Bihar State Board Religious Trust, ... vs Mahant Sri Biseshwar Das on 9 February, 1971

Equivalent citations: 1971 AIR 2057, AIR 1971 SUPREME COURT 2057

Author: J.M. Shelat

Bench: J.M. Shelat, C.A. Vaidyialingam

PETITIONER:
BIHAR STATE BOARD RELIGIOUS TRUST, PATNA

Vs.

RESPONDENT:
MAHANT SRI BISESHWAR DAS

DATE OF JUDGMENT09/02/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 2057

ACT:
Bihar Hindu Religious Trusts Act (1 of 1951), s. 2(1)-Mutt-Property gifted personally to first mahant-Passing in succession from Guru to Chela-Whether public religious trust within meaning of section-Tests.

HEADNOTE:
Gaibi Ramdasji was the recipient of certain lands from the the Maharaja of Darbhanga and other zamindars. From out of the income of these lands a temple and certain residential buildings were constructed. The estate came to be known as Kamlabari asthal. Gaibi Ramdasji, was succeeded in the office of Mahant by his chela, and thereafter succession lo the Mahantship was from Guru to Chela. The respondent who was the reigning Mahant at the relevant time resisted the demand of the appellant ,,for the production of accounts and other particulars under the provisions of the Bihar Hindu Religious Trusts Act, 1 of 1951. The Board took out criminal proceedings against the respondent, who thereupon

filed a suit in which he claimed the asthal and its properties to be his personal property outside the definition of religious trust in s. 2(1) of the Act. The trial ,court decided in favour of the appellant but the High Court took a contrary view. In appeal to this Court.

HELD : (1) Properties of the temple being admittedly in the possession,of the Mahant ever since the time of Gaibi Ramjidas the onus of proof that the respondent mahant held them on trust for public purposes of a religious or charitable character was clearly on the appellant Board who alleged that it was so. The trial Judge was, therefore, clearly in error in holding that the respondent mahant ought to have produced sanads and ,that on his failure to do so in adverse inference could be drawn viz., that had they been produced they would have shown that the grants to Gaibi Ramjidasji were for public purposes of religious or charitable character. [686 F-G]

(2)The mere fact that Mahants of a particular order did not marry and properties held by them is descended from Guru to Chela was not ;indicative of and did not raise a presumption of such properties being religious properties. If originally the property was acquired by a Mahant the fact of its descent subsequently from guru to chela did not also lead to the conclusion that it had lost its secular character. [687 E]

(3)Evidence that Sadhus and other persons visiting the temple were given food and shelter was not by itself indicative of the temple being a public temple or its properties being subject to a public trust. [688 A]

(4)The mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication ,depends on the circumstances which give strength to the inference that the user was as of right-. No such evidence of any reliable kind was avail-able to the appellant Board in the instant case. [689 D]

681

(5)A religious mutt in northern India is generally known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the later case it is to a superior or a mahant. But just as in the case of the debutter endowment, there is both private and public endowment, so too there can be the same distinction between a private and public mutt. A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular section or cult, in which case it would be a public institution. But it is not impossible to have a private mutt where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular order. Examples do occur where the

founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintaining one particular spiritual family and for perpetuation of certain rites and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases it would be the grantor and his descendents who are the only persons interested in seeing that the institution is kept up for their benefit. Even if a few ascetics are fed and given shelter, such a purpose is not to be deemed an independent charity in which the public or a section of it is interested. Such charities appertain to a private debutter also. [690 D-R]

The existence of a private mutt in which the property was given to the head of the mutt for his personal benefit only has in the past been recognised. In such cases there is no-intention on the part of the grantor to fetter the grantee with any obligation in dealing with the property granted. In each case the court has to come to its conclusion either from. the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section of it i.e. annas curtained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which properties had been dealt with as also other established circumstances. [691 B-C]

(6)The fact that idols were installed permanently on a pedestal and the temple was constructed on grounds separate from the residential quarters of the mahant could not,lead to inference of dedication to the public. In the first place such factors are also found in private temples and mutts and therefore are not conclusive. In the second place there was the evidence that the mahants residential quarters were in fact, not separate from the temple premises. [691 G-H]

(7)The expression 'appertaining to the asthal' in the deeds of gifts made by the reigning mahants in favour of their nominees as successor$ meant things which were appurtenant to and forming part of the principal property which was the subject matter of the instrument. The expression would at best mean that the properties formed part of the asthal and were not the properties of the mahant as distinct from those of the asthal. But unless the asthal itself was a public trust for the religious or charitable purposes, the properties appertaining thereto would not be properties of a public trust for religious or charitable purposes. The use of the expression 'appertaining to the asthal', therefore, could not lead to the conclusion that the property in question was stamped with a trust for public purposes. [692 C]

The appeal must accordingly be dismissed.

682

Mahant Ramsaroop Das Ji v. S. P. Sahi, 1955 B.L.J.R. 88,

Mahant Ramsaroop Das Ji v. S. P. Sahi, 1959 Supp. 2 S.C.R. 583 & Deoki Nandan v. Murlidhar, [1956] S.C.R. 756 at 761, referred to.
Permanand v. Nihal Chand [1938] I.L.R., 65 I.A. 252 Ramsaran Das v. Jai Ram Das, A.I.R. 1943 Pat 135, Babu Bhagwan Din v. Gir Har Saroop, 67 I.A. 1, Matam Nadipudi v. Board of Commissioners for Hindu Religious Endowments, Madras, A.I.R. 1938 Mad. 810, Missir v. Das, [1949] I.L.R. 28 Pat. 890 and Sri Thakurji Ramji v. Mathura Prasad, A.I.R. 1941 Pat. 254 at 358 and Mahant Puran Atal v. Darshan Das, [1942] I.L.R. 34 All 468, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 407 of 1967. Appeal from the judgment and decree dated March 13, 1962 of the Patna High Court in Appeal from Original Decree No.. 3 30 of 1958.

D. Goburdhun and R. Goburdhun, for the appellant. B. P. Jha, for the respondent.

The Judgment of the Court was delivered by Shelat J.-This appeal arises from a dispute between the appellant-Board and the respondent which occurred when the Board tried to enforce the provisions of the Bihar Hindu Religious Trusts Act, 1 of 1951, in respect of the estate known as Kamlabari asthal consisting of a temple, buildings and lands. The respondent is the current mahant claiming direct descent from the founding mahant Gaibi Ramdasji in the line of succession from Guru to Chela. Gaibi Ramdasji was the recipient of certain lands from the then Maharaja of Darbhanga and other zamindars. From out of the income of these lands, a temple with Shri Ram, janki and Laxmanji as the presiding deities thereof, and certain residential buildings were constructed. Later mahants added to these properties by acquisition from out of the income of the existing properties. The respondent mahant resisted the Board's demand for production of 'accounts and other particulars and in consequence the Board took out criminal proceedings against the respondent. The respondent thereupon filed a suit of which this appeal is the outcome. In the suit, the respondent claimed that the said asthal and its properties were his personal properties, the gifts of lands having originally been made personally to the founding mahant, and thereafter, to the mahants succeeding him, and that therefore, the properties were not religious trusts as defined by S. 2(1) of the Act. That sub-section defines a 'religious trust' to mean any express or constructive trust created or existing for any pur-

pose recognised by Hindu Law to be religious, pious or charitable but shall not include a trust created according to Sikh religion or purely for the benefit of the Sikh community and a private endowment created for the worship of the family idol in which the public are not interested". The Board took the stand that the asthal and the properties belonging to it were not the personal properties of the manant or his predecessors, that the, gifts to them were not personal gifts but to the asthal that the fact that members of the public had, without any let or hindrance, been using the temple for darshan and worship, the fact that festivals were celebrated at which members of the

public gave offerings, the practice of feeding of sadhus and pilgrims, all went to indicate that the asthal was a public trust in which the members of the public had an interest. Both sides led considerable amount of evidence, both oral and documentary. The oral evidence consisted of the testimony of witnesses, some of whom deposed, on the one hand, that the members of the , public had been coming to the temple without any obstruction on the part of the mahant, and some others, on the other hand, that on certain occasions some of the members of the public had actually been turned away from the temple. Witnesses also deposed to the fact of festivals having been celebrated when members of the public were allowed and placed offerings, of sadhus and pilgrims having been fed and given shelter, thus showing the user of the temple by the public and the asthal having disbursed the income of its properties towards religious and charitable purposes. Some of the witnesses examined by the Board were even prepared to depose that on occasions certain members of the public had exercised some sort of 'control over the mahant's management of these properties. The oral evidence, however, was not of much assistance, partly because it was interested and partly because none of the witnesses had any personal knowledge of the things which they sought to depose.

As regards the documentary evidence, the respondent mahant did not produce the sanads under which the founding mahant had acquired properties. These, he said, could not be traced. The Board also did not make any attempt to produce the record of the Darbhanga Estate which, on merger there-of with the State of Bihar presumably must be in the custody of the State Government. The record, which presumably must contain copies of these sanads, if produced, would have thrown considerable light on the nature of the gifts and the manner in which they were made. The documentary evidence produced at the trial, therefore, consisted mainly of (1) deeds of gift or nomination made by a reigning mahant in favour of his chela as his successor, (2) deeds of Sales, purchases; mortgage deeds etc. made and executed by the mahants in the 14-918 Sup. C.I./71 course of their administration of the asthal properties, and (3) certain revenue records.

The issue which the Trial Judge considered to be, the most crucial one was framed by him as follows :

> "Whether the temple and the properties in suit are the personal properties of the plaintiff or are trust properties under the provisions of Act 1 of 1951 ?"

The issue was framed by him in these terms partly because the respondent had claimed these properties as his personal properties, and partly because the Trial Judge was under

> 'the impression, because of the High Court's decision in Mahant Ramsaroop Das Ji v. S. P. Sahi(1) that the definition in s. 2(1) of the Act also covered private religious trusts. That decision was however, reversed on appeal to this Court and as reported in Mahant Ramsaroop Das ji v. S. P. Sahi(2) the correct position is that ' private trusts do not fall within the ambit of the definition in that section. It was because the Trial Judge was under the belief that private religious trusts also fell within the definition that' he also placed before himself only two alternatives, namely, whether the properties were personal properties of the respondent or whether they were trust

properties. On the evidence before him he ultimately hold that the asthal and the properties appertaining thereto were public religious trust and dismissed the respondent's suit. In coming to this conclusion the Trial Judge took into account the following circumstances :

(1) that the mahants were bairagis, i.e., celibates, which fact raised the presumption that they held properties on behalf of the asthal to which their lives were entirely devoted;

(2) that Mahant Gaibi Railidasji had set up a sampradaya which attracted a large following, that therefore, the temple built by him was for the benefit of his followers and for spreading and propagating the doctrines of that sampradaya, (3) that from these facts the presumption' arose that he had dedicated the temple and the properties to the public or a section thereof; (4) that the evidence showed that sadhus, fakirs and abhyagats were entertained at the temple, that the income of the properties was spent. on puja (1) 1955 B.L.J.R. 88.

(2) [1959] Supp. 2 S.C.R. 583.

68 5 and other religious activities' and for festivals; consequently, the presumption was that the properties were subject to religious and charitable purposes;

(5) that at the time of the installation of the deities in the temple Pran Pratishtha and other ceremonies must have been performed which meant that the temple and the properties were declared to have been dedicated to the public;

(6) that the deeds of appointed of successors executed by the mahants described the mahants as asthaldharis and the properties as appertaining to the asthal, and (7) that though revenue records descried the mahants as proprietors of these properties, they had to be read in the light of the facts aforestated.

On these premises he upheld the Board's contention that "the temple and the properties were trust properties of a public nature for religious and charitable purposes". On a appeal by the respondent-mahant, the High Court first observed that the evidence on record had to be viewed in the light of the definition section as constructed by this Court in Mahant Ramsaroopdasji v. Sahi(1) that is to say, that the trust, as defined in that section, meant only public trusts and did not include private trusts. The High Court then appraised the entire evidence 'and came to the conclusion that even if the mahant had not been able to show that the temple and the other properties were the private properties of the mahants, all the factors from which the Trial Judge, raised the presumption of a public trust were constent with the properties constituting a private religious trust. On this view the High Court reversed the judgment of the Trial Judge and decreed the respondent's suit, holding that the Act did not apply to the properties in suit. Counsel for the appellant-Board challenged before us the correctness of the High Court's judgment and supported the Trial Court's judgment.

It is true that the respondent-mahant did not produce the original sanads whereunder certain lands had been gifted to the founding mahant by the various zamindars. They were not produced because, as the respondent deposed, they could not be traced, but, as stated earlier it was not impossible for the Board also, if it wanted to rely on them, to produce the record, such as that of Dharbhanga Estate, and show therefrom the nature and the terms of those gifts. The Trial Court, however, was not entitled, (1) [1959] Supp. 2 S.C.R. 583.

as we shall presently. show, from the mere failure of the mahant to produce the original sanads to draw an adverse inference which it did against him.

From the rest of the evidence the following facts as summarised by the High Court, emerged

1.that the temple was constructed by Gaibi Ramdasji and it was he who installed the deities therein;

2.that he was succeeded to the mahantship by his chela, and thereafter succession to the mahantship had been from guru to chela,

3.that the appointment of a successor has been all throughout from guru to chela, the reigning mahant appointing or nominating his successor from amongst his chelas and the members of the public have had at no time any voice in the selection or nomination;

4.that the properties have always, been recorded in the names of the mahants as proprietors and not in the name of the deities in the D registers, khewats and khatians;

5.that the mahants have been in possession and management of the, asthal and the properties all throughout;

6.that the mahants acquired properties from time to time in their own names as proprietors and-never in the names of the deities 6r the asthal, without, any objection at any time from any one and dealt with, some of them through deeds of sales, mortgages, leases etc. Properties of the temple being thus admittedly in the possession of the mahants ever since the time of Gaibi Ramdasji, the onus of proof that the respondent-mahant held them on trust for public purposes of a religious or charitable character was clearly on the appellant-Board who alleged that it was so. The Trial Judge was, therefore, clearly in error in holding that the respondent-mahant ought to have produced the sanads and that on his failure to do so an adverse inference could be drawn, namely, that had they been produced they would have shown that the grants to Gaibi Ramdasji were for public purposes of a religious or charitable character. (see Parmanand v. Nihal Chand(1) The sanads not having been available, the appellant-Board tried to establish through the oral evidence of six witnesses (D.Ws. 1 to 6), that the temple was founded and the properties in question were acquired for the benefit of the public or a section thereof (1) [1938] I.L.R. 65 I.A.252, The testimony of these witnesses, however, did not possess much credibility, because although these witnesses declared that the temple was established for the benefit of the public, none of them deposed that Gaibi Ramdasji or any of the succeeding mahants, had at any time dedicated the temple or the properties to the public or to those who used to attend the temple for worship and darshan. In these circumstances, the

appellant-Board had to fall back upon certain circumstances and the conduct of the mahants to establish that these properties were properties of a public trust.The circumstances and the conduct relied on were : (1) the fact that the mahants were vaishnav bairagis who were life long celibates; (2) that sadhus and others were given food and shelter when they visited the temple; (3) that festivals and other important Hindu dates used to be celebrated; (4) that the members of the public came to the temple for darshan without any hindrance and as of right; (5) that in the deeds and wills, whereby reigning mahants appointed or nominated their successors, the properties were described as appertaining to the asthal, and that the temple being the dominant part of the asthal and maintained for the worship and puja of the presiding deities installed therein, the properties belonged to the temple, and therefore, they were properties of a trust for religious and charitable character.

In Parmanand vs. Nihal Chand(1) the Privy Council held that the mere fact that mahants of a particular order did not marry and properties held by them descended from guru to chela was not indicative of and, did not raise a presumption of such properties, being religious properties. If originally the property was acquired by a mahant, the fact of its descent subsequently from guru to chela did not lead to the conclusion that it had lost its secular character. Where, however, a property is dedicated to an idol for the object of performing its puja and other necessary ceremonies the person managing such property is only a she bait, the idol being a juristic person in Hindu law capable of holding such property. If it is alleged that such property is a trust property held for public purposes to which Acts, such as the Charitable and Religious Trusts Act, 1920 or the present Act, applies, it has to be shown that the trust is not a private trust but is one substantially for public purposes of a religious and charitable nature. In such cases provision for the service of the sadhus, occasional guests and wayfarers does not render a trust for an idol into a trust for public purposes. This is because where the main purpose of the trust is making provision for the due worship of an idol and performance of, its seva puja 'and other ceremonies, the feeding of sadhus and giving hospitality to wayfarers are inevitable. These are regarded as duties forming part (1) [1938] I.L.R. 65 I.A. 252, of the due worship of the particular deity. (see Ramsaran Das A vs. Jai Ram Das(1) Therefore, evidence that sadhus and other persons visiting the temple are given food and shelter is not by itself indicative of the temple being a public temple or its properties being subject to a public trust.

Evidence that the mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public. The celebration of festivals is, according to Hindu belief, part and parcel of the puja of the deity. Such festivals are celebrated in family and other private temper also. The, fact that members of the public used to come to the temple without any hindrance also does not necessarily mean that the temple is a public temple, for members of the public do attend private temples. It is against Hindu sentiments to turn away persons who come to do worship and darshan. The mere fact, therefore, that no instance had occurred when persons from the public were asked to go away or the absence of proof that they were allowed on permission or invitation only cannot be conclusive of the temple being one in which the public have by user acquired interest. The case in point is of Babu Bhagwan Din vs. Gir Har Saroop (2) . The original grant there was to the respondent ances- tor, one Daryao Gir, by

the then Nawab of Oudh. The property in question comprised of land on which stood the temple, the presiding deity of which was Bhaironji, certain houses and shops. ,The respondents, who claimed to be the descendants of the original grantee, were grahastha fakirs, i.e., both goshains and house holders. There was no proof that there had been any interference with the management of the properties. The revenue records showed the properties in the names of the descendants of Daryao Gir. The shops were let out and in the leases concerning them the goshains were referred to sometimes as owners and sometimes as owners of the "asthan Sri Bhaironif'. There was evidence, however, of members of the Hindu public having resorted to the temple for worship and darshan without any obstruction. An annual mela used to be held for many years with public subscription on the grounds of the temple. The evidence showed that the temple and the gushains profited from the increased resort to the temple by the public the mela period. Yet, the Privy Council held that the general effect of the evidence was that the family had treated the temple as family property and the mere fact of the members of the public having come to the temple and having (1) A.I.R. 1943 Pat, 135, (2) 67 I.A. 1 made offerings and the mela having been held which gave popularity to the temple and increased its esteem in the eyes of the public and the fact that they were never turned away were not enough to hold the temple and the properties as a public trust. At page 10 of the report their Lordships observed Dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and, as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity."

Thus, the mere fact of the public having been freely ' admitted to that temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. No such evidence of any reliable kind was available, to the appellant-Board in the instant case. True it is that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust on behalf of the Board reliance was placed on the deeds of gifts or nominations by, reigning mahants in favour of their nominees, marked in Ex. 7 series., where, the mahants have stated that they appointed such chelas mahants of Kamlabari asthal and described the properties as properties appertaining to the asthal. Relying on these words counsel argued that what the founding mahant Gaibi Ramdasji established was the asthal of Kamlabari for the propagation of Sri Sampradaya where his disciples and the other adherents of Sri Sampradaya could receive instruction in the doctrines of that Sampradaya at the hands of the mahant and that the temple was only part of the asthal as its adjunct. The argument was that the asthal was to support the sadhus and other followers of Sri Sampradaya, the temple being only an instrument for propagating and teaching the doctrines held by the Sampradava. In support of the argument, reliance was placed on Mahant Puran Atal v. Darshan Das(1). There was in that case also no evidence of any original grant for a charitable purpose from a donor, nor was there in evidence (1)[1912] I.L.R. 34 All. 468.

any instrument expressly creating a charitable trust. The High Court of Allahabad, however, held that the mahant held the properties in trust for"a charitable purpose relying on the mode of the user of the property and declarations made from time to time by the mahants. Those declarations were to the effect that the properties were held for the purpose only of supporting and maintaining Manakshahi fakirs, entertaining visitors and for giving of alms. The properties were held muafi, i.e., free from Government revenue, on the strength of such declarations. Also, in litigations for succession to the gaddi, it had all along been assumed that the properties belonged to the gaddi, managed by the gaddinashin for the time being and held for charitable purposes. On this evidence, the High Court held that it could presume that there was a charitable or religious'. trust, and further observed that even if the main purpose of the trust was to support Nanakshahi fakir's and to spread the religion founded by Guru Nanak, the trust would still be one for a public purpose within the meaning of s. 92 of the Code of Civil Procedure.

A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular Sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the latter, it is to a superior or a mahant. But just as in the case of the debutter endowment, there is both a private and a public endowment, so too there can be the same distinction between a private and a public mutt. A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, in which case it would be a public institution. Mutts have generally sadavrats, i.e., arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access. Such circumstances might indicate the public character of the institution. But it is not impossible to have a private mutt where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular religious sect or order. Examples do occur where the founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for perpetuation of certain rights and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases it would be the grantor and his descendants who are the only persons interested in seeing that the institution is kept up for their benefit. Even if a few ascetics are fed and given shelter, such a purpose is not to be deemed an independent charity in which the public or a section of it has an interest. Such charities, as already stated earlier, appertain to a private debutter also. (see B. K. Mukherjea, Hindu Law of Religious & Chari- table Trusts. (3rd /ed.), 303, 304).

The existence of a private mutt, where the property was given to the head of the mutt for his personal benefit only, has in the past recoginised. (see Matam Nadipudi v. Board of Commissioners for Hindu Religious Endowments, Madras(1) and Missirv. Ras(1). In such cases there is no intention on the part of the grantor to fetter the grantee with any obligation in dealing with the property granted. In each case the court- has to come to its, conclusion either from- the grant itself 'or from the circumstances of the case whether the grant was for the benefit of the public or a section of it, i.e., an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its properties. have been dealt with as also other established circumstances.

Puran Atal's case(,') has no application in the present case because there is no evidence such as there was regarding the user of the properties for the maintenance of a particular far class of ascetics, nor are here declarations made from time to time by the mahants which led the Court there to pronounce that the trust was for a charitable purpose, and on the strength of which the proper-ties were held revenue free.

An attempt appears to have been made in' the Trial Court to establish that certain ceremonies, such as Sankalpa, Pratistha and Utsarga, were performed at the time when idols were installed in the temple. In the case of temples Pratistha, and not Utsarga, if established, would indicate dedication to the public. (see Kane's History of Dharmasastras, Vol. 2, part If, 892 to 893, and Deoki Nandan v. Murlidhar (4). Unfortunately for the appellant Board,. there was no clear evidence of the particular ceremonies performed at the time when Gaibi Ramdasji installed the idols except a general 'statement from the respondent that when idols are installed in temples Pran Pratistha is generally performed. Support for a dedication to the public was also sought from the fact that the idols were installed permanently on a pedestal (Sinhasun) and the temple was constructed on ground.-, separate from the residential quarters of the mahant. In the first place, such factors are also found in private temples and mutts, and therefore, are not conclusive. In the second place, there was the evidence that the mahants residential quarters are in fact not separate from the temple premises.

(1) A.I.R. 1938 Mad. 810. (3) [1942] I.L.R, 34 All. 468. (2)[1949] I.L.R. 28 Pit. 890 (4) [1956] S.C.R. 756 at 761. 918 Sup. C.I./71 Lastly, reference was made to some of the deeds of gifts made by the reigning mahant is favour of their nominees as successors where the properties were described as appertaining to the asthal. Assuming that the scribes of these documents used the expression appertaining to the asthal' in the sense in which such expression is sometimes used in the deeds of conveyance, the expression means things which are appurtenant to and forming part of the principal property which is the subject matter of the instrument. (see Stroud's Judicial Dictionary, (3rd Ed.), Vol. 1. 177). The expression 'appertaining to the asthal' in these deeds, therefore, would at best mean that the properties formed part of the asthal and are not the properties of the mahant as distinct from those ,of the asthal. (see Sri Thakurji Ramji v. Mathura Prasad(1) But unless the asthal itself is a public trust for religious or charitable purposes, the properties appertaining thereto would not be properties of a public trust for religious or charitable purposes. The use of the expression 'appertaining to the asthal', therefore, cannot lead to the conclusion that. the properties in question were stamped with a trust for public purposes. These were all the contentions urged before us. In our view, the appellant-Board failed to establish that the proportion in suit, fell within the ambit of the Act and he respondent-mahant was subject to its provisions. The High Court accordingly was right in reversing the Trial Court's judgment and decreeing the respondent's suit. Consequently, the appeal is dismissed with costs.

G.C. Appeal dismissed.
(1) A.I.R. 1941 Pat. 354, at 358.