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MAHANT RAM SAROOP DASJI

v.

S. P. SAHI, SPECIAL OFFICER-IN-CHARGE OF THE HINDU RELIGIOUS TRUSTS AND OTHERS

1959

April 15.

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

Hindu Religious Trusts—Private Trusts—Applicability of Bihar Hindu Religious Trusts Act—Religious Endowments, public and private—Distinction between—Definition of "religious trust" —Scope and Effect—Bihar Hindu Religious Trusts Act, 1950 (Bihar 1 of 1951), ss. 2(1), 4(5), 30(1), 32, 48.

The appellant as the Mahant of the Salouna asthal made an application in the High Court under Art. 226 of the Constitution praying inter alia for the issue of a writ quashing the order of the Bihar State Board of Religious Trusts requiring the appellant to submit a return of income and expenditure under s. 59 of the Bihar Hindu Religious Trusts Act, 1950, on the grounds, inter alia, that the Salouna asthal was a private institution and not a religious trust within the meaning of the Act and that the Act did not apply to private trusts. The High Court took the view that the language of s. 2(1) of the Act, which defined a " religious trust ", was wide enough to cover within its ambit both private and public trusts recognised by Hindu law and that the Salouna asthal did not come within any of the two exceptions recognised by the section.

Held, that on a true and proper construction of the provisions of the Act, considered in the background of previous legislative history with regard to religious, charitable or pious trusts in India, the definition clause in s. 2(1) of the Act does not include within its ambit private trusts and that the provisions of the Act do not apply to such trusts.

The essential distinction in Hindu law between religious endowments which are public and those which are private is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description ; in a private trust the beneficiaries are definite and ascertained individuals or who within a time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 343 of 1955.

Appeal from the judgment and order dated September 13, 1954, of the Patna High Court in Misc. Judl. Case No. 39 of 1954.

L. K. Jha, B. K. P. Sinha and *R. C. Prasad*, for the appellant.

Mahabir Prasad, Advocate-General for the State of Bihar, Ishwari Nandan Prasad and *S. P. Varma*, for the respondents.

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

S. K. Das J.

S. K. DAS, J.—This appeal on a certificate granted by the High Court of Patna is from a judgment of the said High Court dated September 13, 1954, in a writ proceeding numbered as Miscellaneous Judicial Case No. 39 of 1954 in that court, which the appellant had instituted on an application made under Art. 226 of the Constitution in the circumstances stated below.

It was alleged that one Mahatma Mast Ramji, a Hindu saint, owned and possessed considerable properties in the district of Monghyr in the State of Bihar. About two hundred years ago, he built a small temple at Salouna in which he installed a deity called Sri Thakur Lakshmi Narainji. This temple came to be known as the Salouna asthal. Mast Ramji died near about the year 1802. He was succeeded in turn by some of his disciples, one of whom was Mahant Lakshmi Dasji. He built a new temple in 1916 into which he removed the deity from the old temple and installed two new deities, Sri Ram and Sita. In 1919 Mahant Lakshmi Dasji died. He left three disciples, Vishnu Das, Bhagwat Das and Rameshwar Das. A dispute arose among these disciples about succession to the gaddi, which was settled sometime in February 1919. By that settlement it was arranged that Vishnu Das would succeed Mahant Lakshmi Das as the shebait and would be succeeded by Bhagwat Das, and thereafter the ablest "bairagi" of the asthal, born of Brahmin parents, would be eligible for appointment as

shebait. Bhagwat Das died sometime in 1935 and again a dispute arose between one Rameshwar Das, the youngest chela of Mahant Lakshmi Das, and Ram Saroop Das who is the present Mahant and appellant before us. Rameshwar Das, it appears, filed an application under the Charitable and Religious Trusts Act (XIV of 1920) for a direction upon Mahant Ram Saroop Das to render an account of the usufruct of the asthal. This application was contested by Mahant Ram Saroop Das, who said that the properties appertaining to the Salouna asthal did not constitute a public trust within the meaning of the provisions of the Charitable and Religious Trusts Act (XIV of 1920) and therefore he was not accountable to any person. Mahant Ram Saroop Das also applied for and obtained permission under s. 5 of the aforesaid Act to institute a suit for a declaration that the Salouna asthal and the properties thereof did not constitute a public trust. Such a suit was brought in the court of the Subordinate Judge of Monghyr who, however, dismissed the suit. Then, there was an appeal to the High Court of Patna and by the judgment and decree passed in First Appeal No. 10 of 1941 dated March 5, 1943, the High Court gave a declaration to the effect that the Salouna asthal and the properties appertaining thereto did not constitute a public trust within the meaning of the provisions of the Charitable and Religious Trusts Act, (XIV of 1920). Some eight years later, the Bihar Hindu Religious Trust Act, 1950 (Bihar I of 1951), hereinafter referred to as the Act, was passed by the Bihar Legislature and received the President's assent on February 21, 1951. It came into force on August 15, 1951. The Bihar State Board of Religious Trusts (one of the respondents before us) was constituted under this Act to discharge in regard to religious trusts other than Jain religious trusts the functions assigned to it under the several provisions of the Act. On November 14, 1952, this Board, in exercise of the powers conferred on it under s. 59 of the Act, asked the appellant to furnish to the Board a return of the income and expenditure of the asthal.

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The appellant replied by a letter dated December 1, 1952, that the Salouna asthal was a private institution to which the Act did not apply, and also drew the attention of the Board to the judgment and decree of the High Court in First Appeal No. 10 of 1941. The Board, however, gave a reply to the effect that it was not bound by the declaration made by the High Court and asked the appellant to obtain a declaration in respect of his claim under the provisions of the Act or to submit a return. Thereafter, on January 22, 1954, the appellant made his application under Art. 226 of the Constitution in which he averred (a) that the Salouna asthal was not a religious trust within the meaning of the Act; (b) that the properties appertaining thereto did not constitute a religious trust and the appellant was not a trustee within the meaning of the Act; (c) that the Act did not apply to private trusts; and (d) that the demand made by the respondent Board amounted to an interference with the appellant's fundamental right to hold the asthal properties. The appellant accordingly prayed for the issue of a writ quashing the order of the respondent Board requiring the appellant to submit a return of income and expenditure and also for an order directing the respondent Board and its officers to refrain from interfering with the appellant in his right of management of the Salouna asthal and the properties appertaining thereto.

The High Court of Patna by its judgment complained against dismissed the petition on the main ground that the language of s. 2(l) of the Act, which defined a 'religious trust' for the purposes of the Act, was wide enough to cover within its ambit both private and public trusts recognised by Hindu law to be religious, pious or charitable and that the Salouna asthal did not come within any of the two exceptions recognised by the section, namely, (1) a trust created according to Sikh religion or purely for the benefit of the Sikh community; and (2) a private endowment created for the worship of a family idol in which the public are not interested. The High Court also held that the materials on the record were not sufficient to decide

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the question whether the Salouna asthal and the properties thereof constituted a religious trust of a public character; but proceeding on the footing that the Act applied to private trusts, it expressed the view that the restrictions imposed on the trustee by the several provisions of the Act were not violative of the fundamental right guaranteed under Art. 19(1)(f) of the Constitution, inasmuch as there was no legal reason why the State should not exercise superintendence and control over the administration of private trusts as in the case of public trusts. In a judgment dated October 5, 1953, dealing with the same question in some earlier cases, the High Court had, however, expressed a somewhat different view. It had then referred to the principle that when a legislature with limited power makes use of a word of wide and general import, the presumption must be that it is using the word with reference to what it is competent to legislate, and adopting that principle it said that s. 2(l) of the Act should be read in a restricted sense so as to include only Hindu religious or charitable trusts of a public character and the provisions of the Act would accordingly apply to such trusts only.

The principal point urged before us on behalf of the appellant is one of construction—do the provisions of the Act apply to private religious trusts? The contention of the appellant is that they do not. It is necessary to refer at this stage to some of the relevant provisions of the Act. In connected Civil Appeals Nos. 225, 226, 228, 229 and 248 of 1955 [1] in which also we are delivering judgment today, we have referred to the provisions of the Act in somewhat greater detail. In this appeal we shall refer to such provisions only as have a bearing on the principal point.

We start with the definition clause in s. 2 (l). It says—

"'religious trust' means any express or constructive trust created or existing for any purpose recognised by Hindu Law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh

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

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community and a private endowment created for the worship of a family idol in which the public are not interested; ".

The expression ' trust property ' in s. 2 (p) means the property appertaining to a religious trust and the expression ' trustee ' in s. 2 (n) is defined in the following terms—

" ' trustee ' means any person, by whatever designation known, appointed to administer a religious trust either verbally or by or under any deed or instrument or in accordance with the usage of such trust or by the District Judge or any other competent authority, and includes any person appointed by a trustee to perform the duties of a trustee and any member of a Committee or any other person for the time being managing or administering any trust property as such; ".

The next important section for our purpose is s. 4 as amended by Bihar Act, XVI of 1954, which gives effect to certain amendments and repeals. Sub-section (5) of s. 4 is in these terms—

" The Religious Endowments Act, 1863 (XX of 1863), and section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any religious trust in this State, as defined in this Act."

Chapter V of the Act contains a series of sections which delimit the powers and duties of the State Board of Religious Trusts. Section 28, the opening section of the chapter, states the general powers and duties of the Board. Section 29(1) has a bearing on the question at issue before us. It states *inter alia* that where the supervision of a religious trust is vested in any committee or association appointed by the founder or by a competent court or authority, such committee or association shall continue to function under the general superintendence and control of the Board unless superseded by the Board under sub-s. (2) of the section. If an order of supersession is passed, the committee or association or any other person interested in the religious trust may within 30 days of the order of the Board under sub-s. (2) make an application to the District Judge for varying, modifying or setting aside

the order of supersession. Section 30, so far as it is relevant for our purpose, states—

"When any object of a religious trust has ceased to exist or has, in the opinion of the Board, become impossible of achievement, the Board may, of its own motion or on the application of any Hindu, after issuing notice in the prescribed manner, to the trustee of such trust and to such other person as may appear to the Board to be interested therein and after making such inquiry as it thinks fit, determine the object (which shall be similar or as nearly similar as practicable to the object which has ceased to exist or become impossible of achievement) to which the funds, property or income of the trust or so much of such fund, property or income as was previously expended on or applied to the object which has ceased to exist or become impossible of achievement, shall be applied."

Section 32 defines the power of the Board to settle schemes for proper administration of religious trusts. It states:

"32(1). The Board may, of its own motion or on application made to it in this behalf by two or more persons interested in any trust,—

(a) settle a scheme for such religious trust after making such inquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may appear to the Board to be interested therein;

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stead:

Provided that any scheme so settled, modified or substituted shall be in accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub-section (3) come into force on a day to be appointed by the Board in this behalf and shall be published in the official gazette.

(3) The trustee of, or any other person interested in, such trust, may within three months from the date of the publication in the official gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be, make an application to the District Judge for varying, modifying or setting aside the scheme; but, subject to the result of such application, the order of the Board under sub-sections (1) and (2) shall be final and binding upon the trustee of the religious trust and upon every other person interested in such religious trust.

(4) An order passed by the District Judge on any application made under sub-section (3) shall be final."

It may be here stated that the expression "person interested in religious trust" is defined in s. 2(g). The definition is in these terms—

"" person interested in a religious trust" means any person who is entitled to receive any pecuniary or other benefit from a religious trust and includes,—

(i) any person who has a right to worship or to perform any rite, or to attend at the performance of any worship or rite, in any religious institution connected with such trust or to participate in any religious or charitable ministration under such trust;

(ii) the founder and any descendant of the founder; and

(iii) the trustee;".

The only other section which need be quoted in full is s. 48 of the Act which is in these terms:—

"48(1). The Board, or with the previous sanction of the Board, any person interested in a religious trust may make an application to the District Judge for an order—

(a) removing the trustee of such religious trust, if such trustee—

(i) acts in a manner prejudicial to the interest of the said trust; or

(ii) defaults on three or more occasions in the payment of any amount payable under any law for the time being in force in respect of the property or income of the said trust or any other statutory charge on such property or income; or

(iii) defaults on three or more occasions in the payment of any sum payable to any beneficiary under the said trust, or in discharging any other duty imposed upon him under it; or

(iv) is guilty of a breach of trust.

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquiries; or

(e) granting such further or other relief as the nature of the case may require.

(2) The order of the District Judge under sub-section (1) shall be final".

Now, the argument on behalf of the appellant is that on a true and proper construction of the aforesaid provisions of the Act, considered in the background of previous legislative history with regard to religious, charitable or pious trusts in India, the definition clause in s. 2 (l) of the Act is confined to religious, pious or charitable trusts of a public nature recognised as such by Hindu law. In order to appreciate this argument it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust (see the observations in *Nabi Shirazi* v. *Province of Bengal*) (1). The distinction in this respect between English law and Hindu law has been thus stated by Dr. Mukherjea in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition, pp. 392-396): "In English law charitable trusts are synonymous

(1) (1942) I.L.R. 1 Cal. 211, 228.

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with public trusts and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English law the Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. ...... One fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under Hindu law which is not possible in English law ".

On behalf of the appellant it has been pointed out that so far as public religious and charitable trusts are concerned, there are a number of legislative enactments, both general and local, which aim at controlling the management and administration of such trusts and provide for remedies in cases of mal-administration. So far as private religious trusts are concerned, there are no specific statutory enactments and such trusts are regulated by the general law of the land. The British Government, when it was first established in India, following the tradition of the former rulers, asserted by virtue of its sovereign authority the right to visit public religious and charitable endowments and to prevent and redress abuses in their management. A Regulation for that purpose was passed in Bengal in 1810 (Regulation XIX of 1810) and one for Madras in 1817 (Regulation VII of 1817). In Bombay also there was a Regulation (XVII of 1827) which related to endowments of the same character. In 1863 was passed the Religious Endowments Act (XX of 1863), which repealed the Bengal and Madras Regulations in so far as they related to purely religious institutions and their control was transferred from the Board of Revenue to non-official committees constituted under the Act of 1863. It is worthy of note, however, that the Act of 1863 also applied to public religious endowments only. In course of time it was found that the Act of 1863 did not provide adequate protec-

tion to public religious trust against abuses which led to their control by the State and the remedies provided by that Act did not go far enough. Then came the Charitable Endowments Act, 1890 (VI of 1890), and the Charitable and Religious Trusts Act, 1920 (XVI of 1920), both of which related to public trusts; the former related exclusively to public trusts for charitable purposes unconnected with religious teaching or worship while the latter related to trusts created for public purposes of a charitable or religious nature. In the Civil Procedure Code of 1877 a specific section was introduced, viz., s. 539, under which a suit could be instituted in case of any alleged breach of any express or constructive trust created for public religious or charitable purposes. This section was later amended, and in this amended form it became s. 92 of the present Civil Procedure Code, the first condition necessary to bring a case within its purview being the existence of a trust, whether express or constructive for *public purposes* of a religious or charitable nature. It is clear beyond doubt that a private trust is outside the operation of s. 92, Civil Procedure Code. Of the local Acts, the earliest was that of the Bombay Presidency of the year 1863. In more recent years were passed the Orissa Hindu Religious Endowments Act, 1939, the Bombay Public Trusts Act, 1950, and the Madras Hindu Religious and Charitable Endowments Act, 1951, all of which relate to public religious institutions and endowments. No local Act has been brought to our notice which clearly or unmistakenly sought to include within its ambit private religious trusts.

On behalf of the appellant it has been submitted that though the definition clause in s. 2 (l) of the Act is expressed in wide language, other provisions of the Act make it clear that it is confined to public trusts only. Section 2 (l) of the Act, we have pointed out, recognises two exceptions: first, a trust created according to the Sikh religion or purely for the benefit of the Sikh community; and, second, a private endowment created for the worship of a family idol, in which the public are not interested. It is not disputed

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that the second exception is an instance of a private trust, in which the public are not interested. The High Court has taken the view that inasmuch as the definition clause mentions by way of an exception only one instance of a private endowment, *all private endowments created otherwise than for the worship of a family idol must be included within the definition of the maxim of expressio unius exclusio alterius.* We do not think that this view is quite correct. First of all, let us examine some other provisions of the Act which specifically refer to the definition clause and see what the legislature has itself taken it to mean. Take, for example, s. 4 of the Act, as amended by Bihar Act, XVI of 1954. This section amends and repeals certain earlier Acts like the Charitable Endowments Act, 1890, and the Charitable and Religious Trusts Act, 1920, both of which we have already pointed out related exclusively to public trusts. Sub-s. (5) of s. 4 states that the Religious Endowments Act, 1863, and s. 92 of the Code of Civil Procedure, 1908, shall not apply to *any* religious trust in the State, *as defined in this Act*. The Religious Endowments Act, 1863, and s. 92, Civil Procedure Code,—both apply to public trusts; they have no application to private trusts. If the definition clause was intended to include within its ambit private trusts (other than those created for the worship of a family idol), then it is difficult to understand why sub-s. (5) of s. 4 should be worded as it has been done. That sub-section in effect says that two earlier enactments which apply exclusively to public trusts shall not apply to *any* trust (we emphasise the word 'any') as defined in the Act. If private trusts created otherwise than for the worship of a family idol were included in the definition of religious trust, then sub-s. (5) was entirely otiose or redundant so far as those private trusts were concerned for the earlier enactments never applied to them. The obvious indication is that all trusts defined in the Act are public trusts and, therefore, it became necessary to exclude the operation of earlier enactments which but for the exclusion would have applied to such trusts. If the intention of sub-s. (5) of s. 4 was to exclude *some* trusts

only out of many included within the definition clause from the operation of the earlier enactments, as is contended for by the learned Advocate-General of Bihar, then the use of the word 'any' appears to us to be particularly inapt. Sub-section (5) of s. 4 was amended by Bihar Act XVI of 1954. Before the amendment it read as follows;

"S. 4(5). The Religious Endowments Act, 1863, and section 92 of the Code of Civil Procedure, 1908, shall not apply to any Hindu Religious Trust in the State of Bihar."

Prior to the amendment, sub-s. (5) made no reference to the definition clause; it merely said that two of the earlier enactments shall not apply to any Hindu Religious Trust in the State of Bihar. The amended sub-section, however, specifically refers to the definition clause and states that two of the earlier enactments, which apply only to public trusts, shall not apply to *any* trusts, as defined in the Act. In our opinion, by sub-s. (5) of s. 4 the Legislature itself has spoken and indicated the true scope and effect of the definition clause.

Secondly, it may be asked why the legislature having before it the earlier enactments which applied to public trusts only, failed to use the word 'public' before the word 'purpose' in the definition clause? This is a pertinent question which must be faced. The answer, we think, is this. Charitable trusts are public trusts, both under the English and Indian law; in England a religious trust being a form of charitable trust is also public, but in India, according to Hindu law, religious trust may be public or private. But the most usual and commonest form of a private religious trust is one created for the worship of a family idol in which the public are not interested. Any other private religious trust must be very rare and difficult to think of. Dealing with the distinction between public and private endowments in Hindu law, Sir Dinshah Mulla has said at p. 529 of his Principles of Hindu Law (11th edition)—

"Religious endowments are either public or private. In a public endowment the dedication is for

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the use or benefit of the public. When property is set apart for the worship of a family god in which the public are not interested, the endowment is a private one ".

Obviously enough, the definition clause merely quotes the typical example of a private endowment mentioned above. It is also significant that the exclusion of an endowment created for the worship of a family idol is based on the adjectival clause which follows it, viz., " in which the public are not interested ". In other words, the exclusion is based on the essential distinction between a public and private trust in Hindu law. If the test is that the public or any section thereof are not interested in the trust, such a test is characteristic of *all* private trusts in Hindu law. It also shows that there may be a trust created for the worship of a family idol in which the public may be interested. Those are cases of trust which began as a private trust but which eventually came to be thrown open to the public. This also indicates that the definition was intended to cover only public trusts.

We now turn to some of the other provisions of the Act, which we have earlier quoted. Section 29(1) which talks of supervision of a religious trust being vested in any committee or association appointed by the founder or by a competent court or authority is ordinarily appropriate in the case of a public trust only. Section 30(1) which embodies the doctrine of *cypres* permits any Hindu to make an application for invoking the power of the Board to determine the object to which funds, property and income of a religious trust shall be applied *where the original object of the trust has ceased to exist* or has become impossible of achievement. This section is also inappropriate in the case of a private trust, the obvious reason being that any and every Hindu cannot be interested in a private trust so as to give him a *locus standi* to make the application. Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist. Sec-

tion 32 is an important section of the Act and confers power on the Board to settle schemes for proper administration of religious trusts. Now, the section says that the Board may exercise the power of its own motion or on application made to it in this behalf by two or more persons interested in any trust. The language of the section follows closely the language of s. 92, Civil Procedure Code, so far as the phrase "two or more persons interested in any trust" is concerned. It is difficult to understand why in the case of a private trust, it should be necessary that two or more persons interested in the trust must make the application to settle a scheme for such a trust. In a private or family debutter the beneficiaries are a limited and defined class of persons, as for example, the members of a family. If the trustee or shebait is guilty of mismanagement, waste, wrongful alienation of debutter property or other neglect of duties, a suit can certainly be instituted for remedying these abuses of trust. Under the general law of the land the founder of the endowment, or any of his heirs is competent to institute a suit for proper administration of the debutter, for removal of the old trustee and for appointment of a new one. It is not necessary in such a case that two or more persons interested in the trust must join in order to institute the suit. The condition of "two or more persons" is appropriate only to a public trust, the reason being that a public trust is a matter of public concern. Section 48 of the Act is also analogous to s. 92 of the Code of Civil Procedure and one of the reasons for excluding the operation of s. 92 of the Code of Civil Procedure from trusts as defined by the Act is the existence of provisions in the Act which are analogous to s. 92 of the Code of Civil Procedure. This section is also more appropriate to public trusts than to private trusts. In fact, the Act contains provisions, as the preamble states, 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 and for that purpose certain earlier enactments like the Religious Endowments Act, 1863, the Charitable Endowments Act, 1890,

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the Charitable and Religious Trusts Act, 1920 and the Civil Procedure Code, 1908, have either been amended or excluded from operation. All those earlier enactments related only to public trusts and if the intention was that the Act would apply to private trusts as well, one would expect that that intention would be made clear by the use of unambiguous language. We find, on the contrary, that though the definition clause in s. 2(1) is expressed in somewhat wide language, sub-s. (5) of s. 4 makes clear what the true scope and effect of the definition clause is.

For the reasons given above, we hold that the definition clause does not include within its ambit private trusts and the Act and its provisions do not apply to such trusts.

Learned counsel for the appellant has in the alternative argued before us that if the Act applies to private trusts, several of its provisions will be violative of the fundamental right guaranteed to citizens under Art. 19(1)(f) of the Constitution inasmuch as the restrictions imposed thereby on trustees of private trusts, in which the public are not interested, cannot be justified as reasonable restrictions in the interests of the general public within the meaning of cl. (5) of Art. 19. The High Court negatived this argument by adopting the rule of English law that in the case of a charitable corporation where the founder is a private person, he and his heirs become visitors in law and where such heirs are extinct or incompetent, their powers devolve on the Crown or the State; therefore, it is in the interests of the general public that the State should exercise superintendence and control over the administration of private trusts as in the case of public trusts. This view of the High Court has been seriously contested before us, and learned counsel for the appellant has submitted that there is no warrant for the adoption of the rule of English law in view of the fundamental distinction between English and Hindu law as to private religious trusts. He has also drawn our attention to the following observations of Dr. Mukherjea (Hindu Law of Religious and Charitable Trust, 1952 Edition, p. 393) on this point:

"In English law there is a 'visitatorial' power attached to all eleemosynary corporations. A visitor has the right to settle disputes between members of the corporation, to inspect and regulate their actions and generally to correct all abuses and irregularities in the administration of charity. The law allows to the founder of an eleemosynary institution full powers to make regulations for its creation and such powers include the right of nominating visitors. Under the law of England as it stood before 1926, if a private person was the founder of a charitable corporation, then he and his heirs became automatically the visitors. The descent of the rights of a visitor to heirs has now been abolished by the Administration of Estates Act, 1925, and it is not clear as to who would be visitor in default of appointment by the founder. Most probably such rights would devolve upon the Crown as they did when the founder's heirs became extinct or could not be found or the heir was a lunatic."

He has further submitted that whatever be the position in English law, the guarantee of a fundamental right must depend on the terms of Art. 19 of the Constitution and such guarantee cannot be whittled down by importing artificial rules of English law.

In view of our finding on the question of construction of the definition clause read with s. 4 (5) and other provisions of the Act, we consider it unnecessary to pronounce finally on the contentions referred to in the preceding paragraph, except merely to state that a serious question of the constitutional validity of several provisions of the Act would have undoubtedly arisen if the Act were held to apply to private trusts as well.

On our finding that the Act does not apply to private trusts, the appellant is entitled to succeed in his appeal. The High Court has said that the materials on the record of the case are not sufficient to decide the question whether the Salouna asthal and the properties of the mahant constitute a trust of a public character. This question, however, was the subject of a contested litigation and the appellant had obtained a declaration in First Appeal No. 10 of 1941 that the Salouna asthal

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and the properties appertaining thereto did not constitute a public trust. The respondents were not parties to that litigation and may not be bound by that judgment; but on behalf of the respondents no affidavit was filed nor were any materials placed to show that the position is different from what was declared by the High Court. The High Court commented on the fact that the appellant did not produce before the court all the documents in his possession. A petition has been filed before us for taking in evidence the documents which were considered by the High Court in First Appeal No. 10 of 1941. We do not think that in the circumstances of this case it is necessary to consider that evidence afresh. As long as the declaration made by the High Court in First Appeal No. 10 of 1941 stands and in the absence of some evidence to the contrary, the appellant is entitled to say that the Salouna asthal and the properties appertaining thereto do not constitute a public trust and the Act and its provisions do not apply to it.

Our attention has been drawn to s. 43 of the Act as amended by Act XVII of 1956. That section says *inter alia* that all disputes as to whether any immovable property is or is not a trust property shall be enquired into, either on its own motion or on an application, by the authority appointed in this behalf by the State Government by notification in the official gazette. Without expressing any opinion as to the constitutional validity of s. 43 of the Act we merely point out that no decision has been given under s. 43 of the Act (as it stood prior or after the amendment) against the appellant in respect of the Salouna asthal and the properties appertaining thereto. It would be open to the respondents to take such steps as may be available to them in law to get it determined by a competent authority that the trust in question is a public trust.

We would accordingly allow this appeal, set aside the judgment and order of the High Court dated September 13, 1954, and direct the issue of an appropriate writ quashing the order of the respondent Board calling upon the appellant to file a statement of income and expenditure with regard to the properties of the Salouna

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.

THE STATE OF BIHAR & OTHERS.

v.

SM. CHARUSILA DASI

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April 15.

(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