asthal and also prohibiting the respondents from interfering with the rights of the appellant in the management of the Salouna asthal and the properties appertaining thereto, unless and until the respondents have obtained the necessary determination that the Salouna asthal is a public trust. The appellant will be entitled to his costs throughout.

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Appeal allowed.

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(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Hindu Religious Trusts—Property relating to Trust situate outside State of Bihar—Applicability of Bihar Hindu Religious Trusts Act to such property—Legislative competency—Constitutional validity of Enactment — Applicability to private trusts—Bihar Hindu Religious Trusts Act, 1950 (Bihar 1 of 1951), ss. 1(2), 2(1), 3 —Constitution of India, Arts. 245, 246, Sch. VII, List III, Item 28.

Deed—Construction—Hindu Religious Trust—Private or Public.

A deed of trust was executed by the respondent on March 11, 1938, when she was residing at D in the State of Bihar, in respect of the properties described in the Schedules referred to in the deed, some of which were situate outside the State of Bihar. In the trust deed she described herself as the settlor, and it was recited therein that the settlor had installed a deity named Iswar Srigopal in her house and had since been regularly worshipping and performing the puja of the said deity ; and that she had been erecting a Nat Mandir to be named in memory of her deceased son. The recitals also showed that the settlor had provided for the construction of two temples (Jugal Mandir), in one of which was to be installed the deity Srigopal and other deities, and in the other the marble image of her preceptor ; and that the temple committee shall consist of the Jugal Mandir shebait for the time being and six pious Hindus who must be residents of D and of whom at least four shall be Bengalis. One

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of the clauses of the trust deed recited :—"The 'pronamis' and perquisites to be offered to the deities and image in the Jugal Mandir shall form part of the Srimati Charusila Trust Estate and neither the shebait nor any one else shall have interest or claim in or over same." The provisions of the trust deed in regard to the ceremonials relating to free distribution of food and water and the festivals to be performed for the deity and the image, which were well known festivals in which members of the Hindu Community usually take part, contemplated that they were to be done on a large scale so as to enable a large number of persons to take part in them. There was also a provision in the trust deed for the establishment of a hospital for Hindu females and a charitable dispensary for patients of any religion or creed.

After the coming into force of the Bihar Hindu Religious Trusts Act, 1950, the President of Bihar State Board of Religious Trusts started proceedings under ss. 59 and 70 of the Act against the respondent in respect of the trust on the footing that it was a public trust to which the Act applied. The respondent made an application to the Patna High Court under Art. 226 of the Constitution in which she prayed that a writ or order be issued quashing the proceedings taken against her by the Bihar State Board of Religious Trusts on the grounds (1) that the trust deed dated March 11, 1938, was a private endowment created for the worship of a family idol in which the public were not interested, (2) that the Act did not apply to private trusts, (3) that the Act was *ultra vires* the Constitution by reason of the circumstance that its several provisions interfered with her rights as a citizen guaranteed under Part III of the Constitution, and (4) that, in any case, the Act was not applicable to the trust deed in question as some of the properties were situate outside the State of Bihar.

Held: (1) that on its true construction the deed of trust dated March 11, 1938, created a religious and charitable trust of a public nature.

Deoki Nandan v. *Murlidar*, [1956] S.C.R. 756, considered.

In re Charusila Dasi, I.L.R. [1946] 1 Cal. 473, explained.

One of the relevant considerations as to whether the trust was a public trust, will be if by the trust deed any right of worship has been given to the public or any section of the public answering a particular description.

(2) that the Act does not apply to private endowments.

Mahant Ram Saroop Dasji v. *S. P. Sahi*, [1959] Supp. 2 S.C.R. 583, followed.

(3) that the provisions of the Act do not take away or abridge any of the rights conferred by Part III of the Constitution.

Mahant Moti Das v. *S. P. Sahi*, [1959] Supp. 2 S.C.R. 563, followed.

(4) that s. 3 of the Act makes the Act applicable to all public religious and charitable institutions within the meaning of the definition clause in s. 2(1) of the Act, which are situate in the State of Bihar and any part of the property of which is in that State.

(5) that where the trust is situate in Bihar the State has legislative power over it and also over its trustees or their servants and agents who must be in Bihar to administer the trust, and as the object of the Act is to provide for the better administration of Hindu Religious Trusts in the State of Bihar and for the protection of properties appertaining thereto, in respect of the property belonging to the trust outside the State the aim is sought to be achieved by exercising control over the trustees *in personam*, and there is really no question of the Act having extra-territorial operation.

(6) that, in the present case, the circumstance that the temples where the deities were installed are situate in Bihar and that the hospital and charitable dispensary are to be established in Bihar for the benefit of the Hindu Public in Bihar, gives enough territorial connection to enable the legislature of Bihar to make a law with respect to such trust.

Tata Iron & Steel Co. Ltd. v. *State of Bihar*, [1958] S.C.R. 1355 and *The State of Bombay* v. *R.M.D. Chamarbaugwala*, [1957] S.C.R. 874, relied on.

Sardar Gurdyal Singh v. *The Rajah of Faridkote*, (1894) L.R. 21 I.A. 171, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 230 of 1955.

Appeal from the judgment and order dated October 5, 1953, of the Patna High Court in M. J. C. No. 128 of 1953.

Mahabir Prasad, Advocate-General for the State of Bihar and *R. C. Prasad*, for the appellants.

N. C. Chatterjee and *P. K. Chatterjee*, for the respondent.

1959. April 15. The Judgment of the Court was delivered by

S. K. DAS, J.—This appeal relates to a trust known as the Srimati Charusila Trust and the properties appertaining thereto. By its judgment and order dated October 5, 1953, the High Court of Patna has held that the trust in question is a private trust created for the worship of a family idol in which the public are not interested and, therefore, the provisions

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of the Bihar Hindu Religious Trusts Act, 1950 (Bihar I of 1951), hereinafter referred to as the Act, do not apply to it. Accordingly, it allowed an application made to it under Art. 226 of the Constitution and quashed the proceedings taken against the respondent herein under ss. 59 and 70 of the Act. The State of Bihar, the President of the Bihar State Board of Religious Trusts and the Superintendent of the said Board who were respondents to the petition under Art. 226 are the appellants before us.

The trust in question was created by a trust deed executed on March 11, 1938. Srimati Charusila Dasi is the widow of one Akshaya Kumar Ghose of No. 3, Jorabagan Street in Calcutta. She resided at the relevant time in a house known as Charu Niwas at Deoghar in the district of Santhal Parganas in the State of Bihar. In the trust deed she described herself as the settlor who was entitled to and in possession of certain properties described in schedules B, C and D. Schedule B property consisted of three bighas and odd of land situate in mohalla Karanibad of Deoghar town together with buildings and structures thereon; schedule C property was Charu Niwas, also situate in Karanibad of Deoghar; and schedule D properties consisted of several houses and some land in Calcutta the aggregate value of which was in the neighbourhood of Rs. 8,50,000. In a subsequent letter to the Superintendent, Bihar State Board of Religious Trusts, it was stated on behalf of Srimati Charusila Dasi that the total annual income from all the properties was about Rs. 87,839. In the trust deed it was recited that the settlor had installed a deity named Iswar Srigopal in her house and had since been regularly worshipping and performing the "puja" of the said deity; that she had been erecting and constructing a twin temple (jugal mandir) and a Nat Mandir (entrance hall) to be named in memory of her deceased son Dwijendra Nath on the plot of land described in schedule B and was further desirous of installing in one of the two temples the deity Srigopal and such other deity or deities as she might wish to establish during her lifetime and also of installing in

the other temple a marble image of Sri Sri Balanand Brahmachari, who was her religious preceptor and who was regarded by his disciples as a divine person. It was further recited in the trust deed that the settlor was also desirous of establishing and founding a hospital at Karanibad for Hindu females to be called Akshaya Kumar Female Hospital in memory of her deceased husband. By the trust deed the settlor transferred to the trustees the properties described in schedules B, C and D and the trustees were five in number including Srimati Charusila Dasi and her deceased husband's adopted son Debi Prasanna Ghosh; the other three trustees were Amarendra Kumar Bose, Tara Shanker Chatterjee and Surendra Nath Burman, but they were not members of the family of the settlor. Amarendra Kumar Bose resigned from the office of trusteeship and was later replaced by Dr. Shailendra Nath Dutt. The trusts imposed under the trust deed were—(1) to complete the construction of the two temples and the Nat Mandir at a cost not exceeding three lakhs to be met out of the trust estate and donations, if any; (2) after the completion of the two temples, to instal or cause to be installed the deity Iswar Srigopal in one of the temples and the marble image of Sri Balanand Brahmachari in the other and to hold a consecration ceremony and a festival in connection therewith; (3) after the installation ceremonies and festivals mentioned above, to provide for the payment and expenditure of the daily "sheba puja" and periodical festivals each year of the deity Srigopal and such other deities as might be installed at an amount not exceeding the sum of Rs. 13,600 per annum and also to provide for the daily "sheba" of the marble image of Sri Balanand Brahmachari and to celebrate each year in his memory festivals on the occasion of (a) the "Janma-tithi" (the anniversary of the installation of the marble image); (b) "Gurupurnima" (full moon in the Bengali month of Ashar); and (c) "Tirodhan" (anniversary of the day on which Sri Balanand Brahmachari gave up his body) at a cost not exceeding Rs. 4,500 per annum; and (4) to establish or cause to be established and run and

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manage in Deoghar a hospital for Hindu females only to be called Akshaya Kumar Female Hospital and an attached outdoor charitable dispensary for all out-patients of any religion or creed whatsoever and pay out of the income for the hospital and the outdoor dispensary an annual sum of Rs. 12,000 or such other sum as might be available and sufficient after meeting the charges and expenditure of the two temples and after paying the allowance of the "shebait" and trustees and members of the temple committee. It was further stated that the work of the establishment of the hospital and the out-door charitable dispensary should not be taken in hand until the construction of the temples and the installation of the deities mentioned above.

It may be here stated that it is the case of both parties before us that the temples and the Nat Mandir have been constructed and the deity and the marble image installed therein; but neither the hospital nor the charitable dispensary has yet been constructed. The powers, functions and duties of the trustees were also mentioned in the deed and, in schedule A, detailed rules were laid down for the holding of annual general meetings, special meetings, and ordinary meetings of the trustees. To these details we shall advert later.

On October 27, 1952, the Superintendent, Bihar State Board of Religious Trusts, Patna, sent a notice to Srimati Charusila Dasi under s. 59 of the Act asking her to furnish a return in respect of the trust in question. Srimati Charusila Dasi said in reply that the trust in question was a private endowment created for the worship of a family idol in which the public were not interested and therefore the Act did not apply to it. On January 5, 1953, the Superintendent wrote again to Srimati Charusila Dasi informing her that the Board did not consider that the trust was a private trust and so the Act applied to it. There was further correspondence between the solicitor of Srimati Charusila Dasi and the President of the Bihar State Board of Religious Trusts. The correspondence did not, however, carry the matter any further and on February 5, 1953, the President of the State Board of

Religious Trusts said in a notice that he had been authorised to assess a fee under s. 70 of the Act in respect of the trust. Ultimately, on April 6, 1953, Srimati Charusila Dasi made an application to the High Court under Art. 226 of the Constitution in which she prayed that a writ or order be issued quashing the proceedings taken against her by the Bihar State Board of Religious Trusts on the grounds (a) that the trust in question was a private trust to which the Act did not apply and (b) that the Act was *ultra vires* the Constitution by reason of the circumstance that its several provisions interfered with her rights as a citizen guaranteed under Art. 19 of the Constitution.

This application was contested by the State of Bihar and the Bihar State Board of Religious Trusts, though no affidavit was filed by either of them. On a construction of the trust deed the High Court came to the conclusion that the trust in question was wholly of a private character created for the worship of a family idol in which the public were not interested and in that view of the matter held that the Act and its provisions did not apply to it. Accordingly, the High Court allowed the application and issued a writ in the nature of a writ of certiorari quashing the proceedings under ss. 59 and 70 of the Act and a writ in the nature of a writ of prohibition restraining the Bihar State Board of Religious Trusts from taking further proceedings against Srimati Charusila Dasi in respect of the trust in question. The appellants then applied for and obtained a certificate from the High Court that the case fulfilled the requirements of Art. 133 of the Constitution. The present appeal has been filed in pursuance of that certificate.

In connected Civil Appeals numbered 225, 226, 228, 229 and 248 of 1955 (1) judgment has been pronounced to day, and we have given therein a conspectus of the provisions of the Act and have further dealt with the question of the constitutional validity of those provisions in the context of fundamental rights guaranteed by Part III of the Constitution. We have held therein that the provisions of the Act do not take away or

(1) *Mahant Moti Das* v. *S. P. Sahi*, see p. 563, *ante*.

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abridge any of the rights conferred by that Part. In Civil Appeal No. 343 of 1955 (1) in which also judgment has been pronounced today, we have considered the definition clause in s. 2(l) of the Act and come to the conclusion that the Act does not apply to private endowments, and have further explained therein the essential distinction in Hindu law between private and public religious trusts. We do not wish to repeat what we have said in those two decisions; but in the light of the observations made therein, the two questions which fall for decision in this appeal are—(1) if on a true construction of the trust deed dated March 11, 1938, the Charusila Trust is a private endowment created for the worship of a family idol in which the public are not interested, as found by the High Court and (2) if the answer to the first question is in the negative, does the Act apply by reason of s. 3 thereof to trust properties which are situate outside the State of Bihar.

We now proceed to consider and decide these two questions in the order in which we have stated them. On behalf of the appellants it has been contended that on a true construction of the deed of trust, the Charusila Trust must be held to be a public religious trust. The learned Judges of the High Court emphasised that part of the preamble wherein it was stated that the settlor had installed a deity called Iswar Srigopal in her house and had been regularly worshipping the said deity, which circumstance (according to them) showed that in its origin the endowment was a private endowment created for the worship of a family idol in which the public were not interested, and the learned Judges were further of the view that the installation of the said deity in one of the two temples and of the marble image of Sri Balanand Brahmachari in the other temple did not alter the nature of the endowment which continued to be a private endowment; they also expressed the opinion that the provision in the trust deed for the establishment of a hospital for Hindu females and a charitable dispensary for patients of any religion or creed was merely incidental to the other main objects of the endowment. These findings of the

(1) *Mahant Ram Saroop Dasji* v. *S. P. Sahi*, see p. 583, *ante*.

High Court have been seriously and strenuously challenged before us.

We say this with respect, but we consider that the learned Judges of the High Court have failed to give to several material clauses of the trust deed their due weight and these have an important bearing on the question in issue. It is true that the settlor said that she had installed the deity Iswar Srigopal in her house and she had been regularly worshipping the deity since such installation; if the trust had been created only for the purpose of continuing such family worship, the conclusion would no doubt be that the endowment was wholly of a private character in which the public had no interest. That was not, however, what was done. The settlor created the trust for the construction of two temples, in one of which was to be installed the deity Iswar Srigopal and in the other the marble image of her preceptor; the trustees consisted of persons three of whom were strangers to the family, though the settlor reserved to herself the power to remove in her absolute discretion any one or more of the trustees for misconduct by reason of change of religion, etc. One of the relevant considerations is if by the trust deed any right of worship has been given to the public or any section of the public answering a particular description. One of the clauses of the trust deed reads:

"The 'pronamis' and perquisites to be offered to the deities and image in the Jugal Mandir shall form part of the Srimati Charusila Trust Estate and neither the shebait nor any one else shall have interest or claim in or over same."

This clause to which the learned Judges of the High Court have made no reference shows that the right of worship was not confined to the family of the settlor or founder, but was given to other members of the Hindu public who could offer "pronamis" and perquisites to the deities, and those 'pronamis' and perquisites were to form part of the trust estate. Schedule E of the deed gives details of the festivals and ceremonials to be performed for the deity and the image of Sri Balanand Brahmachari. One of the ceremonials is a "Jal Chhatra" (free distribution of

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water); another is "annakoot" (distribution of food) at the time of Diwali, the approximate expenditure being fixed at Rs. 500. A third ceremony is a "bhandara", culminating in free distribution of food, of the Mataji of Sri Balanand Brahmachari. These are ceremonies which even if ancillary to "deva-sheba", appear *prima facie* to confer benefit on the general body of worshippers. Though not conclusive by themselves, they have to be considered in the light of the other main provisions of the trust deed. The other festivals which have to be performed as a rule for the deity are such well-known festivals as Rath Yatra, Jhulan, Janmastami, Rash and Dol (Holi) in which members of the Hindu community usually take part in large numbers, and the scale of expenses laid down shows that the festivals are to be performed on a large scale so as to enable a large number of persons to take part in them. Even with regard to the special festivals for Sri Balanand Brahmachari on the occasion of the Janmatithi, Gurupurnima and Tirodhan, the provisions of the trust deed contemplate that they are to be performed on a large scale so that other disciples of Sri Balananda Brahmachari may also join in them.

Even the constitution of the committee of trustees is such as would show that the endowment is not a mere private endowment. The trust deed says—

"In filling up a vacancy the trustees shall see that in the Board of Trustees there shall be, if available, one who is the seniormost lineal male descendant of Akshaya Kumar Ghose, the deceased husband of the settlor, who is eligible and willing and capable of acting as a trustee, another who is a trustee of the Sree Sree Balanand Trust created at Deoghar by the said Sree Balanandji Brahmachari Maharaj of sacred memory, and a third who shall be disciple of Sree Sree Balanand order, that is to say, any one of the disciples of the said Sree Sree Balanand Brahmachari Maharaj of sacred memory and his disciples and the disciples of the latter and so on if such a disciple is willing, eligible and capable of acting as a trustee of the said Trust hereby created, provided always that the full number of trustees shall at all times be five in number and no one

shall be eligible to be a trustee unless he be adult male, pious, Bengali Hindu and provided also that the shebait of Sree Gopal and the shebait of Sree Baleshwari Devi of the Ashram Deoghar shall under no circumstances be eligible to be a trustee under these presents save and except in the case of the settlor who shall so long as she lives to both a trustee and a shebait."

We may here draw attention to the formation of the temple committee as envisaged by the trust deed. It says that the temple committee shall consist of the Jugal Mandir shebait for the time being who shall be the *ex officio* member and president of the committee and the other members who will be appointed or nominated by the trustees shall consist of six pious Hindus who must be residents of Deoghar and of whom at least four shall be Bengalis. If the trust were created for the worship of a family idol, one would not expect provisions of this nature which vest the management of the temple and the "sheba puja" in members of the public outside the family of the settlor.

Besides the aforesaid provisions, there is in express terms the imposition of a trust in favour of the public so far as the hospital and the charitable dispensary are concerned. It is necessary to quote here cl. 8 of the trust deed. That clause reads:

"To establish or cause to be established and run and manage in Deoghar a hospital for Hindu females only to be called in memory of the husband of the settlor, since deceased, the "Akshaya Kumar Female Hospital" and an attached out-door Charitable Dispensary for all out-patients of any religion or creed whatsoever and out of the said income to pay and/or spend for the objects of the said Hospital and out-door Dispensary annually a sum of rupees twelve thousand or such sum as will be available and sufficient after meeting the aforesaid charges and expenditure and after paying the allowance of the shebait and trustees and members of the temple committee and the establishment charges of offices at Calcutta and Deoghar and of the temple establishment hereinafter mentioned provided however that the work of the establishment

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of the Hospital and out-door Charitable Dispensary shall not be taken in hand by the trustees until the construction of the temple and installation of the deities hereinbefore mentioned."

The trust deed further states that the female hospital and charitable dispensary shall, so long as the settlor is alive, be located in a house to be rented in Deoghar and after her death shall be shifted to and located in Charu Niwas. Charu Niwas was, however, sold by an order of the Calcutta High Court and the sale proceeds, it is stated, were appropriated towards the satisfaction of the debts and liabilities of the trust estate. One clause of the trust deed relating to the hospital and the charitable dispensary says:

"The object of the said Hospital shall be to provide Hindu females with gratuitous medical and surgical and maternity advice and aid and also to admit them as indoor patients in conformity with such rules and regulation as may be made by or with the sanction of the Board of Trustees. The outdoor Charitable Hospital shall be run as the trustees shall provide by rules. In furtherance of these objects, its funds may be expended in subscriptions or contributions to convalescent and other similar institutions and to other special hospitals and in sending patients to and maintaining them in such institution and hospitals provided that the sum so expended in any one year shall not exceed rupees one thousand or such sum as may be fixed by the trustees from time to time."

The learned Judges of the High Court have expressed the view that these provisions for the establishment of a hospital and charitable dispensary are merely incidental or ancillary to the other main objects of the trust. With great respect, we are unable to appreciate how the establishment of a hospital and charitable dispensary of the nature indicated in the trust deed can be said to be ancillary or incidental to other objects of the trust, viz., the construction of two temples and the installation of the deities therein. In clear and unequivocal terms the trust deed imposes a distinct and independent trust in favour of a considerable section of the public for whose benefit the hospital

and the charitable dispensary are to be established. It is true that the establishment of the hospital and the charitable dispensary is to be taken in hand after the construction of the temples and the installation of the deities; that circumstance, however, does not make the trust in relation to the hospital and the dispensary any the less important or even merely incidental or ancillary to the other trusts. It merely determines the priority of time when the different trusts created by the deed are to be given effect to. The High Court has placed reliance on the decision in *Prasaddas Pal* v. *Jagannath Pal* (1). That was a case in which by the deed of endowment were dedicated certain houses and premises to the "sheba" of a family idol established in one of the said houses and for feeding the poor and carrying out other charitable objects; the deity was installed inside one of the residential quarters, the "shebaitship" was confined to the members of the family of the founder, and the feeding of the poor and of students, in case the income of the debutter property increased, was found to be part and parcel of the "debasheba", and in those circumstances it was held that the feeding of the poor etc. was not an independent charity but incidental to the main purpose of the endowment, viz., the "puja" of the deity. We are unable to hold that the same considerations apply to the trust before us.

In *Deoki Nandan* v. *Murlidhar* (2) this Court considered the principles of law applicable to a determination of the question whether an endowment is public or private, and observed:

"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 thereof. In accordance with this theory, 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 to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But

(1) (1932) I.L.R. 60 Cal. 538. (2) [1956] S.C.R. 756, 762.

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where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

One of the facts which was held in that case to indicate that the endowment was public was that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. We do not suggest that such a fact is by itself decisive of the question. The fact that the temple is outside the dwelling house is only a circumstance in favour of it being regarded a public temple, particularly in Madras (except Malabar); there are, however, private temples in Bengal which are built outside the residential houses of donors (see the Hindu Law of Religious and Charitable Trust, Tagore Law Lectures by the late Dr. B. K. Mukherjea, 1952 edition, p. 188). In the case before us, the two temples were constructed outside the residential quarters, but that is only one of the relevant circumstances. We must construe the deed of trust with reference to all its clauses and so construed, we have no doubt that the trusts imposed constitute a public endowment. There is one other point to be noticed in this connexion. The deed of trust in the present case is in the English form and the settlor has transferred the properties to trustees who are to hold them for certain specific purposes of religion and charity; that in our opinion is not decisive but is nevertheless a significant departure from the mode a private religious endowment is commonly made.

It is necessary now to refer to a decision of the Calcutta High Court, *In re Charusila Dasi* (1) relating to this very trust. The question for consideration in that case was the assessment of income-tax on the income of this trust estate for the accounting year 1938-39. The trustees were assessed upon the whole income of the trust. The trustees appealed against the assessment and contended that the entire trust was for public, religious and charitable purposes and the whole income

(1) I.L.R. [1946] 1 Cal. 473.

fell within cl. (1) of sub-s. 3 of s. 4 of the Income-tax Act. The contention of the Commissioner of Income-tax was that the trust was no more than a private religious trust and the income did not enure for the public benefit, save with respect to that part of the income which was to be devoted to the hospital and dispensary and to which the latter part of cl. (1) applied. A reference was accordingly made to the High Court and the question framed was whether on a proper construction of the deed of trust, so much of the income of the trust as was not applied for the purpose of constructing and maintaining the female hospital was exempt from tax under the provisions of s. 4(3) of the Indian Income-tax Act. It was pointed out before the High Court that no part of the income of the trust during the accounting year was devoted to the hospital and dispensary and it was conceded that that part of the income which would be devoted to those institutions would fall within the exempting clause. It so happens that the learned counsel who argued the case on behalf of the trustees in the Calcutta High Court in the income-tax reference is the same counsel who has argued the case before us on behalf of Srimati Charusila Dasi. The contention now is that the trust in its entirety is a private religious trust. Eleven circumstances were referred to by learned counsel in the income-tax reference in support of his contention that the entire trust as ascertained from the trust deed was of a public nature. Gentle, J., with whom Ormond, J., agreed, held that on a proper construction of the deed of trust, so much of the income of the trust as was not applied for the purpose of constructing and maintaining the female hospital was not exempt from tax under the provisions of s. 4(3) of the Indian Income-tax Act. This decision, it must be stated at once, does not wholly support the present respondent. So far as the hospital and the dispensary are concerned the trust was held to be a public trust. We are of the view that having regard to the main clauses of the trust deed to which we have already made a reference, the trusts in favour of the deity Iswar Srigopal and the image of Sri Balanand Brahmachari are also of a public nature.

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One of the points which was emphasised before the Calcutta High Court was the provision with regard to "pronamis" and perquisites to be offered to the deity and the image. The High Court said:

"This provision does not indicate the creation of a trust in favour of the public, but, on the contrary, it denies the right of any one, which must include any member of the public, having a right to the *pronamis*. In its terms, the deed negatives that benefit is conferred upon the public".

The aforesaid observations appear to us, with respect, to be based on a misconception. When a member of the public makes an offering to a deity, he does not retain any right to what he has offered. What he offers belongs to the deity. When we talk of the right of members of the public or a considerable section thereof, we refer to the right of worship or the right to make offerings in worship of the deity and not of the right to the offerings after they have been made. With regard to other clauses of the trust deed also we take a view different from that of the learned Judges who decided the income-tax reference. We have already explained our view in the preceding paragraphs and it is unnecessary to reiterate it. The conclusions at which we have arrived on a construction of the deed of trust is that it creates a religious and charitable trust of a public nature.

Now, we proceed to a consideration of the second point. Section 3 of the Act says—

"This Act shall apply to all religious trusts, whether created before or after the commencement of this Act, any part of the property of which is situated in the State of Bihar".

The argument before us on behalf of the respondent is this. Under Art. 245 of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. Clause (2) of the said Article further states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Article 246 gives the distribution of legislative power;

Parliament has exclusive power to make laws with respect to any of the matters enumerated in what has been called the Union List; Parliament as also the legislature of a State have power to make laws with respect to any of the matters enumerated in the Concurrent List; the legislature of a State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in the State List. Item 28 of the Concurrent List is—"charities and charitable institutions, charitable and religious endowments and religious institutions". Learned counsel for the respondent contends that by reason of the provisions in Arts. 245 and 246 of the Constitution read with item 28 of the Concurrent List, the Bihar legislature which passed the Act had no power to make a law which has operation outside the State of Bihar; he further contends that under s. 3 the Act is made applicable to all religious trusts, whether created before or after the commencement of the Act, any part of the property of which is situated in the State of Bihar; therefore, the Act will apply to a religious institution which is outside Bihar even though a small part of its property may lie in that State. It is contended that such a provision is *ultra vires* the power of the Bihar Legislature, and Parliament alone can make a law which will apply to religious institutions having properties in different States. Alternatively, it is contended that even if the Act applies to a religious institution in Bihar a small part of the property of which is in Bihar, the provisions of the Act can have no application to such property of the institution as is outside Bihar, such as the Calcutta properties in the present case.

It is necessary first to determine the extent of the application of the Act with reference to ss. 1 (2) and 3 of the Act read with the preamble. The preamble states:—

"Whereas it is expedient to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts",

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It is clear from the preamble that the Act is intended to provide for the better administration of Hindu religious trusts in the State of Bihar. Section 1 (2) states that the Act extends to the whole of the State of Bihar, and s. 3 we have quoted earlier. If these two provisions are read in the context of the preamble, they can only mean that the Act applies in cases in which (a) the religious trust or institution is in Bihar and (b) any part of the property of which institution is situated in the State of Bihar. In other words, the aforesaid two conditions must be fulfilled for the application of the Act. It is now well settled that there is a general presumption that the legislature does not intend to exceed its jurisdiction, and it is a sound principle of construction that the Act of a sovereign legislature should, if possible, receive such an interpretation as will make it operative and not inoperative; see the cases referred to *In re the Hindu Women's Right to Property Act, 1937* and *The Hindu Women's Rights to Property (Amendment) Act, 1936* and *In re a Special Reference under s. 213 of The Government of India Act, 1935* (1), and the decision of this Court in *R. M. D. Chamarbaugwalla* v. *The Union of India* (2). We accordingly hold that s. 3 makes the Act applicable to all public religious trusts, that is to say, all public religious and charitable institutions within the meaning of the definition clause in s. 2 (1) of the Act, which are situate in the State of Bihar and any part of the property of which is in that State. In other words, both conditions must be fulfilled before the Act can apply. If this be the true meaning of s. 3 of the Act, we do not think that any of the provisions of the Act have extra-territorial application or are beyond the competence and power of the Bihar Legislature. Undoubtedly, the Bihar Legislature has power to legislate in respect of, to use the phraseology of item 28 of the Concurrent List, " charities, charitable institutions, charitable and religious endowments and religious institutions " situate in the State of Bihar. The question, therefore, narrows down to this: in so legislating, has it power to affect trust

(1) [1941] F.C.R. 12, 27-30. (2) [1957] S.C.R. 930.

property which may be outside Bihar but which appertains to the trust situate in Bihar ? In our opinion, the answer to the question must be in the affirmative. It is to be remembered that with regard to an interest under a trust the beneficiaries' only right is to have the trust duly administered according to its terms and this right can normally be enforced only at the place where the trust or religious institution is situate or at the trustees' place of residence: see Dicey's Conflict of Laws, 7th edition, p. 506. The Act purports to do nothing more. Its aim, as recited in the preamble, is to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection of properties appertaining thereto. This aim is sought to be achieved by exercising control over the trustees *in personam*. The trust being situate in Bihar the State has legislative power over it and also over its trustees or their servants and agents who must be in Bihar to administer the trust. Therefore, there is really no question of the Act having extra-territorial operation. In any case, the circumstance that the temples where the deities are installed are situate in Bihar, that the hospital and charitable dispensary are to be established in Bihar for the benefit of the Hindu public in Bihar gives enough territorial connection to enable the legislature of Bihar to make a law with respect to such a trust. This Court has applied the doctrine of territorial connection or nexus to income-tax legislation, sales tax legislation and also to legislation imposing a tax on gambling. In *Tata Iron & Steel Co. Ltd.* v. *State of Bihar* (1) the earlier cases were reviewed and it was pointed out that sufficiency of the territorial connection involved a consideration of two elements, namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection. It cannot be disputed that if the religious endowment is itself situated in Bihar and the trustees function there, the connection between the religious institution and the property appertaining thereto is real and not illusory; indeed, the religious institution

(1) [1958] S.C.R. 1355.

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and the property appertaining thereto form one integrated whole and one cannot be dissociated from the other. If, therefore, any liability is imposed on the trustees, such liability must affect the trust property. It is true that in the *Tata Iron & Steel Co.'s case* (1) this Court observed :

"It is not necessary for us on this occasion to lay down any broad proposition as to whether the theory of nexus, as a principle of legislation is applicable to all kinds of legislation. It will be enough for disposing of the point now under consideration, to say that this Court has found no apparent reason to confine its application to income-tax legislation but has extended it to sales tax and to tax on gambling."

We do not see any reason why the principles which were followed in *The State of Bombay* v. *R. M. D. Chamarbaugwala* (2) should not be followed in the present case. In *R. M. D. Chamarbaugwala's case* (2) it was found that the respondent who was the organiser of a prize competition was outside the State of Bombay ; the paper through which the prize competition was conducted was printed and published outside the State of Bombay, but it had a wide circulation in the State of Bombay and it was found that "all the activities which the gambler is ordinarily expected to undertake" took place mostly, if not entirely, in the State of Bombay. These circumstances, it was held, constituted a sufficient territorial nexus which entitled the State of Bombay to impose a tax on the gambling that took place within its boundaries and the law could not be struck down on the ground of extra-territoriality. We are of the opinion that the same principles apply in the present case and the religious endowment itself being in Bihar and the trustees functioning there, the Act applies and the provisions of the Act cannot be struck down on the ground of extra-territoriality.

We proceed now to consider some of the decisions on which learned counsel for the respondent has placed reliance. These are (1) *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote* (3) ; (2) *Commissioner of Wakfs, Bengal*

(1) [1958] S.C.R. 1355. (2) [1957] S.C.R. 874.

(3) (1894) 21 I.A. 171, 185.

v. *Narasingh Chandra Daw and Co.* (1); (3) *Madangopal Bagla* v. *Lachmidas* (2); and (4) *Maharaj Kishore Khanna* v. *Raja Ram Singh* (3). Those decisions, in our opinion, are not in point, as they related to different problems altogether. In Sirdar Gurdyal Singh's case (4) a Faridkote court passed an *ex parte* money decree against a defendant who had been a treasurer of Faridkode, but who at the time of suit had ceased to be such and was resident in *Jhind* of which State he was a domiciled subject; it was held that the decree was a nullity by international law. The ratio of the decision was thus expressed by Lord Selborne:

"Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. .....In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced *in absentem* by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity."

The decision in *Commissioner of Wakfs, Bengal* v. *Narasingh Chandra Daw & Co.* (1) proceeded on a construction of s. 70 of the Bengal Wakf Act which also had a section similar to s. 3 of the Act. Section 70 of the Bengal Wakf Act required notice to the Commissioner of Wakfs before any wakf property could be sold and the question was whether a court in Assam was under any obligation to send such a notice. It was held that the Bengal Act did not apply to Assam and s. 70 stood in a different category from the other sections of the Bengal Act. The ratio of the decision was thus explained :—

"So far as the status of the Commissioner is concerned, it is conferred by the Bengal Act to operate even outside the province. Therefore, the Commissioner may bring suits under s. 72 or s. 73 of the Bengal Act in courts outside the province. But s. 70 lies

(1) I.L.R. [1939] 1 Cal. 462.
(2) I.L.R. [1948] 2 Cal. 455.
(3) A.I.R. 1954 Pat. 164.
(4) (1894) 21 I.A. 171, 185.

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in a different category, because it imposes an obligation on the court to issue notice to the Commissioner in certain circumstances. .....Section 70(1) refers to a suit or proceeding in respect of any *wakf* property, etc., and if this *wakf* property is situated outside the province, so that the court having jurisdiction over it is also outside the province, then the Act cannot operate beyond its extent, that is to say outside the province of Bengal."

The decision in *Madangopal Bagla* v. *Lachmidas* (1) and the decision in *Maharaj Kishore Khanna* v. *Raja Ram Singh* (2)—both related to the interpretation of some of the provisions of the United Provinces Encumbered Estates Act (U. P. Act 25 of 1934). In the former case the limited question for decision was if the decreeholder under a decree of the Original side of the Calcutta High Court was precluded from executing the decree by reason of certain proceedings which had taken place before the Special Judge, Banaras, under the United Provinces Encumbered Estates Act, 1934. The answer given was that the decreeholder was not so precluded and the decision proceeded on a construction of s. 18 of the United Provinces Encumbered Estates Act, 1934, read with ss. 7, 13 and 14(7) of that Act. It was held that the exclusive jurisdiction intended to be conferred on the Special Judge in supersession of those of civil and revenue courts extended, as indicated by s. 7, only over debts enforceable through the courts within the province and the word "creditor" in s. 10 must be limited to those of them who would have to enforce their rights through such courts alone. In the Patna case the question for decision was if s. 14(7) of the U. P. Encumbered Estates Act, 1934, should be construed to mean that the decree of a Special Judge is to be deemed to be the decree of a civil court of competent jurisdiction even beyond the territorial jurisdiction of the State Legislature. It was held that the decree passed by the Special Judge of Banaras had not the effect of a decree of a civil court outside the territorial limits of the United Provinces and the Sub-

(1) I.L.R. (1948) 2 Cal. 455. (2) A.I.R. 1954 Pat. 164.

ordinate Judge of Purnea in Bihar had no jurisdiction to execute such a decree or to direct that the properties of a judgment-debtor in Purnea should be attached in execution of the decree. As we have said earlier, these decisions relate to an altogether different problem, namely, the proper construction of certain sections of the Bengal Wakf Act or of the United Provinces Encumbered Estates Act. The problem before us is of a more general nature and the aforesaid decisions are no authorities for the solution of that problem.

There is a decision of this Court to which our attention has been drawn (Petition No. 234 of 1953 decided on March 18, 1953). A similar problem arose in that case where the head of a math situate in Banaras made an application under Art. 32 of the Constitution for a writ in the nature of mandamus against the State of Bombay and the Charity Commissioner of that State directing them to forbear from enforcing against the petitioner the provisions of the Bombay Public Trusts Act, 1950, on the ground *inter alia* that the Bombay Act could have no application to the math situate in Banaras or to any of the properties or places of worship appurtenant to that math. In the course of the hearing of the petition the learned Attorney-General who appeared for the State of Bombay made it clear that there was no intention on the part of the Government of Bombay or the Charity Commissioner to apply the provisions of the Bombay Act to any math or religious institution situated outside the State territory. The learned Attorney-General submitted that the Bombay Act could be made applicable, if at all, to any place of religious instruction or worship which is appurtenant to the math and is actually within the State territory. In view of these submissions no decision was given on the point urged. The case cannot, therefore, be taken as a final decision of the question in issue before us.

For the reasons which we have already given the Act applies to the Charusila Trust which is in Bihar and its provisions cannot be struck down on the ground of extra-territoriality.

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The result is that the appeal succeeds and is allowed with costs, the judgment and order of the High Court dated October 5, 1953, are set aside and the petition of Srimati Charusila Dasi must stand dismissed with costs.

Appeal allowed.

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April 15.

THE STATE OF BIHAR & OTHERS

v.

BHABAPRITANANDA OJHA

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Hindu Religious Trusts—Constitutional validity of Bihar Hindu Religious Trusts Act—Trust properties situate outside Bihar —Legislative competence—Scheme framed for Trust by Calcutta High Court—Applicability of Act to such Trust—Bihar Hindu Religious Trusts Act, 1950 (Bihar 1 of 1951), ss. 3, 4(5), 28, 29— Code of Civil Procedure, 1908 (Act 5 of 1908), s. 92—Constitution of India, Arts. 14, 19(1)(f), 25, 26, 27.

In respect of an ancient temple situate in the State of Bihar, disputes arose in 1897 between the high priest and the "pandas" regarding the control of the temple which ultimately led to a suit being filed under s. 539 (now s. 92) of the Code of Civil Procedure, in the Court of the District Judge of Burdwan and a decree was passed by the Additional District Judge, under which a scheme was framed for the proper management of the temple. The decree was confirmed by the Calcutta High Court and the scheme itself was later modified from time to time by the said High Court. After the coming into force of the Bihar Hindu Religious Trusts Act, 1950, the President of the Bihar State Board of Religious Trusts, acting under s. 59 of the Act, served a notice on the respondent, who had been appointed Sardar Panda for the temple under the scheme, asking him to furnish a statement in respect of the temple and the properties appertaining thereto. The respondent made an application under Art. 226 of the Constitution to the High Court of Patna challenging the validity of the action taken against him on the grounds (1) that the Bihar