Deewan Singh & Ors. Ã Appellants vs Rajendra Pd. Ardevi & Ors. Ã Respondents on 4 January, 2007

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 4092-4095 of 2002

PETITIONER:
Deewan Singh & Ors. Appellants

RESPONDENT:
Rajendra Pd. Ardevi & Ors. Respondents

DATE OF JUDGMENT: 04/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NOs. 4076-4079 OF 2002 CIVIL APPEAL NOs. 4081-4084 OF 2002 CIVIL APPEAL NOs. 4086-4089 OF 2002 S.B. SINHA, J.

Management of a temple known as Shri Rikhabdevji situated in the village Dhulev near 40 miles away from Udaipur in Rajasthan is involved in these appeal which arise out of judgments and orders dated 18.09.1997 and 06.02.2002 passed by the High Court of Rajasthan.

Indisputably, the matter came up for consideration on an earlier occasion before this Court in State of Rajasthan and Others v. Shri Sajjanlal Panjawat and Others since reported in [(1974) 1 SCC 500].

It is furthermore not in dispute that at one point of time the management of the said temple was taken over by the Maharana of Mewar. We need not go into the history of the said temple, as the same has been noticed by this Court in the earlier round of litigations,. The properties of the said temple vested in the State of Rajasthan as the State of Mewar merged with other princely States forming the United State of Rajasthan on 18.04.1948. Various directions were issued by the Government of Rajasthan in relation to the management of the said temple from time to time.

The legislature of the State of Rajasthan enacted Rajasthan Public Trust Act, 1959 (for short "the Act"). Chapter I to IV thereof came into force on 22.10.1959. In exercise of its rule making power contained in Section 76 of the Act, the State of Rajasthan framed Rules known as the Rajasthan Public Trusts Rules, 1962 which came into force on and from 11.06.1962. Chapter V to X and XII of the Act as also the Rules applicable in relation thereto were brought into operation with effect from 1.07.1962.

Questioning the validity of some of the provisions of the Act including Sections 52(1)(d) and 53 thereof, some members belonging to Swetambers Jain sect filed a writ petition before the Rajasthan High Court which was marked as writ petition No. 501 of 1962 praying inter alia for the following reliefs:

> (i) The State of Rajasthan and its officers be restrained from enforcing certain provisions of the Act and declare those provisions void,
>
> (ii) Restrain the State and its officers from selling gold and silver ornaments of temple and advancing loan from temple fund,
>
> (iii) Restrain the respondents from carrying out management of the temple and allow the petitioners to manage the temple according to declaration of Samwat 1934.

Digambers filed an intervention application therein inter alia contending that the said temple was a Digamber temple.

The stand of the State of Rajasthan therein inter alia was that the temple in question was a Hindu temple and not a Jain temple although the Jains have the right of worship. It was furthermore contended that the temple belonged to the erstwhile State of Mewar and as such its management vested in the State.

Validity of some of the provisions of the Act were also questioned in the said proceedings. The High Court of Rajasthan, however, in its judgment dated 30.03.1966 held:

> (i) Temple of Shri Rikhabdevji is a Jain Temple of Shwetamber Jain sect.
>
> (ii) After merger of State of Mewar, the management of temple was carried on by the Devasthan Deptt. of State and Committee constituted by the erstwhile Ruler of Mewar became defunct.
>
> (iii) The temple vested in the State under Section 52(1) (a) and (c) of the Act.
>
> (iv) The State should take early steps to transfer the management to a Committee as envisaged under Section 53 of the Act.

The matter came up before this Court, as noticed hereinbefore, wherein this Court opined:

(i) Shri Rikhabdevji Temple is a Jain temple not a Hindu Temple.

(ii) The management of the temple is vested in the State of Rajasthan.

(iii) If the State intends to apply Chapter X to the temple, it is for it to include it in the list under Section 52(2) of the Act. Section 53 postulates the application of Chapter X for the vesting of management in a Committee to be constituted by the State Government.

(iv) Chairman and members in the Committee of Management should be appointed from the trustees or persons of the section of denomination to which trust belongs.

(v) High Court's direction to constitute a Committee from Management set aside.

When the Committee of Management, however, was not constituted within a reasonable time, Swetambers again filed a writ petition bearing No. S.B. Civil Writ Petition No. 21 of 1981 before the Rajasthan High Court inter alia contending that as the State having regard to the provisions contained in Sections 52 and 53 of the Act exercises power coupled with duties, the failure to publish the list and to constitute a Committee would amount to dereliction of duties on its part. In the said writ petition it was prayed for:

(i) To issue a Mandamus directing the State Government to issue a list of public trusts under Section 52(2) of the Act and to constitute a Committee for management in terms of Section 53 of the Act.

(ii) To issue a suitable writ or direction to quash the order dated 29.9.1979 restraining the State from changing the denominational character of the temple.

The State in its affidavit in opposition filed in the said proceedings reiterated its position that the temple was a Hindu temple.

Although it had not been brought to the notice of the High Court but now it stands admitted that the State in exercise of its power conferred upon it under Section 52 of the Act notified the said temple vested in the State as a self-supporting temple by a notification dated 25.06.1981 in the following terms:

"No. F.8 (12) General/Dev/79/8550 :- In pursuance to State Governments order no 21/781/R/JU/1/79, dated 14-03-80 and same numbered page dated 17- 5-80 and letter no. 14 (3) Khan/Group 2/80 dated 7-1-81, the general public is hereby notified with, list of temples and institutions managed and controlled by Devasthanam Department, Rajasthan, is being classified under those which are in direct management, those which are self sufficient and those which are handed over(committed) to the State, on the basis of available records and survey done till date. All properties of above classified temples and institutions have vested in the

> State Government. If any person or institutions, without the sanction of the State Government, takes possession in any manner or transfers or sells or mortages or gets registered under the provisions of the Rajasthan Public trusts Act, 1959 any temple or institutions notified under this notification will be deemed to be illegal. If any person has any information in respect of any temple or institutions, other than notified but belonging to the State may inform the Devastaham Commissioner in that regard, because enquiry in respect of the temples belonging to the erstwhile State of Jaipur and Jodhpur is in progress.
>
> *** *** *** Schedule B List of self sufficient temples and institutions managed and controlled by Devasthanam Department C Name of temple Address Place District *** *** ***
>
> 30. Temple of Shri Rikhabdevji Vill-Dhuleva Vill-Dhuleva Udaipur"

It appears that thereafter Digambers also filed a writ petition on 19.04.1983 which was marked as S.B. Civil Writ Petition No. 2247 of 1983 for the following reliefs:

> (i) To declare that Shri Rikhabdevji temple is a Digamber Jain temple.
>
> (ii) The State be directed to publish a list of trusts under Section 52 (2) of the Act and consequently constitute a Committee for management of Digambers.

In its counter-affidavit, however, the State agreed to carry out its obligations under the Act as also the directions of this Court and the High Court.

By a judgment and order dated 5.02.1997, a learned Single Judge of the High Court inter alia directed the State:

> (i) to publish list of trusts under 52(2) of the Act.
>
> (ii) to hold inquiry under Rule 36 to determine denominational character of the temple.
>
> (iii) after completion of inquiry within 3 months, to constitute Committee for management under Section 53 of the Act.

The Division Bench of the High Court by reason of the impugned judgment dated 18.09.1997 while affirming the said directions made certain modifications in regard to constitution of Committee leaving the matter at the discretion of the State Government opining Sections 52 and 53 of the Act confers such discretion to it.

Review petitions filed thereagainst have been dismissed by judgment and order dated 06.02.2002.

There are four sets of appeals before us.

The first set of appeals, viz., Civil Appeal Nos. 4092-4095, has been filed by the Swetamber Jain sect and is directed against the judgment of the Division Bench of the High Court dated 18.09.1997. The second set of appeals, viz., Civil Appeal Nos. 4086-4089 of 2002, has also been filed by the Swetamber Jain sect and is directed against the order of the Division Bench of the High Court dismissing the review petitions filed against the judgment and order dated 18.09.1997.

The third set of appeals, viz., Civil Appeal Nos. 4081-4084 of 2002, is at the instance of the State Government against the judgment and order dated 18.09.1997. The fourth set of appeals, viz., Civil Appeal Nos. 4076-4079 of 2002, is filed by the Digamber Jain sect against the judgment and order dated 18.09.1997.

It is furthermore not in dispute that another notification has been issued on 5.12.1997 by the State under Section 52 of the Act in obedience of the order of the Division Bench of the High Court stating:

> "No. F 14(17)Dev/82: Pursuant to the judgment dated 18.9.97 passed by the Hon'ble Rajasthan High Court, Jodhpur in DB (Civil) Special Appeal No. 663/97 State versus Veerchand Seroiya and 513/97 State versus Shrieyas Prasad and others and under Section 52 of Chapter X of the Rajasthan Public Trust Act, 1959, it is necessary that a list of registered public trusts having a gross annual income of Rs. 10,000 or more have to be published in the Rajasthan Gazette within a period of three months.
>
> Therefore the list of such Registered Public Trusts and Trusts Managed and Controlled by the Devasthan Department under direct charge, self- supporting, supurgisreni which are handed over to the Government is published under:
>
> *** *** *** Chapter KA Temples controlled and managed by the Devastan Department C Name of temple Address Place District *** *** ***
>
> 30.
>
> Shri Rikhabdevji Gram Dhule Gram Dhule Udaipur"
>
> Although, as noticed hereinbefore, the High Court directed the State of Rajasthan to issue notifications in terms of Section 52 of the Act, having regard to the fact that such notifications have since been issued and published in the official gazette, in our opinion, it is not necessary to dilate on the question as to whether the judgment of the High Court to the aforementioned effect was correct or not.
>
> The Act was enacted to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Rajasthan. The management of the said trust is to be vested in the Devasthan Commissioner constituted under

Section 7 of the Act which is in the following terms:

"7. Devasthan Commissioner-(1) The State Government shall, by notification in the official Gazette, appoint an officer to be called the Devasthan Commissioner who, in addition to other duties and functions imposed on him by or under the provisions of this Act or any other law for the time being in force, shall, subject to the general and special orders of the State Government, superintend the administration and carry out the provisions of this Act throughout the territories to which this Act extends.

(2) The Commissioner shall be a corporation sole by the name of "Devasthan Commissioner of the State of Rajasthan", shall as such have perpetual succession and a common seal and may sue and be sued in his corporate name."

Section 17 provides for registration of public trusts. Section 18 provides for inquiry about registration. Sections 52 and 53 of the Act read as under:

"52. Application of chapter.-(1) The provisions contained in this Chapter shall apply to every public trust-

(a) which vests in the State Government, or

(b) which is maintained at the expense of the State Government, or

(c) which is managed directly by the State Government, or

(d) which is under the superintendence of the Court of Wards, or

(e) of which the gross annual income is ten thousand rupees or more.

(2) The State Government shall, as soon as may be after the commencement of this chapter, publish in the official Gazette a list of the public trusts to which this Chapter applies and may by like notification and in like manner add to or vary such list.

53. Management of public trusts to which this Chapter applies (1) As from such date as the State Government may appoint in this behalf, the management of a public trust to which this Chapter applies shall notwithstanding any thing contained in any provision of this Act or in any law, custom or usage, vest in a committee of management to be constituted by the State Government in the manner hereinafter provided and the State Government may appoint different dates for different public trusts for the purpose of this section.

(2) On or before the date fixed under sub-

section (1) in respect of a public trust, the State Government shall, subject to the provision contained in section 54 constitute by notification in the official Gazette a committee of management thereof

under such name as may be specified in the notification; and such committee shall be deemed to be the working trustee of the said public trust and its endowment:

Provided that upon the combined request of the trustees of, and persons interested in several public trusts representing the same religion or persuasion, the State Government may constitute a committee of management for all of them, of their endowments are situated in the same city, town or locality.

(3) Every committee of management constituted under sub-section (2) shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property subject to such conditions and restrictions as may be prescribed and may by the name specified in the notification under sub section (2) sue and be sued.

(4) A committee of management shall consist of a chairman and such even number of members, not exceeding ten and not less than two as, the State Government may determine.

(5) The Chairman and members of a committee of management shall be appointed by the State Government by notification in the Official Gazette from amongst-

(a) trustees of public trusts representing the same religion or persuasion and having the same objects, and

(b) persons interested in such public trusts or in the endowments thereof or belonging to the denomination for the purpose of which or for the benefit of whom the trust was founded, in accordance with the general wishes of the persons so interested so far as such wishes can be ascertained in the prescribed manner :

Provided that in the case of a public trust having a hereditary trustee, such trustee, and in the case of a math, the head thereof, shall be the Chairman of the committee of management, if he is willing to serve as such."

Section 77 provides for exemption from the application of the provisions of the Act in the following terms:

"Exemption-(1) Nothing contained in this Act shall apply to a public trust administered by any agency acting under the control of the State Government or by any local authority.

(2) The State Government may exempt, by notification specifying the reasons for such exemption, any public trust or class of public trusts from all or any of the provisions of this Act, subject to such conditions, if any, as the State Government may deem fit to impose."

Rule 36 of the said Rules reads as under:

> "36. Manner of ascertaining the wishes of persons interested (1) For the purpose of ascertaining the wishes under sub-section (5) of Section 53, of the persons interested, the State Government shall direct the Assistant Commissioner to issue a public notice in such manner as he may think proper, for inviting suggestions for the constitution of the Committee of management.
>
> (2) The Assistant Commissioner shall forward suggestions so received along with his comments, to the State Government through the Commissioner."

The core question involved in these appeals is:

> Whether the State Government is obligated to constitute a committee of management of a public trust to which Chapter X of the Act applies? Or Whether the constitution of such a committee of management falls within the discretionary jurisdiction of the State Government?
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> Chapter X comprises of 14 sections beginning from Sections 52 to 65. Section 52 contemplates fixation of a date. Section 52(1) contemplates that Chapter X shall apply inter alia to the public trusts (i) which vests in the State Government; (ii) which is managed directly by the State Government, and (iii) of which the gross annual income is ten thousand rupees or more. Once Chapter X applies in terms of Sub-section (2) of Section 52, the State Government is obligated to publish a list of public trusts to which the said Chapter applies. Such publications have been made in two notifications, viz., dated 25.06.1981 and 5.12.1997. In the first notification, it had not been stated that the same had been issued either in terms of Section 52 of the Act or under Chapter X thereof. In the notification dated 5.12.1997, not only the provisions of the statute have been mentioned, it has specifically been stated that the notification was issued in terms of the directions of the Division Bench of the High Court of Rajasthan.
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> Section 53 of the Act provides for management of trusts to which Chapter X applies. Once application of Chapter X is conceptualized by issuance of a notification in terms of Section 52 of the Act, indisputably Section 53 would be attracted. As indicated hereinbefore, whereas the learned Single Judge was of the opinion that it is imperative on the part of the State Government to issue an appropriate notification constituting a committee of management in respect of the temple in question, the Division Bench opined that some element of discretion exists in the State Government.
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> A plain reading of the provisions of Section 53 of the Act would show that it contemplates vesting of public trust in the State Government. Different dates may be appointed for different purposes. Once Chapter X is found to be applicable, subject to

fixation of an appointed date, the management vests in a committee. Such a committee of management is to be constituted by the State Government in the manner provided therein. The said provision contains a non-obstante clause and, therefore, the same would prevail over anything contained in any provision of the Act or in any law, custom or usage in force.

The State Government, in our opinion, does not have any discretionary jurisdiction to exercise in the matter of appointment of a committee of management. It is imperative in nature. The expression "shall" used in Sub-sections (1) and (2) of Section 53 of the Act indicates that the natural and ordinary meaning of the words used by the legislature require that a committee of management must be constituted. The expression "shall" ordinarily implies the imperative character of the law.

Even if the expression "shall" is read as "may" although there does not exist any reason therefor, the statute provides for a power coupled with a duty. It is a well-settled principle of interpretation of statutes that where discretion is conferred upon a public authority coupled with discretion, the word "may" which denotes discretion, should be construed to mean a command.

In Commissioner of Police, Bombay v. Gordhandas Bhanji [1952 SCR 135], it is stated:

"We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the license he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the license or reject the objections. That duty he can now be ordered to perform under section 45."

In State of Uttar Pradesh v. Jogendra Singh [(1964) 2 SCR 197], this Court observed:

"Rule 4(2) deals with the class of gazetted government servants and gives them the right to make a request to the Governor that their cases should be referred to the Tribunal in respect of matters specified in clauses (a) to (d) of sub-rule (1). The question for our decision is whether like the word "may" in rule 4(1) which confers the discretion on the Governor, the word "may" in sub-

rule (2) confers discretion on him, or does the word "may" in sub-rule (2) really mean "shall" or "must"? There is no doubt that the word "may"

generally does not mean "must" or "shall". But it is well-settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of rule 4(2) would be frustrated if the word "may" in the said rule receives the same construction as in the sub- rule (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the Tribunal that the rule-making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under rule 4(1) and rule 4(2) has been prescribed, otherwise rule 4(2) would be wholly redundant. In other words, the plain and unambiguous object of enacting rule 4(2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a Tribunal and not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an opinion to them "

> In State (Delhi Admn.) v. I.K. Nangia and Another [(1980) 1 SCC 258], this Court opined:
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> "We are clear that the Explanation to Section 17(2), although in terms permissive, imposes a duty upon such a company to nominate a person in relation to different establishments or branches or units. There can be no doubt that this implies the performance of a public duty, as otherwise, the scheme underlying the section would be unworkable. The case, in our opinion, comes within the dictum of Lord Cairns in Julius v. Lord Bishop of Oxford:
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> There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. The Explanation lays down the mode in which the requirements of Section 17 (2) should be complied with. Normally, the word 'may' implies what is optional, but for the reasons stated, it should in the context in which it appears, mean 'must'. There is an element of compulsion. It is power coupled with a duty. In Maxwell on Interpretation of Statutes, llth Edn. at p. 231, the principle is stated thus:
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> Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become

> an axiom that in such cases such expressions may have-to say the least-a compulsory force, and so could seem to be modified by judicial exposition. (Emphasis supplied) Though the company is not a body or authority, there is no reason-why the same principle should not apply. It is thus wrong to suggest that the Explanation is only an enabling provision, when its breach entails in the consequences indicated above. It is not left to one's choice, but the law makes it imperative. Admittedly, M/s. Ahmed Oomer Bhoy had not at the material time, nominated any person, in relation to their Delhi branch. The matter is, therefore, squarely covered by Section 17 (1) (a) (ii)."

Although there is no ambiguity, even if there be any, the marginal note may be taken into consideration for the purpose of proper construction of the provision. [See N.C. Dhoundial v. Union of India, (2004) 2 SCC 579] Once it is held that Chapter X of the Act applies, the court must bear in mind that the provisions contained in the said Chapter provide for a set of provisions in regard to the management of trust. There does not exist any other provisions providing for the same.

Mr. Mukul Rohtagi, learned senior counsel appearing on behalf of the State of Rajasthan, however, would submit that in view of the fact that the management of the temple is vested in the Devasthan Commissioner, the provisions of the Act, far less Chapter X, will apply to the temple in question.

An exemption provision, as is well-known, must be strictly construed. Sub-section (1) of Section 77 of the Act exempts only those trusts which are administered by any agency under the control of the State Government or by any local authority. Whether the Devasthan Commissioner would be the agency of the State is, therefore, the question. Devasthan Commissioner is a statutory authority. He is an officer of the State. He exercises various functions under the Act. The Act postulates constitution of Advisory Boards and Advisory Committee. Their duties and functions are prescribed. In regard to various provisions of the Act, Devasthan Commissioner indisputably has statutory duties to perform. The Act does not provide that he may be put in charge of the management of any trust falling under Section 52 of the Act. As indicated hereinbefore, Section 53 of the Act contains a non-obstante clause. It is of wide import.

A statutory authority, as is well-known, must act within the four corners of the statute. [See Taylor v. Taylor, (1875) 1 Ch D 426] Any action by a statutory authority contrary to or inconsistent with the provisions of the statute, thus, would be void. In the matter of construction of a statute, therefore, the court shall not take recourse to a principle which would render the acts of a statutory authority void in law.

A statutory authority cannot, in absence of the provisions of a statute, be treated to be an agency of the State. It is one thing to say that the State exercises statutory control over the functions of a statute but it is another thing to say that thereby an agency is created which would be separate in entity over which the State exercises control. Agency of a State would ordinarily mean an instrumentality of a State. It must be a separate legal entity. A statutory authority does not answer the description of an agency under the control of the State.

The expression agency in the context of the statutory scheme would not mean that there would exist a relationship of principal and agent between it and the State. Agency of a State would mean a body which exercises public functions. It would itself be a 'State' within the meaning of Article 12 of the Constitution of India. The concept of an agency in the context of Section 77 of the Act must be considered having regard to the fact that the statute contemplates grant of exemption to a public trust, management whereof vests inter alia in a local authority. A "local authority" is defined in Section 3(31) of the General Clauses Act to mean "a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund." It, thus, ordinarily would be a statutory authority.

Although golden rule of interpretation, viz., literal rule should be given effect to, if it is to be held that the Devasthan Commissioner appointed under Section 7 of the Act would be an agency of the State, the same would lead to an absurdity or anomaly. It is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided. [See Ashok Lanka v. Rishi Dixit, (2005) 5 SCC 598 and M.P. Gopalakrishnan Nair v. State of Kerala,(2005) 11 SCC 45] It is also well-settled that the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. [See Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others, (1987) 1 SCC 424] The relevant provisions of the statute must, thus, be read harmoniously. [See Bombay Dyeing (supra) and Secretary, Department of Excise & Commercial Taxes and Others v. Sun Bright Marketing (P) Ltd., Chhattisgarh and Another [(2004) 3 SCC 185]. It would, therefore, not be possible to give literal interpretation to Section 77 of the Act.

Different provisions contained in different Chapters of the Act must, as far as possible, receive harmonious construction. With a view to give harmonious construction, the effect of an exemption clause must be borne in mind. It has not been denied or disputed that keeping in view the different clauses contained in Section 52 of the Act, public trusts which had vested in the State would come within the purview of the Chapter X. Once it is held that all those trusts would also go out of the statute, the provisions of Chapter X would become otiose in a large number of cases. Application of such principle of interpretation is not permissible.

It is, therefore, incumbent for us to take recourse to harmonious construction. If principle of harmonious construction is applied, in a case of this nature, particularly, when the State itself has acted upon the directions of the court and had issued notifications in terms of Section 52 of the Act, the State cannot now be permitted to contend that Chapter X shall not apply. It could not approbate and reprobate at the same time.

There is another aspect of the matter which cannot also be lost sight of. The State not only in the earlier round of litigation but also before the High Court had taken a categorical stand that it had all along been ready and willing to act in terms of the provisions of Chapter X of the Act and appoint a Committee; it cannot take a different stand now.

In Karamshi Jethabhai Somayya v. State of Bombay (now Maharashtra) [AIR 1964 SC 1714], this Court stated the law, thus:

> " Apart from the fact that the appellant asked for the production of all the relevant documents, the Government, being the defendant in this case, should have produced the documents relevant to the question raised. While it is the duty of a private party to a litigation to place all the relevant matters before the Court, a higher responsibility rests upon the Government not to withhold such documents from the court..."

In Cooke v. Rickman [(1911) 2 KB 1125] , it was held that the rule of estoppel could not be restricted to a matter in issue, stating :

> " The rule laid down in Hawlett v. Tarte (10 C.B. (N.S.) 813 was that if the defendant in a second action attempts to put on the, record a plea which is inconsistent with any traversable allegation in a former action between the same parties there is an estoppel "

[See also Humphries v. Humphries 1910 (2) KB 531] In Jai Narain Parasrampura (Dead) and Others v. Pushpa Devi Saraf and Others [(2006) 7 SCC 756], this Court held :

> "While applying the procedural law like principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict."

It was further held :

> "The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged."

The stand of the State in the earlier round of ligitation was that the temple in question was a Hindu temple. This Court categorically opined that it is a Jain temple. The principles of res judicata, thus, would come into play. The State, therefore, cannot still contend that the temple in question is a Hindu temple. Before us, the Respondent Nos. 1 to 4 in Civil Appeal No. 4086-4089 of 2002 have raised a contention that it is a Hindu temple but we cannot permit the State or the said respondents to raise such a contention before us. We are bound by the earlier judgment. The issue cannot be permitted to be reopened nor we have any jurisdiction in these matters to do so.

We must, however, observe that the question as to whether the temple in question is Swetambers' or Digambers' does not fall for our consideration. Both parties have staked their own claims. It is for the State to act in terms of the statute. While doing so, it indisputably would have to give effect to the directions issued by the High Court.

While implementing the said directions, the incidental or ancillary questions which may arise for consideration before the State Government must also be determined in accordance with law.

For the reasons aforementioned, we are of the opinion that the modifications made by the Division Bench of the High Court are not sustainable. They are set aside accordingly. The judgment of the learned Single Judge is upheld. The judgment of the High Court may be complied within four months from date. Civil Appeal Nos. 4092-4095, 4086-4089 and 4076-4079 of 2002 are allowed and Civil Appeal Nos. 4081-4084 of 2002 are dismissed with costs. Counsel's fee is assessed at Rs. 50,000/- for each set of appeals.