Civil Judge concerned passed interim orders whereby the idols remained in place and puja continued. The interim order was confirmed
c by the High Court in April 1955. On 1-2-1986, the District Judge concerned ordered the opening of the locks upon the disputed structure and permitted puja by devotees. In 1959 a suit was filed claiming title to the disputed structure by the Nirmohi Akhara, In 1961 another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board. In J989 Devki Nandan Agarwal as the next friend of the Deity, that is to say, the said
d idols, filed a title suit in respect of the disputed structure. In 1989 the suits aforementioned were transferred to the Allahabad High Court and were ordered to be heard together. On 14-8-1989; the High Court ordered the maintenance of status quo in respect of the disputed structure, (Appendix-I to the White Paper.)

> "The controversy entered a new phase with the: placing of idols in
> e the disputed structure in December 1949. The premises were attached under Section 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. The interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December J949 till December 1992 the structure had not been used as a mosque." (Para 1.2)

f On 6-12-1992, the disputed structure was demolished.

> "The demolition ... was a most reprehensible act, The perpetrators of this deed struck not only against a place. of worship but also at the principles of secularism, democracy and the rule of law ...." (para 1.35)

At 6.45 p.m, on that day the idols were replaced where the disputed structure had stood and by 7.30 p.m. work had started on the construction of a
g temporary structure for them. (para 1.20) At about 9.10 p.m. the President of India issued a proclamation under the provisions of Article 356 assuming to himself all the functions of the Government of Uttar Pradesh and dissolving its Vidhan Sabha. (Para 1.21)

101. A structure called the Ram Chabutra stood" on the disputed site, within the courtyard of the disputed structure. This structure was also
h demolished on 6-12-1992 (Appendix-V of the White Paper). As a result, worship by the Hindus thereat, Which, it appears, had been going on for a

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considerable period of time without- objection by the Muslims, came to an end.

102. After the imposition of President's rule, the Central Government took, inter alia, the following decisions: "The Government will see to it that the demolished structure is rebuilt; and appropriate steps will be taken regarding new Ram temple." (Para 1.22) a

103. On 27-12-1992, the aforesaid decisions taken on 1-12-1992, "to rebuild the demolished structure and to take appropriate steps regarding new Ram temple" were elaborated as follows: b

> "The Government has decided to acquire all areas in dispute in the suit pending in the Allahabad High Court. It has also been decided to acquire suitable adjacent area. The acquired area excluding the area on which the disputed structure stood would be made available to two trusts which would be set up for construction of a Ram temple and a mosque respectively and for planned development of the area. c
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> The Government of India has also decided to request the President to seek the opinion of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood. The Government has also decided to abide by the opinion of the Supreme Court and to take appropriate steps to enforce the Court's opinion. Notwithstanding the acquisition of the disputed area, the Government would ensure that the position existing prior to the promulgation of the Ordinance is maintained until such time as the Supreme Court gives its opinion in the maner. Thereafter the rights of the parties shall be determined in the light of the Court's opinion." (Para 8.11) d e

104. An Ordinance, which was replaced by the said Act was issued on 7-1-1993. The Reference under Article 143 was made on the same day. We shall refer to the provisions of the Act later. For the present, it is necessary to set out the Reference in full:

> "Whereas a dispute has arisen whether a Hindu temple or any Hindu religious structure existed prior to the construction of the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, in the area in which the structure stood in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh; f
>
> 2. And whereas the said area is located in Revenue Plot Nos. 159 and 160 in the said Village Kot Ramchandra; g
>
> 3. And whereas the said dispute has affected the maintenance of public order and harmony between different communities in the country;
>
> 4. And whereas the aforesaid area vests in the Central Government by virtue of the Acquisition of Certain Area at Ayodhya Ordinance, 1993; h

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5. And whereas notwithstanding the vesting of the aforesaid area in the Central Government under the said Ordinance the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion;

6. And whereas in view of what has been hereinbefore stated it appears to me that the question hereinafter set out has arisen and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

7. Now, therefore, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Shanker Dayal Sharma, President of India, hereby refer the following question to the Supreme Court of India for consideration and opinion thereon, namely,

Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

105. It will be seen that the fifth recital of the Reference states that "the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion". The learned Solicitor General, appearing for the Central Government, submitted that this meant that the Central Government "was committed to bring about a settlement in the light of the Supreme Court opinion and consistent therewith. However, at this stage it cannot be predicated as to the precise manner in which progress towards a solution could be made". If, he submitted orally, no amicable solution was reached, the Central Government would take steps to enforce the Supreme Court's opinion. To avoid ambiguity, the learned Solicitor General was asked to take instructions and put in writing the Central Government's position in this behalf: If the answer to the question posed by the Reference was that no Hindu temple or religious structure had stood on the disputed site prior to the construction of the disputed structure, would the disputed structure be rebuilt? On 14-9-1994, the learned Solicitor General made the following statement in response:

"Government stands by the policy of secularism and of even-handed treatment of all religious communities. The Acquisition of Certain Area at Ayodhya Act, 1993, as well as the Presidential Reference, have the objective of maintaining public order and promoting communal harmony and the spirit of common brotherhood amongst the people of India.

Government is committed to the construction of a Ram temple and a mosque, but their actual location will be determined only after the Supreme Court renders its opinion in the Presidential Reference.

Government will treat the finding of the Supreme Court on the question of fact referred under Article 143 of the Constitution as a verdict which is final and binding.

In the light of the Supreme Court's opinion and consistent with it, Government will make efforts to resolve the controversy by a process of

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negotiations. Government is confident that the opinion of the Supreme Court will have a salutary effect on the attitudes of the communities and they will no longer take conflicting positions on the factual issue settled by the Supreme Court. a

If efforts at a negotiated settlement as aforesaid do not succeed, Government is committed to enforce a solution in the light of the Supreme Court's opinion and consistent with it. Government's action in this regard will be even-handed in respect of both the communities. If the question referred is answered in the affirmative, namely, that a Hindu temple/structure did exist prior to the construction of the demolished structure, Government action will be in support of the wishes of the Hindu community. If, on the other hand, the question is answered in the negative, namely, that no such Hindu temple/structure existed at the relevant time, then Government action will be in support of the wishes of the Muslim community. b c

106. The learned Solicitor General was asked to clarify whether the Central Government proposed to act in support of either community's wishes as presently known or as ascertained after the answer to the Reference was given and negotiations had failed. The learned Solicitor General was unable to get instructions in this behalf from the Central Government. It is fair to say that he had not much time to do so as the arguments were closed on the day after the clarification was sought. d

107. It is relevant now to refer to the content of the dispute.

"At the centre of the dispute is the demand voiced by the Vishwa Hindu Parishad (VHP) and its allied organisations for the restoration of a site said to be the birthplace of Shri Ram in Ayodhya. Till 6-12-1992, this site was occupied by the structure erected in 1528 by Mir Baqi who claimed to have built it on orders of the first Mughal Emperor Babar. e

* * *

The VHP and its allied organisations based their demand on the assertion that this site is the birthplace of Shri Ram and a Hindu temple commemorating this site stood here till it was destroyed on Baber's command and a masjid was erected in its place.

* * *

During the negotiations aimed at finding an amicable solution to the dispute one issue which came to the fore was whether a Hindu temple had existed on the site occupied by the disputed structure and whether it was demolished on Babar's order for the construction of the masjid. It was stated by certain Muslim leaders that if these assertions were proved, the Muslims would voluntarily hand over the disputed shrine to the Hindus." (Paras 2.1, 2.2 and 2.3 of the White Paper.) g

108. The Statement of Objects and Reasons for the Act states:

"It was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could h

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be developed in a planned manner wherein a Ram temple, a mosque, ameniues for pilgrims, a library, museum and other suitable facilities can a be set up,"

109. The Act has been placed on the statute book to provide for the acquisition of "certain area at Ayodhya and for matters connected therewith or Incidental thereto". The Act recites that there had "been a long standing dispute" relating to the structure aforementioned which had affected the maintenance of public order and harmony between different communities in b the country. It was "necessary to maintain public order and promote communal harmony and the spirit of common brotherhood: among the people of India". It was necessary to acquire certain areas in Ayodhya "with a view to achieve the aforesaid objectives".

110. The Act, by reason of Section 1(2), is deemed to have come into force on 7.1.1993 (which is the date on which the Ordinance was passed), c Section *2(a)* defines 'area' to mean the area specified in the Schedule to the Act, including the buildings, structures or other properties comprised therein, Section *2(b)* defines "authorised person" to mean "a person or body of persons or trustees of any trust authorised by the Central Government under Section 7".

111. By reason of Section 3, on and from the commencement of the Act, d the right, title and interest in relation to the area stands transferred to and vests in the Central Government.

112. Section 4(1) states that the "area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, ... and all other rights and interests in or arising out e of such properties as were immediately before the commencement of this Act In the ownership or control of any person or the State Government ..., and all registers, maps, plans, drawings and other documents of whatever nature relating thereto". By reason of Section 4(2) all the properties which have vested in the Central Government under Section 3 shall, by the force of such vesting, stand freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect. Section 4(3) states that any suit, appeal or other proceedings in respect of the right, title and interest relating to any property which is vested in the Central Government under Section 3 which was g pending before any court, tribunal or other authority on the date of the commencement of the Act "shall abate".

113. Section 5 empowers the Central Government to take all steps necessary to secure the possession of the area that vests in it.

Section 6 reads thus:

h "6. (1) Notwithstanding anything contained in Sections 3, 4, 5 and 7, the Central Government may, if it is satisfied that any authority or other

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body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette; that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body of trustees of that trust either on the date of the notification or on such later date as may be specified in the notification. a

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-section (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust. b

(3) The provisions of Sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose references therein to the Central Government shall be construed as references to such authority or body or trustees." c

114. Section 7 is the only section under the Chapter entitled "Management And Administration of Property", and it reads thus:

"7. (1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under Section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf. d

(2) In managing the property vested in the Central Government under Section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained." e

115. By reason of Section 8 the owner of any land, building, structure or other property comprised in the 'area' shall be given by the Central Government in cash an amount equivalent to the market value of the land, building, structure or other property that has been transferred to and vests in the Central Government under Section 3. For the purposes of deciding the claim of the owner, the Central Government is to appoint a Claims Commissioner. Claims are required to be made within a period of 90 days from the date of the commencement of the Act. g

116. Section 9 makes it clear that the provisions of the Act would have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of h

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any law other than the Act or any decree or order of any court, tribunal or other authority. Section 10 provides for penalties for non-compliance with
a the provisions of the Act. Section 11 provides for protection for action taken in good faith under the Act. Section 12 empowers the Central Government to make rules to carry out the provisions of the Act. By reason of Section 13 the Ordinance is repealed.

117. The Act may now be analysed.

118. 'Area' under Section *2(a)* of the Act is that specified in the
b Schedule. Again, 'area' under Section 3 is that specified in the Schedule. 'Area', by reason of Section 4(1), includes assets and all property, movable and immovable, and all other rights and interests in or arising out of such property. 'Area', in other words, includes the whole bundle of movable and immovable property in the area specified in the Schedule and all other rights and interests therein or arising thereout. The whole bundle of property and
c rights vests, by reason of Section 4(2), in the Central Government freed and discharged from all encumbrances.

119. Section 7(1) speaks of property vested in the Central Government under Section 3. It, therefore, speaks of the whole bundle of property and rights. These are to be managed by the Central Government or any person or body of persons or trustees of any trust so authorised. In managing the whole
d bundle of property and rights "the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards) ... stood ... is maintained". This provision in Section 7(2) relates only to that part of the area upon which the disputed structure stood (the disputed site).

e 120. Now, as to the "authorised person", Section 7(1) says that the whole bundle of property and rights shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by the Central Government. This, as Section 7(2) shows, is the "authorised person" under Section *2(b)*. He or it may not be the authority or other body or trustees referred to in Section 6(1). In other words, the power to manage the whole bundle of property and rights may be conferred upon any person or body of persons or trustees of any trust even though he or they are not required to comply with the terms and conditions that the Central Government may deem fit to impose under Section 6(1).

121. "In managing the property vested in the Central Government under
g Section 3" (which, read with Section 4(1), means the whole bundle of property and rights) "the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure) ... stood ... is maintained". This provision in Section 7(2) speaks of "the position existing before the commencement of
h this Act", i.e. existing before midnight on the night of *6-1-1993/7-1-1993*. This provision, therefore, requires the Central Government or the authorised

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person to ensure, in managing the whole bundle of property and rights, that the position existing on the disputed site before midnight on the night of 6-1-1993/7-1-1993 is maintained. a

122. The obligation is cast in regard to the 'management' of the whole bundle of property and rights. This implies that the Central Government or the authorised person is required to continue with the puja that was being performed on the disputed site before 7-1-1993. This is provided for even though, by reason of Section 4(2), the orders of the court in this behalf cease to have effect. b

123. There is no provision in the Act which indicates in clear terms what use the whole bundle of property and rights, including the disputed site, will be put to by the Central Government. An indication in this behalf is provided by Section 6. Section 6 is an enabling provision. By reason of Section 6(1), notwithstanding the vesting in the Central Government of the whole bundle of property and rights, "the Central Government may, if it is satisfied that c any authority or other body or trustees of any trust set up on or after the commencement of this Act is, or are willing to comply with such terms and conditions as that Government might think fit to impose direct .... that the right, title and interest or any of them" in relation to the whole bundle of property or rights or any part thereof, instead of continuing to vest in the Central Government, shall vest in that authority or body or trustees of that d trust. Thereupon, by reason of Section 6(2), the rights of the Central Government in the whole bundle of property and rights or such part thereof as has been vested under Section 6(1) shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust. In other words, when the vesting takes place in respect of the whole bundle of property and rights or of any part thereof, all the e rights of the Central Government in the whole bundle of property and rights or such part thereof as has been vested, shall be deemed to be transferred to the authority or body or trust in which it is vested.

124. The provisions of Section 6 apply to the whole bundle of property and rights; that is to say, they apply also to the disputed site. The disputed site may also be vested in an authority or body or trust that is willing to comply with the terms and conditions that the Central Government might think fit to impose. Those terms and conditions are not specified in the Act, nor is there any indication in that behalf available. The only restriction imposed upon such authority or body or trust, apart from the terms and conditions that the Central Government may think fit to impose, are those provided in Section 7. This is set out in Section 6(3). The provisions of g Sections 4, 5 and 11 which are also mentioned in Section 6(3) are provisions that empower and protect the authority or body or trust.

125. Section 7 relates to the management and administration of the whole bundle of property and rights. Section 7(1) states that it shall be managed by the Central Government or by a body of persons or trustees of h any trust authorised by the Government in this behalf; in other words, the

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authorised person. Section 7(2) obliges the Central Government or the authorised person, in managing the whole bundle of property and rights, to
a ensure that "the position existing" before the commencement of the Act in the area on which the disputed structure stood "is maintained". The Central Government or the authorised person is, therefore, obliged to maintain the "position" in respect of the disputed site as it was before midnight on the night of 6-1-1993/7-1-1993, and it is required to do so in "managing" the whole bundle of property and rights. This implies not only that the debris of
b the demolished structure must be maintained as it stands but also that the idols which had been placed on the disputed site after the demolition had taken place must be retained where they are and the puja earned on before them must be continued.

126. Since the Act does not spell out the use to which the whole bundle of property and rights is intended to be put and since the provisions of
c Section 7 are applicable even to the authority or body or trust in which the Central Government may vest the whole bundle of property and rights or any part thereof under the provisions of Section 6, it is possible to read the provisions of Section 7 as being of a permanent nature. The Act read by itself, therefore, suggests that the idols shall remain on the disputed site for an indefinite period of time and puja shall continue to be performed before
d them.

127. Section 8 gives to the owner of any land, building, structure or other property, which is acquired compensation equivalent to the market value thereof. Claims in that behalf are to be entertained by a Claims Commissioner to be appointed by the Central Government. For the purposes of establishing his claim, the owner would have to establish his title to the
e property that has been acquired. The suits in the Allahabad High Court which abate by reason of Section 4(3) relate to the title of the disputed site. In other words, the forum for the adjudication of the title to the disputed site is shifted from the courts to the Claims Commissioner.

128. The above is an analysis of the Act by itself. It is necessary to read it also in the context of its Statement of Objects and Reasons and the Reference.

129. The Statement of Objects and Reasons state that the acquisition of the whole bundle of property and rights is necessary for setting up a planned complex housing "a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities". The authority or other body or trustees of any trust willing to comply with such terms and conditions as the Central
g Government may think fit to impose would, under the provisions of Section 6, be vested with a part of the whole bundle of property and rights to construct and maintain a Ram temple and concommitant amenities. Another authority or body or trust so willing would be vested with another part of the whole bundle of property and rights to construct and maintain a mosque and
h concommitent facilities. So read, the provisions relating to the management and administration of the whole bundle of property and rights contained in

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Section 7 are interim provisions, to operate until vesting under Section 6 has taken place.

130. Having regard to the provisions of Section 6, the Statement of Objects and Reasons and the Reference, the acquisition of the disputed site and surrounding, land is to hold the same pending the resolution of the dispute regarding the disputed site. The resolution of the dispute is to take place in the manner stated in the Reference. Upon such resolution the disputed site would be handed over for the construction of a mosque or a Ram temple, as the case may be, and the surrounding area would house a place of worship of the other religion and ancillary facilities for the places of worship of both the Muslim and the Hindu communities. The validity of the provisions of Section 3, by reason of which the whole bundle of property and rights stands transferred to and vests in the Central Government, and, therefore, of the Act itself, depends upon the validity of the provisions that follow it, particularly, Section 4.

131. Section 4(1) states that the "area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, ... and all other rights and interests in or arising out of such properties as were immediately before the commencement of this Act in the ownership or control of any person or the State Government ... and all registers, maps, plans, drawings and other documents of whatever nature relating thereto". By reason of Section 4(2) all the properties which have vested in the Central Government under Section 3 shall by the force of such vesting, stand freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect. Section 4(3) states that any suit, appeal or other proceedings in respect of the right, title and interest relating to any property which is vested in the Central Government under Section 3 which was pending before any court, tribunal or other authority on the date of the commencement of the Act "shall abate". By reason of Section 8 the owner of any land, building, structure or other property comprised in the 'area' shall be given by the Central Government in cash an amount equivalent to the market value of the land, building, structure or other property that has been transferred to and vests in the Central Government under Section 3. Such claims are to be decided by a Claims Commissioner, who is entitled to regulate his own procedure.

132. As the White Paper shows, the demolished structure was built as a mosque in 1528. It was used as a mosque from 1528 until the night of 22-12-1949/23-12-1949, when the idols were placed therein. The idols continue in the disputed structure by reason of the orders of the courts. Under the orders of the court passed in 1986 public worship of the idols was permitted. This state of affairs continued until 6-12-1992, when the disputed structure was demolished.

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133. The effect of Section 4 of the Act is that the Sunni Wakf Board, which administered the mosque that was housed in the disputed structure, and the Muslim community lose their right to plead adverse possession of the disputed site from 1528 until 1949, if not up-to-date, considering that the idols remained in the disputed structure only under the orders of the courts, Instead of judicial determination of the title to the disputed site on the basis of the law, the disputed site, along with surrounding land, has been acquired and a complex with a mosque and a temple thereon is planned. What is to happen to the disputed site is to depend upon the answer to the question posed in the Reference and negotiations based thereon. The question posed in the Reference is: Whether a Hindu temple or any other Hindu religious structure existed prior to the construction of the disputed structure on the disputed site. The learned Solicitor General fairly stated that the court should read the question as asking whether any Hindu temple or other Hindu religious structure stood on the disputed site immediately before the disputed structure was built thereon. The dispute, it will be remembered, was that a Ram temple had stood on the disputed site and it was demolished to make place for the disputed structure; the question posed, however, is: Was there "a Hindu temple or any Hindu religious structure" on the disputed site. Secondly, the salient fact as to whether the temple, if any, was demolished to make place for the disputed structure is not to be gone into. The disputes as to title to the disputed site survive for consideration for the purpose of award of compensation. For this purpose title shall have to be established not before a court of law but before a Claims Commissioner to be appointed by the Central Government who is entitled to devise his own procedure. No right of appeal or reference to a Civil Court is provided for with the result that the decision of the Claims Commissioner would be final except for a remedy under Articles 226/227 of the Constitution. For the reasons aforesaid, the provisions of Sections 4 and 8 of the Act must be held to be arbitrary and unreasonable.

134. More importantly, the provisions of Section 4 of the Act, inasmuch as they deprive the Sunni Wakf Board and the Muslim community of the right to plead and establish adverse possession as aforesaid and restrict the redress of their grievance in respect of the disputed site to the answer to the II mated question posed by the Reference and to negotiations subsequent thereto, and the provisions of Section 3 of the Act, which vest the whole bundle of property and rights in the Central Government to achieve this purpose, offend the principle of secularism, which is a part of the basic structure of the Constitution, being slanted in favour of one religious community as against another.

135. That secularism is a part of the basic features of the Constitution was held in *Kesavananda Bharati v. State of Kerala*[5]. It was unanimously reaffirmed by the nine-Judge Bench of this Court in *S.R. Bommai* v. *Union of*

5 (1973) 4 SCC 225 : 1973 Supp SCR 1

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India". Sawant, J. analysed the Preamble of the Constitution and various articles therein and held that these provisions, by implication prohibited the establishment of a theocratic State and prevented the State from either identifying itself with or favouring any particular religion. The State was enjoined to accord equal treatment to all religions. K. Ramaswamy, J. quoted the words written by Gandhiji that are as apposite now as they were when he wrote them: "The Allah of Muslims is the same as the God of Christians and Ishwara of Hindus." B.P. Jeevan Reddy, J. said: (SCC p. 233, para 304)

> "While the citizens of this country are free to profess, practise and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by Western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution as affirmed in *Kesavananda Bharati v. State of Kerala*[5] and *Indira Nehru Gandhi v. Raj Narain*[6]. Any step inconsistent with this constitutional policy is, in plain words, unconstitutional."

The State has no religion. The State is bound to honour and to hold the scales even between all religions. It may not advance the cause of one religion to the detriment of another.

136. The core provisions of the Act are Sections 3, 4 and 8. The other provisions of the Act are only ancillary and incidental to Sections 3, 4 and 8. Since the core provisions of Sections 3, 4 and 8 are unconstitutional, the Act itself cannot stand.

137. The provisions of Section 7 are referred to in support of the finding that the Act is skewed to favour one religion against another.

138. The provisions of Section 7(1) empower the Central Government to entrust the management of the acquired area to "any person or body of persons or trustees of any trust". Section 7(2) states that "in managing the

4 (1994) 3 SCC 1
5 (1973) 4 SCC 225 : 1973 Supp SCR 1
6 1975 Supp SCC 1 : (1976) 2 SCR 347

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property vested in the Central Government under Section 3 the Central
Government or the authorised person ... shall ensure that the position
a existing before the commencement of this Act in the area on which" the
disputed structure "stood,... is maintained". It is relevant to note, that "the
position" is required to be maintained in the course of "managing the
property". Before "the commencement of this Act" the disputed structure
had been demolished, the idols had been placed on the disputed site and puja
thereof had begun, Section 7(2), therefore, requires that the puja must
b continue so long as the management continues. For how long such
management is to continue and on the happening on what event it will come
to end is not indicated. Section 7(2), thus, perpetuates the performance of
puja on the disputed site. No account is taken of the fact that the structure
thereon had been destroyed In "a most reprehensible act. The perpetrators of
this deed struck not only against a place of w9rship but at the principles of
c secularism, democracy and the rule of law...." (White Paper, para 1.35.) No
account is taken of the fact that there is a dispute in respect of the site on
which puja is to be performed; that, as stated in the White Paper, until the
night of 22-12-1949/23-12-1949, when the idols were placed in the disputed
structure, the disputed structure was being used as a mosque; and that the
Muslim community has a claim to offer namaz thereon.

d 139. Reference was made in the course of the proceedings to the
provisions of the Places of Worship Special Provisions Act, 1991. It is a
statute to prohibit the conversion of any place of worship and to provide for
the maintenance of the religious character of any place of worship as it
existed on 15-8-1947. It enjoins that no person shall convert any place of
worship of any religious denomination or any Section thereof into a place of
e worship of a different section of the same religious denomination or of a
different religious denomination or any section thereof. It declares that the
religious character of a place of worship existing on 15-8-1947, shall
continue to be the same as it existed on that date. It is specified that nothing
contained in the statute shall apply to the place of worship which was the
disputed structure at Ayodhya and to any suit, appeal or other proceedings
relating to it. Based upon The Places of Worship Act, it was submitted that
what had happened at Ayodhya on 6-12-1992, could never happen again. The
submission overlooks the fact that the Indian Penal Code contains provisions
in respect of offences relating to religion. Section 295 thereof states that
whoever destroys, damages or defiles any place of worship or any object
held sacred by any class of persons with the object of thereby insulting the
g religion of any class of persons or with the knowledge that any class of
persons is likely to consider such destruction, damage or defilement as an
insult to their religion shall be punished. Section 295 provides for
punishment of a person who with the deliberate and malicious intention of
outraging the religious feelings of any class of citizens of India, by words,
either spoken or written, or by signs or by visible representation or otherwise
h insults or attempts to insult the religion or religious beliefs of that class.
Those who razed the disputed structure to the ground on 6-12-1992, were not

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deterred by these provisions. Others similarly minded are as little likely to be deterred by the provisions of the Places of Worship Act.

140. The Preamble to the Constitution of India proclaims that India is a secular democratic republic. Article 15 in Part III of the Constitution, which provides for fundamental rights, debars the State from discriminating against any citizen on the ground of religion. Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, to place all religious communities on a par. When, therefore, adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the State to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution.

141. We must add a caveat. If the title to the place of worship is in dispute in a court of law and public order is jeopardised, two courses are open to the Central Government. It may apply to the court concerned to be appointed Receiver of the place of worship, to hold it secure pending the final adjudication of its title, or it may enact legislation that makes it statutory Receiver of the place of worship pending the adjudication of its title by the court concerned. In either event, the Central Government would bind itself to hand over the place of worship to the party in whose favour its title is found.

142. The learned Solicitor General submitted:

> When conflicting claims are made and deep sentiments are involved, a solution may hurt one or other of the sentiments, but on that account it cannot be characterised as partial or lacking in neutrality.
>
> When amity and harmony between communities are threatened, it is one of the secular duties of the State to help the parties towards a solution which the Government feels will be accepted over the course of time, if not immediately, and which will have the effect of abating and blunting the violence of the strife and conflict. The Act and the Reference make an attempt in the direction of restoring amity and harmony between the communities. Their objective is secular.

We cannot, for the reasons stated above, agree.

143. A brief reference to Article 25(1) may now be made. It reads:

> "25. *Freedom of conscience and free profession, practice and propagation of religion.*— (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

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Article 25(1) protects the rights of individuals. (See *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*.[20]) Exercise of the right of the individual to profess, practise and propagate religion is subject to public order. Secularism is absolute; the State may not treat religions differently on the ground that public order requires it.

144. The principle of secularism illumines the provisions of Articles 15 and 16. Article 15 obliges the State not to discriminate against any citizen on the ground of religion. The obligation is not subject to any restriction. Article 16(1) declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16(2) puts the requirement negatively: No citizen shall on the ground of religion be ineligible for or be discriminated against in respect of any employment or office under the State. Again, the obligation in this behalf is not subject to any restriction. The "hands-off" approach required of the State in matters of religion is illustrated also by Article 27, by reason whereof no person can be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion. Article 29(2) may also be noted for its absolute terms; no citizen can be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion.

145. This brings us to the Reference. The Act having been struck down, the suits as to the title of the disputed site in the Allahabad High Court revive and the purpose for which the Reference was made may be said to have become redundant. On the other hand, it may be said that the revival of the suits does not debar the Central Government from negotiating to bring an amicable solution to the dispute at Ayodhya and such negotiations depend upon the answer given to the question posed by the Reference. We shall, therefore, deal with the Reference, and proceed upon the basis that it is maintainable under the provisions of Article 143.

146. In *Special Reference No. 1 of 1964*[21], this Court held: (SCR p. 431)

> "It is quite true that under Article 143(1) even if questions are referred to this Court for its advisory opinion, this Court is not bound to give such advisory opinion in every case. Article 143(1) provides that after the questions formulated by the President are received by this Court, it may, after such hearing as it thinks fit, report to the President its opinion thereon. The use of the word 'may' in contrast with the use of the word 'shall' in the provision prescribed by Article 143(2) clearly brings out the fact that in a given case, this Court may respectfully refuse to express its advisory opinion if it is satisfied that it should not express its opinion having regard to the nature of the questions forwarded to it and having regard to the other relevant facts and circumstances."

20 1954 SCR 1005, 1021: AIR 1954 SC 282
21 (1965) 1 SCR 413: AIR 1965 SC 745

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147. In *Special Courts Bill,* 1978, *Re*[22], this Court said; (SCR p.502: SCC pp. 400-01, para 20)

"Article 143(1) is couched in broad terms, which provide that any question of law or fact may be referred by the President for the consideration of the Supreme Court if it appears to him that such a question has arisen or is likely to arise and if the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it. Though questions of fact have not been referred to this Court in any of the six references made under Article 143(1), that article empowers the President to make a reference even on questions of fact provided the other conditions of the article are satisfied. It is not necessary that the question on which the opinion of the Supreme Court is sought must have arisen actually. It is competent to the President to make a reference under Article 143(1) at an anterior stage, namely, at the stage when the President is satisfied that the question is likely to arise. The satisfaction whether the question has arisen or is likely to arise and whether it is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, is a matter essentially for the President to decide. The plain duty and function of the Supreme Court under Article 143(1) of the Constitution is to consider the question on which the President has made the reference and report to the President its opinion, provided of course the question is capable of being pronounced upon and falls within the power of the Court to decide. If, by reason of the manner in which the question is framed or for any other appropriate reason the Court considers it not proper or possible to answer the question it would be entitled to return the reference by pointing out the impediments in answering it. The right of this Court to decline to answer a reference does not flow merely out of the different phraseology used in clauses (1) and (2) of Article 143, in the sense that clause (1) provides that the Court 'may' report to the President its opinion on the question referred to it, while clause (2) provides that the Court 'shall' report to the President its opinion on the question. Even in matters arising under clause (2), though that question does not arise in this reference, the Court may be justified in returning the reference unanswered if it finds for a valid reason that the question is incapable of being answered. With these preliminary observations we will consider the contentions set forth above."

This Court is, therefore, entitled to decline to answer a question posed to it under Article 143 if it considers that it is not proper or possible to do so, but it must indicate its reasons.

148. In our view, the Reference must not be answered, for the following reasons.

149. The Act and the Reference, as stated hereinabove, favour one religious community and disfavour another; the purpose of the Reference is,

22 (1979) 1 SCC 380: (1979) 2 SCR 476

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therefore, opposed to secularism and is unconstitutional. Besides, the Reference does not serve a constitutional purpose.

a 150. Secondly, the fifth recital to the Reference states that "*the Central Government proposes to settle the said dispute* after obtaining the opinion of the Supreme Court of India and *in terms of the said opinion*". (emphasis supplied) It is clear that the Central Government does not propose to settle the dispute in terms of the Court's opinion. It proposes to use the Court's opinion as a springboard for negotiations. Resolution of the dispute as a
b result of such negotiations cannot be said to be a resolution of the dispute "in terms of the said opinion". Asked to obtain instructions and tell the Court that the mosque would be rebuilt if the question posed by the Reference was answered in the negative, the learned Solicitor General made the statement quoted above. It leaves us in no doubt that even in the circumstance that this Court opines that no Hindu temple or Hindu religious structure existed on
c the disputed site before the disputed structure was built thereon, there is no certainty that the mosque will be rebuilt.

151. Thirdly, there is the aspect of evidence in relation to the question referred. It is not our suggestion that a court of law is not competent to decide such a question. It can be done if expert evidence of archaeologists and historians is led, and is tested in cross-examination. The principal
d protagonists of the two stands are not appearing in the Reference; they will neither lead evidence nor cross-examine. The learned Solicitor General stated that the Central Government would lead no evidence, but it would place before the Court the material that it had collected from the two sides during the course of earlier negotiations. The Court being ill-equipped to examine and evaluate such material, it would have to appoint experts in the field to do
e so, and their evaluation would go unchallenged. Apart from the inherent inadvisability of rendering a judicial opinion on such evaluation, the opinion would be liable to the criticism of one or both sides that it was rendered without hearing them or their evidence. This would ordinarily be of no significance for they had chosen to stay away, but this opinion is intended to create a public climate for negotiations and the criticism would find the public ear, to say nothing of the fact that it would impair this Court's credibility.

152. Ayodhya is a storm that will pass. The dignity and honour of the Supreme Court cannot be compromised because of it.

153. No observation that we have made is a reflection on the referring
g authority. We have the highest respect for the office of the President of India and for its present incumbent; his secular credentials are well known.

154. Having regard to the construction that we have placed upon the Act and the Reference, it is neither necessary nor appropriate to discuss the other challenges to their validity and maintainability, respectively. It may, however, be said that we found the argument that the Act was public order
h legislation and, therefore, beyond the competence of Parliament very plausible.

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155. We are indebted to the learned Attorney General for the assistance that he has rendered to the Court. We are indebted to counsel who have appeared in these matters; if we single out Mr R.K. Garg, it is because of his untimely demise. a

156. Before we pass final orders, some observations of a general nature appear to be in order. Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land. We have no doubt that the moderate Hindu has little taste for the tearing down of the place of worship of another to replace it with a temple. It is our fervent hope that that moderate opinion shall find general expression and that communal brotherhood shall bring to the dispute at Ayodhya an amicable solution long before the courts resolve it. b

157. To quote Gandhiji again:

> "India cannot cease to be one nation because people belonging to different religions live in it. ... In no part of the world are one nationality and one religion synonymous terms, nor has it ever been so in India." c

158. The Acquisition of Certain Area at Ayodhya Act, 1993, is struck down as being unconstitutional. The writ petitions impugning the validity of the Act are allowed. The issues in the suits in the Allahabad High Court withdrawn for trial to this Court are answered accordingly. d

159. The Presidential Reference is returned respectfully, unanswered.

160. There shall be no order as to costs.

(1994) 6 Supreme Court Cases 442 e

(BEFORE M.N. VENKATACHALIAH, C.J. AND G.N. RAY, J.)

MOHD. ASLAM ALIAS BHURE, ACCHAN RIZVI Petitioners;

Versus

UNION OF INDIA,
STATE OF UTTAR PRADESH AND OTHERS Respondents.

Contempt Petition No. 97 of 1992 in Writ Petition (Civil) No. 977 and 972 of 1991† and Contempt Petition No. 102 of 1992 in Writ Petition (Civil) No. 1000 of 1991†, decided on October 24, 1994

A. Constitution of India — Arts. 129 & 215 - Wilful circumvention of Courts' orders in surreptitious and indirect manner by Chief Minister of a State, held, covered — Chief Minister liable for contempt on his failure to take reasonable steps in disregard of secular principles to keep up his assurances which were incorporated by Court as his undertaking and orders issued on that basis - Pursuant to challenge to State Govt. notifications under S. 4 of Land Acquisition Act for acquisition of certain land close to Ram Janma Bhumi-Babri Masjid complex, interlocutory orders issued by High Court as well as Supreme Court - Assurances given by Chief Minister before National g h

† Under Article 32 of the Constitution of India

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the provisions of Order 39 Rules 1 and 2 CPC and has committed a serious error in deciding the scope of Section 53-A of the Transfer of Property Act, a 1882 and Order 2 Rule 2 CPC. As noticed above the Civil Judge while granting ad interim injunction very categorically observed in the order that respective rights of the parties shall be decided at the time of final disposal of the suit. The very fact that Plaintiff 2 is in possession of the property as a tenant under Plaintiff 1 and possession of Plaintiff 2 was not denied, the interim protection was given to Plaintiff 2 against the threatened action of the b defendants to evict her without following the due process of law. In our considered opinion, the order passed by the learned Single Judge cannot be sustained in law.

8. For the aforesaid reasons, we allow this appeal and set aside the order passed by the High Court in the aforesaid appeal arising out of the order of injunction. However, before parting with the order we are of the view that c since the suit is pending for a long time the trial court shall hear and dispose of the suit within a period of four months from the date of receipt of copy of this order. It goes without saying that the trial court shall not be influenced by any of the observation made in the order passed by the appellate court as also by this Court and the suit shall be decided on its own merits.

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(2013) 9 Supreme Court Cases 319

(BEFORE DR B.S. CHAUHAN AND F.M. IBRAHIM KALIFULLA, JJ.)

STATE OF ANDHRA PRADESH AND OTHERS .. Appellants;

Versus

e STAR BONE MILL AND FERTILISER COMPANY .. Respondent.

Civil Appeal No. 6690 of 2004†, decided on February 21, 2013

A. Property Law — Transfer of Property Act, 1882 — Ss. 54, 55(1)(a) to 55(1)(c) & 55(2) and 7 & 8 — Buyer's claim to paramount ownership and title in respect of property purchased — Seller having different title from title that was professed to be sold i.e. seller concerned owned only leasehold title, but professed to sell paramount title — Seller concerned (one A) held the leasehold under the Government as lessor — Effect — Held, such sale deed was invalid and inoperative — Suit for declaration of paramount title to said property by buyer against Government, held, could not be decreed — Doctrines and Maxims — *Nemo dat qui non habet* (no one gives what he g has not got) — *Nemo plus juris tribuit quam ipse habet* (no one can bestow or grant a greater right, or a better title than he has himself) — Specific Relief Act, 1963, S. 34

B. Evidence Act, 1872 — S. 17 — Admission by transferee as to non-holding of title by transferor — Letter written by buyer, S who had purportedly been sold the paramount title by registered sale deed by A,

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† From the Judgment and Order dated 22-3-2004 of the High Court of Judicature of Andhra Pradesh at Hyderabad in City Civil Court Appeal No. 72 of 1989

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stating that S had been cheated by its seller, *A*, as *A* had professed to sell paramount title which *A* did not hold - Held, this was a clear admission by S that *A* did not have paramount title - Hence, as no person can grant a better title than he himself holds, S could not come to hold paramount title by virtue of the said sale deed — Property Law - *Nemo dat quod non habet* - Admission by purported transferee of title that purported transferor did not hold that title — Held, will bind such purported transferee — Transfer of Property Act, 1882 — Ss. 7, 8 and 54 - Civil Procedure Code, 1908, Or. 12 R. 6 (Paras 6, 16 and 17) b

Held:

No person can grant a title better than he himself possesses. In the instant case, unless it is shown that *A* (i.e. seller) had valid paramount title, the respondent-plaintiff (i.e. buyer) could not claim any relief whatsoever from court. The courts below failed to appreciate that the sale deed dated 11-11-1959 was invalid and inoperative, as the documents on record established that the seller *A* was merely a lessee of the Government. The documents show that the Government was the absolute owner of the suit land since at least 1920. Hence, the judgments of the courts below decreeing the suit filed by the respondent-plaintiff for declaration of paramount title are hereby set aside and the suit is dismissed. (Paras 17, 24, 16 and 25) c

State of A.P. v. *Star Bone Mill & Fertiliser Co.*, City Civil Court Appeal No: 72 of 1989, decided on 22-3-2004 (AP), *reversed*

d

C. Property Law — Ownership and Title — Proof - Presumption of title in favour of possessor under S. 110, Evidence Act, 1872 - Rebuttability of - Held, presumption of title as a result of possession arises only where the facts disclose that no title vests in any party - Further held, where possession of plaintiff is not prima facie wrongful, and his title is not proved, it certainly does not mean that because a man has title over some land, he is necessarily in possession of it - It in fact means that, if at any time a man with title was in possession of said property, the law allows the presumption that such possession was in continuation of the title vested in him - Thus, all that S. 110 provides for is that where apparent title is with the plaintiffs, then in order to displace said claim of apparent title and to establish good title in himself, it is incumbent upon defendant to establish by satisfactory evidence the circumstances that favour defendant's version - Presumption of possession and/or continuity thereof, both forward and backward, can be raised under S. 110, Evidence Act, 1872 e

- In present case, plaintiff S was in possession of property in dispute as transferee (as sub-lessee) of a lessee *(A)* of the Government - *S* claiming paramount title by filing suit for declaration of paramount title against Government - One *R* shown as pattadar in revenue record of that land - No explanation by plaintiff S as to who *R* was and how plaintiff was concerned with it - Documents showing that the Government was absolute owner of disputed land - On such facts, judgments of courts below decreeing plaintiff's suit for paramount title, held, not justified and, therefore, set aside - Evidence Act, 1872 - Ss. 110 and 114 — Specific Relief Act, 1963 - Ss. 34, 5 and 6 - Criminal Procedure Code, 1973 - S. 145 - Penal Code, 1860, Ss. 154 and 158 g h

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Held:

The principle enshrined in Section 110 of the Evidence Act, 1872 is based on public policy with the object of preventing persons from committing breach of the peace by taking the law into their own hands, however good their title over the land in question may be. It is, for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 CrPC, and Sections 154 and 158 IPC, were enacted. All the aforesaid provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It in fact means that, if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act. (Para 21)

The trial court recorded a finding to the effect that the name of one *R* was shown as pattadar in respect of the land in dispute and the respondent-plaintiff S is in possession. The respondent-plaintiff could not furnish any explanation herein as to who was this *R* and how the respondent-plaintiff was concerned with it. The courts below, have erred in ignoring the revenue record, particularly, the documents showing that the Government was the absolute owner of the suit land since at least 1920. (Paras 16 and 23)

Gurunath Manohar Pavaskar v. *Nagesh Siddappa Navalgund,* (2007) 13 SCC 565; *Nair Service Society Ltd.* v. *K.C. Alexander,* AIR 1968 SC 1165; *Chief Conservator of Forests* v. *Collector,* (2003) 3 SCC 472, *relied on*

D. Property Law - Ownership and Title - Proof - Revenue record - Nature and value of - Held, it is not a document of title - It merely shows possession of a person - Evidence Act, 1872, S. 35 (Paras 21 and 24)

Gurunath Manohar Pavaskar v. *Nagesh Siddappa Navalgund,* (2007) 13 SCC 565, *relied on*

E. Evidence Act, 1872 - S. 90 - Presumption under, as to documents 30 yrs old - Reckoning of period of 30 yrs mentioned in S. 90 - Mode of - Held, said period must be reckoned backward from the date of offering of the document, and not any subsequent date i.e. the date of decision of suit or appeal - In present case, suit filed in 1974 on basis of registered sale deed dt. 11-11-1959 - High Court considering said sale deed in the light of S. 90 and reckoning period of 30 yrs as to said deed from 1959 till the date of its impugned decision passed in appeal i.e. 22-3-2004, treating the appeal as a continuation of the suit - Held, such a view by High Court was impermissible and perverse - Hence, not acceptable (Paras 14 and 15)

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F. Property Law - Ownership and Title — Estoppel or acquiescence- Ownership of property - Acceptance of municipal/agricultural tax by State in respect of property or grant of loan by bank upon hypothecation/ mortgage of the property - Effect of - Held, mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from challenging ownership of the land, as there cannot be estoppel against the statute - Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property — Evidence Act, 1872, S. 115 otherwise - Transfer of Property Act, 1882 - Ss. 7, 8 and 54 — *Nemo dat quod non habet* (Para 22)

Appeal allowed W-D/51461/CV

Advocates who appeared in this case:

Amarendra Sharan, Senior Advocate (C.K. Sucharita and Ms Rumi Chanda, Advocates) for the Appellants;

D. Rama Krishna Reddy and Ms Asha Gopalan Nair, Advocates, for the Respondent.

Chronological list of cases cited on page(s)

1. (2007) 13 SCC 565, *Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund* 326c
2. City Civil Court Appeal No. 72 of 1989, decided on 22-3-2004 (AP), *State of A.P. v. Star Bone Mill & Fertiliser Co.* (reversed) 322e, 324f, 325d
3. (2003) 3 SCC 472, *Chief Conservator of Forests v. Collector* 326e
4. AIR 1968 SC 1165, *Nair Service Society Ltd. v. K.C. Alexander* 326c

The Judgment of the Court was delivered by

DR B.S. CHAUHAN, J.— This appeal has been preferred against the impugned judgment and order dated 22-3-2004, passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in *State of A.P. v. Star Bone Mill & Fertiliser Co.*[1], by way of which the civil suit filed by the respondent against the appellants, claiming title over the suit land in dispute, has been upheld.

2. The facts and circumstances giving rise to this appeal are: one Shri M.A. Samad, Assistant Engineer, City Improvement Board, Hyderabad, along with his associate, converted the land in dispute measuring 3.525 acres i.e. 17,061 sq yd in favour of the Forest Department in 1920. The suit land was given on lease on 21-5-1943 to M/s A. Allauddin & Sons for a fixed time period, incorporating the terms and conditions that the lessee would not be entitled to extend the existing building in any way, or to erect any structure on the land leased. The lessee was also prohibited from transferring the suit land by any means.

3. The said M/s A. Allauddin & Sons, a proprietary concern, sent a letter dated 29-9-1945 in response to the eviction notice, informing the appellants that it was not possible for it to remove the factory established on the suit land, and thus, the said lessee asked the appellants to put up the said property for rent. The said firm, then sent a letter dated 1-5-1951, offering rent of

1 City Civil Court Appeal No. 72 of 1989, decided on 22-3-2004 (AP)

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Rs 600 per annum. The appellants vide letter dated 20-12-1954, informed M/s A. Allauddin & Sons to vacate the site within a period of one month, or
a else be evicted in accordance with law, and in that case it would also be liable to pay damages. In spite of receiving such a letter, the said lessee/tenant remained in possession of the suit premises, and continued to pay rent, as is evident from the letter dated 15-8-1956.

4. The appellants, however, vide letter dated 21-2-1958, asked the said lessee/tenant M/s A. Allauddin & Sons, yet again, to vacate the suit land.
b Instead of vacating the suit land, M/s A. Allauddin & Sons executed a lease deed dated 24-2-1958, and got it registered on 6-4-1958, in favour of Syed Jehangir Ahmed and others (partners of the respondent firm, M/s Star Bone Mill and Fertiliser Co.), for a period of two years. During the subsistence of the said sublease, the partners of the firm M/s A. Allauddin & Sons, executed a sale deed on 11-11-1959 in favour of the respondent, for a consideration of
c Rs 45,000. The said sale deed was also registered, and possession was handed over to the respondent.

5. The respondent herein filed a petition in 1964 before the Minister for Agriculture & Forest, seeking permanent lease of the suit premises in his favour. On 26-4-1967, an order was passed by the Ministry of Agriculture & Forest in respect of recovery of arrears of rent as regards the said land. The
d respondent vide letter dated 7-5-1969, offered higher rent to the appellants for the suit land.

6. On 22-5-1970, the respondent wrote a letter to the Chief Minister of Andhra Pradesh (Ext. B-39), stating that he had been cheated by M/s A. Allauddin & Sons, as it had executed a sale deed in his favour, even though it had no title, and a very high rate of rent was fixed by the department, which
e should be reduced and till the matter is finally decided, a rent of Rs 569 per month should be accepted. The said application/petition was rejected by the Assistant Secretary to the Government, Food & Agriculture Department, vide letter dated 18-12-1970. Aggrieved, the respondent filed Writ Petition No. 187 of 1971 wherein an interim order dated 12-1-1971 was passed, to the effect that the recovery of rent for the period prior to 26-4-1969 would be made at the rate of Rs 568 per month instead of Rs 1279 per month. Subsequent to 26-4-1969, rent would be recovered at the rate of Rs 1279 per month. In case arrears are not paid by the respondent, he would be vacated from the suit land.

7. In view of the interim order of the High Court, the appellants issued a
g demand notice for a sum of Rs 45,484.62p. However, vide order dated 19-10-1971, the High Court directed the respondent to deposit a sum of Rs 30,000, in eight monthly instalments. The said writ petition was disposed of vide order dated 18-2-1972, asking the respondent to approach the appropriate forum to establish his rights over the suit land, or to make a representation to the State Government for this purpose.

h 8. The appellants served notice dated 8-4-1974, upon the respondent under Section 7 of the Land Encroachment Act, and the respondent submitted

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a reply to the said show-cause notice on 24-6-1974. The matter was adjudicated and decided on 21-8-1974, under Section 6 of the Land Encroachment Act, and the respondent was directed to vacate the suit land. a
The respondent filed Writ Petition No. 5222 of 1974 before the High Court, however, the same was dismissed, after giving liberty to the respondent to approach the civil court. Thus, the respondent filed Original Suit No. 582 of 1974 for declaration of title and for injunction, restraining the appellants from evicting the said respondent-plaintiff from the property in dispute.

9. The appellants contested the suit by filing a written statement, and on the basis of the pleadings therein, a large number of issues were framed, including whether M/s A. Allauddin & Sons was actually the owner and possessor of the suit land; and whether it could transfer the suit land to the respondent-plaintiff, vide registered sale deed dated 11-11-1959. The City Civil Court, vide judgment and decree dated 25-4-1989 decreed the suit, holding that the Government was not the owner of the suit land and that the respondent-plaintiff had a better title over it. Thus, he was entitled for declaration of title, and injunction as sought by him. b c

10. Aggrieved, the appellants preferred City Civil Court Appeal No. 72 of 1989 before the High Court, challenging the said judgment and decree dated 25-4-1989, which was dismissed vide judgment and decree dated 22-3-2004[1], affirming the judgment and decree of the trial court. Hence, this appeal. d

11. Shri Amarendra Sharan, learned Senior Counsel appearing on behalf of the appellants, has submitted that the courts below misdirected themselves and did not determine the issue as regards, whether the vendor of the respondent-plaintiff had any title over the suit property. The same is necessary to determine the validity of the sale deed in favour of the respondent-plaintiff. The issue before the trial court was not whether the Government was the owner of the said land or not. No such issue was framed either. Moreover, such an issue could not be framed in view of the admission made by the respondent-plaintiff itself, as it had been paying rent regularly to the Government, and the same was admitted by it, by way of filing an application before the Government stating, that M/s A. Allauddin & Sons had cheated it by executing a sale deed in its favour, without any authority/title. It thus, requested the Government to execute a lease-deed/rent deed in its favour. It was not its case, that in its earlier two writ petitions filed by it, it had acquired title over the land validly, or that M/s A. Allauddin & Sons, etc. had any title over the said suit land. The lease deed executed by the Government in favour of M/s A. Allauddin & Sons, dated 21-5-1943 must be considered in light of the provisions of Section 90 of the Evidence Act, 1872 (hereinafter referred to as "the Evidence Act"), and not the sale deed dated 11-11-1959, as the suit was filed in 1974, just after a period of 15 years of sale, and not 30 years. The courts below have erred in applying the provisions e g

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1 *State of A.P. v. Star Bone Mill & Fertiliser Co.*, City Civil Court Appeal No. 72 of 1989, decided on 22-3-2004 (AP)

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of Section 90 of the Evidence Act. The findings of fact recorded by the courts below are perverse, being based on no evidence and have been recorded by a
a misapplication of the law. Thus, the appeal deserves to be allowed.

12. On the contrary, Shri D. Rama Krishna Reddy, learned counsel appearing on behalf of the respondent, has opposed the appeal, contending that the findings of fact recorded by the courts below, do not warrant interference by this Court. It is evident from the revenue records that possession is prima facie evidence of ownership, and that the same is by
b itself, a limited title, which is good except to the true owner. The admission and receipt of tax constitutes "admission of ownership, and the entries in the revenue record must hence, be presumed to be correct. In the revenue record, one Raja Ram has been shown to be the owner of the land, the Forest Department cannot claim any title or interest therein. The said appeal lacks merit, and is liable to be dismissed.

c 13. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

14. Admittedly, the High Court erred in holding that the sale deed dated 11-11-1959, must be considered in the light of the provisions of Section 90 of the Evidence Act, instead of the period mentioned therein, thereby treating
d the appeal as a continuation of the suit. Therefore, the period of 30 years mentioned therein, has been calculated from 1959, till the date of the decision of the appeal i.e. 22-3-2004[1]. This view itself is impermissible and perverse, and cannot be accepted. The courts below have not given any reason, whatsoever, for the said lease deed to be treated as having been executed on 21-5-1943, under Section 90 of the Evidence Act and, thus, for believing that the land belonging to the Forest Department, which had in
e turn, given it to M/s A. Allauddin & Sons on lease.

15. Section 90 of the Evidence Act is based on the legal maxims: *nemo dat qui non habet* (no one gives what he has not got); and *nemo plus juris tribuit quam ipse habet* (no one can bestow or grant a greater right, or a better title than he has himself). This section does away with the strict rules, as regards the requirement of proof, which are enforced in the case of private documents, by giving rise to a presumption of genuineness, in respect of certain documents that have reached a certain age. The period is to be reckoned backward from the date of the offering of the document, and not any subsequent date i.e. the date of decision of suit or appeal. Thus, the said section deals with the admissibility of ancient documents, dispensing with
g proof as would be required, in the usual course of events in a usual manner.

16. There has been a clear admission by the respondent-plaintiff in its letter dated 22-5-1970 (Ext. B-39), to the effect that it had been cheated by *M/s* A. Allauddin & Sons, who had no title over the suit land, and sale deed dated 11-11-1959, had thus been executed in favour of the respondent-plaintiff by way of misrepresentation. The said application was
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1 *State of A.P. v. Star Bone Mill & Fertiliser Co.*, City Civil Court Appeal No. 72 of 1989, decided on 22-3-2004 (AP)

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rejected vide order dated 18-12-1970. While filing the writ petition, the respondent-plaintiff did not raise the issue of title of the Forest Department, in fact, the dispute was limited only to the extent of the amount of rent, and a
its case remained the same even in the second writ petition, when it was evicted under the Encroachment Act, The trial court framed various issues, and without giving any weightage to the documents, filed by the appellant-defendant, decided the case in favour of the respondent-plaintiff, with total disregard to any legal requirements, The courts below have erred in ignoring the revenue record, particularly, the documents showing that the Government b
was the absolute owner of the suit land since at least 1920.

17. No person can claim a title better than he himself possesses. In the instant case, unless it is shown that M/s A. Allauddin & Sons had valid title, the respondent-plaintiff could not claim any relief whatsoever from court.

18. In *Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund*[2] this Court held as under: (SCC p. 568, para 12) c

"12. A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act."

19. In *Nair Service Society Ltd. v. K.C. Alexander*[3], dealing with the d
provisions of Section 110 of the Evidence Act, this Court held as under: (AIR p. 1173, para 15)

"*15*. ... possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides." e

20. In *Chief Conservator of Forests v. Collector*[4], this Court held that: (SCC p. 484, para 20)

"*20*. ... presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title."

21. The principle enshrined in Section 110 of the Evidence Act is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be, It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of the Code of Criminal Procedure, 1973, and Sections 154 and 158 of the Penal Code, 1860, were enacted. All the aforesaid provisions have the same object. The g
said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases

2 (2007) 13 SCC 565 : AIR 2008 SC 901 h
3 AIR 1968 SC 1165
4 (2003) 3 SCC 472 : AIR 2003 SC 1805

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where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one a way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such b possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim, of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory c evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act.

22. The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from d challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property.

23. The trial court has recorded a finding to the effect that the name of one Raja Ram was shown as pattadar in respect of the land in dispute and the respondent-plaintiff is in possession. Therefore, the burden of proof was e shifted on the Government to establish that the suit land belonged to it. The learned counsel for the respondent-plaintiff could not furnish any explanation before us as to who was this Raja Ram, pattadar and how the respondent-plaintiff was concerned with it. Moreover, in absence of his impleadment by the respondent-plaintiff such a finding could not have been recorded.

24. The courts below erred in holding that revenue records confer title for the reason that they merely show possession of a person. The courts below further failed to appreciate that the sale deed dated 11-11-1959 was invalid and inoperative, as the documents on record established that the vendor was merely a lessee of the Government.

25. In view of the above, we are of the considered opinion that findings g of fact recorded by the courts below are perverse and liable to be set aside. The appeal succeeds and is allowed. The judgments of the courts below are hereby set aside. The suit filed by the respondent-plaintiff is dismissed.

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(1968) 3 SCR,163 : **AIR 1968** SC **1165**

In the Supreme Court of ,India

(BEFORE M. HIDAYATULLAH,. S.M. SIKRI AND K.S. HEGDE, JJ.)

NAIR SERVICE SOCIETY LTO., ... Appellant:

Versus

REV. FATHER K.e. ALEXANDER AND OTHERS ... Respondents.

Civil Appeal No. 1632 crissse, decided on February 12, 1968

Advocates who appeared in this case:

M.K. Nambiar, Senior Advocate (N.A. Sub-ramanian K. Velavudhen Nair and T.K. Unnithan, Advocates, and Rarneshwer Nath and Mahinder Narain, Advocates of Rajinder Naraln and Co., with him), for the Appellant;

S.V. Gupte, Senior Advocate (T.p. Paulose, B. Dutta and Annamma Alexander, dvocates and J.B. Dadachanji, O.C. Mathur and Ravlnder Naraln, Advocates of J.B. "oeoecharurano Co., with him), for Respondent 1.

The Judgment of the Court was delivered by

M. HIDAYATULLAH, J.— This is an appeal by certificate from the judgment of the High Court of Kerala, December 23, 1965 reversing the decree of the SUb-Court, Mavelikara." By the judgment and decree under appeal the suit of the first respondent, Rev. Father K.C. Alexander (shortly the plaintiff) was decreed in respect of the suit lands of which he had sought possession from the appellant, Nair Service Society Ltd. (shortly the Society or the first defendant) and some others who are shown as Respondents 2 to 6. The facts in this appeal are asfollows:

2. The plaintiff filed a suit in *forma pauperis* on October 13, 1942 against the Society, its *Kariasthan* (Manager) and four others for possession of 131.23 acres of land from Survey Nos. 780/1 and 780/2 of Rannipakuthy in the former. State of Travancore and for mesne profits past and future with compensation for' waste. The suit lands are shown as L(1) on a map Ex. L prepared by Commissioners in CMA 206 of 1110 ME and proved by PW 10. The two Survey Nos. are admittedly Government Poramboke lands. The plaintiff claimed to be in possession of these lands for *over 70* years. In the year 1100 ME a Pcramboke case for evicting him from an area shown as L (2) measuring 173.38 acres, but descrlbed in the present suit variously as 160, 161 and 165 acres, was started under the Travancore Land Conservancy Regulation 4 of 1094 ME (LC Case No. 112/1100 ME) by Petbanarnathltta Taluk Cutchery. This land is conveniently described as 160 acres and has been SQ referred to by the High 'Court and the Sub-Court. The plaintiff was fined under the Regulations and was evicted from the 160 acres. The Society applied for Kuthakapattorn lease of thls area on August 11, 1938. The lease was granted but has not been produced in the case. It was for 165 acres and the Society was admittedly put in possession of it on July 24, 1939 or thereabouts.' The lease was' for 12 years. Plaintiff case was .that on 13/16 October, 1939 a number of persons acting on behal' of the Society trespassed upon and took possession of the suit lands (131.23 acres) in addition to the 160 acres. The plaintiff, therefore, claimed possession of the excess land from the SOciety, its Manager and Defendants 3 to 6; who were acting on behalf of the Society. The plaintiff also claimed mesne profits and compensation for waste.

3. The Society contended that the' plaint lands were Government Reserve and that the plaintiff was .dtscossessed by 'Government from these lands when he was dispossessed of the 160 acres. The sult land is in two parts. Ex. L shows these two'

parts as L(l)(a) and L(l)(b). The Society had applied for enotherKuthakapattom lease in respect of L(l)(b) and obtatnedtt during the pendency of the suit on March 10, 1948. In this Kuthakapattom, which is Ex. 1, the land is shown as 256.13. acres and the lease is made' without limit of time. SimultaneousJy a demand was made from the Society for arrears of Pattorn at the same rate as for the Kuthakapattom in respect of the whole land after setting off the amount already paid by the socistv, The socletv in its written statement did not aver that it was not in possession of L(l)(a) and resisted the suit in regard to the entire suit lands, Subsequently it attempted by argument to: limit its defence to L(l)(b) which was additionally granted tott in the kuthakapettom Ex. 1. Although the suit pended for 17 years in the Sub-Court no application for amendment was made. The Society asked for amendments several times, the last being on october 1,5/ 1958. However/ on the last day of hearing of the appeal in the High Court (December 14, 1,965) the Society applied for an amendment of the written statement limiting its defence to portion L(l)(b) disclaiming ell interest in portion L(i)*(a)* and attempted to plead the grant of the second Kuthekapattom in its favour on March 10, 1948. The High Court rejected this application by its judgment under appeal and awarded possession against the Society of the entire suit land. The Society in its ese denied the right of the plaintiff to bring a suit for ejectment or its liability for compensation as claimed by the plalntlff, In the atternatlva.tbe Society claimed the value of improvementseffected by it, in case theclatrn of the plaintiff was decreed against' it. The other detendants remained ex parte in the suit and did not appeal. They have now been shown as *proforma respondents* by the SQciety.

4. The suit went to trial on 13 issues. The main issues were *(a)* whether the plaintiff was in possession of lands: L(1) for over 70 years and had improved these lands; *(b)* whether the first defendant was entitled to possession of any area in excess of the first Kuthakapattom for 12 years; and *(c)* whether the trespass was on 13/16 October, 1939 or whether the plaintiff wasevtcted on July 24, 1939 by the Government from the suit land in addition to the 160 acres in respect of which action was taken in the Land Conservancy case. Other issues arose from the rival claims for, mesne profits and compensation to which reference has already been made. The suit was dismissed by the trial Judge against the Society but was decreed against Defendants 3 to 6 in respect of land L(l)(a) with mesne profits and compensation for waste. The trial Judge held that the possession of the plaintiff dated back only to 1920-21 and that he was evicted from portion L(1)*(b)* as per plan AZ.and that the Socletv was in possession from the time it entered into possession of 160 acres. The trtal Judge held that as the land was Poramboke and the plaintiff has been ousted by G'overnment he could not claim possession. The subsequent grant of Kuthakepattorn (Ex. 1) was not considered relevant and the suit was decided on the basis of thefacts exlstlnq on the date of the commencement of the sult, The trial Judge, however, held .that if the plaintiff was entitled to recover possession he would also be entitled to mesne profits at the rate! of Rs 3392 from October 16, 1939. The, defendants' improvements were estimated at Rs 53,085. Possession of L(l)(a) was decreed with costs, mesne profits past and future, and compensation for waste against Oefendants 3 to 6.

5. The plaintiff filed an appeal in *forma pauperis.* The High Court reversed the decree of the trial Judge and decreed it against the Society and its Manager ordering possession of the entire suit lands with mesne. profits past and future, and compensation for any waste. The High Court held that the Society had admitted its possession in respect of the entire suit land and that the grant of Kuthakapettom in respect of L(l)(a) to Defendants 3 to 6 by the Govemment was immaterial. The High Court held that the evidence clearly established that the plaintiff was in possession of the plaint lands at least from 1924 to 1925 and that it made no difference whether the plaintiff was dispossessed on October 16, 1939 as stated in the plaint or July 24, 1939 as alleged by the Society. The main controversy, which was decided by the High Court,

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was whether the plaintiff could maintain a suit for possession, (apart from a possessory suit under the Travancore laws analogous to Section 9 of the Indian Specific Relief Act) without proof of title basing htrnself mainly on his prior possession and whether the Society could defend itself pleading the title: of the Government. On both these points the decision of the Hlqh Court was in favourof the plaintiff.

6. In this appeal the first contention of the Society is that It did not dispossess the plaintiff on October 16, 1939 but on July 24, 1939 when he was evicted from the 160 acres in respect of which Poramboke case was started against him. Accordlnq to. the Society, if the plaintiff's possession': was terrnlnated by the rightful owner and the Society got its possession from the rightful owner the suit for ejectment could not lie. It may be stated here that the plai'ntiff had applied for an amendment to implead Government but the amendment was disallowedbv the trial Judge. In 1928 the plaintiff had filed OS 156/1103 against the Government 'for declaration of possession and injunction in respect of the 160 acres of land: and L(1)(*b*), but the suit was dismissed in default and a revision application against the order of dismissal was also dismissed bythe High Court of Kerala. The suit had delayed the Poramboke case as a .emporary injunction has been issued against Government. On the dismissal of that ;it the first Kuthakapattom lease was granted to the Society. The next contention of the Society is that a suit in ejectment cannot lie without title and a prior trespasser cannot maintain the suit generally against the latter trespasser and more particularly in this case in respect of lands belonging to Government specially when the latter trespesser (even if it was one) had the authority of the true owner either given orlqlnallv or subsequently but relating back to the date of the trespass. The Society also submits that as trespass on Government land was prohlblted by law the plaintiff could not get the assistance of the court. The Society also contends more specifically that there is no true principle of law that possession confers a 'good title except against the owner or that possession is a 'conclustve title against all but the true owner. In its submission, if a possessory suit analogous to secnon 9 of the Indian Specific Relief Act was not filed by the plaintiff's only remedy was to file a suit for ejectment pleading and proving his title to the suit land. A mere possessory suit after the expiry of 6 months was not possible. There are other branches of these main arguments to which reference need not be made here. They will appear when these arguments will be considered.

7. The first question to settle is when dispossession took place. According to the plaintiff he was dispossessed on October 16, 1939 and according to the Society plaintiff was dispossessed on July 24, 1939 when he was evicted from 160 acres. The trial Judge accepted the case of the Society and the High Court that of the plaintiff. The High Court, however, remarked .that it did not matter when the plaintiff was first dispossessed. The difference in dates is insisted upon by the Society because ifit can show that the plaintiff was dispossessed by the true owner, namely, the State, it can resist the suit pleading that it was In.pcssesstcn under the authority of the owner and that the possession of the plaintiff was already disturbed and a suit in ejectment did.' .iot lie against it. There are;: however, several circumstances which indicate that the plaintiff case that dispossession took place in October 1939 is true.

8. To b@gin with we are concerned with three areas. The Land Conservancy case concerned L(2) or 160 acres. The other two areas ar.e L(1)(*a*) 55.47 acres and L(l)(b) 75.76 acres. These' totalto 291.23 acres. The suit was filed to obtain possession of 131.23 acres, that is to say, 291.23 acres minus the 160 acres. The Society attempted to disclaim all interest in *L(l)(a)* 'and even attempted to deny that Defendants 3-6 were in possession of it. This was not allowed for very good reasons. In the written statement no distinction .was made between L(l)(a) and L(l)(b). Although amendments were allowed, no amendment of the written statement to withdraw L(1) *Ca)* from dispute was asked for. The attempt consisted of oral arguments were allowed,

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ny amendment of the written statement -to withdraw written statement was sought to be amended as late as: Decemberd-t, 1965, the- last day of the arguments. 1ihe application had two prayers. About the second of the two prayers we shall say something later but the amendment we are dealing with was not only belated but also an after thought. The High Court rightly points out that a defendant, who after trial of the suit for 16 years orally asks for the withdrawal Qf an admission in the written statement, cannot be allowed to do so. Therefore.: the dispute covered the entire 131.23 acres and the Society was. claiming to be' in possession. The plaint had asserted that the Defendants 2-6 were in possesslonand that Defendant 2 was acting for the Society. In reply the Society claimed to be, in possession. It, however, led evidence on its own behalf'that L(l)(a) ,was not in its possession. That could not be considered in view of the admission in the pleadings. The contrary admission of the plaintiff that Defendants 3-6 were in possession was cited before us as it was before the High Court. But the High Court has already given an adequate answer when it observes that the' plaintiff only said he had heard thls, Therefore, we are of opinion that the .tssue was joined' between the plaintiff and the Society with respect to the entire suit land.

9. The alternative contention of the Society is that the plaintiff was dispossessed by the rightful owner, that is, the State. This contention was accepted by the trial Judge but rejected by the High Court. We .shetl now consider it. ttts an admitted fact that eviction in the Land Conservancy case took place on 8-12-1114 ME corresponding to July 24, 1939. Since the order was to evict the plaintiff from 16Q acres, it is fair to assume that he would be evicted from that area only, The *Mahazar* Ex. AG, proved by the village Munsiff who waspersonally present, establishes thet eviction was from 160 acres. The High Court judqrnent mentions the names of several other witnesses who have also deposed in the seme way. The High Court also points out that the rubber quotas from the rubber trees continued to be in the name of the plaintiff except in 160, acres in which the quotas were transferred to the name of Government. All this was very clear evidence. Further even if some more area was taken over from the plaintiff, it would be small and not as much as 131.23 acres or even 75.76 acres. It is to be noticed that the Society applied on August 11, 1939 for grant of a Kuthakapattom only in respect of 165 acres and this was' on the basis of possession. If the Society was in possession of 291.23 acres, it would not have omitted on August 11, 1939 to apply for the additional area as well. Another application was made for a second Kuthakapattom in respect of the addltlonal land on the basis of possession but only after certain events happened. On September 29, a complaint (Ex. AO) was made by Phtlllppose Abraham (PW 8), the Manager of the plaintiff, that the land was trespassed upon by the Society's men who had harvested the paddy. On october 2, 1939 the second defendant made a counter complaint Ex. AS. This .rnade a, mention of "land from which, 'the 1st accused (plaintiff) was evicted". It is, .however, to be seen that in the Mahazar (Exs, AT, AT-I and AT-2) the encroached area is shown as 160 acres. On October 13, 1939 one Krishna Nair made a complaint (Ex. AH) against plaintiff's men of beating and dacoity. On October 16, the servants of the plaintiff were arrested. Bail was delayed and was only granted on October 20, 1939. On October 24, 1939 the plaintiff complained of drspossession. The case of dacottv was virtually withdrawn and the accused were discharged. The High Court accepted the plea that the false charge of dacoity and the arrest were a prelude to dispossession and a ruse to get the servants of the plaintiff out of the way. On looking into the evidence ,we cannot say that this inference is wrong.

10. The Society, however draws ettentlon to several circumstances from which it seeks to infer the contrary, We do not think that they are ccsent enough to displace the other evidence. We may, however, refer to them. The Society first refers to plaintiff's application(Ex. 16) on July 28, 1939 that he was dispossessed of suit

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buildings and requesting that 160 acres be correctly demarcated. In other documents also the plaintiff complained of eviction from land in excess of 160 acres and dispossession from buildings. The Society submits that the evidence showed that there were no buildings in 160 acres and that only bamboo huts were to be found. The map Ex. L shows some buildings in L(2). It is more likely that as these buildings were close to the western boundary between L(2) and L(1), the plaintiff hoped that he would be able to save them as on admeasurement they would be found outside 160 acres. It may be mentioned that in addition to 160 acres, land 20 acres in extent was further encroached upon. This land is shown in plan Ex. BB and represents little extensions all round the 160 acres. If this area was taken into account and 160 acres admeasured then, there was a possibility of the buildings being saved. This is a more rational explanation than the contention that as many as 131.23 acres were additionally taken in possession when the plaintiff was dispossessed from 160 acres. We have therefore, not departed from the finding of the High Court which we find to be sound.

11. Failing on the facts, the society takes legal objections to the suit. According to the learned counsel for the Society the suit in ejectment, based on possession in the character of a trespasser was not maintainable. His contention is that a trespasser's only remedy is to file a suit under Section 32 of the Travancore Limitation Regulation (6 of 1100) as amended by Regulations 9 of 1100 and 1 of 1101, but within 6 months. This section corresponds to Section 9 of the Indian Specific Relief Act. Now if dispossession was by Government the suit could not be filed because there was a bar to such a suit. If dispossession was by the Society a suit under Section 32 was competent. The question is whether after the expiry of 6 months a regular suit based on prior possession without proof of title was maintainable. This is the main contention on merits although it has many branches. We now proceed to consider it.

12. This aspect of the case was argued by Mr Nambiar with great elaboration for a number of days. The argument had many facets and it is convenient to deal with some facets separately because they have no inter connection with others and some others together. The main argument is that a suit by a trespasser does not lie for ejectment of another trespasser after the period of 6 months prescribed by Section 32 of the Travancore Limitation Act (6 of 1100). The provisions of the Travancore Specific Relief Act (13 of 1115)1 are in *pari materia* and also *ipsissima verba* with the Indian Specific Relief Act and are set out below. It is convenient to refer to the Indian Act. According to Mr Nambiar a contrast exists between Sections 8 and 9 of the Specific Relief Act. These Sections are reproduced below. Mr Nambiar submits that Section 8 refers to suits for possession other than those under Section 9, and while question of title is immaterial in suits under Section 9, under Section 8 a suit for ejectment must be on the basis of title. In other words, in a suit under Section 8 title must be proved by a plaintiff but under Section 9 he need not. Once the period of six months has been lost a suit brought within 12 years for obtaining possession by ejectment must be based on title and not bare prior possession alone.

13. In support of this argument Mr Nambiar refers to Roman Law of Interdicts and urges that the same distinction also existed there and has been borrowed by us through the English practice. We may first clear this misconception. Possession in Roman Law was secured to a possessor by two forms of Interdicts — *Uti possidetis* for immovables and *utrubi* for moveables. But we are not concerned with these, but with actions to recover possession which were compendiously called *recuperandae possessionis causa*. There were two interdicts known as *de precario* and *de vi*. Of the latter two of the branches were the Interdict *de vi cottidiana* by which possession was ordered "to be restored on an application made within the year where one had been ejected from land by force, provided there had not been *vi clam aut precario* from the ejector". The other *de vi armata* for ejection by armed force was without restriction of

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time. Mr Nambiar says thatthe same distinction exists between suits under Sections 9 and 8 of the Specific RellefAct, This is an ingenious way of explaining his point of view but it does not appear that these principles of Roman Law at all influenced law making. These principles were in vogue in early Roman Law. In the time of Justinian the two Interdicts *de vi* were fused and there was only one action representing both. Even the clause about *vi clam aut precerto* dlseppeered and 'the restriction to a year applied to both. The appealto Roman Law, does not, therefore, assist us.

14. We may now consider wriatnsr ssrnons 8 and 9 are to be distinguished on the lines suggested. In *MUlla's Indian Contract and Specific Relief Acts* there is a commentary which explatnstthe words 'In the manner prescribed by the Code of Civil Procedure' by observing-

> "that is to say by a suit for ejectment on the basts of title: *Lachman* v. *Shambu Neretra",*

The question in that case lnrhe words of the Full Bench was—

> "The sole question raised in this appeal is whether a plaintiff who sues for possession and for ejectment of the defendant on the basls.of title and fails to prove his title is still 'entitled to a, decree for possession under Section 9 of the Specific Relief Act, 1877, if he can prove possession within six months anterior to the date of his dispossesslon."

In the course of decision the Full Bench dissented from the earlier view in *Ram Harakh . Rai v, SheodihaJ Joti*[3] and observed:

> "With great respect we are unable to agree with this view. Section 8 of the Act provides that a person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure, that is to say, by a suit for ejectment on the basis of title. section 9 gives a summary remedy to a person who has without his consent been dispossessed of immovable property, otherwise than in due course of law, for recovery of possession without establishing title, provided that his suit is brought within six months of the date of dispossession. The second paragraph of the section provides that the person against whom a decree may be passed 'under the first paragraph may, notwithstanding such decree, sue to establish his title and to recover possession. The two sections give alternative remedies and are in our opinion mutually exclusive. If a suit is brought under Section 9 for recovery of possession, no-question of title can be raised or determined. The object of the section is clearly to dlscourace forcible dispossession and to enable the person dispossessed to recover possession by merely proving title, but that is .not his only remedy. He may, if he so chooses, bring a suit for possession on the basis of his title. But we do not thlnkthat he can combine both remedies in the same suit and 'that he can' get a decree for possession even if he fails to prove title. Such a combination would, to say the least of it, result in anomaly and inconvenience. In a suit under Section 9 no Question of title is to be determined, but that question may be tried in anothersutt instituted after the decree in that suit. If a claim for establlshrnentof title canbe combined with a claim under Section 9, the court will have to grant a decree for possession or dispossession being proved, in spite of its finding thet the, plaintiff had no title and that title was in the defendant."

15. We agree as to a part of the reasoning but with respect we cannot subscribe to the view that after the period of 6 months is over a suit based on prior possession alone, is not possible. Section 8 of the Specific Relief Act does not limit the kinds of suit but only lays down that the procedure laid down by the Code of Civil Procedure must be followed. This is very different from saying that a suit based on possession alone is incompetent after the expiry of 6 months. Under Section 9 of the Code of Civil Procedure itself all suits of a civil nature are trlable excepting suits of which their

cognizance is either expressly or impliedly barred. No prohibition expressly barring a suit based on possession alone has been brought to our notice, hence the added attempt to show an implied prohibition by reason of Section 8 (section 7 of the Travancore Act) of the Specific Relief Act. There is, however, good authority for the contrary proposition. In *Mustapha Sahib v. Santha Pillai*[4] Subramania Ayyar, J. observes

> "... that a party ousted by a person who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had held before the ouster even though that possession was without any title.
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> * * *
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> The rule in question is so firmly established as to render a lengthened discussion about it quite superfluous. *Asher v. Whitlock*, (LR, I Q.B. 1) and the rulings of the Judicial Committee in *Musammat Sunder v. Mussammat Parbati*, (16 IA 186) and *Ismail Ariff v. Mahomed Ghouse*, (20 IA 99) not to mention numerous other decisions here and in England to the same effect, are clear authorities in support of the view stated above ... Section 9 of the Specific Relief Act cannot possibly be held to take away any remedy available with reference to the well-recognised doctrine expressed in Pollock and Wright on possession thus: Possession in law is a substantive right or interest which exists and has legal incidents and advantages apart from the owner's title (p. 19)".

In the same case O' Farell, J. points out that

> "all the dictum of the Privy Council in *Wise* v. *Ameerunissa Khetoon,* (7 IA 73) appears to amount to is this, that where a plaintiff in possession without any title seeks to recover possession of which he has been forcibly deprived by a defendant having good title, he can only do so under the provisions of Section 9 of the Specific Relief Act and not otherwise".

It is not necessary to refer to the other authorities some of which are already referred to in the judgment under appeal and in the judgment of the same court reported in *Kuttan Narayanan* v. *Thomman Mathai*[5]. The last cited case gives all the extracts from the leading judgments to which we would have liked to refer. We entirely agree with the statement of the law in the Madras case from which we have extracted the observations of the learned Judges. The other cases on the subject are collected by Sarkar on Evidence under Section 110.

16. The Limitation Act before its recent amendment provided a period of twelve years as limitation to recover possession of immovable property when the plaintiff, while in possession of the property was dispossessed or had discontinued possession and the period was calculated from the date of dispossession or discontinuance. Mr Nambiar argues that there cannot be two periods of limitation, namely, 6 months and 12 years for suits based on possession alone and that the longer period of limitation requires proof of title by the plaintiff. We do not agree. No doubt there are a few old cases in which this view was expressed but they have since been either overruled or dissented from. The uniform view of the courts is that if Section 9 of the Specific Relief Act is utilised the plaintiff need not prove title and the title of the defendant does not avail him. When, however, the period of 6 months has passed questions of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fail. In other words, the right is only restricted to possession only in a suit under Section 9 of the Specific Relief Act but that does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one. The present amended Articles 64 and 65 bring out this difference. Article 64 enables a suit within 12 years from dispossession, for possession of immovable property based on possession and not on title, when the plaintiff while in possession of the property has been dispossessed. Article 65 is for possession of immovable property or any interest

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therein based on title. The amendment is not remedial but declaratory of the law. In our judgment the suit was competent.

17. Mr Nambiar also relies in this connection upon Section 110 of the Indian Evidence Act and claims that in the case of the Society there Is a presumption of title. In other words, he relies upon the principle that possession follows title, and that after the expiry of 6 months, the plaintiff must prove title. That possesston may prima facie raise a presumption of title no .one 'can deny but this presumptlcn can hardly arise when the facts are known. When the facts disclose no title In' either party, possession alone decides. In this case Section 110 of the Evidence Act is immaterial because neither party had title. It tsfor this reason that Mr Nambiar places a greater emphasis, on the plea that a suit on bare possession cannot be maintained after the expiry of 6 months and that the Society has a right to plead *jus tertii*. The first must be held to be unsubstantial and the second is equa,lly unfounded.

18. The proposition of law on the subject has been summed up by *Salmond on Torts* (13th Edn.) at p, 172 in the following words:

> "The mere de facto and wrongful possession of land .Is a valid title of right against all persons who cannot show a better title in themselves, and is therefore , sufficient to support an action of trespass against such persons. Just as a legal title to land without the possession of it is insufficient for this purpose, so conversely the possession Of it without legal title is enough. In other words, no defendant in an action of trespass can plead the *jus tertii* - the right of possession outstanding in some third person - as against the fact of possession in the plaintiff."

The maxim of law is *Adversus extraneous vtuose possessio prodesse soiet*, and jf the plaintiff is in possession the *jus. tertii* does not afford a defence. Salmond, however, goes on to say:

> "But usually the plaintiff in an action of ejectment is not in possession: he relies upon his right to possession, unaccompanied by actual possession. In such a case he must recover by the strenqth of his own title, without any regard to the weakness of the defendants. The result, therefore, is that in action of ejectment the *jus tertii* is in practice a good defence. This is sometimes spoken of as the doctrine of *Doe v, Barnard*, (1849) 13 QB 945."

Salmond, however/ makes two exceptions to this statement and the second he states thus:

"Probably, if the .defendent's possession is wrongful as against the plaintiff, the plaintiff may succeed though he cannot show a good title: Poe *d. Hughes v, DybalJ*, (1829) 3 C & P *610j Davison v, Gent*, (las7) 1 H & N 744. But possession is prima facie evidence is not displaced by proof of title. If such prima facie evidence is not displaced by proof of title in ,a third person the plaintiff with prior possession will recover. So in *Asher v, Whitlock*, [(1865) L.R. 1 QB.-1] where a man inclosed waste land and died without having had 20 years' possesslon, the 'heir of his devisee was held entttled to recover it against a person who entered upon it without any title. This leclslon, although long, doubtful,' may now be, regarded as authoritative in consequence of its express recognition of the Judlclat Committee in *Perry v, cussota*, (1907) A.C. 73."

Mr Nambiar strongly relies upon the above exposition of the law and upon institutional comments by Wiren "The Plea of *jus tertii* in ejectment" (1925) 41 L.Q.R. 139, Hargreaves "Terminology and TItle in *Ejectment*, (1940) 56 L.Q.R. 376 and Holdsworth's article in 56 L.Q.R. 479.

19. In our judgment this 'involves an incorrect approach to our problem. TQ express our meaning we may begin by reading *Perry* v. *ClissoJd* to discover if the principle that possession is Prior possession is a gOOd title of ownership against all who cannot show a better good against all but the trueowner .has in any way been departed from. *Perry*

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v. Clissold reaffirmed the principle by stating quite clearly:

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the, ordinary rights of ownership has a perfectly good title against atl the world but the ri,ghtful owner..And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provlsions of the statute of Limitation applicable to the case, his right is for ever extinguished and the' possessory owner acquires an absolute title."

Therefore, the plaintiff who was peaceably in possession was entitled to remain in possession and only the State couldevlct him. The action of the Society was a violent invasion of his possession and 'in the law as it stands in Indla the plaintiff could maintain a possessory suit under the provisions of the Specific Relief Act in which title would be immaterial or a suit for possession within 12 years -ln which the question of title could be raised" As this was a suit of latter klnd title could be examined. But whose -title? Admittedly neither side could establish title. Thejplalntlff at least pleaded the statute of Limitation and asserted .that he had perfected his title by edverse possession. But as he did not join the State in his suit to get a declaration, he may be ald to have not rested his case on an acquired title. His suit was thus limited to recovering possession from .one who had trespassed against him. The enquiry thus narrows to this: did the Society have any title in itself, was it acting under authority express or implied of the true owner.or was it just pleading a.tltle in a third party? To the first two questions we find no difficulty in furnishing an answer, It is clearly in the negative. So the only question is whether the defendant could plead that the title was in the State? Since in every such case between, trespassers the title must be outstanding in a third party-a defendant will be placed in a position of dominance. He has only to evict the prior trespasser and, sit pretty pleading that the title is in someone else. As Erie, J. put It in,'*Burling* v. *Read,* (11 Q.B. 904) "parties might imagine that they acqutred-rsorne right by merely intruding upon land in the night, running up a hut and occupying it 'before mornlnq", This will be subversive of the fundamental doctrine which was accepted always and was reaffirmed in *Perry v, Cussota.* The law does not therefore countenance the doetrineof 'findings keeplnqs'.

20. Indeed *Asher v, Whitlock,* (1885) 1 Q.6" 1 goes much further. It laid down as the head-note correctly summarizes: A person in possession of land without other title has a devisable interest, and the heir of his devisee can malntaln ejectment against a person who had entered upon the land and cannot show title or possession in anyone prior to the testator. No doubt as stated by Lord Macnaghten in *Perry v, Clissotd, Doe v, Bernerd* lays down the preposltlon that "if a person having only a possessory title to land be supplanted in the possession by another who has himself no better title, and afterwards brings an action to recover the land, he must fail in case he shows in the course of the proceedlnqsfhat the title on which he seeks to recover was merely possessory". Lord Macnaghten observes further that it is difficult, if not impossible to reconcile *Asher* v. *Whitlock* with *Doe* v. *Barnard* and then concludes.

"The judgment of Cockburn, C.J., is clear on the point. The rest of the court concurred and it may be observed that one of the members of the court in *Asher* v. *Whitlock* (Lush, J.) had been counsel for the successful party in *ooe v, Barnard.* The conclusion at which the court arrived in *Doe v, Barnard* ls hardly consistent with the views of such eminent authorities on real property law as Mr Preston and Mr. Joshua Williams. It is opposed to, the opinions of modem text-writers of such weight and authority as Professor Maitland anc Holmes, J. of the Supreme Court Of the United States (see articles by Professor Maitland in the Law Quarterly Review Vols. 1, 2 and 4; Holmes, Common Law p, 244; Professor, J.B. Ames in 3 Harv. l-awRev. 324 n.)

The difference in the two cases and which 'made *Asherv. White* prevail was indicated

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in that case by Mellor, J. thus;

> "In *Doe* v. *Barnard* the plaintiff did not rely on her own possession merely, but showed a prior possession in her husband, with whom she was unconnected in point of title. Here the first possessor is connected in title with the plaintiff; for there can be no doubt that the testator's interest was devIseble."

The effect of the two cases is that between two claimants, neither of whom has title in himself the plaintiff if dispossessed is entitled to recover possession subject of course to the law of limitation. If he proves-that he was dlspossessed within 12 years he can maintain his action.

21. It is because of this that MrNambiar claimed entitled to plead *jus tertii*. His contention is that In action of ejectment (as opposed to an ertlon of trespass) *jus tertii* is capable of being pleaded. The old action of ejectment was usee to try freehold titles but it was abolished in 1873. It was also used "for recovery of land by one who claimed not the right to seisin but the right to possession by virtue of some chattel interest such as a term of veers", In such cases "the defence of *jus tertii* admits that the plaintiff had such a right of entry as would generally entitle him to succeed, but eeks to rebut that conclusion by setting up a better right in some third person" or nat the plaintiff had no right of entry at all.

22. To summarize, the difference: between *Asher* v. *Whitlock* and *ooe v, Bamardis* this: In *Doe* v. *Barnard* the prtnclple.settled was thatIt is quite open to the defendant to rebut the presumption that the prior possessor has title i.e. seisin. This he. can do by showing that the title is in hlrnself; if he cannot do this he .can show that the title is in some third person, *Asher* v. *Whitlock* lays down that a person in possession of land has a good title aqalnst all the wend-except the true owner and it is wrong in principle for anyone without title or authority of the true owner to dispossess him and relying on his position as defendant in ejectment to remain in possession. As Loft in his Maxim No. 265 puts it *Possessio contra omnes valet preeter eur cui ius sit possessionts* (He that hath possession hath right against all but him that hath the *very* right: see *Smith v, oxenaen,* 1 Chapter Ca 25. A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presurnptlon prior in time. It is to be noticed that Ames *(Harvard Law Review* Vol. III p, 313 at 37); Carson *(Real Property Statutes* 2nd Edn. p. 180); Halsbury *[Laws ot' England,'* VOl. 24,3rd Edn. p. 255 f.n.(o)];::Leake *(Property in Land,* 2nd Edn. p. 4, 40); Lightwood (*Time Limit* on Actions pp. 120-133): Maitland, Newell *(Action in Ejectment,* American Edn. pp, 433-434); Pollock (*Law of Torts,* 15th Edn.. P. 279); Salmond Law of Torts; and William and .Yates (*Law of Ejectment,* 2nd Edn. pp, 218,250) hold that *Doe v, Bernerd* does not represent true law. Winer (to whom lam indebted for much of the information) gives a list of other writers who adhere still to the view that *Jus tertII* can be pteaded.

, 23.Mr Nambiar pressed upon us the view that we should not accept *Perry* v. *cttssota.* It must be remembered that that case was argued twice before the Privy Council and on the second occasion" Earl of Halsbury, L"C. Lords Macnaghten, Davey, Robertson, Atkinson, Sir Ford North and Sir Arthur Wilson heard the case. Lord Macnaghtents judgment is brief but quite clear. Mr Nernblar relies upon two other eases Of the Privy Council and a reference to them is necessary. In *Dharani Kanta Lahiri v, oerber Ali Khan*[6] a suit in ejectment was filed. The plaintiffs failed to prove that the lands of which they complained dispossession were ever in ·their possession" within 12 years before suit and thatthe lands were not the lands covered by a *sened* which was produced by the defendants. The case is distInqulshable. It is to be noticed that Lord Macnaghten was the President, of the Board and the judgment of the Board, DecernberB, 1912 did not base the: case on *Doe* v. *Barnard* or even refer to it. The second is *Mahabir Prasad* v. *Jemune Singh,* 92 IC-31 PC.:: In this case the Board

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observed as follows:

"Counsel for the appellant (defendant) admits that in the face of the ruling by the Board he could not impugn the reversionary right of the plaintiff's vendors, but" he contends that the defendant is in possession and in' order to eject him the plaintiff must show that there is no other reverslonarv heir in the same degree or nearer than his assignors whose: title he (the defendant) can urge against the plaintiffs claim for ejectment. In other words, the action being one of ejectment the defendant is entitled to plead in defence the right of someone etseequally entitled with the plaintiff's vendors.",

After observing thls the Board held that the defendant had failed to prove his point. The observation does not lead to the conclusion that a defendant can prove title in another unccnnected with his own estate. The case is not an authority for the wider proposition.

24. "The cases of the Judlctel Committee are not binding on us but we .approve of the dictum in *Perry v, cttssota.* No subsequent case has been brought to our notice departing from that view. No doubt :a great controversy extsts over the two cases of *"ieo* v. *Barnard* and *Asher v. Whitlock* but it, must be taken to be finally resolved by *erry vccttssotd.* A similar view has been consistently taken in India and the amendment of the tndranvumttatton Act' has given approval to the proposition accepted in *Perry v, Clissold* and may be taken to be declaratory of the law in India. We hold that the suit was matntalnable.

25. It is next submitted that the High Court should not have given its assistance, to the plaintiff whose possession was unlawful to begin with especially when, by granting the decree, an illegality would be condoned and perpetuated. In support of this case the Society relies on the provisions of Regulation 4 of 1091 and other connected Regulations and rules. It points outthat under Regulation 4:of 1091, it was unlawful for anyone to occupy Government land and a punishment of fine in addition to eviction was prescribed, and all crops and other products were liable to confiscation. If eviction was resisted the Dewan could order the arrest and detention in jail of the offender. Section 18 barred Civil Courts from taking any action in respect of orders passed under the said Regulation except on when it was established that the land was not Government land. The Civil Court, it is submitted, could not grant a decree for possession nor set up the .possesslon of a person who was an offender under the Regulation.

26. ·In our opinion these .subrnlsslons are not well-founded. The Regulations were intended to regulate the relation of Government and persons but had no bearing upon the relations between persons claiming to be in possession. Further the penalty was a fine for wrongful occupation and in no sense a punishment tor crime. The illegality of the possession was thus not 'a criminal act and the regaining of lost possession cannot be described as an action to take advantage of one's own illegal action. In fact the plaintiff was not required to rely upon any ill@gality which is ths consideration which makes courts deny their assistance to a party. The Society relled upon the oft-quoted observations of Lord Mansfield C.J. *uv.Hotmen* v. *Johnson*, (1775) 1 Cowper 341:

"the objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth :of the defendant, It is not for his sake, however, that the objection is ever allowed; but It is founded in general principles of policy which the defendant has the advantage of, contrary to the real justice, as between him and the p,laintiff, by eccldent, if I may say so. The principle of public policy is this: ex *dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of ectten upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise the cause. of ectton appears to arise *ex turptceuse* or the transgression of a positive law of this country, there the court says

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he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff".

27. These are general observattonsappllcableto a case of illegality on which a party must rely to succeed. In a case. in which a plaintiff must rely upon his own illegality the court may refuse him assistance. But there is the other proposition that if.a plaintiff does not have to rely upon.any such illegality, then:although the possession had begun in trespass a suit can be maintained for resntuttonct possession. Otherwise the opposite party can make unjust enrichment althouqf its own possession is wrongful against the claimant. It is to be noticed that the law regards possession with such favour that even against the rightful owner a suit by a trespasser is well founded if he brings the suit within 6 months of dispossession. We have also shown that there is ample authority for the propcsltlon that even after the expiry of these 6 months a suit ca-n be maintained Within 12 years to recover possession of which a person is deprived by one who is not an owner or has no authority from him.

28. The Society next argues that since it has got a secondKuthekepettom we must relate it back to the original dispossession and treatit as a statutorv order under the ǝws of Travancore. It refers us to the Travancore Survey and "::Boundaries Regulation of ʼay 1942 (Rule 9), the Land Conservancy Regulation ,(as amended from time to time), the Puduval Rules and the Land Assignment Regulations and some other rules to show that the forest lands were property of GQvernment and the plaintiff could not be said to be holding land under a grant from Government but the Society is. We think that this argument is of the same character as the argument about *jus tertii*. The case is between two persons neither of whom had any right to the suit lands and were trespassers one after the other. No question of implementing a statutoryorder arises. The grant of the second Kuthakapattom is not related back to the grant of the original grant and can only be considered if and when it' ts pleaded. It is therefore not necessary to consider this point at the moment when we are, not in possession of the case of the plaintiff which he may set up in answer to.thls case.

29. This brings us to the questlon whether the High Court should have allowed the amendment sought in 1965. The suit was filed in 1942 and the second Kuthakapattom was granted in 1948. The last amendment was asked for in 1958. Before this the plaintiff had pointedly drawn attention to the fact that arguments based on the new' Kuthakapattom were likely to be pressed. The trial Judge had ruled that arguments could not be shut out in advance. These circumstances have to be borne in mind in approaching the problem.

30. It is, however, plain that after the grant of Kuthakapattom in 1948 the possession of the Society became not only *de facto* but also *de jure* unless there was a flaw in the qrarrt, It is equally plain that the Society could only resist the present suit' by proving its title or the authority of the true owner, namely the State. The former was not open to the Society before 1948 but the latter was after the grant. The Society contends that even if the facts were not 'pleaded the documents were before the court, and the parties knew of them and indeed the plaintiff had 'himself" caused some of them to be produced. It was the dutv of the court to.take note of them and *suo motu* to frame an issue. This point has hardly any force. The Society could take advantage of such evidence as was provided by the plaintiff but it had to put it In support of a plea. Issue 2 on which great reliance is placed was not concerned with an abstract proposition but what nowedrrom the pleas. Nor Gould the court frame an issue from documents which not the soctetv but the plaintiff had caused to be brought on file. The cases reported in 26 Bom. 360[7], 3S Mad 607 PC[8] and (1964) 3 SCR 634[9] do not help the Society. If the plea-had been raised by the Society it would undoubtedly have been countered and one does not know what use the plaintiff would have made of the documents he had got marked. Therefore it cannot be said that the trial Judge was, in error in not considerina the documents.

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31. This brings us to the 'general; proposition whether the High Court should have allowed the amendment late as It was. The plaintiff·is rlght.that the application was made literally on the eve ofthe judqment. This argument ls reallv based on delay and laches. The application has not been made for the first time in this Court when other considerations might have .apptled It was made in the High Court after the .argument based on the documents on record was urged. This .argument was also urged in the court of trial. The contention of the Society was thus present on both' the occasions and it would have been better if the Society was directed to amend the pleadings before the argument was heard, The omlsslon, however, remained.

32. Now it is a fixed principle of law that a sult must be tned on the original cause of action and this principle governs not only the trial ·of suits but also appeals. Indeed the appeal being a contlriuetton of the suit new pleas are not. considered. If circumstances change thevean form the subject of some other proceedings but need not ordinarily be considered 'in the appeal. To this proposition there are a few exceptions. Sometimes it happens that the original rellef claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases 'ourtsmav allow an amendment pleading the changed circumstances Sometimes also ne change circumstances shorten ntigation and then to avoid circuity of action the courts allow an amendrnent.rrhe practice of the courts is very adequately summarized in *Ram Ratan Sahu v, Mohant Sahu*[10] Mookerjeeand Holmwocd JJ have given the kind of changed circumstances which the courts usually take notice, with illustrations from decided cases. The judgment in that case has been conslstentlv followed in India. In *Raicharan Mandai* v. *Biswanath Mandal*[11] other cases are to be found in which subsequent events were noticed. The same view was taken by the Federal Court in *Lechmeshwsr Prasad Shukul* v. *Keshwar La} Cneudhurtu-* following the dictum of, Hughes C.J. in *Patterson* v. *State of AJabama*u. In *Surinder Kumar v, Gian Chand*[14] this Court also took subsequent events into account and approved of the case of the Federal Court. In view of these decisions it is hardly necessary to cite further authorities.

33. Mr Gupte on behalf of the plaintiff has strenuously opposed the request for amendment. His objection, is mainly based on the ground of delay and laches. He relies ,on, *Gajadhar Mahlon v, Ambika Prasad Tiwertu, R. Shanmuga Rajeshwara Sethupathie* v. *Chidambaram Chettiar*[16] and *Kanda v, Waghu*[17] in which the Judicial Committee declined amendment before it. These cases were different. In the first case the JUdicial Committee held that it was within its discretion to allow amendment but did not feel compelled to exercise the discretion. In the second case the amendment was no doubt refused because it was asked for at the last moment but the real reason was that under it a relief of a wide and exceptional nature was granted. The point was so intricate that it required careful and timely pleading and a careful trial. In the last case the Judicial Committee relying on the leading case of *Ma Shwe Mya v, Maung Mo Hueunqss:* held that it was not open: to allow an amendment' of the plaint to cover a new issue wh'lch involved setting up a new case.

34. As against these cases, this' Court in *L.J. Leach: & Co" v; Jardine Skinner & Co.*[19], *Pungonda Hongonda Petit* v. *Kalgonda Shidgonda Patil*[20] and *A.K. Gupta and Sons v, Damodar Valley Corpn.u-* allowed amendments when a fresh claim would have been time barred. The cases of this Court cannot be said to be directly in point. They do furnish a guide that amendment, is a discretionary matter and althQugh amendment at a late stage is not to be granted as a'matter of course, the court must bear in favour of doing full and complete justice in the case where the .partv against whom amendment is to be allowed can be compensated by costs or otherwise. Also the amendment must be one which does not open the case or take the opposite party by surprise.

35. In the present case, the amendment sought was not .outslde the suit. In fact

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Issue 2 could have easllvcovered it !if a proper plea had been ralsed. The Society was perhaps under an impression that the fresh Kuthakapattom would be considered and the trial JUdge had also said that the argument could not be shut out. Although it is not possible to sev that parties went to trial in regards to the fresh xutnakaoattorn, it cannot be gainsaid that the plaintiff had himself caused all the documents necessary for the plea to be 'brought on the record of the case. No doubt plaintiff tried to implead Government with a view to obtaining an in junction but as no notice under Section 80 of the Code of Civil Procedure was given this was an exercise in futility. But the Society was under no disability except its own inaction. If it had made a timely request it would have been granted.

36. Thus it is a question of the delay and laches on the part of Society. Insofar as the court was concerned the amendment would not have unduly prolonged litigation; on the other hand, it would have cut it short. Without the amendment another suit based on the second Kuthakapattom is inevitable. As we have shown above there is good authority in support of the proposition that subsequent events may be taken note of if they tend to reduce litigation. This is not one Qf those cases in which there is a likelihood of prolonged litigation after remand or in which a, new case will begin. The mendment will prima facie allow the Society to show to the. court that in addition to .ocssessrcn it has also title. This will enable the court to do complete justice, if the plea is found good, without the parties haVing to go to another trial.

37. We are, therefore, of the opinion that we should allow the amendment. Of course, the plaintiff will be at liberty to controvert the new, plea but he will not be allowed to raise new pleas of his own haVing no relatton to: the grant of the second Kuthakapattom. As this' amendment is being allowed we do not consider it advisable to state at this stage what the: implications of the new grant will be under the law applicable in 1948. We are, however 'clear for reasons, already given that the second Kuthakapatttom cannot be regarded. as retroactive from thedate of the grant of the first Kuthakapattom. We wish to add that the document Ex. 1 does not mention that It was to be retrospective. Now a formal document which has no ambiguity cannothbe varied by reference to other documents not intended to vary it. The only oter documents are Ex. 6, the 'order conferrlnq the second Kuthakapattorn and Ex. 7 a demand by the Tahsildar. of the *Pattom* calculated at the same rate from the date of the first Kuthakapattom. This follows from the Rules. Any person in unlawful possession may be ccmpelled underthe Rules to pay pattern.end this is what appears to have been ordered. There. is also nothing to show that this was not the Tahsildar's own interpretation of the facts and the documents. We are therefore, quite clear that the second Kuthakapattom must be read prospectively from the date of its grant, if it be held that it is valid.'

38. There are only two other matters to conslder; They are the question Of mesne proftts and improvements. The rate of mesne profits has already been decided and no argument was addressed tous about it. We say no more about it except that the rate will be applicable to the new state, of facts in the case after the amendment. It is also not necessary to go into the question of improvements now because in answer to the pleas to be raised hereafterthe question of improvements will have to be gone into *de novo* in the light of the findings reached. The arqument of the parties that the Rules do not contemplate payment for improvements is neither here nor there. That applies between Government and a:private party and not between two private parties. These matters will be left for determlnatlon.tn the proceedings hereafter to be taken,

39. In the result we dismiss the appeal as to portion L(1)(a) both in regard to possession and mesne profi.ts and improvements. As regards *L(l)(b)* the amendment based on the second Kuthakapattom will be allowed and parties will go to trial on that amendment. The plaintiff will be entitled to raise his defence in reference to the second Kuthakaoattom. The question of mesne orofitsand imbrovements in relation to

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L(1)(*b*) will be reconstderad in the light of the finding regarding the second Kuthakapattom but the rate of mesne profits as already determined shall not be altered. The plaintiff will, of course, be entitled to mesne profits till the date of the grant of the second Kuthakapattom.

40. There is no doubt that the" Society was wrongly advised and allowed the question of arnendment to be delayed. At the same tlrne by not allowing the amendment the plaintiff forces the issue regarding possession of *L(l)(b)*. In our judgment the Society must pay the. costs thrown away, that is to say, that it must bear the costs incurred in the High Court and the court of first instance by the plaintiff in addition to costs on its own account. Insofar as the' costs cftthls Court are concerned parties' will bear the costs as the case is being sent to the trial court for further trial.

* Appeal from the Judgment and Decree dated 23rd December, 1965 of the Kerala High Court in Appeal Suit No. 406 of 1961.

1 Act 13 of 1115

(1911)33 All 174

(1893) lS All 384

Exception-Nothing in this section shall Vbar any person from suing to establish his title to such property and to recover possession thereof

Bar to suit against Government under this section— No suit under: this section shall' be brought against our Government". Indian Specific Relief Act

"8 Recovery of Specific immovable propertv-« A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure"

"9 Suit by person dispossessed of immoveable, property- if any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, bysuit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof

NO suit under this section shall be brought against the Central Government, Or any state Government

No appeal shall lie from any order or decree passed in any suit instituted under this section Nor shall any review of any such order or decree be allowed"

4 ILR 23 Mad, 179 at 182

5 1966 Keral law Times 1.

6 25 MU 9S PC

r *Gangoo v, Shri Dev SideshwarRavuthag.*

8 *Shamu Patter v, Abdul Kadir*

9 *Kunju Kesavan* v. *N.M. Phillip,* leS

10 (1907) 6 CU 74

11 AIR 1915 Cal 103

12 1940 FeR 84 at 87

13 (1934) 294 US 600 at 607

14 (1958) SCR 548

15 AIR 1925 PC 169, 170

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16 1938 PC 123

17 LR 77 IA 15

18 1921 LR 48 IA 214, 217

19 1957 SCR 438

20 1957 SCR 595

21 (1966) 1 SCR 796

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1940 SCC Online PC 60 : (1940-41) 45 CWN 637 : (1941) 43 Bom LR 777 : (1940-41) 68 IA 53 : (1941) 54 LW 159 : AIR 1941 PC 38 : (1941) 2 Mad LJ 1

Privy Council
[Appeal From Allahabad]
(BEFORE LORD ATKIN, LORD THANKERTON AND SIR GEORGE RANKIN, JJ.)

Maharani Hemanta Kumerl Debi and ors. ... Appellants;
Versus
Gaud Sankar Tewari and ors.... Respondents.*
Appeal (P.C. Appeal No. 64 of 1939)
Decided on December 4, 1940

Hindu Law - Dedication, if must necessarily be complete so as to divest owner of all rights of property - Dedication, complete and partial-Partial dedication, forms of - Dedication to the public for the purposes of limited user, while retaining proprietary right in Subject-matter, if possible and valid- Dedication of river bank at Benares for use as public bathing ghat, if necessary implies complete dedication - Absence of express and formal dedication — Circumstances pointing to partial or complete dedication - Ghatias of Benares, if have any customary right as members of a class to occupy portions of public bathing ghat for purposes of their profession-Individual ghatias, if may acquire such right by custom, prescription or lost grant - Ghatias, if liable at instance of owner, to remove both obstructions set-up by them and themselves.

A valid dedication under Hindu law may be either to a particular deity or to religious or charitable uses.

But complete relinquishment by the owner of his proprietary right is not the only form of dedication known to Hindu law. A dedication may be complete, involving complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object, or it may be partial, either in the term that a mere charge is created in favour of the idol or other religious object or that the owner retains the property in himself but grants the community or part of the community an easement over it for certain specified purposes. Dedication by a Hindu of land on the banks of the Ganges at Benares for the purposes of a bathing ghat is a dedication to an object, both religious and of public utility, but from such dedication it cannot at once be concluded that there has been a dedication in the full sense of the Hindu law, divesting the founder of all property in the ghat and the soil. The dedication may be partial and the owner's title may coexist with a right of limited user of the specified kind on the part of the public.

Jaggamoni Dasi v. *Nilmoni Ghosal*[4] and *Chairman of the Howrah Municipality* v. *Khetra Krishna Mitra*[4] referred to.

In the absence of a formal and express endowment evidenced by deed or declaration, the character of a dedication can only be determined on the basis of the history of the Institution and the conduct of the founder and his heirs.

Where a Hindu had purchased a portion of the river bank at Benares, where there was previously a bathing ghat, built masonry steps thereon and allowed the ghat to be used by the public for bathing purposes, but there was no express dedication; no manager had ever been appointed, the founder and his heirs had never acted as mere managers, but as owners, looking after and repairing the ghat at their own expense, closing it to bathers on proper occasions and collecting tolls from shop-keepers at festivals, though their expenditure exceeded the receipts; and they had been treated by public authorities as owners:

Held:

(I) That though there was a dedication of the ghat to the public for bathing purposes, there was only a Partial dedication and the proprietors

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had retained their ownership of the ghat and the soil;

(ii) That a complete dedication is not essential for the purposes of a public bathing ghat at Benares.

Ghatias of *Benares have no customary right as members of a class to occupy portions of a public bathing ghat for the purpose of exercising their profession, and to that end to set up any canopies or other obstructions thereon; nor can any individual ghatia acquire any right to exclusive possession of any portion of a ghat, whether by custom or prescription or lost grant.*

On their failure to establish a right to occupy the ghat, ghatias are liable not only to remove the obstructions set up by them, but also to remove themselves.

The facts of the case will appear from the judgment.

C.S. Rewcastle and C. Sidney Smith for the Appellants,

J.M. Parikh and P.V. Subba for the Respondents.

Their Lordships' Judgment was delivered by

SIR GEORGE RANKIN, J.:— The sanctity which Hindu thought and feeling attribute to the Ganges and the special veneration which its stream commands as it flows past the holy city of Benares (Kashi) are manifested by the temples and bathing *ghats* upon the banks. The efficacy of its waters to wash away every form of sin and pollution, is widely accepted doctrine among the orthodox and brings the Hindu pilgrim in large numbers seeking to acquire religious merit and advantage. According to evidence given in the present case "Mankarnika, Dasaswemedh, Panch Ganga, Asst and Barna are the *panch tirthas* of Kashi: one who comes to Kashi on pilgrimage has to visit all these five places." In this appeal their Lordships are concerned with a bathing *ghat* which is known as the Pryag or Puthiya *ghat* and which is covered by the name Dasaswamedh—the name of a mohalla of the city.

The suit was brought on the 15th. February, 1929, in the Court of the Additional Subordinate Judge of Benares. The Plaintiff was Maharani Hemanta Kumari Debi, widow of the last male owner of the Putnlva Raj estate. She claimed to be owner of the *ghat*. She will be referred to as "the Plaintiff" notwithstanding that pending this appeal she has by relinquishment accelerated the interest of her husband's reversioners who have been joined with her as Appellants to his Majesty in Council. She impleaded six sets of Defendants, fourteen persons in all, alleging that they belonged to a class of Brahmins known as *ghatias* and that they, and their predecessors, had been allowed by the owners of the *ghat* to sit on different portions of it in order to gain a livelihood by receiving alms and gifts from pilgrim bathers. She complained that the Defendants were abusing the permission granted to them, by altering the condition of the steps, putting down platforms of earth and wood, erecting canopies, and blocking up the free space to the detriment of the utility, cleanliness and beauty of the *ghat.* She alleged that the Defendants were mere squatters: that she had been willing to allow them to continue to sit on the *ghat* if they would execute written agreements for the proper conduct of the *ghat*; but that they had failed or refused so to do. She asked for relief in different forms-a declaration that she was the owner of the *ghat* and that the Defendants had no right to sit on any portion of it; an order of ejectment of the Defendants; an order for removal of the various obstructions put up by the Defendants: and an injunction

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restraining the Defendants "from using any portion of the said Prayag *ghat* as *ghatias* in any season of the year and from sitting and squatting over the same for the purposes of collecting *dan dakshina* from the bathers."

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A number of written statements were ftled, The qefendants numbered 2, 8 and 11 pleaded that they were mere servants of other Defendants. The main defence as pleaded on behalf of the rest denied the Plaintiff's proprietary right and set up that the *ghatias* were a communitvwhose business and duty it was.to assist bathers; that a *ghat* necessarily involved a right on the part of some members of this community to occupy portions of it by the use of seats or platforms of the -klnd known as *cbeukis* or *tekhts;* that this right was a, form of property heritable and transfereble by the Hindu law; that the Defendants and their ancestors had been in occupation of definite sites on the *ghat* for hundreds of vears; and that they had been" guilty of no impropriety. They maintained that a right to occupy sites on the *ghat* by laying out *cneukis* and *tekhts* had become vested in them by lost grant, prescription: or custom.

The learned trial Judge heard more than twenty witnesses and by his Judgment (25th June, 1930) came to the conclusion that the Plaintiff's ownership of the *ghat* was proved and that she had a right to sue as owner, notwtthstandlnq that the *ghat* was dedicated to the use of the publtc for purposes of bathing. He found that the *ghatias* do not belong to any particular ,class or cumrnunltv but are called *ghat/as* because they sit on the ghats. He thought that there was nothing in any Shastra to show that their presence at the *ghat* is indispensable for the performance of religious ceremonies or that a bath in the Ganges would not y·ield any spiritual benefit unless accompanied by gifts to them, He found that in the case of Plaintiff's *ghat* and neighbouring *ghats* the *ghatias* had sat by leave and licence of the owners. He negatived the existence of any custernarv right in the Defendants andfound that at no time had any grant of any interest in the *ghat* been madeto them.' He further held that they could have no claim ,by prescription to an exclusive right to occupy any specific portion of. a bathing *ghat* dedicated to the use of the public. In the result he found for the Plaintiff, but, following a practice which is not to be commended, he contented himself with ordering "that the Plaintiff's suit as prayed be decreed" without formatlv stating the terms of the various orders, declarations and injunctions which he was granting, save by this reference to prayers in .the plamt which might well have been improved by revision.

An appeal to the High Court was taken by a number of the, Defendants.

On the 27th March, *1935,* it came before a Dlvlslon Bench, who, in refering it to a Full Bench, recorded an order mentioning that before them it was not In dispute that the Plaintiff was owner of, the *ghat* or that the Defendentscr their predecessors had sat on different portions of the *ghat* for generations; also that the Defendants did not claim any right by virtue of adverse possession but that they dld clatrn a right cf property in the *ghat* In respect of their long use of it for the purpose of assisting the bathers. A single judgment was gi:ven by the Full Bench (Sulaiman, C.J., Bajpai and Ganga Nath, JJ.) on 3rd January, 1936. The learned Judges' maintained the decree of the trial JUdge in so far as it directed removal of railings, planks, canopies and other articles of obstruction but discharged the trial Judge's order of ejectment and the injunction granted by

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him to restrsln the Defendants from using the *ghat* as *ghatias* or sitting or squatting over the same. They discharged also the declaration made by the trial Judge that the PlaIntltf was owner of the *ghat*.

The. Plaintiff upon this eppeal complains of these variations and asks that the decree of the trial Judge be restored.

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In the view of the learned Judges of the Full .Bench the right claimed by the Defendants may be divided into two parts: (1) aright to exclusive possession over specific plots of lend and to place platforms and canoptes oyer them; (2) the right to minister to the needs of the bathihg public and to receive alms and gifts for their services. As regards the first the Full Bench found some difficulty in appreciating the nature of the right claimed but they found that *ghatias* as members of a class have no customary right and that the individual Defendants could have no right by custom to exclusive possession of any 'parts of the *ghat.* The claim to such a right by prescription or lost grant was also held to be bad. The Full Bench considered it to be proved that *thetakhts* and canopies had been obstructions leavlnq [lttle space for passage, injurious to the pavement, and dangerous to the', public using the *ghat"* In their Lordships' view, the reasons given by the learned Judges in their judgment fUlly justify their order for removal of the obstructions, and thelr.rejectlon of the Defendants· claim to have acquired any rights in this *ghat* whether by custorn.jprescrlptlon or grant. The Defendants have not appeejed from the High Court's .decree,

But the Full Bench set aside the trial Judge·s decree of ejectment and the injunction granted by him on the ground that such relief would interfere with the right of "the eathlnq public" to take to the *ghat* persons who may help in the proper performance of "sptrttual ablutions" and ceremonies. It would be Inconventent, in a suit not constituted for the purpose, that an attempt shoutd 'be made to define with exactness the extent of the user which the eubuc have as of right in this *ghat*. But if it b@ assumed that any bather may bring with him his own priest or his own friend to assist in ceremonial ablutions, this is not in their Lordships' view a valid reason for refusing to the Plaintiff an order in ejectment together with a properly framed injunction. The Defendants have been sitting on the *ghat* for the purpose of carrying on their occupation there and have' clalmed to be entitled to exclusive possesstcn of parts of the *ghat* as a right of property. If the Plaintiff's ownership and possession entitle her to relief, then, upon it appearing that the Defendants have no such rights as they claim, she is as well entitled to an order that the Defendants should remove themselves as to an order for removal of their conoptes, They are not persons who come with bathers to the *ghat* but persons who cumber the *ghat* in order to intercept the bathers and who de so continuously habitually and as an occupation or profession. A right to stand, sit or squat on the *ghat* for the purposes of exercising the profession of *ghatias* may be acquired by consent of the Plaintiff but as 'matters stand it is not the right Of any of the Defendants.

As the rights claimed by the Defendants have not been established, it is not clear that they have anything to gain by disputing whether the Plaintiff is owner of the *ghat* or is merely the hereditary superintendent of a religious endowment. In either case she would be entitled to rnalntalrra suit in respect of the grievances complained of, and to obtain the same or similar

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relief. But as the Plaintiff sued as owner and as the Full Bench appear to have held that she was a mere manager or *mutewelli,* it is right to consider whether the trial Judqe's declaration of the Plaintifrsownership was well founded.

A bathing ghat' on the banks of the Ganges at Beneresls a subject-matter to be considered upon the principles of the Hindu law" If dedicated to such a purpose, land or other property would be dedicated to an object both religious and of public utility, just as' much as is a *dharamsaJa* or a *math"* notwithstanding that it be not dedicated to any particular duty. But it cannot from this consideration be: at once concluded that in

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any particular case there has been a dedication in the full sense of the Hindu law which involves the complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object, There may or may not be some presumption arising in respect of this from particular circumstances of a given case, but, in the absence of a formal and express endowment evidenced by deed or declaration, the character of the dedication can only be determined on the basis of the history of the institution and; the conduct of the founder and his heirs. That the dedication of property to religious or charitable uses may be complete or partial is as true under the Benares as under the Bengal school of Hindu law. Partial dedication may take place not only where a mere charge is created in favour of an idol or other religious object but also as Mr. Mayne in his well-known work was careful to notice "where the owner retained the property in himself but granted the community or part of the community an easement over it for certain specified purpose' (*Hindu Law and Usage,* 6th Ed., 1900, sec. 438, p.567). In *Jaggamoni Desi v. Nitmoni Ghosal*W-, the Plaintiff's ancestor had built a temple and bathing *ghat*, as well as a room and another *ghat* for use by persons at the point of death. The Defendant having used the *ghat* for the landing of goods, Field, J., observed:-

> "There is here no deed of endowment and no evidence has been taken as to the exact purpose and object of this so-called endowment. The first question which suggests itself is whether the 'Plaintiff's father in building these temples, this *entorjoli* room and this *ghat* intended to give to the Hindu community a right of easement over the soil, or intended to transfer the ownership of the buildings as well as the ownership of the soil to such community. By no means necessarily follows that, because the Plaintiff's father erected this ghat and this *entorjoti* room, and allowed the Hindu community to use them for the purposes set out in the plaint, he intended to divest himself of the ownership of the soil, etc."

The judgment of the Full Bench in the present case is open to criticism in respect that it does not take due account of this distinction. Speaking of the tolls collected from shopkeepers on the *ghat* at festivals, the learned Judges, though noticing that no trustee or manager had ever been appointed and that the Plaintiff and her predecessors had bought the land, built the masonry steps and had always looked after and repaired the *ghat,* say: -

> "The ghat having been dedicated to the public, it is not conceivable that the Plaintiff or her predecessors could have ever wished to appropriate its income to their private use, nor has the Plaintiff made any attempt to show that its income was ever appropriated by her or her predecessors, It therefore appears that the Plaintiff and her predecessors realised the income of the ghat and made repairs as a manager or *mutawalli* and not as absolute proprietor.... The Plaintiff is not entitled to a declaration of an absolute proprietary title in the ghat, as the same has been dedicated to the public, and the Plaintiff has only the right of reversion if ever the ghat ceases to be used as such."

Another passage deals with the right of the Defendants as follows:-

> "The ghat having been dedicated to the public the Defendants could not have acquired any right under any grant or prescription which might interfere with or limit the right of the public. As

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already stated, there is no difference in principle between the dedication of a ghat to the public and the dedication of a high road."

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Now there is the verv: broadest distinction between saying that the Plaintiff's ownership is not ebsolute-because it is qualified by the public's right of user for purposes of bathing, and saying that the Plaintiff is not the owner "at all, but a mere *mutawaJli* in whom nothing vests because her predecessor had dedicated the *ghat* in the full sense of dlvestlnq.hlmself completely of all Jnterest.thereln. When in English law the owner of land Is said to have dedicated it for a highway it Is not intended or implied that his right of ownership has been divested" On the contrary if any member of the public exceeds the' permitted user, a right of action in trespass arises to the dedicator or his successorm title by virtue of his cwnershlpand possession. *St. Mary Newington* v. *Jacobs*[2] and *Harrison* v. *Rutland*[3]. Dedication in the full sense known to the Hindu law is a different.matter, In the usual case of complete dedlcatlon made to an idol, for example, the-propertv ceases altogether to belong to the donor and becomes vested in the idol as a juristic person. Complete relinquishment by the owner of his 'proprteterv right is however by no means the. only form of dedication known to the Hindu law and is vervdlfferent.fromanythlnq that could ordlnartlv be inferred 'from the public user of a highway. From the standpoint Of the Hlndu law '\'it is not essential to a valid dedication that the legal title should' pass from the 'owner nor is it inconsistent with an effectual dedication that the owner should continue to make any and all uses of the land which do not interfere with the usesfor which it is dedicated." *Chairman of the Howrah Municipality v, Knetre Krishna Mitra*[4], *(per,* Mookerjee, J., 'at 348). When the dedlcatlon is only partial, the property in some parts of India might none the less in common perlence be described as *devottar;but* whether it be charged with a sum of money for the worships of an idol or be subjected to a right Of limited user on the part of the public, it would descend and: be alienable in the ordinary way; "the only difference being" as Mr. Mayne observes in.the passage already referred to in th is judgment "that it passes with the charge upon it." *(Hindu Law and Usage,* 6th Ed., 1900, sec. 438, p, 567).

The conclusion of the Full Bench that the Plaintiff had only the right of reversion if ever the *ghat* ceases to be used as such' appears to have been drawn from the mere fact that the *ghat* was "dedicatedto the public." But a review of the history of the *ghat* and the conduct of the Plaintiff and her predecessors is required to determine whether the river bank at this spot was dedicated in such sense as to make an end of private ownership therein. The written statements of the Defendants set up that "the land on the bank of the holy River Ganges between the two confluents of Baruna and Assl rivulets in the city of Benares is *waqf* property from tlrrie immemorial, the same havlnq been. dedicated to the Hindu community at large." The exceeding sanctity of the river is not of itself a reason why a pious benefactor of the public should do more than provide access to its waters. Whether the questlon be Hmtted to the *ghat* in suit or be enlarged by consideration of the evidence about neighbouring *ghats,* it seems to their Lordships that there is no substantial ground for holding that the Plaintiff's predecessors or any of them had divested themselves of all property

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in this *ghat* and had accepted tlie position of having a mere right of management. No express dedication has been proved by production of a deed of endowment or otherwise. No manager has ever been appointed. Not one instance has been shown in which the Plaintiff or any predecessor has purported to act es superintendent, *sebett* or *mutewettt*, On the contrary they have been treated as owners Whenever by disrepair the *ghat* has attracted the attention of public authority. They have repaired and substantially improved the *ghat* at thelr own expense.'They have closed it to bathers on proper occasions and have levied tolls on the keepers of shops at festivals. That

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their expenditure upon the *ghat* has exceeded their: receipts; and that they would not wish to make a profit from the tolls' is probable enoueh but tn no way tends to prove that they have parted with all right as owners of the soll, The evidence as to agreements taken from *ghat/as* upon nearby *ghats* is strong .to show that in them. the proprietors have retained their right,s of ownership notwthstandlnq that the *ghats* are public bathing places. The learned trial Judge very'. reason.ably thought that the evidence was overwhelming to show the Plaintiff's proprietary right and their Lordships though bearing well in mind that there was a bathing *ghat* at this spot before the purchase of the Plaintiff's predecessor in 1814, thlnk that there is little to support a contrary view. The river bank at Benares is a sacred and nlstortc spot with a powerful claim to the regard of a pious Hindu: but the practice of bathing in the Ganges is not in general so directly connected with the worship of a partlculer deity that nothing short of complete dedication would be appropriate for a public bathing *ghat.* The character of the use to be madeof the bank does not require it. Nor does the public right of use for purposes of bathing take its origin as a rule from an immediate and express act of dedication: rather does it begin by acts of user which are acquiesced in by the owner of the property who in due course makes provtslon for the public needs as an act of charity or piety. It may well be doubted whether a complete abendcnment of the owner's rights is ,at all usual in the case of public bathing *ghats:* though it might be common enouqh in the case Oftanks dedicated to the public for bathing purposes: even then the ownership of the banks would be another matter.

Their Lordships are of opinion that the declaration, made by the trial Judge as to the Plaintiff's ownership as well as' his order of ejectment against the Defendants was correct. They think that the terms-of the permanent injunction to be granted to the Plaintiff should restrain the Defendants from frequenting the Prayag *ghat,* without the consent of the Plaintiff or her successor in title, for the purpose of acting as *ghatias* thereon, and from sitti.ng or squatting upon the same without such consent in the exercise of the profession or occupation of *ghatias.*

They will humbly advlse. his Majesty that this appeal should be allowed, that the decree of the High Court dated 3rd January, 1936, be set aside and that the decree of the Addltlonal Subordinate Judge of Benares dated the 25th June, 1930., be restored, with the variation mentioned as to the terms of the permanent injunction. The Respondents will pay the costs of the Plaintiff in the High Court and of the Appellants in this appeal. The Appellants must however, pay to the Respondents the costs of the appltcatlon to restore theeppeal, which had been dismissed for non-prosecution, as directed by the Order in Council of the 25th July, 1939,

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and there must be a set-off as regards these costs.

S.P.K.

* Appeal (P.C. Appeal No. 64 of 1939) from a Full Bench decision of the High Court, at Allahabad, dated 3rd January, 1936.

(1) I.L.R. 9 Cal. 75 (1882).

(4) 10 C.W.N. 1044 : s.c: 4 C.L.J. 343 (1906).

(1) I.L.R. 9 Cal. 75 (1882).

(2) L.R, 7 Q.B. 47 (1879).

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LR. [1893] 1 K.B. 142.

(4) 10 C.W.N. 1044 : s.c. 4 C.L.J. 349 (1906).

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1956 SCR 756 : AIR 1957 SC 133

In the Supreme Court of India

(BEFORE B. JAGANNADHADAS, T.L. VENKATARAMA AYYAR, BHUVANESHWAR PRASAD SINHA AND SUDHANSHU KUMAR DAS, JJ.)

DEOKINANDAN ....Appellant;

Versus .

MURLIDHAR AND OTHERS ... Respondents.

Civil Appeal No, 250 of 1953*, decided on October 4, 1956

Advocates who appeared in this case:

A.D. Mathur, Advocate, for the Appellant;

Jagdish Chandra, Advocate, for Respondent 1.

The judgment of the Court was delivered by .

T.L. **VENKATARAMA** AYYAR, J.– The point for decision in this appeal is whether a Thakurdwara of Sri Radhakrishnaji in the village of Bhadesia in the District of Sitapur is a private temple or a public one in which all the Hindus are entitled to worship.

2. One Sheo Ghulam, a pious Hindu and a resident of the said village, had the Thakurdwara constructed during the years 1914-1916, and the idol of Shri Radhakrishnaji ceremoniously installed therein. He was himself in management of the temple and its affairs till 1928 when he died without any issue. On March 6, 1919; he had executed a will whereby he bequeathed all his lands to the Thakur. The provisions of the will, in so far as they are material, will presently be referred to. The testator had two wives one of whom, Ram Kuar, had predeceased him and the surviving widow, Raj Kuar, succeeded him as Mutawalli in terms of the will and was in management till her death in 1933. Then the first defendant, who is the nephew of Sheo Ghulam, got into possession of the properties as manager of the endowment in accordance with the provisions of the will. The appellant is a distant agnate of Sheo Ghulam, and on the allegation that the first defendant had been mismanaging the temple and denying the rights of the public therein, he moved the District Court of Sitapur for relief under the Religious and Charitable Endowments Act 14 of 1920, but the court declined to interfere on the ground that the endowment was private. An application to the Advocate-General for sanction to institute a suit under Section 92 of the Code of Civil Procedure was also refused for the same reason. The appellant then filed the suit, out of which the present appeal arises, for a declaration that the Thakurdwara is a public temple in which all the Hindus have a right to worship. The first defendant contested the suit, and claimed that "the Thakurdwara and the idols were private", and that "the general public had no right to make any interference".

3. The Additional Civil Judge, Sitapur, who tried the suit was of the opinion that the Thakurdwara had been built by Sheo Ghulam "for worship by his family", and that it was a private temple. He accordingly dismissed the suit, This judgment was affirmed on appeal by the District Judge, Sitapur, whose decision again was affirmed by the Chief Court of Oudh in second appeal. The learned Judges, however, granted a certificate under Section 109(c) of the Code of Civil Procedure that the question involved was one of great importance, and that is how the appeal comes before us.

4. The question that arises for decision in this appeal whether the Thakurdwara of Sri Radhakrishnaji at Bhadesia is a public endowment or a private one is one of mixed law and fact. In *Lakshmidhar Misra* v. *Ranga Lal*[1] in which the question was whether certain, lands had been dedicated as cremation ground, it was observed by the Privy

Council that it was "essentially a rnlxed question of:law and faet", and that while the findings of fact of the tower appellate court must be accepted as binding, its "actuel conclusion that there has been a dedication or lost grant is more properly regarded as a proposition of law derived from those tects than as a findinQ of fact itself". In the present case, it was admitted that there was a formal dedication; and the controversy is only as to the scope of the dedtcatton, and that is also a mixed question of law and fact, the decision of which must depend on the appllcatlon of legal concepts of a public and a private endowment to the facts found, and that is open to consideration in this appeal.

S. It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas 'in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneflclarles are persons who are ascertained or capable of being ascertained, in the latter they 'constitute a body which is Incapable of ascertainment. The position is thus stated in *Lewin on Trusts,* 15th Edn., pp.' 15-16:

> "By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular descrtptlon. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained...."

Vide also the observations of Mitter;· J. in *Nebi Shirazi* v. *Province of Bengal*[2]. Applying this principle, a religio·us endowment must be held to be private or public, according as the beneficiaries thereunder are specfflc persons or the general public or sections thereof.

6. Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therejorz Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest In It, But does it follow from this -tbat it .is to be regarded as the beneficial owner of the endowment? Though such a notion had a vogue at one time, and there is an echo of it in these .proceedtnqs (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is 'only in an ideal sense that the idol is the owner of the endowed properties. Vide *Prosunno Kumari Debya v, Golab Chand Baboo*[3]; *Maharaja Jagadindra Nath Roy Bahadur v, Rani Hemanta Kumari Debi*[4] and *Pramatha Nath Mul/ick* v. *Pradyumna Kumar Mullick*[5]. It cannot itself make use of them;' it cannot enjoy them or dispose of them, or .evenpretect them. In short, the idol can have no beneficial interest in the endowment, This was clearly laid down in the Sanskrit texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami has the folfowing:

> देवग्रामोए देव-ध्रपसकमयेत्रमितिए उपधारमात्रम-पउय ।योबदमिप्रेतं विनियोक्तु-उयय
> महतिए तत्तस्य स्वम-पउय। न च ग्रामं -ध्रपसकमयेत्रं यायथाभिप्रायं विनियुक्ते देवता।
> तस्माञ्च संप्रयच्छतीति। देवपरिचाकाण्णं तु ततो भूतिर्भवति देवतामु-उयय
> दिद-चयेययवत स्वयतम-पउय।

> "Words such as 'village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however eees not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever property is abandoned for Gods,' brings prosperity to those who serve Gods".

Likewise, Medhathithi in cornmentlnq on the expression "Devaswarn" in Manu, Chapter XI, Verse' 26 writes:

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देवाबुदि-यवेययाग्यादि कियार्थ यशंयदुत्सृष्ट, वद्देस्वम-पठरा मुख्यस्य स्वस्वामिसंबन्धस्य देवानां असंभयात-पडय। न हि देवता इच्छया धनं नियुञ्जते।-तकुवयन य परिपालनव्यापारस्तासां दृ-यवेक्यते।-तकुवयय

"Property of the Gods, Devaswam, meanswhatever 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. For, the Gods do not make use of the property according to their desire nor are they seen to act for protecti'ng the same".

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 *(Ga,unartha),* and the true purpose of a gift of propertles to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In *Bhupatl Netiv Smrititirtha* v. *Ram Let: Maitra*[6] it was held on a consideration of these and .other texts that a gift to an idol was not to be judged by the rules applicable to a transfer to a 'sentient being', and that dedication of properties taan idol consisted in theabendonment by the owner of his dominion over them for the purpose of their being',;·appropriated for the purposes Which he intends. ThUS, it was observed by Sir Lawrence Jenkins C.J. at p. 138 that "the pious purpose is still the legatee, tna estebushment of the image is merely the mode in which the pious purpose is to be effected" and that "the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedlcatlon is designed". Vide also the observations of Sir Ashutcsh Mookerjee at p. 155.: In *Hindu Religious Endowments Board* v. *Veeraraghavachariar*[7] varedecherter J. dealing wtth.thts question, referred to the decision in *BhupatiNatb Smrititirtha v, Ram Lal Maitra*[2] and observed:

"As explained in that case, the purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it posstblefcr them to have the worship conducted in a proper and impressive manner. This is the, sense in which a temple and its endowments are regarded as a public trust".

7. When once it is understood that the true beneficiaries of rellqlous endowments are not the idols but the worshippers, and that the purpose of the' endowment is the maintenance .of that worsbjp for the benefit of the worshippers, the question whether an endowment is prlvate ior public presents no difficulty. ;The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right Of worship at the shrine, or the general public or any specified portion tnsrsor. In eccomance with this thsorv. it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled .toworshlp at the shrine of the deity can only be the members of the family, and that isan ascertained group of individuals. But where the beneficiaries are not members Qf a family or a specified indiVidual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

In the light of these principles, we must examine the facts of this case. The materials bearlnq on the question whether the Thakurdwara isa public temple or a private one may be considered under four heads: (*1*) the will of Sheo-Ghulam, Exhibit A-l, (2) user of the temple by the public, (3) ceremonies relating to the dedication. of the Thakurdwara and the Installetlon of the idol wlth special reference tQ *Sankcalpa* and *Uthsarga* and (4) other facts relating to the character of the temple.

(1) The Will, Exhibit *A-1,* is the most important evidence on record as to the intention of the testator and the scope of the dedication. Its provisions, so far as they are material, may now be noticed. The will begins with the recital that the testator has two wives and no male, issue, that he has constructed a Thakurdwara and installed the

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ol of Sri Radhakrishnaji therein, and that he is making a dlsposltlon of the properties with a view to avoid disputes. Clause 1 of Exhibit A-1 provides that after the death of the testator "in the absence of male issue, the entire tmmovable property given below existing at present or which may come Into being hereafter shall stand endowed in the name of Sri Radhakrishnaji, and mutation of names, shall be effected in favour of Sri Radhakrtshnajl in the Government papers and my wives Mst Raj Kuer and Mst Ram Kuer shall be the Mutawallis of the waqf". Half the income from the properties is to be taken by the two wives for their maintenance during their lifetime, and the remalnlng half was to "continue to be spent for the expenses of the Thekurdwera". It is implicit in this provision that after the lifetime of the wives, the whole of the income is to be utilised for the purpose of the Thakurdwara. Clause 4 provides that if a son is born to the testator, then the properties' are to be dtvtded between the son and the Thakurdwara in a specified proportion; but as no son was born, this clause never came into operation" Clause 5 provides that the Mutawallis are tor have no power to sell or mortgage the property, that they are to maintain accounts, that the surplus money after meeting the expenses' should be deposited In a safe bank and when funds permit, property should be purchased in the name of 'Sri 'Radhakrlshnajl. Clause 2 appoints a committee of four persons to look after the management of the temple and its properties, and of these, two are not relations of the testator and belong to a different caste. It is further provided in that clause that after the death of the two wives the committee *"may appoint* my nephew :Murlidhar as Mutawalli by their unanimous opinion". This Murlidhar is a divided nephew of the testator and he is the first defendant in this action. Clause 3 'provides for filling up of vacancies in the committee. Then finally there is clause 6, which runs-as follows:

> "If any person alleging himself to be my near or remote heir files a claim in respect of whole or part of the waqf property his suit shall be improper on the face of this deed."

The question is whether the provisions of the will disclose an intention on the part of the testator that the Thakurdwara should be a private endowment, or that it should be public. The learned Judges of the Chief Court in affirming the decisions of the courts below that the temple was bullt for the benefit of the members of the family, observed that there was nothing in the will pointing "to a conclusion that the trust was a public one", and that its provisions were not "Inconslstent.wlth the property being a private endowment". We are unable to endorse thls oplnlon, We, think that the will read asa whole 'indubitably revealsen intention on the part of the testator to dedicate the Thakurdwara to the public and not merely to themembers of his family.

The testator begins by stating that he had no male Jssue. In *Nabl Shirazi v, Province of Bengal*[2] the question was whether awakf created by a deed of the year 1806 was a public or a private endowment. Referring to a recital in the deed that the settlor had no children, Khundkar J."observedat p, 217:

> "The deed recites that the founder has neither children nor grandchildren, a circumstance which in itself suggests that the imambara was not to remain a private or family institution".

Vide also the observations of Mitter, J. at p. 228. The reasoning on which the above view is based is, obvlouslv; that the word 'farnlly' in its populer sense means children, and when the settlor recites that 'he has no children, that, is an indication that the dedication is not for the benetlt of the family but forthe publlc,

Then we have clause 2, under which the testator constitutes a committee of management consisting of four persons, two of whom were wholly unrelated to him. Clause 3 confers on the,' committee power to fill up vacancles: but there is no restriction therein on the'ipersons who could be appointed under that clause, and conceivably, even all the four members might "be strangers to the farnlly. It is difficult believe that if Sheo Ghulam intended to restrict the right of worship in the temple to his relations, he would have entrusted the management thereof to a body consisting of strangers. Lastly, there is clause 6, which shows that the relationship between Sheo Ghulam and his kinsmen was not particularly cordial, and it is noteworthy that under clause 2, even the appointment of the first defendant as manager of the endowment is left to the option of the committee. It is inconceivable that with such scant solicitude for his relations, Sheo Ghulam would have endowed a temple for their benefit. And if he did not intend them to be beneficiaries under the endowment, who are the members of the family who could take the benefit thereunder after the lifetime of his two wives? If we are to hold that the endowment was in favour of the members of the family, then the result will be that on the death of the two wives, it must fail for want of objects. But it is clear from the provisions of the will that the testator contemplated the continuance of the endowment beyond the lifetime of his wives. He directed that the properties should be endowed in the name of the deity, and that lands are to be purchased in future in the name of the deity. He also provides for the management of the trust after the lifetime of his wives. And to effectuate this intention, it is necessary to hold that the Thakurdwara was dedicated for worship by members of the public, and not merely of his family. In deciding that the endowment was a private one, the learned Judges of the Chief Court failed to advert to these aspects, and we are unable to accept their decision as correct.

(2) In the absence of a deed of endowment constituting the Thakurdwara, the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. The witnesses examined on his behalf deposed that the villagers were worshipping in the temple freely and without any interference, and indeed, it was even stated that the Thakurdwara was built by Sheo Ghulam at the instance of the villagers, as there was no temple in the village. The trial Judge did not discard this evidence as unworthy of credence, but he held that the proper inference to be drawn from the evidence of PW 2 was that the public were admitted into the temple not as a matter of right but as a matter of grace. PW 2 was a pujari in the temple, and he deposed that while Sheo Ghulam's wife was doing puja within the temple, he stopped outsiders in whose presence she used to observe purdah, from going inside. We are of opinion that this fact does not afford sufficient ground for the conclusion that the villagers did not worship at the temple as a matter of right. It is nothing unusual even in well-known public temples for the puja hall being cleared of the public when a high dignitary comes for worship, and the act of the pujari in stopping the public is an expression of the regard which the entire villagers must have had for the wife of the founder, who was a pardanashin lady, when she came in for worship, and cannot be construed as a denial of their rights. The learned Judges of the Chief Court also relied on the decision of the Privy Council in *Babu Bhagwan Din v. Gir Har Saroon*[8] as an authority for the position that "the mere fact that the public is allowed to visit a temple or thakurdwara cannot necessarily indicate that the trust is public as opposed to private". In that case, certain properties were granted not in favour of an idol or temple but in favour of one DaryaoGir, who was maintaining a temple and to his heirs in perpetuity. The contention of the public was that subsequent to the grant, the family of Daryao Gir must be held to have dedicated the temple to the public for purpose of worship, and the circumstance that members of the public were allowed to worship at the temple and make offerings was relied on in proof of such dedication. In repelling this contention, the Privy Council observed that as the grant was initially to an individual, a plea that it was subsequently dedicated by the family to the public required to be clearly made out, and it was not made out merely by showing that the public was allowed to worship at the temple "since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away". But, in the present case, the endowment was in favour of the idol itself, and the point

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or decision is whether it was a private or public endowment, And in such circumstances, proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public. In *MunC/ancheri Kernen v, Achuthan*[2] which was referred to and followed in *Babu Bhagwan Din* v. *Gir Her Saroon* the distinction between user in respect of an institution which is initially proved to have been private and one which is net, is thus expressed:

"Had there been any sufficient reason for holding that these temples and their endowment were originally dedicated for the tarwad, and so were private trusts, their Lordships would have been slow to hold met the adrnlsslon of the public in later times, possibly owing to' altered conditions, would affect the private character of the trusts. As it is, they are of opinion that the' learned' Judges of the High Court were justified in presuming from the evidence as to public user, which is all one way, that the temples and their endowments were. public religious trusts."

We are accordingly of opinion that the user of the temple such as is established by the evidence is more consistent. with its being a public endowment.

(3) It is settled law that an endowment can validly be created In favour of an idol or temple without the performance of any particular ceremonles, provided the settlor has clearly and unambiguously expressed his. intention In that behalf. Where it is proved that ceremonies were performed, that would be valuable evidence of endowment, but absence of such proof would not be conclusive against it. In the present case, it is common ground that the consecration of the temple and the installation of the idol of Sri Radhakrishnaji were made with great solemnity and: in accordance with the Sastras. PW 10, who officiated as Acharya at the function hes deposed that it lasted for seven days, and that all the ceremonies commencing with *KaJasa Puja* and ending with *Stha pana* or *Prathistawere* duly performed and the idols of Sri Radhakrishnaji, Sri Shivji and Sri Hanumanji were installed as ordained in the Prathlsta Mayukha. Not much turns on this evidence, as the defendants admit both the dedication and the ceremonies, but dispute only that the dedication was to the publtc.

In the court below, the appellant raised the contention that the performance of *Uthsarga* ceremony at the time of the consecration was conclusive to show that the dedication was to the public, end that as PW 10 stated-that *Prasadothsarga* was performed, the endowment must be held to be pubhc, The learned Judges considered that this was a substantial- question calling for an -authorltatlve decision, and for that reason' granted a certificate under Section *109(c)* of the Code of Civil Procedure. We have ourselves read the Sa,nskrit texts bearing on this Question, and we are of opinion that the contention of the appellant proceeds on a mlsapprehenston. The ceremonies relating to dedtcatlon are *Sankalpa, Uthsargaand Prathista. $ankalpa* means determination, and is really a formal declaration by the settlor of his intention to dedicate the property. *Uthsarga* is the formal renunciation by the founder of his ownership in the property, the result whereof being that it becomes impressed with the trust for which he dedicates it. Vide *The Htndu Law of Religious and Charitable* Trust by B.K. Mukherjea, 1952 Edn., p, 36. The formulae to be adopted in *Sankalpa* and *Uthsarga* are set out Jn *Kane's History of Dharmasastras*, Volume II, P: 892. It will be seen therefrom thet whlle the *Sankalpastates:* the objects for the realisation of which the dedication Is made, it Is the *Uthsarga* that in terms dedicates the properties to the public (*Sarvabhutebyah*). It would therefore follow that *ifUthsarga* is proved to have been performed, the dedication must beheld to have been to the public. But the difficulty in the way of theappellant is that the formula whlch according to PW 10 was recited on the occasion of the foundation was not *Uthsarga* but *Prasadothsarga*, which is something totally different. '*Prasada'* is the 'mandira', wherein the deity is placed before the final tnstatletten or *Prathista* takes ptace, and the Prathista Mayukha prescribes the ceremonies that have to be performed when.the idol is installed in the *Prasada. Presedothserae* is the. formula to be used on that occasion. and the text

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relating to it as given in the Mayukha runs as fouows;

,सकृन्वच्चवत: ......प्रासादोत्सर्गं कुर्यात्-पउय। तत्र गासपक्षाद्युल्लिख्य, इमं
पिचेयालेष्टकादार्वाद्विनिर्मितं........स-क्लतंअमयादेवतालोकावाप्तिकाम:, कुलद्रयानुग्रहाय,
अमुकदेवताप्रीतये, अहमुत्सृजामीति, कु-पचेयाचयजमाभि क्षिपवा,
देवे वत्वा, प्राहमणेभ्य-पउय मोत्सर्येदिति।-तकूच्चय

It will be seen that this is merely the *Sankalpa* without the *Uthsarga,* and there are no words therein showing that the dedlcatlon is to the public. Indeed, according to the texts, *Uthsarga* is to be performed only for charttabte endowments, like construction of tanks, rearing of gardens and the like, and not for religious foundations. It is observed by Mr Mandlik in the. Vyavahara Mayukha, Part II, Appendix II, p, 339 that "there is no *utsarga* of a temple except in the 'case of repair of old temples". In the Hlstorv of Dharmasastras, Volume II; Part III p. 893, it is pointed out by Mr Kane that in the case of temples the properrword to, use *isPrathista.* and not *Uthsarga.* Therefore, the question of inferring a dedlcatlon to the public by reason of the performance of the *Uthsarga* ceremony cannot.erlse in the case of temples, Theeppellant is correct in his contention that if *Uthsarga* is performed the dedication is to the public, but the fallacy in his argument lies in equating *Presedotnserqe* with *Uthsarga.* 6ut it is also clear from. the texts that *Prathista* takes the place of ,*Uthsarga* in dedication of temples, and that there was *Prathista* of Sri Radnakrlsnnaj! as spoken to by PW 10, is not in dispute. In aur opinion, this establishes. that the dedication was to the publlc.

(4) We may now refer to certain facts admitted or estabnshed in the evidence, which indicate that the endowment is to the public. Firstly, there is the fact that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacarrtslte. And as pointed out in *Delroos Banoo Begum* v. *Nawab Syud Ashgur Ally Khan*[10] it Is a factor to be taken into account in deciding whether an endowment is private or public, whether the place of worship is located inside a private house or a public building. Secondly, it is admitted that some of the idols are permanently installed on a pedestal wlthln the temple precincts. That is more consistent with the endowment being public rather than private. Thirdly, the puja in the temple is performed by an archaka appointed from time to time. And lastly, there is the 'fact that there was no temple in the village, and there is evidence on the side of the plaintiff that the Thakurdwara was built at the instance of the villagers for providing a place of worshlp for them. This evidence has not been considered by the courts below, and if it is true, that will be decisive to prove that the endowment is public.

8. It should be observed in this connection that though the plaintiff expressly pleaded that the temple was dedicated "forthe worship of the general public", the first defendant In his written statement merely pleaded that the Thakurdwara and the idols were private. He did not aver that the temple was founded for the benefit of the members of the family. At the trial, while the witnesses for-the plaintiff deposed that the temple was built with the object of providing a place of worship for all the Hindus, the witnesses examined by the defendants merely deposed that Sheo Ghulam built the Thakurdwara for his own use and "for his puja only". The View of the lower court that the temple must be taken to have been dedicated to the members of the family goes beyond the pleading, and is not supported by the evidence in' the case. Having considered all the aspects, we are of opinion that the Thakurdwara of Sri Radhakrishnaji in Bhadesia is a publlc temple,

9. In the result, the appeal is allowed, the decrees of the courts below are set aside, and a declaration granted in terms of para 17 *(a)* of the plaint. The costs of the appellant in all the courts will come out of the trust properties. The ftrst defendant will himself bear his own costs throughout.

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On appeal from the judgment and decree dated 14th July,. 1948 of the Chief Court of Audh, tucknow in Second Appeal No. 365 of 1945 arising out of the decree dated 30th May, 1945 Qf the Court of District Judge, Sitapur in Appeal No. 4 of 1945 against the decree dated 25th November, 1944 of the Court of Additional Ovil Judge, Sitapur in Regular Civil Suit No. 14 of 1944)

1 (1949) LR 76 IA 271

2 ILR (1942) 1 Cal 211, 227, 228

3 (187S) LR 2 IA 145, 152

4 (1904) LR 31 IA 203

5 (1924) LR 52 IA 245

6 (1910) ILR 37 Cal 128

7 AIR 1937 Mad 750

8 'A' (1939) LR 67 IA 1 : AIR 1940 PC 7

9 (1934) 611A 405 : AIR 1934 PC 230

? (1875) 15 Ben LR 167, 1.86

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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 Assessment 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 juristic 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 explicit and beyond challenge in the 1961 Act.

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

Appeal *dismissed.*

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M. C. Chagla, Senior Advocate (*S. 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. Elabcrate 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 Shobaits 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

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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 Shibessouree Debia* v. *Mathooranath Acharjo*[3] and *Prasanna 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.

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designated in ditrerent'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 or things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must or 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 shouldbe disinherited by tbe negUgence of their guardians or be barred Of an action in case tbey 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 autbority, founded upon the religious customs or the Hindus, and the recognition thereof by Courts of law, a 'juristic;'entity'. It has a juridical status with the power orsuing 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 tbat 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 Purya Mimamsa, Adbyaya 9, Pada I,; Sabara Swami states:

देवग्रामो, देवक्षेत्रमिति, उपचारमात्रम् । यो यदभिप्रेतं विनियोक्तमंहति, तत्तस्य स्वम् । न च ग्रामं क्षेत्रं वा यथाभिप्रायं विनियुक्तङे । तस्मान्न संप्रयच्छातीति । देवपरिचार काणां तु ततो भूतिर्भवति, दवतामुद्दिश्य यत् त्यक्तम् ।

"Words such as 'village of the Gods', 'land of the Gods' are used vin 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 or the village or lands, according to its desires". Likewise, Medhatbitbi in commenting on the expression 'Devaswam' in Manu, Chapter XI, verse 26, writes :

देवानुद्दिश्य, यागादि क्रियार्थं धनं यदुत्सृष्टं, तद्देवस्वम् 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.

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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 vivos* 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.

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law. A *pia causa* did not require to have a juristic personality expressly conferred upon it. According to Roman law the act-s-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 euasa* a "oundation' 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 standpoint 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. 1t 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 बरुणम् अग्निम् आहुर्—
एकं सद् विप्रा बहुधा वदन्ति । (Rig Veda 1-164)

(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 यमोऽग्निर वरुणः शशाङ्क
प्रजापतिस् त्वं प्रपितामहश्च I (Chap. XI-39)

(Thou art Vayu and Yama, Agnl, 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 or law agaln 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 die possession and management of its property. It was argued on behalf of.the appellant that the word cindividual' 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 vas 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.

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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-

X X X

(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-

X X X

(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.

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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 13A 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 13A(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.

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petitioner of its products was much higher than the control price which included elements of SDF. While the collection and remittance to SDF has been discontinued w.e.f. April 1994, the petitioner made its claim for the first a
time in 1999 which would appear to be rather incongruous. It is submitted that the claim made by the petitioner is not bona fide and the writ petition has been filed with ulterior motives, which are not difficult to fathom, SAIL had stressed immediate need for restructuring and modernising all the main steel plants. Due to rccesskn, SAIL has been passing through a sesere financial position and has to suffer a loss of Rs 1574 crores in 1998-99. It has further b
to suffer the burden of interest to the tune of Rs 2017 crores per annum for modernisation. In the aforesaid circumstances, the petitioner does not have any right to claim any relief in the writ petition pertaining to utilisation of SDF. It is quite apparent that from the very nature of the creation of SDF, the manner of remittance to SDF and purpose or its utilisation, it is a fund created ultimately for the utilisation by the member steel producers only. c

14. We do not think it is a fit case where this Court in the exercise of its powers under Article 136 of the Constitution of India should grant leave to appeal from the impugned judgment of the High Court. Leave to appeal is refused. Special leave petition is dismissed.

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(BEFORE M. JAGANNADHA RAO AND A.P. MISRA, JJ.)

SHIROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR ... Appellant;

Versus

SOM NATH DASS AND OTHERS ... Respondents. e

Civil Appeal No. 3968 of 1987† with SLPs (C) Nos. 2735-36 of 1989, decided on March 29, 2000

A. **Jurisprudence** — Juristic person — Meaning and concept of — How created — Legal status of such juristic person — Religious endowment for gurdwara — Guru Granth Sahib installed in a gurdwara — Held, a juristic person — It replaced the Guru after the tenth Guru and is worshipped by Sikhs as a living Guru — It cannot be equated either with any other sacred book such as Geeta, Bible or Quran or with an idol — Gurdwara and Guru Granth Sahib are not two separate juristic persons but one integrated whole — Status of Guru Granth Sahib as a juristic person is not affected merely because of non-appointment of a manager for acting on its behalf — Sikh Gurdwaras Act, 1925, Ss. 2(12), 7, 8, 10 and 25-A — Civil Procedure Code, g
1908, S. 92 — General Clauses Act, 1897, S. 3(42) — Words and Phrases — "juristic person", "endowment" — Trusts — Religious and charitable endowments

h

† From the Judgment and Order dated 19-4-1985 of the Punjab and Haryana High Court in FAO No. 449 of 1978

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B. Trusts - Religious and charitable endowments - Once an endowment is made it, never reverts to the donor

a *Held;*

"Guru Granth Sahib" is a "juristic person". (Para 42)

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 b only means a human person. Essentially, every human person is a person. However, 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, object or thing. 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 c 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. (Para 11)

Roscoe Pound's Jurisprudence, Part IV, 1959 Edn., pp. 192-93; *Corpus Juris Secundum,* Vol. LXV, p. 40; *Corpus Juris Secundum,* Vol. VI, p. 778; *Salmond on Jurisprudence,* 12th Edn., p. 305; *Jurisprudence by Paton,* 3rd Edn., pp. 349 and 350; *Analytical and Historical Jurisprudence,* 3rd Edn., p. 357, *relied on*

d A "juristic person" is not roped in any defined circle. With the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time. (Para 28)

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 e 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 a juristic person when it is recognised by the society as such. Each religion has a different nucleus, as per its faith and belief, for treating any entity as a unit. (Paras 19 and 30)

Sarangadeva Periya Matam v, Ramaswami Goundar, AIR 1966 SC 1603; *Deoki Nandan v, Murlidhar.* AIR 1957 SC 133; *Som Prakash Rekhi v, Union of India,* (1981) 1 SCC 449 : 1981 SCC (L&S) 200; *Yogendra Nath Naskar v, CIT,* (1969) 1 SCC 555, *relied on*

Masjid Shahid Ganj v. Shromani Gurdwara Parbandhak Committee, AIR 1938 Lah 369 *(FB), approved*

Manohar Ganesh Tambekar v. Lakhmiram Govindram, ILR (1888) 12 Bom 247; *Bhupati Nath Smrititirtha v, Ram Lal Maitra,* ILR (1909-10) 37 Cal 128 : 14 CWN 18; *Board of* g *Commrs. for the Hindu Religious Endowments v, Parasaram Veeraraghavacharlu.* AIR 1937 Mad 750 : (1937) 2 MLJ 368, *cited*

When belief and faith of two different religions are different, there is no question of equating one with the other. It is not necessary for "Guru Granth Sahib" to be declared as a juristic person that it should be equated with an idol. If "Guru Granth Sahib" by itself could stand the test of its being declared as such, it can be declared to be so. (Para 29)

h In the Sikh religion, the Guru is revered as the highest reverential person, It is said that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru

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Arjun. The last living Guru, Guru Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru. The Guru Granth Sahib wouldbe the vibrating Guru. He declared that "henceforth it would be a
your Guru from which you will get all your guidance and answer". It is with this faith that it is worshipped like a living Guru. It is with this faith and conviction, when it is installed in any gurdwara it becomes a sacred place of worship. Sacredness. of the gurdwara is only because of placement of Guru Granth Sahib in it. This reverential recognition of Guru Granth Sahib also opens the hearts of its followers to pour their money and wealth for it. It is not that it needs it, but when it is installed, it grows for its followers, who through their b
obeisance to it, sanctify themselves and also for running the *langer* which is an inherent part of a gurdwara, (Paras 31 and 33)

Pritam Dass Mahant v. *Shiromani Gurdwara Prabandhak Committee,* (1984) 2 SCC 600, *relied on*

Khushwant Singh: *A History of the Sikhs,* Vol. I, p. 307, *relied on*

In this backgroigid and on overall considerations it must be held that "Guru c
Granth Sahib" is a "juristic person". It cannot be equated with an "idol' as idol worship is contrary to Sikhism. As a concept or a visionary for obeisance, the two religions are different. Yet, for its legal recognition as a juristic person, the followers of both the religions give them respectively the same reverential value. Thus the Guru Granth Sahib has all the qualities to be recognised as such. Holding otherwise would mean giving too restrictive a meaning of a "juristic person", and that would eree the very jurisprudence which gave birth to it. d
(Para 34)

The view that a juristic person could only act through someone, a human agency and as in the case of an idol, the Guru Granth Sahib also could not act without a manager erroneous. No endowment or a juristic person depends on the appointment of a manager. It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either e
by the trustees or courts in accordance with law. The property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "court as representing the sovereign". This can be done, by the court in several ways under Section 92 CPC or by handing over management to any specific body recognised by law. But the trust will norbe allowed by the court to fail. Endowment is when the donor parts with his property for it being used for a public purpose and its emrusuncnt is to a person or group of persons in trust for carrying out the objective of such entrustment. Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get it appointed through court. So, if entrustment is to any juristic person, mere absence of a manager would not negate the existence of a juristic person. (Para 35) g

Manohar Ganesh Tambekar v, Lakhmiram Govindram; ILR (1888) 12 Bom 247; *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami,* ILR (1903-05) 27 Mad 435, 457, *approved*

Yogendra Nath Naskar v. *CIT,* (1969) 1 SCC 555, *relied on*

Words and Phrases, Permanent Edition, Vol. 14-A, p. 167, *referred to*

Further, gurdwara and Guru Granth Sahib cannot be treated as two juristic persons and so it is not correct to say that these two could not be there in the h
same building. In fact both are so interwoven that they cannot be separated. The

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installation of "Guru Granth Sahib" is the nucleus or nectar of any gurdwara. If there is no Guru Granth Sahib in a gurdwara it cannot be termed as a gurdwara.
a When one refers a building to be a gurdwara, he refers to it so only because Guru Granth Sahib is installed therein. Even if one holds a gurdwara to be a juristic person, it is because it holds the "Guru Granth Sahib". So, there do not exist two separate juristic persons, they are one integrated whole. (Para 37)

Ram Jankijee Deities v. State of Bihar, (1999) 5 SCC 50, *relied on*

Again the view that if Guru Granth Sahib is a "juristic person" then every copy of Guru Granth Sahib would be a "juristic person" is based on an erroneous
b approach. An "idol" becomes a juristic person only when it is consecrated and installed at a public place for the public at large. Every "idol" is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes a juristic role through its installation in a gurdwara or at such other recognised public place. (Para 38)

As regards the particular Gurdwara in question it was contended that the
c basis for mutating of the name of "Guru Granth Sahib Barajman Dharamshala Deh", by deleting the name of the ancestors of the respondents, based on farman-e-shahi issued by the then Ruler of the Patiala State dated 18-4-1921 is liable to be set aside, as this farman-e-shahi did not direct the recording of the name of "Guru Granth Sahib". It is not possible to accept this contention on facts. The mutation of name was not because of direction issued by the farman-e-shahi, So no error could be said to have been committed, when mutations were
d recorded. The farman-e-shahi if at all may be said to have led to the inquiry but it was not the basis. (Paras 43 and 45)

Examining the merits it is found that the mutation in the revenue papers in the name of Guru Granth Sahib was made as far back as in the year 1928, in the presence of the ancestors of the respondents and no objection was raised by anybody till the filing of the present objection by the respondents as aforesaid
e under Sections 8 and 10 of the 1925 Act. This is after a long gap of about forty years. Further, this property was given in trust to the ancestors of the respondents for a specified purpose but they did not perform their obligation. It is also settled that once an endowment it never reverts even to the donor. Then no part of these rights could be claimed or usurped by the respondent's ancestors who in fact were trustees. Hence even on merits, any claim to the disputed land by the respondents has no merit. Thus, any claim over this disputed property by the respondents fails and is hereby rejected. (Para 47)

R-M/ATZ/22422/Corr-20/C

Suggested Case Finder Search Text (*inter alia*):

juristic near person*

Advocates who appeared in this case:

g M.S. Gujral, Ujagar Singh, Harbans Lal, Hardev Singh, Ms Madhu Moolchandani, Ms B.K. Brar, Ms Shobha, S.K. Mehta, Ashok Kr. Mahajan, A.V. Palli, Ms Rekha Palli, P.N. Puri, Atul Sharma, D.O. Sharma, Dhurv Mehta, Aman Vachher, D.P. Sharma, Narinder Singh, R.K. Aggarwal, Advocates, for the appearing parties.

Chronological list of cases cited *on page(s)*

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h 2. (1984) 2 SCC 600, *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee* 160e

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3. (1981) 1 SCC 449 : 1981 SCC (L&S) 200, *Som Prakash Rekhi v. Union of India,* 159f
4. (1969) 1 SCC 555, *Yogendra Nath Naskar v. CIT* 160a, 164e, 164e-f a
5. AIR 1966 SC 1603, *Sarangadeva Periya Matam v. Ramaswami Goundar* 158f
6. AIR 1957 SC 133, *Deoki Nandan v. Murlidhar* 159b
7. AIR 1938 Lah 369 (FB), *Masjid Shahid Ganj v. Shromani Gurdwara Parbandhak Committee* 158f
8. AIR 1937 Mad 750 : (1937) 2 MLJ 368, *Board of Commrs. for the Hindu Religious Endowments v. Parasaram Veeraraghavacharlu* 159d
9. ILR (1909-10) 37 Cal 128 : 14 CWN 18, *Bhupati Nath Smrititirtha v. Ram Lal Maitra* 159b, 159d-e b
10. ILR (1903-05) 27 Mad 435, 457, *Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami* 164e
11. ILR (1888) 12 Bom 247, *Manohar Ganesh Tambekar v. Lakhmiram Govindram* 160a-b, 164e

The Judgment of the Court was delivered by c

MISRA, J.— 1. The question raised in this appeal is of far-reaching consequences and is of great significance to one of the major religious followers of this country. The question is whether the "Guru Granth Sahib" could be treated as a juristic person or not. If it is, then it can hold and use the gifted properties given to it by its followers out of their love, in charity. This is by creation of an endowment like others for public good, for enhancing the d religious fervour, including feeding the poor etc. Sikhism grew because of the vibrating divinity of Guru Nanakji and the 10 succeeding Gurus, and the wealth of all their teachings is contained in "Guru Granth Sahib". The last of the living Guru was Guru Gobind Singhji who recorded the sanctity of "Guru Granth Sahib" and gave it the recognition of a living Guru. Thereafter, it remained not only a sacred book but is reckoned as a living Guru. The deep e faith of every earnest follower, when his pure conscience meets the divine undercurrent emanating from their Guru, produces a feeling of sacrifice and surrender and impels him to part with or gift out his wealth to any charity maybe for gurdwaras, dharamshalas etc. Such parting spiritualises such follower for his spiritual upliftment, peace, tranquillity and enlightens him with resultant love and universalism. Such donors in the past, raised a number of gurdwaras. They gave their wealth in trust for its management to the trustees to subserve their desire. They expected the trustees to faithfully implement the objectives for which the wealth was entrusted. When selfishness invades any trustee, the core of trust starts leaking out. To stop such leakage, the legislature and courts step in. This is what was happening in the absence of any organised management of gurdwaras, when trustees g were either mismanaging or attempting to usurp such trusts. The Sikh Gurdwaras and Shrines Act, 1922 (6 of 1922) was enacted to meet the situation. It seems, even this failed to satisfy the aspirations of the Sikhs. The main reason being that it did not establish any permanent committee of management for Sikh gurdwaras and did not provide for the speedy confirmation by judicial sanction of changes already introduced by the h reforming party in the management of places of worship. This was replaced

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by the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925) under which the
a present case arises. This Act provided a legal procedure through which gurdwaras and shrines regarded by Sikhs as essential places of Sikh worship were to be effectively and permanently brought under Sikh control and management, so as to make it consistent with the religious followings (sic feelings) of this community.

2. About 56 persons of Villages Bilaspur, Ghodani, Dhamot, Lapran and
b Buani situated in Village Bilaspur, District Patiala moved petition under Section 7(1) of the said Act for declaration that the disputed property is a Sikh gurdwara. The State Government through Notification No. 1702 OP dated 14-9-1962 published the aforesaid petition in the Gazette including the boundaries of the said gurdwaras which were to be declared as Sikh gurdwaras, Thereafter, a composite petition under Sections 8 and 10 of the
c said Act was filed by Som Dass, son of Bhagat Ram, Sant Ram, son of Narain Dass and Anant Ram, son of Sham Dass of Village Bilaspur, District Pauala, challenging the same. They claimed it to be a dharamshala and dera of udasian being owned and managed by the petitioners and their predecessors since the time of their forefathers and that they being the holders of the same, received the said dera in succession, in accordance with
d their ancestral share. They also claimed to be in possession of the land attached to the said demo They denied it to be a Sikh gurdwara. This petition was forwarded by the Xlovemment to the Sikh Gurdwara Tribunal, hereinafter referred to as "the Tribunal". In reply to the notice, the Shiromani Gurdwara Parbandhak Committee, hereinafter referred to as "SGPC" (appellant), claimed it to be a Sikh gurdwara, having been-established by the
e Sikhs for their worship, wherein "Guru Granth Sahib" was the only object of worship and it was the sole owner of the gurdwara property. It denied this institution to be an udasi dera However, the appellant Committee challenged the locus standi of the respondent to file this objection to the notification. The appellant's case was that under Section 8 an objection could only be filed by any hereditary office-holders or by 20 or more worshippers of the gurdwara, which they were not. The Tribunal held that the petitioners before it (respondents here), admitted in their cross-examination that the disputed premises was being used by them as their residential house, that there was no object of worship in the premises, neither were they performing any public worship nor were they managing it. So it held that they were not hereditary office-holders, as they neither managed it nor performed any public
g worship. Thus, their petition under Section 8 was rejected on 9-2-1965 by holding that they have no locus standi. Aggrieved by this they filed first appeal being FAO No. 40 of 1965 which was also dismissed by the High Court on 24-3-1976, which became final. Thereafter, the Tribunal took the petition under Section 10 in which the stand of SOPC was that the land and the buildings were the properties of "Gurdwara Sahib Dharamshala Guru
h Granth Sahib" at Bilaspur. The respondents and their predecessors along with

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their family members had all along been its managers and they had no personal rights in it. The Tribunal framed two Issues:

"(1) What right, title or interest have the petitioners in the property in dispute. a

(2) What right, title or interest has the notified Sikh Gurdwara in the property in dispute."

3. The Tribunal decided both Issue 1 and Issue 2 in favour of the present appellants and held that the disputed property belonged to SGPC. Thus the respondents' petition under Section 10 was also rejected on 4-9-1978. The b Tribunal's conclusion is reproduced hereinbelow:

"The above discussion shows that the respondent Committee has been successful in, bringing its case rightly in clauses 18(1)(a) and 18(1)(*d*) of the Act and has been successful in discharging its onus as regards Issue 2 and the issue is, therefore, decided in favour of the c respondent Committee and against the petitioners.

For the reasons given above, it is held that the petitioners have failed to prove that they have got any right, title or interest in the property in dispute and Issue 1 is decided against them and this petition is dismissed with costs. However, it is declared that the institution in dispute, namely, Gurdwara Sahib Dharamshala Guru Granth Sahib, situated in the revenue d estate of Bilaspur, Tehsil Sirhind, District Patiala is the owner of the property in dispute consisting of gurdwara building, the plan of which is given in Notification No. 1702 OP dated 14-9-1968 at p. 2527 and the agricultural land measuring 115 bighas 12 biswas the details of which are given in the copy of jamabandi for the year 1955-56 Alr'attached to the abovesaid notification at p. 2529 and is comprised of Khasras Nos. 456 e min, 457, 451, 644 and 452 bearing Khawar No. 276, Khataunis Nos. 524 to 527."

4. Aggrieved by this, the respondents filed first appeal being FAO No. 449 of 1918. During its pendency, SGPC on the basis of final order passed by the High Court in FAO No. 40 of 1965 against the order of the Tribunal rejecting the Section S application, filed Suit No. 94 of 1979 against the respondents under Section *25-A* of the Act for the possession of the building and the land. The respondents contested the suit by raising objection about misdescription of the property in the plain; and also raising an issue about jurisdiction since the income from the gurdwara was more than Rs 3000 per annum for which a committee was to be constituted before any suit could be filed. On contest, the said suit of SGPC was decreed and the g respondents' objections were rejected, against which the respondents filed FAO No. 2 of 1980. The High Court vide its order dated 11-2-1980 directed this FAO No. 2 of 1980 to be listed for hearing along with FAO No. 449 of 1978. It is also relevant to refer to, which was also stated by the respondents in their petition before the Tribunal, that a notification under Section 9 of the Act was published declaring the disputed gurdwara to be a Sikh gurdwara, h

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5. It is necessary to give some more facts to appreciate the contentions raised by the respective parties. In jamabandi Ex. P-1 of 1961-62 BK, (which would be 1904 AD), Mangal Dass, Sunder Dass and Bhagat Ram, sons of Gopi Ram Faqir Udasi were mentioned as owners in possession of the land. They had also mortgaged part of this land to some other persons. This Village Bilaspur where the disputed gurdwara exists formed part of the erstwhile Patiala State. The then ruler of the Patiala State issued farman-e-shahi dated 18-4-1921. Its contents are quoted hereunder:

> "In future, instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-i-khas through Deori Mualla, until the time, the Mahant is entitled to receive turban, shawl or bandhan or muafi etc. from the Government, no property or muafi shall be entered in his name in the revenue papers.
>
> It should also be mentioned that the land which pertains to any dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the dera. Revenue Departmene be also informed about it and the order be gazetted."

6. On Maghar 10, 1985 BK (1920 AD) at the instance of Rulia Singh and others the Patwari made a report in compliance with the aforesaid farman-e-shahi for the change of the entries in favour of "Guru Granth Sahib Barajman Dharamshala Deh". This was based on the inquiry and evidence produced before him. In this mutation proceeding which led to the mutation viz., Ex. P-8, Narain Dass, Bhagat Ram and Atma Ram Sadh appeared before the Revenue Officer and stated that their ancestors got this land which was gifted in charity (*punnarth*) by the then proprietors of the village. This land was given to the ancestors of the respondent for the purpose that they should provide food and comfort to the travellers passing through this village. In the same proceeding Kapur Singh, Inder Singh Lambardars and other rightholders of the said village also stated that their forefathers had given this land in the name of "Guru Granth Sahib Barajman Dharamshala Deh" under the charge of these persons for providing food and comfort to the travellers. But Atma Ram and others, ancestors of the respondents were not performing their duties. This default was for a purpose, which is revealed through the last settlement that they got this land entered in their personal names in the revenue records against which a matter was pending before the Deori Mualla in the mutation proceedings. Based on the evidence, the Revenue Officer after inquiry recorded the finding that Atma Ram and the others admitted that this land had been given to them without any compensation for providing food and shelter to the travellers which they were not performing. He further held that Atma Ram and the others could not controvert the aforesaid assertion made by the villagers. So, based on this inquiry and evidence on record, he ordered the mutation, in the name of "Guru Granth Sahib

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Barajman Dharamshala Deh" by deleting the name of Atma Ram and the others from the column of ownership of the land. He further observed, so far as the question of appointment of manager or Mohatmim was concerned; it a
was to be decided by the Deori Mualla as the case about this was pending before the Deori Mualla, Similarly, in the other Mutation No. 693 which is Ex. P-9 in 27th Maghar, 1983 (1926 AD) also, mutation was ordered by removal of the name of Narain Dass, Bhagat Ram, sons of GopiRam in favour of "Guru Granth Sahib Barajman Dharamshala Deh", Since that date till the filing of the petitions by the respondents under Sections 8 and 10 of b
the Act entries in the ownership column of the land continued in the name of "Guru Granth Sahib Barajman Dharamshala Deh" and no objection was filed either by the ancestors of the respondents or the respondents themselves.

7. It was for the first time objection was raised by the respondents through their counsel before the High Court in FAO No. 449 of 1978 regarding validity of Exs. P-8 and P-9 contending that the entry in the c
revenue records in the name of Guru Granth Sahib was void as Guru Granth Sahib was not a juristic person. The case of the respondents was that the Guru Granth Sahib was only a sacred book of the Sikhs and it would not fall within the scope of the word "juristic person". On the other hand, with vehemence and force learned counsel for the appellant SGPC submits that Guru Granth Sahib is a juristic person and hence it can hold property, can sue d
and be sued. On this question, whether Guru Granth Sahib is a juristic person, a difference arose between the two learned Judges of the Bench of the High Court. Mr Justice Tiwana held it to be a juristic person and dismissed both the FAOs, namely, FAOs Nos. 449 of 1978 and 2 of 1980 upholding the judgment of the Tribunal. On the other hand Mr Justice Punchhi, (as he then was) recorded dissent and held the Guru Granth Sahib e
not to be a juristic person, but did not decide the issue on merits. The case was then referred to a third Judge, namely, Mr Justice Tewatia who agreed with the view of Mr Justice Punchhi and held the Guru Granth Sahib not to be a juristic person. After recording this finding the learned Judge directed that the FAO may be placed before the Division Bench for final disposal of the appeal on merits.

8. The question whether Guru Granth Sahib is a juristic person is the main point which is argued in the present appeal to which we are called upon to adjudicate. It is relevant to mention here that after adjudication of the question whether the Guru Granth Sahib is a juristic person, the matter again went back to the same Bench which again gave rise to another conflict between Justice Tiwana and Mr Justice Punchhi, Justice Tiwana held on g
merits that mutations were valid and the respondents had no right to this property. But Mr Justice Punchhi held to the contrary that the mutation was invalid and this property was the private property of the respondents. Thereafter, the said FAO No. 449 of 1978 and FAO No. 2 of 1980 were placed before the third Judge, namely, Justice J.B. Gupta, who concurred with the view taken by Mr Justice Punchhi, as he then was. He recorded the h
following conclusion:

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Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

12. In *Roscoe Pound's Jurisprudence*, Part IV, 1959 Edn., at pp. 192-93, it is stated as follows: a

> "In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law, down to the constitution of Antoninus Pius the slave was not a person. He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such like animals, could be the object of rights of property.' ... In the French colonies, before slavery was there abolished, slaves were 'put in the class of legal persons by the statute of April 23, 1833' and obtained a 'somewhat extended juridical capacity' by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the States were free human beings with no legal rights." b

13. With the development of society, where an individual's interaction fell short, to upsurge social developments, cooperation 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 a 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. c d

14. *Corpus Juris Secundum*, Vol. LXV, p. 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 CJS definition of 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." e

15. *Corpus Juris Secundum*, Vol. VI, p. 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."

16. *Salmond on Jurisprudence*, 12th Edn., p. 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 beings is one of the most noteworthy feats of the legal imagination. ... g
>
> 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 h

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unions and friendly societies are also legal persons though not verbally
a 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
b personification of, groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members...,

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,
c 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.... "

d 17. *Jurisprudence by Paton,* 3rd Edn., p. 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 a legal relationship. Salmond said: 'So far as legal theory
e 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 person 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),
g 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."

h 18. *Analytical and Historical Jurisprudence,* 3rd Edn., at p.357 describes "person":

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"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."

19. 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, object or thing. 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 a minor a guardian is appointed, so in the case of an 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 a charitable purpose it can create institutions like a church, hospital, gurdwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose inasmuch 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 a juristic person when it is recognised by the society as such.

20. In this background, we find that this Court in *Sarangadeva Periya Matam* v. *Ramaswami Goundar*[1] held that a "mutt" was the owner of the endowed property and that like an idol the mutt was a juristic person and thus could own, acquire or possess any property. In *Masjid Shahid Ganj* v. *Shromani Gurdwara Parbandhak Committee*[2] a Full Bench of that High Court held that a mosque was a juristic person. This decision was taken in appeal to the Privy Council which confirmed the said judgment. Sir George Rankin observed:

"In none of these cases was a mosque party to the suit, and in none except perhaps the last is the fictitious personality attributed to the mosque as a matter of decision. But so far as they go these cases support the recognition as a fictitious person of a mosque as an institution — apparently hypostatising an abstraction. This, as the learned Chief Justice

1 AIR 1966 SC 1603
2 AIR 1938 Lah 369 (FB)

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in the present case has pointed out, is very different from conferring personality upon a building so as to deprive it of its character as Immovable property."

21. There may be an endowment for a pious or religious purpose. It may be for an idol, mosque, church etc. Such endowed property has to be used for that purpose. The installation and adoration of an Idol or any image by a Hindu denoting any god is merely a mode through which his faith and belief is satisfied. This has led to the recognition of an idol as a juristic person.

22. In *Deoki Nandan v. Murlidhar*[3] this Court held:

"In *Bhupati Nath Smrititirtha v. Ram Lal Maitra*[4] it was held on a consideration of these and other text that a 'gift to an idol was not to be judged by the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins, C.J. at p. 138 that 'the pious purpose is still the legatee, the establishment of the Image is merely the mode in which the pious purpose is to be effected' and that 'the dedication to a deity' may be 'a compendious expression of the pious purposes for which the dedication is designed'. Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In *Board of Commrs. for the Hindu Religious Endowments v. Parasaram Veeraraghavacharlu*[5] Varadachariar, J., dealing with this question, referred to the decision in *Bhupati* and observed:

'As explained in the case, that purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust.' "

23. In *Som Prakash Rekhi v. Union of India*[6] this Court held that "a legal person" is any entity other than a human being to which the law attributes personality. It was stated: (SCC p. 461, para 26)

"Let us be clear that the jurisprudence bearing on corporations is not myth but reality. What we mean is that corporate personality is a reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed, '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 ... is one of the

3 AIR 1957 SC 133
4 ILR (1909-10) 37 Cal 128 : 14 CWN 18
5 AIR 1937 Mad 750 : (1937) 2 MLJ 368
6 (1981) 1 SCC 449 : 1981 SCC (L&S) 200

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most noteworthy feats of the legal imagination.'† Corporations are one species of legal persons invented by the law and invested; with a variety of attributes so as to achieve certain purposes sanctioned by the law." a

24. This Court in *Yogendra Nath Naskar* v. *CIT*[7] held that the consecrated idol in a Hindu temple is a juristic person and approved the observation of West, J. in the following passage made in *Manohar Ganesn Tambekar* v. *Lakhmiram Govindrami*:

"The Hindu law, like the Roman law and those derived from it, recognises not only corporate bodies with rights, of property vested in the corporation apart from its individual members, but also the juridical persons or subjects 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 rule will give effect to the bounty, or at* least protect it so far, at any rate, as it is consistent with his own *dharma* or conceptions of morality. A trust is not required for the purpose: the necessity of a trust in such a case is indeed a peculiarity and a modem peculiarity of the English law. In early times; a gift placed, as it was expressed, 'on the altar of God' sufficed 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...." b c

(emphasis supplied) d

25. Thus, a trust is not necessary in Hindu law though it may be required under English law.

26. In fact, there is a direct ruling of this Court on the crucial point. In *Pritam Dass Mahant* v. *Shiromani Gurdwara Prabandhak Committee*[9] with reference to a case, under the Sikh Gurdwara Act, 1925 this Court held that the central body of worship in a gurdwara is *Guru Granth Sahib*, the holy book, which is a juristic entity. It was held: (SCC p. 605, para 14) e

"*14*. From the foregoing discussion it is evident that the sine qua non for an institution being a Sikh gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation and a Nishan Sahib as indicated in the earlier part of the judgment. There may be other rooms of the institution meant for other purposes but the crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib."

Tracing the ten Sikh Gurus it records: (SCC pp. 603-04, paras 9, 11 & 12)

"They were ten in number each remaining faithful to the teachings of Guru Nanak, the first Guru and when their line was ended by a conscious decision of Guru Gobind Singh, the last Guru, succession was invested in g

† Salmond: *Jurisprudence*, 10th Edn., pp. 324-25
7 (1969) 1 SCC 555
8 ILR (1888) 12 Bom 247
9 (1984) 2 SCC 600

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a collection of teachings which was given the title of Guru Granth Sahib.
a This is *now the Guru of the Sikhs.*

* * *

The holiest book of the Sikhs *is Guru* Granth Sahib compiled by the Fifth Master, Guru Arjan. It is the Bible of Sikhs. After giving his followers a central place of worship, HariMandir, he wanted to give them a holy book. So he collected the hymns of the first four Gurus and to these he added his own. Now this Sri Guru *Granth Sahib is a living Guru of the Sikhs.* Guru means the guide. Guru Granth Sahib gives light and shows the path to the suffering humanity. Wherever a believer in Sikhism is in trouble or is depressed he reads hymns from the Granth.

When Guru Gobind Singh felt that his worldly sojourn was near, he made the fact known to his disciples. The disciples asked him as to who
c would be their *Guru in future*. The Guru immediately placed five pies and a coconut before the holy Granth, bowed his head before it and said:

> The Eternal Father Willed, and I raised the Panth.
>
> All my Sikhs are ordained to believe the Granth as their preceptor.
>
> d Have faith in the holy Granth as your Master and consider it.
>
> The visible manifestation of the Gurus.
>
> He who hath a pure heart will seek guidance from its holy words.

The Guru repeated these words and told the disciples not to grieve at his
e departure. It was true that they would not see his body in its physical manifestation but he would be ever present among the Khalsas. Whenever the Sikhs needed guidance or counsel, they should assemble before the Granth in all sincerity and decide their future line of action in the light of teachings of the Master, as embodied in the Granth. The noble ideas embodied in the Granth would live forever and show people the path to bliss and happiness." (emphasis supplied)

27. The aforesaid conspectus visualises how "juristic person" was coined to subserve to the needs of the society. With the passage of time and the changes in the socio-political scenario, collective working instead of individualised working became inevitable for the growth of the organised society. This gave manifestation to the concept of juristic person as a unit in various forms and for various purposes and this is now a well-recognised
g phenomenon. This collective working, for a greater thrust and unity gave birth to cooperative societies, for the success and implementation of public endowment, it gave rise to public trusts and for the purpose of commercial enterprises, the juristic person of companies was created so on and so forth. Such creations and many others were either statutory or through recognition by the courts. Different religions of the world have different nuclei and
h different institutionalised places for adoration, with varying conceptual beliefs and faith but all with the same end. Each may have differences in the

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perceptive conceptual recognition of God but each religion highlights love, compassion, tolerance, sacrifice as a hallmark for attaining divinity. When one reaches this divine empire, he is beholden, through a feeling of universal a
brotherhood and love which impels him to sacrifice his wealth and belongings, both for his own bliss and for its being useful to a large section of the society. This sprouts charity, for public endowment. It is really the religious faith- that leads to the installation of an idol in a temple. Once installed, it is recognised as a juristic person. The idol may be revered in homes but its juristic personality is only when it is installed in a public b
temple.

28. Faith and belief cannot be judged through any judicial scrutiny. It is a fact accomplished and accepted by its followers. This faith necessitated the creation of a unit to be recognised as a "juristic person". All this shows that a "juristic person" is not roped in any defined circle. With the changing thoughts, changing needs of the society, fresh juristic personalities were c
created from time to time.

29. It is submitted for the respondent that decisions of courts recognised an idol to be a juristic person but they did not recognise a temple to be so. So, on the same parity, a gurdwara cannot be a juristic person and Guru Granth Sahib can only be a sacred book. It cannot be equated with an idol nor does Sikhism believe in worshipping any idol. Hence Guru Granth Sahib d
cannot be treated as a juristic person. This submission in our view is based on a misconception. It is not necessary for "Guru Granth Sahib" to be declared as a juristic person that it should be equated with an idol. When belief and faith of two different religions are different, there is no question of equating one with the other. If "Guru Granth Sahib" by itself could stand the test of its being declared as such, it can be declared to be so. e

30. An idol is a "juristic person" because it is adored after its consecration, in a temple. The offerings are made to an idol. The followers recognise an idol to be symbol for God. Without the idol, the temple is only a building of mortar, cement and bricks which has no sacredness or sanctity for adoration. Once recognised as a "juristic person", the idol can hold property and gainfully enlarge its coffers to maintain itself and use it for the benefit of its followers. On the other hand in the case of a mosque there can be no idol or any images of worship, yet the mosque itself is conferred with the same sacredness as temples with idols, based on faith and belief of its followers. Thus a temple without an idol may be only brick, mortar and cement but not the mosque. Similar is the case with the church. As we have said, each religion has a different nucleus, as per its faith and belief for treating any entity as a unit. g

31. Now returning to the question, whether Guru Granth Sahib could be a "juristic person" or not, or whether it could be placed on the same pedestal, we may first have a glance at the Sikh religion. To comprehend any religion fully may indeed be beyond the comprehension of anyone and also beyond any judicial scrutiny for it has its own limitations. But its silver lining could h
easily be picked up. In the Sikh religion, the Guru is revered as the highest

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reverential person. The first of such most revered Gurus: was Guru Nanak
a Dev, followed by succeeding Gurus, the tenth being the last living, viz., Guru Gobind Singhji. It is said that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru Arjun and it is this book that is worshipped in all the gurdwaras. While it is being read, people go down on their knees to make reverential obeisance and place their offerings of cash and-kind on it, as it is treated and equated to a living Guru. In the book *A History of the Sikhs* by
b Khushwant Singh, Vol. I, p. 307 it is said:

> "The compositions of the Gurus were always considered saoed by their followers. Guru Nanak said that in his hymns 'the true Guru manifested Himself, because they were composed at His orders and heard by Him' (Var Asa). The fourth Guru, Ram Das said: 'Look upon the words of the True Guru as the supreme truth, for God and the Creator
> c hath made him utter. the words' (Var Gauri). When Arjun formally installed the Granth in the Hari Mandir, he ordered his followers to treat it with the same reverence as they treated their Gurus, By the time of Guru Oobind Singh, copies of the Granth had been installed in most gurdwaras. Quite naturally, when he declared the line of succession of Gurus ended, he asked his followers to turn to the Granth for guidance
> d and look upon it as the symbolic representation of the ten Gurus.
>
> The Granth Sahib is the central object of worship in all gurdwaras, . It is usually draped in silks and placed on a cot, It has an awning over it and, while it is being read, one of the congregation stands behind and waves a flywhisk made of yak's hair. Worshtppers go down on their knees to make obeisance and place offerings of cash or kind before it as
> e they would before a king: for the Granth is to them what the Gurus were to their ancestors - the Saccha Padshah (the true Emperor)."

32. The very first verse of the Guru Granth Sahib reveals the infinite wisdom and wealth that it contains, as to its legitimacy for being revered as a Guru. The first verse states:

> "The creator of all is One, the only One. Truth is his name. He is doer of everything. He is without fear and without enmity. His form is immortal. He is unborn and self-illumined. He is realized by Guru's grace."

33. The last living Guru, Guru Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru. The Guru Granth Sahib would be the vibrating Guru. He declared that "henceforth it would be
g your Guru from which you will get all your guidance and answer", It is with this faith that it is worshipped like a living Guru. It is with this faith and conviction, when it is installed in any gurdwara it becomes a sacred place of worship. Sacredness of the gurdwara is only because of placement of Guru Granth Sahib in it. This reverential recognition of Guru Granth Sahib also
h opens the hearts of its followers to pour their mQney and wealth for it. It is not that it needs it, but when it. is installed, it grows for. its followers, who

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through their obeisance to it, sanctify themselves and also for running the langer which is an inherent part of a gurdwara,

34. In this background, and on overall considerations, we have hesitation to hold that "Guru Granth Sahib" is a "juristic person". It cannot be equated with an "idol" as idol worship is contrary to Sikhism. As a concept or a visionary for obeisance, the two religions are different. Yet, for its legal recognition as a juristic person, the followers of both the religions give them respectively the same reverential value. Thus the Guru Granth Sahib has all the qualities to be recognised as such. Holding otherwise would mean giving too restrictive a meaning of a "juristic person", and that would erase the very jurisprudence which gave birth to it.

35. Now, we proceed to examine the judgment of the High Court which had held to the contrary. There was a difference of opinion between the two Judges and finally the third Judge agreed with one of the differing Judges, who held Guru Granth Sahib to be not a "juristic person". Now, we proceed to examine the reasoning for their holding so. They first erred in holding that such an endowment is void as there could not be such a juristic person without appointment of a manager. In other words, they held that a juristic person could only act through someone, a human agency and as in the case of an idol, the Guru Granth Sahib also could not act without a manager, In our view, no endowment or a juristic person, depends on the appointment of a manager. It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or courts in accordance with law. Mere absence of a manager *(sic does not)* negative the existence of a juristic person. As pointed out in *Manohar Ganesh case*[2], *Lakhmiram* (approved in *Yogendra Nath Naskar case*[7]) referred to above, if no manager is appointed by the founder, the ruler would give effect to the bounty. As pointed in *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*[10] ILR Mad (at p. 457), by Bhashyam Ayyangar, J. (approved in *Yogendra Nath Naskar case*[7]) the property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "court as representing the sovereign". This can be done by the court in several ways under Section 92 CPC or by handing over management to any specific body recognised by law. But the trust will not be allowed by the court to fail. Endowment is when the donor parts with his property for it being used for a public purpose and its entrustment is to a person or group of persons in trust for carrying out the objective of such entrustment, Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get it appointed through court. So, if entrustment is to any juristic person, mere absence of a manager would not negate the existence of a juristic person. We, therefore, disagree with the High Court on this crucial aspect.

10 ILR (1903-05) 27 Mad 435, 457

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36. In *Words and Phrases*, Permanent Edition, Vol. 14-A, at p. 167:

a "Endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common acceptance as a fund-yielding income for support of an institution."

37. The further difficulty, the learned Judges of the High Court felt, was that there could not be two "juristic persons" in the same building. This they b considered would lead to two juristic persons in one place viz., "gurdwara" and "Guru Granth Sahib". This again, in our opinion, is a misconceived notion. They are no two "juristic persons" at all. In fact both are so interwoven that they cannot be separated as pointed by Tiwana, J. in his separate judgment. The installation of "Guru Granth Sahib" is the nucleus or nectar of any gurdwara. If there is no Guru Granth Sahib in a gurdwara it c cannot be termed as a gurdwara. When one refers a building to be a gurdwara, he refers to it so only because Guru Granth Sahib is installed therein. Even if one holds a gurdwara to be a juristic person, it is because it holds the "Guru Granth Sahib". So, there do not exist two separate juristic persons, they are one integrated whole. Even otherwise: in *Ram Jankijee Deities v. State of Bihar*[11] this Court while considering two separate deities, d of Ram Jankijee and Thakur Raja they were held to be separate "juristic persons". So, in the same precincts, as a matter of law, existence of two separate juristic persons was held to be valid.

38. Next it was the reason of the learned Judges that if Guru Granth Sahib is a "juristic person" then every copy of Guru Granth Sahib would be a "juristic person". This again in our considered opinion is based on an e erroneous approach. On this reasoning it could be argued that every idol at private places, or carrying it with one self each would become a "juristic person". This is a misconception. An "idol" becomes a juristic person only when it is consecrated and installed at a public place for the public at large. Every "idol" is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes a juristic role through its installation in a gurdwara or at such other recognised public place.

39. Next submission for the respondent is that "Guru Granth Sahib" is like any other sacred book, like the Bible for Christians, the Bhagwat Geeta and the Ramayana for Hindus and the Quran for Islamic followers and cannot be a "juristic person". This submission also has no merit. Though it is true Guru Granth Sahib is a sacred book like others but it cannot be equated g with these other sacred books in that sense. As we have said above, Guru Granth Sahib is revered in gurdwara, like a "Guru" which projects a different perception. It is the very heart and spirit of a gurdwara. The reverence of Guru Granth on the one hand and other sacred books on the other hand is based on different conceptual faith, belief and application.

40. One other reason given by the High Court is that the Sikh religion h does not accept idolatry and hence Guru Granth Sahib cannot be a juristic

11 (1999) 5 SCC 50

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person. It is true that the Sikh religion does not accept idolatry but, at the same time when the tenth Guru declared that after him, the Guru Granth will be the Guru, that does not amount to idolatry. The Granth replaces the Guru henceforward, after the tenth Guru. a

41. For all these reasons, we do not find any strength in the reasoning of the High Court in recording a finding that the "Guru Granth Sahib" is not a "juristic person". The said finding is not sustainable both on fact and law.

42. Thus, we unhesitatingly hold "Guru Granth Sahib" to be a "juristic person". b

43. The next challenge is that the basis for mutating of the name of "Guru Granth Sahib Barajman Dharamshala Deh", by deleting the name of the ancestors of the respondents, based on farman-e-shahi issued by the then Ruler of the Patiala State dated 18-4-1921 is liable to be set aside, as this farman-e-shahi did not direct the recording of the name of "Guru Granth Sahib". For ready reference the said farman-e-shahi is, again quoted hereunder: c

> "In future, instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-i-khas through Deori Mualla, until the time, the Mahant is entitled to receive turban, shawl or bandhan or muafi etc. from the Government, no property or muafi shall be entered in his name in the revenue papers. d
>
> It should also be mentioned that the land which pertains to any dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the dera. Revenue Department be also informed about it and the order be gazetted." e

44. It was also submitted that it was not known whether this farman-e-shahi was administrative in nature or was issued as a sovereign. If it was administrative it could not have the same force of law.

45. We have examined this farman-e-shahi. It does not direct the authorities to mutate the name of "Guru Granth Sahib". It merely directed, the Revenue Authority that till the Mahant's appointment is approved by the Deori Mualla, no property or muafi received by a Mahant should be entered in his name, in the revenue papers. Further the land of any dera should not be considered to be that of the Mahant. This was only a directive which is protective in nature. In other words it only directed that they should be done after ascertaining the fact and if the land was of the dera it should not be put g in the name of the Mahant. In other words, it stated - enquire, find out the facts and do the needful. The mutation in the case before us was not on account of this farman-e-shahi but was made because of the application made by one Rulia Singh and others of Village Bilaspur to the Patwari, and mutation was done, only after a detailed inquiry, after examining witnesses and other evidence on the record, which resulted in Ex. P-8 and Ex. P-9. In h the said proceedings a number of witnesses appeared before the Revenue

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Officer and stated that their ancestors gifted this disputed land for charity (punnarth) for the benefit of public, who were the proprietors and was merely entrusted to the ancestors of the respondents for management. The claimants had no rights over it. Admittedly they did not receive this land for any payment nor for any service rendered by them to such donors. Their statement was that this land was given to them with the clear direction that they should use it for providing food and comfort to the travellers (musafran) passing through the village. They further gave evidence that their forefathers gave it in the name of "Guru Granth Sahib Barajman Dharamshala Deb". In spite of this, Atma Ram and others and their predecessors did not perform their obligations. On the contrary, with oblique motives they got this disputed land entered in their name in the revenue records which was an attempt to usurp the property. The Revenue Officer after inquiry held that Atma Ram and other ancestors of the respondents admitted that this land was given without making any payment and was specifically meant for providing food and shelter to the travellers which function they were not performing. It was only after such an inquiry, he ordered the mutation by ordering deletion of the name of Atma Ram and others. With reference to the question of appointment of a manager, he recorded that this had to be decided by the Deori Mualla, where such a case about this was pending. Similar was the position in the other mutation proceedings about which an application was also made to the Revenue Officer, where the names of Narain Dass, Bhagat Ram, sons of Gopi Ram were deleted and the aforesaid name was mutated resulting in Ex. P-9. So, the mutation of name was not because of direction issued by the farman-e-shahi. So no error could be said to have been committed, when Ex. P-8 and Ex. P-9, viz., mutations were recorded. The farman-e-shahi if at all may be said to have led to the inquiry but it was not the basis.

46. This takes us to the last point for our consideration. After the said difference of opinion between the two learned Judges, Mr Justice M.M. Punchhi did not decide the case on merits though the other Judge Mr Justice Tiwana, held on merits in favour of the appellants, i.e., that the property belonged to the gurdwara. When the case again returned to the same Bench for decision on merits there was again a difference of opinion. It was again referred to the third Judge who concurred with Mr Justice Punchhi. Against this the appellants filed special leave petition in this Court which was dismissed for default as aforesaid. However, we find that the third Judge who concurred with Mr Justice Punchhi based his finding on the ground that "Guru Granth Sahib" was not a juristic person hence entries Exs. P-8 and P-9 were invalid. But once the very foundation falls, and Guru Granth Sahib is held to be a juristic person, the said finding cannot stand. Thus, in our considered opinion there would not be any useful purpose to remand the case. That apart since this litigation stood for a long time, we think it proper to examine it ourselves.

47. Learned Senior Counsel for the respondents who argued with ability and fairness said that in fact the only question which arises in this case is

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whether Guru Granth Sahib is a juristic person. Examining the merits we find that the mutation in the revenue papers in the name of Guru Granth Sahib was made as far back as in the year 1928, in the presence of the ancestors of the respondents and no objection was raised by anybody till the filing of the present objection by the respondents as aforesaid under Sections 8 and 10 of the 1925 Act. This is after a long gap of about forty years. Further, this property was given in trust to the ancestors of the respondents for a specified purpose but they did not perform their obligation. It is also settled, once an endowment, it never reverts even to the donor. Then no part of these rights could be claimed or usurped by the respondent's ancestors who in fact were trustees. Hence for these reasons and for the reasons recorded by Mr Justice Tiwana, even on merits, any claim to the disputed land by the respondents has no merit. Thus, any claim over this disputed property by the respondents fails and is hereby rejected. We uphold the findings and orders passed by the Tribunal against which Suit No. 94 of 1979 and FAO No. 2 of 1980 were filed.

48. For the aforesaid reasons and in view of the findings which we have recorded, we hold that the High Court committed a serious mistake of law in holding that the Guru Granth Sahib was not a juristic person and in allowing the claim over this property in favour of the respondents. Accordingly, this appeal is allowed and the judgment and decree passed by the High Court dated 19-4-1985 and 28-1-1988 in Suit No. 94 of 1979 and FAO No. 2 of 1980 dated 28-1-1982 are hereby set aside. We uphold the orders passed by the Tribunal both under Section 10 of the said Act in Suit No. 94 of 1979. Appeal is, accordingly, allowed. Costs on the parties.

SLPs (Civil) Nos. 2735-36 of 1989

49. The main question raised in these special leave petitions is the same as has been raised in Civil Appeal No. 3968 of 1987, which we have disposed of today. In view of this, the point raised by the petitioners in this petition is unsustainable for the same reasons and is therefore dismissed.

(2000) 4 Supreme Court Cases 168

(BEFORE K.T. THOMAS AND D.P. MOHAPATRA, *JJ.*)

HRIDAYA RANJAN PRASAD VERMA AND OTHERS ... Appellants;

Versus

STATE OF BIHAR AND ANOTHER ... Respondents.

Criminal Appeals Nos. 313-14 of 2000†, decided on March 31, 2000

A. Criminal Procedure Code, 1973 - S. 482 — Quashing of complaint and criminal proceedings - Abuse of process of court — Transaction of sale of land by appellants to Respondent 2 Society - **Cheques** issued by

† From the Judgment and Order dated 13-4-1999 of the Patna High Court in Crl. Misc. Nos. 22880 and 24068 of 1998

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,1954 SCR 407 : AIR 1954 SC 69 : 1954 SCJ 17 : 1953 BP 957

In the Supreme Court of India
(BEFORE BIJAN KUMAR MUKHERJEA, VIVIAN BOSE AND N.H. BHAGWATI, JJ.)

SREE SREE ISHWAR SRIDHAR JEW ... Petitioner;
Versus
SUSHILA BALA DASI AND OTHERS ... Respondents.
PASUPATI NATH DUTT AND OTHERS ... Appellants;
Versus
SREE SREE ISHWAR SRIDHAR JEW AND OTHERS ... Respondents.

Civil Appeal No. 201 of 1952 with Petition for Special Leave to Appeal No. 234 of 1953, decided on November 16, 1953

Advocates who appeared in this case :

N.C. Chatterjee, Senior Advocate (S.N. Mukherjee, Advocate, with him), instructed by P.K. Chatterjee, Agent, for the Appellant;

N.N. Bose, Senior Advocate (A.K. Dutt, Advocate, with him), instructed by Sukumar Ghose, Agent, for Respondent 1 in Civil Appeal No. 201 of 1952;

N.N. Bose Senior Advocate, (A.K. Dutt, Advocate, with him), instructed by Sukumar Ghose, Agent, for the Petitioner;

M.C. Setalvad, Attorney-General for India, (B. Sen, Advocate, with him), instructed by P.K. Ghose, Agent, for Respondents 1, 2 & 3 in Petition for Special Leave to Appeal.

The Judgment of the Court was delivered by

N.H. BHAGWATI, J.— This is an appeal on a certificate under Article 133(1) of the Constitution from a judgment and decree passed by the Appellate Bench of the High Court of Calcutta, modifying on appeal the judgment and decree passed by Mr Justice Bose on the original side of that Court.

2. One Dwarka Nath Ghosh was the owner of considerable movable and immovable properties. On 10th June, 1891, he made and published his last will and testament whereby he dedicated to his family idol Sree Sree Iswar Sridhar Jew his two immovable properties, to wit, Premises No. 41 and No. 40/1 Grey Street in the city of Calcutta. He appointed his two sons Rajendra and Jogendra, executors of his will, and provided that his second wife Golap Sundari and the two sons Rajendra and Jogendra should perform the *seva* of the deity and on their death their heirs and successors would be entitled to perform the *seva.*

3. Dwarka Nath died on 16th March, 1892, leaving him surviving his widow Golap Sundari and his two sons Rajendra and Jogendra. On 19th July, 1899, Rajendra made and published his last will and testament whereby he confirmed the dedication made by Dwarka Nath with regard to Premises Nos. 41 and 40/1 Grey Street and appointed his brother Jogendra the sole executor thereof. He died on 31st January, 1900, and Jogendra obtained on 24th April, 1900, probate of his said will. Probate of the will of Dwarka Nath was also obtained by Jogendra on 31st August, 1909.

4. On 4th September, 1909, Bhupendra, Jnanendra, and Nagendra, then a minor, the three sons of Rajendra filed a suit, being Suit No. 969 of 1909, on the original side of the High Court at Calcutta against Jogendra, Golap Sundari and Padma Dassi, the widow of Sidheswar, another son of Rajendra, for the construction of the wills of Dwarka Nath and Rajendra, for partition and other reliefs. The idol was not made a party to this suit. The said suit was compromised and on 24th November, 1910 a

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consent decree was passed, whereby Jogendra and Golap Suhdari gave up their rights to the sevayatship and Bhupendra, Jnenendra and Nagendra became the sevaits of the idol, a portion Of the Premises No, 41 Grey Street was allotted to the branch of Rajendra and the remalnjnq .portibnwas allotted, to Jogendra absolutely and in consideration of a sum of Rs 6500 to be paid to the plaintiffs. Jogendra was declared entitled absolutely to the Premises No. 40/1 Grey Street. The portions allotted to Jogendra were subsequently numbered 40/2-A Grey Street and the portion of the Premises No. 41 Grey Street allotted to the branch of Rajendra is subsequently numbered 41-AGrey street,

5. Jogendra died on 5th August, 1911 leaving a will whereby he appointed his' widow Sushilabala the executrix thereof. She obtained probate of the will on 6th August, 1912.

6. Disputes arose between Bhupendra, Jnanendra and Nagendra, the sons of Rajendra, and one Kedar Nath Ghosh was appointed erbttrator to settle those disputes. The arbitrator made his award dated 12th October, 1920 whereby he allotted Premises No. 41-A Grey Street, exclusively to Nagendra as his share of the family properties. Nagendra thereafter executed several mortgages of the said premises. The first .nortqaqe was created by him in favour of snehalata Dutt-on 19th May, 1926. The second mortgage was executed on 4th June, 1926,,"and the' third mortgage on 22nd February, 1927. On 23rd February, 1927, Nagendra executed a deed of settlement of the said premises by which he appointed his wife Labanyalata and his wife's brother Samarendra Nath Mitter trustees to carry out the dlrectlons therein contained and in pursuance of the deed of settlement he gave up possession of the said premises in favour ofthe trustees.

7. Snehalata Dutt filed in the year 1929 a suit, being Suit No. 1042 of 1929, against Nagendra, the trustees under the said deed of settlement and the puisne mQrtgagees, for reallsation ,of the mortgage security. A consent decree was passed in the said suit on 9th September, 1929. Nagendra died in.June1931 and the said premises were ultimately put up for sale in execution of the mortgage decree and were purchased on 9th December, 1936 by Hari Charan Dutt, Haripada Dutt and Durga Charan Dutt for a sum of Rs 19,000. A petition made by the purchasers on 12th January, 1937 for setting aside the sale was rejected by the Court on the 15th March, 1937. Haripada Dutt died on 3rd June 1941 leaving him surviving his three sons, Pashupati NathDutt, ShambhunathDutt and Kashinath Dutt, the appellants before us. Haricharan Dutt conveyed his one-third share in the premises to them on 4th March, 1944 and Durga Charan Outt conveyed his one-third share to them on 3rd May 1946. They thus became entitled to the whole of the premises Which had been purchased at the auction sale held on 9th December, 1936.

8. On 19th July, 1948, the family idol of Owarka Nath, Sree Sree Iswar Sridhar Jew by its next friend Debabrata Ghosh, the son of Nagendra, flied the suit, out of which the present appeal arises, against the appellants as also against Susilabala and the two sons of Jogendra by her, amongst others, for a declaration that the Premises Nos. 41-A and 40/2-A Grey Street, wereIts absolute properties and for possession thereof, for a declaration that the consent decree dated 24th November/ 1910, in Suit No. 969 of 1909 and the award dated 12th October, 1920 and the dealings made by the heirs of Jogendra and/or Rajendra relating to the said prerhises or any of them purporting to affect its rights in the said premises were invalid and inoperative in law and not binding on it, for an account of the dealings with the said premises, for a scheme of management of the debutter properties and for its, worship, for dlscoverv, receiver, injunction and costs.

9. Written statements were filed by the appellants and by Sushilabala and the two sons of Jogendra denying the clatrns of the idol and contending inter alia that there

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was no valid or absolute dedication of the suit properties to the idol and that the said premises had been respectively acquired by them by adverse possession and that the title of the idol thereto had been extinguished.

10. The said suit was heard by Mr Justice Bose who declared the Premises No. 41-A Grey Street to be the absolute property of the idol and made' the other declarations in favour of the idol as prayed for. The Idol was declared entitled to possession of the said premises with mesne profits for three years prior to the institution of the suit till delivery of possession, but was ordered to pay as a condition for recovery of possession of the said premises a sum of Rs 19,000 to the appellants with interest thereon at the rate of 6 per cent per annum from 19th July, 1945 till payment or till the said sum was deposited in Court to the credit of the suit. The learned Judge however dismissed the suit of the idol in regard to the Premises NO. 40/2-A Grey Street as, in his opinion, Sushilabala as executrix to her husband's estate and her two sons had acquired title to the said premises by adverse possession and the title of the idol thereto had been extinguished.

11. The appellants filed on 18th August, 1950 an appeal against this judgment being Appeal No. 118 of 1950. The idol filed on 20th November, 1950 cross-objections against the decree for Rs 19,000 and interest thereon as also the dismissal of the suit in regard to the Premises No. 40/2-A Grey Street. The appeal and the cross-objections came on for hearing before Harries, C.J. and S.N. Banerjee, J., who delivered judgment on 5th March, 1951 dismissing the said appeal and allowing the cross-objection in regard to Rs 19,000 filed by the idol against the appellants. In regard however to the cross-objection relating to Premises No. 40/2-A Grey Street which was directed against Sushilabala and the two sons of Jogendra the learned Judges held that the cross-objection against the co-respondents was not maintainable and dismissed the same with costs.

12. The appellants filed on 31st May, 1951, an application for leave to prefer an appeal to this Court against the said judgment and decree of the High Court at Calcutta. A certificate under Article 133(1) of the Constitution was granted on 4th June, 1951 and the High Court admitted the appeal finally on 6th August, 1951. On 22nd November, 1951 the idol applied to the High Court for leave to file cross-objections against that part of the judgment and decree of the High Court which dismissed its claims with regard to the Premises No. 40/2-A Grey Street. The High Court rejected the said application stating that there was no rule allowing cross-objections in the supreme court. The said cross-objections were however printed as additional record.

13. By an order made by this Court on 24th May, 1953 the petition of the idol for filing cross-objections in this Court was allowed to be treated as a petition for special leave to appeal against that part of the decree which was against it, subject to any question as to limitation. The appeal as also the petition for special leave to appeal mentioned above came on for hearing and final disposal before us. The appeal was argued but so far as the petition for special leave to appeal was concerned the parties came to an agreement whereby the idol asked for leave to withdraw the petition on certain terms recorded between the parties. The petition for special leave was therefore allowed to be withdrawn and no objection now survives in regard to the decree passed by the trial court dismissing the idol's claim to the Premises NO. 40/2-A Grey Street. The appeal is concerned only with the Premises No. 41-A Grey Street.

14. It was contended on behalf of the appellants that the dedication of the Premises No. 41 Grey Street made by Dwarka Nath under the terms of his will was a partial dedication, and that his sons Rajendra and Jogendra and his widow Golap Sundari, who were appointed sevayats of the Idol were competent to deal with Premises No. 41 Grey Street after making due provision for the idol as they purported

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do by the terms of settlement, dated 24th November, 1910. It was further contended that Nagendra by virtue of the award dated 12th October, 1920 claimed to be absolutely entitled to the. Premises NO. 41-A Grey: Street and that his possession of the said premises .thereafter became adverse which adverse possession continued for upwards of 12 years extinguishing the right of the idol to thesaid premises.

15. ,The first contention of the appellants is clearly untenable on the very language of the will of Dwarka Nath. Clause 3 of the said will provided:

> "With a view to provide a permanent habitation for the said deity, I do by means of this will, dedicate the aforesaid immovable property the said House No. 41 Grey Street together with land thereunder to the said Sri Sri Ishwar Sridhar Jew with a view to provide for the expenses of his daily (and) pertodtca! sheba and festivals, etc. The 3½ Cattahs (three and half Cattahs) of rent free land more or less that I have on that very Grey Street No. 40/1...• This else I dedicate to the sheba of the said Sri Sri Sridhar Jew Salagram Sila Thakur. On my demise none of my heirs and representatives shall ever be competent to take the income Qf the said Land No. 40/1 and spend (the same) for household expenses. If there be any surplus left after defraying the Debsheba expenses the same shall be credited to the said Sridhar Jew Thakur's fund and with the amount Se deposited repairs etc. from time to time will be effected to the sald house No. 41 with a view to preserve it and the taxes etc. in respect of the said two properties will be paid.... For the purpose of the carrying on the daily (and) periodical sheba and the festivals etc. orthe said Sri Sri Ishwar Sridhar Jew Salagram SUa Thakur my said second wife Srimati Golap Moni Oasi, and 1st Sriman Rajendra Nath and 2nd Sriman Joqendra Nath Ghose born of the womb of my first wife on living in the said House No. 41 Grey Street dedicated by me shall properly and ag"reeably to each other perform the sheba etc. of the Sri Sri Ishwar Sridhar Jew SalagramSiia Thakur and.on the death of my said two sons their representatives, successors: and heirs shall successively perform the sheba in the aforesaid manner and the executors appointed by this will of mine having got the said two properties registered in the Calcutta Municipality in the neme of the said Sri Sri Ishwar Sridhar Jew Thakur shall pay the municipal taxes etc.' and shall take the municipal bills in his name. None of my representatives, heirs, successors, executors, administrators or asslqns shall have any manner of interest in or right to the sald two debutter propertlesand no one shall ever be competent to give away or effect sale, mortgage or in respect of the said two properties nor shall the said two properties be sold on account of the debts of anv one."

It is quite true, that a dedication may be 'either absolute or pertlal. The property may be given out and out to the ldot, or it may be subjected toa charge In favour of the idol. "The question whether the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, these heirs shall be considered the true oenendenes of the propsrtv, subject to a charg@ for the upkeep, worship and expenses of theIdol, is a questlonwhlch can only be settled by a conspectus of the entire provisions of the will": *Pande Har Narayan v, Surja Kunwern-.*

16. What we find here in clause 3 of the will: is an absolute dedication of the Premises No. 41 Grey Street to thetdol as its permanent habitation with only the right given to the sevayats to reslde.In the said premises for the purposes of carrying on the daily and periodical seva and the festivals etc. of the deity. The said premises are expressly declared as dedicated to the deity. They are to be registered in the-municipal records in the name of the deltv, the rnunlclpalbllls have got to be tak.en also in his name and, none of the testator's representatives, heirs, successors, executors, administrators or assigns is to have any manner of interest in or right to the said premises or is to be competent to give away or @ff@ct sale, mortgage etc, of the said oremlses. There is thus a clear indication of the Intentton of the' testator to

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bsolutely dedicate the said prarnlses to the deity and it is impossible to urge that there was a partial dedication of the premises to the deity. The only thing which was, urged by Shri N.C. Chatterjee in support of his contentlon was that the right to reside in the premises was given to the sevavats and thet.eccordlnq to him detracted from the absolute character of the dedication. This argument however cannot avail the appellants. It was observed by Lord Buckmaster Jn delivering the judqrnent of the Privy Council in *Grianendra Netn oee v, Surendra Natb Das*[2]:

> "In that case it is provided that the shebalt for the ttrne' being shall be entitled to reside with his family in the said dwelling house, but the dwelling house itself is the place specially set apart for the family idols to which specific reference is made in the Will, and in Their Lordships' opinion the gift is only a perfectly. reasonable arrangement to secure that the man in whose hands tne.supervtston of the whole estate is vested should have associated with htsdutles the right to reside in this named dwelling place."

The first contention of the appellants therefore fails and we hold that the dedication of the Premises No. 41 Grey Street to the idol was an absolute dedlcetlon.

17. As regards the secorid contention viz. the adverse possession of Nagendra, it is to be noted that under' the terms of clause 3 of the will ofDwerka Nath the representatives, successors' and heirs of his two sons Rajendra and Joqendra were successively to perform the seva Inthe manner therein mentioned and Nagendra was one of the heirs and legal representatives of Rajendra. He was no doubt a minor on 24th November, 1910 when the terms of settlement were arrived at between the parties to the Suit No. 969 of 1909. His two elder brothers Jnanendra and Bhupendra were declared to be the then sevayats, but a right was reserved to Nagendra to join with them as a sevayat on his attaining majority. So far as Nagendra is concerned there is a clear finding of fact recorded by Mr Justice: Bose on a specific issue raised in that behalf viz. "Did Nagendra act as shebalt of the plaintiff deity under the wills of Dwarka Nath Ghosh and Rajendra Nath Ghosh?" - that he did act as such shebalt and that his possession of the Premises No. 41-A Grey Street was referable to possession on behalf of the idol. This finding was not challenged in the appeal court and it is too late to challenge the same: before us. If Nagendra:was thus a sevayat of the idol it could not be urged that his possession could in any manner whatever be adverse to the idol and his dealings with the said premises in the manner he purported to do after 12th October, 1920 could not be evidence of any adverse possession against the idol. The position of the sevayat and the effect of his deallnqs with the property dedicated to the idol has been expounded by Rankin, C.J., in *Surendrakrishna Ray v. Shree Shree Ishwar Bhubenesnwert Tbekurenu*:

> "But, in the present case, we have to see whether the possession of two joint shebalts becomes adverse to the idol, when they openly claim to divide the property between them. The fact of their possesston is in accordance with the ldol's tltle, and the question is whether the change made by them, in the intention with which they hold, evidenced by an application of the rents and profits to their own purposes and other acts, extinguishes the idol's right. I am quite unable to hold that it does, because such a change of intention 'can only be brought home to the idol by means of the shebait's knowledge and the idol can only react to it by the shebalt. Adverse possession, in such circumstances, is a notion almost void of content. True} any heir or perhaps any descendant of the founder can bring a suit against the shebaits on the rdol's behalf and, in the present case, it may be said that the acts of the shebaits must have been notorious in the farnllv. But such persons have no legal duty to protect the endowment and, until the snebett is removed or controlled by the court, he alone can act for the idol."

We are in perfect accord with the observations made by Rankin, C.J. If a shebalt by

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acting contrary to the terms of his appointment or in breach of his duty as such shebait could claim adverse possession of the dedicated property against the idol it would be putting a premium on dishonesty and breach or.dutv on his part and no property which is dedicated to an idol would ever be safe.!The shebatt for the time being is the only person competent to safeguard the Interests of the idol, his possession of the dedicated property' is the possession of the idol whose sevait he is, and no dealing of his with the property dedicated to the idol could afford the basis of a claim by him for adverse possession of the property against the idol. No shebait can, so long as he continues to be thesevait. ever claim adverse possession against the idol. Neither Nagendra nor the appellants who derive their title from the auction-sale held on 9th December, 1936 could therefore claim to have perfected their title to the Premises No. 41-A Grey Street by adverse possession. The"second contention of the appellants also therefore fails.

18. The further contention urged on behalf of the appellants in regard to the disallowance of the sum of Rs 19,'000 by the appeal court could not be and was not seriously pressed before us and does not require env.consIderatron.

19. The result therefore is that' the appeal fails and must stand dismissed with costs.

* On Appeal from the Judgment and Decree dated 5th March" 1951 of the High Court of Judicature at Calcutta (Harries, CJ. and Banerjee, J.) in Appeal from"Original Deaee No. 118 of 1950 arising out of the Judgment and Decree dated 15th June, 1950 of the said High Court in its Ordinary Original Civil Jurtsdictlon in Suit No. 2379 of 1948.

1 (1921) LR 48 IA 143, 1.45, 146

2 24 Calcutta Weekly Notes, p. 1026 at p, 1030

3 60 Calcutta 54 at p. 77

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regard to it, I will not attempt any definition of the word "judgment." I will only say this, that I am not prepared to say that every order on a contested petition is a judgment. The line dividing judgments from orders must be drawn somewhere short of this. Having regard to the fact that in the case before us no substantial right of the defendants has been adversely affected by the order under appeal, I would say that it does not fall on the judgment side of the line. Beyond this I make no further attempt,

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMALINGAPPA.

RAMESAM, J.

Grant and Greatorex, solicitors for appellant.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1925, October, 28.

RAMA REDDY (3RD DEFENDANT), APPELLANT,

v.

RANGADASAN AND OTHERS (PLAINTIFFS AND 4TH AND 5TH DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 134 and 144—Hindu Law—Religious endowment—Temple—Trustee—Alienation by trustee, not for a valid purpose—Suit against alienee to recover temple property, more than twelve years after alienation—Bar of limitation—Temple property, whether vested in idol or trustee—Trustee, mere Manager—Adverse possession.

Where a trustee of a Hindu temple improperly alienated temple property and a suit was instituted by a succeeding trustee to recover the property from the alienee more than twelve years from the date of the alienation,

Held, that, in the case of a Hindu temple, its property vested in the idol and the trustee was only a manager for the time being; that the trustee could not convey a valid title to the transferee, and therefore article 134 of the Limitation Act, 1908, did not apply to a suit for recovery of the temple property improperly

* Letters Patent Appeal No. 158 of 1924.

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alienated by the trustee; *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar* (1921) I.L.R., 44 Mad., 831 (P.C.), applied; that article 144 of the Act did not apply to a case of alienation by a trustee, where the alienee derived possession from the trustee, and that consequently the suit was not barred by limitation.

Semble.—Where a person takes possession of temple property, not derivatively from the trustee but hostilely against the trustee, article 144 will apply as against the trustee and the idol.

APPEAL under clause 15 of the Letters Patent against the judgment of MADHAVAN NAYAR, J., in Second Appeal No. 1230 of 1921 preferred against the decree of J. T. COTTON, District Judge of Coimbatore, in Appeal Suit No. 33 of 1921 preferred against the decree of P. G. RAMA AYYAR, Principal District Munsif of Erode, in Original Suit No. 713 of 1918.

The plaintiff ~~sues as~~ the present pujari, and trustee of the suit temple to recover possession of certain lands, which were granted to an ancestor of the plaintiff as the manager for the time being of the suit temple. The lands had been sold by the first and second defendants (who were the father and uncle of the plaintiff and defendants 6, 7 and 8, respectively) to the third defendant in 1893. The plaintiff alleged that the lands had been granted as service inam to their family for doing pujari service; that the alienation by his father and the uncle were not valid and he instituted this suit in 1918. The District Munsif dismissed the suit as barred by limitation. On appeal, the Subordinate Judge reversed and remanded the suit, holding that if the plaintiff's family were entitled to a beneficial interest in the inam, the suit would not be barred by limitation on the authority of the decisions in 13 Mad., 277, and 10 M.L.J., 781. After remand the District Munsif again dismissed the suit and on appeal the District Judge confirmed the decree and dismissed the appeal. The lower Appellate Court found that the plaintiff was the pujari or trustee of the suit

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temple and that the suit property was attached to the temple. The plaintiff preferred a second appeal, which was heard by MADHAVAN NAYAR, J., who held that the suit was not-barred under article 134, Limitation Act, and relied on the decision of the Privy Council in 44 Madras, 831, reversed the decrees of the lower Courts and gave a decree to the plaintiff as prayed, subject to his paying Rs. 1,700 to the third, fourth and fifth defendants for value of improvements. The third defendant preferred this Letters Patent Appeal.

T. R. Ramachandra Ayyar and *N. P. Narasinilu Ayyar* for appellant.

T. M. Eriehnaeuuuni Ayyar for respondents.

JUDGMENT.

DEVADOSS, J.

DEVADOSS, J.—This is an appeal against the judgment of MADHAVAN NAYAR, J., giving a decree to the plaintiff. The third defendant has preferred this Letters Patent Appeal. The question for determination is whether the suit is barred by article 134 of the Limitation Act. The plaintiff is the trustee of a temple. The finding is that the property is the property of the temple. The contention of Mr. Ramachaudra Ayyar is that the suit is barred under article 134 inasmuch as the suit was brought more than twelve years after the date of the alienation. Article 134 gives a period of "twelve years for the recovery of possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for valuable consideration. The argument advanced is that the suit is barred by article 134, if the transferor is held to be a trustee, and if he is not a trustee, then the suit is barred by reason of article 144 of the Limitation Act. The finding that the transferor is a trustee cannot be challenged now. The simple

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question is therefore whether article 134 applies to the case. It was decided in *Sri Vidya Varuthi* v. *Baluswami Ayyar*(1) that a permanent lease of mutt property granted by the head of the mutt could not create any interest in the property to enure beyond the life of the grantor and consequently article 134 of Schedule I of the Limitation Act of 1908, did not apply to a suit brought by the successor of the grantor for the recovery of the property. Mr. Ramachandra Ayyar tries to get over this decision by contending that the transferee was only a lessee and that he did not deny the title of the mutt but only contended that he was entitled to be in perpetual possession of the property being a permanent lessee. Mr. AMEER ALI in delivering the judgment of their Lordships observed:—

"It is also to be remembered that a "trustee" in the sense in which the expression is used in the English law is unknown in the Hindu system, pure and simple."

With reference to the head of a mutt or Shebait he observed,

"In no case was the property conveyed to or vested in him, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him he is answerable as a trustee in the general sense for maladministration."

In the case of a religious institution the property is vested in the idol and the trustee is only a manager for the time being. In the case of a mutt the head of the mutt for the time being is entitled to use the income of the mutt property subject to the maintenance of the Tharnbirans and the ascetics attached to the mutt. In the case of a trustee of a temple he is not entitled to use any portion of the income for himself. In the case of a wakf if the deed of trust makes provision for the maintenance of the Muthavalli or the trustee for the time being, he may use the income for

(1) (1921) I.L.R., 44 Mad., 831 (P.C.).

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himself as allowed by the deed of trust, but in the case of Hindu religious institutions no trustee of any institution is entitled to use any portion of the income for himself: if the property is vested in the idol. The decision in 44 Madras cannot be said to apply only to cases of leases. The remarks of their Lordships apply to cases of all alienations of property. A permanent lease is as much an alienation as a sale. The mere fact that rent is payable by the permanent lessee does not make a permanent lease any the less an alienation than a sale. Has the trustee of a religious institution the right to alienate the kudivaram interest in the temple property? Can it be said, if he lets into possession tenants so as to enable them to acquire occupancy rights, that he does not alienate the kudivaram interest? The mere fact that the tenants pay the melvaram to the temple cannot convert the transfer of the kudivaram into anything less than an alienation of it. A trustee therefore cannot convey a valid title to the transferee and therefore article 134 does not apply to a suit for the recovery of the temple property improperly alienated by the trustee. The case in *Subbayya Pandaram v. Mahammad Musthapha Maracayar*(1) has no application to the present case. In that case the property was vested in the trustees and it was sold in execution of a decree. It was held that the suit was barred by article 144. In that case it was distinctly found that the property was vested in the person against whom the decree was obtained and the property being vested in him he could by transfer give a title to the vendee and if the transaction is not set aside within 12 years the vendee gets a good title. The case in *Kuppuswami Mudaliar v. Samia Pillai*(2) does not touch the point under discussion. There the holder of a religious office

(1) (1917) I.L.R., 40 Mad., 751. (2) (1922) 42 M.L.J., 1.

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was dismissed from the office, but he continued to be in possession of the property for more than 12 years after his dismissal and a suit by the successor was held to be barred. The property was vested in the person and he held the office for the time being and when he was dismissed from the office bisposseeeion became adverse to hin successor and the successor not having sued within 1'2 years his suit was barred.

There were a few cases which may be said to support the contentiou of Mr. Ramachsndra Ayyar that au invalid ulienatiou of trust property should be set aside within 12 years, and, if not so set aside the vendee under the invalid sale gets a good title. The decision in *Gnana Sambanda Pandora Sannadhi* v. *Velu Pandaram*(1) and *Damodar Das* v, *Lakhan Das*(2) supports this view. In *Gnana Sambanda Pandara Sannadhi* v, *Velu Pandaram*(1), the hereditary managers of the property with which a religious foundation was endowed had purported to sell and assign the management and lands of the endowment to the representative of another institution. It waa held that the possession delivered to the purchaser was adverse to the vendors, and after 12 years, the successor of the vendor could not recover possession of the property conveyed.

Their Lordships observed at page 279,

"There is no proof of any custom in this case, and cousequently these deeds of sale are void and did not give any title to the purohaaers, The title remained in Chockalinga and Nataraja and the possession which was taken by the purchaser was adverse to them. . . . "

"Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. The one is attached to the other, but if there is, article 144 of the same schedule is applicable to the property. That bars the suit after 12 years' adverse pcssessiou."

(1) (1910) I.L.R., 23 Mad., 271. (2) (1910) I.L.R., 37 Calc., 885.

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In *Damodar Das* v. *Lekhan Das*(1), the Privy Council held that where two chelas divided two institutions and the property among themselves one chela could not recover the property on the death of the other. Sir ARTHUR WILSON, who delivered the judgment of their Lordships, observed at page 894,

"It follows from this that the learned Judges were further right in holding that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of the terms of that *ekrarnama* was adverse, to the right of the idol and of the senior chela, as representing that idol, and that therefore the previous suit was barred by limitation,'

There is no discussion in *Vidya Varuthi Thirthaswami* v, *Baluswami Ayyar*(2) of the decisions in *Gnana Sambanda Pandara Sannadhi* v, *Velu Pandaram*(3) and in *Damodara Das* v. *Lekhan Das*(1). In view of their Lordships' decision in *Sri Vidya Varuthi Thirthuswami* v. *Baluswami Ayyar*(2), the decisions in the former cases cannot be considered to be good law. The principle underlying these decisions seems to be this: that where the trustee of a religious institution who is only a manager for the time being, alienates any property belonging to the trust, he cannot give a valid title to the alienee, for he himself has no interest in the property and the alienee can only get what the manager himself possesses, namely, of being in possession of the property. The principle of adverse possession would apply to cases where a person who could assert his title does not assert his title within the period fixed by article 144 of the Limitation Act. In the case of a minor whose property has been improperly alienated by the guardian he has the right of suit within three years after his attaining majority. The legal fiction is that an idol is a minor for all time and it has to be under

(1) (1910) I.L.R., 37 Calc., 885. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).
(3) (1900) I.L.R., 23 Mad., 277.

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perpetual tutelage aud that being.so, it cannot be said that the idol can ever acquire majority, and a person who acquires title from a trustee of a temple cannot acquire any title adverse to the idol, for the idol is an infant for all time 'and the succeeding trustee could recover the property for the 1(101 at any time. Though the language has been loosely nserl as if the trustee occupies a position similar to that of the karunvuo of a Malabar tarwarl, or the maunging member of a ';01nt Hindu frnuily, or the guardian of a minor, .Yet, his position is different from that of any of Ithes«. .11, is contended by Mr. Ramachandra Ayyar tliat a trustee can alienate the property for certain purposes. In order to preserve the trust or with the sanction of the Courtbe could alienate the property, but such alienation is under exceptional circumstauces. But Where. he purports to convey the title to the property which is vested in him the vendee cannot be said to derive title from a.man who could never give a good title to him. If the vendee buys knowing that the trustee has no right to convey title to the propert.y which is vested in the idol, he cannot set up article 144 in answer to a suit by the trustee for the r-covery of t.he property. His possession is that of the tru stee and a trustee's poases-sioncan never he adverse to the idol. No doubt if a person takes poeeession of the :immornbls property belonging to a temple and keeps the trustee and the persons connected with the temple out of possession and is able to assert such possession adveraely to the trust for over 12 years, he could acquire a valid title nuder section 28 of the Limitation Act.' But where such person .acquires possession from the manager, his possession can only be with the consent of the trustee for the time being and therefore his possession can never become adverse to the temple. The observation

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of one'of us in *Jagya liaoBahadur Garu* v, *Gohar Bibi*(1), apply to the present case;

" If the properties are trust properties, any person claiming from a trustee cannot acquire a prescriptive "Tle against the trust. Whether the document is valid or invalid, it. would-:: not givo a right to anybody claiming under that document to iprescribe for a tible against the trust."

MADHAVAN NAYAR, J., held similarly in *Lakshminarayana Kulluraya* v. *Raja:m,ma.*(2). In a recent case in *Gouindo. Iiou: v. Chinnathambi Pillai*(3). PHILLIPS, J., held that a permanent lessee could not set up the bar of limitation in a suit for recovery ofpossessiou of the property by the trustee. .He held that article 134 did. Dot apply to that case. As regards the coutentiou that article 144 appliedvthe learned Judge observed :–

"This contention was negatived by their Lordships on tho ground that the idol has uo power to bring a suit except through the trustee and consequently there ~~can be~~ no question of the suit being barred unless it eould not have been brought at au earlier 'date."

Reliance is placed upon *Ramrup Gir* v. *Lal Chand Marwari*(4). In that case the Patna High Court held that the alienation by the Mahant did not .give a good title to the alienee, unless it is proved that the alienation was one which could bind the. institutiou. I'll tho course of tb,e [udguient, DAS, J., observedr-e-

"In tny opinion the true rule is this; where the property is vested in the juridical person as it was in Dauiodar Das's case (37 Calcutta, 885) and the Mahant is only the, representative and manager of the idol, tlieact of alienation is a direct cballenge upon the title of the idol and the idol, or the manager of, the idol on behalfof the idol, must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant or the Shebait, as it was in the two other cases to which I have referred, the act ot alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to

(1) (1923) 17 L.W., 521 (529).
(2) (1925) 21 L.W , 250.
(3) (1925) 49 M.L.J.. 640.
(4) (1922) 67 I.O., 401.

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the purposes of the endowment, and there is no adverse possession so long as the person making the alienation is alive; and the possejsion of the defendant becomes adverse to-the plaintiffs only when a new title has come into existence capable of maintainiog the suit andwhich has not approved of or acquiesced in the alienation,"

With due respect to the learned Judge, I am unable to follow his reasoning as regards the property vesting in an idol. Where a manager alienates property belonging to an idol, his act cannot be said to be a challenge on the title of the idol. When the idol is incapable of asserting it,s will except through its manager, how can it be said that the manager's act is a challenge on its title? An' idol, as I have already observed, being under perpetual tutelage can never assert its will and therefore the manager or the trustee who alienates its property cannot by his act be said to challenge the title of the idol. He might as well set up his own title against the idol, Can any express trustee or manager of a temple set up his own title against the trust or the temple? If the manager cannot set up an adverse title to the property vested in the idol, can he by his act allow a person who derives title from him to assert a title which ho himself could not assert against the idol. The case of *Ramrup Girv, Lalchand. Marwari*(1), is against the principle of the decision in *Sri Vidya Varuthi Thirthaswami* v. *Balaswami Ayyar*(2), and therefore it cannot be relied upon in support of the argument for the appellant,

In the resnlt the appeal fails and is dismissed with costs of first respondent,

WALLER, J. WALLER, J.-I agree.

K.R.

(1) (1922) 67 I.C., 401. (2) (1921) I.L.R. 44 Mad., 831 (P.C.).

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Government if it is found that the appellant-Board is liable to refund any excess amount of handling charges to the respondents as collected by it from the respondents during the relevant period, it will be bound to refund the a same within a period of eight weeks from the date of decision of the Central Government with interest at the rate of 12% per annum from the date of payment of the excess amount of handling charges by the respondents to the Board till the actual refund thereof by the Board to the respondent-writ petitioners. The appeals are dismissed accordingly with no order as to costs in the facts and circumstances of the case. b

(1997) 4 Supreme Court Cases 606

(BEFORE K. RAMASWAMY, K. VENKATASWAMI AND G.B. PATTANAIK, JJ.)

SRI ADI VISHESHWARA OF KASHI VISHWANATH TEMPLE, VARANASI AND OTHERS .. Appellants; c

Versus

STATE OF U.P. AND OTHERS .. Respondents.

Civil Appeals Nos. 1013-1017 of 1987†, decided on March 14, 1997

A. U.P. Sri Kashi Vishwanatha Temple Act, 1983 (29 of 1983) - Ss. 4, 5, 6, d 16 to 22 - Constitutionality - Held, valid - Act draws a distinction between religious and secular functions of the Temple - It entrusted to the Board only secular functions of administration and management of the Temple and Temple Fund which are not essential or integral part of religion - It does not interfere with freedom of conscience and right to profess, practice and propagate religion - Act merely changed the management from pandas to the Board - Legislature is competent to regulate such secular functions - Temple is not of e any religious denomination or section thereof, nor believers of Shaiva form of worship belong to a denomination or sect - Hence as Shaivites they cannot claim their exclusive right to worship and to manage the Temple including the right to receive offerings given by the pilgrims to Lord Shiva, to perform pooja (rituals) and ceremonies in accordance with prevailing customs and usages in the Temple handed down from centuries - Absence of provision for nomination of pandas as members of the Board not violative of their rights under Arts. 25 and 26 - Pandas' right to livelihood under Art. 21 not affected - If found suitable they can be appointed as archaka/priest by the Board - Right to receive offerings being incidental to and coupled with duty to render service on abolition of service on customary basis also extinguished and as such that does not amount to deprivation of right to livelihood of the pre-existing pandas/archakas - Act also not ultra vires on ground of conferment of g unguided discretionary power on the Board - Ss. 3, 6, 20(1) and (2), 22(2), 23(2)(b), 24(2) and 25(8) cannot be read down

Held:

The Act does not suffer from any invalidity except to the extent indicated in the judgment. (Para 45)

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† From the Judgment and Order dated 28-10-1986 of the Allahabad High Court in C.M.W.Ps. Nos 6916, 6915 and 1792 of 1983

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The Act itself has demarcated and drawn distinction between secular part and religious parts of the activities in the Temple; the latter have been entrusted to the
a competent priests well versed in the performance of rituals and ceremonies and services according to Hindu Shastras, customs, usages and practices as applicable and prevailing in the Temple. The secular part has been entrusted to the Board, Executive Committee and Chief Executive Officer etc. appointed as per the Act. The Act ensures and enjoins the Board, the Executive Committee and the Chief Executive Officer assisted by all the staff, to ensure due and proper performance of worship, services, rituals and ceremonies, daily or periodical, general or special, of
b Sri Kashi Vishwanath and other deities in the Temple in accordance with Hindu Shastras, scripture's and usages. The Act does not invest the Government with any power to interfere with the religious part of management or day-to-day administration of the Temple or its endowments. The Government kept its control only on the secular side as the Temple is one of the important Hindu Temples in the State of U.P. and in Bharat, Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the Temple by mahant/panda/archaka is not their
c property. The Act has merely changed the management from pandas to the Board. Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State not the State acquired it for itself In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has assumed the management. This entrustment of management cannot be said to constitute acquisition of the property or extinguishment of right to property. In the
d light of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage the Temple both on temporal pan and deny them the secular part of the management of the Temple.
(Paras 39, 21 and 40)

Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498; *Sri Sri Sri Lakshamana Yatendrulu v. State of A.P.*, (1996) 8 SCC 705; *A.S. Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548, *distinguished*

e Every Hindu whether a believer of Shaiva form of worship or of panchrama form of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles 25 and 26 of the Constitution. However, they are not entitled to the
g protection, in particular, of clauses *(b)* and (d) of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution. (Paras 32 and 33)

The management has been entrusted to the Board consisting of eminent personalities specified in Section 6 of the Act. The religious management is entrusted to eminent personalities professing Hindu religion, well versed in religious
h and administrative facets of management and, therefore, the Act does not infringe the rights conferred under Articles *26(b)* and *(d)*. The legislature has power to

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interfere with and regulate proper and efficient management thereof.
(Paras 38 and 41)

Tharamel Krishnan v. Guruvayoor Devaswom Managing Commutee, AIR 1978 Ker 68, *distinguished* a

Bhuri Nath v. Siate of J&K, (1997) 2 SCC 745 : IT (1997) 1 SC 546, *relied on*

The contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and *26(b)* and *(d)* of the Constitution, is untenable and devoid of substance. (Para 34)

Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498; *S« Sri Sri Lakshamana Yatendrulu v. State of A.P.,* (1996) 8 SCC 705, *followed* b

The Act relates to the Individual institution, namely, Sri Kashi Vishwanath Temple at Varanasi with particular reference to the mismanagement etc. by the selfsame persons. The Committee appointed by the Government had gone into and found the need for the legislative interference. As a consequence, it would be difficult to read down Section 6 to give any direcnon to nominate the members of the family or some of'the appellants (pandas) as members, of the Board. On the other hand, sub-sections (2)(*k*) and *(2)(l)* of Section 6 deal with nomination of eminent c Hindu scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and in worship, service, rituals or observance, these persons are therein made eligible. It is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time. (Para 35) d

While contendiag that some' of the mahants were prevented from performing pooja, the appellants-had 'not setup their case that as pandas/archakas/priests, they were prevented from-performing duties in rendering rituals/ceremonies, services etc. They staked their claims as mahants which claims have already been negatived. Interim direction was given by the Supreme Court not to. prevent them from performing pooja as devotees. Therefore, that direction Is made absolute and they will not be prevented from performing pooja as devotees. Section 22 takes care of e any service being rendered as archaka (priest). "Archaka" has been defined in Section 4(2) to mean' any person who performs or conducts any worship, service, rituals in the 'Temple and includes a pujari, if he was doing the same on the appointed date. By its necessary implication, if any of the appellants is found to be of good character, possessed of the requisite qualification and experience etc. he/they may continue as archaka/priest and may be appointed by the Board. (Para 42)

The further contention of deprivation of right to livelihood guaranteed by Article 21 of the Canstitution is devoid of any force. In view of the settled legal position that the legislature is empowered to enact the law regulating the secular aspect of the management of the, Temple or the religious institution: or endowment, panda/archaka (priest), by whatever name called, is not integral part of the religion and performs all the' religious tenets or ceremonies in a Temple as servant of the Temple. They owe' their existence to an appointment They are servants of the g Temple terminable on the ground of misconduct or unfitness to perform service, rituals/ceremonies in accordance with Hindu Shastras, customs and practices prevailing in the Temple handed down from centuries. On abolition, the right of the holder of the office or post stands extinguished. It does not vest in the State but is regulated by the Act. The need to pay compensation does not arise. However, by operation of Section 22" archakas or pandas found eligible to perform religious service (pooja) etc. are regulated and entitled to be considered for appointment and h to consequential salary. As regards qualifications of the archaka (priest)/panda/pujari

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or samarchaka at Lord Kashi Vishwanath Temple, there is a great deal of unanimity among Dharmashastris that the pujari at Lord Vishwanath Temple should at least
a have a graduation or equivalent degree with Sanskrit and subjects such as Veda, Dharmagama, Shaivagama and Purohitya. Though according to the scholars, it was not initially prescribed to have *Aupadhik Yogyata* (educational qualification) for the archaka, deval or the samarchaka at Sri Kashi Vishwanath Temple, he should be proficient in Vedocharana, i.e., the proper incantation, delivery and pronunciation of Vedic mantras. He should practise Trikaal Sandhya. He should be conversant with all the mantras, srutis and vandanas of Lord Sri Visheshwara. He should also be fully
b trained and conversant in Rudrashtadhyayi. It would appear that Dharmashastras recommend that the process of selection for the archakas of Kashi Vishwanath Temple should be undertaken by a committee of traditional Dharmashastris comprising of a minimum of three renowned scholars who should be empowered to select the archakas or samarchakas from the qualified candidates. As was held in *Narayana Deekshitulu* case, periodical training and continuing education would improve and augment excellence. (Para 42)

c *A.S. Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548, *relied on*

The right to receive offerings from the pilgrims is incidental to the service rendered by the archaka (priest). Independent of service, there is no right to receive offerings from a pilgrim or the devotee. Therefore, the regulation of rendering service and prohibition to receive offerings, though may affect the livelihood of a pre-existing archaka, it being a regulatory measure, it is sequel or consequential to
d the abolition. It is not a vested right as such but is a right coupled with duty to render service. When the service on customary basis is abolished, concomitantly right to receive offerings given by the pilgrims stands extinguished and prohibited and is vested in the deity, Lord Shiva. It is not an acquisition of their right but it has only incidental and consequential effect. Equally, it is not a vested right in the individual panda/archaka/priest dehors the service. Rights of persons in service as archakas is not affected; on the other hand, Section 22 is subject to regulation and extends the
e right to earn livelihood guaranteed by Article 21. (Para 43)

The further contention that the impugned Act is overboard and is vitiated with vice of discretionary power without any supervision or guidelines and is ultra vires, is devoid of any force. The Act has carefully formulated different principles, applied the same in the matter of nomination of the members of the Board, appointment of the Executive Committee, the staff and proper and efficient management of the Temple. Even the discretionary powers are well within the parameters laid under the Act. Even assuming that if any action is found to be in excess of the statutory conferment of the power or wanting in quality that would be an individual case which may be liable to challenge in an appropriate proceeding and for that reason the Act cannot be declared as ultra vires. (Para 44)

The Board, as seen, is composed of 7 officials and 8 non-officials for efficient management of the Temple. Dr Vibhuti Narain Singh was statutorily inducted by Section *6(1)(a)* as a member and President of the Board. He had disclaimed interest
g and abstained from taking responsibility or interest in the management of Lord Sri Visheshwara Temple and endowments thereof and is not taking any part therein. It would be for the State Government to cause a notice issued to him seeking whether he is willing to take keen and active interest in the management and maintenance of the Temple and its endowments as member and President of the Board. In case he declines to associate himself or fails to take part as member and President of the Board, then the State Government would take steps to have Section *6(1)(a)* so
h amended as to bring into the Board another eminent non-official member and follow the procedure of election of the President of the Board. Non-official members of the

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Board should, of necessity, be eminent persons having rich knowledge and experience in the management and administration of the affairs of the Temple and the performance of services, rituals or religious observances in the Temple without a creating any vested interest. It would be voluntary service with religious and pious devotion, selfless service to the society as responsible member of the society without any distinction of caste, sect or sub-sect among Hindus. (Para 36)

Equally, the Vice-Chancellor under Section 6(1)(*j*) per force is a person having good knowledge and perceptions in the aforementioned disciplines. Equally, the persons to be nominated under Section 6(1)(1) must be eminent Hindu scholars well-versed in Hindu theology. The Government should always take care to ensure that b the persons nominated under Section *6(1)(k)* and *(l)* are those endowed with the above qualifications, quality devoted to and zeal for active association with proper and efficient management of the Temple, its endowments, the Fund and service to the pilgrims so that the object of the Act would be constantly monitored and effectively implemented. If any infraction in this behalf is committed by the State Government in periodical nomination and if any of them does not fulfil the requirements, that would be a matter for anybody to call in question the same and c have the same corrected in an appropriate proceeding. (Para 37)

In view of the finding that Lord Sri Vishwanath Temple is not a denominational temple and Hindus as such are not denomination/section/sect nor the appellants are denominational worshippers, the contention that Sections 6 and 3 cannot be read down so as to make the appellants as members of the Board under Section 6 of the Act, is without any force. Similarly, it is difficult to accede to the contention that d Section 6 must be read down to include those persons who profess to be denominational Hindu Shaivues practising as members of the Board. Equally, Sections 20(1) and (2) cannot be read down so as to give wider powers to the "archaka" defined in Section 4(2). Equally, Sections 22(2), *23(2)(b)*, 24(2) and 25(8) cannot be read down so as to confer functional and financial responsibilities on the archaka. (Para 45)

B. **Constitution of India — Preamble and Arts. 25, 26 — Secularism is a** e **basic feature of the Constitution**

C. **Constitution of India — Arts. 25, 26 and 14, 15, 16 & Preamble — Freedom of religion — Object and scope — Religion — Meaning — Freedom not absolute — Secular functions can be regulated by legislation — Whether a function is religious or secular — One of the tests to determine is whether it is essential and integral part of the religion or not — What constitutes essential part of religion may be ascertained from doctrines of that religion itself — Words and phrases — 'Religion', 'matters of religion' and 'religious beliefs or practice'**

Secularism is the basic feature of the Constitution. The Constitution seeks to establish an egalitarian social order in which any discrimination, on grounds of religion, race, caste, sect or sex alone is violative of equality enshrined in Articles 14, 15 and 16 etc. of the Constitution. India is a land of multi-religious faiths and the g majority are Hindus; Hinduism is their way of life, belief and faith. Unfortunately, they are disintegrated on grounds of caste, sub-caste, sect and sub-sect. Unity among them is the clarion call of the Constitution. Unity in diversity is the Indian culture and ethos. The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each others' religion, religious faith and belief. Integration of Bharat is, thus, its arch. (Para 26) h

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The religious freedom guaranteed by Articles 2S and 26 is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 2S and 26. therefore. strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so.in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another drametncaily more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national. unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process, History and customs, utility and the accepted standards of right conduct-are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any ease depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. AU secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets. historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances' to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integra} and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 2S accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered tq decide whether it is a matter of religion or a secular management by the State. (Para 28)

State of Rajasthan v. Sajjanlal Panjawat, (1974) 1 SCC 500; *Raja Biro Kishore Deb v. State of Orissa,* AIR 1964 SC 1501 : 30 Cut LT 426; *S.P. Mittal v. Unton of India,* (1983) 1 SCC 51 : AIR 1983 SC 1, *relied on*

Hinduism cannot be defined in terms of Polytheism. or Henotheism or Monotheism. The nature of Hindu religion ultimately is MonismlAdvaita. This is in contradistinction, to Monotheism which means only one God to the exclusion of all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spintual belief of one Ultimate Supreme who manifests Himself as many. This multiplicity is not contrary to on-dualism. The protection of Articles 25 and 26 of the

well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name. (Para 23)

Commn, H.R.E. v. Sri Lakshmindra Thirtha Swamiar of SrrShirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282; *Sri Venkataramana Devaru v. State of Mysore,* 1958 SCR 895 : AIR 1958 SC 255, *relied on*

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property in favour of a denominational institution as per reasonable terms on which the endowment was created, it cannot be said to have it. It had riot acquired the said
a right as a result of Article 26 and the practice and the custom prevailing in that behalf which obviously is consistent with the terms of the endowment should not be Ignored. The Act cannot be treated as illegal and the administration and management should be given to the, denomination, (Para 23)

Durgah Committee v. Syed Hussain Ali, (1962) 1 SCR 383 : AIR 1961 SC 1402; *Bramchari Sidheswar Shai v. State of W. B.,* (1995) 4 SCC 646, *relied on*

Suggested Case Finder Search Text (*inter alia*):
b [coi (25 or 26) denomination]

E. Constitution of India - Art. 26 - 'Denomination or any section thereof' - A section of a denomination is equally bound by the constitutional goal and relevant law

The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was
c protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational *sect is also* bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. (Para 27)

d *A.S. Narayana Deekshitulu v. State of A.P.,* (1996) 9 SCC 548, *relied on*

R-M/T/17657/C

Advocates who appeared in this case:

Dr Rajeev Dhavan, B.S. Javali and D.V. Sehgal, Senior Advocates (L.R. Singh, Ms Vimla Sinha, Yatish Mohan, Ms Binu Mohla, Ranjit Kumar, Ms Anu Mohla, Ms Monika Gosain, A.K. Srivastava, R.B. Misra and Sunil Ambwani, Advocates, with
e them) for the appearing parties.

Chronological list of cases cited *on page(s)*

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5. (1995) 4 SCC 646, *Bramchari Sidheswar Shai v. State of W. B.* 626g
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12. 1958 SCR 895 : AIR 1958 SC 255, *Sri Venkataramana Devaru v. State of Mysore* 626b
13. h 1954 SCR 1005 : AIR 1954 SC 282, *Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 625f-g, 626a-b

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The Judgment of the Court was delivered by

K. RAMASWAMY, J. – These five appeals by special leave arise from the Division Bench judgment of the Allahabad High Court, made on 28-10-1986 In eM Wnt Petition No. 1244 of 1984 and batch. The primary question is as to the constitutionality of the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 (U.P. Act No. 29 of 1983) (for short "the Act"), made for the management of the temple of renowned Lord Vishwanath, otherwise known as sn Adi Vishesbwara of Kashi, By and large, every Hindu believes that without a visit to Kashi for a bath in River Ganges and prayer offered to Lord Shiva, life is incomplete and meaningless and every endeavour is made to visit Kashi at least once in life. The idol of Lord.Shiva at Varanasi on the bank of holy River Ganges is one of the five Jyotirlingas In India believed to be self-incarnated' (swayam bhuva); other four, viz., (1) Rameshwaram in Tamil Nadu State; (2) Srisailam on the banks of River Krishna in Andhra Pradesh; (3) Dwarka in Gujarat State; and (4) Onkar in Madhya Pradesh on the bank of River Narmada, ,are believed to be Jyotirlingas according to Hindu mythology. Hindus believe that Lord Brahma is the Creator, Lord Vishnu is the Protector and Lord Shiva is the' Destroyer of evils and the wicked. Lord Shiva is the cornmonman's God and it *is* believed that He is easily accessible by fervent" prayer and fulfils the prayers of devotees. Though there are several stories on self-incarnation of linga (idol) at Varanasi, the fact remains that it is very ancient. For the last one thousand years, Lord Vishwanath/Visheshwara has been pre-eminent Shiva Linga (idol) at Kashi, the supreme principal deity. According to the mythological literature, Lord Avimukteshwara (never forsaken) appears to be the supreme deity in Kashi since the Gupta ages, i.e., 4th century AD tin 12th century AD Pandit Lakshmi Ohara of 12th century in his *"Puranic Mahatmya"* and *"Tirtha Vivechana Kanda"* ilnd Dandini, the great Sanskrit Scholar (6th century) in his *"Dasha Kumaracharita"* refer to this aspect of the matter. Mitra Mishra in his book "Tirtha Prakash" has also stated that Lord Visheshwara and Lord Avimukteshwara appear to be separately located as is spoken in *"Linga Purana"* quoted by Lakshmi Ohara. The ancient name of Kashi appears to be "Avimukta", The Linga of Lord Visheshwara appears to have been located to north of the sacred well, Jnana Vapz while encircling the Temple of Avimukteshwara, the shrines of: Dandapani, Taraka and Mahakaal all of which are-also erected near the Jnana Vapi and Lord Visheshwara Temple. According to *Puranic Mahatmya* and *Kashi Khanda* of the *Skanda Purana,* the Jyotirlinga was established by Lord Shiva himself when he went into exile to the Mount Mandara during the reign of the legendary King Divodasa, Since Lord Shiva himself disguised the Linga, according to *Mahatmya* Lord Shiva never really left the sacrosanct and sacred temple. Hence, it became "Avirnukra" (Never Forsaken). This was also stated by Vaachaspati Mishra in his famous Puranic work, *"Tirtha Chintamani"* in 1460 wherein he had stated that "Visheshwara" and "Avrmukteshwara" were merely two names for the same Jyotirlinga. Narayan Bhatta had similarly mentioned it to be so in Ieth.century in his

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work "Tirthalisetu". According to the literature, by 13th to 14th century AD
a and especially dated 1325 AD the Temple called Padameshvara was existing as per *"Kashi Ka Itihas"*, p. 190 written by Moti Chandra, As stated earlier, in due course, Jyotirlinga in the name of Lord Visheshwara gained popularity and Avimukteshwara Linga was installed in a comer of the temple. Every Hindu believes that Lord Shiva is worshipped by the common man and perhaps for that belief Linga of Lord Sri Visheshwara became
b famous. In the year 1193 AD, when one of the Lieutenants of Mohd. Ghori, namely, Kutubuddin Eibak completely destroyed Lord Shiva's Temple, the priest (mahant) concealed' the idol of Lord Vishwanath from being defiled and destroyed. The Temple construction was undertaken in a big way in 1585 by Raja Todar Mal, the Finance Minister of Akbar the Great, the Mughal Emperor who was then Governor of Jaunpur. The Temple was
c constructed accordingly on a large scale consisting of a central sanctum (Garba Griha) surrounded by eight mandapas or pavilions. Aurangzeb again destroyed the Temple of Lord Shiva io.1669 AD when again the then priest (mahant) removed the idol of Lord Shiva so as to prevent it from being defiled and destroyed. Thereafter, it was again restored in the year 1777 AD by Rani Ahilya Bai Holkar of M.P. who had built the present Temple and
d instalJed the present deity, Maharaja Ranjit Singh in 1859 AD had got it renovated. covering the dome with gold plates weighing 22 tons of gold.

2. Though it is claimed that some of the appellants are the descendants of Pt. Visheshwar Dayal Tiwari and that the mahant (priest) of the Temple got it re-erected, it is not necessary for the purpose of this case to dwell oo the history. Suffice it to state that the management of the Temple was in an
e appalJing condition, Devoted pilgrims when they visited the Temple were subjected to exploitation at the behest of pandas and the precincts were in most unhygienic condition. Admittedly. the jewellery of Lord Shiva was stolen which necessitated constitution of a Committee which had gone into and recommended to the Government to take steps for proper management thereof. The theft that took place in the midnight of 4-1-1983-5-1-1983, 14 years from now, had become a cause of concern to all the Hindus and the residents of Varanasi, in particular for protection and proper management of the Temple. It became necessary to take effective steps to provide efficient administration and proper arrangements for orderly visit and prayer by the devotees thronging daily the precincts of the-Temple in minions coming from every nook and comer of the country and abroad, On the basis of the
g recommendation of 'the said Committee dated 14..1-1983, an Ordinance titled "U.P. Sri Kashivishwanath Temple Ordinance, 1983" was promulgated by the Governor of the State of Uttar Pradesh on 24..1.1983 whereby the management. arid control of the said Temple was taken over from. the mahants and pandas (priests). On 28-1..1983, the Government issued a Notification specifying the "Appointed Date" under the Ordinance to be
h 28-1-1983 and another Ordinance No.9 of 1983, namely, U.P. Sri Kashi Vishwanath Temple (Second) Ordinance, 1983 was issued since the first one

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was to expire on 16-3-1983 by operation of proviso to Article 213 of the Constitution. The Government issued another Ordinance, viz., Ordinance No. 20 of 1983 on 27-4-1983" which was replaced by the Act of Parliament. a
The appellants, though initially challenged the Ordinance, pending proceedings, the U.P. Act No. 29 of 1983 came into force after receiving the assent of the President on 12-10-1983 and was notified in the State Gazette on 13-10-1983.

3. By operation of sub-section (1) of Section 1, the Act came into force w.e.f. 28-1-1983, i.e., on the "appointed date" under the first Ordinance. b
Before the High Court, the Act was assailed by filing a writ petition, primarily on the ground that it infringes the appellants' fundamental rights enshrined in Articles 25(1) and 26(b) and (d) of the Constitution. One of the learned Judges of the Bench had held that though the Temple of Sri Kashi Vishwanath was and is a public Temple of the common people, the presiding deity, i.e., Lord Vishwanath is the Lord of all. It is a commonman's Temple c
but it is a denominational temple of Shaivites of Hindu community. Another learned Judge held that it is not a denominational one. However, both the learned Judges held that the legislature was competent to enact the law for management of the Temple along with its properties. The learned Judges gave directions to consider taking in some of the representatives of the appellants as members of the Board; they gave other directions which we d
would consider at the appropriate places while dealing with questions separately. The appellants feeling aggrieved by the decision of the High Court, have filed the present appeals. The learned counsel on both sides have filed written arguments, pursuant to this Court's direction dated 13-12-1991. After a considerable time having been taken while the matter was before different Benches, it ultimately came up before this Bench and has been e
heard at length.

4. Shri Rajeev Dhavan, learned Senior Counsel, contended that Lord Shiva Temple is a denominational Temple of Shaivites of which the appellants are the members. They have their exclusive right to worship and to manage the Temple including the right to receive offerings given by the pilgrims to Lord Shiva, to perform pooja (rituals) and ceremonies in f
accordance with prevailing customs and usages in the Temple handed down from centuries. The Act interdicts to exercise that right and, interfere with those rights which are part of their religion. The Act prevents them from managing the Temple and its properties which interferes with their right to profess and practise any religious belief offending Articles 25 and 26 of the Constitution. g

5. We find no force in the contention. The preamble of the Act in unequivocal language, manifests its intention that the Act is to provide "for the proper and better administration of Sri Kashi Vishwanath Temple at Varanasi and its endowment and for matters connected therewith or incidental thereto". Sub-section (2) of Section 1 gives overriding effect to the Act. It envisages that the Act "shall have effect, notwithstanding h
anything to the contrary contained in any other law for the time being in

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force or custom or use, contract, deed or engagement, judgment, decree or
a order of any court or scheme of management settled by any court".

6. Section 5 declares that ownership of the Temple and its endowment shall vest in the deity of Sri Kashi Vishwanath. "Temple" has been defined under Section 4(9) which reads as under:

> "4. (9) 'Temple' means, the Temple of Adi Vishweshwara, popularly known as Sri Kashi Vishwanath Temple, situated in the city of Varanasi
> b which is used as a place of public religious worship, and dedicated to or for the benefit of or used as of right by the Hindus, as a place of public religious worship of the Jyotirlinga and includes all subordinate temples, shrines, sub-shrines and the ashthan of all other images and deities, mandaps, wells, tanks and other necessary structures and land appurtenant thereto and additions which may be made thereto after the appointed date;"

c 7. "Endowment' has been defined by Section 4(5) which reads as under:

> "4. (5) 'endowment' means all properties, moveable or immovable, belonging to or given or endowed for the support or maintenance or improvement of the Temple or for the performance of any worship, service, ritual, ceremony or other religious observance in the Temple or any charity connected therewith and includes the idols installed therein, the premises of
> d the Temple and gifts of property made or intended to be made for the Temple or the deities installed therein to anyone within the precincts of the Temple;" ...

8. "Temple Fund" has been defined under Section 4(10) to mean the temple constituted under Section 23 of the Act. Chapter IV deals with "Property and Accounts". Section 23(1) postulates that there shall be constituted a Fund to be called "Sri Kashi Vishwanath Temple Fund" which
e shall be vested in and administered by the Board and shall consist of the following, namely—

> "(a) the income derived from the moveable and immovable properties of the Temple;
>
> (b) the religious offerings made or intended to be made to the deity of Sri Kashi Vishwanath or any other deity in the Temple;
>
> (c) any contribution by the State Government either by way of grant or by way of loan;
>
> (d) any donation or charity made by a person in or for the Temple;
>
> (e) any other gift or contribution made by the public, or local authorities or institutions;
>
> f (f) all fines and penalties imposed under the Act;
>
> (g) all recoveries made under the Act;"

Thus the totality of the endowment and the Temple Fund vests in the Deity, Sri Kashi Vishwanath. Its management is entrusted to the Board of Trustees (for short, "the Board").

9. Section 4(3) defines "Board" to mean the "Board of Trustees"
h constituted under Section 6. Sub-section (1) of Section 6 postulates that with effect from the appointed date, the administration and governance of the

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Temple and its *endowments* shall vest in a Board called "the Board of Trustees for Sri Kashi Vishwanath Temple". It shall consist of the members specified in sub-section (2), namely: a

"(a) Dr Vibhuti Narain Singh who shall also be the President of the Board;

(b) Shri Jagadguru Sankaracharya of Sringeri;

(c) Secretary to the Government of Uttar Pradesh in the Department of Cultural Affairs - ex officio;

(d) Secretary to the Government of Uttar Pradesh in the Department of Finance - ex officio; b

(e) Secretary to the Government of Uttar Pradesh in the Department of Harijan and Social Welfare - ex officio;

(f) Secretary to the Government of Uttar Pradesh in the Judicial/Legislative Department by rotation in such manner as may be prescribed - ex officio; c

(g) Director of Cultural Affairs, Uttar Pradesh - ex officio:

(h) Commissioner, Varanasi Division - ex officio;

(i) District Magistrate, Varanasi - ex officio:

(j) Vice-Chancellor, Sampurnanand Sanskrit Vishwavidyalaya Varanasi - ex officio;

(k) Two local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and any worship, service, ritual or religious observance made therein, to be nominated by the State Government; d

(l) Three eminent Hindu scholars well versed in Hindu theology, to be nominated by the State Government."

Sub-sections (3) to (5) provide as under: e

"(3) Where a member of the Board cannot perform his duties as such by reason of the fact that he is not a Hindu, the person available next below him in this behalf shall be a member of the Board for the time being.

(4) The Board shall be a body corporate having perpetual succession and may sue or be sued by the name aforesaid.

(5) The constitution of the Board and every change therein shall be notified by the State Government."

10. Thus, the Board consists of 8 non-officials well-versed in the knowledge and experience in Hindu theology, management and administration of the Temple; two local officials and five Secretaries having diverse experience. All these men of wisdom and experience are imbued to infuse in proper, efficient and honest administration and management of the Temple, endowment and the Temple Fund, the property of the Deity Lord Vishwanath. g

11. It would, thus, be seen that the ownership of the Temple and its endowment shall vest in the Deity of Sri Kashi Vishwanath, the presiding Deity of the Temple. The management of Temple and the endowment shall vest in the Board to cater to the welfare of the pilgrims, proper and better h

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management of the performance of daily and periodical ceremonies and
a rituals. By operation of sub-section (4) of Section 6, the Board shall be a body corporate having perpetual succession and it may sue and be sued in the name of the Board. The tenn of the office of the Board as specified in Section 7, is 3 years from the date of the notification of the nomination and some of the members mentioned in the proviso specified in clauses *(a)* and *(b)* of sub-section (2) shall be life members. Other members are liable to be
b removed by operation of sub-section (1) of Section 8 following the procedure prescribed in sub-section (2) thereof and the decision of the Government in that behalf is final under sub-section (3) and (shall not be liable to be questioned in any court of law).'

12. By operation of Section 13, the Board shall be entitled to take and be in possession, of all moveable and immovable properties, cash, valuables,
c jewellery, records, documents, material objects and other assets belonging to or forming part of the Temple and its endowments, Every person, by operation of sub-section (2), who has possession, custody or control of any such moveable or immovable property, cash, valuable, jewellery, record, document, material object or other asset, as mentioned in sub-section (1) shall, subject to all just exceptions, produce and deliver the same, when
d required, under the Act, to the Chief Executive Officer defined in Section 4(4) to mean the Chief Executive Officer appointed under Section 16.

13. Chapter III under the caption "the Temple Establishment", consists of Sections 16 to 22 and deals in this behalf. Section 16 empowers the State Government to appoint a Chief Executive Officer for the Temple. His conditions of service may be determined by the State Government from time
e to time under sub-section (2) thereof. The proviso thereto protects his pre-existing salary and other conditions of service. Section 17(1) enjoins that the Chief Executive Officer shall be the Principal Executive Officer of the Temple and, subject to the control of the Board, shall be "responsible for management of the secular affairs of the Temple and its endowments". Sub-section (2) thereof provides that subject to the provisions of the Act and the rules made thereunder, the Chief Executive Officer shall do the following duties:

"*(a)* to carry out the decisions and orders of the Board and the Executive Committee in accordance with the provisions of this Act;

(b) to arrange for the proper collection, maintenance and disposal of the religious offerings in the Temple and to keep a full and proper
g account thereof;

(c) to have custody of and make suitable arrangement for the preservation and maintenance of all records, jewelleries, valuables, moneys, valuable securities and properties of the temple;

(d) to record and maintain the minutes of proceedings of the Board:

(e) to call for tenders for works or supplies and to accept tenders,
h the value or amount whereof does not exceed five thousand rupees;

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(f) to exercise control over the employees of the Temple and take appropriate action against them in cases of breach of discipline;

(g) to do all such things as may be required for the due performance of his duties imposed by or under this Act." a

14. Section 18 deals with emergency powers of the Chief Executive Officer. Under sub-section (1) thereof, the Chief Executive Officer may direct the execution of any work or the doing of anything, which is not provided for in the budget for the year or which is, in his opinion, immediately necessary and unavoidable "for the preservation of the Temple b or its endowments or for the health, safety or convenience of the pilgrims or worshippers resorting to the Temple or for the due performance of the worship, service, rituals, ceremonies or observances in the Temple and may further direct that the expenses of the execution of such work or the doing of such thing shall be paid out of the Temple Fund". Under sub-section (2), he is enjoined to forthwith submit the report in that behalf together with the c statement of reasons for such action, to the Board and the Executive Committee, The Board shall take such action, after taking into account the recommendations of the Executive Committee, as it deems fit.'

15. Section 19 deals with the constitution of the Executive Committee. Sub-section (1) thereof adumbrates that the Executive Committee shall be subject to the directions of the Board or the State Government and shall be d responsible for the superintendence, direction and control of the affairs of the Temple. Under sub-section (2) thereof, the Executive Committee shall consist of the following members, namely-

"(a)	Commissioner-Varanasi Division	Chairman;
(b)	District Magistrate, Varanasi	Member;
(c)	Senior Superintendent of Police, Varanasi	Member;
(d)	Administrator/Mukhya Nagar Adhikari, Nagar Mahapalika, Varanasi	Member;
(e)	Members of the Board specified in Section 6(2)(j)	Member ex officio;
	Chief Executive Officer	Member-Secretary."

e

16. Sub-section (3) of Section 19 is equally of importance and it is worth noting that where a member of the Executive Committee cannot perform his duties as such by reason of the fact that he is not a Hindu, the person, available next below him in this behalf, shall serve on the Committee. It has also power under sub-section (4) to co-opt as member, any other suitable g person, not more than two in number, for the discharge of its functions. Under sub-section (5), it shall exercise such power and perform such functions as are conferred on it by or under the Act or are assigned to it by the Board. Under, Section 20, the Chief Executive Officer is required to prepare a schedule setting forth the designations, grades and duties of persons constituting the establishment of the Temple. If any member of the h establishment claims any special right by virtue of a judgment, etc., sub-

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section (2) of Section 20 makes the Chief Executive Officer responsible to
a give effect to such judgment and decree of a court while preparing the Schedule. All the particulars mentioned and the details specified in the said Schedule shall be submitted to the Board which is empowered to make any change or modification and after its approval such persons shall be entitled to the conditions of employment prescribed therein, the details whereof are not material. Section 21 deals with the Temple staff and their conditions of
b service. Section 22 deals with appointment of archakas. It reads as under:

"22. (1) Every archaka attached to or serving in the Temple shall be responsible for the proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith and the Board or the Executive Committee or the Chief Executive Officer or any
c other employee of the Temple shall not interfere with the discharge of the duties by the archaka as such.

(2) The archaka shall be entitled to such remuneration for his services as may be agreed upon between him and the Board and failing such agreement, as may be determined in accordance with the rules made in this behalf and shall not be entitled to any other perquisites or emoluments, save as permitted by or under this Act."

d 17. Section 24 gives power to the Chief Executive Officer to prepare, within three months from the appointed date, the scale of expenditure in the Temple and the amounts which should be allotted to the various objects connected with the Temple which should be done by operation of sub-section (2) after consultation with the archaka and also have "due regard to the requirements of worship or offerings in connection with the performance
e of the general or special, daily or periodical services, rituals, ceremonies or other religious observances according to the usage or otherwise". The proposals referred to in sub-section (1), viz., scale of expenditure etc. shall be submitted in the prescribed manner to the Board. Sub-section (4) bears a salutary provision which envisages that "the Board shall cause the proposal to be published in such manner, as may be prescribed, and any person interested may submit his objections or suggestions within a period of 30 days from the date of publication". Under sub-section (5), after considering the objections and suggestion, if any, received under sub-section (4), the Board shall pass such orders, as it thinks fit, on such proposals, having regard to the objects specified in sub-section (2) and the financial position of the Temple. A copy thereof under sub-section (6) shall be published in the
g prescribed manner. Sub-section (7) gives to the aggrieved person right to appeal against such an order, which lies to the State Government and the order of the State Government in appeal is declared to be final. The result of the expenditure under sub-section (5) may be revised from time to time by operation of sub-section (8) and the provisions of sub-sections (1) to (5) of Section 25 shall mutatis mutandis apply to such revisions. By operation of
h sub-section (9) of Section 24, the scale of expenditure shall be the first charge on the Temple Fund and save as aforesaid, "*shall not be altered*".

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Section 25 deals with preparation of the budget of the Temple for each year; the details in that respect are enumerated therein. Section 26 deals with regular accounts to be kept in such form as may be approved by the State a
Government and they should contain such particulars and in such manner as may be prescribed. Under Section 27, the accounts shall be audited annually. Section 28 provides for imposition of surcharge for dereliction of duties, Section 29 makes provisions as to acquisition or transfer of the property of the Temple, as to how the property shall be dealt with: the details thereof are not necessary. Section 30 deals with prohibition on borrowing of money. b
Section 31 regulates entering into and execution of the contracts.

18. The powers and functions of the Board are detailed in Sections 14 and 15 of the Act which read as under:

"14. Subject to the provisions of this Act and any rules made thereunder, it shall be the duty of the Board—

(a) to arrange for the due and proper performance of worship, c
service and rituals, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple, ceremonies and other religious observances in accordance with 'the Hindu' Shastras and scriptures and usage;

(b) to ensure maintenance of public order, health and morality, including arrangement for lighting, hygienic conditions and proper d
standard of cleanliness in the Temple:

(c) to ensure the safe custody of the funds, cash, valuables, jewelleries and other properties of the Temple;

(d) to make adequate arrangements for the preservation and management of the properties and secular affairs of the Temple;

(e) to ensure that the funds of the endowments are spent according e
to the wishes, so far as may be known or ascertained, of the donors;

(f) to provide facilities for the proper performance of worship by the pilgrims and worshippers:

(g) to make provision for the convenience and medical relief of pilgrims and worshippers;

(h) to undertake for the benefit of the pilgrims and worshippers-

(i) the construction of buildings for their accommodation:

(ii) the construction of sanitary works:

(iii) the improvement of means of communication;

(iv) such other matters as may be prescribed;

(i) to make provision for the payment of suitable emoluments to the salaried staff; g

(j) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments and the convenience of the pilgrims and worshippers.

15. The Board shall exercise all such powers, as are necessary for or incidental to the performance of its duties and functions under this Act and in particular shall have power- h

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(a)10 fix fees for the performance of any worship, service, ritual, ceremony or religious observance in the Temple;

(b) to call for such information and accounts as may, in its opinion be necessary for satisfying itself that the Temple and its endowments are properly maintained and administered and their funds are duly appropriated for the purposes for which they exist or were founded;

(c) to prohibit within the premises of the Temple or within such area belonging to the Temple, as may be specified in this behalf-

(i) sale, possession, use or consumption of any intoxicating liquor or drug;

(ii) sale, possession, preparation or consumption of meat or other foodstuffs containing meat;

(iii) slaughter, killing, maiming of any animal or bird for any purpose;

(iv) gaming with cards, dice, counter, money or other instruments of gaming;

(d) to do or direct the doing of such other things as may be prescribed."

19. Section 32 deals with power of the State Government to cause inspection to be made in the prescribed manner. Section 33 gives power to the State Government to issue directions "not being inconsistent with the provisions of this Act" or the rules made thereunder. It shall be the duty of the Board to comply with such directions. Chapter VI consists of Sections 34 and 35 which deal with penalties for contravention of the directions, the details whereof are not necessary. Chapter VII consists of Sections 36 to 47 under the caption "Miscellaneous", the details whereof are not material for the purpose though they contain integral scheme for effective and proper and better management of the Temple and endowments. From a broad perspective of the scheme, as explicit from the preamble and the above built-in operational structure, the object of the Act is to regulate the management and administration of the Temple and endowments and the Temple Fund for matters connected therewith and incidental thereto.

20. According to the religious literature on Pooja Puddhutti in Kashi Visheshwara, most of the traditional mantras are in the Paramparagata (Lokik tradition) so it does not find place in Dharmashastras, Pooja Puddhutti as being observed at Kashi Visheshwara Temple are to be found in four Vedas. However a compilation of these mantras are contained in Shukla Yajurveda which is a compilation of Yajush Mantras by Rishi Yajnavalkya. However, there appears to be some controversy as to whether the rituals are to be performed by touching of the Linga by the devotee or to prohibit the worshipper and pooja to be performed by archaka (priest) as per vedic/shastric parampara. In all Jyotirlingas in the country, pooja is performed by the devotee himself touching the Linga. As a result that controversy was referred to Kashi Vidvat Parishad (Kashi Council of Scholars) for resolution of the dispute and to find out whether Lokik

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Parampara with the tradition of offering prayers to the Linga by touching the Linga or Shastravat Parampara i.e. according to the Dhannashastras is to be followed in performing pooja to Shiva Linga in Lord Visheshwara Temple. The Committee recommended Lokik Parampara since it is believed by the people in popular tradition. Accordingly, by custom and usages Lokik Parampara being timeless uaage of Hindu Dharma, besides being flexible enough to be moulded and adopted according to changing times, Lokik Parampara, i.e., popular people's belief of performing pooja by touching the Linga, which is most ancient of times, is being followed. Accordingly, the Pooja Puddhutti at the Visheshwara Temple is being followed as part of the great and universal traditions of Hinduism. Accordingly, every devotee is entitled to enter into Garba Griha, i.e., the sanctum sanctorum and himself/herself perform pooja (ceremonies) and no one is restricted or barred of the same.' On the issue of Prokshana of Lord Visheshwara by Panchagavya, the Committee recommended that it was not a part of the traditional mode of worship of Jyotirlinga and was not required. His Holiness, the Sankaracharya of Kanchi Kamakoti Peetam had also subscribed to the above view and directed that the traditional pooja at Visheshwara Temple should be commenced with Mangala Vadya and pooja in accordance with the 'Shodashopachara, The present Pooja Puddhutti contains this Shodashopachara.

21. From this legal and factual backdrop, the question is whether the appellants have any fundamental right in the aforesaid. If so, to what extent? By operation of Section 14, clause *(a),* it shall be the duty of the Board to arrange for the due and proper performance of worship, service and rituals, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple, ceremonies and other religious observances in accordance with the Hindu Shastras, scriptures and usages. Under clause *(j),* the Board is enjoined to provide facilities for the proper performance of worship by the pilgrims and worshippers and under clause *(j),* to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments and to the convenience of the pilgrims and worshippers. It would thus be seen that the Act ensures and enjoins the Board, the Executive Committee and the Chief Executive Officer assisted by all the staff to ensure due and proper performance of worship, services, rituals and ceremonies, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple in accordance with Hindu Shastras, scriptures and usages. The Act does not invest the Government with any power to interfere with the religious part of management or day-to-day administration of the Temple or its endowments.

22. Under Section 22, every archaka (priest) attached to or serving in the Temple should be responsible for the proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith. The Board or the Executive Committee or the Chief Executive Officer or any other ernplovee of the Temple shall not interfere with the

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discharge of the religious duties performed by the archaka as such and in
a such capacity in the performance of ceremonies; rituals, services being observed in accordance with the established custom and usage. It would, therefore, be seen that the proper performance and conduct of daily or periodical, general or special rituals, ceremonies, services etc. to Lord Sri Vishwanath, the presiding deity of the Temple and other deities in the Temple is the duty of the priests of the temple and they are required to
b perform them in accordance with Hindu Shastras, scriptures and usages. The Board should ensure their effectuation. The Board, Executive Committee or the Chief Executive Officer or any of the officers are prohibited from interfering with the performance of religious services or ceremonies etc. The Act, thus, demarcates the religious functions and men entrusted to priests; similarly, the secular functions of administration and management of the
c Temple, endowment and Temple Fund are entrusted to the Board for proper, efficient, honest, truthful administration and management with piety and devotion to serve Lord Visheshwara and the pilgrims and worshippers.

23. The question is whether Sri Kashi Vishwanath Temple is a denominational Temple and whether the Act interferes with freedom of conscience and the right to profess, practise and to propagate religion of
d one's choice and whether the devotees of Lord Vishwanath are members of religious denomination and shall have the fundamental right to manage its affairs in the matter of religion guaranteed under Articles 25 and 26 of the Constitution or to administer the properties of the Temple in accordance with law. In the *Law Lexicon* by P. Ramanatha Iyer (1987, Repdnt Edn.) at p. 315, the author says that "denomination" means a class or collection of
e individuals called by the same name; a sect; a class of units; a distinctively named church or seer-as clergy of all denominations. The maxim *Denominatio est a digniore* means "Denomination is from the more worthy" (Burrill). *"Denominatio fieri debet a dignioribus"*, another maxim means "denomination should be deduced from the more worthy," *(Wharton's Law Lexicon). "Denomine proprio non est curandum cum in substantia non erretur quia nomina mutabilla sunt res autem immobiles meaning"* means "as to the proper name, it is not to be regarded when one errs not in substance; because names are changeable, but things are immutable". *(Bouvier Law Dictionary; American Encyclopaedia)* In *Commn, H.R.E.* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[1], the precise meaning of the word "denomination" had come up for consideration before the
g Constitution Bench. It was held, following the meaning given in *Oxford Dictionary*, that the word "denomination" means a collection of individuals or class together under the same name, a religious group, or body having a common faith and organisation and designated by a distinctive name. On the practices of the Math, the meaning of the connotation "denomination" in that
h behalf, it was held that each such sect or special sects which are founded by

1 1954 SCR 1005: AIR 1954 SC 282

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their organiser generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organisation. Article 26 contemplates not merely a religious denomination but also a section thereof. Therefore, it was held that *Shirur Mutt*[1] was a religious denomination entitled to the protection of Article 26. In *Durgah Committee v. Syed Hussain Ali*[2] another Constitution Bench considering the ratio laid in *Shirur Mutt case*[1] explained *Sri Venkataramana Devaru case*[3] and had laid down that the words "religious denomination" under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must also specify three conditions, namely, it must be (1) a collection of religious faith, a system of belief which is conducive to the spiritual well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name. Therein, the endowment to the tomb of Hazrat Khwaja Moin-ud-din Chishti of Ajmer, under the Khadims Durgah Khwaja Saheb Act, 1955 was challenged by the respondents as violative of their fundamental rights under Articles 25, 26, 19(1)(1) and (8) of the Constitution. This Court had held that Hazrat Khwaja Moin-ud-din Chishti tomb was not confined to Muslims alone but belonged to all communities, i.e., Hindus, Khwajas and Parsis who visit the tomb out of devotion for the memory of the departed soul and it is a large circle of pilgrims who must be held to be the beneficiary of the endowment made to the tomb. Considered from that perspective, it was held that the right to receive offerings was not affected or prejudiced by the Act, though they had a right to worship in accordance with their faith. Article 26 requires to be carefully scrutinised to extend protection and it must be confined to such religious practices as are an essential and integral part of it and no other. The management of the properties was in the hands of the officers. Article 26 does not create rights in any denomination or a section which it never had. It merely safeguards and guarantees the continuance of a right which such denomination or the section had. If the denomination never had the right to manage property in favour of a denominational institution as per reasonable terms on which the endowment was created, it cannot be had *(sic said)* to have it. It had not acquired the said right as a result of Article 26 and that the practice and the custom prevailing in that behalf which obviously is consistent with the terms of the endowment should not be ignored. The Act cannot be treated as illegal and the administration and management should be given to the denomination. Such a claim is inconsistent with Article 26. In *Bramchari Sidheswar Shai v. State of W.B.*[4] the relevant facts were that the Ramakrishna Mission had established educational institutions to which approval and affiliation were granted by the Government and the University. The dispute arose as regards the composition of the Governing Body, viz., whether the

2 (1962) 1 SCR 383 : AIR 1961 SC 1402
3 *Sri Venkataramana Devaru v. State of Mysore*, 1958 SCR 895 : AIR 1958 SC 255
4 (1995) 4 SCC 646

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Government's nominee would be associated on a standard pattern? Ramakrishna Mission claimed "minority" status being a denomination. In that perspective, this Court while rejecting the claim of the Mission as a minority institution under Article 30(1), upheld its denominational character within the meaning of Article *26(a)* of the Constitution. It was held that it being a denomination was entitled to administer the educational institutions. Therein, the vires of the statute did not come up for consideration in the context of the followers of Shri Ramakrishna who are professing the line of teachings and doctrines of Shri Ramakrishna. The followers were considered to be a denominational section of the citizens. The ratio therein, therefore, does not apply to the facts of the present case.

24. In *State of Rajasthan v. Sajjanlal Panjawat*[5] Section 52 of the Rajannan Public Trust Act was challenged as ultra vires Articles 25 and 26 offending the denominational right to manage their Jain Temple properties, namely, by the Jain denomination. The management of the Temple of Rikhabdevji with its properties was vested in the Rulers of Udaipur before the Constitution of India came into force. The rights which the Jains or any one of the Jain denomination, namely, Swetamber or Pitamber or both, have had in the Temple or its management in the pre-Constitution period, vested in the State; they cannot claim right to its management under the Act. Following the ratio in *Durgah Committee of Ajmer case*, it was held that the right to acquire any property by religious denomination is different from the right to manage its own affairs in matters of religion. The latter is a fundamental right which cannot be taken away by the legislature; the former can be regulated by the law which the legislature can validly enact.

25. The question, therefore, relates to only administration of properties belonging to the religious group or institution. They are not matters of religion to which Article 25 or 26 gets attracted. Article 26 does *not* protect the right to management and they are not entitled to the management. In *Raja Bira Kishore Deb v. State of Orissa*[6] another Constitution Bench had held that Section 6 of Sri Jagannath Temple Act, 1954 extinguishes the hereditary right of the Raja and entrusts secular management of the Temple of Lord Jagannath at Puri to the Committee of which he remains the Chairman. *The superintendence of the Temple is not the property.* It carried no beneficial interest or enjoyment of the property with it. *The right was not acquired by the State. The whole of the right to manage the Temple was extinguished and in its place another body for the purpose of administration of the properties of the Temple was created. In other words, the affairs of the functionary are brought to an end and another functionary had come into existence in its place. Such process cannot be said to constitute the acquisition or extinguishment of* office or the vesting of the right in such

5 (1974) 1 SCC 500
6 AIR 1964 SC 1501 : 30 Cut LT 426

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persons holding that office (emphasis supplied). In that context, it was contended that the Act interfered with religious affairs of the Temple offending Article 19(1) of the Constitution. The contention was rejected. The a
contention that it is a denominational Temple was also not accepted, In *S.P. Mittal* v. *Union of India*[7] the Constitution Bench was to consider whether Auroville (Emergency Provisions) Act was violative of Article 26 of the Constitution. Considering the speeches and writings of Shri Aurobindo on religious beliefs, it was held that it was not a religious denomination. The Act was incidental to the proper administration. It was not violative of b
Articles 25 and 26 of the Constitution.

26. It would appear from the judgment of the High Court that the Advocate General contended that the protection of Articles 25 and 26 was not available to the Hindus as a community but as a denominational sect or section thereof and that Hindus are not denominational section. One of the learned Judges in that background considered the scope of denomination and c
held that Shaivites among Hindus are a denominational section and that, therefore, they are entitled to the protection of freedom of conscience and to establish and manage the religious institution or properties attached to it. It is a well-settled law that secularism is the basic feature of the Constitution. The Constitution seeks to establish an egalitarian social order in which any d
discrimination on grounds of religion, race, caste, sect or sex alone is violative of equality enshrined in Articles 14, 15 and 16 etc. of the Constitution. India is a land of multi-religious faiths and the majority are Hindus; Hinduism is their way of life, belief and faith. Unfortunately, they are disintegrated on grounds of caste, sub-caste, sect and sub-sect. Unity among them is the clarion call of the Constitution. Unity in diversity is the e
Indian culture and ethos. The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each others' religion; religious faith and belief. Integration of Bharat is, thus, its arch. Article 15(2), therefore, lays emphasis in that behalf that no citizen shall, 'on grounds only of religion, race, caste, sect, place of birth or any of them be subjected to any disability, liability, restriction or conditions with respect to access to shops, public restaurants, hotels, places of public entertainment or the use of wells, tanks, baths and places of public resorts maintained wholly or partly out of State fund or dedicated to the use of general public. Congregation and assimilation of all sections of the society, in particular in place of worship generates feeling of amity assured in the Preamble and g
fosters fraternity for social cohesion, harmony and integration. Thus, the Constitution lays seedbed to integrate the people transcending various religious, regional, linguistic, sectional diversities, castes; sects and/or divisive actions or acts. Integration of all sections belonging to different castes, sub-castes, sects and sub-sects or people professing different
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7 (1983) 1 SCC 51 : AIR 1983 SC 1

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religious faiths transcending the diversity of religious beliefs. Apart from communion of the individual with his perceived cosmos or divinity, the primary aim of all religious faiths is to inculcate the feeling of oneness among all people, to imbibe the good of that religion or that faith teaches; to get rid of unfounded or superstitious beliefs and to make a person self-disciplined. Every right carries with it the co-relative duty. Article 51-A of the Constitution enjoins every citizen to abjure violence, to cultivate the spirit of tolerance, reform and enquiry, in other words, rational thinking and to distinguish between good and bad; to discard bad and viciousness and to imbibe good and to improve the faculty of constructive-thinking. So, all religions are equally entitled to constitutional protection under Articles 25 and 26.

27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational *sect is also* bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. In *A.S. Narayana Deekshitulu* v. *State of A.P.*[8] a Bench of this Court (to which one of us, K. Ramaswamy, J., was a member) considered in extenso the entire case-law in the context of abolition of the hereditary rights of archakas and mathadipatis (trustees) and of the attached right to share in the offerings, plate collections etc. and appointment of Executive Officer to religious institution and endowment under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the A.P. Act"). There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criterion of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are non-essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are antithesis to seculazism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. For

8 (1996) 9 SCC 548

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instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable a
under Civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.

28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of b
right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most c
of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The d
legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his *Judicial Process*, life is not logic but experience. History and e
customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape f
to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily g
from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the h
community itself. Though not conclusive, this is also one of the facets to be .

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noticed. The practice in question is religious in character and whether it
a could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is
b a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

29. Justice B.K. Mukherjee in his *Tagore Law Lectures on Hindu Law of*
c *Religious and Charitable Trust* at p. 1 observed:

> "The popular Hindu religion of modem times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in
> d the social and religious institution. But whatever changes were brought about by time - and it cannot be disputed that they were sometimes of a revolutionary character - the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions remained substantially the same; and the system that we see
> e around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development."

30. Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme who manifests Himself as many. This multiplicity is not contrary to on-dualism. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme.

g 31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In *Seshammal case*[9] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the
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9 *Seshammal* v. *State of T.N.*, (1972) 2 SCC 11

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importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. a
This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. b
Religion, as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious c
activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice", Right to religion guaranteed by Articles 25 and 26 is not absolute d
or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State e
regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.

32. It would, therefore, be necessary to consider whether the Act infringes the right of the Hindus who believe in Shaiva form of worship. In *A.S. Narayana Deekshitulu case*[8] this Court pointed out that in matters of g
performing pooja, in Shiva Temple, 28 Agamas are applicable whereas in Vaishnava Temples Panchratna Agama contain elaborate rules regulating how the Temple would be constructed, whereat the principal deity is to be consecrated, whereat the other idols are to be installed and what would be the place where the worshippers would stand and worship the deity. Accordingly, in para 5, it was held that to integrate the people, all people are h
entitled to participate in all ferms of worship. The only prohibition was as to

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the entry into sanctum sanctorum in which the priest would be entitled to
a enter. The form of worship and absence of prohibition for devotees to enter the sanctum sanctorum in the Temple has already been pointed out and needs no reiteration.

33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of
b Shaiva form of worship, are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship
c of Lord Visbwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles 25 and 16 of the
d Constitution. However, they are not entitled to the protection, in particular, of clauses *(b)* and *(d)* of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution.

34. It is then contended that abolition of the right to manage the Temple
e as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in *Pannalal Bansilal Pitti v. State of A.P.*[10] was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In *Sri Sri Sri Lakshamana Yatendrulu v. State of A.P.*[11] this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we
g adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes

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10 (1996) 2 SCC 498
11 (1996) 8 SCC 705

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their rights and so is violative of Articles 25 and *26(b)* and *(d)* of the Constitution is untenable and devoid of substance.

35. Obviously, therefore, it was contended that in the constitution of the committees or the Board of Trustees the appellants are entitled to be nominated as members of the Board. The absence of any provision in the Act in that behalf is violative of their right to be members of the Board. The learned Judges of the High Court observed the need to consider their representation. Shri Javali, learned Senior Counsel, sought support in that behalf from *Pannalal case*[10] and was adopted by Shri Dhavan. The A.P. Act relates to abolition of hereditary right of the founders of the religious institution or endowment or the Board of Trustees. That Act was based upon the Report of Justice Kondiah Commission and has abolished those rights. While the validity of the provisions was upheld, the provisions were read down to indicate that all hereditary trustees need not be painted with the same brush as having committed misconduct or mismanaged the institution or endowment. In *Pannalal case*[10] this Court examined the question in detail and held that if in an individual case a hereditary trustee incurs any disqualification, an enquiry may be conducted and one of the members of the family of the founder may be appointed as a hereditary trustee along with non-hereditary trustees and as a Chairperson of the Board of Trustees so that the institution would be properly maintained and rituals and ceremonies conducted as per the custom, usage and practice. In the present case, the Act relates to the individual institution, namely, Sri Kashi Vishwanath Temple at Varanasi with particular reference to the mismanagement etc. by the selfsame persons. The Committee appointed by the Government had gone into and found the need for the legislative interference. As a consequence, it would be difficult to read down Section 6 to give any direction to nominate the members of the family or some of the appellants as members of the Board. On the other hand, sub-sections *(2)(k)* and *(2)(l)* of Section 6 deal with nomination of eminent Hindu scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and in worship, service, rituals or observance, these persons are therein, made eligible. It is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time.

36. It is seen from mythological literature referred to hereinbefore that Lord Sri Vishwanath is *swayam bhuva* (self-incarnated). The object of the Act is only to ensure efficient and effective performance of the duties of services, conduct of worship, daily or periodical, general or special rituals services, ceremonies and other religious observances in accordance with the Hindu Shastras, customs and practices by the archakas and equally to provide hygienic conditions, proper standard of cleanliness, sanitation, maintenance of morality, public order and healthy atmosphere; to provide benefit to the pilgrims and worshippers of accommodation, sanitary

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conditions therein, proper arrangement and facilities for worship,
a performance of pooja by pilgrims and worshippers. The Board, as seen, is composed of 7 officials and 8 non-officials for efficient management of the Temple. Dr Vibhuti Narain Singh was statutorily inducted by Section 6(1)(a) as a member and President of the Board. We are informed that he had disclaimed interest and abstained from taking responsibility or interest in the management of Lord Sri Visheshwara Temple and endowments thereof and
b is not taking any part therein. Since he is not a party to the present proceedings, we are not expressing any opinion in that behalf. Suffice it to state that it would be for the State Government to cause a notice issued to him seeking whether he is willing to take keen and active interest in the management and maintenance of the Temple and its endowments as member and President of the Board. In case he declines to associate himself or fails
c to take part as member and President of the Board, then it would be needless to mention that the State Government would take steps to have Section 6(1)(a) so amended as to bring into the Board another eminent non-official member and follow the procedure of election of the President of the Board. In view of the national importance of Lord Sri Visheshwara Temple and the belief and faith every Hindu has in the presiding deity Lord Shiva as well as
d in other deities installed therein, it is needless to reiterate that the legislarive object of proper, efficient, effective and sustained management of the Temple/endowments and of the Fund of the Temple, constantly requires to be effectuated and ensured. Equally, facilities for the pilgrims and worshippers for darshan, performance of pooja, rituals, ceremonies etc. require to be constantly monitored and provided by the Executive
e Committee or the Chief Executive Officer, and the staff under the supervision of the Board. Consequently, non-official members of the Board should, of necessity, be eminent persons having rich knowledge and experience in the management and administration of the affairs of the Temple and the performance of services, rituals or religious observances in
f the Temple without creating any vested interest. It would be voluntary service with religious and pious devotion, selfless service to the society as responsible member of the society without any distinction of caste, sect or sub-sect among Hindus,

37. Equally, the Vice-Chancellor under Section 6(1)(j) per force is a person having good knowledge and perceptions in the aforementioned
g disciplines. Equally, the persons to be nominated under Section 6(1)(l) must be eminent Hindu scholars well-versed in Hindu theology. The Government should always take care to ensure that the persons nominated under Section 6(1)(k) and (l) are those endowed with the above qualifications, quality devoted to and zeal for active association with proper and efficient management of the Temple, its endowments, the Fund and service to the
h pilgrims so that the object of the Act would be constantly monitored and effectively implemented. If any infraction in this behalf is committed by the

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State Government in periodical nomination and if any of them does not fulfil the requirements, that would be a matter for anybody to call in question the same and have the same corrected in an appropriate proceeding. a

38. The further contention of Shri Rajeev Dhavan is that the right of the denomination to practise their faith and manage their affairs, as guaranteed by Articles 26(b) and (d), has been eroded and they have been deprived of it. The theft of jewellery of Lord Vishwanath is an offence and a law and order problem and cannot be made a ruse or a cause to interfere with religious b rights and management of the religious properties. Interference in that behalf must be proportionate to the need, namely, preventing recurrence of thefts or mismanagement by appropriate action by law enforcing authorities. Even if there is any mismanagement of the properties belonging to the Temple it should be corrected exercising the power either under Section 92 CPC or under appropriate existing provision in the U.P. Religious Endowments Act. It would, therefore, be clear that the Act interferes with religious affairs and c management of the properties attached to the religious institution guaranteed by Articles 26(b) and (d). He further contended that even if it is found to be necessary, the Act must be read down giving the appellant the right to manage religious affairs and the administration of the properties, performance of the ceremonies by the pandas (archakas, priests) so as to preserve the sanctity of the rights of the worshippers which include, inter d alia, the right to management of the properties according to long-standing usage or custom and to receive offerings given by the pilgrims. Placement of the management of the religious affairs and the properties in the hands of a few Hindus will not satisfy the denominational right of the Hindus. He also contended that pandas are not just Shaivites but are like the e trustees/mahants. They are archakas as well. They perform pooja/ceremonies etc. which is integral to the working of the Temple as a religious institution - a spiritual and temporal fact of religion - and cannot be relegated to be a secular activity. The Act deprives them of the share of the offerings received by the archakas without compensation. As Shaivites, the Act interferes with their legitimate right to function as pandas in their denominational character and also deprive them of their right to livelihood protected under Article 21 of the Constitution as it is integral to the management of the Temple. We find no force in any of the contentions. It is already held that practice of religious faith according to tenets of Hindu religion, custom and usage stand protected by the Act. But the secular management of the religious affairs in the Temple is a secular part. The legislature has power to interfere with and g regulate proper and efficient management thereof. This aspect of the question has been elaborately considered by a three-Judge Bench to which two of us (K. Ramaswamy and G.B. Pattanaik, JJ.) were members in *Bhuri Nath v. State of J&K*[12]. Therein the controversy related to abolition of Baridars' rights to perform pooja and to own the properties and abolition

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12 (1997) 2 SCC 745 : JT (1997) 1 SC 546

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thereof by the *Jammu and Kashmir Act* of Mata Sri Vaishno Devi in Jammu.
a Since this Court elaborately discussed the reasons in support of its holding, the need to reiterate them once over is obviated.

39. The denominational status has already been held to be non-existent and Articles 25 and 26 do not protect them. Various regulatory measures devised under the Act aim only at proper and better management and administration of the Temple, endowments and all matters incidental to or
b connected with the management thereof. The Act itself has drawn a distinction between religious affairs and secular control: Chief Executive Officer acts under the control and supervision of the Board. The Board, Executive Committee and Chief Executive Officer have been entrusted with the duty to ensure performance of religious services, rituals, ceremonies and worships in accordance with the Hindu Shastras, customs and practices
c being followed in the Temple etc. The priests are given full freedom to perform daily or periodical rituals and ceremonies as are in vogue. They are responsible for proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith. Obviously, the
d legislature being aware of the power under Section 92 CPC etc. to frame the scheme, appears to have felt it expedient in the interest of the institution itself and has taken legislative measure to regulate it, by employing non obstante clause in relevant provisions in the Act. The legislature, therefore, having undoubted power has stepped in and made the Act as a permanent measure to prevent mismanagement and to improve hygienic and sanitary
e conditions prevailing in the Temple and to provide orderly facilities for worship by the pilgrims coming from every neck and corner of India and abroad as a regular stream of devotees and local worshippers. As has already been stated, in Lord Sri Vishwanath Temple the presiding deity is the idol (Linga) of Lord Shiva and all other deities are situated therein to whom due and regular performance of daily and periodical rituals and ceremonies are ensured under the Act. The Temple is one of the renowned Temples in India; Hindus constantly keep visiting the Temple throughout the day, week, month and year uninterruptedly as an unbroken chain; the legislature has stepped in to prevent misuse, mismanagement and irreligious acts, actions and conduct, to regulate proper and efficient management and administration of the Temple, performance of all religious services, ceremonies and rituals in a
g systematic and organised manner by competent persons on the religious side of performing ceremonies without any interruption. The Board assisted by the Executive Committee and Chief Executive Officer with the aid of the establishment are entrusted with the duty to effecniate the efficient management of the Temple, the endowment and proper utilisation of the Temple Fund and safe custody of the jewellery etc. and proper management
h of the properties in the light of the demarcation. The Act itself has demarcated and drawn distinction between secular part and religious parts of

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the activities in the Temple; the former *(sic* latter) have been entrusted to the competent priests well versed,in the performance of rituals and ceremonies and services according to Hindu Shastras, customs, usages and practices as applicable and prevailing in the Temple. The secular part has been entrusted to the Board, Executive Committee and Chief Executive Officer etc. appointed as per the Act. a

40. The Government kept its control only on: the secular side as the Temple- is one of the important Hindu Temples in 'the State of U.P. and in Bharat. Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the. Temple by mahant/panda/archaka is not their property. The Act has merely changed the management from'pandas to the Board, Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has, assumed the .management, This entrustment of management cannot be said to constitute acquisition of the property or extinguishment of right to property, In the llght of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage. the Temple both on temporal part and deny them the secular part of the management of the .Temple. The ratios laid in *Pannalal case*[10], *Lakshamana case*[11] and *Narayana cases* do not apply to the Act in question, b c d

41. The management has been entrusted 'tQ the Board consisting of eminent personalities specified in Section 6 of the Act. As seen, seven officers well experienced in the management and' eight non-officials fully acquainted with and experienced in the religious part of the religion are members of the Board. The ratio in *Tharamel Krishnan v. Guruvayoor Devaswom Managing Committee*[13] has no application to the facts in this case. Therein, the constitution of the Committee was found to be inconsistent with the scheme of management guaranteed by the Constitution and, therefore, it was declared to be ultra vires. On'the facts of this case, we need not go into the correctness of those decisions. But in this case, as seen, a clear demarcatidp came to be made between temporal and secular aspects of the management of the Temple. The religious management is entrusted to eminent personalities professing Hindu religion, well versed in religious and administrative facets of management and, therefore, the .Act does not infringe the rights-conferred under Articles *26(b)* and *(d)*. e g

42. It is then contended that some of the mahants are prevented from performing pooja, The appellants had not set up their case that as pandasl archakas/priests, they were prevented from performing duties in rendering rituals/ceremonieslservices etc. They staked their claims as mahants which claims we have negatived. Interim direction was given by this Court not to h

13 AIR 1978 Ker 68

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prevent them from performing pooja as devotees. Therefore, that direction is
a made absolute and they will not be prevented from performing pooja as devotees. Section 22 takes care of any service being rendered as archaka (priest). "Archaka" has been defined in Section 4(2) to mean any person who performs or conducts any worship, service, rituals in the Temple and includes a pujari, if he was doing the same on the appointed date. By its necessary implication, if any of the appellants is found to be of good
b character, possessed of the requisite qualification and experience etc. he/they may continue as archaka/priest and may be appointed by the Board. The further contention that it offends their right to livelihood guaranteed by Article 21 of the Constitution is devoid of any force. In view of the settled legal position that the legislature is empowered to enact the law regulating the secular aspect of the management of the Temple or the religious
c institution or endowment, panda/archaka (priest), by whatever name called, is not integral part of the religion and performs all the religious tenets or ceremonies in a Temple as servant of the Temple. They owe their existence to an appointment. They are servants of the Temple terminable on the ground of misconduct or unfitness to perform service, rituals/ceremonies in accordance with Hindu Shastras, customs and practices prevailing in the
d Temple handed down from, centuries. On abolition, the right of the holder of the office or post stands extinguished. It does not vest in the State but is regulated by the Act. The need to pay compensation does not arise. However, by operation of Section 22, archakas or pandas found eligible to perform religious service (pooja) etc. are regulated and entitled to be considered for appointment and to consequential salary. As regards
e qualifications of the archaka (priest)/panda/pujari or samarchaka at Lord Kashi Vishwanath Temple, there is a great deal of unanimity among Dharmashastris that the pujari at Lord Vishwanath Temple should at least have a graduation or equivalent degree with Sanskrit and subjects such as Veda, Dharmagama, Shaivagama and Purohitya. Though according to the
f scholars, it was not initially prescribed to have *Aupadhik Yogyata* (educational qualification), for the archaka, deval or the samarchaka at Sri Kashi Vishwanath Temple, he should be proficient in Vedocharana, i.e., the proper incantation, delivery and pronunciation of Vedic mantras. He should practise Trikaal Sandhya. He should be conversant with all the mantras, srutis and vandanas of Lord Sri Visheshwara. He should also be fully trained and conversant in Rudrashtadhyayi. It would appear that Dharmashastras
g recommend that the process of selection for the archakas of Kashi Vishwanath Temple should be undertaken by a committee of traditional Dharmashastris comprising of a minimum of three renowned scholars who should be empowered to select the archakas or samarchakas from the qualified candidates. As was held in *Narayana cases*, periodical training and
h continuing education would improve and augment excellence.

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43. The right to receive offerings from the pilgrims is incidental to the service rendered by the archaka (priest). Independent of service, there is no right to receive offerings from a pilgrim or the devotee. Therefore, the a regulation of rendering service and prohibition to receive offerings, though may affect the livelihood of a pre-existing archaka, it being a regulatory measure, it is sequel or consequential to the abolition. It is not a vested right as such but is a right coupled with duty to render service. When the service on customary basis is abolished, concomitantly right to receive offerings given by the pilgrims stands extinguished and prohibited and is vested in the b Deity, Lord Shiva. It is not an acquisition of their right but it has only incidental and consequential effect. Equally, it is not a vested right in the individual panda/archaka/priest dehors the service. Rights of persons in service as archakas is not affected; on the other hand, Section 22 is subject to regulation and extends the right to earn livelihood guaranteed by Article 21.

44. The further contention that the impugned Act is overboard and is c vitiated with vice of discretionary power without any supervision or guidelines and is ultra vires, is devoid of any force. The Act has carefully formulated different principles, applied the same in the matter of nomination of the members of the Board, appointment of the Executive Committee, the staff and proper and efficient management of the Temple. Even the d discretionary powers are well within the parameters laid under the Act. Even assuming that if any action is found to be in excess of the statutory conferment of the power or wanting in quality that would be an individual case which may be liable to challenge in an appropriate proceeding and for that reason the Act cannot be declared as ultra vires.

45. In view of the finding that Lord Sri Vishwanath Temple is not a e denominational temple and Hindus as such are not denomination/section/sect nor the appellants are denominational worshippers, the contention that Sections 6 and 3 cannot be read down so as to make the appellants as members of the Board under Section 6 of the Act, is without any force. Similarly, it is difficult to accede to the contention that Section 6 must be read down to include those persons who profess to be denominational Hindu Shaivites practising as members of the Board. Equally, Sections 20(1) and (2) cannot be read down so as to give wider powers to the "archaka" defined in Section 4(2). Equally Sections 22(2), *23(2)(b)*, 24(2) and 25(8) cannot be read down so as to confer functional and financial responsibilities on the archaka. Thus considered, we hold that the Act does not suffer from any invalidity except to the extent indicated in the g judgment.

46. The appeals are accordingly dismissed but without costs.

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(2014) 2 Supreme Court Cases 269

(BEFORE K.S.P. RADHAKRISHNAN AND DR A.K. SIKRI, JJ.)

a UNION OF INDIA AND OTHERS .. Appellants;

Versus

VASAVI COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS .. Respondents.

Civil Appeal No. 4702 of 2004, decided on January 7, 2014

b A. Specific Relief Act, 1963 - Ss. 34 and 5 — Suit for declaration of title and possession - Burden of proof in case of - Reiterated, burden is on plaintiff to establish its case, irrespective of whether defendants prove their case or not - In absence of establishment of its own title, the plaintiff must be non-suited even if title set up by defendants is found against them -
c Weakness of case set up by defendants cannot be a ground to grant relief to plaintiff — Evidence Act, 1872, Ss. 101 to 103

B. Property Law - Ownership and title - Entries in revenue records - Value of — Reiterated, do not confer any title - Evidence Act, 1872, S. 35

Allowing the appeal, the Supreme Court

d ***Held*** :

In a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants, would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength
e of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited. (Paras 15 to 19)

Moran Mar Basselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31; *Nagar Palika, Jind v. Jagat Singh*, (1995) 3 SCC 426, *followed*

In the instant case, the trial court as well as the High Court rather than examining that question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants' title. The defendants relied on the entries in the General Land Register (GLR) and their possession or repossession over the suit land to non-suit the plaintiffs. The court went on to examine the correctness and
f evidentiary value of the entries in the GLR in the context of the history and scope of the Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the plaintiff could prove its title over the suit property in question. (Para 20)

It is settled law that the revenue records do not confer title. Even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext. X-1 is Classer Register a
of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiffs' vendor's property These entries, as such, would not confer any title, The plaintiffs have to show, independent of those entries, that the plaintiffs' predecessors had title over the property in question and it is that property which they have purchased. (Paras 21 and 24)

Corpn. of the City of Bangalore v. *M. Papaiah,* (1989) 3 SCC 612; *Guru Amarjit Singh* v. *Rattan Chand,* (1993) 4 SCC 349; *State of H.P.* v. *Keshav Ram,* (1996) 11 SCC 257, *relied on* b

During the trial, the only document that has been produced before the court was the registered family settlement and partition deed dated 11-12-1939 of the plaintiffs' predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned. Conspicuous absence of the suit land in question in the aforesaid deed would cast doubt about the ownership and title of the plaintiffs c
over the suit land in question. No acceptable explanation has been given by the plaintiffs to explain away the conspicuous omission of the suit land in the registered family settlement and partition deed. The burden is on the plaintiffs to explain away those factors, but the plaintiffs have not succeeded. On the other hand, much emphasis has been placed on the failure on the part of the defendants to show the applicability of the GLR. Rather than finding out the weakness of the GLR, the courts below ought to have examined the soundness of the plaintiffs' d
case. In these circumstances, the judgment of the trial court decreeing the suit, which has been affirmed by the High Court, is set aside. (Paras 20 to 29)

Union of India v. *Vasavi Coop. Housing Society Ltd.,* (2002) 5 An LT 370 : (2002) 5 ALD 532, *reversed*

Union of India v. *Ibrahim Uddin,* (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362; *Union of India* v. *Kamla Verma,* (2010) 13 SCC 511 : (2010) 4 SCC (Civ) 802; *Chief Executive Officer* v. *Surendra Kumar Vakil,* (1999) 3 SCC 555; *Secunderabad Cantonment Board* v. *Mohd. Mohiuddin,* (2003) 12 SCC 315, *cited* e

C. Property Law — Ownership and title — Grant of patta — If confers title — Evidence Act, 1872 — S. 35 — Transfer of Property Act, 1882, Ss. 105 and 107

Held :

In the instant suit for declaration of title and possession, the plaintiffs took the stand that their predecessor-in-interest was the pattedar of the suit land. In a given case, the conferment of patta as such does not confer title. (Para 22)

Syndicate Bank v. *APIIC Ltd.,* (2007) 8 SCC 361; *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu,* 1991 Supp (2) SCC 228, *relied on*

V-D/52764/CV g

Advocates who appeared in this case:

Vikas Singh, P.S. Narasimha and Basava Prabhu Patil, Senior Advocates [Ms B. Sunita Rao, Ms Deepika Kalia, Sanket Kapish Seth, B.Y. Balaram Das, P. Badri Prem Nath, M. Narender Reddy, Shakil Ahmed Syed, Amitesh Kumar (for Gopal Singh), Ms Promila, Prabhakar Reddy, Sridhar Potaraju, P. Prabhakar, Gaichangpou Gangmei, A.T.M. Sampath, Ms T.S. Shanthi, Ms E.K. Sucharita, Ms Sushma Suri, Ms Anil Katiyar, Mohd. Shahid Anwar, Ms Madhusmita Bora, G.N. Reddy, h
M/s Lawyers' Knit & Co. and M.K. Garg, Advocates] for the appearing parties.

Chronological list of cases cited — *on page(s)*

The Judgment of the Court was delivered by

K.S.P. RADHAKRISHNAN, J.— Vasavi COOp. Housing Society Ltd., the first respondent herein instituted Suit No. 794 of 1988 before the City Civil Court, Hyderabad, seeking a declaration of title over land comprising 6 acres 30 guntas in Survey Nos. 60/1 and 61 of Kakaguda Village and recovery of the vacant possession from Defendants 1 to 3 and 7, the appellants herein, after removal of the structure made therein by them. The plaintiff had also sought for an injunction restraining the defendants from interfering with the abovementioned land and also for other consequential reliefs. The City Civil Court vide its judgment dated 31-7-1996 decreed the suit, as prayed for, against which the appellants preferred CCCA No. 123 of 1996 before the High Court of Andhra Pradesh at Hyderabad. The High Court also affirmed the judgment of the trial court on 6-9-2002[1], but noticed that the appellant had made large-scale construction of quarters for the Defence Accounts Department, therefore, it would be in the interest of justice that an opportunity be given to the appellants to provide alternative suitable extent of land, in lieu of the scheduled suit land, for which eight months' time was granted from the date of the judgment. Aggrieved by the same, the Union of India and others have filed the present appeal.

Facts

2. The plaintiff's case is that it had purchased the land situated in Survey Nos. 60, 61 and 62 of Kakaguda Village from pattedar S.M. Rama Reddy and his sons and others during the year 1981-1982. The suit land in question forms part of Survey Nos. 60 and 61. The suit land in question belonged to the family of B. Venkata Narasimha Reddy consisting of himself and his sons, Anna Reddy, B.V. Pulla Reddy and B.M. Rama Reddy and Anna Reddy's son, Prakash Reddy. The land in Old Survey No. 53 was allotted to Rama Reddy vide registered family settlement and partition deed dated 11-12-1939 (Ext. A-2). In the subsequent resettlement of village (Setwar of

1 *Union of India v. Vasavi Coop. Housing Society Ltd.*, (2002) 5 An LT 370 : (2002) 5 ALD 532

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1353 Fasli), the land in Survey No. 53 was renumbered as Survey Nos. 60, 61 and 62. Ever since the allotment in the family partition of the abovementioned land, vide the family partition deed dated 19-3-1939, Rama Reddy had been in exclusive possession and enjoyment and was paying land revenue. Rama Reddy's name was also mutated in the pahanies. a

3. The plaintiffs further stated that the first defendant had its AOC Centre building complex in Tirumalagiri Village adjoining the suit land Survey No. 60 of Kakaguda Village. The first defendant had also requisitioned 4 acres and 28 guntas in Survey No. 60 of Kakaguda Village in the year 1971 along with the adjoining land in Tirumalagiri for extension of AOC Centre. Further, it was stated that the sixth defendant took possession of the abovementioned land and delivered possession of the same to other defendants. The third defendant later, vide his letter dated 18-12-1979, sent a requisition for acquisition of 4.38 guntas in Survey No. 60 for the extension of AOC Centre. Notification was published in the Official Gazette dated 18-9-1980 and a declaration was made on 30-6-1981 and compensation was awarded to Rama Reddy vide award dated 26-7-1982. b c

4. The plaintiffs, as already stated, had entered into various sale deeds with Rama Reddy during the year 1981-1982 by which land measuring 13 acres and 08 guntas in Survey No. 60, 11 acres and 04 guntas in Survey No. 61 and 17 acres and 20 guntas in Survey No. 62 were purchased, that is, in all 41 acres and 32 guntas. The plaintiffs further stated that the land, which was purchased by it was vacant, but persons of the Defence Department started making some marking on the portions of the land purchased by the plaintiff, stating that a substantial portion of the land purchased by the plaintiff in Survey Nos. 60/1 and 61 belonged to the Defence Department and treated as B-4 in their records. d

5. The plaintiff then preferred an application dated 12-9-1983 to the District Collector under the A.P. Survey and Boundaries Act for demarcation of boundaries. Following that, the Deputy Director of Survey issued a notice dated 21-1-1984 calling upon the plaintiff and the third defendant to attend to the demarcation on 25-1-1984. Later, a joint survey was conducted. The third defendant stated that land to the extent of 4 acres and 35 guntas in Survey Nos. 60 and 61 corresponds to their GLR (General Land Register) No. 445 and it is their land as per the record. The Deputy Director of Survey, however, stated that lands in Survey Nos. 60 and 61 of Kakaguda Village are patta lands as per the settlement records and vacant, abutting Tirumalagiri Village boundaries to military pillars and not partly covered in Survey No. 60. The plaintiff later filed an application for issuing of a certificate as per the plan prepared by the revenue records under Section 19(1)(v) of the Urban Land Ceiling Act. The plaintiff further stated that pending that application, officers of Garrison Engineers, on the direction of the third defendant illegally occupied land measuring 2 acres and 29 guntas in Survey No. 60 and 4 acres and 01 guntas in Survey No. 61. Thus, a total extent of land 6 acres and 30 guntas was encroached upon and construction was effected despite the protest by the plaintiff. Under such circumstances, the plaintiff preferred the present suit, the details of which have already been stated earlier. e g h

443.

6. The third defendant filed a written statement stating that an area of land measuring 7 acres and 51 guntas, out of Survey Nos. 1, 60 and 61 of
a Kakaguda Village comprising GLR Survey No. 445 of the Cantonment belongs to the first defendant, which is locally managed and possessed by Defendant 3 being local representative of Defendant 1 and D-3 and is also the custodian of all defence records. Further, it was also stated that, as per GLR, the said land was classified as B-4 and placed under the management of the Defence Estates Officer. It was also stated that the suit land is part of review
b Survey Nos. 60 and 61 and the plaintiff is wrongly claiming that the said land was purchased by it. Further, it was also stated that the plaintiff is threatening to encroach upon another 6 guntas of land alleged to be situated in Survey Nos. 60/1 and 61. It has been categorically stated that as per the records maintained by the third defendant, land measuring 7 acres and 51 guntas, forming part of GLR Survey No. 445 of the Cantonment is part of Survey
c Nos. 1, 60 and 61 of Kakaguda Village. It is owned, possessed and enjoyed by Defendants 1 to 4 and 7.

7. The plaintiff, in order to establish its claim, examined PWs 1 to 4 and produced Exts. A-1 to A-85 and Exts. X-1 to X-10 besides Exts. A-86 to A-89. On behalf of the defendants, DW 1 was examined and Exts. D-1 to D-7 are produced.

d 8. The primary issue which came up for consideration before the trial court was whether the plaintiff has got ownership and possession over 6 acres and 30 guntas covered by Survey Nos. 60/1 and 61 of Kakaguda Village for which considerable reliance was placed on the settlement record (Setwar, Ext. *A-3* of 1353 Fasli). On the other hand, the defendants placed considerable reliance on GLR Survey No. 445 of the Cantonment which is
e part of Survey Nos. 1, 60 and 61 of Kakaguda Village, wherein, according to the defendants, the suit land falls.

9. PW 2, the Deputy Inspector of Survey stated that according to Setwar, land in Survey Nos. 60, 61 and 62 is patta land of Prakash Reddy and others and such survey numbers correspond to Old Survey No. 53. The evidence of PWs 3 and 4 also states that the land is covered by Old Survey No. 53 which figures in Survey Nos. 60, 61 and 62. Ext. A3 Setwar, is a settlement register prepared by the Survey Officer at the time of revised survey and settlement in the year 1358 Fasli in which the names of the predecessors-in-title of the plaintiff are shown as partedars. In other words, Ext. A-3 is the exhibit of rights and title of the plaintiff's predecessors-in-title.

10. The defendants, as already indicated, on the other hand, pleaded that the total extent of Survey No. 53 was only 33 acres and 12 guntas and if that
g be so, after sub-division the extent of sub-divided survey numbers would also remain the same, but the extent of sub-divided Survey Nos. 60, 61 and 62 was increased to 41 acres and 32 guntas in the revenue records without any notice to the defendants which according to the defendants, was fraudulently done by one Venkata Narasimha Reddy, the original landowner of Survey No.
h 53 of Kakaguda Village, who himself was the Patwari of Kakaguda Village. Further, it was the stand of the defendants that in exercise of powers under the Secunderabad and Aurangabad Cantonment Land Administration Rules,

1930, the GLR of 1933 was prepared by Captain O.M. James after making detailed enquiries from the holder of occupancy rights as well as general public. Further, it is also stated that certain lands within the villages were *a* handed over by the then Nizam to the British Government for military use. The land in question measuring 7 acres and 51 guntas in GLR 1933 at Survey No. 581 was used by the British Government as murram pits and it was classified as Class C land vested in the Cantonment Authority. GLR 1933 was rewritten in the year 1956 in view of the provisions of Rule 3 of the Cantonment Land Administration Rules, 1937 and the said Survey No. 581 *b* was rewritten as GLR Survey No. 445. Further, in view of the classification of the land, as stipulated in the Cantonment Land Administration Rules, 1937, the land pertaining to GLR Survey No. 445 was reclassified as B-4 (vacant land) reserved for future military purposes and the management was transferred from Cantonment Authority to the Defence Estate.

11. The abovementioned facts would indicate that the plaintiff traces their *c* title to the various sale deeds, Ext. A-3 Setwar of 1353 Fasli and the oral evidence of the survey officials and the defendants claim title and possession of the land on the basis of the GLR. The question that falls for consideration is whether the evidence adduced by the plaintiff is sufficient to establish the title to the land in question and to give a declaration of title and possession by the civil court. *d*

12. Shri Vikas Singh, learned Senior Counsel appearing for the appellants submitted that GLR 445 measuring an area of 7 acres and 51 guntas is classified as B-4 and placed under the management of the Defence Estate Officer. Column 7 of the GLR would indicate that the landlord is the Central Government. Out of 7 acres and 51 guntas, land admeasuring 6 acres has been handed over to the Defence Accounts Department for construction of *e* Defence staff quarters as per Survey No. 445/A, as per the records as early as in 1984. Further, it was pointed out that the appellant had already constructed approximately 300 quarters in 6 acres of land. The learned Senior Counsel submitted that since the extent of land mentioned in Old Survey No. 53 as well as in the settlement and partition deed, do not tally to the extent of land mentioned in Ext. A-3 and burden is heavy on the side of the plaintiff to show and explain as to how the registered family settlement and partition deed did not take place in the disputed land. The learned Senior Counsel also submitted that the High Court has committed an error in ignoring the GLR produced by the defendants, even though there is no burden on the defendants to establish their title in a suit filed by the plaintiff for declaration of title and possession. *g*

13. Shri P.S. Narasimha and Shri Basava Prabhu Patil, learned Senior Counsel appearing for the respondents submitted that the City Civil Court as well as the High Court have correctly appreciated and understood the legal position and correctly discarded the entries made in the GLR. The learned Senior Counsel submitted that the correctness and evidentiary value of GLR entries have to be appreciated in the context of the history of Secunderabad *h* Cantonment. Reference was made to the provisions of the Cantonment Act, 1924 and it was pointed out that the Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930 do not apply to Kakaguda Village.

14. The learned Senior Counsel have also referred to Ext. A-6, the sesala pahani for the year 1955-1958, of Kakaguda Village; Ext. A-7, the pahani patrika for the year 1971-1972; Ext. A-S, the pahani patrika for the year 1972-1973 and submitted that they would indicate that Methurama Reddy, the predecessor-in-title, was the pattedar of Survey Nos. 60 and 61 of Kakaguda Village. It was pointed out that the entries made therein have evidentiary value. The learned counsel pointed out that the settlement register prepared under the statutes and pahanies maintained under the Hyderabad Record-of-Rights in Land Regulations of 1358 Fasli have considerable evidentiary value. Further, it was also pointed out that the land in question is pot kharab land, which is not normally treated as land in Section *3(j)* of the Ceiling Act and hence may not figure in a settlement or partition deed, hence not subjected to any revenue assessment. The learned Senior Counsel submitted that the plaintiff has succeeded in establishing its title to the property in question, as was found by the City Civil Court as well as the High Court which calls for no interference by this Court under Article 136 of the Constitution.

15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabilises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Moran Mar Basselios Catholicos* v. *Thukalan Paulo Avira*[2] observed that: (AIR p. 37, para 20)

> "20. ... in a suit [for declaration] if the plaintiffs are to succeed they must do so on the strength of their own title."

18. In *Nagar Palika, Jind* v. *Jagat Singh*[3] this Court held as under: (SCC p. 427c)

> "The onus to prove title to the property in question was on the plaintiff-respondent. ... In a suit for ejectment based on title it was

2 AIR 1959 SC 31
3 (1995) 3 SCC 426

incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit." a

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (*sic* them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited. b

20. We notice that the trial court as well as the High Court rather than examining that question in depth as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants' title. The defendants relied on the entries in the GLR and their possession or repossession over the suit land to non-suit the plaintiffs. The court went on to examine the correctness and evidentiary value of the entries in the GLR in the context of the history and scope of the Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the plaintiff could prove its title over the suit property in question. The entries in the GLR, by themselves may not constitute title but the question is whether the entries made in Ext. A-3 would confer title or not on the plaintiff. c d

21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore* v. *M. Papaiah*[4] this Court held that: (SCC p. 615, para 5) e

"5. ... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In *Guru Amarjit Singh* v. *Rattan Chand*[5] this Court has held that: (SCC p. 352, para 2)

"2. ... that entries in the Jamabandi are not proof of title."

In *State of H.P.* v. *Keshav Ram*[6] this Court held that: (SCC p. 259, para 5)

"5. ... an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs." g

22. The plaintiff has also maintained the stand that their predecessor-in-interest was the pattedar of the suit land. In a given case, the conferment of patta as such does not confer title. Reference may be made to the judgments

4 (1989) 3 SCC 612 h
5 (1993) 4 SCC 349
6 (1996) 11 SCC 257

of this Court in *Syndicate Bank* v. *APIIC Ltd.*[7] and *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu*[8].

a 23. We notice that the above principle laid down by this Court was sought to be distinguished by the High Court on the ground that in none of the abovementioned judgments, is there any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are maintained. The High Court took the view that Ext. A-3 has evidentiary value since the same has b been prepared on the basis of the Hyderabad Record-of-Rights in Land Regulation, 1358 Fasli. It was also noticed that Columns 1 to 19 of the pahani patrika is nothing but record-of-rights and the entries in Columns 1 to 19 in pahani patrika shall be deemed to be entries made and maintained under the Regulations.

24. We are of the view that even if the entries in the record-of-rights carry c evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext. X-1 is Classer Register of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is d that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11-12-1939 of their predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned.

25. The learned Senior Counsel appearing for the respondents submitted that the land in question is pot kharab and since no tax is being paid, the e same would not normally be mentioned in the partition deed or settlement deed. The A.P. Survey and Settlement Manual, Chapter XIII deals with pot kharab land which is generally a non-cultivable land and if the predecessors-in-interest had ownership over this pot kharab land, the suit land, we fail to see, why there is no reference at all to the family settlement and partition deed dated 11-12-1939. Admittedly, the predecessor-in-interest of the plaintiff got this property in question through the abovementioned family settlement and partition deed. Conspicuous absence of the suit land in question in the abovementioned deed would cast doubt about the ownership and title of the plaintiffs over the suit land in question. No acceptable explanation has been given by the plaintiff to explain away the conspicuous omission of the suit land in the registered family settlement and partition g deed. The facts would also clearly indicate that in Ext. A-1, the suit land has been described in Old Survey No. 53 which was allotted to the plaintiff's predecessors-in-title. It is the common case of the parties that Survey No. 53 was sub-divided into Survey Nos. 60, 61 and 63. Admittedly, Old Survey No. 53 takes in only 33 acres and 12 guntas, then naturally, Survey Nos. 60, 61

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7 (2007) 8 SCC 361
8 1991 Supp (2) SCC 228

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and 63 cannot be more than that extent. Further, if pot kharab land is not recorded in the revenue record, it would be so even in case of sub-division of Old Survey No. 53. The only explanation was that, since the suit land being pot kharab land, it might not have been mentioned in Ext-A. *a*

26. A family settlement is based generally on the assumption that there was an antecedent title of some kind in the purchase and the arrangement acknowledges and defines what that title was. In a family settlement-cum-partition, the parties may define the shares in the joint property and may either choose to divide the property by metes and bounds or may continue to live together and enjoy the property as common. So far as this case is concerned, Ext. A-1 is totally silent as to whose share the suit land will fall and who will enjoy it. Needless to say that the burden is on the plaintiff to explain away those factors, but the plaintiff has not succeeded. On the other hand, much emphasis has been placed on the failure on the part of the defendants to show the applicability of the GLR. *b* *c*

27. The defendant maintained the stand that the entries made in the GLR, maintained under the Cantonment Land Administration Rules, 1937, in the regular course of administration of the cantonment lands, are admissible in evidence and the entries made therein will prevail over the records maintained under the various enactments, like the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli; the Hyderabad Record-of-Rights in Land Regulation, 1358 Fasli; the Hyderabad Record-of-Rights Rules, 1956, etc. In order to establish that position, reliance was placed on the judgments of this Court in *Union of India v. Ibrahim Uddin*[9], *Union of India v. Kamla Verma*[10], *Chief Executive Officer v. Surendra Kumar Vakil*[11] and *Secunderabad Cantonment Board v. Mohd. Mohiuddin*[12]. *d*

28. Both, the trial court and the High Court made a detailed exercise to find out whether the GLR Register maintained under the Cantonment Land Administration Rules, 1937 and the entries made thereunder will have more evidentiary value than the revenue records made by the Survey Department of the State Government. In our view, such an exercise was totally unnecessary. Rather than finding out the weakness of GLR, the courts ought to have examined the soundness of the plaintiff's case. We reiterate that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession. *e*

29. In such circumstances, we are of the view that the plaintiff has not succeeded in establishing his title and possession of the suit land in question. The appeal is, therefore, allowed and the judgment of the trial court, as affirmed by the High Court, is set aside. However, there will be no order as to costs. *g*

9 (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362
10 (2010) 13 SCC 511 : (2010) 4 SCC (Civ) 802
11 (1999) 3 SCC 555
12 (2003) 12 SCC 315

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(2004) 5 Supreme Court Cases 272

(BEFORE S. RAJENDRA BABU, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.)

BAJRANGLAL SHIVCHANDRAI RUIA ... Appellant; a

Versus

SHASHIKANT N. RUIA AND OTHERS ... Respondents.

Civil Appeal No. 5293 of 1993†, decided on March 23, 2004

A. Civil Procedure Code, 1908 — Or. 41 Rr. 4 & 33 and 11 — Appeal by one of the several defendants — Another appeal subsequently filed by co-defendant, dismissed for default — Effect of, on the earlier appeal — Held, would not result in defeating the other defendant's appeal — Doctrine of res judicata not applicable — Appellate court's power to make appropriate order in consonance with justice, equity and good conscience explained — Constitution of India — Art. 136 — Res judicata b

B and S were defendants in a suit filed on the original side of the High Court for recovery of possession of the suit property. The suit was dismissed by the Single Judge and the plaintiff carried an appeal to a Division Bench. In the appeal, both *B* and *S* were respondents. The Division Bench allowed the appeal. As respondents before the Division Bench both *B* and *S* were aggrieved by the decree against them. *B*, the present appellant, filed an SLP and thereafter *S* also filed an SLP. Both in the matter of filing the SLP and granting of leave, *B's* appeal was prior. The appeal filed by *S* was dismissed for default for non-removal of office objections. It was contended by the respondent-plaintiffs before the Supreme Court that inasmuch as the appeal filed by *S* was dismissed by the Supreme Court for non-prosecution, the judgment of the Division Bench of the High Court would operate as res judicata. It was urged that the judgment and decree had become final against *B* and all other defendants in the original suit. c d

It was further contended that even otherwise the appeal should be dismissed as it may result in conflicting decrees. That is, if the present appeal were allowed, resulting in setting aside the decree or making any modification thereof, it would result in the anomalous situation of there being conflicting decrees between the same parties, arising out of the same cause of action. e

Held:

It is not possible to accept that the principle of res judicata will apply to bar the appeal. An order dismissing subsequent appeal for default cannot operate as res judicata in respect of an earlier appeal. Neither Section 11 CPC, nor any principle derivable therefrom, would bar the appeal as contended by the respondents. (Paras 41 and 42)

The second contention has also no merit. Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them and only one of them challenges the decree by an appeal in his own right, the fact that the other defendants do not choose to challenge the decree or that they have lost their right to challenge the decree, cannot render the appeal of the appealing defendant infructuous on this ground. In fact, Rule 4 and Rule 33 of Order 41 CPC are enacted to deal with such a situation. (Para 44) g

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† From the Judgment and Order dated 21-5-4-1993 of the Bombay High Court in A. No. 213 of 1989

State of Punjab v. Nathu Ram, AIR 1962 SC 89 : (1962) 2 SCR 636, *applied*

a *Narhari* v. *Shanker*, AIR 1953 SC 419 : 1950 SCR 754; *Karam Singh Sobti* v. *Pratap Chand*, AIR 1964 SC 1305: (1964) 4 SCR 647; *Sri Chand* v. *Jagdish Pershad Kishan Chand*, AIR 1966 SC 1427 : (1966) 3 SCR 451; *Ratan Lal Shah* v. *Lalmandas Chhadammalal*, (1969) 2 SCC 70; *Mahabir Prasad* v. *Jage Ram*, (1971) 1 SCC 265; *Govindan* v. *Subramaniam*, (2000) 9 SCC 510; *Harihar Prasad Singh* v. *Balmiki Prasad Singh*, (1975) 1 SCC 212; *Banarsi* v. *Ram Phal*, (2003) 9 SCC 606; *Chandramohan Ramchandra Patil* v. *Bapu Kayappa Patti*, (2003) 3 SCC 552; *K. Muthuswami Gounder* v. *N. Palaniappa Gounder*, (1998) 7 SCC 327; *Panna Lal* v. *State of Bombay*, AIR 1963 SC 1516 : (1964) 1 SCR 980; *Managing Director* v. *K. Ramachandra Naidu*, (1994) 6 SCC 339, *relied on*

b *Badri Narayan Singh* v. *Kamdeo Prasad Singh*, AIR 1962 SC 338 : (1962) 3 SCR 759; *Sheodan Singh* v. *Daryao Kunwar*, AIR 1966 SC 1332; *Premier Tyres Ltd.* v. *Kerala SRTC*, 1993 Supp (2) SCC 146, *distinguished*

Nirmala Bala Ghose v. *Balai Chand Ghose*, AIR 1965 SC 1874 : (1965) 3 SCR 550, *explained*

c *Lachhmi* v. *Bhulli*, AIR 1927 Lah 289 : ILR 8 Lah 384 (PS); *Rameshwar Prasad* v. *Shambehari Lal Jagannath*, AIR 1963 SC 1901 : (1964) 3 SCR 549, *referred to*

Mahant Dhangir v. *Madan Mohan*, 1987 Supp SCC 528, *cited*

In this case, the appeal preferred by *B* cannot be dismissed, *S* is fifth respondent before the Supreme Court, who has been served, but has chosen to remain absent. The fact that S's own appeal failed for non-compliance with the office objections cannot have the consequence of defeating the appeal of the present appellant *B*. Order 41 Rule 4 read with Rule 33 invests the Supreme

d Court with sufficient power to entertain the appeal of *B* and to make any appropriate order thereupon consonant with justice, equity and good conscience. (Para 67)

B. Civil Procedure Code, 1908 - Or. 20 R. 12 - Suit for ejection of defendant and possession based on title - Need for plaintiff to successfully establish title for success of suit — Challenge to title of plaintiff by way of

e defence-Maintainability of -Jurisdiction of court concerned to entertain such question — If title claimed by plaintiff is found to be null and void, held, defendant need not challenge it by way of a substantive suit — Defendant could always setup nullity of title as a defence in any proceeding taken against it based on such title - Burden lay on the plaintiff to prove title and on failing to do so, suit would fail notwithstanding that the defendant in possession may or may not have title to the property - In reply to the facts alleged in the plaint, it was open to defendant to contend to the contrary -, Plaintiff's title derived from certificate of auction-sale issued in its favour by Bombay Municipal Corporation — In the suit filed before the original side of the High Court, defendant (appellant) raised a comprehensive defence and sufficiently pleaded in its written statement that the sale was a nullity — Thereupon it was open to Single Judge of High Court to go into the question and decide if plaintiff had good title or not -

g After recording evidence of both sides, Single Judge found that certificate issued by BMC was invalid and hence liable to be declared null and void for contravening provisions of S. 206 of BMC Act, and Regulations made thereunder — Held, in such circumstances, Division Bench of High Court erred in interfering with the finding of Single Judge and holding that the auction sale could not be challenged by way of defence in the suit filed by

h the plaintiff for recovery of possession - Specific Relief Act, 1963 - Ss. 5 and 34 - Evidence Act, 1872, Ss. 101 and 102 - Burden of proof

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c. Civil Procedure Code, 1908 - S. 79 and Or. 27 R. 1 — Suits by or against Government — *Mohumdee Begum case*, (1868) 10 SuthWR 25 (PC), clarified that though as a rule an act of State can be challenged in a duly a constituted suit, if a third party claims title from such act of State, nullity of such title can be pleaded as a defence

Held:

If the title claimed by the plaintiff was a nullity and wholly void, there was no need for the defendant to challenge it by way of a substantive suit. The defendant could always set up nullity of title as a defence in any proceeding b taken against him based upon such title. If, in fact, the sale was a nullity, it was *non est* in the eye of the law and all that the defendant had to do was point this out. (Para 73)

Ajudh Raj v. Moti, (1991) 3 SCC 136; *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573, *relied on*

Abdullamiyan v. Govt. of Bombay, (1942) 44 Bom LR 577 : AIR 1942 Bom 257, *approved*

As a rule, it may be that an act of the State can be questioned in a municipal c court by way of a duly constituted suit. However, if another person claims a title from a so-called act of the State, there is no reason why the defendant cannot plead nullity of title. (Para 77)

Nawab Umjad Ally Khan v. Mohumdee Begum, (1868) 10 Suth WR 25 (PC), *clarified*

Here, the plaintiff's suit is for ejection of the defendant and for possession of the suit property. She must succeed or fail on the title that she establishes. If she d cannot succeed in proving her title, the suit must fail notwithstanding that the defendant in possession may or may not have title to the property. (Para 75)

Brahma Nand Puri v. Neki Puri, AIR 1965 SC 1506 : (1965) 2 SCR 233, *relied on*

The defence raised by the defendant-appellant in this case was quite comprehensive. He had challenged the plaintiff's title on the basis of the alleged auction sale as a nullity on the grounds of ultra vires, lack of jurisdiction, non- e service of demand notice on all heirs/co-owners, breach of mandatory provisions of law and also perpetration of fraud, the particulars of which were reiterated and adopted from the suit of the other defendant as well as that defendant's written statement in the plaintiff's suit. Thus the appellant had sufficiently pleaded in his written statement the defects in the title of the plaintiff and it was, therefore, open for the Single Judge to go into this question and decide if the plaintiff had good title or not. The Division Bench, therefore, erred in interfering with the finding of the Single Judge on this ground. On the facts, the Single Judge had elaborately discussed the evidence and come to a finding with which it is difficult to disagree. It is not possible to share the view of the Division Bench that the defects in title pleaded and found by the Single Judge were mere irregularities in conducting the sale which could not have been challenged collaterally. The finding of the Single Judge that the plaintiff's title was invalid g and *non est* for contravention of the provisions of Section 206 of the BMC Act and the Regulations made thereunder, is fully justified and brooked no interference in appeal. (Paras 79 and 76)

Narahari Mohanti v. Ghanashyam Bal, AIR 1963 Ori 186; *Chenihiperumal Pillai v. P.M. Devasahayam*, AIR 1956 Trav-Co 181 : ILR 1956 Trav-Co 62 (FB); *Kishorsingh Anarsingh v. Tej Singh Dhyansingh*, AIR 1967 MP 120, *distinguished*

Mohan Wahi v. CIT, (2001) 4 SCC 362, *relied on* h

Mahadev Narayan Datar v. Sadashiv Keshev Limaye, AIR 1921 Bom 257 : ILR 45 Bom 45; *Vyankatesh Dhonddev Deshpande v. Kusum Dattatraya Kulkarni,* AIR 1976 Bom 190 : 1976 Mah LJ 373, *approved*

a The finding of the Division Bench in the impugned judgment that the action of Bombay Municipal Corporation in holding the auction-sale could not have been challenged by the defendant-appellant after withdrawal of the suit of the other defendant and that the right to challenge the auction-sale would not subsist in the defendant-appellant by way of a defence in the suit filed by the plaintiff auction-purchaser for recovery of possession, is erroneous. The view of the b Division Bench that as the defendant-appellant could not have instituted a suit for challenging the auction-sale and the sale certificate, equally, he could not raise a defence to the suit and plead that the auction-sale was invalid is also wholly erroneous. (Paras 86 and 87)

D. Limitation — Limitation Act, 1963 — S. 3 — Defence, plea of limitation by — Whether attracts bar of limitation — Held, though period c of limitation prescribed in Limitation Act precludes a plaintiff from bringing a suit which is barred by limitation, there is no such limitation so far as any defence is concerned (Para 71)

E. Municipalities — Bombay Municipal Corporation Act, 1888 (3 of 1888) — S. 206(6) — Sale of property — Legality — Sale certificate issued in the name of plaintiff — But no record in Corporation's books that the d plaintiff was registered as highest bidder nor as a purchaser in auction-sale — Record showing one J as the highest bidder — No explanation given for this discrepancy ... J not claiming to be an agent of the plaintiff — Only in the plaint plaintiff for the first time claimed that he had paid the entire price of the auction-sale but that averment not substantiated by any evidence — Division Bench of High Court taking view that as J, the highest bidder, was in the employment of plaintiff's husband, the sale certificate could be in the e name of the plaintiff and it conveyed good title — Held, reasoning of Division Bench was faulty — Sale being in violation of S. 206 was illegal (Para 97)

F. Municipalities — Bombay Municipal Corporation Act, 1888 (3 of 1888) — S. 206 — Sale of property — Mere issuance of certificate of sale in the name of a person (plaintiff) is not conclusive of title of that person — There is no provision in the Act or Regulations made thereunder for conclusiveness of the sale certificate — Even assuming that such a conclusiveness or presumption of sale is there, it can only arise if it is shown that the certificate is issued strictly in accordance with Section 206 and the Regulations — Held on facts, sale certificate did not convey good title to plaintiff (Para 98)

g R-M/AZ/29817/C

Advocates who appeared in this case:

Sunil Gupta, Senior Advocate (Sunil Dogra and Ms Sayali Pathak, Advocates, for Suresh A. Shroff & Co., Advocates, with him) for the Appellant;

Bhaskar P. Gupta, Senior Advocate (Aseem Mehrotra, Joseph Rana, Ms Shruti Chaudhary, Sanjay Khaitan and Suman J. Khaitan, Advocates, with him) for the h Respondents.

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9. (1991) 3 SCC 136, *Ajudh Raj v. Moti* 295b
10. 1987 Supp SCC 528, *Mahant Dhangir v. Madan Mohan* 290c
11. AIR 1976 Bom 190: 1976 Mah LJ 373, *Vyankatesh Dhonddev Deshpande v. Kusum Dattatraya Kulkarni* 298a
12. (1975) 1 SCC 212, *Harihar Prasad Singh v. Balmiki Prasad Singh* 288a, 289b-c
13. (1971) 1 SCC 265, *Mahabir Prasad v. Jage Ram* 287a-b, 287d, 288a-b c
14. (1969) 2 SCC 70, *Ratan Lal Shah v. Lalmandas Chhadammalal* 286d-e, 287e, 288a-b
15. AIR 1967 MP 120, *Kishorsingh Anarsingh v. Tej Singh Dhyansingh* 296h
16. AIR 1966 SC 1427: (1966) 3 SCR 451, *Sri Chand v. Jagdish Pershad Kishan Chand* 286a
17. AIR 1966 SC 1332, *Sheodan Singh v. Daryao Kunwar* 291e-f, 291e
18. AIR 1965 SC 1874: (1965) 3 SCR 550, *Nirmala Bala Ghose v. Balai Chand Ghose* 289b-c, 291f, 292a-b d
19. AIR 1965 SC 1506: (1965) 2 SCR 233, *Brahma Nand Puri v. Neki Puri* 295e-f
20. AIR 1964 SC 1305: (1964) 4 SCR 647, *Karam Singh Sobti v. Pratap Chand* 285e-f, 286g-h, 288a-b
21. AIR 1963 SC 1901: (1964) 3 SCR 549, *Rameshwar Prasad v. Shambehari Lal Jagannath* 287d-e, 288a-b e
22. AIR 1963 SC 1516: (1964) 1 SCR 980, *Panna Lal v. State of Bombay* 289b-c, 290e
23. AIR 1963 Ori 186, *Naraharl Mohanti v. Ghanashyam Bal* 296g-h
24. AIR 1962 SC 338: (1962) 3 SCR 759, *Badri Narayan Singh v. Kamdeo Prasad Singh* 290g
25. AIR 1962 SC 89: (1962) 2 SCR 636, *State of Punjab v. Naihu Ram* 288a-b, 292b-c
26. AIR 1956 Trav Co 181: ILR 1956 Trav Co 62 (FB), *Chenthiperumal Pillai v. D.M. Devasahayam* 296h
27. AIR 1953 SC 419: 1950 SCR 754, *Narnarl v. Shanker* 285c, 290g, 291d, 291d-e
28. (1942) 44 Bom LR 577: AIR 1942 Bom 257, *Abdulamiyan v. Govt. of Bombay*
29. AIR 1927 Lah 289; ILR 8 Lah 384 (FB), *Lachhmi v. Bhulli*
30. AIR 1921 Bom 257: ILR 45 Bom 45, *Mahadev Narayan Datar v. Sadashiv Keshev Limaye* 297d g
31. (1868) 10 Suth WR 25 (PC), *Nawab Umjad Ally Khan v. Mohumdee Begum* 296a

The Judgment of the Court was delivered by

B.N. SRIKRISHNA, J.– This appeal is directed against the judgment of the Division Bench of the Bombay High Court granting a decree for the relief of possession of the suit property together with a direction for inquiry into mesne profits by reversing the judgment of the Single Judge who had dismissed the original suit. h

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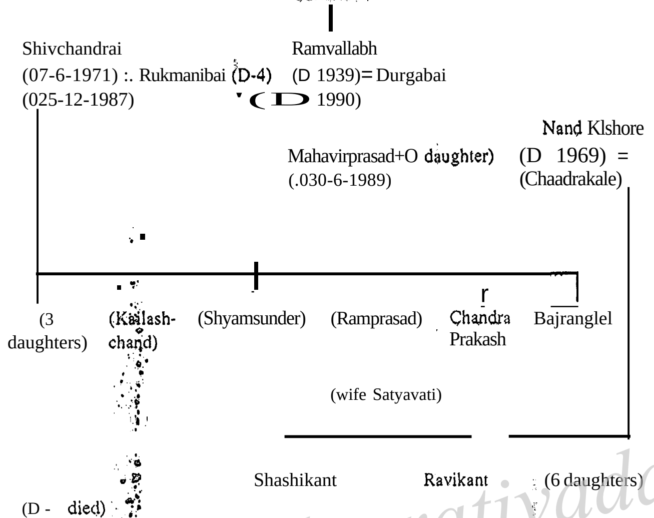
Facts

2. Two brothers, Shivchandrai and Ramvallabh purchased a plot of land
a measuring 1063 sq metres at Malviya Road, Ville Parle, Bombay in the year 1928. Haribux was the third brother, whose son was Nand Kishore and who in turn had a son by name Shashikant.

3. The family tree of the contending parties is as under:

GENEALOGY



4. In 1931, Shivchandrai and Ramvallabh constructed a building known as "Hari Niwas" on the said land. The building comprised a ground floor, two upper floors and several separate outhouses, sheds; and garages. In all, there were five separate structures having 5 different municipal ward and street numbers, namely, Nos. 781(1), (2), (3), (4) and (5). Bombay Municipal Corporation (hereinafter "BMC") used to issue separate property tax bills in respect of these five demarcated properties. The families of Shivchandrai and Ramvallabh were occupying Hari Niwas as their family house. Shivchandrai's family expanded in due course of time and consisted of his
g wife Rukmanibai, three daughters and six sons, Ramvallabh's family consisted of his wife Durgabai, one daughter and his son Mahavirprasad. Satyavati, the plaintiff in the suit, which has given rise to the present appeal, is the wife of Ramprasad who is one of the sons of Shivchandrai.

5. Sometime in 1933, Bajranglal, the appellant, was born to Shivchandrai in Hari Niwas itself. In 1939 Ramvallabh died leaving behind his wife
h Durgabai, one daughter and son Mahavirprasad. In 1962, one of the six sons of Shivchandrai, namely, Chandra Prakash, shifted his residence to Bandra

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and has been living separately. Shashikant with his father Nand Kishore moved out to Madras and settled there.

6. In 1964, Shivchandrai also moved over to Madras to settle with his nephew Nand Kishore. Until his departure to Madras, Shivchandrai was carrying on a business in partnership with Mahavirprasad in a firm known as "Gorakh Ram Golak Chand" in Bombay. The office of the said firm was situated at Choksi Chamber, Zaveri Bazar, Bombay. The partnership employed an employee by name Janardnan Dhuri, The property tax in respect of Hari Niwas building used to be paid by the said partnership firm,

7. After Shivchandrai's going away to Madras, Mahavuprasad and Ramprasad started attending to the management of the property and payment of municipal taxes upon receipt of the municipal bills. Janardhan Dhuri being a long-standing employee of the finn used to assist them in this work and this was being done under arrangement with Shivchandrai,

8. In 1964 Katlashcnand also shifted his residence to Juhu, Ville Parle, Bombay, In 1965, Shyamsunder shifted his residence to Ajmal Road, Bombay, In 1968 Mahavirprasad shifted his residence to Jethwa Niwas, Ville Parle, Bombay. In 1969, Ramprasad shifted his residence to Juhu Scheme, Ville Parle, Bonlbay.

9. Despite shifting of his residence, Ramprasad continued to be in possession of the portion of the ground floor of Hari Niwas and Bejranglal remained in possession of the second floor and contlnued to live there. Shashikant, Mahavtrprasad, Rukmanibai and two other sons of Shivchandral continued to retain possession of different portions of Hari Niwas,

10. On 22-11-1968, the Commissioner of BMC issued a warrant of attachment in the names of Shlvchandrai and Ramvallabh for recovery Of a sum of Rs 5972.52 (total of 5 bills issued in respect of structures of Hari Niwas) as property tax for the period from 1-4-1963 to 31-3-1968. On 23-12-1968, a sum of Rs 2250 was paid towards property tax and some dispute was raised with regard to the balance. On 14-7-1969, the Municipal Corporation decided to auction the suit property and fixed a reserve bid for the auction-sale at Rs 30,600. It was by this time revealed that one of the persons in whose name the warrant of attachment has been issued; namely, Ramvallabh, had already died. Hence, the warrant of attachment was cancelled on 11-9-1969.

11. In 1969-70, Janardhan Dhuri joined the sole proprietorship concern of Ramprasad with trading name "Gorakh Ram Haribux", whlch had its office on the ground floor of Hari Niwas. As an employee of this concern he continued to attend to the job of payment of municipal taxes in respect Of Hari Niwas, The municipal bills were received either by Janardhan Dhuri or Mahavirprasad.

12. On 4-10-1969, a warrant of attachment in the names of Shivchandrai and Mahavirprasad was issued for realisation of a sum of Rs 5996.29 towards municipal taxes for the period 1-10-1965 to 31-3-1969. However, on this occaslon no reserve bld was fixed by the Municipal Commissloner.

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13. On 17-11-1969, the orders pursuant to the warrant of attachment were sent by the officers concerned of BMC to Mahavirprasad at his address a at Jethwa Niwas, Bombay and also to Shivchandrai at his address both at Madras and Zaveri Bazar, Bombay.

14. On 29-12-1969/30-12-1969 Shivchandrai and Mahavirprasad respectively replied to BMC objecting to the sums demanded on the ground that their appeals with regard to increase in rateable value to which they had objected were pending. On 6-1-1970, BMC informed Mahavirprasad that the b auction-sale would be held on 12-1-1970 if the dues demanded were not paid before 10-1-1970. On 12-1-1970, Shivchandrai and Mahavirprasad paid a sum of Rs 4073.64 as against Rs 5996.29 demanded under the warrant of attachment and agreed to pay the balance later. Consequently, the proposed auction-sale was cancelled.

15. On 25-6-1970, a letter of demand was sent by BMC only in the name c of Shivchandrai demanding balance amount due under the warrant of attachment (Rs 5996.29 - 4073.64 = Rs 1922.65) and new taxes for the period 1-4-1969 to 31-9-1970 equal to Rs 2593.56, in all making a total of Rs 4516.21. No costs were specified, quantified or demanded by this letter-cum-bill.

16. On 3-8-1970, both Shivchandrai and Mahavirprasad sent a reminder d to BMC to send a final statement of account to enable them to make the necessary payment of taxes and requested that the property not be auctioned in the meantime. On 4-8-1970, the auction-sale, which was scheduled to be held, was adjourned *sine die* on the ground that there was no bidder and a new date of auction was fixed as 26-11-1970.

17. On 19-10-1970, BMC replied to letters dated 3-8-1970 of e Shivchandrai and Mahavirprasad reiterating the old dues under the warrant of attachment as well as the new taxes due, without specifying any amount of costs or giving the final statement of account as demanded by them in their letters. By this letter, BMC threatened to sell the property in exercise of its power under Section 206 of the BMC Act.

18. On 26-11-1970, Shivchandrai and Mahavirprasad paid a *lump sum* amount of Rs 3500 towards the dues. Although the balance of taxes due under the earlier warrant of attachment was only Rs 1922.65 (Rs 5996.29 - 4073.64), an additional amount of Rs 1577.35 was paid by them. Hence, the auction-sale fixed was cancelled.

19. Shivchandrai died in Madras on 7-6-1971. On 9-6-1971 BMC addressed a letter in the sole name of Shivchandrai (who had already died on g 7-6-1971) without addressing any letter to Mahavirprasad or any other person on his behalf. In this letter the Corporation adjusted the amount of Rs 7573.64 (Rs 4073.64 + 3500) paid as against the amount of Rs 5996.29 demanded under the warrant of attachment. For the first time, the Corporation specified the costs at Rs 3299.40, an amount of Rs 1722.05 towards costs of proceedings and further specified that an amount of fresh tax h of Rs 3470.08 for the period 1-4-1969 to 31-3-1971 was due, though it did not form part of the warrant of attachment. In this fashion, the Corporation,

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for the first time, worked out the dues of Rs 12,765.77 and demanded an amount of Rs 5192 (Rs 12,765.77 - 7573.(4) as still due and payable. Since the notice of the Municipal Corporation dated 9-6-1971 had been addressed in the name of a dead person, it was returned unserved. a

20. On 8-9-1971, the officer concerned of BMC sent a proposal for sanction of auction-sale of the suit property towards the demanded sum of Rs 5192.13 as total dues. This proposal was forwarded to the Municipal Commissioner, though at this time no reserve bid was fixed. On 30-9-1971 and 2-10-1971 the officials concerned of the Municipal Corporation were b directed by the Assistant Assessor and Collector to give notice of the auction-sale by pasting notices on the suit premises in the presence of two independent witnesses, preferably tenants. The Municipal Corporation claims to have pasted such notices without the presence of any independent witness as directed.

21. On 5-10-1971, Mahavirprasad learned about the auction-sale and c wrote to the Municipal Corporation that as Shivchandrai had died on 7-6-1971, the demand notice should be addressed to all the co-owners of the property and in the meantime the auction-sale should not be held. This letter was received by the Superintendent, 'K' Ward, S.D. Madlwala, and the Assessment Department of the Municipal Corporation on 6-10-1971 and 7-10-1971 respectively. d

22. On 12-7-1972, Bajranglal, Mahavirprasad and others received a telegram from Satyavati (the plaintiff) for immediate handing over of possession of the suit property to her alleging that she had become sole owner of the property at the auction-sale held by the Municipal Corporation on 7-10-1971. On 15-7-1972, Mahavirprasad sent a legal notice to the Municipal Corporation and to Satyavati denying that she had become sole e owner of the property in question.

23. On 15-7-1972, Suit No. 118 of 1973 was filed by Satyavati for delivery of the possession of property. The parties to the suit were as under:

Plaintiff:		Smt Satyavati R. Ruia
Defendants:	1	Shashikant Nand Kishore Ruia
	2	Mahavirprasad Ramvallabh Ruia
	3	Kailashchand Shivchandrai Ruia
	4	Smt Rukmanibai Shivchandrai Ruia
	5	Shyamsunder Shivchandrai Ruia
	6	Ramprasad Shivchandrai Ruia
	7	Chandra Prakash Shivchandrai Ruia
	8	Bajranglal Shivchandrai Ruia

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24. In this suit it was claimed that Ramprasad (D-6) had already handed over possession to the plaintiff and it was alleged that he was the only defendant continuing in actual occupation of Hari Niwas while the possession of all other defendants was said to be merely formal. h

25. This suit was initially filed in a City Civil Court, but was returned by that court due to undervaluation and refiled on the original side of the
a Bombay High Court.

26. On 2-10-1972 Suit No. 218 of 1973 was filed on the original side of the Bombay High Court by Mahavirprasad and his mother Durgabai challenging: (1) the auction-sale alleged to have taken place on 7-10-1971, and (2) the certificate of sale dated 14-1-1972 alleged to have been issued therein to Smt Satyavati, and seeking a declaration that Smt Satyavati was not
b the sole owner of suit property but that Mahavirprasad and Durgabai were also co-owner of the suit property (i.e. Hari Niwas).

27. On 4-9-1973, Mahavirprasad filed his written statement contesting Suit No. 118 of 1973 on various grounds challenging the validity of the sale and the plaintiff's title. He also detailed several particulars of fraud vitiating the sale and pleaded that the suit of the plaintiff Satyavati was bad for non-
c joinder of the Municipal Corporation and prayed for dismissal thereof. On 18-9-1973 Bajranglal (D-8) Shyamsunder (D-5) and Kailashchand (D-3) filed their respective individual written statements contesting Suit No. 118 of 1973 filed by the plaintiff Satyavati. Bajranglal, in particular, defended the suit by contending that the sale was a nullity, as it was *ultra vires* the legal provisions and on the ground of lack of jurisdiction, non-service of demand
d notice on all the heirs and co-owners, irregularities and breach of law and fraud. Referring to the pleas and particulars of fraud stated by Mahavirprasad in his Suit No. 218 of 1973, as well as Mahavirprasad's written statement filed in Suit No. 118 of 1973, Bajranglal adopted the pleas raised therein. He also contended that the Bombay Municipal Corporation was a necessary party and the suit was bad for non-joinder of a necessary party.

28. Sometime in 1973-74, Ramprasad closed his office which was
e situated in Hari Niwas. Bajranglal continued to have physical occupation of the suit property ever since then and continues to remain in occupation till date.

29. On 15-7-1975, Satyavati filed a written statement contesting Mahavirprasad's Suit No. 218 of 1973. On 24-7-1984, BMC filed its written statement contesting Mahavirprasad's Suit No. 218 of 1973. On 9-9-1985, Bajranglal filed his written statement supporting fully Mahavirprasad's Suit No. 218 of 1973 challenging the sale of suit property to Satyavati.

30. On 9-9-1985 Mahavirprasad adduced oral evidence in his Suit No. 218 of 1973 before the learned Single Judge. His cross-examination, however, remained incomplete and was postponed to the next day. On 10-9-1985, Mahavirprasad suddenly moved the learned Single Judge (Pendse, J.)
g for withdrawal of his suit and this prayer was allowed by the learned Single Judge. Counsel for the defendant Bajranglal made a request that he be transposed as plaintiff in Suit No. 218 of 1973 to enable him to prosecute the suit, which had originally been filed by Mahavirprasad. This request was, however, rejected and the permission sought was declined by the learned Single Judge. In his order the learned Single Judge held that this request was
h hit by laches and that a substantial right had accrued to the plaintiff on account of the property in auction, which could not be defeated by belated

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transposition of Bajranglal in the place of original plaintiff Mahavirprasad in Suit No. 118 of 1973. Bajranglal filed Appeal No. 842 of 1985 challenging the order of Pendse, J. declining the request for transposition. This appeal a was dismissed on 21-1-1987 by a Division Bench of the High Court holding that Bajranglal's right to institute a suit was an independent separate remedy for claiming the same relief against the plaintiff as had been claimed in Suit No. 218 of 1973, and that, since this right was lost, Bajranglal could not be permitted to get over the laches and to subvert the period of limitation by allowing his application for transposition in Mahavirprasad's Suit No. 218 of b 1973.

31. On 25-12-1987, Rukmanibai (D-4) died while she was living in Hari Niwas.

32. On 28-6-1988, during the trial of Suit No. 118 of 1973, the learned Single Judge (Suresh, J.) proposed to implead BMC as a party to the suit. This proposal was vehemently opposed by the plaintiff and due to the c opposition the learned Single Judge did not press the proposal. The learned Single Judge, however, permitted the parties to lead evidence with regard to the validity of the sale made by BMC. The counsel for the plaintiff sought and was granted adjournment for putting his client Satyavati in the box as witness for examination on 29-6-1988. However, on that date the plaintiff did not appear as witness and adjournment was sought on medical grounds. d Despite two more adjournments granted, the plaintiff did not appear as a witness, nor was any other evidence led by the plaintiff to support the sale. On 14-7-1988 the learned Single Judge directed BMC to produce its records with regard to the auction-sale of Hari Niwas. On 28-7-1988 counsel for the plaintiff stated that he did not desire to examine the plaintiff as a witness. On 3-8-1988 the learned Single Judge (Suresh, J.) ordered the Municipal e Corporation to produce the complete records connected with the sale. On 9-8-1988, in response to a witness summons issued on behalf of Bajranglal, one S.D. Madiwala, Superintendent, 'K' Ward appeared as a witness (DW 2) and stated in his deposition that he had brought the entire records and that there was no other file connected with the sale of Hari Niwas. On 25-8-1988, the learned Single Judge (Suresh, J.) delivered the judgment dismissing Suit No. 118 of 1973 recording detailed findings that the sale and alleged title claimed by the plaintiff were illegal, null and void and *non est* on various grounds. The plaintiff Satyavati filed Appeal No. 213 of 1988 against the judgment on 5-10-1988.

33. On 21-1-1991, this Court dismissed Special Leave Petition No. 1154 of 1988 filed by Bajranglal, challenging the order of the Division Bench of g the High Court in the matter of transposition in the plaintiff's Suit No. 218 of 1973.

34. On 2-4-1993/5-4-1993, a Division Bench of the High Court headed by Pendse, J. allowed the plaintiff's Appeal No. 213 of 1988, set aside the judgment of Suresh, J. and decreed the plaintiff's suit for possession against Bajranglal and others. The application for speaking to the minutes by h Bajranglal was not entertained by the Division Bench.

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Bajranglal Shivchandrai Ruia			D-8
Shashikant Nand Kishore Ruia	R-1	R-I	
Mahavirprasad Ramvallabh Ruia		R-2	0.2
Kailashchand Shivchandrai Ruia	R-3	R-3	
Soot Rukmanibai Shivchandral Ruia	R-4	R-4	D-4
Shyamsunder Shivchandrai Ruia	R-5	R-5	D-5
Ramprasad Shivchandrai Ruia	R-6	R-6	
Chandra Prakash Shlvchandrai Ruia	R-7	R-7	
Soot Satyavati R. Ruia	.R-8	Appellant	Plalntiff

Maintainability of the present appeal

(A) Res judicata

39. At the outset, the respondents contend that the present appeal is not maintainable and that, if maintainable, propriety demands that it should be dismissed as otherwise it may give rise to conflicting decrees in the same cause of action.

40. The present appeal is only at the instance of the sole appellant Bajranglal, who was Defendant 8 in the original suit filed by Respondent 8 (original plaintiff). The decree made by the High Court qua other respondents (original defendants) has attained finality since Defendants 1-4, 6 and 7 in

that suit did not challenge the judgment dated 2-4-1993/5-4-1993 made by the Division Bench of the Bombay High Court and the consequent decree, Original Defendants 1, 2 and 7 did not participate in the proceedings before the High Court and the suit was contested only by Defendant 5 Shyamsunder and Defendant 8 Bajranglal (the present appellant). The respondents contend that inasmuch as the appeal filed by Shyamsunder, Original Defendant 5, being CA No. 7490 of 1993 was dismissed by this Court on 15-1-2001 for non-prosecution, the judgment of the Division Bench of the Bombay High Court operates as res judicata. It is urged that the judgment and decree has become final as against Bajranglal and all other defendants in the original suit. Even otherwise, it is urged that the present appeal must be dismissed as otherwise it may give rise to conflicting decrees.

41. It is not possible to accept that the principle of res judicata will apply to bar the appeal. Section 11 CPC would bar the court from trying any suit or issue in which the matter "directly and substantially in issue" between the same parties or between the parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or suit in which such issue has been subsequently raised, has been "heard and finally decided by such court". In the present case, Bajranglal and Shyamsunder were defendants in Original Suit No. 118 of 1973. The suit was dismissed and the plaintiff Satyavati carried an appeal to the Division Bench. In the appeal, both Bajranglal and Shyamsunder were respondents. The Division Bench, reversed the Single Judge's judgment and decreed the suit by its judgment. As the respondents in the appeal before the Division Bench both Bajranglal and Shyamsunder were aggrieved by the decree against them, The present appellant Bajranglal filed SLP No. 8425 of 1993 on 27-5-1993, while Shyamsunder filed his appeal SLP No. 18492 of 1993 on 17-12-1993.

42. Leave was granted in Bajranglal's appeal on 4-10-1993 while leave was granted in Shyamsunder's case on 17-12-1993. Subsequently, Bajranglal's appeal was numbered as Civil Appeal No. 5293 while Shyamsunder's appeal was numbered as Civil Appeal No. 7490 of 1993. Shyamsunder's appeal was dismissed for default for non-removal of office objections on 15-1-2001. Thus, it is obvious that both in the matter of filing the SLP and granting of leave, Bajranglal's appeal was earlier and Shyamsunder's was later in time. In these circumstances, we are unable to accept the contention that an order dismissing a subsequent appeal for default can operate as res judicata in respect of an earlier appeal. Neither Section 11 CPC, nor any principle derivable therefrom, would bar the appeal as contended by the respondents. The contention is misconceived and we see no merit in the contention. In our judgment, the appeal is perfectly maintainable.

(B) Conflict of decrees

43. The respondents then contend that, even if the appeal is not liable to be dismissed on the principle of res judicata, even otherwise the appeal should be dismissed as it may result in conflicting decrees. Upon dismissal for default of Civil Appeal No. 7490 of 1993, the decree made by the High Court became final as against Shyamsunder, If the present appeal is allowed, resulting in setting aside the decree or making any modification thereof, it

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would result in the anomalous situation of there being conflicting decrees between the same parties, arising out of the same cause of action, is the
a contention.

44. In our view, this contention has no merit. Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them, and only one of them challenges the decree by an appeal in his own right, the fact that the other defendants do not choose to challenge the decree or that they have lost their right to challenge the decree, cannot render
b the appeal of the appealing defendant infructuous on this ground. In fact, Rule 4 and Rule 33 of Order 41 CPC are enacted to deal with such a situation.

45. A number of judgments were cited before us in support of the argument that the present appeal should not be entertained as otherwise it may be likely to produce conflicting decrees.

c 46. In *Narhari v. Shanker*[1] *A* instituted a suit for possession of two-third share in an estate against *B* and *C* who claimed a one-third share each in it. The suit was decreed by the trial court. *B* and *C* filed separate appeals. These appeals were heard together and disposed of by the same judgment. Two separate decrees were prepared. *A* preferred an appeal from one of these decrees in time paying the full court fee. After the period of limitation had
d expired, *A* preferred an appeal from the other decree also. The High Court held that inasmuch as one of the appeals was time-barred, the first appeal was barred by res judicata. This Court rejected this contention and approving the observations of Tek Chand, J., in *Lachhmi* v. *Bhulli*[2] pointed out that the determining factor is not the decree, but the matter in controversy. The estoppel is not created by the decree, but can only be created by the judgment and that there was no question of application of the principle of res judicata.
e It was therefore, held that the appeal of *A* was competent.

47. In *Karam Singh Sobti v. Pratap Chand*[3] a proceeding under the Delhi Rent Control Act for eviction had been filed against the tenant and sub-tenant on the ground that the tenant had, without the consent of the landlord, sub-let, assigned or otherwise parted with the rented premises. One decree of eviction was passed by the trial Judge against both tenant and sub-tenant who were defendants. Both the defendants were aggrieved by the decree of eviction and each had his own right to appeal from that decree. While the tenant failed to move an appeal, the sub-tenant filed an appeal against the decree. This Court held that there was one decree and therefore the appellant was entitled to have it set aside "although thereby the tenant who had not appealed would also be freed from the decree". It was open to the sub-tenant
g to contend that the decree was wrong as it was passed on an erroneous finding and the sub-tenant could challenge the decree on any available ground. Thus, it was held that the appeal of one of the defendants was

h 1 AIR 1953 SC 419 : 1950 SCR 754
2 AIR 1927 Lah 289 : ILR 8 Lah 384 (FB)
3 AIR 1964 SC 1305 : (1964) 4 SCR 647

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competent, even though the other defendant who was equally situated had filed no appeal.

48. In *Sri Chand* v. *Jagdish Pershad Kishan Chand*[4] the plaintiff had commenced his suit against three sureties who were defendants in a suit. The said defendants objected to the execution of the decree against them on several grounds. The trial court rejected the objections raised by the sureties and this order was confirmed by a Single Judge of the High Court. An appeal under the Letters Patent was dismissed in limine. The three sureties moved this Court by special leave petition in which leave was granted to them. One of the sureties died even before the record of the appeal was transmitted to this Court. The application made for bringing the legal heirs on record came to be rejected. It was contended before this Court that the appeal had abated in its entirety because the heirs of one of the sureties had not been brought on record, as the ground on which the judgment of the High Court proceeded was common to all the sureties. This contention was upheld for the reason that the appeal filed in this Court was a single appeal by all the three sureties, and one of them having died and his legal representatives not having been brought on record, the decree became final as against such a surety. It was also held that Order 41 Rule 4 CPC would not apply here. This judgment is distinguishable on its facts as there was only one appeal filed by all three sureties.

49. In *Ratan Lal Shah* v. *Lalmandas Chhadammalal*[5] this Court had occasion to examine the scope of application of Order 41 Rule 4 CPC in a situation like the present one. In this case there was a joint decree against two defendants *R* and *M*. *R* alone appealed to the High Court by impleading *M* as second respondent in the appeal. *M* was not served with notice as a result of which the appeal came to an end as far as *M* was concerned. The High Court dismissed the appeal on the ground that the decree was jointly against both *R* and *M*, in a suit on a joint cause of action, the decree against *M* having become final, *R* could not be heard alone in the appeal. This Court reversed the judgment of the High Court by taking the view that the appeal could not be dismissed on the ground that *M* was not served, nor could the appeal be dismissed on the ground that there was a possibility of two conflicting decrees. Delineating the provisions of Order 41 Rule 4 CPC this Court said: (SCC p. 72, para 3)

> "The object of the rule is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are in the same interest as the appellant."

50. This Court reiterated its view in *Karam Singh Sobti*[3] and held that even if it be assumed that *R* was negligent, on that ground he could not be deprived of his legal right to prosecute the appeal and to claim relief under Order 41 Rule 4 of the Code of Civil Procedure, if the circumstances of the

4 AIR 1966 SC 1427 : (1966) 3 SCR 451
5 (1969) 2 SCC 70

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case warrant it. The decree of the trial court proceeded on a ground common to *M* and *R*. In the appeal filed by *R*, he was denying liability for the claim of
a the plaintiffs in its entirety. Thus, it was held that this was essentially a case in which the court's jurisdiction under Order 41 Rule 4 of the Code of Civil Procedure could be exercised.

51. This view was reiterated by this Court in *Mahabir Prasad* v. *Jage Ram*[6]. It was a case in which the plaintiff Mahabir Prasad, his mother and his wife obtained a decree against the defendant Jage Ram and two others for a
b certain amount. Their application for execution was dismissed by the executing court. Mahabir Prasad alone preferred an appeal to the High Court and impleaded his mother Gunwanti Devi, and his wife Saroj Devi as party-respondents. Saroj Devi died and the legal representatives were not brought on record within the period of limitation and her name was struck off from the array of respondents. The High Court dismissed the appeal on the ground
c that it abated in its entirety. Mahabir Prasad appealed to this Court. Allowing the appeal it was held by this Court (vide SCC p. 267, para 4):

> "4. Order 41 Rule 4, Code of Civil Procedure, invests the appellate court with power to reverse or vary the decree in favour of all the plaintiffs or defendants even though they had not joined in the appeal if the decree proceeds upon a ground common to all the plaintiffs or
d defendants."

52. This Court in *Mahabir Prasad*[6] distinguished the judgment in *Rameshwar Prasad*[7] as a case in which all the plaintiffs whose suits had been dismissed had filed an appeal and thereafter one of them being dead his heirs were not brought on record. While in the case before this Court, there was an order against all the decree-holders but all of them had not appealed. The
e previous judgment in *Ratan Lal Shah*[5] was followed approvingly. Commenting on the judgment in *Ratan Lal Shah*[5] in the light of Order 41 Rule 4 CPC, this Court observed (vide SCC pp. 268-69, para 6):

> "Competence of the appellate court to pass a decree appropriate to the nature of the dispute in an appeal filed by one of several persons against whom a decree is made on a ground which is common to him and others is not lost merely because of the person who was jointly interested in the claim has been made a party-respondent and on his death his heirs have not been brought on the record. Power of the appellate court under Order 41 Rule 4, to vary or modify the decree of a subordinate court arises when one of the persons out of many against whom a decree or an order had been made on a ground which was common to him and others
g has appealed. That power may be exercised when other persons who were parties to the proceeding before the subordinate court and against whom a decree proceeded on a ground which was common to the appellant and to those other persons are either not impleaded as parties to the appeal or are impleaded as respondents."

h
6 (1971) 1 SCC 265

7 *Rameshwar Prasad v. Shambehari Lal Jagannath*, AIR 1963 SC 1901 : (1964) 3 SCR 549

53. The same principle was reiterated in *Govindan* v. *Subramaniam*[8] where it was held that Order 41 Rule 4 CPC would apply in such a case.

54. In *Harihar Prasad Singh v. Balmiki Prasad Singh*[9] a similar contention was urged. After analysing *Ratan Lal*, *Karam Singh*[3] and *Mahabir Prasad*[5] and distinguishing the judgments in *State of Punjab v. Nathu Ram*[10] and *Rameshwar Prasad v. Shambehari Lal Jagannath*[7] it was held that normally Order 41 Rule 4 would apply to a situation like the one before us.

55. This principle has also been reiterated in the recent judgment in *Banarsi v. Ram Phal*[11] which holds that Order 41 Rule 4 and Rule 33 are to be read together. This Court observed (vide SCC p. 619, para 15):

"15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of the widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and

8 (2000) 9 SCC 510.
9 (1975) 1 SCC 212
10 AIR 1962 SC 89: (1962) 2 SCR 636
11 (2003) 9 SCC 606

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thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41."

56. This judgment considers the observations made in *Panna Lal v. State of Bombay*[12], *Harihar Prasad Singh*[9] and *Nirmala Bala Ghose v. Balai Chand Ghose*[13] and holds that Order 41 Rule 4 CPC would take care of a situation as the one before us.

57. In *Chandramohan Ramchandra Patil v. Bapu Koyappa Patil*[14] a suit for partition was filed in which the right of partition was recognised and upheld by the Court. In the opinion of the Court, the fact that one of the plaintiffs had appealed, and not all, did not render the appellate court powerless for it could invoke the provisions of Order 41 Rule 4 read with Order 41 Rule 33 CPC. It was held that the object of Order 41 Rule 4 is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The Court in such an appeal may vary the decree in favour of all the parties who are in the same interest as the appellant. The Court observed (vide SCC pp. 558-59, paras 14-15):

> "14. Order 41 Rule 4 of the Code enables reversal of the decree by the court in appeal at the instance of one or some of the plaintiffs appealing and it can do so in favour of even non-appealing plaintiffs. As a necessary consequence such reversal of the decree can be against the interest of the defendants vis-a-vis non-appealing plaintiffs. Order 41 Rule 4 has to be read with Order 41 Rule 33. Order 41 Rule 33 empowers the appellate court to do complete justice between the parties by passing such order or decree which ought to have been passed or made although not all the parties affected by the decree had appealed.
>
> 15. In our opinion, therefore, the appellate court by invoking Order 41 Rule 4 read with Order 41 Rule 33 of the Code could grant relief even to the non-appealing plaintiffs and make an adverse order against all the defendants and in favour of all the plaintiffs. In such a situation, it is not open to urge on behalf of the defendants that the decree of dismissal of suit passed by the trial court had become final inter se between the non-appealing plaintiffs and the defendants."

12 AIR 1963 SC 1516 : (1964) 1 SCR 980
13 AIR 1965 SC 1874 : (1965) 3 SCR 550
14 (2003) 3 SCC 552

58. In *K. Muthuswami Gounder v. N. Palaniappa Gounder*[15] dealing with the powers of the appellate court under Order 41 Rule 33 CPC, this Court observed (vide SCC p. 333, para 12): a

"12. Order 41 Rule 33 enables the appellate court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (*i*) the appeal is as to part only of the decree; and (*ii*) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the court and the question raised properly arises (sic out of) one of the judgments of the lower court and in that event, the appellate court could consider any objection to any part of the order or decree of the court and set it right. We are fortified in this view by the decision of this Court in *Mahant Dhangir v. Madan Mohan*[16]. No hard-and-fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41 Rule 33 CPC and each case must depend upon its own facts. The rule enables the appellate court to pass any order/decree which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings. Ordinarily the appellate court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this rule holds good notwithstanding Order 41 Rule 33 CPC. However, in exceptional cases, the rule enables the appellate court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal."

59. In *Panna Lal v. State of Bombay*[12] this Court said (vide SCR p. 987: AIR p. 1519, para 12) e

"12. Even a bare reading of Order 41 Rule 33 is sufficient to convince anyone that the wide wording was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as 'the' case may require'."

60. The respondents, however, strongly rely on certain observations made in the judgment of the Constitution Bench of this Court in *Badri Narayan Singh v. Kamdeo Prasad Singh*[17] and contended that the observations made in *Narhari case*[1] had been distinguished by the Constitution Bench. The case before the Constitution Bench was one where the Election Tribunal, on the petition of the first respondent, had set aside the election of the appellant on certain grounds. The Election Tribunal, however, did not entertain the first

15 (1998) 7 SCC 327
16 1987 Supp SCC 528
17 AIR 1962 SC 338 : (1962) 3 SCR 759

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respondent's prayer to declare him as duly elected. Both the appellant and the first respondent being aggrieved went up in appeal to the High Court. The appellant's Appeal No. 7 was against the order setting aside his election, while the first respondent's Appeal No. 8 was against not declaring him elected. Both were disposed of by the common judgment by the High Court which dismissed Appeal No. 7 but allowed the respondent's Appeal No. 8 and declared him to be duly elected. A preliminary objection was taken on behalf of the first respondent that the appeal was incompetent as barred by the principle of res judicata as the appellant did not appeal against the order of the High Court in his own Appeal No. 7, the dismissal of which by the High Court confirmed the order of the Election Tribunal setting aside the election of the appellant. Hence, it was contended that the appellant could not question the correctness of the finding that he held an office of profit which was the basis of the dismissal of Appeal No. 7. The Constitution Bench of this Court was of the view that two appeals arose out of one proceeding, the subject-matter of each appeal being different. While the subject-matter of Appeal No. 7 related to his election being good or bad, the subject-matter of Appeal No. 8 had no relation to the validity or otherwise of the election of the appellant, but was related to the further action to be taken in case the election of the appellant was bad on the ground that he holds an office of profit. It was in this situation that the judgment in *Narhari'* was distinguished by the Constitution Bench, which pointed out that the observations in *Narhari)* did not apply to cases which are governed by the general principle of res judicata which rests on the principle that a judgment is conclusive regarding the points decided between the same parties and that the parties should not be vexed twice over in the same case. In our view, the judgment of the Constitution Bench has no application to the facts before us.

61. The effort of the respondent to rely on *Sheodan Singh*[18] in support of the objection is also in vain for the observations in *Sheodan Singh*[18] have been considered and distinguished in *Managing Director v. K. t. Ramachandra Naidu*[19].

62. Reliance by the respondents on *Nirmala Bala Ghose*[13] is also of little use. A three-Judge Bench of this Court considered the applicability and the ambit of Order 41 Rule 33 CPC in such a situation, and observed: (AIR p. 1884, para 23)

> "When a party allows a decree of the court of first instance to become final, by not appealing against the decree, it would not be open to another party to the litigation, whose rights are otherwise not affected by the decree, to invoke the powers of the appellate court under Order 41 Rule 33, to pass a decree in favour of the party not appealing so as to give the latter a benefit which he has not claimed. Order 41 Rule 33 is primarily intended to confer power upon the appellate court to do justice by granting relief to a party who has not appealed, when refusing to do

18 *Sheodan Singh v. Daryao Kunwar*, AIR 1966 SC 1332
19 (1994) 6 SCC 339

so, would result in making inconsistent, contradictory or unworkable orders. We do not think that power under Order 41 Rule 33 of the Code of Civil Procedure can be exercised in this case in favour of the deities."

63. In our view, in *Nirmala Bala Ghose*[13] this Court has not made any observations contrary to what had been laid down earlier.

64. We do not think that the judgment in *Premier Tyres Ltd.* v. *Kerala SRTC*[20] cited by the respondents has any relevance for it is entirely distinguishable on facts. It was a case where two suits were tried together and decided by a common judgment, each of them being partly decreed. One of the parties did not appeal against dismissal of part of his claim, but appealed against the part-decree in the other suit. It was in these circumstances that it was held that his appeal was barred by res judicata.

65. In *State of Punjab* v. *Nathu Ram*[10] this Court considered a situation of such conflicting decrees and made the following observations (vide SCR pp. 639-40): (AIR pp. 90-91, para 6)

"6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal *(a)* when the success of the appeal may lead to the court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; *(b)* when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and *(c)* when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed."

66. The rationale behind the principle was explained by the Court thus (vide SCR p. 641): (AIR p. 91, para 8)

"The reason is plain. It is that in the absence of the legal representatives of the deceased respondent, the appellate court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the court will do is one to which exception can or cannot be taken."

20 1993 Supp (2) SCC 146

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67. In our view, this is the litIUUS test to decide whether an appeal should be dismissed for possible conflict of decrees or not, Applying this test, it
a appears to us that the appeal before us cannot be dismissed. Shyamsunder is the 5th respondent before us, who has been served, but has chosen to remain absent. The fact that Shyamsunder's own appeal failed for non-compliance with the office objections cannot have the consequence ordereadng the appeal of the present appellant Bajranglal, Order 41 Rule 4 read with Rule 33 invests thts Court with sufficient power to entertain the appeal of Bajranglal
b before us and to make any appropriate order thereupon consonant with justice, equity and good conscience. In the result, we overrule the preliminary objections and hold that the appeal is maintainable.

Merits of the appeal

68. The learned Single Judge raised the following issues and answered them as under:
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St. No.	Issues	Remarks
1.	Whether the suit is bad for misjoinder of parties and/or causes of action for reasons alleged in the respective written statements of Defendants 5 and 8?	In the negative.
2.	Whether the suit is bad for non-joinder of necessary parties for the reasons alleged in their respective written statements?	In the negative.
3.	Whether the plaintiff is the owner of the suit property?	In the negative. The plaintiff has not proved her title, and the title relied on is invalid in law, and, therefore, a nullity.
4.	Whether the plaintiff has not acquired title to the suit property for the reasons alleged in their respective written statements?	In the affirmative.
5.	Whether each of the defendants is a trespasser as alleged in para 4 of the plaint?	In the negative.
6.	Whether the defendant is the tenant in respect of the premises in his occupation as alleged in their respective written statements?	In the negative.
7.	Whether the said auction-sale was subject to the right of the defendants' tenancy and subject to the defendants' right of possession and occupation and enjoyment as alleged in their respective written statements?	In the negative
8.	Whether the plaintiff is entitled to mesne profits as alleged in para 6 of the plaint?	In the negative.
9.	Whether the plaintiff is entitled to any relief and, if so, what?	In the negative

d e g

h 69. The Single Judge's finding is that the certificate of sale Issued by BMC was invalid and the sale was liable to be declared null and void for

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contravening the provisions of Section 206 of the BMC Act, 1888 and the Regulations made thereunder. After examining the evidence before him, the learned Single Judge came to the conclusion that there was clear contravention of the provisions of the BMC Act and the Regulations dealing with the auction-sale. He also came to the conclusion that the sale had taken place without any reserved bid, that Janardhan Dhuri had never disclosed that he was bidding as an agent of R-8; the plaintiff never entered the box, nor did Janardhan Dhuri, to prove that Janardhan Dhuri has bid as her agent, consequently, R-8 being nowhere in the picture, the certificate of sale could not have been issued in her name.

70. The Division Bench came to the conclusion that the withdrawal of Suit OS No. 218 of 1973 and the rejection of the application moved by Bajranglal for transposition as the plaintiff, which was upheld by the Division Bench, and the summary dismissal of the special leave petition thereagainst, conclusively precluded the contention urged by the appellant in this regard. The Division Bench held, "the result of rejection of application for transposition is that the cause of action against the corporation and the auction-purchaser came to an end" and based its finding upon the fact that, on the date when Bajranglal made the application for transposition as plaintiff (10-9-1985), Bajranglal had lost the right to file a suit for avoiding the auction-sale, as it was barred by time. This led the Division Bench to hold:

> "the result of withdrawal of the suit and the rejection of application for transposition is that the auction-sale in favour of the plaintiff had become final and Bajranglal cannot raise any objection in the present suit and avoid the auction-sale".

71. In our view, this reasoning of the Division Bench is erroneous. Although the period of limitation prescribed in the Limitation Act, 1963 precludes a plaintiff bringing a suit which is barred by limitation, as far as any defence is concerned, there is no such limitation. In reply to the plaintiff's suit that she had derived title to the suit property by virtue of the auction-sale and the certificate of sale issued by BMC, it was perfectly open to the defendants, including Bajranglal, to contend to the contrary. The burden of proving the facts alleged in the plaint was squarely upon the plaintiff. After recording evidence on both sides, if the evidence showed that the auction-sale held by BMC was contrary to the provisions of the BMC Act and the Regulations made thereunder, the defendants were entitled to urge upon the learned Single Judge to come to the conclusion recorded by the learned Single Judge.

72. The respondents, however, contend that the sale proceedings could be challenged only by way of substantive suit. Inasmuch as the suit had become time-barred on the date of the application for transposition, there was no scope for the sale of Hari Niwas to the plaintiff being challenged by a suit. They urged that the Division Bench is right in characterising the challenge to the suit by Bajranglal as a "back-door method".

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73. It appears to us that the contention of the respondent is misplaced. If the title claimed by the plaintiff was a nullity and wholly void, there was no
a need for any of the defendants including Bajranglal to challenge it by way of a substantive suit. They could always set up a nullity of title as a defence, in any proceeding taken against them based upon such title. If, in fact, the sale was a nullity, it was *non est* in the eye of the law and all that the defendant had to do was point this out. (See in this connection: *Ajudh Raj v. Moti*[21] and the opinion of the Full Bench of the Bombay High Court in *Abdullamiyan v.*
b *Govt. of Bombay*[22].)

74. In *Vidhyadhar v. Manikrao*[23] the plaintiff had filed a suit on the basis of a sale deed executed by D-2 in his favour and sought the relief of possession of the property from Defendant 1 who was an absolute stranger to the sale deed. The question which arose was whether Defendant 1, who was in possession, could justify his possession by urging the nullity of sale
c transaction between the plaintiff and Defendant 2. In these circumstances, this Court held: (vide SCC p. 585, para 21):

"21. The above decisions appear to be based on the principle that a person in his capacity as a defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff. This would also include the plea that the sale deed by which the title to the property
d was intended to be conveyed to the plaintiff was void or fictitious or, for that matter, collusive and not intended to be acted upon. Thus, the whole question would depend upon the pleadings of the parties, the nature of the suit, the nature of the deed, the evidence led by the parties in the suit and other attending circumstances."

75. Here, the plaintiff's suit is for ejection of the defendant and for
e possession of the suit property. She must succeed or fail on the title that she establishes. If she cannot succeed in proving her title, the suit must fail notwithstanding that the defendant in possession may or may not have title to the property. (See in this connection: *Brahma Nand Puri v. Neki Puri*[24].)

76. Appellant Bajranglal had sufficiently pleaded in his written statement the defects in the title of the plaintiff and it was, therefore, open for the learned Single Judge to go into this question and decide if the plaintiff had good title or not. The Division Bench, therefore, erred in interfering with the finding of the learned Single Judge on this ground. On the facts, the learned Single Judge has elaborately discussed the evidence and come to a finding with which it is difficult to disagree. We are unable to share the view of the Division Bench that the defects in title pleaded and found by the learned
g Single Judge were mere irregularities in conducting the sale which could not have been challenged collaterally. In our view, the finding of the learned Single Judge that the plaintiff's title was invalid and *non est* for contravention

21 (1991) 3 SCC 136
h 22 (1942) 44 Bom LR 577 : AIR 1942 Bom 257
23 (1999) 3 SCC 573
24 AIR 1965 SC 1506 : (1965) 2 SCR 233

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of the provisions of Section 206 of the BMC Act and the Regulations made thereunder, is fully justified and brooked no interference in appeal.

77. The Privy Council's observations in *Nawab Umjad Ally Khan* v. *Mohumdee Begum*[25] on which the respondents rely, have to be understood in the context of the case before it. As a rule, it may be that an act of the State can be questioned in a municipal court by way of a duly constituted suit. However, if another person claims a title from a so-called act of the State, we see no reason why the defendant cannot plead nullity of title. In our view, the principle in *Vidhyadhar case*[23] clearly applies to the case on hand. a b

Failure to implead BMC

78. The respondent then raised a contention that the validity of the title derived by the plaintiff Satyavati could not have been considered in the suit without Bombay Municipal Corporation being impleaded as a necessary party. In our view, this is an argument of *post hoc ergo propter hoc*. If we accede to the argument that the Municipal Corporation was a necessary party, c then by reason of Order 1 Rule 9 CPC, the consequence would be the dismissal of the plaintiff Satyavati's suit for non-joinder of BMC, which according to her is a necessary party. In fact, the learned Single Judge was desirous of adjudicating the issues fully and completely, and therefore, proposed to add BMC as a party to the suit. The plaintiff as a *dominus litis* vigorously opposed and successfully persuaded the learned Single Judge not d to add the Corporation as a necessary party. It was in these circumstances that the suit proceeded without the Corporation being made a party to the suit. For the plaintiff (R-8) to now plead before us that BMC was a necessary party, without whose presence the adjudication of the issues could not have proceeded, appears to us to be an argument of desperation. *Vidhyadhar case*[23] is a complete answer to this argument. In any event, the only interest that the Corporation had in the matter was towards its tax arrears as it was not e interested in the title of the property being transferred to it.

79. In the written statement filed by Bajranglal, he had relied upon and reiterated all contentions which had been urged by Mahavirprasad in his Suit No. 218 of 1973. He had also reiterated and repeated all contentions urged by Mahavirprasad both in his own Suit No. 218 of 1973 and in his written statement in Suit No. 118 of 1973. We are satisfied that the defence raised by Bajranglal was quite comprehensive. He had challenged the plaintiff's title on the basis of the alleged auction-sale as a nullity on the grounds of ultra vires, lack of jurisdiction, non-service of demand notice on all heirs/co-owners, breach of mandatory provisions of law and also perpetration of fraud, the particulars of which were reiterated and adopted from the suit of g Mahavirprasad, No. 218 of 1973, as well as Mahavirprasad's written statement in Suit No. 118 of 1973.

80. The reliance placed by the respondent on the judgment in *Narahari Mohanti*[26], *Chenthiperumal Pillai* v. *D.M. Devasahayam*[27] and *Kishorsingh*

25 (1868) 10 Suth WR 25 (PC)

26 *Narahari Mohanti* v. *Gananashyam Bal*, AIR 1963 Ori 186 h

27 AIR 1956 TravCo 181 : ILR 1956 TravCo 62 (FB)

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Anarsingh v. *Tej Singh Dhyansingh*[28] is misplaced. These were all cases where a substantive suit was filed for setting aside a revenue sale for a realisation of the Government's arrears. In these circumstances, the view taken was that the Government ought to have been made a party along with the auction-purchaser.

81. In *Mohan Wahi* v. *CIT*[29] there was a recovery certificate issued by the tax officer under the Income Tax Act, 1961 without the required service of notice of demand on the assessee as mandated by Section 156 of the Act, b prior to issue of the recovery certificate. Setting aside the sale of the property this Court observed (vide SCC p. 374, para 21):

"A little more sensitive approach is required to be adopted in the process of dispensing justice when it is found that valuable property of a person was sought to be sold away for recovery of such arrears as did not exist at all."

c 82. Even in the present case, the appellant was not invited to the auction-sale as required by the BMC Act under Section 209. Further, the sale was held for recovery of arrears which were not even included in the warrant of attachment pursuant to which the sale was held.

83. *Mahadev Narayan Datar* v. *Sadashiv Keshev Limaye*[30] was a case of d sale in execution by a Revenue Court and an attempt to execute the decree. The plaintiffs who were purchasers in the auction-sale contended that they were purchasers without notice, and therefore, their title was good as against the judgment-debtor. This argument was sought to be buttressed by an analogical reference to a sale in execution under the decree of a civil court. This argument was categorically rejected by Macleod, C.J., who observed e (vide AIR p. 258):

"It appears to me that there is a very great distinction between sales in execution of civil court decrees and sales by the Revenue Courts for arrears of assessment. I think that if it were found as it has been found in this case, that as a matter of fact the defendant in the revenue proceedings was entitled to hold his lands free of assessment, any sale which took place on the footing that he was bound to pay assessment would be invalid and that the purchaser in such a sale would not acquire a good title except by adverse possession. In this case the purchaser did not even get possession. The judgment-debtor remained in possession of the property, and ten years after the sale the vendor who had bought the property for Rs 8, subject to various mortgages, sold it to the present g plaintiffs. In my opinion, the defendants were entitled to raise the question whether or not the sale in 1904 was valid, and on the facts of this case I think that they succeeded in showing that the sale was invalid."

h 28 AIR 1967 MP 120
29 (2001) 4 SCC 362
30 AIR 1921 Bom 257 : ILR 45 Bom 45

84. *Vyankatesh Dhonddev Deshpande v. Kusum Dattatraya Kulkarni*[31] was also a case of a suit to set aside the auction-sale held by the Revenue Authorities. It was contended for the defendant, that such relief could not be given in the absence of the State Government which was a necessary party to the suit. This contention was rejected by the Division Bench of the Bombay High Court by observing that where the plaintiffs can obtain complete and effective relief from the Court in respect of the subject-matter, in dispute against a party, it is not necessary to join any other party whether it is the Government or others. As long as no relief was claimed against the State Government, which the plaintiff was not bound to, the suit was competent. It was observed (vide AIR p. 205, para 48):

> "It is well established that where a Revenue Officer purports to do an act or pass an order which is invalid and without jurisdiction, the purported order is a mere nullity; and it is not necessary for anybody, who objects to that order to apply to set it aside. He can rely on its invalidity when it is set up against him, although he has not taken steps to set it aside. Such an order does not give any right whatsoever, not even a right of appeal."

85. Since this is the legal position with regard to a substantive suit challenging the title of the purchaser in a revenue sale, we do not think that the situation of the appellant before us who merely pleaded nullity and invalidity of the plaintiff's title can be any different. It is significant that, unlike the provisions in some other statutes viz. Section 39 of the Companies Act, 1956 which provides that the certificate of incorporation would be conclusive evidence that all requirements of registration under the Act have been complied with, significantly, the Bombay Municipal Corporation Act, does not have any similar provision making the certificate of sale issued by it conclusive evidence of compliance with all requirements of the BMC Act and the Regulations thereunder.

86. We are, therefore, of the view that the finding of the Division Bench in the impugned judgment that the action of Bombay Municipal Corporation in holding the auction-sale could not have been challenged by Bajranglal after withdrawal of the suit by Mahavirprasad and that the right to challenge the auction-sale would not subsist in Bajranglal by way of a defence in the suit filed by the plaintiff auction-purchaser for recovery of possession, is erroneous.

87. The Division Bench has also taken note of the fact that Mahavirprasad, who was a co-owner of the property, had filed Suit No. 218 of 1973 (to which other co-owners including Bajranglal were parties) for setting aside the auction-sale and thereafter withdrew the suit. This, according to the Division Bench, precluded all other co-owners from challenging the auction-sale on the same ground or by way of a defence in a suit instituted by the auction-purchaser to recover possession. The reasoning of the Division Bench appears to be that, as Bajranglal could not have

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instituted a suit for challenging the auction-sale and the sale certificate, equally, he could not raise a defence to the suit and plead that the auction-
a sale was invalid. This reasoning in our view, is wholly erroneous in the light of the authoritative pronouncements of this Court-to which we have already referred.

Fraud

88. The Division Bench of the High Court took the view that in the written statenienr filed by Bajranglal in the suit, there was no complaint of
b fraud and no particulars whatsoever of fraud were pleaded. It further held that not only was the fraud norpleaded, but no issue inconnecttonwirh fraud had been framed by the trial Judge and yet he proceeded to make the finding that the auction-safe was vitiated by fraud,

89. We have already' noticed that, in the written statement filed by Bajranglal in Suit No. 118. of 1973, as Defendant 8 he specifically relied
c upon the defence taken by Mahavirprasad and he had also adopted and reiterated the contentions urged by Mahavirprasad in his Suit No. 218 of ,1973. Thus, there were enough pleadings with; regard to.the fraudulent manner in which the property was sought to be grabbed-by Ramprasad through his wife Satyavat], who was the plaintiff in Suit No. 118 of 1973.
d The Single Judge after a detailed analysis of the evidence pointed out as to how Ramprasad had connived with the officers of BMC to' grab the suit property, which was worth lakhs of rupees, for a paltry sum of Rs 16,000. The conduct of Ramprasad and the plaintiff Satyavati, as found from the facts adduced before the trial Judge, fully justify the conclusions Of the Single Judge as to the fraud perpetrated,

90. It is necessary to recall some of the findings made by the Single
e Judge which appeal' to be borne out by the evidence on,record. In the first place, the property tax in respect of Hari Niwas was being paid by the finn *M/s* Gorakh Ram Golak Chand in which Shivchandrai and ,Mahavirprasad were partners. After Shivchandrai shifted to Madras in .1964, it was Mahavirprasad and Ramprasad who were attending, to the work of payment of taxes in respect of the said property. Janardhan Dhuri wasassisting them in the management of property as an employee of the said,firm till about 1969-70. Thereafter, he joined as an employee of the firm of Gorakh Ram Haribux which was owned by Ramprasad, The firm had' its office on the ground floor of Hari Nlwas, The municipal bills were being received by Mahavirprasad and someumes by Janardhan Dhuri. At an earlier stage a
g warrant of attachment had been issued and the property was sought to be put up for auction by BMC. At that time, the reserved bid fixed by BMC was Rs 30,600 as on 14-7-1969. That the value of the property was Rs 2,00,000, even at the time of filing of the suit, was not challenged. The.leamed Single Judge traced the events whi.ch had transpired and took the view that there was a clear attempt by Ramprasad to get the property knocked down in sale for a
h paltry sum of Rs 16,000. After the death of Shivchandral on 7-6-1971, all the heirs of Shivchandrai were entitled to,claim ownership of the' property, and

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Ramprasad had a duty to Intorm BMC that Shivchandrai had died on 7·6·1971 and that the property should be shown in the joint names of all the heirs and legal representatives of Shtvchandral together with Ramprasad, For obvious reasons, no such thing was done by Ramprasad. Tlle learned Single Judge, therefore, rightly concluded on the facts that this was a-deliberate failure on the part of Ramprasad in order to cause wrongful gain to himself and a wrongful loss to his brothers.

91. The evidence on record unmistakably shows that Mahavirprasad and Bajranglal were not aware of the date of auction-sale having been fixed as 7·10-1971. There, was neither a notice from BMC in their names, nor dld Ramprasad who was in management of the property, let them know of the same.

92. Mahavirprasad in his evidence in Suit No. 218 of 1973 stated that he had vaguely learnt from Janardhan Dhuri about the aucdon-sale Therefore, he had written a letter on 5·10·1971 to BMC pointing out that Shtvchandrat had already died on 7-6-1971 and that no notice had been served on the co-owners, He also pointed out that the Corporation had still not accounted for the amounts already paid, and, therefore, no action could be taken which would bind the co-owners. This letter was personally delivered by him in the Office of BMC with an acknowledgement given by the Superintendent, 'K' Ward on 6·10·1971, and by the Assessment Department en 7·10·1971.

93. Curiously, the plaintiff Satyavati, who claimed title to the property, led no evidence whatsoever in her support except relying upon the certificate of sale, In the first place, the certificate of sale was not in her name. The learned Single Judge rightly pointed out that there was no materia! whatsoever on record to come to the conclusion that Janardhan Dhurl had paid the sum of Rs 16,000 on behalf of the plaintiff Satyavau. It is rightly pointed out by the learned Single Judge that, under the "Municipal Regulations applicable to such auction-sales, if a person is purchasing as an agent for another he is required to file papers giving full name, address and description both of himself and his principal. The notebook maintained under the Regulations and the record produced did not show that Janardhan Dhuri had disclosed that he was bidding as an agent for the plaintiff Satyavatl. Tl10ugh Dhwi was still under the employment Of Ramprasad, and used to attend the hearings during the trial when the evidence was recorded, he was not examined by the plaintiff, The plaintiff also led no evidence in support of her case. The BMC oflicial, Madiwala, of the Office of Deputy Assessment and Collecmr, prQtluced two files containing relevant pspen of the Inatter. The learned Single Judge carefully examined all the documents produced and arrived at the conclusion that no reserve bid had been fixed for tbe auction-sale which took place on 7·10·1971, contrary to the Regulations. At the earlier auction-salj.on 14-7-1969 the reserved bid fixed was Rs 30,600. The auction-sale is alleged to have taken place on 7·10·1971; therefore, the value of the property on the date of sale coutd not have been less than Rs 30,600. Upon scanning the records of the Municipal Corporation the learned Single Judge noted that there was a proposal for sanction of sale (Ext. 27 dated 8-9-

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1971) which only said that it was proposed to sell the property without a reserve bid. There was no explanation whatsoever in the file as to why this
a deviation from the Regulations was being made, nor was the witness Madiwala in a position to give any satisfactory explanation therefor. The learned Single Judge concluded that in fact, if at all, any sale had taken place on 7·10·1971, it was clearly contrary to Regulations 12 and *12-A* of the BMC Regulations pertaining to immovable property framed by the Standing Committee of BMC. The witness, Madiwala, had admitted, that apart from
b two files produced, there were no other papers connected with the alleged sale, which took place on 7.10.1971. It was in these circumstances that the learned Single Judge came to the finding that the alleged sale was engineered by Ramprasad in collusion with the BMC officials; keeping the other heirs in the dark to get the valuable property to himself at a throwaway price. These were inferences which were clearly justified and correctly raised by the
c learned Single Judge to hold that the transaction was unconscionable, be it called fraud, collusion or whatever else. In our view, the conclusions of the Single Judge were warranted by the evidence on record. The reasons given by the Division Bench to set aside this conclusion can hardly be upheld.

94. An appraisal of the facts of the record shows that the learned Single Judge was justified in permitting Bajranglal (defendant) to rely on the
d evidence of Mahavirprasad recorded in Suit No. 218 of 1973. The facts on record show that on 28.7.1988 counsel for the plaintiff stated that the witness of the plaintiff would be the plaintiff herself as well as her husband Ramprasad (D-6). The learned Single Judge recorded the above statement of the counsel. Thereafter, the plaintiff examined only Yashwant Shankar Pawar, Managing Clerk, Legal Department of BMC for producing the certificate of
e the sale dated 14-1-1972. This witness categorically admitted that the certificate of sale had been prepared by the Assessment Department after which it came to him and he knew nothing else in respect of the said document. Thereafter, the plaintiff neither examined any other witness nor herself. On behalf of Defendant 8 (Bajranglal) and Defendant 5 (Shyamsunder), they were both examined and cross-examined. They also examined one Shrikrishna Dhondu Madiwala, Deputy Assessor and Collector, Assessment Department of the Western Suburb of the Municipal Corporation. As a matter of fact, the persons who were aware of the facts and circumstances under which the alleged sale certificate had been issued could have been the plaintiff (Satyavati) herself, Ramprasad (D-6), Mahavirprasad (D-2) and Janardhan Dhuri who was an employee of the firm Ramprasad and Mahavirprasad, and who was actually present when the auction-sale took
g place.

95. When Mahavirprasad (D-2) filed his Suit No. 218 of 1973 challenging the validity of the sale certificate relied upon by the plaintiff, he had given evidence in the said suit. Though Bajranglal was a defendant in the said suit, he was only a proforma defendant and did not contest the suit. On the contrary, he supported fully the stand which had been taken by
h Mahavirprasad in the said Suit No. 218 of 1973. Bajranglal, in his evidence recorded in Suit No. 118 of 1973, stated that Mahavirprasad had told him that

he withdrew his Suit No. 218 of 1973 because he had got some amount from Ramprasad and he was not likely to get anything from Bajranglal. He had also said that he and Mahavirprasad were not on talking terms after the withdrawal of the suit. This evidence of Bajranglal (D-8) was not challenged at all in his cross-examination. The learned Single Judge was therefore justified in drawing the inference that Mahavirprasad suddenly withdrew his suit halfway through because he had been won over. There was also evidence on record which was unchallenged that Janardhan Dhuri was attending the court proceedings, and watching the proceedings both in Suits No. 218 of 1973 and No. 118 of 1973. The evidence on record also shows that Ramprasad was also throughout present during the court proceedings in Suit No. 118 of 1973. Both Ramprasad and Satyavati (plaintiff) had opportunity of cross-examination of Mahavirprasad when he tendered evidence in Suit No. 118 of 1973. In these circumstances, the learned Single Judge was justified in drawing the conclusion that Mahavirprasad (D-2) was being kept away by Ramprasad (D-6) and/or the plaintiff as far as the proceedings in Suit No. 118 of 1973 were concerned. Hence, the learned Single Judge was justified in permitting Bajranglal (D-8) to produce certified copy of the evidence given by Mahavirprasad in his own Suit No. 218 of 1973 and to rely thereupon.

96. Bajranglal stated in his written statement, as also in his evidence, that after receipt of a telegram he had contacted Mahavirprasad and Ramprasad. While Ramprasad did not say anything, Mahavirprasad had offered to take up the matter for the purpose of having the sale set aside. Accordingly, Mahavirprasad filed Suit No. 218 of 1973. Since Mahavirprasad had taken the lead, Bajranglal was supporting him. He was advised not to file a written statement in Suit No. 218 of 1973, because he accepted whatever Mahavirprasad had said in examination-in-chief. In Bajranglal's written statement in Suit No. 118 of 1973, he pleaded that he was adopting whatever had been said by Mahavirprasad in Suit No. 218 of 1973 filed by him and also in Mahavirprasad's written statement in Suit No. 118 of 1973 "to the extent of showing and proving that the plaintiff had no title and interest in respect of suit property". All this material was correctly analysed by the learned Single Judge who drew justified conclusions therefrom. Unfortunately, the Division Bench, without proper appreciation, has interfered by misdirecting itself.

Illegality of sale

97. The sale certificate has been issued under Section 206 of the BMC Act. Sub-section (6) thereof provides that, after the sale of the immovable property as aforesaid, the Commissioner shall put the person declared to be the purchaser in possession and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers. The evidence led by the plaintiff merely shows that Janardhan Dhuri was the highest bidder. The records produced by BMC show that Janardhan Dhuri was the highest bidder. If that be so, there is no acceptable explanation as to how the sale certificate could have been issued in the name of plaintiff Satyavati for she did not participate in the bid at the auction-sale; much less was she the

highest bidder. The Division Bench has made a very curious finding that "the sale certificate was issued in favour of the plaintiff by the Corporation and was duly registered", We must say that this finding is totally without basis. The sale certificate ex facie shows that it was given in the name of plaintiff Satyavati and there is no record in the BMC books that the plaintiff was registered as the highest bidder nor as a purchaser in the auction-sale, Neither the plaintiff Satyavati, Janardhan Dhuri, nor any competent officer Of BMC entered the witness box to explain this discrepancy as to how the sale certificate was issued in the name of Satyavati when the highest bidder was Janardhan Dhuri, who did not even claim to have bid as an agent of Satyavati, It is only in the plaint that the plaintiff for the first time claimed that she had paid the entire price of the auction-sale. This was an averment in the plaint which was not substantiated by any evidence. Nonetheless, the Division Bench facilely accepted this averment and held that the sale certificate was issued in favour of the plaintiff as Janardhan Dhuri was the highest bidder and because he was in the employment of Ramprasad, the certificate of the sale could be in the name of Satyavati and it conveyed her good title, To say the least, the reasoning appears to be faulty.

98. We are also unable to accept the reasoning of the Division Bench that merely because the certificate of sale had been issued in the name of the plaintiff, it was conclusive of the title of the plaintiff and could not be impeached and that it was for the defendants to defend their possession. In the first place, there is no provision in the BMC Act or Regulations for conclusiveness of the certificate of sale. Secondly, the analogy drawn by the Division Bench with a court sale is wholly misconceived, Thirdly, even assuming that such a conclusiveness or presumption of sale is there, it can only arise if it is shown that the certificate is issued strictly in accordance with Section 206 and the Regulations, which was not the case here. In these circumstances, where there is non-compliance with the law, we are unable to appreciate the reasoning of the Division Bench" nor its conclusion, that the certificate of sale conveyed good title to Satyavati. We are in agreement with the view expressed by the learned Single Judge that the sale was ab initio void and that the certificate of title was bad and null and void for complete violation of the provisions of the BMC Act and the Regulations made thereunder.

99. In the circumstances of the case, and upon overall evaluation of the evidence on record, we are satisfied that the conclusions drawn by the learned Single Judge were perfectly justified and in accordance with law. The Division Bench erred on all counts in interfering with and setting aside the judgment of the learned Single Judge.

100. In the result, we allow this appeal, set aside the judgment of the Division Bench and affirm the judgment of the learned Single Judge.

101. In the circumstances of the case the eighth respondent shall pay a sum of Rs 50,000 as costs to the appellant.

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followed, or even the principles of natural justice were not observed before taking steps to oust the plaintiffs from the possession is itself a ground to grant an injunction. On the facts of the case, there is no real need to enter into a
an elaborate discussion on the question of title. The expression of views on the aspect of title either by the High Court or by the trial court was unnecessary. That question should be kept open. However, it must be made clear that the injunction granted by the trial court would enure to the benefit of the plaintiffs till appropriate order is passed and action is taken pursuant thereto by the Panchayat in accordance with law. b

6. The judgment of the High Court is set aside and the appeal is allowed subject to the above observations and clarification. No costs.

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(BEFORE K.G. BALAKRISHNAN AND P. VENKATARAMA REDDI, JJ.) c

DALIP SINGH AND OTHERS .. Appellants;

Versus

SIKH GURDWARA PRABHANDAK COMMITTEE AND OTHERS .. Respondents.

Civil Appeal No. 7418 of 1993†, decided on October 15, 2003 d

A. Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925) — Ss. 10(3) and 7(3) — Notification issued under S. 10(3) serves as a conclusive proof that no claim was made in respect of any right, title or interest in any property specified in the list forming part of notification published under S. 7(3) in respect of Gurdwaras — But failure to produce the notification under S. 10(3) by itself would not lead to the necessary conclusion that the properties e were not of the Gurdwara but were private properties — Burden on the person who claimed the property as his private property to prove his right, title and interest over the property — That having not been proved, this flaw cannot be got over by relying on the fact that notification under S. 10(3) was not produced — Appellants' case that one *B* was owner of the property who had gifted the property to his son and wife (Respondents 2 and 3) from whom they had purchased the same, held on facts, not made out — SGPC's application under S. 142 calling upon *B* to surrender possession of the land was earlier allowed by Judicial Commission — *B* having no right, title and interest over the land, transfer thereof in favour of his son and wife were not binding — Revenue records showing *B* as cultivator of the land is not sufficient to prove that occupancy right or title to the land vested in *B* — Revenue records were consistent with the fact that *B* must have been in g possession of the property as an employee or manager of the Gurdwara — Held, it was proved by satisfactory evidence that the property belonged to the Sikh Gurdwara and appellants failed to prove that their predecessors-in-interest namely Respondents 2 and 3 acquired any title from *B* —

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† From the Judgment and Order dated 23.7.1992 of the Punjab and Haryana High Court in RSA No. 2245 of 1978

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Tenancy and Land Laws - Punjab Occupancy Tenants (Vesting of
a Proprietary Rights) Act, 1952 (8 of 1953) (paras 9 to 13)

B. Tenancy and Land Laws - Generally - Revenue records - Entries in, held, cannot prove title to the property unless supported by other evidence (Para 12)

Appeal dismissed R-M/Z/29119/S

Advocates who appeared in this case:

b P.K. Palli, Senior Advocate (Rajiv K. Garg and A.D.N. Rao, Advocates, with him) for the Appellants;

Hardev Singh, Senior Advocate (Ms Madhu Moolchandani, Advocate, with him) for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J.— This appeal is against the Judgment of the
c High Court of Punjab and Haryana in Regular Second Appeal No. 2245 of 1978. The appellants were plaintiffs in a suit filed for declaration of the title in respect of 64 canals and 8 marlas comprising Khataunis Nos. 1361 to 1364 and 11 canals and 9 marlas comprising Khatauni No. 1746 in Village Dheleke, Tehsil Moga in Punjab. The appellants contended that they had purchased this land by a registered sale deed from Respondents 2 and 3 in
d June 1957. The first respondent is Shiromani Gurdwara Prabhandak Committee (hereinafter being referred to as "SGPC"). The appellants alleged that SGPC had no title or right over the suit property. The appellants prayed that the first respondent be restrained from taking possession of their property. They alleged that the suit property originally belonged to one Jeeta Singh and he was an occupancy tenant whose rights devolved on Bhola Singh
e who was the father of the second respondent and the husband of the third respondent. According to the appellants, Bhola Singh became the absolute owner of this land by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

2. The case was contested by the first respondent SGPC. The first respondent raised the following contentions: Jeeta Singh did not have any title over this property and consequently Bhola Singh also did not acquire any right from him. There was an earlier litigation as Suit No. 859 before the Sub-Judge, Moga and Jeeta Singh was party to that suit and by judgment dated 15-6-1943, it was held that the first respondent was the owner of the land. Bhola Singh was an office-holder under the Managing Committee of Gurdwara Jeeta Singh wala, Lohara, and he was managing the land in that
g capacity. As he began to misuse his powers, an application was filed against him under Section 142 of the Sikh Gurdwara Act before the Judicial Commission and the same was allowed. As Bhola Singh had no right, title or interest on the land, the gift, if any, executed in favour of Respondents 2 and 3 was invalid and void.

3. On these allegations, several issues were framed. The suit was
h ultimately decreed on 20-12-1958 and the learned Sub-Judge held that Jeeta Singh was not the original owner of the property and the title of the suit

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property vested with the. first respondent SGPC. It was held that the title in respect of the suit property never passed on to Bhola Singh.

4. Aggrieved by the same, the appellants herein filed the first appeal before the lower appellate court. The lower appellate court framed two Issues and these issues related to the question as to whether Bhola Singh was the owner of the suit property and whether the gift deed executed by him in favour of Respondents 2 and 3 was valid or not and remitted the matter to the trial court for decision on those issues. In view of the issues framed by the first appellate court, the trial court again examined the question and gave a finding that Bhola Singh was not the owner of the suit land and the gift deed executed by him in favour of his son and wife had no effect so far as the rights of the first respondent herein are concerned, The lower appellate court on receipt of the decision on the two issues framed by it, reconsidered the appeal on merits and held that the suit was liable to be dismissed. The lower appellate court also held that the appellants herein were not bona fide purchasers for value and they were not entitled to get the benefit of Section 41 of the Transfer of Property Act. Against this decision, the appellants again filed an appeal before the High Court and their appeal was dismissed by the High Court. Aggrieved by the same, the present appeal is filed.

5. We heard the learned Senior Counsel Mr P.K. Palli who appeared on behalf of the appellants and the learned Senior Counsel Shri Hardev Singh, who appeared on behalf of the first respondent.

6. One of the main contentions urged by the appellants' counsel is that; the suit property never belonged to the first respondent SGPC and no Sikh gurdwara was formed by dedicating the suit property. According to the appellants, in the absence of notification under Section 10(3) of the Sikh Gurdwara Act, 1925, the suit property can never be considered as property of the Sikh Gurdwara,

7. In order to appreciate this contention, it is necessary to refer to some of the provisions of the Sikh Gurdwara Act, 1925, to find out as to how a Sikh gurdwara is formed and the properties are dedicated to such Sikh gurdwara, The procedure can be briefly summarised as follows: Section 7 of the Act says that any fifty or more Sikh worshippers of a gurdwara, each of whom is more than twenty-one-years of age, may forward an application to the appropriate Secretary to the Government praying to have a gurdwara to be declared as a Sikh gurdwara, This petition shall be accompanied by a list of properties claimed for the gurdwara. The list shall contain all the details regarding the title and interest in respect of those properties. The list shall be in such form and shall contain all particulars of the properties prescribed under the Act and rules and on receiving the petition along with the list of properties, the Government shall publish it in the prescribed manner, The State Government may also publish such notice as may be prescribed under the Act, The petition filed may be withdrawn, by notice, at any time before the publication. In case any person claims a right on any of the properties included in the list, he can file his objections as per the provisions of the Act

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When a notification is published under sub-section (3) of Section 7 in respect
a of any gurdwara, a resident in the police station area in which the gurdwara is situated, may forward to the Government within ninety days a petition verified, and signed by him, or the petitioners as the case may be, claiming that any hereditary office-holder or any person could have succeeded to such office-holder. If no petition or objection is filed under Section 9 claiming any right over the gurdwara, and if no petition has been presented in accordance
b with Section 8 pursuant to the notification published under the provisions of sub-section (3) of Section 7, the Government shall after expiration of ninety days from the date of such notification publish a notification, declaring the gurdwara to be a Sikh gurdwara. As regards the properties dedicated to the said Sikh gurdwara, any person may forward to the State Government within ninety days from the date of publication of notification under the provisions
c of sub-section (3) of Section 7 a petition claiming the right, title or interest in any property included in the lists so published. Sub-section (3) of Section 10 which is the relevant section for the purpose of this appeal, states that after the expiry of the ninety days for making a claim regarding any right, title or interest in respect of any property included in the list published under Section 7(3) notification, the State Government shall publish a notification. If any
d claim is made, such claim will be dealt with in accordance with the provisions contained in the Act. Even if there is no claim in respect of any property included in the list, there shall be a further notification under sub-section (3) of Section 10 and this notification shall be conclusive proof of the fact that there is no such claim in respect of any right, title or interest in the properties specified in the notification under sub-section (3) of Section 7.

e 8. The contention of the first respondent was that the suit property was one of the items of property included in the list published under sub-section (3) of Section 7 notification on 19-2-1932 and Ext. D-5 notification showed that it was a Sikh gurdwara and the properties contained in the list attached to the exhibit notification were the properties of the Gurdwara, namely, Gurdwara Jeeta Singh Wala, Lohara. The details of the properties in the notification show that Khasras Nos. 484, 490 and 493 are included. There was another notification, also under Section 9(1) of the Act issued on 13-3-1936. It is true that the first respondent could not produce any document to show that there was a notification under Section 10(3) of the Sikh Gurdwara Act, 1925. The contention of the appellants' counsel is that a notification under sub-section (3) of Section 10 is the only conclusive proof
g to show that the suit properties belonged to Gurdwara Jeeta Singh Wala, Lohara and in the absence of such notification, the claim of the first respondent is to be negatived.

9. We do not find much force in the contention urged by the counsel for the appellants. There are documents to show that the suit property was included in the list of properties in the notification dated 19-2-1932. If
h anybody had filed any claim in respect of these properties, there would have been an adjudication and only after the adjudication, the notification under

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Section 10(3) would have to be issued. It is not the case of the appellant that Jeeta Singh, the alleged predecessor-in-interest of Bhola Singh made any claim over any of the properties included in the list forming part of the *a* notification under sub-section (3) of Section 7. True, the notification issued under sub-section (3) of Section 10 serves as a conclusive proof of the fact that no claim was made in respect of any right, title or interest in any properties specified in the notification. But, the failure to produce the notification issued under Section 10(3) by itself does not lead to the logical or necessary conclusion that the landed properties which are being claimed *b* by the appellants were not the properties of the Gurdwara, but they were the private properties of Jeeta Singh and Bhola Singh. It is for the appellants who had filed a suit for the declaration of title to prove that Bhola Singh acquired right, title or interest over the suit properties either under the general law of succession or tenancy law. The appellants utterly failed to prove the same and this flaw cannot be got over by relying on the fact that the notification under *c* Section 10(3) was, not produced. The appellants who had filed a suit for declaration of their title could not produce any document to prove that the suit properties had been later divested from the ownership and management of Gurdwara Jeeta Singh Wala" Lohara,

10. According to the appellants, the suit properties originally belonged to Jeeta Singh as occupancy tenant and were inherited by Bhola Singh. Jeeta *d* Singh was the *Mahant* of the Gurdwara, Bhola Singh was not his son or legal heir and there is nothing in the evidence to indicate that he had inherited the property from Jeeta Singh. The oral evidence adduced in this case also completely negatives the case set out by the appellants. Even the appellant who was examined as PW 3 was not aware of the fact that this property belonged to the Gurdwara. He was also not aware of the nature of the rights *e* enjoyed by Bhola Singh over this property, The witnesses examined on the side of the appellants admitted that Bhola Singh was the *Mahant* of the Gurdwara and his *Guru* was Jeeta Singh and that the suit property belonged to the Gurdwara, The evidence of PW 5 shows that the case set up by the appellants was not true. The first respondent had initiated the proceedings before the Tribunal against Bhola Singh. The matter was compromised and Ext. *CX/1* is the compromise statement. The learned Senior Counsel for the appellants strongly contended that there is nothing in evidence to show that this compromise was filed before the Tribunal and the same was accepted and a decree was passed. It seems that some of the records were destroyed and the first respondent could not produce the certified copies of such records. Be that as it may, the statement in the compromise petition to which Bhola Singh *g* was admittedly a party, cannot be eschewed from consideration.

11. The learned Senior Counsel for the appellants further contended that under Section 28 of the Sikh Gurdwara Act, 1925, the first respondent could have filed a suit to settle the disputes if any, in respect of any property notified as the property of the Sikh Gurdwara. It was argued that in the absence of such a suit, the claim of the first respondent is to be negatived. *h* The first respondent herein filed an application under Section 142 of the Act

calling upon Bhola Singh to surrender the possession of the properties. The
a Commission rendered its judgment on *20-12-1958* and in that proceeding, it was mentioned that the first respondent had entered into a compromise on 5-4-1943. According to the appellant's counsel, Bhola Singh had transferred the property to his wife and son on 6-6-1957 but when a decree had been passed against Bhola Singh, he had no right over the property and, therefore, the transfer deed executed by him is not binding on Respondents 2 and 3 and
b consequently the appellants herein are also not bound by the said decree. It is important to note that there is no document to show that Bhola Singh acquired any title over this property. The proceedings before the Judicial Commission also would only show that he was an office-holder of the Gurdwara and he was removed from office in 1951 and consequently, he was directed to vacate the office and hand over the properties including the suit
c lands.

12. The appellants lastly contended that there are series of revenue records to show that the suit property was being cultivated by Bhola Singh and all the entries in these records show that the first respondent had no right to possession of property. Reference was made to a series of documents produced by the appellants. It is true that in some of the documents produced
d by the appellants, Bhola Singh is shown as the cultivator of these properties. This is not sufficient to prove that the occupancy right or the title of the suit property vested in Bhola Singh. These revenue records are quite consistent with the fact that Bhola Singh must have been in possession of this property as an employee or manager of the Gurdwara. The entries in the revenue records by itself cannot prove the title to the property unless it is supported
e by other evidence.

13. In the instant case, it is proved by satisfactory evidence that the property belonged to the Sikh Gurdwara and the appellants failed to prove that their predecessors-in-interest, namely, Respondents 2 and 3 acquired any title from Bhola Singh. Consequently, the sale deed in favour of the appellants did not confer any title on them in respect of the suit properties. The appeal is without any merits and it is liable to be dismissed.

14. While leave was granted in favour of the appellants, this Court directed the appellants to deposit Rs 25,000 annually before the Additional Senior Sub-Judge, Moga, till the disposal of the appeal. If any such amount has been deposited by the appellants, pursuant to the order passed by this Court on 13-12-1993, the first respondent would be entitled to get the refund
g of the same with interest, if any accrued, thereon. The appeal is dismissed, and parties to bear their costs.

h

AIR 1959 SC 31.

In the Supreme Court of India

(BEFORE SUDHI RANJAN DAS, C.J. AND N.H. 6HAGWATI, BHUVANESHWAR PRASAD SINHA, K. SU66A RAO AND K.N. WANCHOO, JJ.)

Civil Appeal No. 267 of 1958

MORAN MAR 6ASSELIQS CATHOLICOS ... Appellant;

Versus

THUKALAN PAULO AVIRA & ORS.... Respondents.

With

Petition No. 59 of 1957

(Under Article 22 of the Constitution of India for entorcemerjt of Fundamental Rights).'

REV. FATHE.R K.e. THOMAS & ORS.... Petitioners;

versus

T.P. AVIRA & ORS ... Respondents.

Civil Appeal No. 267 of 1958, decided on September 12, 1958

Advocates who appeared in this case :

M.K. Nambyar, Senior Advocate, M. Abraham, Advocate, & S.N. Andley, Rameshwar Neth & J.8. Dadachanji, Advocates. of Rajlnder Naraln & Ce., with him, for the Appellant;

K.P. Abraham, Senior Advocate, (S. subrernenta Iyer, P. Sivarama tver, P.P. John & M.R. Krishna Pillai, Advocates, with him), for Respondent No.1 (In Appeal);

T.N. Subramania rver. Senior Advocate (G.e. Pai and Sardar Behadur, Advocates, with him), for Respondent No. 3 (In Appeal);

G.B. Pai & Sardar 6ahadur, Advocates, for Respondent No.4 (In Appeal);

P. Ram Reddy, Advocate, for the Petitioners;

M.R. Krishna Pillal, Advocate, for Respondent No.1 (In Petition);

S.N. Andley & Rameshwar Nath, J.B. Dadachanji, Advocetes of Rajinder Narain & Co, for Respondent No.2 (In Petition);

Sardar Bahadur, Advocate, for Respondent No. 4 (In Petition).

The Judgment of the Court was delivered bv

SUDHI RANJAN 'DAS, C.J.— In order to appreciate the points urged before us in this appeel it is necessary to briefly narrate some facts which will bring out the genesis of the controversy that has been going on between the two rival sectlons of the Malankara Jacobite Syrian Christian cornrnunltv for a constdereble length of time and which has brought in its train protracted litigation involying rulnous costs.

2. In Malabar there is a' Chrlstlan community cornmcntv: known as Malankara Jac.obite Syrian Christians. That cornmunltv tracesIts origin:to 52 A.D. when St. Thomas, one of the dtsctptes Of JeSIJS Christ, carne to Malabar and estebtlshed the Christian Church there. In 1599 A.D., under the infl.u:ence of the Portuqese political power on the West Coast of India, the community accepted the Roman Catholic faith. This affiliation, however, did not last long. At a meeting known as Mattancherry Meeting held in 1654 the Roman Catholic Supremacy was thrown off and the Church in Malabar came under the authority of the Patriarch Of Antioch. who began to depute Metropolitans for ordaining Metropofitans .In Malabar. Later on the Patriarch himself ordained MetroDolitans for Malankara. Thus in 1840 the then relcnlnc Patriarch of

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Antioch perscnatlv ordained one Mar Mathew Atheneslus who had gone to Syria for the purpose.

3. In 1808 a trust for charitable purposes was created by one Moran Mar Thoma VI, popularly called Dionysius the great, by investing 3000 Star Pagodas with the British Treasury at Trivandrum on interest at 8% per annum In prepetultv, The trust property in dispute consists of this amount and the eccretlons thereto. It appears that a Society called the Church Mission Society and the Malankara Jacobite Syrian Church had come to jointly hold certain properties including this trust property. Disputes arose between the Church Mission societvenc the Malankara Jacobite Syrian Church with regard to such porperttes. 'Those disputes were settled by what Is known as the Cochin Award made in 1,840. This award divided the properties between the two bodies and so far as the orcperttesetlotted to the Malankara Jacobite Sy'rian Church were concerned, it provtded that they should,', be administered by three trustees, namely, *(i)* the Malankara Metropolitan, *(ii)* a kathanar (that is prtestlvjtrusteevend *(iii)* a lay trustee.

4. In 1876 Patriarch Peter III came to Malabar.: He called a meeting of the accredited representatives of all the churches in Malabar which accepted the ecclesiastical supremacy of the Patriarch of Antioch. ',The sald representatives. met together in a Synod called the Mulunthuruthu Synod under the prestdentshtp of Patriarch Peter III. The proceedings of that meeting were recorded in writing, a copy of which is marked Ex. F.O. At that Synod the Malankara Syrian Christian Association, popularly called the Malankara Association, was formed to manage all the affairs Of the churches and the cornmunlw, It consisted of the Malankara Metropolltan as the ex-officio President and three' representatives from each church. A managing cornrnlttee of 24 was to be the standlnq worklnqcornmlttee of the said Malankara Association.

5. On March 4,. 1879 one Mar Joseph Dionysius claiming to be the properly consecrated Metropolitan of the Malankara Jacobite Syrian Church and the President of the Malankara Association filed a suit (OS No. 439 of 1054) in the Zilla Court of Alleppev against one Mar Thomas Athauaslus who claimed to have been ordained by his brother Mar Mathew Athanasius as his successor and two other persons who claimed to be the Kathanarhnd lay trustees for the recovery of-the church propertles. Mar Jcspeh Dionysius asserted that the supremacy 'of the Patriarch consisted in consecrating and appointing Metropolitans from nrns to time to covsrn and ruls ovsr the Malankara Edavagai, sending Morone (the sanctlfled oil) for baptismal purposes, receiving the Ressissa from the cornrnunltv to malntaln his drgnity and generally in controlling the ecclestasttcal and temporal affairs of the Edavagai. Mar Thomas Athanaslus totally denied such alleged supremacy of the Patrlarch, Accordlnq to him the Patriarch could not claim, as a matter of right, to have any control over the Jacobite Syrian Church in Malabar either in temporal or spiritual matters, although, as a high dignitary in the churches of the country where their SaviQur was born and crucrfled, the Malabar Syria,n Christian community did venerate the Patriarch. That suit was, after various proceedings, finally disposed of by the Travancore Royal Court of Final Appeal by its judgment (Ex. DY) pronounced in 1.889, which, by a majority of 2 to 1, dismissed the appeal of the defendant Mar Thomes Athanaslusand confirmed the decree of the lower courts in favour of the plaintiff respondentNar Joseph Dionysius. The conclusions arrived at by the majority of Judges, as set forth in paragraph 347 of that judgment,were, amongst others, that the ecclesiastical supremacy of the See of Antioch over Jacobite Syrian ChurchIn Travancore had been all along recognised' and acknowledged by the Jacobite Syrian Christian Community and their Metropolitans; that the exercise of the supreme power consisted in ordaining elther directly or by duly authorised delegates, Metropolitans from time to time to rnanaqe the spiritual matters of the local Church, in sending Morone to be used in the churches for baptlsmal and other purposes and in general supervision over the spiritual government of the Church: that the authorltv of the Patriarch had never extended to. the oovernment of

temporalities of the Church which, Inthls respect, had been an independent Church; that the Metropolitan of the Jacoblte Syrian Church in Travancore should be a native of Malabar consecrated by the Patriarch or by his duly authorised pelegate and accepted by the people as their Metropolitan. The finding was that the p,lpintiff-respondent has been so consecrated and accepted by the majority of the pecpte and had succeeded to the Metropolitionship on. the death of Mar Mathew Athanasius. As a result of the af'oreseld judgment Mar Joseph. Dlonvslus came into possession of the office of the Malankara Metropolitan' and of the church properties. The Patrlarch Peter III did not, naturally enough, approve of that judgment, for it denied to hlm any authority over the ternporalltles of the Church.

6. Up to 1905 one Abdul Messiah was the reigning Patriarch of Antioch. It was a matter of dispute whether there was a valid Synodical removal of Abdul Messiah from the office of Patriarch. There is no dispute, however, that the Sultan of Turkey had withdrawn the Firman he had issued recognising Abdul Messiah as the Patriarch and had issued a fresh Firman in favour of one Abdulla II who began to perform the duties of the Patrtarch.

7. In 1909 Mar Joseph Dlonvslus died and the Malankara Association elected and installed one Mar Geevarghese Dlonvslus (who, in 1907, had gone to Syria and got himself ordained as a Metropolitan by Patriarch Abdulla II) as the Malankara Metropolitan and as such he became the ex-offlclc President of the Malankara Association and one of the trustees of the Church properties. The other two co-trustees of Mar Joseph Dlonysjus, namely, Kora Mathan Malpan and C-J.kurien continued as co -trustees of Mar Geevarghese olonvstus.

8. In 1909 Abdulla II carne to Malabar with the object of regaining his temporal authority over the Malankara Jacobite Syrian Christian Church. After his arrival he convened a meeting of the Malankara Association at the Old Seminary of Kottayam and demanded that the said Association should accept and acknowledge the temporal authorttv of the Patriarch. This the co:ngregation declined to do and the meeting ended in confusion. Abdulla II thereafter started approaching the parlsh churches separately and attempted to get from them Udampadls (Subrnlsston Deeds) acknowledging the spiritual and temporal supremacy of the Patriarch. Heectuanv succeeded in getting such Udampadis from some of the churches but not from many; He started rewarding persons who gave Udarnpadls by' ordaining them as Metropolitans and ex-communicating those who decltned to do so. In 1910. Mar Poulose Athanaslus (the first plaintiff in the present suit ,and now the respondent in' the present appeal arising eut of that suit) gave an Udampadi and was ordained as a Metropolitan, Mar Geevarghese Dionysius declined. to submit and give any Udampadi and consequently in 1911 Abdulla II ex-communicated Mar Geeverghese Dionysius whom he himself had ordained in 1907 and ordatned one Mar Kurllos as the Malankara Metropolitan so as to make him automatically the ex-offlclq President of the Malankara Association and one of the trustees of the trust properties. The other two trustees Kora Mathan Malpan and C.J. Kurten went over to the vide of Abdulla II and acknowledged his new nominee Mar Kurilos as the Malankara 'Metropolitan and as such the ex-officio trustee Mar Geevarghese Dlonvsrus retaliated by convening a meetlriq of the Nalankere Association which declared his ex-cornmunlcation invalid and removed from trusteeship the two trustees who had gone over to the side of the Patriarch and appointed two new trustees, namely, Mani Poulese Kathanar who was the second appellant but has since died and one Kora Kochu Korula also slnce deceased. The said meeting also resolved to enquire into the real posltlcn of. Abdulla II and Abdul Messiah and suspend the payment of Ressissa to the Patriarch. Abdulla II left Malabar in october 1911 and in 1912 issued a Kalpana (message or order) branding Abdul Messiah and Mar Geevarghese Oionysius as "wolves" from whom the faithful should entirely keep aloof.

9. In 1912 Abdul Messiah, whose Firman had been withdrewn by the Sultan of Turkey, came to Malabar', He declared the ex-cornmunicetlon of Mar Geevarghese as invalid. In 1913 he issued a Kalpana (Ex. 80) establishing a Cathollcete in Malabar 'as it appeared to him that "unless we do Instal a cathotlcos. Our Church, owing to various causes. is not likely to stand firm in purity and hollness". By this I<alpana Abdul Messiah ordained one Mar Poulose sesseuos as the first Catholicos and also ordained. three Metropolitans. This Kalpana further provided that the Catholicos aided bv the Metropolitans would ordain: Melpattakars "in accordance with the Canons of Our Holy Fathers" and consecrate Holy Morone.and that the Metropolitan had the sanction and authority to instal enew Catholicos when a Catholicos died. Shortly erter this Abdul Messiah left Malabar in March 1913, The position at that time, therefore, was that there were two rival groups in the Malankere Jacobite Syrian Church who were represented by two rival sets of trustees, narnelv. Mar Geevarghese Dionysius (since deceased) and his co-trustees Mani Poulose Kathaner (the second appellant) n.ow deceasedand Kora Kochu Korula also since ceceesed on the one side and Mar Kurilos and Kora Mathan Mafpan and C.J. Kurien who had deserted Mar Geevarghese Oionysius .enc had sided with Mar Kurilos. In 1915 Abdulla II and Abdul Messiah died.

. 10. In the meantime in 1913 the Secretary of State for India filed an Interpleader suit (OS No. 94 of 1088) in the District Court Of Trlvandrum. In that suit he impleaded both the sets of rival claimants as defendants, namely, *(i)* Mar Geevarghese Dlonyslus, *(ii)* Mani Poulose Kathanar *(iii)* Kora KQchU Korula being one set claiming to be trustees, and *(iv)* Mar Kurilos, *(v)* kora Mathan Malpan' and *(vi)* C.J. Kurten being the other set also making the same claim. The prayer was for the determination of the question as to which of the two rival sets of trustees was entitled to draw the interest on theerncunts standing to the credit of the Malankara Jacobite Syrian Christian cornrnunltv in the British treasurv.: The two rival sets of trustees filed written statements interpleading. against each other, the defendants Mar Geevarghese Oionysius, Mani Poulose Kathanar and Kora Kcchu Korula being treated as plaintiffs and the defendants Mar Kurilos. Kora Mathan Malpan and C.J. Kurten being treated as derendents. As will appear from para 3 of the trial court's judgment (Ex. 255) pronounced on September 15,.1919, the suit was ccnverted.Jnto a representative action on behalf of the Jacobite Syrian Christian population' of Malabar with the oerrnlsslcn of the court and notice 'was given of the institution of the suit under Section 26 of the Travancore CPC by publishing advertlsements In the several jurisdictions peopled by the Syrian Christian community. Defendants 7 to 41 got themselves impleaded in the suit as defendants and supported Defen(Jants 1 to 3. During the pendency of the suit, Defendant 4, Mar Kurilos died and Mar Pculose Athanaslus, who claimed to be the successor of Mar Kurilos as M.alankara Metropolitan, was added as Defendant 42. By the aforesaid judgment (Ex. 255) the trial court upheld the claim of defendants Mar Geevarghese Dionysius, Mani Poulose Kathanar and Kora Kochu Korula (Defendants 1 to 3) as the lawful trustees of the Church properties.

11. The defendants Kora M,athan Malpan, C.J. Kurien and Mar Poulose Athanaslus (Defendants 5, 6 and 42) appealed to the Travancore High Court, In 1923 the Full Bench of the Travancore High Court pronounced its judgment (Ex. DZ) which will be found reported in 41 Tr.L.R. 1. By that judgment the Fun Bench reversed the judgment and decree of the District Court and directed that the money lying deposited in court be withdrawn ov the Defendants 5 and 6 and by the person to be thereafter duly elected, appointed and consecrated as the Malankara Metropolltan.

12. Mar Geevarghese Dionysius and his two co-trustees (Defendents 1,2 and 3) applied under Section 12 of the Travancore High Court RegulatiQn, 1099 for review of the aforesaid judgment of the Full Bench. That application was admitted subject to the condition that on the re-hearing the findings recorded *(i)* as to the authenticity of Ex.

18 the version of the Canon Law produced by the Defendants 5, 6 and 42, *(ii)* as to the power of the Patriarch to ex-communicate without the Interventlon of the Synod, and *(iii)* as to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his powers .of ex-communlcatlon must be taken as. binding. The appeal was then re-heard by a Full Bench which, by Its judgment pronounced On July 4, 1928 (Ex. 256), upheld the decision of the learned District Judge and confirmed his decree. That judgment will be found reported in 45 rr.t.n. 116. The net result of that litigation, therefore, was that Mar Geevarghese Dionysius end his two co-trustees (Defendants 1, 2 and 3) became finally entitled to withdraw the moneys deposited in the court as the lawful trustees of the church properties.

13. On August 16, 1928 the Managing Committee of the Malankara Association was authorised to draw up a constitution for the Church and the Assoclatton. On the very next day Mar Jultus Elias, the Patriarch's Oelegate who was in Malabar at that time and who has figured as PW 17 in the present proceedings, issued an order on Mar Geevarghese Dionysius calling upon him to execute an Udampadl within two days and at the same time suspending him for having "cornrnltted several grave offences against the Holy Throne of Antloch and the faith and practices of the Holy Church and repudiated the. authority of the ruling Patriarch". He alsQsent letters to the Governments of'Travancore and Madras to withhold the payment of interest to defendant Mar Geevarghise Dlonvslus on the ground of his suspension.

14. On August 21, 192805 No.2 of 1104 was filed in the District Court of xottavam by 18 persons belonging to what, for the sake of brevity, may be cajled the Patriarchal party against the Defendar1ts 1, 2 and 3 of OS No. 94 of 1088 and 12 other persons including the second Cathcllcos, Mar Geevarghese Philixinos, who rnav be ccmpendlouslv called as belonging to the Cathcllcos' party, and the Secretary of State for India. It mav be mentioned here that in 1929 on the death of Mar Geevarghese Phtlfxlnos,' Moran Mar Bassellos, who was Defendant 1 in the suit out of which this appeal arises and is the appellant before us, was installed by the local Metropolitans es the third Cathollccs in terms of the procedure prescribed by" the Kalpana (Ex. 80) issued by Abdul Messiah and he was substituted as a defendant" In OS No.2 of 1104 In place and stead of the second cathettccs Mar Geevarghese Philixinos. On January 23, 1931 OS No.2 of 1104 was dismissed for non-compliance with the court's order for payment of certain moneys to the Commissioner appointed in that suit. The plaintiffs applied for restoration of t.he suit by setting aside of that order of dismissal. That application for restoration was dismissed on September 29, 1931 (Ex. 46). There was a Civil Misc. Appeal No. 74 of 1107 a,gainst the order refusing to restore the suit.

15. In view of the disputes rag'ing between the two sections of the community which resulted in acute dissensions in the Church, .an attempt was made to restore goodWill and. amity amonqst, the members of the communltv.and et the instance of Lord Irwin,. the then Viceroy of India, Patriarch Elias·1 visited' Malabar in 1931. He, howsvsr, died in Malabar before he could effect any settlement. In 1933 Ebhraim wes elected as Patriarch of Antioch without, it is said, notice to the Malabar community. Mar Geevarghese Dionysius and his supporters did not recoqnlse Ephrain1 as the duly installed Patriarch.

16. Kora Kochu Korula, who was one of the co-trustees of Mar Geevarqhese Dlonvsius died in 1931 end/one E.J. Joseph was appclnted a trustee in his place and stead. During the pendency of the Civil Miscellaneous Appeat, hereinbefore mentioned. Mar Geevarghese Dionysius died in February 1934 and the trust properties passed into the possession of Mani Polouse Kathanar and E.J. Joseph. Shortly thereafter the draft constitution was published in the shape of a pamphlet, On Oecember 3, 1934 three notices (Ex. 59, 60 and 61) were Issued convenlnq a meeting of the Churches to be held on December 26, 1934 at M.D. Seminary at Kottavam for, inter alia, electing the

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Malankara Metropolitan and adopting the draft constitution. Notices were also published in two leading Malayalam newspapers (Ex. 62 and 63). The meeting was held on the appointed day and the proceedings of the meeting will be found recorded in Ex. 64. Shortly put, the third Catholicos, who was Defendant 1 in the present suit and is now the appellant before us and who was also Defendant 1 in OS No. 2 of 1104 was unanimously elected as Malankara Metropolitan and as such he automatically became a trustee of the church properties. The meeting also unanimously adopted the constitution (Ex. A.M.). The factum and validity of this meeting are strenuously challenged on diverse grounds to which reference will be made hereafter.

17. On July 5, 1935 the Metropolitans of the Patriarchal party issued a notice (Ex. D) summoning a meeting of the Church representatives for August 22, 1935 at Karingasserai to elect the Malankara Metropolitan. In that notice it was mentioned that none of the Catholicos party should be elected, although Ex. A.M. was not referred to therein as a ground for such exclusion. The meeting was held on August 22, 1935. At that meeting Mar Poulose Athanasius, the original first plaintiff in the present suit now deceased, was elected Malankara Metropolitan, Mar Poulose Kathanar and E.J. Joseph, the Defendants 2 and 3 in the present suit were removed from trusteeship and Avira Joseph Kathanar and Thukalan Paulo Avira, Plaintiffs 2 and 3 in the present suit, Plaintiff 2 having died since, were elected trustees; and the three new trustees (Plaintiffs 1 to 3 in the present suit) were authorised to file a suit for the recovery of the trust properties.

18. After these resolutions were passed at the meeting the Civil Miscellaneous Appeal No. 74 of 1107, which was pending in the High Court, was on July 23, 1936 allowed to be dismissed for non-prosecution. On March 10, 1938 was filed in the District Court of Kottayam the suit (OS No. 111 of 1113) out of which the present appeal has arisen for various reliefs to which reference will hereafter be made in some detail. That suit was dismissed on January 18, 1943. The plaintiffs preferred an appeal to the Travancore High Court, which was numbered as AS No. 1 of 1119. On August 8, 1946 that appeal was allowed and the suit was decreed by a majority of Judges in the proportion of 2 to 1. The defendants applied for review which came up before the Travancore High Court. That review application having been dismissed on December 21, 1951, the defendants applied for and obtained special leave to appeal from this Court under Article 136 of the Constitution. That appeal before this Court was numbered CA 193 of 1952. By its *judgment delivered on May 21, 1954*[1] this Court allowed the appeal, set aside the judgment of the High Court and admitted the review application and directed the entire appeal No. AS 1 of 1119 to be re-heard on all points. The Travancore High Court thereupon took up the re-hearing of the appeal. The arguments commenced on September 15, 1956 and concluded in the first week of October 1956 when judgment was reserved. On November 1, 1956 came the States Reorganisation Act which brought into being the present State of Kerala and the Kerala High Court. In December 1956 the same Judges heard the appeal formally de novo by putting a few questions and on December 13, 1956 delivered a unanimous judgment allowing the appeal and decreeing the suit. The High Court on March 21, 1957 granted a certificate under Article 133 of the Constitution. Accordingly Moran Mar Basselios Catholicos, the original first defendant, has preferred this appeal impleading Thukalan Paulo Avira, the original third plaintiff, and Kurien George Semmassen the original seventh defendant, as the respondents, the other parties having died in the course of the long drawn proceedings. Two individuals have been elected by the Patriarchal party under orders of this Court made on April 22, 1957 to carry on this litigation in the event of the first respondent's death during its pendency and they have since been added as party-respondents.

19. In the meantime on April 17, 1957 was filed a petition under Article 32 of the Constitution by 8 persons belonging to the Catholicos party praying for a writ of

certiorari or other appropriate order or direction or writ for quashing the judgment and decree passed by the High Court of Kerala dated December 31, 1956 in A.S. I of 1119. That application has also come up for hearing along with the appeal. Shri T.N. Subramania Aiyer took a preliminary objection as to the maintainability of the appeal on the ground that although the final judgment of the Kerala High Court was passed on December 13, 1956, it only restored the decree of the majority of the Travancore High Court pronounced on August 8, 1946 and accordingly, that being a decree passed before the commencement of the Constitution, no appeal would lie under Article 133 of the Constitution. This objection, however, was not seriously pressed by learned counsel and would, at any rate, not affect the maintainability of Article 32 petition. In the circumstances nothing further need be said on this preliminary objection, except that it is rejected as untenable.

20. The plaintiffs have brought the suit out of which the present appeal has arisen claiming to be trustees and praying for a declaration of their own title as trustees and for a declaration that the defendants were not trustees and for possession of the trust properties and other incidental reliefs. It is perfectly clear that in a suit of this description if the plaintiffs are to succeed they must do so on the strength of their own title. The plaintiffs in this suit base their title to trusteeship on their election at a meeting of the churches alleged to have been held on August 22, 1935 at Kartnqassere! when the original plaintiff is said to have been elected the Malankara Metropolitan and the plaintiffs 2 and 3 as Kathanar and lay trustees. That meeting was admittedly held without any notice to the members of the Catholicos party, for they were, quite erroneously as we shall presently indicate, regarded as having gone out of the Church. In justification of this stand reference is made, rather half-heartedly, to the Kalpana (Ex. Z) which commended the faithful not to have anything to do with the heretics. On our finding on that question to be hereafter recorded, namely, that the defendants and their partisans had not become *ipso facto* heretics in the eye of the civil court or aliens or had not gone out of the Church, it must necessarily follow, apart from the question of the competency of the convener of the meeting, that the meeting had not been held on due notice to all churches interested and was consequently not a valid meeting and that, therefore, the election of the plaintiffs was not valid and their suit, in so far as it is in the nature of a suit for ejectment, must fail for want of their title as trustees.

21. Learned counsel for the respondents, however, seek to get over this difficulty by contending that the present suit has been filed by the plaintiffs not only in their capacity as trustees, but also in their individual capacity as members of the Malankara Jacobite Syrian Christian community who claim that as such members they are entitled to come before the court for the preservation of the properties held in trust for all the members of the community including themselves. Learned counsel for the defendant-appellant contends that the present suit is not a representative suit nor a suit under Section 72 of the Travancore CPC corresponding to Section 92 of our CPC and that, therefore, the plaintiff cannot question the validity of the defendants' title as trustees of the church properties. Learned counsel for the defendant-appellant also points out that even if the plaintiffs may in their individual capacity as members of the community maintain this suit with a view to dislodge the defendants from their office as trustees the onus is on the plaintiffs and not on the defendants who have not come to court for a declaration of title to prove that the defendants have no title as trustees. The question of burden of proof at the end of the case, when both parties have adduced their evidence is not of very great importance and the court has to come to a decision on a consideration of all materials. Further although in the cause title or in the body of the plaint the plaintiffs do not claim to have instituted the suit for themselves and on behalf of all other members of community proceedings were taken under the provisions of the Travancore Code of Civil Procedure corresponding to O.1, Rule 8 of

our CPC, We, therefore, proceed to determine the questions arising in this appeal on the basis that the plaintiffs were entitled to maintain this suit as members of the Malankara Jacobite Syrian Christian community not only on behalf of themselves but on behalf of all the members of the said community.

22. The plaintiffs first seek to displace the title of the defendants on the plea that the defendants are herettcs.er aliens to the Church or have voluntartlv gone out of the Church by establishing a new Church and consequently have lost their status es members of the Malankara, Jacoblte Svrtan Church and have forfeited their office es trustees of the properties of that Church, The major part of the argument advanced before us on both sides has centred round the question as to how far the contentions now SOl)ght to be put forward by the plaintiffs in the present sutt in deroqatlon Of the title of the defendants are concluded by the final declslon (Ex. 256) In theInterpleader sult Cp.S. No. 94 of 10S8) and by the provisions of the' Kerala cede Of Civil Procedure corresponding to Order 9, Rule 9 of our CPC In view of the dismissal for default of the other sult (Order 2 of 1104).

23. At the forefront, of course, has come the question as.to the identity of the .oerttes in the different suits. As will appear from paraqraph 3 of the judgment (Ex. 255) pronounced by the trial court on September 15, 1919 in the interpleader suit (O.S. No. 94 of 1088) that suit was, with the permtsston of the court, converted into a representative action on behalf of the Jacobite Syrian Christian population of Malabar. Therefore the decision in that interpleader suit (O.S. No. 94 of 10S8) must be binding on all members of the Malankara Jacobite Syrian Christian communltv. In paragraphs 6, 9 and 32 Of the plalnt in the present suit the plaintiffs who represent the interests of Defendants 4 to 6 in the interpleader suit (O.S. NO. 94 of 1088) themselves rely on the decision in that interpleader suit as operating as *res judicata* as between the parties to the present suit on questlons referred to in those paragraphs. Indeed in paragraph '55 of the grounds of appeal filed by the plaintiffs in the present suit the contention is put forward that the trial court should have, held, Inter alia, that Ex. 256 operated as *res judicata* in respect of the points decided in that case. It is also to be remembered that the first plaintiff' in the present suit was Defendant 42 in that interpleader suit and: the second defendant in the present' suit was the second defendant in that interpleader suit. In these circumstances there does not appear to us any difficulty as to parties in applying the principle of *res judicata* to the matters in issue in this SUit, if the other condltlons for its appllcatlon are satlsfled.

24. In order to ascertain exactly what are the matters in issue In the present suit between the parties thereto it is necessary to analyse the plaint In some detail. The properties claimed to belong to the Malankara Jacobite Syrian Church which have to be admlnlstered by three trustees, namely, the Malankara Metropolitan, one Kathanar (clergy) and a lay man to be elected by the Church, are referred to in paragraphs 1 and 2 of the plaint. The sallent .facts summarised above as constituting the background of the present disputes are then set forth in paragraphs 3 to 12. Reference is thereafter made in paragraphs 13 and 14 to the meeting said.to be a meeting of the Malankara Association held in Karln-qasseral in August, 1935. It is alleged that at that meet.ing the first plantiff was elected as the Malankara Metropolitan and the second and third plaintiffs were elected respectively as the Kathanar (priestly) trustee and the lay trustee and the second and the thtrd defendants were removed from trusteeship. In paragraph 15 is formulated the plaIntlff's claim to .be in possession of the church properties. Paragraphs 16 to 21 repudiate the claims of the first defendant allegedly founded on his election as the Malankara Metropolttan and trustee at a n1eeting of the Malankara Association sald to have been held In December 1934. It Is alleged that the last mentioned meeting was' not convened by any competent person nor was due notice of it given to all the Churches. In,' paragra ph 2.2 it Is stated that, for reasons stated there and m,ore partlcularlv specified in oarecreohs 26, the first defendant was

disqualified and declared unfit to be Malankara MetropoHtian, The reasons set forth are five in number and each of them is characterised as arnountlnj; to a denial or repudiatton of the authority of His Holtness the Patriarch of Antioch. The contentions formulated in paragraphs 23 end 25 are that the acts and pretentious referred to therein constitute heresy and that the first defendant as well as the second and third defendants, who are supporting and co-orieranns with, the first defendant, had become *toso tecto* heretics and alrens to the Malankara Jacobite Syrian Church. Paragraph 26 of the plaint, which is very Important for the purposes of our declslon Of this appeal runs as follows:

"'The defendants and their partisans have voluntarily separated themselves from the ancient Jacobite Syrian church and have constituted for themselves a new church called "Malanl<ara Orthodox Syrian Church". According to the beliefs and doctrines of that Church, such functions as, consecration of Morone, ordination of Metropolitans, granting of statccns and allotting Edavagas to Metropolitans-privileges which are exclusIvely within the powers of His Holiness the Patriarch-could be done by the first defendant and others, without any recourse to His Holiness the Patriarch. Further it is provlded, that Resslssa which is due to His Holiness the Patriarch may be pald to the person holding the dignity of Catholicos of the said: Church. In short,' this act which provides for the permanent constitution of the said Church without any connection with His Houness.the Patriarch, and in repudiation and negation of him as well constitutes heresy. The delendantshave no right to claim membership of the ancient Jacobite Syrian Churchv For these reasons also, the defendants have become disqualified and unfit to be the trustees of, or to hold any other position in, or enjoy any benefit from the Jacobite Syrian Church.

25. The constltutlon referred to above presumably is Ex. AM, which is said to have been adopted at the M.D. Seminary rneeting held in December, 1934. The rest of the allegations in the plaint need not be scrutinised in detail, except that it may be noted that in paragraph 35 the plaintiffs claim to be entitled to rnetntaln the suit not only as trustees but also in their individual capacity as members of the community. The plaintiffs clalm that they be declared as lawful trustees, that the defendants be declared to have no right to retain possession of the church properties, that the' defendants be compelled to surrender and the plaintiffs be put in possession of the suit properties, that the' defendants be directed to pay mesne profits and render accounts of their adrntnlstretlon and of the rents etc.ireetlsedjbv them and that the defendsnts be restrained from functioning as trustees.

26. The defendants have filed their written statement denying the contentions of the plaintiffs. In perttcular, they deny that they have been guilty of any act of heresy or that even if they were they *ipso'facto* ceased to' be members of the Church, Paragraphs 22 to 26 of the plaint are denied in paragraphs 26 to 39 of the written statement. It is averred that there were not two different churches or two ktnds Of faiths and that the defendants had not established a separate church and had not separated from the Jacobite, Syrian Church. They deny that the meeting said to have been held at Karlnqasseral-sn AUgust 1935 was convened by any competent person or was held on notice to all churches. They contend that the meetlnq was invalid and the first plaintiff was not valldlv elected Malankara Metropolitan and the second and third plaIntlffs had not been validly elected as trustees. It isalso pleaded in paragraph 4S of the written statement that it is the plaintiffs and their parttsans who had been from 1085 (1910 A.D.) contending that the Patriarch had temporal power over the properties of the church, that thetpatrlerch had power, acting by himself, to ex-communicate and ordain Melpattakars (bishop), that only the Patriarch could consecrate Marone (holy oll), that the Canon of the Church is the book, which was marked as Ex. 18 in the suit of 1913 and that the Catholtcate had not been validly established and that bv non-co-ooeratlnc with and ooocslnc the Malal1kara Syrian

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Church the plaintiffs had voluntarily separated themselves and had ceased to be the members of the Church. In paragraph,s 46 and 47 of the written statement alternetlve plees are teken that the plaintiffs and their partisans had lost their rights, if any, to the Church properties by adverse possessio" and limitation. The defendants contend that, in the premises, the plaintiffs, have no title and were not entitled to maintain the suit.

27. The allegations in the written statements are denied and the averments in the plaint are reiterated in the replication filed by the plaintiffs. certeln clarifications called ISSUe Papers, according to the Rules and Forms Of the coderot Civil Procedure of Travancore were filed in the case. They are in the nature of interrogatories and answers thereto, obvlouslv designed to form the bests on whtchthe issues have to be struck.

28. Not less than 37 issues were raised on the pleadings. Of them issues 1 and 3 raise the question of the validity of the respective titles of the three plaintiffs, that is to say, title of the first plaintiff as Malankara Metropolitan and of the second and third plaintiffs as the trustees of the church properties and the validity of the Karingasseral meetlnq in August 1935. Issues 6 to 9 concern the validity of the M.D. Seminary meeting in December 1934 at which the first defendant is ,alleged to have been elected as Malankara Metropolitan, the second and third de'fendants having been previously elected trustees as the Kathanar and the lay trustees Issues Nos. 10, 11, 13, 14,15,16, 17, 19 and 20 are as follows:-

"10, Has the Lst defendant been duly and validly Installedes cethcnccs in 11047 If so by whom? And was it done with the ccoperetlon and consent of Mar Geevarghese Dlonvslus and the other Metropolitans of Malankara?

(a) Were his two immediate predecessors in that office also duly and validly installed in the same manneranddid they function as such?

(b) Has the institution of the Catholicate for the East exercising jurisdiction over Malankara ever existed at any time before 10S8?

(c) Was the institution Of the Cathollcate for the East with jurisdiction in Malankara, purported to be brought Into existence in 1088 for the first time? Or had it only been in abeyance for some time? And was it only revived and re established in 1086?

(cJ) Was such a re-esteblishment effected by Abdul r-tessrah with the co-operation of the late Malankara Metropolitan Mar Geevarghese Dionysius and the other Metropolitans of Malankare and the Malankara Chl)rch? If S0, is it valid and lawful? Was Abdul Messiah competent to do so?

(e) Did Mar Geevarghese Dlcnvslus submit hlrnself to the authorltv of the Catholicate from lOSS till his 'death?

(f) Have the Malankara Jacobite Syrlan Associatlon the Association Committee, and the Churches and people of Malankara also accepted the Cathottcate and have submitted themselves to lts.authortty from 1088?

(g) Are the plaintiffs estopped fromc;ontending that the Cethollcate was not validly re-established in 1088 or that its authority was not accepted or recognised by the Malankara Jacobite Syrian Church?

(h) Whether after the r.evival 'of the Catholicate'the powers Of the Patriarch, if any, as rega.rds ordination or appointment of the Malankara Metropolitan and the Metropolitans of Malankara have become vested in the Cathctlcos?

U) Cannot the offices 'of Cathollcos and Malankara Metropolitan be cornblnedIn one and the same person?

11. Is the Patriarch of" Antioch the ecclesiastical head of the Malanl(ara Jacobite Syrian Church or is he only the supreme sptrttual head?

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(a) What is the nature, extent and scope of the Patriarch's ecclesiastical .or spiritual authority, Jurisdiction, or supremacv 'over the Malankara Jacoblte Syrian Church?

(b) Is the Patt"iarch ac.ting by himself or through the Oelegate duly authorised by him in that behalf, the only authority competent to consecrate Metropolitans for Malankara? Or i6 the consecrenon a. Synodical Act in which the Patriarch acts and can act only in conjunction with a Synod of two or more Metrans?

(c) Whether "Kalvappu:' or "the laying on of hands" which is e necessary and indispensable Item Jn the consecration of a Metropolitan should be by the Patriarch or his duly 'appointed Delegate alone or can it be done by the Cethollcos also?

Cd) Is the Patriarch alone entltled to and competent to consecrate "Morone" for use in the Malankara Church? Or is the cethoncos also entitled to do it?

(e) Whether by virtue of long-standing custom accepted by the Malankara Church and rullnqscof Courts, the Holy Morone for use in the Malankara Churches has to be consecrated by the Patriarch?

(f) Is the allocation of Dioceses or Edavagais in Malankara a right vestlnq solely in the Patriarch and;iwhetherbefore exerctslnqjurlsdlctlon in any Diocese ,the Metropolitan ordained and appointed by the Patriarch (by issuing a Station) has only to be accepted by the People of the Dlocese? Or is the allocation of Edavagais, so far as Malankara is concerned, not a right which the Patriarch or camcucos or Malankara Metropolitan has or has ever had, but a right whlch vests and has always vested in the Malankara Jacobite Syrian Association? Whether a Metropolitan, before he can exercise jurisdiction in any Diocese in Malankara, must have been elther elected for the office before ordination by the Malankara Jacoblte Syrian Association duly convened for the purpose or accepted by the same after ordination?

(g) Is the Patriarch the sole and only authority competent-to ordain and appoint the Malankara Metropolitan? Is the issue of a Staticon or order of appointment by the Patriarch either before selection or election by the meeting of the church representatives or after such election or selection essential? Or is such order unnecessary and the election, or acceptance by the Jacobite Syrian Association sufficient?

(h) What is Ressissa? Is it a contribution which the Patriarch and Patrlarch atone is entitled to levy as a matter' of right? Or is it onlv in the nature of a voluntary gift which may be made to or received by the Patriarch and Cathollcos?

(i) Has the Patriarch no temporal authority or [urlsdlctlon or control whatever over the Malarikara Jacobite Syrian Church? or whether, as the ecclesiastical head, he court exercise and has all along exercised .temporal authority by awarding such splrltual punishment as he thinks fit in cases of mismanagement or misappropriation of church assets?

13. Which is the correct and genuine version of the Hocdava Canons compiled by Mar Hebraeus? Whether it is the book marked as Ex. A or the book Marked as Ex. XVIII in 0.5. 94 of 1088?

14. Do all or any of the followlnq acts of the i st defendant and his partisans amount to open defiance of the authority of the Patriarch? Are they against the tenets of the Jacobite Syrian Church and do they amount .to heresy and render them *ipso facto* heretics and allens.to the faith?

(i) Claim that the 1st defendantIs a Catholicos?

(ii) claim that he is the Malankara Metropolitan?

(iii) claim that the 1st detendant has authority to consecrate Morone and the fact that he is so consecrating?

(iv) Collection of Ressisa by the 1st defendant?

15,(a) Have the 1st defendant and his partisans voluntarily given up their allegiance to and seceded from the Ancient Jacoblte Syrian Church?

(*b*) Have they established a new Church styled the Malankara Orthodox Syrian Church?

(c) Have they framed a constttutlon for the new .church conferring authority in the Catholicos to consecrate Morone to ordain the higher orders of the ecclesiastical hierarchy, to: issue statlcons allocating Oioceses to the Metropolitans and, to collect Besslssa?

(d) DQ these functions and rights appertain solely to the Patriarch and does the assertion and claim of the tst defendant to exercise these rights amount to a rejection of the Patriarch?

(e) Have they Institutec the Cathctlcate for the first tlme'iln Malankara? Do the above acts, if proved, amountto heresy?

16.(*a*) Have the defendants cesset to be members of the Ancient Jacobite Syrian Church?

(*b*) ,Have they forfeited their right to be trustees or to hold any other office in the Church?

(c) Have they forfeited their right to be beneflclarles in respect of the trust properties belonging to the Malankara Jacobite Syrian cdrnmunltv?

1,7. Have Defendants 2 and 3 by helping and actively co-operatlnq with the 1st defendant in the above acts and pretensions become heretics or aliens to the faith or gone out of the fold?"

19, (a) Have the plaintiffs and their partisans formed themselves into a separate Church in opposition to Mar GeevargheseDionysiu$ and the Malankara Jacobite Syrian Church?

(b) Have they separated themselves from the main body of the beneficiaries of the trust fro m 10857'

20. Do the following acts and clatrns of the platntlffs constitute such separation?

(a)(i) The claim .that Patrlerch alone can consecrate Morone?

(ii) That the Canon .of the Church is Ex. XXmro 0.5. 94?

(iii) That the Catholicate is not established?

(iv) That the Patriarch by himself can ordain' and exccmrnunlcete Metropolitans?

(b) Have the plaintiffs 'been claiming that the Patriarch has temporal powers over the Church?

(c) Have they been urging .that Mar Geevargtiese Dlonvslus was not the Malankara Metropolitan?

(d) Have they made alterations in the liturgy of the church?

(e). Has the 1st plaintiff executed an Udarnpadvto the Patriarch conceding him temperalpowers over the Jacobite Syrian Church and its properties?

(f) Have the plaintiffs and their partisans by virtue of the above acts and claims become aliens to the church and disentitled to be trustees or beneficiaries, of the Church and its properties?

29. The pleadings, in which may be included the repllcation and the issue papers and the actual issues raised in this case, quite clearly tndlcate that the principal contention of the plaintiffs in the present suit is that the defendants had become heretics or aliens to the Church or had Voluntarily gone out-of the Church' only by reason of certain conduct definitely partlcularlsed in paragraphs 19 to 26 Of the plaint, namely, (i) the acceptance of Abdul Messiah as a validly continuing Patriarch; (ii)the acceptance of the estabttshment of the cethoucete with power tothe cethoncos for the tlrne being *(a)* to ordain Metropolitans, *(b)* to ccnsecrete Morone *(c)* to Issue statlcons, *(d)* to allot Edavagais and *(e)* to receive Ressissa. These are thespectftc acts on whlch is founded the charge of heresy or going out of the, Church by setting up a new Church. It has not been disputed that the power to issue Staticons and to allot Edavagais are not independent powers but are incidental to and flow from the power to ordain Metropolitans. The question is whether these contentlons are concluded by the final decision, (Ex. 256) pronounced on July 4, 1928 in the Interpleeder suit (0.5. No. 94 of 1088) which is reported in 45 Tr. L.R. 116. This leads us to scrutinise the matters which were in issue in that suit.

30. It is unfortunate that the pleadings in that tnterpleader suit have not been exhibited in the erssant casas. The judgment (Ex. 255) pronounced by the trial Judge in 1919 and reported in 41 Tr. L.R. 1, however, summarises the pleadings and the rival contentions of the two opposing sets of trusteeswho Interpleaded against each other. The findings of the trial JUdge relevant for our present purpose may be thus summarised:

"*(i)* that Mar Geevarghese Dlonyslus was the lawful Malankara Metropolitan and was recognised and accepted as such by the Malankara-, Syrian Church and as such had become a trustee of the Church properties (Issue 1).

(ii) that the Patriarch had only a power of general supervision over the spiritual government Of tbevChurch but had no right to interfere witt, the internal administration of the Church in spiritual matters whlcn rested only in the Metropolitan and that the Patriarch has no authority, jurisdiction, control, supervision or concern over or with the temporalities of the Arch-Diocese of Malankara (Issue III);

(iii) that Patriarch Abdulla II did make an attempt to secure authority over the temporalities of the Syrian Church when he visited Travancore in 1085 but that his attempts and pretenslons in regard to the Qovernn1ent of the temporalities of the Church' were illeg'al and against the interest and well being of the Malankara Church and the cornrnunltv (issues V & VI);

(iv) that Mar Geevarghese Dionysius was excommunicated by Patriarch Abdulla II but such excommunication was opposed to the constitution of the Malankara Church as laid down by the Synod Of Mulunthuruthu and was Canonically invalid and he was still reccqnlsedand accepted as the Malankara Metropolitan by a large majority of Malankara Christian rommunltv (Issues VII to XVII);

(v) that Defendants 2 and 3, Mani Paulose Kathanar and Kora Kochu Korula had been elected by the cornmunttv as trustees to cooperate with Mar Geevarghese Dionysius (Issue XVIII);

(vi) that 4th defendant (Mar kutllos) had not been elected; and was not accepted and recognised as the Malankara Metropolitan by the cornrnunltv and was not competent to be a trustee (Issues XIX & *XX);*

(vii) that Defendants 5 and 6 (Kora Mathan Malpan- and C.J. Kurten) had been validly removed from the office of trustee and Defendants 2 and 3 (Mani Poulose Kathanar and KoraKochu Korula) had been valldlv appointed in their places {Issues XXI and XXIIi;

(viii) that Defendants 1, 2 and 3 (Mar Geevarghese Dionysius, Mani Poulose Kathanarand Kora Kochu Kcrula) did not accept Abdul Messiah or deny the authority of Abdulla II over the spiritual supervision of the Church and they had not by such act become aliens to the faith or incompetent to be trustees (Issue XXVII);

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(ix) that the 42nd defendant (Mar Atheneslus, the original first plaintiff) had not been Canonically ordained or validly appointed as Malankara Metropolitan or as President of the Malankara Association (Issues XXX to XXXIII);

(x) that Defendants 1, 2 and 3 were entitled to receive payment Of the interest in deposit."

31. It was on the above findings that the learned Dlstrlct Judge passed a decree in favour of Defendants 1, 2 and 3 in that interpleader suit declaring them as the lawful trustees of the Church properties.

32. The Defendants 5, and 6 and 42 appealed to the High Ccurt, The prtnclpal questions urged in the appeal were:

"(1) What was the Canon law binding on the Church and what were the powers of the Patriarch under that law in regard to the exccrnmuntcetlon of a Metropolitan;;

(2) Was the excornrnunicatlon of Mar Geevarghese Dionysius by the Patriarch opposed to the Canon law and the constitution of the Malankara Syrian Church as laid down by the Synod of Mulunthuruthu;

(3) If the Patriarch was by himself competent tcexcommunlcete a Metropolitan, whether any procedure had been prescribed to be rottowed by the Patriarch before the power of exccmmuntcetlcncould beexerclsed by him;

(4) If no such procedure had been so prescribed', whether that power had been exercised in a manner consonant with' the prtnclplestof natural justice and with no corrupt motive; and

(5) Whether the excornmunlcatlon of Mar Geevarghese Dionysius was valid?

33. A Full Bench otthe Travancore High Court pronounced judqrnent, Ex. DZ, in 1923. The Full Bench in paragraph 80 of the judgment held that Ex. is, which was prccucec by the then appellants, was the correct version of the Canon law which was accepted as such by the Malankara Jacobite Syrian Church. The conclusions arrived at by the Full Bench on questions 1, 2 and 3 noted above were surnrnartsed in paragraph 124 of the judgment as follows:—

"Our conclusions on thequestions 1, 2 and 3 formulated for decisions are:

(a) That Exhibit 18, and not Exhibit A, is the version of the Canon Law that has been recoqnlsed and accepted by the Malankara Jacobtte Syrian chrtstlan Church as blndlnq on it;

(b) That under Ex. 18, the Patriarch of Antioch possesses the power of ordaining and exccrnmunlcatfdq Episcopas and Metropolitans by himself, i.e., in his own right and that it is not necessary for him to convene a SynQd of Blshops and proceed by way of Synodical action, in order to enable him to exercise these powers; the person ordained being of course, a native of Malabar and accepted by the people;

(c) That there is nothing in the Mvlanthuruthu Resolutions, Exhibit EL, which limits the powers possessed by the Patriarch under the Canon Law in matters of spiritual character, or which imposes restrictions on him in regard to the exercise of such powers; and

(d) That no special forms of procedure are prescribed by Exhibit 18 for observance by Patriarch before he exercises hls powersof exccmrnunlcatlon."

34. Then after an elaborate discussion of the relevant materials the learned Judges in paragraph 254 recorded their findings on questions 4 and 5 in the affirmative and held that Mar Geevarghese Dionysius had lost the status Of Malankara Metropolitan and Metropolitan trustee. In that view of the matter they considered it unnecessary to express any opinion on the question whether Mar Geevarghese Oionysius had become schismatic or alien to the Jacobite faith bythe repudletton of Patriarch Abdulla II and

the recognition of Abdul Messiah. They further held that although the Malankara Association had the pcwerto remove them, the Defendants 5 and 6 had not been validly removed Inesmuches the meeting which removed thsm had been convened and was presided ever by Mar Geevarghese otcnvstus, an excommunicated Metropolitan and that the proceedings of that meeting having been *ab initio* void, the Defendants 5 and 6 continued to be trustees. It has already been stated that there was an appllcatton for review Of rhtsjudqment made by Mar Geevarghese Dionysius and his co-trustees which was admitted on three conditions hereInbefore mentioned. On a re-hearing of the appeal the Full Bench pronounced its judgment, Ex: 256, on July 4, 1928 which is the final judqment in that case. The net result Of that Judgment may be thus summarised:

(i) The excommuntcetlorr'of Mar Geevarghese otonvstus wasjInvalld because of the breach of the rules ofnatural justice in that he was not apprised of the charges against him and had not been given a reasonable opportunity to defend himself;

(ii) That the Defendants 1 to3 had not become heretics or aliens or had not set up a new Church by accepting the establishment of the Catholicate by Abdul Messiah with power to 'the cathoucos for the time being to ordain Metropolitans and to consecrate Morone and thereby reducing the power of the Patriarch over the Malankara Church to a vanishing point;

(iii) That the Defendants 4 to 6 had not been validly elected,

35. It is said that there was no issue as to whether the' acts imputed to Mar Geevarghese Dionysius had been done by him or not or whether the ordInetlcn of three Metropolitans by Abdul Messiah .was valid or not and that 'the charge against Mar Geevarghese Dlonvslus and his two co-trustees (Defendants 1 to 3) was only that of heresy founded on certain acts. It is true that the same acts are referred to in paraqraphs 19 to 20 of the present plaint, but, it is contended, there was no charge Of their haVing gone out of the Church by their having set UP a new church as evidenced by those very acts. We do not think there is any force in this ccntentlon. In paragraph 32 of his judgment Chatfleld C.J. held that no enquiry was held into the conduct Qf Mar Geevarghese Dlonyslus who had never been placed on htsdetence or apprised Of the charges against him or given any opportunlty of defending himself and that as such his excommunication was invalid and he continued to be a Malankara Metropolitan and as such one of the trustees of the church properties. TO the same effect were the findings of Joseph Thaliath J. and of Parameswaran Pillai J. teamed Advocate for the then appellants, (Defendants 4 to 6) then fell back on the case that quite irrespective of the validity of the excornrnunlcatlo] Of Mar- ,Geevarghese Dlonvslus he and his co-trustees could not be permitted to act as trustees as they had rendered themselves aliens to the faith by reason, amongst others. of th@ir repudiating the lawful Patriarch Abdulla II and accepting the deposed Patriarch, Abdul Messfah and by LJpholding the Catholicate with powers to the Catholicos as hereinbefore mentioned. Reliance was placed on the decision of the House of Lords in *Free Churd» of Scotland* v. *overtoun-* in support of the contention that Mar Geevarghese Oionysius and his adherents had set up a new Church effectively free from the control of the Patriarch. It is clear, therefore, that as a consequence of the finding on the breach of the rules of natural justice, it became incumbent on the Full Bench to deal with the alternative case founded on the decision in the *Free Church of Scotland case* (supra).

36. In paragraph 34 of the judgment Chatfield C.]. sums up the contentions set out by the Defendants 4 to 6 in their written statement., He points out that it was said, amongst others, that Mar Geevarghese Dlonyslus and his co-trustees (Defendants 1 to 3) had "rendered themselves aliens to the faith". The word "alien" is significant, for it connotes the idea of a person going 'outside the faith. The matter does not, however, hang on this slender thread alone. After referring to the varlous facts, which had taken

place soon after his excornrnunlcatlon and the acts and conduct of Mar Geevarghese Dionysius, e.q., the repudiation of the lawful Patriarch and the acceptance of a Parlarch who had been deposed and by .getting the deposed Patriarch tocome to Malabar to do various acts as Patrtarch of Antioch, e.g., to ordaln certaln persons as Metropolitans, -to set up a Catholicate by ordaining one Mar Ivanlos as Catholicos with power to ordain Metropolitans and consecrate Morone, the learned Chief Justice stated that the contentions advanced for Defendants 4 to 6 were that the defendant Mar Geevarghese Dlonvslus and his partisans had all along desired a separetlcn from the See of Antioch and had succeeded in their attempt and that "a new Church had been created". Towards the end of that paragraph. the learned Chief Justice again refers to the contention advanced on behalf of Defendants 4.to 6 that "by reason of the actions of the first defendant rnentloned in the 'first part of those .peraqrephs the first defendant and his followers seceded from the Jacobite Syrian Church in the year 1087 and set up a different Church " The word "seceded"; in the context in which it is used, leaves no room for doubt that the charge of having gone out of the Church by setting up a new Church which accepted tnecetncncete with the powers to the cethcucos as herein-before mentioned wascanvassed and actually decided in the final judgment on review. Chatfield C.J. and the other judges negatived the contentions put forward on behalf of Defendants 4 to 6 with the following observations.->

Per Chatfield, C.J.:-

"The objection to the' trusteeship of Defendants 1 to 3 does not seem to have been stated in this form in the written statements Of Defendants 4 to 6 and 42. ,In any case it is not contended that the appointment of a Cathollcos is a thing which is in itself forbidden and to, work for whlch is a sign of disloyalty to the Church. In the Canon "of Nicea" as given on both Exhibits A and XVIII there is express provision for a great "Metropolitan of the East" who was to have power like the Patriarch, to consecrate Metropolitans in the .East. All that can be urged against the first defendant therefore is that he co-operatedwtth one who was not a valid Patriarch 'when the latter was doing acts which could only be done by a Patriarch or at the worst that he caused this unlawful Patriarch to do such acts: It is conceded by the Defendants that if Abdulla had done these acts there would have been no objection. Therefore, the whole matter resolves itself into a personal dispute between two cleimanbs to the Patriarchate in which it said, thsnrst defendant deserted the Patriarch who had created him Metropolitan and supported his rival. Such conduct might amount to an ecdestesttcelortence for which, the offender could be deprived by his ecclesiastical superior but Itcould not be an offence for which the civil courts could try him or express any opinion as to his Quilt." .

Further down

"In the clrcumstances-jt cannot be said that the Church to which the Defendants 1 to 3 belong is a differents Church from that for which the endowment now in dispute was made. Therefore, no question of any loss' or forfeiture of trusteeshtp by the first defendant lrrespectlve of Ex. L or of any threatened diversion of trust funds can arise."

Per Joseph Theltath, J.:

:'Qrdinarily, it is for the eccleslastlcal tribunals to pronounce whether a person is gUilty of an ecclestasttcelotrence, and what the consequences are if one is found so guilty. The decisions of Secular courts with respect to ecclesiastical matters,' by the very nature of. things, cannot be very satisfactory. We have also to consider the probable inconvenience. that wlll result from the temporal courts determining whether a person is .9uilty of any declaration rnade by proper ecclesiastical tribunals. If we are now to enquire into the alleged offence of schism of the first defendant, it will corneto this. Ev.ery time the Metropclltarrtrustae applies for the interest on the trust fund, there will be some people who, are members of the Jacobite Church to object to the payment of interest, on the ground that the Metropolitan cannot act as the trustee of the Church, since, according to them, he is guilty of some heinous ecclesiastical offence or other. And every time a fresh suit will have to be instituted to decide the question. For these reasons, it seems to me, that the better policy for the temporal courts to adopt will be not to enter into such questions as long as there has been no pronouncement on the subject made by the ecclesiastical authorities. There has been no such pronouncement in the present case. Hence I have to find this point also against the defendent."

Per Parameswaran Pillai. J.:,

"I have considered this aspect of the case very carefully and have corne to the conclusion that there is no substance in this contention. The first defendant has not denied the authority of the Patriarch of Antioch and, therefore, he remains the Metropolitan Trustee of the Malankara Church and he claims to draw the money on behalf of that Church. At best, what he did was, when Abdulla and Abdul Messiah both claimed to be the Patriarchs of Antioch, he acknowledged the latter as the true Patriarch in preference to the former. If he was wrong in this he has committed a spiritual offence for which his spiritual superior might punish him in a proper proceeding. This court has nothing to do with his spiritual offence. *Free Cnurci: qf Scotland v, overtouni* referred to in this connection bY Sir C.P. Ramaswami Iyer has no bearing upon the facts of this case."

37. It must, therefore, be held that the contentions put forward in paragraph's 19 to 26 of the plaint in the present suit on which issues Nos. 14, 15, 16 and 19 have been raised were directly and substantially in issue in the interpleader suit (O.S. 94 of 1088) and had been decided by the Travancore High Court on review in favour of Mar Geevarghese Dionysius and his two co-trustees (Defendants 1 to 3) and against Defendants 4 to 6. In short the question whether Mar Geevarghese Dionysius and his two co-trustees (Defendants 1 to 3) had become heretics or aliens or had gone out of the Church and, therefore, were not qualified for acting as trustees was in issue in the interpleader suit (O.S. No. 94 of 1088) and it was absolutely necessary to decide such issue. That judgment decided that neither *(a)* the repudiation of Abdulla II, nor *(b)* acceptance of Abdul-Messiah who had ceased to be a Patriarch, nor *(c)* acceptance of the Catholicate with powers as hereinbefore mentioned, nor *(d)* the reduction of the power of the Patriarch to a vanishing point, *ipso facto* constituted a heresy or amounted to voluntary separation by setting up a new church and that being the position those contentions cannot be re-agitated in the present suit.

38. Learned counsel appearing for the respondents seek to get out of this position by contending that, apart from the grounds set up in the interpleader suit (Order 94 of 1086) the plaintiffs in the present suit also rely on a cause of action founded on new charges which disqualify the defendants in the present suit from acting as trustees of the Church properties. Shri T.N. Subramania Aiyer appearing for the third respondent who has been elected Malankara Metropolitan by the Patriarchal party and made a party to the proceedings under the order of the court aforementioned formulates the new charges as follows:

(i) By adopting the new constitution (Ex. A.M.), which takes away the supremacy of the Patriarch, the defendants have set up a new church;

(ii) By inserting Clause (5) in the constitution (Ex. A.M.) the defendants have repudiated the Canons which have been found to be the true Canons binding on the Church (Ex. BP-Ex.18 in O.S. No. 94 of 1088) and have thereby gone out of the Church;

(ii)(a) The privilege of the Patriarch alone to ordain Metropolitans and to consecrate Morone has been taken away as a consequence of the adoption

of a wrong Canon (Ex. 26—Ex..A in O.S. NO. 94 Qf 1088) indicating that the defendants have set up a new church:

(ii)(b) The privilege, of the perqutsltes of the Ressissa has been denied to the Patriarch by the new constltutlon in breach of the trueCanons:

(iii) That there has been a complete transfer of the trust properties rrom the beneficiaries, namelv, Malankara Jacobite Syrian Church to an entirely different institution,the Malankara Orthodox Syrian Church;

(iv) The re-establishment of the institution of the Catholicate of the East in Malabar having jurisdiction over India, Burma, Ceylon and other countries in the East is different from the tnstltutlon of Cathollcatefthat was the subject matter of the interpleader sult (O.S. NO. 94 of 1088). It is necessary now to discuss thesecontentlons separately.

39. Re (1): In support of the first charge learned counsel has drawn our attention to paraqraphs 18, 22 and 26 of the plaint, paragraphs 29 and 38 of the written statement, paragraphs 18 and 27 of the replication and to issues Nos. 6, 14, 15 and 16. We do not think the pleadings and the issues are capable of being construed in the way learned counsel would have usdo. The suprernacv of the Patriarch has indeed been alleged to have been taken away, but that is not a general averment founded on Ex. A.M.-indeed there is no specific mention of Ex. A.M. in paragraph 26 of the plaint-but it is based on certain specific matters which appear-to be incorporated as rules of the new consttuttco. (Ex. A.M.). Therefore, what are pleaded as disqualifying the defendants from being trustees are those specific matters and not the general fact of adoption of the constitution. There is no charge in the plaint that for the incorporation in the constltetton (Ex. A.M.) of any matter otherthan those specifically pleaded in the plaint the. defendants have Incurred a dlsqualfflcatlcn. The plaintiffs came to court charging the defendants as heretics or as haVing gone out of the church for havlnq adopted a constitution (Ex. A.M.) which contain's the several specific matters pleaded in the plaint and repeated in the repltcatlcnand made the subject matter of specific issues. Those self-same matters were relied on as entailing disqualification in the earlier suit. The plaintiffs themselves contend that some of these matters are *res judicata* against the defendants in this sult by reason of the conditions subject to which their epplrcatlcn for review was admitted. On the pleadings as they stand and on the issues as they have been framed, it is now impossible to permit the plaintiff-respondent to go outside the pleadings and set up a new case that the supremacy Of, the Patriarch has been tarsn away by tbe mere fact Qf the adoption of the new constitution (Ex. A.M.) or by any particular clause thereof other than those relating to matters specifically referred to in the pleadings. The Issues cannot be permitted to be stretched to cover matters which 'are not, on a reasonable construction, within the pleadings on which they were founded.

40. Re *(ii)* and (ii a): Same remarks apply to thesetwo grounds formulated above. There is no averment anywhere in the pleadings that by accepting the Hudava Canon compiled by Bar Hebreus (Ex. 26—Ex. A in O.S. No. 94 of 1088) as the correct Canon governing the church, the defendants have gone out of the Church, Learned counsel draws our attention first to issue No. 13 and then to issue No. 16 and contends that the loss of status as mernbers of the Church by acceptance of the wrong Canon is within the scope of those two Issuesand that the partles to this suit went to trial with that understanding. We do not constder this argument to be well founded at all. A reference to the pleadings will indicate how and why the Hoodaya Canon came to be pleaded and discussed in this case. The plaintiffs impute certaln acts and conduct to the defendants and contend that. by reason thereof the 'defendants have become heretics or aliens or have gone out of the Church. These Imputations form the subject matter of issues 14 and 15 and the conclusions to be drawn frojn the findings on those

issues are the subject-matter of issues Nos. 16 and 17. The defendants, on the other hand, impute certain acts and conduct to the plaintiffs as a result of which, they contend, the plaintiffs have separated from the Church and constituted a new Church. Issues 19 and 20 are directed to this counter charge. In order to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of Canons, for the plaintiffs founded their charges on Ex. B.P.—Ex. 18 in Order I.S No. 94 of 1088 and the defendants took their stand on Ex. 26—Ex. A in 0.5. No. 94 of 1088. Issue No. 13 was directed to determine that Question. Issue No. 16 is concerned with the conclusions to be drawn from the findings on issues Nos. 14 and 15. The plaintiffs cannot be permitted to use issue No. 16 as a general issue not limited to the subject matter of issues 14 and 15, for that will be stretching it far beyond its legitimate purpose.

41. Re.CH b): This ground raises the question Of the Patriarch's right to Ressissa. Ressissa is a voluntary and not a compulsory contribution made by the parishioners. Ex. F.O., which records the proceedings of the Mulunthuruthu Synod held on June 27, 1876, refers to a resolution providing, *inter alia*, that the committee, that is to say, the Committee of the Malankara Association, will be responsible to collect and send the Ressissa due to His Holiness the Patriarch. This may suggest that some Ressissa was due to the Patriarch. But in paragraph 218 of Ex. DY which is the judgment pronounced by the Travancore Royal Court of Final Appeal on July 12, 1889, it is stated that no satisfactory evidence had been adduced before the court as to the payment Of Ressissa to the Patriarch by the committee in Malankara, that the evidence on record was very meagre and inconclusive and that it was open to doubt whether it was payable to the Metropolitans in this country or to the Patriarch in a foreign country. Ex. 86, which records the proceedings of the meeting of the Malankara Association held on September 7, 1911, refers to a resolution forbidding maintaining any connection with Patriarch Abdulla II and presumably in consequence of this resolution the payment of the Ressissa to the Patriarch was stopped. The interpleader suit (Order 94 of 108S) was filed in 1913. If non-payment Of Ressiasa could be made a ground of attack, it should have been taken in that suit and that not having been done, it cannot now be put forward according to the principles of constructive *res judicata.* Besides, the provisions of paragraph 115 of the impugned constitution (Ex. A.M.) require every Vicar in every parish church to collect only two chukrurns from every male member who has completed 21 years of age and to send it to the Catholicos. This does not forbid the payment of Ressissa to the Patriarch, if any be due to him and if any parishioner is inclined to pay any-thing to the Patriarch who is declared in Clause (1) of this very constitution to be the supreme head of the Orthodox Syrian Church. In any case, according to the Canons relied upon by each of the parties, namely, Ex. B.P.—Ex. 18 of Order 94 of 1088 produced by the plaintiffs or Ex. 26-Ex. A in Order 94 of 1088 insisted upon by the defendants, the non-payment of Ressissa does not entail heresy. Even if the Question Involved in ground (ii b) is not covered by the previous decision in the interpleader suit (Order 94 of 1088) the question has, on the foregoing grounds, to be decided against the plaintiff-respondent.

42. Re. *(iii):* This is really not a charge but a statement of the conclusion which the plaintiff-respondent desires to be drawn from the other charges formulated above. Accordingly the point has not been pressed before us and nothing further need be said about it.

43. Re. (rv): An attempt is made by learned counsel for the respondents to make out that what was referred to in the interpleader suit (Order 94 of 1088) was the ordination of a Catholics whereas in the present suit reference is made to the establishment of a Catholicate and further that in any case the Catholicate of the East referred to in the plaint in the present suit is an institution quite different from the Catholicate which was the subject matter of discussion in the interpleader suit (0.5.

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No. 94 of 1088). We do not think there is any substance whatever in this contention. A reference to paragraphs 3pand 31 of the written statement clearly indicates that the institution of Catholicate, which is relied upon by the defendents, is no other than the Catholicate established in Malabar in 1088 by Patriarch Abdul Messiah. This position In accepted by the plaintiffs themselves In their grounds of appeal" Nos. 13, 15, 17, 18 and 27 to the High Court of Travancore from the decision of the Oistrict Judge of Kottayam in this case. Issues Nos. 14 and 15 as well as the judgment of the District Judge in this case also indicate that the subject matter of this part of the controversy centred round the Catholicate which had been estabttshed by Abdul Messiah in the year IOS8.Before the argument advanced before us there never was a case that the impugned constitution (Ex. A.M.) had established a: Catholicate of the East. The purported distinction sought to be drawn between the crdInetlohof Catholicos and the establishment of a Catholicate and a Catholicate established by Abdul Messiah in 1088 and the Catholtcate of the East created by the in1pLIgned constItutton (Ex. A.M.) and which is souqhtto be founded upon as a new cause of actlcn in the present sult, appears to us to be a purely fanciful afterthought and is totally untenable.

" 44. For reasons stated above we have come to the conclusion and we hold that the case with which the plaintiffs have come to court in the present suit is that the defendants had become heretics or aliens or had gone out of the Church by establishing a new church because of the specific acts and conduct imputed to the defendants in the present suit and that the charges founded on those 'specific acts and conduct are concluded by the final judgment (Ex. 256) of the High Court of Travancore in the interpleader suit (Order 94 of 1088) which operates as *resfudicete*, The charge founded on the fact of non-payment of Ressissa, if it is not concluded as constructive *res judicata* by the prevlous judgment must, on merits, and for reasons already stated, be found against the plaintiff-respondent. We are definitely of the cptnton that the charges now sought to be relled upon as afresh cause of actlonere not covered by the pleadings or the issues on which the parties went to trial, that some of them are pure afterthoughts and should not now be permitted to be raised and that at any rate most of them could and should ha.ve been put forward in the earlier suit (Order'94 of 1088) and that not having been done the same are barred by *res iuotcst»* or principles analogous thereto. We accordingly hold, in agreement with thetrlal court, that it is no longer open to the plaintiff-respondent to re-agitate the question that the defendant-appellant had *ipso facto* become heretic or alien or had gone out of the church and has in consequence lost his status as a member of the Church or his office as a trustee..

45. In the view we have taken on the question of *resiudtcete«* is not necessary for us to discuss the further question whether this suit is founded on the same cause of action as that on which Order 8. No.2 of 1104 was founded or whether by allowing that suit to be eventually dlsrnlssed: for default the plaintiffs can under the relevant provisions Of the Travancore Code of Civil Procedure corresponding to Order 9, Rule 9 of our CPC meIntaIn the present suit.

46. The next line of attackadopted by learned counsel torthe respondents is that the appellant had not been validly elected as trustee by the; Malankara Assoclatlon. This objection affects only the appellant 'who was the first defendant in the suit, but does not affect the other two defendants (since deceased) who had been elected in 1931 at a meeting whose validity Is, not questioned. The firstpJaintiff claims to have been elected as the Malankara Metropolitan at a meeting of the Malankara Assoclatlon held on December 26, 1934 at the M.D. Seminary. The M.D. Seminary meeting was convened by notices Issued Indlvlduallv to all the Jacobite Syrian Christian Churches in Malabar, Three notices (Exs. 59, 60 and 61) are alleged to have been sent under the same cover and at the same time. "; Exhibit S9 purports to be a notice issued by the defendant Bassellos Catholicos. It is addressed to Vicars, Kykers and Parishioners. The meetlnc was fixed for WednesdaY the 11th Dhanu, 1101 (December 26, 1934). The

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first item of the agenda was tc elect one as Malankara Metropolitan. Exhibit 60 is a notice emanating from three vrce-Prestdents of the Malankara Jacobite Syrian Association named therein and addressed to the vicars, Kykers and Parishioners. It referred to the Kalpana (meaning the notice) sent by the Catholicos (Ex. 59) and intimated that a meeting of the Malankara Jeccblte Syrian Associatlcn would be held in the M.D. Seminary on the appointed day and asking them to elect a priest and a lay man from the Church as their representatives. Exhibit 61 is a nottce by the Managing Committee of the Assoctaticn addressed to each Church. This aso refers to the notice (Ex. 59) issued by the Cathotlcos andflxes the meetlnq at the same time end place. Besides these individual notices, advertisements were issued in two leading dally newspapers, copies of which have been marked Exs. 62 land 63. All that has been said in paragraph 18 of the plaint is that no meeting was held and that even if there was a meeting the same had not been held legally or eccordtnsto the usages or convened by a competent person or after notice to all the churches accordlnq to custom. On a plain reading of that paragraph there can be no getting awav from the fact that the only objectlon taken is that the meet.ing had not been convened by a competent person and that notice had not been given to all the churches. No other specific objection is taken to the validity of the notice. Learned counsel for the respondent now seeks to rely on the sentence in that paraqraph which avers that the proceedlnqs had in that meeting were illegal and void. That averment clearly is a conclusion founded on the specific objections taken prevlouslv and cannot possibly be taken as a separate and independent ground of objection expressed in so vague a language as to embrace all objections that the ingenuity of human rnlnd may now conceive and put forward. Indeed issue 6 *(a)* which is the only Issue relating to the electron of the first defendant at this meeting quite clearly negativ.es such an omnibus meaning now sought to be read into paragraph 18 of the plaint.

47. The District Judge found, for reasons most of which appear to us to be cogent and well founded, that all the churches had been duly servedand that the meeting was properly convened and held. Paragraph 146 of his judgment deals with the question whether the Associatlon meeting was convened by a competent authority. In paragraph 147 he discusses the questlon whether invitations were sent to all churches. He held that all the churches had been duly served. The reasons adopted by the District Judge may be sumrnarlsed thus:

(i) A large majority of churches being in favour of the defendants, there could be no incentive on the part ofthe defendants to suppress the notices;

(ii) The evidence of the plaintiff's witnesses cleerlvtnclcetes that the partisans of the Patriarch would not have attended the meeting even if notices had been received by them and Indeed, according to.them, notices from heretics would not be read in thelr churches at all;

(iii) In point of fact twoof the churches siding with the-plaintiffs had returned the notices which were marked as Exs. 150 and 1Si/and lastly

(iv) that, apart from the individual notices to the churches, there were edvernsements issued, in two leading Malankara daily newspapers which have been marked Exs. 62 and 63. Although the fact that the churches siding with the plaintiffs would not have attended the meeting does not appear to us to b& sufficient reason for not giving notice to them, it nevertheless has a bearlnq on the question of the probability or otherwlse of the suppresslcn of notices from the churches siding with the plaintiffs. The public adverttsernents in newspapers also negative the alleged attempt at suppression Of the notice. Further, as the Mulunthuruthu resolutions embpdled in Ex. P.O., which records the proceedings of the meeting at which the Malankara Association was constituted did not provide for any particular modeof service for meetings, it was enough, that the

ordinary rules adopted by voluntary associations and clubs had been followed, nametv(that in the absence of any specific rules, the mode of service determined by the Managing Committtee should prevail. The Kerala High Court has, however, in the judgment under appeal, taken a different view. Their reasonings are set out in paragraph 48 of their judgment which is reported in 1957 K.L.J. page 83 at page 147. The learned JUdges of the High Court held that the Catholicos, even if validly appointed, had been a,ssigned no place in the Malankara Association or in the Managing Committee as 'its member or President and consequently could not be said to be competent to issue such a notice as "Ex. 59. After pointing out that Ex. 60 had been issued by three Metropolitans' as Vice Presidents and Ex. 61 had been issued by the members of the Managing 'Committee, the, High Court points out that in the absence of specific rules as to who can issue the notices, EX5. 60 and 61 have to be accepted as proper: and valld notlces issued by competent persons. Learned counsel for the respondents] urges that the High Court overlooked the fact that ex. 60 was not Issued by .el] the Vice Presidents, because the Metropolitans on the plaintiffs' side who were also Vice Presidents did not join in issuing the notice Ex. 60. There is no substance in this contention. The judgment of the Travancore Royal Court of Final Appeal (Ex. DY) pronounced on July 12, 1889 quite clearly held that a Metropolitan:of the Jacobite Syrian Church should be a natlve of Malabar consecrated by the Patriarch or his delegate and accepted by the people as their Metropolitan to entitle hlm to the spiritual and temporals-government of the local church. Indeed in paragraphs 54 and 78 of his judqment in the present suit the District Judge has also definitely found that persons ordained by the Patriarch will have to be accepted by the whole Malankara Church as represented by the Malankara Association and that the Metropolitans on the plantiffs side had not been so accepted and that, therefore, they could not possibly become Vlce Presldents and thelr non-joinder In the notice (Ex. 60) could not vitiate it. The High Court was, therefore, Quite correct in its finding that Exs. 60 and 61 were Issued by proper-persons. But on the question as to whether the notices had been issued and served on all the churches, the High Court has observed that there was norellable and convincing evidence in proof of that fact. The High Court has referredto the evidence of DWs 23 and 22 and has concluded that although the notices 'Exs. 60 and 61 were issued by competent persona the evidence on record fell short of the standard of proof necessary for establishing the fact of service of .the notices on all the churches and particularly on those on the plaintiffs' slde, Ordinarily we do not go behind the findings of fact by the final court of facts but in the present case it appears to us, with respect, that the learned Judges of .the High Court have overlooked important materials', .on the record which, if taken Into account, will certainly go to show that all the-churches had ample notice of themeetihg. It is clear from the judgment that in arriving at their conclusion the learned High Court Judges completely overlooked the evidence of 'OW 29 who was the secretary of Mar Geevarghese Dionysius and who was personally concerned with 'the issue. of the notices. We have been taken throuqh. the evidence of the defendants' witness who said that they did not think nctlces: had been sent to the Metropolitans on the plantiffs' side. The High Court, however, completely overlooked the evidence of the plaintiffs witness Kuran Mathew (PW 2) who said that for meetings of the church representatives no notices are sent to the Metropolitans but are .sent only to the churches. Further;. as already observed, the Metropolitans on the plaintiffs' side were never accepted by the Malankara Association and, therefore, no notlces need have been sent to them. It is true that notices convening the Ex. 98B meeting in 1106 were served on the Metropolitans on the plaintiffs' side, but that was a speclal occasion for bringing about a settlement. It is somewhat significant that we do not find in the record placed before us any statementofanywitnes$ examined by,'the plaintiffs that he (if he was a Metropolitan) or hls church had not in fact been served. Besides, the notices by advertisement in newspapers (Exs. 62 and 63) will also be sufficlent notice to the Metropolitans and churches on both Sides. Learned counsel for the appellant has placed before us. pcrtlons of evtdenca of so'.me of the witnesses examined by the plaintiffs. Those witnesses say that even if they had been served they would not have takenany note of them and indeed would not have got them read in their church. As already observed this attitude of the partis.ans of the plaintiffs does not absolve the defendants from the duty of serving notices on the churches on the plalntlffs' side but it undoubtedly shows that the defendants knowing of this attitude would have no incentive to suppress the notices from them. Further the leerned Judges do not also appear to have adverted to the evidence of DW 25 who was a: partisan of the plaintiffs as admitted by PW 5 and who did not complain Of anvwant of notice to his church. Further, the learned Judges have not given any reason why the notices bY advertisements in the newspapers could not be 'accepted as sufficient notice' in the absence, as they found, of any specific rules as to themode of service. Apart from Exs. 59, 60 and 61 the advertisements in. thenewspapers evidenced by Exs. 62 and. 63 appear to us to: be.sufflclent notlce to all churches. There is no evidence at all that any particular church dld not in fact kqow that a meeting was going to be' held' at the time and placed heretnbefore mentioned. On the materials placed before us we feel satisfied that the notrees were served on all the churches including "these which sided. with the plaintiffs end that there was no adequate ground for rejecting the finding of tact arrived at by the trial court on this question after a fair and full consideration' of the evidence on record. The conclusion of the High Court appears to us, with respect, to be based partly on a mls-readlnq ot.evldenceand partly on the non-advertence to important materlal evidence bear.ing on-the question and to the probabilities of the case.

48. Learned counsel for the respondent has tried toflnd fault wfth the notices in minor details. For instance, it has been argued that in the notices other than Ex. S9 no agenda was mentioned. Apart from the fact that no such objectton was taken In the plaint, it is clear that tnose.nonces by a clear reference to Ex. 59, specially because they had all been sent together, did tncorporate the agenda set-cut in full in Ex. 59. In our opinion the M.O. Seminary meeting was properly held and the first defendant, who Is now the sole appellant before us, was validly appointed as the Malankara Metropolitan and as such became the ex-officio trustee.of the church properties. There is no question that the Defendants 2 and 3 who are now dead had been previously elected by a meeting of the Malankara Association duly convened and held and were properly constituted trustees. In this view of the matter it must follow that the plaintiffs cannot, even in their individual or representative capacity, question the title of the defendants as validly appointed trustees.

49. The result, therefore, is that this appeal must be accepted, the judgment of the Kerala High Court set aside, the decree of the trial court dismissing the suit must be restored and we order accordingly. The plaintiff-respondent as also the newly added respondents must pay to the defendant-appellant the costs of this appeal and the plalntiff-respondent must also pay the costs of all proceedings in all courts including the costs of the prcceedlncsetreedvawerded to him by this court, which will stand. The suit will, therefore, stand drsmlssed with costs throughout and all interim orders as to security for mesne profits etc., will be vacated.

50. The Article 32 petition is not pressed and is dlsmtssed. No order as to the costs of that petition.

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* Appeal from the Judgment and Decree dated 31st December, 1956, of the Kerala High Court in AS No.1 of 1119 (Travancore) arising out of the Judgment and Decree dated 18th January, 1943, of the District Court of Kottayam in OS No. 111 of 1113.

1 (1954) KLT 385 : (1955) SCR 520

2 LR (1904) AC 515

(1965) 2 SCR 233 : AIR 1965 SC 1506

In the Supreme Court of India
(BEFORE K. SUBBA RAO, RAGHUBAR DAYAL AND N. RAJAGOPALA AYYANGAR, JJ.)

BRAHMA NAND PURI ... Appellant;

Versus

NEKI PURI SINCE DECEASED REPRESENTED BY MATHRA PURI AND ANOTHER .: Respondents.

Civil Appeal No. 813 of 1962, decided on November 2, 1964

Advocates who appeared in this case :

N.C. Chatterjee, Senior Advocate (V.S. Sawhney, S.S. Khanduja and Ganpat Rai, Advocates, with him), for the Appellant:

Naunit Lal, Advocate, for Respondent 1(a).

The Judgment of the Court was delivered by

N. RAJAGOPALA AYYANGAR, J.– The tenability of the appellant's claim to possession of certain properties belonging to the Dera of Sanyasi Sadhus in Mauza Kharak Tahsil Hansi, District Hisser in Punjab is the subject-matter of this appeal which is before us on a certificate of fitness granted by the High Court Of the Punjab.

2. The appellant claimed the properties as the successor of the last Mahant of the Dera..Kishan Puri who died on February 15, 1951. The fortunes of the litigation started by the appellant have greatly fluctuated. His suit was decreed by the learned trial Judge, was dismissed by the first appellate court, was again decreed by a learned Single Judge of the Punjab High Court on second appeal but this judgment has again been reversed on Letters Patent appeal and the suit directed to be dismissed. On a certificate of fitness granted by the High Court the matter is now before us.

3. The last Mahant of this Dera-Kishan Puri died on February 15, 1951. Immediately on his death disputes seem to have arisen as regards the succession to the Dera. Neki Puri - the original respondent in this appeal (now deceased) claiming to be a Chela of the deceased Mahant appears to have entered into possession of the properties belonging to the Dera basing his title thereto on an appointment made to the office by the Bhekh and the people of the Village. The appellant nevertheless claiming to be in possession of the property as the successor of the deceased Kishan Puri by virtue of a title as the Gurbhai of the deceased, brought a suit for a declaration regarding his title and for an injunction restraining Neki Puri from interfering with his possession. Neki Puri, as stated earlier, claimed that he was in possession of the properties and asserted a title to such possession by being a Chela who had been appointed by the Bhekh. An issue was raised in the suit as to whether it was the plaintiff or the defendant who was in possession of the properties and on a finding recorded that Neki Puri was in possession, the suit for a mere declaration and injunction was held to be not maintainable and was, therefore, dismissed. Incidentally, however, evidence was recorded on an issue as to whether Neki Puri was a Chela of Kishan Puri - the last Mahant and a finding was recorded on this question adverse to the claim of Neki Puri, An appeal against this judgment was dismissed and that decree has now become final.

4. The suit for declaration and injunction having been dismissed, Brahma Nand Puri - the appellant - brought the suit out of which this appeal arises, in the civil court at Hissar for a decree for possession of the properties movable and immovable belonging to the Dera. The suit. being on the basis of the plaintiff's title, this was formulated thus:

"5. According 'to custom 'regarding succession of the Dera and the Riwaj-i-Am of Deras the plaintiff being Gurbhai was entitle" to Gaddi, as he is the eldest Chela of Shanker Purl and the people of the village and the 6hekh appointed him as Mahant after performing all the ceremonles on the 17th daYQf the death Of Shri Kishan Purl and made him occupy the Gaddi of dera of xharak."

An alternative basis for the title was also put forward in para 8. *in* these terms:

"8. If for any reason it is held that after the death of Shri Klshan Purl, the plaintiff was not appointed as Mahant of the Dera, even then according to the custom regarding succession of the Dera and Rlwaj-t-Am, the plaintiff is entltled to become Mahant of the Dera as he is the Gurbhal of Klshan Puri deceased. It was held in the previous case that according to the Riwaj, in the absence of a Chela his (deceased Mahant's) Gurbl1ai becomes Mahant of a Dera.'

In the written statement that was flled by Neki Puri two defences were raised: (1) that Neki Puri was a Chela and he had been appointed to succeed Klshan Purl by the Bhekh and other villagers. In other words, he put forward a preferential title based on Chelaship followed by an appointment by the 6hekh and others, (2) Alternatively, while admitting that Brahma Nand Puri was a Gurbhai of the deceased Mahant, he denied that he had been appointed by the Bhekh and also urged that there was no custom by which a Gurbhal who had not been appointed by the Bhekh was entitled to succeed as Mahant merelv by reason of his being a Gurbhai.'On these pleadings 4 principal questions (omitting certain others which are not relevant in the present context) arose for trial: (1) Was Nekl Purl a Chela of the deceased Ktshen Puri?, (2) Was Nekl Puri appointed by the Bhekh? It was admitted by Brahma Nand Purt that a Chela had a right superior to a Gurbhai and therefore if 'these two issues were found In favour of Neki Puri the plaintiff's suit had admittedly to fail" (3) Was the plaintiff appointed by the Bhekh? No serious attempt was made to establish that the plaintiff had been appointed by the Bhekh and hence the 4th questlon .thet arose was whether there was -a custom by which a Gurbhai could succeed to the Mahantship of this institution without an appointment by the Bhekh as pleaded in para 8 of the plaint extracted earlier. On these four matters the learned trial Judge'recorded the following findings: (1) that Neki Puri had not been proved to be the Chela of the last Mahant, (2) No definite finding was recorded on the second point but the;trial Judge was of the opinion that there was no proof that the Bhekh could appoint as Mehent a person who was not either a Chela or a Gurbhai or that they actually did so in the present case, (3) A definite finding was recorded that the plaintiff was not eppontsc by the Bhekh, (4) Without recording a finding on the custom set up by the plaintiff in para 8 of the plaint the learned trial Judge held that under the law in the Punjab in the absence of a Chela, a Gurbhai was entitled to succeed to the Gaddi apart from any question of appointment by the Bhekh and on thls reasontnq decreed the plaintiff's suit.

5. The defendant went up in appeal to the Additional Sessions Judge. The appellate court reversed the finding of the trial Judge on the issue, as to whether Neki Puri was a chete of the deceased Nahant and held that he was. A definite finding was also recorded on the basis of the evidence led by the defence that Neki Puri had been appointed to succeed the deceased Mahant by the Bhekh 'a,nd the villagers. As' admittedly a Chela had a superior title to a Gurbhai in the matter of succession the learned District Judge ellowed the appeal of the defendant - Neki Puri and directed the dismissal of the suit.

6. Th'e plaIntlff'took the matter to the High Court by way .of second appeal. The learned Single Judge who heard the appeal in his turn reversed the finding of the first appellate court on the Issuereqardlnq Neki Puri being a Chela of the deceased Kishan Purl. He considered that the 'finding on this matter by the Additlonal Sessions Judge was vitiated by serious errors Of law and misappreciation of facts. Having "thus put

aside the claim of Neki Puri to succeed by holding that he was not a Chela, the learned Judge upheld the plaintiff's claim on the ground that a Gurbhai was entitled to succeed to the Gaddi even if he had not been appointed by the Bhekh. He, therefore, decreed the suit of the plaintiff. Neki Puri then in his turn took the matter before a Division Bench by a Letters Patent appeal. The learned Judges concurred with the learned Single Judge on the issue as to whether Neki Puri was a Chela or not. They agreed with him that the first appellate court had committed serious errors in its reasoning in finding that Neki Puri had established the claim to be the Chela of Kishan Pur; and affirmed the finding of the learned trial Judge in that regard. Dealing next with the title of the plaintiff to the Gaddi, the learned Judges held that the custom set up in para 8 of the plaint that a Gurbhai could succeed without an appointment by the Bhekh had not been made out on the evidence and on this reasoning they allowed the appeal and directed the dismissal of the suit. It is the correctness of this decision that is challenged before us by the appellant.

7. Two points were urged before us by Mr Chatterji — learned counsel for the appellant. The first was that under the law applicable to Deras in the Punjab that is to say apart from any special custom, a Gurbhai was entitled to succeed to the Dera even without an appointment by the Bhekh or fraternity, (2) that even if that was not the law and a custom was required to sustain that plea, such a custom had been established by the evidence adduced by the appellant in the present case.

8. Pausing here, we might mention that Mr Chatterji referred us to the circumstance that during the pendency of the appeal in this Court Neki Puri had died and that certain others who, he stated, had even less claims to the Mahantship were in possession of the property, and that seeing that the appellant was admittedly a Gurbhai it would be most inappropriate that his rights should be overlooked and a stranger permitted to squat on the property. We consider this submission is devoid of force. The plaintiff's suit being one for ejectment he has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property, assuming learned counsel is right in that submission. As pointed out in *Mukherjea's Hindu Law of Religious and Charitable Trust*, Second Edn., p. 317:

> "The party who lays claim to the office of a Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even though he be a disciple of the last Mohunt, unless he succeeds in proving the particular usage under which succession takes place in the particular institution.

We, therefore, dismiss this aspect of the case from consideration.

9. Taking the first point urged by Mr Chatterji, we do not consider that learned counsel is justified in his submission that under the law as obtains in the Punjab a Gurbhai is entitled to succeed without reference to an appointment by the Bhekh or the fraternity. In *Rattigan's Digest of Customary Law* the position as regards religious institutions in the Punjab is thus stated:

> "There is no general law applicable to religious Institutions in this Province" and each institution must be deemed to be regulated by its own custom and practice. There are, however, certain broad propositions which judicial decisions have shown to have received very general recognition, and these propositions are embodied in the following paragraphs:
>
> > "84. The members of such institutions are governed exclusively by the customs and usages of the particular institution to which they belong.
> >
> > 85. The office of Mahant is usually elective and not hereditary. But a Mahant may nominate a successor subject to confirmation by his fraternity."

From para 85 it would follow that the office of Mahant being usually elective and not hereditary, anyone who lays claims to the office on the basis of a hereditary title resting on Chelaship simpliciter or Gurbhaiship simpliciter must establish it. (See else *Jiwan Das* v. *Hire Das*[1]). Though, no doubt, the usage of one institution is no guide to that of another, it may be mentioned that in regard to the succession of the Mahantship of a Thakurdwara belonging to the Ram Kabir Sect Of Hindu Bairagis in District Jullundur in the Punjab this Court held in *Sital Des.* v. *Sant Ram*[2] that the usage required an appointment by the fraternity before a person could become a Mahant. On the basis, therefore, of the passage in *Rattigan's Oige$t*, which we have extracted, it appears to us that the first of the submissions mece by Mr Chatterji cannot be upheld. In fact, the tenor of para 5 of the plaint we.nave extracted earlier itself shows a consciousness on the part of the plaintiff himself that he considered that an appointment by the Bhekh was necessary to clothe -him with the title to the Gaddi besides his status as a Gurbhai. No doubt the plafntlff, was a Gurbhal but he had not established that he had been appointed by the Bhekh or fraternity. In the absence of such appointment under the law and. apart from any special custom pertaining to this institution the appellant could claim no title to the Gaddi, bv his being a Gurbhai.

10. This takes us to the second polnt urged by Mr Chatterji that on the evidence the plaintiff had made out the special custom pertaining to this institution that no appointment by the Bhekh 'was necessary before a Chela or Gurbhai could succeed to the Gaddi. We have been taken through the entire evidence in the case. In the first place, there are no documents or anything in writing in support'o" the custom and the matter depends entirely on the testimony of witnesses produced before the Court. PW 4 who claimed to be a Bhekh of this Dera stated in chief examlnatlon:

> "According to the custom of our 6hekh if a Mahant died without leaving a Chela his Gurbhai became the successor. If however there is Chelahe Islhe successor."

In cross examination he stated:

> "The custom of succession stated by me above Iswrltten nowhere; it is followed by us.",

and then he continued:

> "In Village 6ata there is a Sanyasi Dera. There-also Prabhu Puri Chela was riot found to be a good man and Sunder Purl Gurbhai of the last Mahant was installed. In Guna there is a Sanyasl Dera, Lachhman Gir Sanyasi .dled without leaving a Chela. His Gurbhai Phag Gir succeeded him to the Gaddl."

It would be seen that there was' nothing specific in his .evldence about the absence of an appointment by the Shekh in those Instances which is the speclel custom which the plaintiff sought to prove by this evidence. PW 11 is another witness to whose evidence reference 'was made. He 'stated in his chief exemlnatlon:

> "According to the custom of the. Bhekh if a Mahant leevesno Chela, his Gurbhai succeeds to the Gaddl,"

In cross-examination he stated:

> "The custom of successton whlch I have deposed to above is at par with the general Hindu customaryJaw.... There might be many instances. But I cannot recall to my mind any such instance now,"

PW 13 belongs to a different Dera but he claimed that the Deraat Kharak was similar to his institution and stated in his chief examination:

> "Amongst us if a Sadhu does not 'leave a Chela, the Gaddi goes to his Gurbhai. There Is an. instance in the Gurdwara of Kosll near my Dera of a Gurbhai succeeding a Mahant in the absence. of a Chela. There is another such instance of Dera 'at Nangri in Rajasthan."

The evidence of PW 16 was similar:

> "My Guru succeeded to the Gaddi as Gurbhai of .the last Mahant. Evidence of PWs

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17 and 18 was identical with that of the witnesses who preceded them:

"According to custom-or the Bhekh if a Mahant dies without leaving a Chela his Gurbhai succeeds."

It wou ld be seen from thls evidence: (1) that it is lacking in particulars as regards the Instances, and (2) there is nothing stated as to whether even in the instances rererred to, there was no recognition, appointment or conflrmettoru tbv the Bhekh which according to Rattigan is part of the customary law of the Punjab as the source of title for the Mahantship. We are, therefore/ not prepared to hold that the appellant has established the custom which he put forward in para 8 of his plaint in derogation of the ordinary law viz. that without an .eppclntrnent by .the Bhekh or fraternity a Chela or, In hls absence, a Gurbhai succeeds to the headship of a Dera. The plaintiffs sult was therefore, in our opinion, properly dismissed.

11. Mr Naunit Lal - learned counsel for the respondent urged that the learned Single Judge was in errorInreversInq the finding of the first appellate court that Neki PLJri had proved that he was a Chela of Klshen Puri- the deceased Mahant. It might be noticed that the Division Bench had concurred in the views expressed by the learned Single Judge as regards the defects in the judgment of the first appellate court on its findings on this issue. Learned counsel submitted that the .learned Single JlJdge fell into serious errors in interfering with a finding offact. Though we are satisfied that certain portions of tne judgment of the learned Single Judge had suffered from errors, we do not propose to examine this question: as the same is wholly unnecessary for the disposal-of this appeal. It is only in the event of our accepting the submissions of Mr Chatterji that the correctness of the reversal: of the finding on the Chelaship of Neki Puri would have become' rnaterlal, In the view that we have expressed as regards the appellant's title to the Gaddi .we do not consider it necessary or proper to discuss what, in' fact, is merely an academic questlcn,

12. The result is, the appeal fails and is dlsmlssed with costs.

* Appeal from the JUdgment and Decree dated 13th July, 1960 of the Punjab High Court in LP Appeal No. 58 of 1958

1 AIR 1937 Lah 311

2 AIR 1954 SC 606