Bala Shankar Mama Shankar Bhattjee And ... vs Charity Commissioner, Gujarat State on 17 August, 1994

Equivalent citations: AIR 1995 SUPREME COURT 167, 1994 AIR SCW 4181, 1994 AIR SCW 4215, (1994) 4 JT 473 (SC), 1995 (1) SCC(SUPP) 596, 1995 SCC (SUPP) 1 596, (1994) 3 SCJ 278, 1995 SCC (SUPP) 1 485, (1995) 1 GUJ LR 711, (1995) 1 MAHLR 216, (1994) 5 JT 152 (SC)

Author: K. Ramaswamy

Bench: J.S. Verma, K. Ramaswamy

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           CASE NO.:
Appeal (civil)  175 of 1973

PETITIONER:
BALA SHANKAR MAMA SHANKAR BHATTJEE AND ORS.

RESPONDENT:
CHARITY COMMISSIONER, GUJARAT STATE

DATE OF JUDGMENT: 17/08/1994

BENCH:
J.S. VERMA & K. KAMASWAMY

JUDGMENT:
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JUDGMENT 1994 SUPPL. (2) SCR 687 The Judgment of the Court was delivered by K. RAMASWAMY, J. This appeal, by leave under Article 133, granted by the High Court, arises from the Division Bench Judgment of the Gujarat High Court in First Appeal No. 417/64 dated August 25/29, 1972 reversing the decision of the District Judge Panchmahal in O.M.C.A. No. 19/1961. Near the town of Champaner in Halol taluka of Panchmahal District, there is hill called Pavagarh hill. On its top Kalika Mataji, Bhadrakali Mataji, Annapurna Mataji and Budhia Darwajani Budhia Mataji temples are situated. Another temple by name Ranchhodji along with in Haveli is also situated in the main village which are the subject matters of these proceedings. The High Court held that Kalika Mataji temple is a public trust and a public temple within the meaning of s.2(13) read with s.2(17) of the Bombay Public Trust Act, 1950, (for short 'the Act') and set aside the contra declaration of the district judge. The Assistant Charity Commissioner was directed to conduct de nave inquiry in regard to other temples, rinding that the join enquiry held by the Assistant Charity Commissioner has led to "prejudicial and lopsided results".

The facts for our decision are as under :

The appellants' predecessors were called upon and under protest made an application under s. 18 of the Act for registration of the temples as Public Trust. By order dated June 6, 1958, after conducting an enquiry, the Asstt. Charity Commissioner held that the five temples and Haveli as Public Trust properties. On appeal the Dy. Charity Commissioner in his Order dated October 20, 1959, remitted for fresh inquiry. Thereafter the Asstt. Charity Commissioner after inquiry, by his order dated August 24, 1969, reiterated that the temples and Haveli to be public trust properties and accordingly ordered their registration under the Act. On appeal, the Charity Commissioner in his order dated May 22, 1961 confirmed the same and dismissed the appeal. On further appeal under s.72, at the instance of the appellants, the district judge declared that all the five temples and Haveli are private properties and directed deletion of their registration under the Act. As stated earlier, the High Court reversed and upheld the registration of Kalika Mataji temple as a public trust property and remitted for fresh inquiry in respect of other four temples and Haveli.

Sri Yogeshwar Prasad, the Learned senior counsel contended that the district judge had elaborately considered the entire evidence from the factual matrix to conclude that Kalika Mataji temple and other temples are private temples and that, therefore, they are not public trust properties for being registered under Section 18 of the Act He had taken us through the entire evidence, judgments of the District Court and the High Court. He contends that the High Court had not correctly applied the legal tests laid by this Court in adjudging Kalika Mataji to be public temple which was refuted by Sri Bhatt, senior counsel appearing for the respondents and Sri Verma for the intervener who has been permitted to argue the matter by specific order in that behalf. We have gone through the judgment of the High Court and that of the District Court, scanned the entire evidence on records and given our anxious consideration to their respective contentions.

The question emerges whether the Kalika Mataji temple is a public Trust. The High Court after exhaustively subjecting the entire material evidence to close scrutiny concluded thus :

(1) It (Kalika Mataji temple) is very ancient temple more than thousand years old.

(2) It origin is lost in antiquity. It is not possible to rely upon the evidence of witness Chandramukharam and witness witness- Pavinbhi that about a thousand years ago their ancestor Devshanker had the vision of Mataji at that place and that the had constructed that temple for his own worship. They cannot have knowledge of events which took place a thousand years ago. We are, there fore, of the opinion that so far as the origin of the temple is concerned it is lost in antiquity. The temple is situated on a hill were there is no permanent human habitation.

(3) It is situated about a mile away from Champaner which is the nearest village.

(4) Pilgrims in thousands visit every year this temple for Darshan, for performing their individual rituals and for discharging themselves from the vows (Badhas) which they take for due fulfillment of their desires, They do so on account of their faith in Mataji.

(5) The visitors visit the temple without let or hindrance. Therefore, no evidence of any one having been obstructed in his visit to temple for Darshan. There is evidence on record regarding offerings from the visitors to Mataji not only in small coins but also in big things, as we shall shortly show.

(6) The temple has been shown in Govt. records as belonging to Mataji an the respondents have been described as it Vahivatdars and pujaris.

(7) There is cash allowance paid from the State Treasury to maintain it. It has been paid to the deity. The respondents are only its recipients in their capacities as the Pujaries or Acharyas of the temple.

(8) The evidence of witness Chandrakukharam shows that separate of the income of the temple have been maintained.

(9) Sanad No. 19 to which we have referred in the foregoing para-graphs of This judgment, shows that Seindias in their capacity as sovereign Rules had interest in that temple and that they had passed on their obligation in respect of the temple to the British Govt. by the Treaty concluded between Them and the British Govt. in 1860.

(10) The properties attached to the temple of Kalika Mataji have been shown in all Govt. records in the name of Mataji and not in the names of the respondents. Obviously this factor leads to the inference that the immovable properties standing in the name of Mataji were gifted or donated to the deity.

(11) The evidence further discloses that the deity has three sources of income (a) Cash allowance from the State Treasury, (b) Offerings by the devotees and visitors and (c) Income from immovable properties given over to and in the name of Mataji.

In view of all these factors we have no doubt in our mind that temple of Kalika Mataji is 'temple' within the meaning of 5s2(17) of the Bombay Public Trusts Act, 1950 and is therefore, a public trust as defined in Section 2(13) of the said Act. We record this conclusion on the strength of the fact that taking into account the nature of public user of the temple and other attendant factors the members of the Hindu Community have been using it as of right. In a given case public user as of right may not amount to implied dedication. It depends upon the facts of each case. But so far as the facts of the present case are concerned, no doubt it is left in our mind that on an analysis of the evidence discussed by as above not only the user by the evidence discussed by us above not only the user by members of the Hindu Community of the said temple has been as of right but that it amounts to

implied dedication for the benefit of the Hindu Community.

The main question that needs decision is whether Kalika Mataji temple is a temple within the meaning of s.2(l7) and a Public Trust under s.2(l3) of the Act. Temple has been defined in s.2(17) of the Act, which reads thus :

> ""temple" means a place by whatever designation known and used as place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as place of public religious worship."

and Public Trust has been defined in s.2(13) thereof which reads as under:

> ""Public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

A bare conjoint reading of the two definitions would show that the definition of public trust is an inclusive one bringing within its ambit, an express or constructive trust for which a public religious or charitable purpose or for both which includes a temple, a math, a wakf, a charmada or any other religious or charitable endowment and a society formed either for religious or charitable purpose or for both and a registered society under society Registration Act. A public place by whatever designation is temple when it is used as a place of public religious worship. It must be dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof, as a place of public religious worship.

Black's Law Dictionary 6th Edition, at page 1512 defines 'Public Trust' to mean by one constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; public trusts and charitable trusts may be considered in general as synonymous expressions. At page 1510 'Charitable trust' has been defined as 'trusts designed for the benefit of a class or the public generally. They are essentially different from private trusts in that the beneficiaries are uncertain. In general, such trust must be created for charitable, education-al, religious or scientific purposes'. In p. Ramanatha Aiyhar's The Law Lexicon' Reprint Edition 1987, at page 1298 'Public and Private Trust' has been defined as 'in the case of a temple an idol publicly constituted and publicly accessible in which the appearance may be what one may describe a ambiguous, one would expect and ought to insist upon clear evidence of permission given or license given and permission withheld because it is equally true that a private individual may construct, out of this private purse, a private temple and idol retaining the control and management in his own hands and that of his family or some other selected individuals and yet so conduct himself as of provide conclusive evidence of dedication by implication and by conduct. There is a broad difference when one comes to construe a dedication, between conduct which shows that the owner of the property is giving individuals and conduct which shows that he intends certain members of a class whom he desires to benefit to act indiscriminately without permission that is to say, as of right. A

useful test, for a judge to apply to see whether the evidence satisfies the conditions of the private trust, is to ask himself whether any of the acts testified to by the witnesses could have been prevented or penalised by proceedings for trespass. In private trust the beneficial interest is vested absolutely in one or more individual who are, or within a given time, may be definitely ascertained. On the other hand public trust has for its object the members of an uncertain and fluctuating body and the trust itself is of a permanent and indefinite character and is not confined within the limits prescribed to a settlement of a private trust.

Deoki Nandan v. Murlidhar, [1956] SCR 756, is a leading judgment of this court by a Bench of four Judges. In that case the facts found were that one sheo Ghulam, a pious childless Hindu, constructed Thakurdwara of Sri Radhakrishnaji ii Balasia village of District Sitapur, He was in management of the temple till his death. He executed a 'Will' bequeathing all his properties to the temple and made provisions for its proper manage-ment. The question arose whether the temple was dedicated to the public and whether the temple was a public or private temple. This court laid down that the issue whether the religious endowment is a public or a private is a mixed question of law and facts, the decision of which must be taken on the application of the legal concepts of public and private endowment to the facts found and it is open to consideration of this court. The distinction between a private or a public endowment is that whereas in the former the beneficiaries are specific individuals, in the letter they are the general public or a class thereof. An idol is a juristic person capable of holding properties. The properties endowed for the temple yest in it, but the idol has no beneficial interest in the endowment. The true beneficiaries are its worshipers. On facts it was found that the temple was a public temple. In Tilkayat Shri Govindlalji Maharaj v. The State of Rajashihan & Ors., [1964] 1 SCR 561 the Constitution Bench of this court held, on construction of evidence, that Nathdwara temple of Udaipur is a public temple with the management of the trustee of the property belong-ing to the temple vested in the trustee. In Narayan Bhagwantrao Gosavi Balajiwala v, Gopal Vintryhak Gosavi & Ors,(i960] 1 SCR 773 a Bench of three Judges held that the long user by the, public as of right and grant of land and cash by the Rulers, taken along with other relevant facts are consistent only with the public nature of the endowment. It was held that Sri Balaji Venkatesh at Nasik and its Sansthan constituted charitable and religious trusts within the meaning of the charitable and Religious Trusts Act, 1920, In that contest this court also considered the question of burden of proof and held it would mean one of two things, namely, (i) that a party has to prove an allegation before it is entitled to a judgment in its favour; and (2) that the one of the other of the two contending parties had to introduce evidence on a contested issue, The question of onus is material only where the party on which it is place would eventually lose if it failed to discharge the same. Where issues are, however, joined, evidence is led and such evidence can be weighed in order to determine the issues, the question of burden becomes academic.

In Mahant Ram Saroop Dasji V. S.P. Satti, Special Officer-in-Charge of the Hindu Religious Trusts & Ors., (1959) Suppl, 2 SCR 583, another Constitution Bench reiterated 'the distinction between the public and private trust. In the former 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 the latter, 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, It was held that Shri Thakur Laxmi Narainji was a public trust within the meaning Of s.2(e) of the Bihar Hindu Religious Trusts Act, 1950. In Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas & Ors., [1969] 2 SCC 853, relied on by the appellant, this court construing whether a temple is a public trust or a private temple laid down the following tests :

> "(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?
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> (2) Are the members of the public entitled to worship in that temple as of right?
>
> (3) Are the temple expenses met from the contributions made by the public?
>
> (4) Whether the Sevas and Utsvas conducted in the temple are those usually conducted in Public' temples?
>
> (5) Have the management as well as the devotees been treating that temple as a public temple?

On the facts of that case, it was held that Haveli at Nadiad was a public temple. In that context this court emphasized that the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship, the consciousness of the manager and the consciousness of the devotees them-selves as to the public character of the temple are relevant factors which would go to establish that the temple is whether a public or a private one. The true character of a particular temple is to be decided on the basis of diverse circumstances.

In Goswami Shri Mahalaxami Vahuji v. Shah Ranchhoddas Kalidas (dead) & Ors., AIR (1970) SC 2025 while considering whether Shree Gokulnathji temple at Nadiad was a public trust, this court had held that the temple belongs to Vallabha sampradayees and the custom that the public are asked to enter the temple only after Goswami has finished worship in on circumstance to show that temple is private one. The power to manage temple includes the power to maintain discipline within its precincts. It was held that Shree Gokulnathhji temple was a public trust. In State of Bihar & Ors. v. Smt Charusila Dasi, AIR (1959) SC 1002, another Constitution Bench found that Ishwar Shree Gopal was installed as a family deity by Smt. Charusila Dasi. A trust deed was settled by her. Subsequent execution of the trust deed and the terms thereof were considered by this court and held to be a public endowment. In Bihar State Board of Religious Trust v. Mahant Sri Biseshwar Das, AIR (1971) SC 2057, relied on by the appellant, while reiterating the distinction between public or private en-dowment, one of the tests laid was that user by public as of right would be a strong circumstance to give stand to the inference that it was dedicated to the public and the public users were as of right. With regard to the management of the properties and enjoyment thereof this court pointed out to find whether the property was given to the Math or to the head of Math for personal benefit which has to:

be decided either from the terms of the grant of from the circumstance of the case. On the terms of the deed of the gift it was held that the properties were stamped a trust properties for public purpose.

In T.D. Gopalan v. Commissioner of Hindu Religious and Charitable Endowments,[1973] I SCR 584, relied on by the appellants, the facts were that the Mandapam was constructed On their own land. The Garbha Griha in front of the mandapam, stone idols called Dwarabalakas on either side and implements necessary for offering Puja in the mandapam existed. The Commissioner declared it to be a public temple but in the suit the trial court declared in to be a private temple. On appeal, the High Court reversed the decree of the trial court and held that the temple was a public temple on the ground that members of the public had been worshiping at the shrine without let or hindrance, and that the temple was being run by contributions and by benefactions obtained from members of the public, this Court considered the nature of the temple, place of worship without attaching importance of the origin of the temple, the management thereof by the members of the family and absence of any endowed property etc., declared it to be private temple and confirmed the decree of the trial court; While considering those facts, this Court held that the origin of the temple, the manner in which its affairs were managed, the nature and extent of the gifts received by it, the rights exercised by devotees in regard to worship therein, the consciousness of the Manager or devotees themselves as to the public character of the temple are facts which go to establish whether a temple is public or private. The absence of Dwajasthamba or Nagara bell or Hundial in the temple were considered to be factors to declare the temple to be a private temple. In Dhaneshwarbuwa Guru Purshottambuwa owner of Shri Vtthal Rukhamal Sansthan v. The Charity Commissioner, [1976] 3 SCR 518, while reiterating the weft-settled distinction between private trust or public trust, this Court emphasised the deity installed in the temple was intended by the founder to be continually worshiped by an indeterminate multitude of the Hindu public without any hindrance or restriction in the matter of worship by the public extending over a long period. Receipt of the Royal grant, gifts of the land by members of the public, absence of any evidence in long history of the Sansthan to warrant that it had any appearance of, or that it was ever treated as, a private property were some of the features to lead to an inescapable conclusion that Shri Vithal Rukhamai Sansthan was to be public trust within the meaning of $.2(13) of the Act.

In T.V. Mahalinga Iyer v. State of Madras, AIR (1980) SC 2036, it was held that crucial question is as a whether the public worship in the temple as of right. Ordinarily, there may not be direct evidence regarding the exercise of such right by the general public and an inference has to be drawn from a wealth of circumstances. The dedication to the public need not be by a deed and may be spilt out of the circumstances present. The right of the public to worship is also a matter of inference. The initial presumption with regard to temples in South India is that they are the public temples, rebuttable by clinching testimony: The temple, in question, in

that case, was held to be a public temple.

In Sri Radhakanta Deb v. Commissioner of Hindu Religious Endow-ments, [1981) 2 SCC 226, this Court was to consider whether Radhakanta Deb in Orissa State is a public or private trust. This Court held that each case has to be decided with reference to the facts proved therein and it is difficult to lay down any test or tests which can be universal application. Where the origin of the endowment is lost in antiquity of shrouded in mystery, there being no document or reliable entries to prove its origin, the task of the Court becomes difficult and it has to rely merely on the circumstantial evidence regarding the nature of the user of the temple. It was also further held that allowing the public to worship by itself would not make an endowment public unless it is proved that the members of the public had a right to worship in the temple: On the facts, in that case, it was held that the temple, in question was a public temple.

In Hari Bhanu Maharaj of Baroda v. Charity Commissioner [1986] 4 SCC 162, the triumph card of the appellant renders little assistance to them Laxman Maharaj Math, build in 1835 A.D. was considered whether to be public or private trust. In view of the size of the building, existence of Samadhi on Mandir in a small extent of land, location of the Mandir, using a portion of it for residents were held to be important factors. In view of the unimpeachable evidence of use of the Mandir for long period and the absence of maths and tomb Under the Samadhi was considered to be a private temple.

InJammi Raja Rao v. Sri Anjaneyaswami Temple Vahi & Ors., [1992] 3 SCC 14, the question whether Sri Anjaneyaswami temple at V.puram in Andhra Pradesh is at private or a public temple. The appellant's father claimed it to be private temple and that he was an hereditary trustee. The trial court and the High Court held the temple to be a public temple, this Court dismissed the appeal confirming the decree of the High Court and civil court and held that the entities in the Inam Fair Register and the oral evidence establish the temple to be a public temple. Proof of user by the public without interference would be cogent that its dedication was in favour of the public. The finding that the temple is public temple is a finding of fact. It is not open to further scrutiny by this court unless it suffers from errors of law.

In Kapoor Chand v. Ganesh Dutt, [1993] Suppl. 4 SCC 432 this court held that dedication of private property for religious and charitable pur-pose may be proved by oral evidence or may be inferred from the conduct of the parties, in a suit to set aside alienation of the temple property by its manager, this court held that the High Court committed error of law in not drawing proper inference from the proved evidence or admissions. An inference of dedication of a property to the deity was drawn from the Conduct of the parties.

From the aforesaid discussion the following principles of law would emerge.

A place in order to be a temple, must be a place for public religious worship used as such place and must be either dedicated to the Community at large of any section thereof a place of public religious worship. The distinction between a private temple and public temple is now well settled. In the case of former the beneficiaries are specific individuals; in the latter they are indeterminate or fluctuating general-public or a class thereof. Burden of proof would mean that a party has to prove an allegation before he is entitled to a judgment in his favour. The one or the other of the contending parties has to introduce evidence on a contested issue. The question of onus is material only where (he party on which it is placed would eventually lose if he failed to discharge the same. Where, however, parties joined the issue, led evidence, such evidence can be weighed in order to determine the issue. The question of burden becomes academic.

An idol is a juristic person capable of holding property. The property endowed to it vests in it but the idol has no beneficial interest in the endowment. The beneficiaries ate the worshipers. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler or Govt; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The true character of the temple may be decided by taking into consideration diverse circumstances. Though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple it'is not .conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the head man leaves, the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.

Dedication to the public may be proved by evidence or circumstances obtainable in given facts and circumstances. In given set of facts, it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance. In a public debulter or endowment, the dedication is for the use or benefit of the public, But in a private endowment when property is see apart: for the worship of the family idol, the public are not interested. The mere fact that the management has been in the hands of the members of the family itself is not a circumstance to conclude that the temple is private trust. In a given case management by the members of the family may give rise to ah inference that the temple is impressed with the character of a private temple and assumes importance in the absence of an express dedication through a document. As stated earlier,

consciousness of the manager or the devotees in the user by the public must be as of right. If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple. The origin of the temple, when lost in antiquity, it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and cir-cumstances of a given case. No set of general principles could be laid.

The contention of Sri Yogeshwar Prasad that the Asstt, Charity Commissioner has failed to prove that Kalika Mataji temple is a public trust; contrarily the evidence on records, namely the 'Will' of Bai Diwali, widow of N. Girjashankar, establishes that the lemple and its properties Were always treated as private properties. It would get fortified and gets corroborated by decrees in civil suit No. 439/1985, one of the legatees sought to annual the Will in Exhibits 10, 59 and the decree in that behalf. The Civil Suits Nos. 353/93, Ex. 24 and the Civil Suit No. 439 of 1885, Ex 26 and the Civil Suit Nos. 904 of 1903 and 910 of 1903: Ex 52 and Ex. 54, Civil Suit No, 912 of 1903, Ex 55 would establish that the appellant's family had always treated the temple and the lands attached to temple as private properties. It has also been further contended that the entry into the temple was subject to permission and the devotees were not allowed to have pooja, but have darshan Only. These circumstances have duly been taken into consideration by the District Judge while the High Court had not con- sidered them in proper perspective. We find no force in the contention, It is seen that the Gazette of the Bombay Presidency, Vol. Ill published in 1879 is admissible under s.35 read with s.81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material con- tained therein and the facts stated therein is evidence under s.45 and the court may inconjunction with other evidence and circumstance take into consideration in adjuding the dispute in question though may not be treated as conclusive evidence. The recitals in the Gazette do establish that Kalika Mataji is onlhe lop of the hill. Mahakali temple and Bachra Mataji on the right and left to the Kalika Mataji. During Moughal rule another Syed Sadar Peer was also installed there, but Kalika Mataji was the chief temple. Hollies and Bills are the main worshipers. Oh full Moon of Chaitra (April) and Dussehra (in the month of October), large number of Hindus of all classes gather there and worship Kalika Mataji, Mahakali, etc. After the downfall of Moughal empire, Marathas took over and His Highness Scindias attached great importance to the temple. One of the devotees in 1700 offered silver doors. The British annexed the territory pursuant to the treaty between Her Majesty's Government of India and His Highness Scindia on the 12th December, I860, A condition was imposed in the treaty for continued payment of fixed cash grants to all the temples from the Treasury and that British emperors accepted the condition. Regular cash grants of fixed sums were given to all the temples by Scindias and British rulers, as evidence by exhibits 27, 29 and 30. The historical statement of noted historian, stated by the High Court, by name M.S.

Commissionaria in his Vol. I of 1938 Edition corroborates the Gazette on the material particulars, which would established that the temple was constructed on the top of the hill around 14th century and the people congregate in thousands and worship, as of right, to Kalika Mataji and other deities. R.N. Jogelkar's Alienation manual brought up in 1921 in the Chapter 5 Devas-

tbana also corroborates the historical evidence. It is true that Bai Diwali in her Will, Ex.22 treated the temple and the properties to be private property and bequeathed to her brother and the litigation ensued in that behalf. At that time, as rightly pointed out by the High Court, the concept of public trust and public temple was not very much in vogue. Therefore, the treatment meted out to these properties at that time is not conclusive. On the other hand the fixed cash grants given by a Rulers Scindias and the successor British emperors, the large endowment of lands given to Kalika Mataji temple by the devotees do indicate that the temple was treated as public temple. The appropriation of the income and the inter se disputes in that behalf are self serving evidence without any probative value. Admit- tedly, at no point of time, the character of the temple was an issue in any civil proceedings. All the lands gifted to the deity stand in the name of the deities, in particular large extent of agricultural lands belong to Kalika Mataji. The entries in Revenue records corroborated it. The Gazette and the historical evidence of the temple would show that the village is the pilgrimage centre. Situation of the temples on the top of the hill away from the village and worshiped by the people of Hindus Community at large congregated in thousand without any let or hindrance and as of right; devotees giving their offerings in large sums in discharge of their vows, do establish that it is a public temple. It is true that there is ho proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our con-sidered view an irresistible inference would be drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was no permitted. But that is only internal regulation arranged for the orderly Darshan and that is not a circumstance to go against the conclusion that it is a public temple. Enjoyment of the proper- ties and non-interference by the public in the management are not sufficient to conclude mat the temple is a private temple. It is found by the District Court and the High Court that the appellants are hereditary priests and when the public found that they are in the management of the properties, they obviously felt it not expedient to interfere with the management of the temples. It is seen that the High Court considered the evidence placed on record and has drawn the necessary conclusions and inferences from the proved facts that kalika Mataji temple is a public temple. It is a finding of fact. As regard the oral evidence the High Court rightly appreciated the evidence and it being a question of fact, we find no error in the assessment of the evidence by the High Court.

Thus, we are of th considered view that Kalika Mataji temple is a public trust within the meaning of s.2(13); and public temple under s.2(17) of the Act and the High Court rightly relegated the enquiry in respect of other temple and-we feel it not expedient to record any finding in that behalf. The appeal is accordingly dismissed with costs quantified at Rs. 20,000.