Supreme Court of India
State Of Rajasthan And Ors vs Sajjanlal Panjawat & Ors on 14 December, 1973
Equivalent citations: 1975 AIR 706, 1974 SCR (2) 741
Author: P J Reddy
Bench: Reddy, P. Jaganmohan

PETITIONER:
STATE OF RAJASTHAN AND ORS.

Vs.

RESPONDENT:
SAJJANLAL PANJAWAT & ORS.

DATE OF JUDGMENT14/12/1973

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
DWIVEDI, S.N.
GOSWAMI, P.K.

CITATION:
1975 AIR 706 1974 SCR (2) 741
1974 SCC (1) 500
CITATOR INFO :
R 1975 SC1069 (23)
RF 1981 SC1863 (29)
RF 1992 SC1256 (13)

ACT:
Rajasthan Public Trusts Act 1959-ss, 17(3); 52(1) and 53-If violative of Art. 25 and 26 of the Constitution.

HEADNOTE:
The respondents alleged before the High Court that certain provisions of the Rajasthan Public Trusts Act, 1959 contravened their fundamental rights guaranteed under Arts. 25 and 26 of the Constitution. In the first set of appeals (C.A. Nos. 1083 and 1092 of 1967) the respondents, in their writ petition, claimed that the temple of Shri Rikhabdevji (also known as Keshariyanathji temple) was a Swetamber Jain temple which was under the ownership and management of Jain Sashan and had been recognised as such in official documents as well as in the firmans issued by the erstwhile State of Mewar and that the State usurped the management and applied the provisions of Rajasthan Public Trusts Act and thereby contravened their fundamental rights. In the second set of appeals (C.As. Nos. 1119 and 1087 of 1967) the Chairman of

the Trust Committee of Shri Nakodaji Parasnath Tirath alleged that the administration and management of the temple was being carried on by the Trust Committee on behalf of Swetamber Jain temple and that interference in the management of the temple and other religious institutions envisaged by the Act was against the usages and customs, principles and tenets of the Jain religion.

The High Court struck down s. 17(3) of the Act on the ground that under the rules made under the Act the sum charged as registration fee goes to the consolidated fund and was thus not a fee but a tax which the State Legislature was not competent to levy. Section 52(1)(d) and (e) were struck down as invalid as B. 53 had not provided for proper safeguards of leaving the administration of the property in the hands of the denomination. But since the management of the temple had vested in the State prior to the constitution, the case of Rikhabdevji was held to have been covered by s. 52(1) (a) or (c) of the Act. Section 53 was struck down on the ground that since Art. 26 contemplates not only a denomination but a section of the denomination, the trustees of a public trust representing the same religion may not necessarily be members of that section of the denomination managing the property even if such public trust has the same object as that of the public trust, the management of which is being transferred to the Committee of Management.

In the first set of appeals the High Court held that the temple was a Swetamber Jain temple which was being managed by the State. It directed the State to constitute a Committee for its management as provided in the Act.

Section 17(3) provides that an application to be presented under sub-S.(1) of that section "shall be accompanied by such fee. if any, not exceeding five rupees, and to be utilised for such purposes, as may be- prescribed". Rule 18 of the Rules specifies the rates of fee payable on different values of the trust property enumerated the-rein, and further provides that the fee shall be credited to the Consolidated Fund of the State. Section 52(1) of the Act enacts that the provisions contained in Chapter X shall apply to every public trust which vests in the State Government (cl. a) or which is managed directly by the State Government (cl. c); or which is under the superintendence of the Court of Wards (cl. d); & Aid of which the gross annual income is ten thousand rupees or more (cl. e). Section 53 provides that the management of a public trust shall vest in a Committee of Management to be constituted by the State Government. Sub-section (5) provides that the Chairman and Members of the Committee of Management shall be appointed 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

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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.

Allowing the appeals,

HELD : Section 17(3) cannot be held to be invalid and ultra vires the Dower ,of the State Legislature. The mere fact that the amount was paid into the consolidated fund is by itself not sufficient to hold that the levy under s. 17(3) of the Act is a tax. It was held in the Commissioner of H. R. E. Madras v. Sri Lakshmindra Tirtha Swamiar of Shri Shirur Mutt that the essence of taxation is compulsion and imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax, that is to say, that the levy of tax is for the purposes of general revenue which, when collected, forms part of the public revenues of the State. A fee on the other hand is payment for a special benefit or privilege which the individual receives. It is regarded as a sort of return or consideration for services rendered and should be correlated to the expenses incurred by Government in rendering the services. In the Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd., it was reiterated that the fact that the collections went to the Consolidated Fund was not in itself conclusive though not much stress could be laid on this point because Art. 266 requires that all revenues raised by the State shall form part of the Consolidated Fund, [765D-H; 76.6A]

In the instant case the expenditure on Devasthan Department was much more than the income from registration. The mere fact that the amount was paid into the Consolidated Fund is by itself not sufficient to hold that the levy was a tax.

Section 52 (1) (d) has no application in this case because it deals with a public trust which is under the superintendence of the Court of Wards and this part of the judgment of the High Court was clearly wrong. [761 D]

It is for the State Government, if it intends to apply the provisions of Chapter X of the Act, if it is satisfied that the gross annual income exceeds ten thousand rupees to include it in the list of public trusts Published under sub-section (2) of s. 52 in the official gazette., Section 53 postulates the application of Chapter X before the management of the temple can be said to vest in a Committee of Management to be constituted by the State Government in the manner provided in that section. Until the notification is published under sub-s. (2) of 8. 52 the respondents could not claim that their rights were affected. [761E-G)

The hypothesis on which the High Court has based its conclusions is not warranted by the provisions of sub-s.(5) of s. 53 of the Act. In the first category, apart from the Committee being constituted from amongst the trustees of public trusts representing the same religion the Committee can also be constituted from amongst the trustees of the

same persuasion. The significance of the word "persuasion" and what it connotes does not seem to have been considered by the ELI Court. The word persuasion is a synonym of faith, creed, denomination, religion etc. In the first category also a Committee can be appointed from persons of the denomination to which the trust belongs as in the second category with this difference that in the first category if the State Government chooses, it can appoint it from the trustees representing that denomination or persuasion while in the second category from amongst the persons who belong to tire said denomination who may not be trustees as such. Even where the Persons interested satisfy the requirements of s. 2(9) the additional requirement of cl. (b) of sub-s. (5) of s. 53 is that such persons must be also persons for whose benefit the trust was founded. A reading of cl.(a) of sub-s. (5) clearly indicates that the trustees Must represent the concerned religion or persuasion, which includes a denomination. it could not have been the intention to appoint a Committee of management comprising trustees of a public trust of a particular religion or persuasion who do not to that religion or persuasion or denomination. Nor does cl. (b) or subs-s (5) ,of s. 53 empower persons who do not belong to a denomination to be appointed to a public trust of that denomination. Again, the word "denomination" is wide enough to include sections thereof, and it cannot therefore be said. as the High Court seems to assume, that a section of the denomination managing the property may not be the same as trustees of public trusts representing the same religion even management of which is being transferred to the Committee. If s. 53(5)(a) is read in the manner suggested the difficulties pointed out by the High Court would not arise at all. [763D-H, 764A-C]
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On a consideration of all the documents admitted, which the State had not, and could not challenge, there was no doubt that Shri Rikhabdevji temple was a Jain temple and the State of Rajasthan had produced no evidence to the contrary to show that it was a Hindu temple where Jains of all sects as well as Hindus of all sects were allowed to worship. [749F]
There was no doubt that the management of the temple of Rikhabdevji with its properties had validly vested in the Ruler of Udaipur, and thereafter in the successor State before the Constitution of India came into force. There can be no doubt that any right which the Jams or anyone of the two Jain denominations, namely, the Swetambars or Digambars or both, might have had in the temple or in its management was lost in the pre-Constitution period and is now vested in the State of Rajasthan. [753A]
Director of Endowments, Govt. of Hyderabad & Ors. v. Akram Ali, A.I.R. 1956 S.C. 60 and Sarwartal & Ors. v. The State of Hyderabad [1960] 3 S.C.R. .311, referred to.
The constitution under which the properties and management of the templ had vested in the Ruler and thereafter in the

State continued to be law by virtue of Art. 372 of the Constitution till it was repealed by the impugned Act. Since the respondents lost the right to manage and administer the temple and its properties prior to the Constitution by a valid law, they cannot now regain that right on the plea that law contravened the right guaranteed under Art. 26(d) of the Constitution. [753C]
Durgah Committee Ajmer v. Syed Hussain Ali, [1962] 1 S.C.R. 383, followed.
Tilakayat Shri Govindlalji Maharaj v. The State of Rajasthan
JUDGMENT:

Religious Endowments, Madras, v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt. [1954] S.C.R. 1005, and Sri Venkataramana Devaru v. The State of Mysore, [1958] S.C.R. 895, referred to.

The High Court was in error in giving the impugned directions in view of the fact that the right of management of Rikhabdevji temple was lost as it was vested in the State and the respondents could not complain of any infringement of their fundamental rights to manage and administer its affairs.

& CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1083 and 1092 of 1967.

From the judgment and order dated the 30th March, 1966 of the High Court of Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 501 of 1962.

Civil Appeals Nov. 1087 and 1119 of 1967 From the judgment and order dated the 30th Match, 1966 of the High Court of Rajasthan at Jodhpur in D.B. Civil Misc. Writ Petition No. 407 of 1962 and vice versa. Civil Appeal No. 1647 of 1967 From the judgment and order dated the 4th August, 1966 of the Rajasthan High Court at Jodhpur in D.B. Civil Writ Petition No. 197 of 1963.

D. V. Patel, G. C. Kasliwal and S. M. Jain, for the appellants (in C. A. Nos. 1083 & 1119/67 and respondents (in C. A. Nos. 1087 & nT092/67) M. C. Chagla, S. S. Khanduja, Pukhraj Singhvi, D. N. Misra and I.B. Dadachanli, for the respondents (in C.A. No. 1083) and sole respondent in C.A. No. II 19/67 and appellants (in C.A. Nos. 1087 & 1092/67).

S. M. lain for the appellants (in C.A. No. 1647/67) S.C. Agrawala, B. K. Garg and Y. J. Francis, for the respondents. (in C. A. No. 1647/67) The Judgment of the Court was delivered by JAGANMOHAN REDDY, J.-These five appeals are by certificate under Art. 1 3 3 (1) (a) & (c) of the Constitution and have been heard together as common questions of law were raised in all these appeals.

Civil Appeal No. 1083 of 1967 is an appeal by the State of Rajasthan against the respondents, while Civil Appeal No. 1092 of 1967 is the appeal by the respondents against the State of Rajasthan. These two appeals, which we may also refer as the first set of appeals, arise out of a writ petition filed by the respondents against the State of Rajasthan alleging that the temple of Shri Rikhabdevji, also known as Keshariyanathji temple, situated about 40 miles from Udaipur, is a Swetamber Jain temple which is under the ownership and management of Jain Shasan, and has been recognized as such in official documents as well as in the firmans issued by the erstwhile State of Mewar.

Notwithstanding the position it was averred that the management of the said temple has been illegally usurped by the State of Rajasthan through the Devasthan Department for some years, and that the State, of Rajasthan had applied certain provisions of the Rajasthan Public Trusts Act, 1959-hereinafter called 'the Act-to the said temple which contravened the fundamental rights of the respondents guaranteed under Arts. 25 and 26 of the Constitution of India. The respondents, therefore, prayed that the Court should refrain the State from enforcing provisions of the Act specified in the petition and declare them void being in contravention of the fundamental rights of the respondents guaranteed under Arts. 14, 19, 25, 26 and 31 of the Constitution of India. They also challenged s. 17(3) of the Act on the ground that the fee levied along with the application for registration of the public trust is a tax, and therefore beyond the competence of the State Legislature. The case of the State of Rajasthan, however, was that the temple in question was not a Jain temple, but is a Hindu temple where Jains of all sects as well as Hindus of all beliefs and sects including the Bhils worship. It denied that the provisions of the Act which had been enacted to regulate and to make better provisions for the administration of public religious and charitable trusts in the State of Rajasthan were in any way violative of Arts. 25 and 26 or any other article of the Constitution. It asserted that the management of the temple was with the State of Rajashan which had a valid and legal right to manage it, and that s. 17(3) of the Act was valid. The High Court held that Rikhabdevji temple is a Swetamber Jain temple and is at present managed by the State of Rajas.than, that s. 17(3) of the Act is invalid because under the Rules that have been framed under the Act an amount of Rs. 51. charged as registration fee goes to the Consolidated Fund, and is thug not a fee but a tax which the State Legislature was not competent to levy. Following the decision in another writ petition, which is the subject matter of the second set of appeals to which we shall refer presently, the High Court struck down S. 52(1) (d) & (e) of the Act, but as the management of the temple had vested in the State prior to the Constitution, the case of Rikhabdevji was held to have been covered by s. 52(1) (la) or (c) of the Act. In the petition relating to the second set of appeals the High Court had held that cases of trust as are mentioned in sub- ss. (1) (a), (b) and (c) a secular State may not like to keep the management of public trusts belonging to various, denominations with it and may like to transfer it to those who might be better equipped for managing it in accordance with the wishes of the founder or of the religious denomination to which the trust belongs. But that would not be violative of Art. 26(b) and (d) of the Constitution in any way. It was of the view that S. 52(1) (d) & (e) of the Act was invalid as s. 53 had not provided for proper safeguards for the administration of the property being left in the hands of the denomination. Even so it held that these clauses were not applicable to that case. In so far as the challenge to ss. 30, 31, 38 to 43 of the Act was concerned, it held them to be valid. In, the result the High Court gave the directions which are contained in the following conclusion now impugned:

> "This being our conclusion the question is what relief the petitioners (respondents) are entitled to. Since we have come to the conclusion that the management of the temple is with the State Government the case falls within section 52(1) ('a) or (c) of the Act which have been held valid by us. Therefore, no question of depriving the denomination of the management of the temple arises in this case. But the Act contains a provision for the transfer of the management even for those public trusts which fall under sub-section (1)(a), (b) and (c) of section 52 and the Government should therefore act accordingly and take early steps to transfer the management to a

committee as envisaged by section 53 of the Act and in doing so we hope the Government while constituting the committee shall have due regard to the wishes of the denomination as was done in the past by the Maharana of Udaipur in Sambat Year 1934."

In this view the High Court partly allowed the writ petition holding that the temple of Shri Rikhabdevji is a Swetamber Jain temple and is at present being managed by the State of Rajasthan and since it was being managed by the State of Rajasthan the High Court directed the State to constitute a Committee for its management as provided in the Act. As seen earlier S. 17(3) of the Act was held ultra vires the State Legislature. Both the parties, being aggrieved, have filed separate appeals as aforesaid.

Civil Appeals Nos. 1119(N) of 1967 is by the State of Rajasthan while Appeal No. 1087(N) of 1967 is by Shri Surajmal Singhvi. These arise out ,.of a writ petition filed by the respondent Surajmal Singhvi who claims .to be the Chairman of the Trust Committee of Shri Nakodaji Parasnath Tirath alleging that the administration and management of that temple was being carried on by the Trust Committee on behalf of the Swetamher Jain Sangh in which is vested the entire property of the temple .,consisting of buildings, cash, ornaments of the idol and all other mov able and immovable properties. It was claimed that according to the .religious faith and belief of Jains, the properties of the said temple can only be utilised for the maintenance, upkeep and worship of the idol and for the purpose of different religious ceremonies, propagation of Jain faith and religion and for other analogous purposes which are pious, religious and charitable. It was, therefore, averred that inas.much as the administration and management of the said temple and worship of the idol and other religious ceremonies are carried on ,according to the scriptures and tenets of Jain religion they do not brook ..any outside interference, and consequently the interference in the management of the temples and other religious institutions envisaged by the Act was against the usages and customs, principles and tenets of Jain religion. On these allegations the various provisions of the Act were challenged on the ground that they were in direct and flagrant breach of the fundamental right of religious freedom and freedom of ;.conscience of the Jains and their right to freely profess, practice and propagate religion. It was also contended that the impugned provisions imposed unreasonable restrictions on the religious denomination to maintain and manage religious institutions and to manage their own ,-Hairs in the matter of religion and to administer the property according .to the Jain Shasan.

The High Court held that Chapters V, VI and VII of the Act .deal with the registration of public trusts and provide certain safeguards ,to protect them from dissipation. These provisions are analogous to ,those contained in the Bombay Public Trusts Act, 1950-hereinafter called 'the Bombay Act'- which provisions regarding registration of public trusts were held to be valid by this Court in Ratilal Panachand ,Gandhi v. State of Bombay(1). The High Court, however, allowed the writ petition filed by the respondent as in its view proper safeguards were not provided in s. 53 of the Act for leaving the administration of the property in the hands of the denomination and that ss. 17(3) and 52 (1) (d) and

(e) of the Act being ultra.vires the State Legislature were invalid. The rest of the provisions of the Act were held constitutional and valid. Against this judgment, both parties have ..appealed as pointed out earlier. The fifth appeal is Civil Appeal No. 1647(N) of 1967 arising out ,of a writ petition filed by one Pandit Ram Dayal against the State of Rajasthan challenging the constitutional validity of the Act and the Rules framed thereunder on the ground, inter alia, that they contravened his fundamental rights enshrined in Arts. 25 and 26 of the Constitution, as they take away, limit or abridge his right to manage the affairs of (1) T19541 S.C.R. 1055, the two temples known as Thakurji Vijay Govindji and Thakurji Shri. Sireh Behariji in accordance with the tenets of the religion and the. traditions of his family. The respondents case was that the temple of Thakurji Vijay Govindji is situated within the residential premises of the respondent in Ramganj Bazar, Jaipur City, and the temple of Thakurji Shri Sireb Behariji is situated near the first temple. Both these temples, according to him, were his family temples and neither the public in general visited those temples for worship nor any offerings, were made to the deities. Nevertheless it was admitted that certain properties were granted by the then Maharaja of Jaipur to his great grand father for the maintenance and for providing Bhog, Pooja etc. of those temples. The respondent, therefore, challenged the constitutional, validity of the several provisions of the Act specified therein on. the ground that they contravene his fundamental rights guaranteed by Arts. 25 and 26 of the Constitution to freely profess, practice, propagate his religion and has placed unreasonable restrictions on his fundamental right to manage the affairs and to carry on the administration. of the aforesaid temples in accordance with the tenets of his religion and the traditions of his family. He, therefore, prayed that the High Court should declare that the two temples in question were private temples and that the Act was not applicable to them.

The appellant contested the claim of the respondent that the temples were his private temples. According to the-State, these temples were public temples, that Shri Anandilal the great grand-father of the respondent was put in charge of Sewa-Pooja of the temples and that the land was granted by the Rulers of the former State of Jaipur for the maintenance of the temples, for the performance of Sewa-Poojaand for making offerings to the deities, and, therefore, they were public religious trusts within the meaning of s. 2(11) of the Act. It denied' that the respondent would be deprived of any of the fundamental right guaranteed by the Constitution, nor in its view do any of the provisions of the Act interfere with the religious freedom of any person much less the respondent, nor do any of those provisions impose unreasonable restrictions on the respondent. The High Court, following the decision in Surajmal Singhvi's case, which is the subject-matter of the second set of appeals, held the provisions of the Act to be valid except those mentioned in sub-s. (3) of s. 17 and clauses (d) and

(e) of sub-s. (1) of s. 52 of the Act, which were, as already noticed, struck down as being ultra vires the State Legislature. The question whether the temples were private temples or public religious trusts does not seem, to have been urged, as on the petitioner's contention in view of the decision in Surajmal Singhvi's case the State should be directed not to take any action the Court granted the relief referred to above. This appeal is against this judgment. In the first set of appeals. three questions arise for determination1) whether the petitioners/respondents who claim to represent the, Swetamber Jain sect can challenge the right of the State to manage Shri Rikhabdevji temple; (2) whether the provisions of the Act in any way infringe their fundamental rights to manage their own

affairs in matters of religion and to administer such property in accordance with, the law under clause (b) or (d) of Art. 26; and (3) if they have a right to manage and administer the temple whether any of tile provisions of the Act offend their fundamental rights guaranteed under Arts. 25) 26 and 27 of the Constitution.

If the temple is a Hindu temple the respondents have no locus standi to ask for the reliefs prayed for in the petition. But if it is not a Hindu temple, then the question whether it is a Swetamber Jain temple or a Digamber Jain temple will become relevant only if we were to hold that the management of the temple was not validly vested in the State prior to the Constitution. or even if it had vested in the State, any of the fundamental rights of the worshipers of the temple guaranteed, under Arts. 25 and 26 are infringed. In our view, the question whether the temple is a Swetamber Jain temple or a Digamber Jain temple as contended by the interveners does not arise for-decision in these appeals, firstly because, if the management had vested in the State of Rajasthan under a pre-Constitution law and that law cannot be challenged under the Constitution, the right of the State to administer and manage the temple is unassailable; secondly, even if the right of the State to manage the temple after the Constitution came into force can be successfully challenged as offending the provisions of Arts. 25 and 26 of the Constitution, the management of the temple by the State will be held to be ultra wires and illegal. And in that event the Court need not go further. The learned Advocate, for the respondents, however, contests this reasoning, because according to him as the respondents in their petition have categorically stated that they repre- sent the Swetamber Jain sect entitled to the management of the temple and have accordingly prayed that not only the State of Rajasthan be restrained from carrying out the management of the temple but that they be allowed to manage it and continue the said management, it is incumbent upon this Court to give a finding as to whether the Keshari- yanathji temple is a Swetamber Jain temple. It is further contended that even if the management of the temple had been taken over prior to the Constitution under a valid law, the right of the respondents to follow their religion in accordance with the tenets of that religion would nevertheless continue after the Constitution, and therefore they can challenge the right of the State to continue the management as being in contravention of the provisions of Arts. 25 and 26 of the Constitution.

We may here mention that the Digamber Jain sect which was not a party before the High Court had applied for being allowed to intervene in these appeals. It appears that after the respondents filed the writ petition on November 17, 1962, a notice was given by the solicitors of the interveners to the respondents on March 12, 1963, requiring them to implead the interveners in the writ petition failing which they would themselves apply to the Court for being made a party. It is, therefore, contended that since the interveners did not apply to make them a party, they cannot now be allowed to intervene. This contention is no longer available to the respondents, as the learned Chamber Judge after giving notice to the respondents allowed the petition and permitted them to intervene. Accordingly we have allowed the interveners to represent their point of view. The learned Advocate for the interveners submits that Digamber Jain sect did not get themselves impleaded even though they had intended to do so, because at that time the respondents did not pray that the management of the temple should be given to them, but had only challenged the right of the State to manage the temple and to restrain it from doing so,. As the prayer then was, which did not in any way conflict with their rights, they did not apply for being made a party to the petition, but filed a

separate writ petition of their own. it was only after the notice was given to implead the interveners that the respondents applied on April 3, 1963, for an amendment praying that they be allowed to manage the said temple which amendment was granted. The application was granted on July 29, 1963 and accordingly the proposed amendment was effected in the writ petition. The contention of the interveners is that as the High Court-has now given directions to the State of Rajasthan for appointing a Committee of Swetamber Jain sect on the assumption that the temple was a Swetamber Jain temple, the Digamber Jain sect worshipers are affected and have, therefore, applied for and obtained permission to intervene.

As we have said earlier, in this case we do not wish to determine the question whether the temple is a Swetamber temple or a Digamber temple, not only because the Digamber sect was not a party, but because the State of Rajasthan was not interested in contesting the claim of the respondents that it was a Swetamber temple. What the State was interested in was to non-suit the petitioners/respondents on the ground that they had no right to the management of the temple, as, that right had vested in the State prior to the Constitution, and even if that right can be challenged after the Constitution. the temple being a Hindu temple where all sects including the Jains and the , Bhils worshiped, the respondents would have no locus standi.

In our view, however, without going into the question whether the temple is a Swetamber or a Digamber Jain temple', it will be sufficient for us to consider whether the temple. is a Jain temple, or as- alleged by the State a Hindu temple. On a consideration of all the documents admitted, which the State has not, and cannot challenge, we have no doubt that Shri Rikhabdevji temple is a Jain temple and the State of Rajasthan has produced no evidence to the contrary to show that it is a Hindu temple where Jains of all sects as well as Hindus of all sects including the Bhils are allowed to worship.

Apart from a copy of the firman of the Emperor Akbar produced by the respondents to show that Shri Rikbabdevji temple is a Swetamber Jain temple, the authenticity of which has been disputed by the State, there are other documents from which it appears indisputable, even as was represented by the State and its predecessors that Shri Rikhabdevji temple is a Jain temple. Annexure 26-The Imperial Gazetteer of India, Vol. XXI (New Edition 1908 pp. 168169) describes it as "The famous Jain temple sacred to Adinath or Rikhabnath." It further states that it is annually visited by thousands of pilgrims from all parts of Rajputana and Gujarat, and that it is difficult to determine the age of this building, but three inscriptions mention that it was repaired in the- fourteenth. and fifteenth centuries. There can be no doubt that it is an ancient temple, though it is not possible to say when and by whom the idols were consecrated. We, find as late as in 1958 that Annexure 30-a Calendar printed and published by the Government of Rajasthan-has a photo of Shri Rikhabdevji temple-- under which there is a caption "UDAIPUR KE PAS RIKHABDEVJI KA PRASIDH JAIN MANDIR" i.e. famous Jain temple of Rikhabdevji near Udiapur. Annexure 17 is a notification issued by the. Mewar Government on Chait Sukla 7 Monday 1982 corresponding to April 19, 1926 A.D. with the heading "Unique Angi Utsav in Shri Dhulevnagar". In it Shri Keshariyanathji Maharaj is described as a holy Jain Tirath which was managed previously by Udiapur Nagar Seth and Seth Jorawarmalji. We are not for the present concerned with the statement contained therein about the misappropriation of the money of the deity in Samvat Year 1934. But this document also shows that

the State of Mewar describes it as a holy Jain Tirath. Annexures 2, 3, 4, 6, 7A, 7B and 7C show that some embezzlement of the temple funds was suspected in Samvat Year 1933 (about year 1875-76 A.D.) as a result- of which one Molvi Abdul Rehman Khan was deputed by the State of Udaipur to make enquiry and check the accounts. It appears proceeding, one Bhandari Jawanji Molvi for forcibly breaking open away the account books and other papers. described the temple of Shri Rekhabdebji Maharaj as belonging to the, that while this enquiry was pro. Khem Raj complained against that the lock of the Bhandar and taking In that connection he Jain Sangh. Annexure 9 dated January 27, 1878, is a notification of the Government of Udiapur State for the information of the pilgrims and the devotees of Shri Rikhabdevji stating that Bhandaries were removed due to their mismanagement of the, temple affairs and that a Committee consisting of five. respectable Oswal Mahajan devotees of Shri Rikhabdevji was appointed. Annexure 10 dated November 22, 1878, is a notice issued by the members of the Committee to dispel doubts about the action taken by the Ruler of the State in appointing a Committee for the management of the temple, It also a mentions that the management has been assigned to a Committee of five or seven big Sahukars who follow Jain religion and lead a religious life. Annexure 24 dated May 29, 1886, is a copy of the report made by Mehta. Govind Singh Hakim Magra (an office having both judicial and magisterial powers) to Mahkama Khas, Udaipur, on an application submitted by some Digamber Jams objecting to the raising of Dhawaja i.e. flag over the 'Jainalaya' by the Swetamber Jains. In that report it was stated that the temple was a Swetamber Jain temple. Annexure 21 dated July 19, 1907, shows that on a complaint that some people had allowed low caste people to Perform Puja of Shri Rikhabdevji by taking some illegal gratification, the matter was referred by the Officer of the Devasthan Bhandar to Jain Muni Paniyas Nem Kushalji as to what steps be taken for purification of the temple and the reply given by the said Muni. Annexure 28 dated Kartik Sudi 10 Samvat 1979 (1922 A.D.) is a copy of the report of the Devasthan Department to Mahkama Khas, Udaipur State, stating that 'Naivedya' should not be offered to the deity Shri Rikhabdevji as neither the Committee nor the Jain Sangh nor the Acharyas of the Jain Sangh are in favour of it, and that the new practice of offering 'Naivedya for the first time is uncalled for. On this report, the Mahkama Khas ordered that the Devasthan be informed that there is no necessity of offering 'Naivedya'. Annexure 29 dated Samvat 1889 (Sak 1759) (1833 A.D.) is a copy of inscriptions engraved on the main gate in which there is a reference to the performance of the ceremony of Dhawja-Danda on the temple of Shri Rikhabdevji Maharaj. All these documents, there being no document to the contrary filed by the State of Rajasthan, clearly show that Shri Rikhabdevji temple is a Jain temple.

The next question is whether the management of the temple had been taken over prior to the Constitution by the erstwhile Udaipur State under a law,: and whether that management continued to be vested even after the Constitution in its successor State, namely the State of Rajasthan, and if so, whether the respondents' fundamental rights, guaranteed under Arts. 25 and 26 are affected. The High Court has held that the Ruler of the erstwhile Udaipur State, by virtue, of his sovereign power always exercised general superintendence over the temples and on finding that there was mismanagement of the temple affairs, the management which was till then vested in the Nagar Seth was transferred to a Committee and the President of the "Sel Kantar Sabha" (a Department of the erstwhile State of Mewar) was appointed its Manager. The Sel Kantar Sabha took the keys of the Bhandar from the Nagar Seth on November 29, 1877, after the management was transferred to the Committee. It also held that vacancies in the Committee occurring from time to time were being

filled up by the orders of the Ruler of the State and whenever there was a dispute about the affairs of the temple it was referred to the Government and its decision was obtained. In 1948 when-mismanagement of the temple was again reported, the Government appointed a Tribunal to make an enquiry and report about the state of mismanagement and ordered that the affairs of the temple should be managed according to the report of Shri Tej Singh Kothari until a final decision was taken by the Government on the report of the Tribunal. These findings, in our view, are supported by Annexures 6, 7A, 33, 41 and 42. It also appear s that a Constitution was promulgated by the Maharana of Udaipur on May 23, 1947, which was subsequently amended on October 11, 1947. It is evident from the preamble that the Rulers of Mewar claimed that they were ruling the State as the Dewans on behalf of Lord Shiva represented by Eklingji Maharaj. The Ruler was always referred to as Shriji. In paragraph 2 of Article 11 it is stated that "All shrines, temples and other religious and charitable institutions forming part of Devasthan described in Schedule 1 or which may hereafter be found to have formed part thereof or which form part there-of by future dedication and all property and funds appertaining thereto are hereby declared to be vested in Devasthan Nidhi hereby constituted in law as a Corporation with a seal of its own.' By paragraph-3 of Article 11 it was provided that the Devasthan Nidhi shall hold all the said institutions, their properties and funds for the purposes specified therein. The constitution of the Devasthan Nidhi, its powers and duties have been set out in Paragraph 4 to 10 of Article 11 of the Constitution. Shree Rikhabdevji temple at Dhulve and its properties L748 SupCI/74 are set Out in item 32 of Schedule 1 of the List of Devasthan Temples. To this Constitution certain amendments were made by the Ruler on October 11, 1947, the main object of which was to deal with the objections to the formation of Devasthan Nidhi and allocation of its funds on other grounds also. Paragrphs 2 to 10 of Article II were replaced and it was ordered by him that all shrines, temples and other religious and charitable institutions forming part of Devasthan describe(in Schedule 1 etc. were vested in Shriji (the Ruler) to be administered by him with the assistance of an advisory body, in which representatives from different sections of worshipers at the temples were to be included; that the income of these institutions was to be used for the purposes for which the institutions have been founded; and that the surplus income after meeting those purposes was to be made available for other like or similar purposes. The Article further stated that in the administration of the Devasthan Shriji (Ruler) shall have all powers necessary, proper and incidental to carry out the administration of the Devasthan and may invest its funds in securities, lands, business or industrial undertakings and may vary the investments as he may think fit.

The relevant portions of these Constitutions have been furnished to us by agreement of counsel for parties. The learned advocate for the respondents, however, contends that the Constitution was never promulgated in so far as the taking over of the shrines, temples and other religious and charitable institutions was concerned. This submission, in our view, is not justified. because not only was it specifically proclaimed that the Constitution was being promulgated, but by the notification of October 11, 1947, it was further declared that the Constitution that was proclaimed on May 23, 1947, was amended that day. namely on October 11, 1947. It may further be pointed out that pursuant to the amendment an Advisory Body was constituted on March 20 1948, with the Maharana as its resident, Major General Rao Manohar Sinhaji as Vice President and eight other members named therein. From evidence it appears clear that for quite some time before the promulgation of these Constitutions the management of Shri Rikhabdevji temple had been taken over by the erstwhile

Ruler of Udaipur State, and by virtue of the Constitutions it had finally vested in the State and was being managed by the Maharana with the Advisory Body. This Court has in several decisions held that the Rulers of the erstwhile Indian States exercised sovereign powers, legislative, executive and judicial. Their firmans were law which could not be challenged prior to the Constitution. See Director of Endowments. Government of Hyderabad and others v. Akram Ali(1); and Sarwarlal and others v. The State of Hyderabad(2) . In view of these decisions, we have no hesitation in holding that the management of the temple of Rikhabdevji with its properties had validly vested in the Ruler of Udaipur, and thereafter in the successor State before the Constitution of India came into force on January 26-1-1950. There can, therefore, be no doubt that any (1) A.I.R. 1956 S.C. 30 (2) [1960] 3 S.C.R. 31 1, right which the Jains or any one of the two Jain denominations, namely, the Swetambers or. Digambers or both, may have had in the temple or in its management was lost in the pre-Constitution period and is now vested in the State of Rajasthan.

It is, however, contended that even after the Constitution, the respondents have a right to get back the management as the continued management of the temple transgresses their rights under Art. 26(b). This contention,- in our view. is not tenable.

The Constitution under which the properties and management of the temple had vested in the Ruler and thereafter in the State continued to be law by virtue of Art. 372 of the Constitution till it was repealed by the impugned Act. Since the respondents lost the right to manage and administer the temple and its. properties ,Prior to the Constitution by a valid law, they cannot now regain that right on the plea that law contravenes the right guaranteed under Art. 26(d) of the Constitution. In Durgah Committee, Ajmer v. Syed Hussain Ali(1), it was observed at p. 414 that if the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Art. 26 cannot be successfully invoked." To the contention that the right to manage the temple and its properties fall under Art. 26(b) and not under Art. 26(d), the answer may be two-fold : (1) the Jains, whether Swetamber or Digamber. had lost the right before the Constitution and Art. 26 would not reinvest the right in them; (2) the administration of property being dealt with in Art. 26(d), should be deemed to be excluded from the purview of Art. 26(d). Dealing with the first matter, Gajendragadkar said : "It is obvious that Art. 26 (c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. in other words if the denomination never had the right to manage the, properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the, said rights as a result of Art. 26(c) and (d) 1 and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Art. 26." (Durgah Committee of Ajmer at p. 414).

Dealing with the second matter the learned Judge said : "If the practice in question is purely secular or the affairs which is controlled by the statute is essentially and absolutely secular in Character, it cannot be, urged that Art. 25(1) or Art. 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion."

Again at p. 625 he said : "Art. 26(b) relates to affairs in matters of region such as, the performance of the religious rites or ceremonies, or the observance of religious festivals and the like it does not refer to the administration of the property at all. Article 26(d), therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to do in the present case. If. the clause affairs in matters of religion' were to include affairs in regard to all matters, whether religious or not the provisions under Art. 26(d) for legislative regulation of the administration of the denomination's property would be rendered illusory." (Tilkayat Sri Govindlalji Maharaj v. The State of Rajasthan and others) (1).

Earlier in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swaimar of Sri Shirur MUtt(2) (to which a reference was made by Gajendragadkar J. in Tilkayat's case(1), Mukherjea, J., as he then was considered the scope of Art. 26(b), the language of which according to him undoubtedly suggests that there can be other affairs of religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. (After pointing out that clauses (c) and (d) of Art. 26 guaranteed to a religious denomination the right to acquire and own property and to administer such property in accordance with law, that administration of its property by a religious denomination had been placed on a different footing from the right to manage its own affairs in matters of religion, and that whereas the latter is a fundamental right which no Legislature can take away, the former can be regulated by laws which the Legislature can validly enact he observed : "It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause

(b) of the article applies." To the, question "what then are matters of religion ?" his answer was "Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. "A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress." The observations of Venkatarama Aiyar, J., in Sri Venkataramana Devaru v. The State of Mysore(3) were to the same effect.

Bearing in mind the scope of clauses (b) and (d) of Art. 26 as, expounded in the decisions of this Court. if, as we have held, the right of management of Rikhabdevji temple is lost as it is vested in (1) [1954] i S.C.R. 561 at p. 621 (2) [1954] S.C.R. 1005.

(3) [1958] S.C.R. 895.

the State, the respondents' cannot complain of any infringement of their fundamental right to manage and administer its affairs, and as such the High Court was-an error in giving the impugned directions. In the view we have taken, the validity of the provisions of the Act which have been

challenged does not fall for consideration in the first 'set of appeals and it has also been so held by the, High Court.

In the second set of a peals it is not denied that Nakedaji Parasnath temple is a Swetamber Jain temple coming within the definition of a public trust under s. 2(11) of the Act. It is the contention of the respondents that the establishment of a trust or a temple is a part of the Jain religion and, therefore, the administration and management of Nakedaji Parasnath temple is also a part of their religion. Whether this is a valid claim or not, and whether the impugned provisions of the Act contravene any of the tenets of the Jain religion has to be ascertained by reference not only to the impugned provisions of the Act but also to the tenets and in junctions of the Jain religion applicable to the Jain endowments. Though many of the provisions of the Act had been challenged as unconstitutional, the main attack before the High Court was confined only to sections 30, 31, 38 to 43, 52. and 53 of the Act on the ground that 'they infringed the, petitioners' rights guaranteed under Arts. 25 and 26 of the Constitution. The contention of the writ petitioners before that Court were that the administration and management of the, religious trusts was a part of the Jain religion and that contributions to the particular funds must be utilised for the purposes for which the funds existed and 'cannot be utilised for other purposes, and that according to the tenets of the Jain religion the funds of the temples or- religious institutions have to be invested and utilised for the maintenance, upkeep and worship of the idols for the purposes of different religious ceremonies, for the propagation of Jain faith and religion etc. and the State has no right to interfere with those tenets which are an integral part of their religion except on grounds of public order, morality or health. The High Court, while holding sections 30, 31, 38 to 43 and clauses (a), (b) and (c) of sub-s. (1) of s. 52 valid, struck down sub-s. (3) of s. 17 and clauses (d) and (e) of sub-s. (1) of s. 52 as invalid. As the, correctness of this conclusion has been challenged, we will examine the scheme and the provisions of the Act to see whether any of them infringe the right of the respondents guaranteed under Art. 26 of the Constitution. Chapters 11, HI, IV and V of the Act deal with public trusts not being void on the ground of uncertainty; the appointment of officers and servants by the Government; establishment and functions of the Board and Committees; registration of public trusts. Of these provisions. as we have mentioned earlier, s. 17(3) for payment of registration fee has been declared by the High Court to be ultra vires as the fee leviable thereunder was in fact a tax which the State Legis- lature has no power to levy. Section 30 and 31 of Chapter VI relate to the investment of public trust moneys and obtaining of previous sanction for certain transfers of trust property. Sections 32 to 36 of Chapter VII deal with accounts, auditing of accounts and budget of public trusts. Sections 37 to 46 of Chapter VIII, of which ss. 38 to 43 were seriously challenged on various grounds, relate to the power of the District Court to remove any trustee or appoint a new trustee; to determine what portion 'of trust property shall be allocated to any particular object of the trust and for providing a scheme of management of the trust property. The District Court was also empowered to direct how the funds of the public trust, the original object of which has failed, shall be spent and issue further directions as it thinks fit. Sections 47 to 5 1 of Chapter IX provide for the general control over public trusts, of which s. 51 particularly deals with the filling of the vacancy in the Board on trustees. The writ petition challenged ss. 48 and 51(2) but during the course of the arguments before the High Court objection to the validity of s. 48 was not seriously pressed. Sections 52 to 65 of Chapter IX were the main subject of controversy of which ss. 52 and 53 were seriously challenged and that challenge found favour with the High Court, which, as we have seen

earlier, struck down s 52(d) and (e) for-being ultra vires as they did not provide for proper safeguards of leaving the administration of the property in the hands of the denomination. Though the validity of ss. 77 and 80 of Chapter XIII was challenged in the petition, it appears this contention was not pressed at the time of the arguments before the High Court., We have already referred to the contention of the petitioners/ respondents while dealing with the first set of appeals which has also been urged in these appeals as to what constitutes the essential part of a religion and the fundamental right which a person has under Article 26 of the Constitution. We have held that what is an essential part of a religion has primarily to be ascertained with reference to the doctrines of that religion. In Ratilal Panachand Gandhi's case (supra) it was observed that : "Every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others". and that "Religious practices or performances of acts in pursuance of religious belief are as "much a part of religion as faith or belief in particular doctrines".

What are those religious practices in the Jain religion which are regarded as essential and integral part of the religion will be a matter which has to be considered by reference, to the tenets of the Jain religion. The petitioners/respondents in this case had filed Schedule-A List of Shashtrapath which deals with Greatness of religion; JainShansana Samstha; Sampati-Dharma-Dravya; Performance of 'Vahivat' or Management of religious property; what type of person a Manager should be etc. We have also a report of the Hindu Religious Endowments Commission (1960-62) in which Chapter IX deals with Jain endowments of which paragraphs 7 to 13 were admitted by the parties before the High Court to be relevant as serving a useful guide for deciding the matters in issue. These paragraphs have been given in that judgment and we do not propose to extract them again in extenso. In paragraph 7 it is. stated that Jain scriptures have made meticulous rules and regulations for the utilization of funds and management of the trusts and have enunciated seven types of funds called "Sat Kshetras" and have also dictated the uses to which each type of fund could be put. These seven funds Were then enumerated. Paragraph- 8 refers to the Jiva-Daya Fund which is apart from the seven Kshetras which can be used for the care and maintenance of birds, animals etc. In paragraph-9 it is stated that the funds donated to one Kshetra cannot be utillsed for another Kshetra. Even in the same Kshetra, funds allocated for a particular purpose can be utilized only for that purpose and for no other. However, if the purpose for which the donation was made becomes extinct or if by reason of circumstances the purpose cannot be carried into effect either in whole or in part of where there is a surplus left after exhausting the purposes of the trust, the funds in a Kshetra, for the lower purposes can be taken to higher ones but not vice-versa. Similarly funds of a lower Kshetra can be transferred to any higher Kshetra but not vice-versa. The application of the doctrine of cypress may thus be allowed to a limited extent. In paragraph-10 it was stated that income not spent in any one year is not necessarily surplus. Such balance, may have been kept from year to year to accumulate to a larger amount so as to be utilized later in a more effective manner on objects for which the funds are intended. Generally the purposes in the Kshetra are perennial in character. They do not fail nor do they become incapable of fulfillment. There is, therefore, no question of exhausting the object for which donations in the Jain religion are made. It is also stated that Jain tenets do not recognize any cognate purpose in the secular since of the word. The purposes looking alike are not cognate. They are different with different characteristics. In paragraph- 11 it

was observed that the guiding principle in the utili- zation of funds of a particular Kshetra is the special religious merit. The person receiving the benefit of the funds is a secondary consideration. Thus, the fund for one place or for a particular group of persons can be used for another place and for other persons anywhere in the world, but for the same identical object. Paragraph-12 states that by and large Jain trusts are public trusts, the beneficial interest being vested in an uncertain and fluctuating body of persons, either the public at large or a considerable section of it answering a particular description. The trusts which come into existence on account of Dravyadan to Kshetras belong to the Jain Sangh. There is no individual ownership. The possession is always of the Sangh through the trustees. In so far as Digamber Jains are concerned, it is stated in paragraph-13 that they do not have Dev Dravya or Gyani Dravya as such. The funds are donated to the Bhandar Fund and money from that Fund can be used for the purpose of that temple or for any institution that is run by that temple or for any good object. The money can also be utilized for teaching the principles of Jain philosophy exclusively or along with secular learning. It is also contended before us that according to the Jain tenets, earning of income from religious property or increasing it is prohibited. but we find that there is no warrant for this submission. What is prohibited is only certain methods for increasing the religious properties. In the Shashtrapath Dravya Sapatali : Tika :8 under the heading "The Method of increasing religious property" and the caption "How to earn interest", it is stated :

> "Generally, the following are some of the Methods of increasing religious property which are strictly prohibited in the scriptures :- "(1) For example giving away of the money out of the religious property on interest, with a view to increasing it to the following people :-
>
> (1) Butcher. (2) Fisherman, (3) Prostitute, (4) Cobbler Giving of money to these people is not proper.
>
> (2) Earning rent out of "Deve Dravya" and building houses etc with a view to increasing it (i.e. Deva Dravya).
>
> (3) Hoarding of foodgrains with the Deva Dravya with an intent to sell it during the time when prices to high thinking that the "Deva Dravya" would thereby increase. (4) Digging of impulium (Bewadi) and building on fields etc. earmarked for the idol.
>
> (5) Charigina of any kind of tax in the name of the idol on the goods even when the excise or custom duty has already been charged by the State's Customs Department. These are vicious Practices and the "Deva Dravya" should be increased after forsaking them."

It is further stated therein that there can be exceptions also. From a perusal of the above text it appears to us clear that there is no prohibition from increasing the Deva Dravya. On the other hand it permits the increase of Deva Dravva though not by the methods specifically enumarated therein Even in respect of these prohibited methods exceptions have been permitted. The State can, therefore, by law relating to the administration of public trusts direct the investment of properties of

the trust in a specified manner and in specific investments so as to protect the corpus from being dissipated or depreciated and to assure a regular income. It was, however, contended in the High Court as well as before us that is the funds belonging to a Jain religious trusts cannot be invested for earning interest with such persons or institutions which may utilise them for causing Hinsa or for other purposes prohibited by the Jain religion, there can be no interference by the State in the exercise OF that right except on the grounds of public order, morality or health. In our view this contention has no validity, What was injuncted was that investments will not be made by the trustees themselves for the Purposes forbidden in the scriptures. From this it cannot be inferred that the Jain religion has forbidden the deposit in banks or any insti- tution mentioned in s 30 of the Act. We, think that such an argument is far fetched.

In a similar case of the Jains, this Court had in Ratilal Panachand Gandhi's case (supra) upheld the validity of the provisions of 'the Bombay Act analogous to those contained in Chapters V, VI, and vII of the Act. The analogous provisions of s. 17(3) of the Act were somewhat different in the Bombay Act and consequently the High Court on a consideration of s. 17(3) held it to be invalid. We shall deal with this aspect later. It was, however, observed in Ratilal panach and Gandhi's case (supra) that the provisions relating to registration undoubtedly have been made with a view to ensure due supervision, of the trust properties and the exercise of proper control over them, and that these are matters relating to administration of trust property as contemplated by Art. 26(d) of the Constitution and cannot, by any stretch of imagination, be held to be an attempt at interference with the rights of religious institutions to manage their own affairs it was further pointed out that the provisions of the Bombay Act also cast a duty on a public trust to keep accounts and to get them audited and to prepare balance-sheet and to report irregularities, if any which certainly were not matters of religion and the objections raised with regard to the validity of those provisions seem to be a`together baseless. Section 35 of the Bombay Act which is similar to s. 30 of the Act was upheld on the ground that "It is a well-established principle of law that trustees in charge of trust properties should not keep cash money in their hands which are not necessary for immediate expenses; and a list of approved securities upon which trust money could be invested is invariably laid down in every legislation on the subject of trust." Section 36 of the Bombay Act which is analogous to s. 31 of the Act was also considered to be salutary. aimed it protecting the property of the trust. Section 38 in Chapter VIll requires that the Assistant Commissioner when be is satisfied that (a) the original object of the public trust has failed, (b) the trust property is not being properly managed or administered; or (c) the direction of the court is necessary for the administration of the public trust; may direct the working trustee or any other trustees or person having interest in the trust to apply to the court for direction. In case these persons fail to do so. he may himself make an application to the court. When there is a refusal by the Assistant Commissioner to apply, an application can be made under s. 39 to the Commissioner. Section 40 empowers the Court on an application made either under s. 39 or s. 39 to pass such order thereon as it may consider proper. Sections 41 to 43 also make similar provisions which are applicable when the working trustee disclaims or dies, is absent for six months, is declared insolvent, desires to be discharged from the trust, or refuses to act as a trustee or is not available to administer the trust. under s. 43 it is the Court which after making such inquiry as it thinks fit, appoints a new working trustee having regard to the facts enumerated therein. These provisions appear unexceptionable and do not in any way conflict with any of the tenets of the Jain religion. The Assistant Commissioner or the Commissioner has not been given any

power to pass orders by themselves, except in the matter of presentation of an application to the Court, so as to invite a charge of arbitrariness or capriciousness. It is the Court which has been empowered to pass such orders as it considers fit according to the circumstances of the case, which it can only do after hearing the parties and their objections, if any, urged before it. The Court should be expected to have regard for the rights of the parties and if any of their fundamental rights is infringed, they have remedies both under the law by an appeal or under the Constitution. The High Court, as we have already noticed, struck down S. 52, (1) (d) & (e) as the provisions of s. 53 did not lay down proper safeguards for leaving the administration of the properties in the hands of a denomination. What we have now to consider is whether this decision is justified. It is, therefore, necessary to examine the relevant provisions of ss. 52 and 53 of Chapter X of the Act which are as under :

"52. (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 or vary such list."

"53. (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 anything 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) x x x
(3) x x x

(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."

It may be observed from the above provisions that S. 52(1)

(d) which has also been struck down by the High Court has no application in this case, because it deals with a public trust which is under the superintendence of the Court of Wards. This part of the judgment is, therefore, clearly wrong. We will now have to only consider the validity of s. 52(1)(e) which concerns a public trust of which the gross annual income is Rs. 10,000/ or more.

It is alleged that Nakodaji Parasnath temple is a public trust of which the gross annual income exceeds Rs. 10,000/ and is, therefore, governed by clause (e) of sub-s. (1) of s. 52 of the Act. Whether this is so or not cannot be determined by us merely on the allegations in the petition. It is for the State Government, if it intends to apply the provisions of Chapter X of the Act to the said temple, to include it in the list of public trusts published under sub- s. (2) of s. 52 in the official Gazette. Section 53 postulates the application of Chapter X before the management of the temple can be said to vest in a Committee of management to be constituted by the State Government in the manner provided in that section. Until a notification is published under sub-s. (2) of s. 52 the respondents cannot claim that their rights are affected. The learned Advocate for the respondents. however, submits that when it is apprehended that the Act may be made applicable to the Nakodaji Parasnath temple, the, denomination or persons interested in that temple could challenge the vires of the Act or of any of its provisions. Even assuming that the provisions of Chapter X are made applicable to the temple or to other similar religious trusts, though these have not yet been made applicable, the question will be whether the provisions of sub-s. (5) of s. 53 empower the Government to take away from a religious denomination the management of that public religious trust not already vested in it, as specified in clauses (a) to (d) of sub-s. (1) of s. 52, and vest it in a Committee to be constituted under that sub- section and whether such vesting would contravene the fundamental rights guaranteed under clauses (b) and (d) of Art. 26.

We have already referred to the decisions of this Court which deal with matters to which clauses (b) and (d) of Art. 26 apply. It was pointed out in those cases that under clause (d) of Art. 26 a religious denomination has undoubtedly a right to administer its properties but only in accordance with law. While the State has power to regulate the administration of trust properties, it cannot by law take away the right to administer those properties altogether and to vest it in any other authority which does not comprise that denomination. To do so would be a violation of the right guaranteed under that clause. We have also noticed that the administration of the property of the denomination is

obviously outside the scope of clause

(b) because that clause only relates to affairs in matters of religion such as the performance of the religious rites or ceremonies or the observance of religious festivals and the like and does not at all refer to the administration of the property which is dealt with in clause (d) of Art. 26. What we have to decide is whether the provisions of sub-s. (1) read with sub-ss. (4) and (5) of s. 53 authorise the vesting of the administration of a public religious trust in a Committee of management which does not represent the religious denomination and which is entitled to manage and administer that religious trust. The Committee of management that the State Government is empowered to constitute under sub-s. (5) of s. 53 has to be from amongst the two categories specified therein in accordance with the general wishes of the persons so interested so far as such wishes can be ascertained in the prescribed manner. The State Government has prescribed the manner of ascertaining the wishes of the persons interested in the endowment in r. 36 of the Rajasthan Public Trust Rules, 1962. This rule provides that for the purpose of ascertaining the wishes of the persons interested under sub-s. (5) of s. 53, 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. The Assistant Commissioner, shall forward the suggestions so received along with his comments, to the State Government through the Commissioner. The State Government may thereafter vest the management of a public religious trust under sub-s. (1) of s. 53 in a Committee so appointed under sub-s. (5) of that section. We are not relying on this rule for testing the constitutionality of s. 53(5).

It is contended on behalf of the State of Rajasthan that clauses (a) and (b) of sub-s. (5) of s. 53 may be read reasonably in such a way as to presume their validity, for as these provisions are applicable to trusts of different hues, the Government will be expected to call for suggestions from those denominations who may represent the religion to which the public trust belongs from persons interested in a public trust or endowment belonging to the denomination, and only after considering their wishes that the Chairman and the members of the Committee would be appointed. It is apparent that s. 53 makes it obligatory to appoint the Chairman and members of the Committee 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 be longing to the denomination for the purpose of which or for the benefit of whom the trust was founded. These provisions enable the Government to appoint two sets of persons as Chairman and members of the Committee, namely, one set representing trustees of public trusts of the concerned religion or persuasion and having the same object, the second set is of persons interested in such public trusts or in the endowments thereof, persons belonging to the denomination for the purpose of which and for the benefit of whom the trust was founded. The High Court thought that if the State Government appoints persons of the first category or second category they may not necessarily be of the same denomination which manages the trust. According to it is only the persons in the second category who may be of the same denomination. It was observed that since Art. 26 contemplates not only a denomination but a section of the denomination., the trustees of a public trust representing the same religion may not necessarily be members of that section of the denomination managing the property even if such public trust has the same object as that of the public trust the management of which is being transferred to the Committee of management.

In our view, the hypothesis on which the High Court has based its conclusions is not. warranted by the provisions of sub-s. (5) of S. 53 of the Act. In the first category, apart from the Committee being, constituted from amongst the trustees of public trusts representing the same religion, the Committee can also be constituted from amongst the trustees of the same persuasion. The significance of the word 'persuasion' and what it connotes does not seem to have been considered by the High Court. The word 'persuasion' is a synonym of faith, creed, denomination, religion etc. Webster's Third New International Dictionary Vol. II, p. 1688, gives the meaning of "persuasion" among others (a) as "a system of religious or. other beliefs (the several Protestants. s. (b) a group, faction, sect, or party that adheres to a particular system of beliefs or ideas or pro- motes a particular view, theory, or cause". The same dictionary in Vol. I gives the meaning of "denomination" at p. 602 as "a religious group of a community of believers called by the same name". In other words, in the first category also a Committee can be appointed from persons of the denomination to which the trust belongs as in the second category with this difference that in the first category if the State Government chooses, it can appoint it from the trustees. representing that denomination or persuasion while in the third category from amongst the persons who belong to the said denomination who may not be trustees as such. It is significant to note that 'persons interested' falling in the second category have been defined by sub-s. (19) of s. 2 as including for the purposes of temples and maths in clause

(a) and (b) namely; (a) in the case of a temple, a person who is entitled to attend or is in the habit of attending the performance of worship or service in the temple or who is entitled to partaking or is in the habit of partaking in the distribution of gifts thereof, (b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs". Even where the persons interested satisfy the above requirements the additional requirement of clause (b) of sub-s.(5) of s. 53 is that such persons must be also persons for whose benefit the trust was founded. A reading of clause (a) of sub-s. (5) clearly indicates that the trustees must represent the concerned religion or persuasion, which includes a denomination. It could not have been the intention to appoint a Committee of management comprising trustees of a public trust of a particular religion or persuasion who do not belong to that religion or persuasion or denomination. Nor does clause (b) of sub-s. (5) of s. 53 empower persons who do not belong to a denomination to be appointed to a public trust of that denomination. Again the word "denomination" is wide enough to include sections thereof, and it cannot therefore be said, as the High Court seems to assume, that a section of the denomination managing the property may not be the same as trustees of public trusts representing the, same religion, even if the public trust has the same object as that of the public trust the manage- ment of which is being transferred to the Committee. If s. 5 3 (5) (a) is read in the manner suggested by us, as it should be, the difficulties pointed out by the High Court would not arise at all.

It appears to us, therefore, that merely because the provisions of sub-s. (5) of s. 53 enable the Government to appoint a Committee from the two categories specified in that clause, it does not mean that the Government will appoint or can appoint persons who are not constitutionally entitled to be appointed to that particular trust. If the temple is a Swetamber temple, merely because the Digambars, like Swetambers, are also Jains, it does not empower the Government to appoint them as a Chairman and members of the Committee of management. The very fact that the, Legislature has provided for the ascertainment of the general wishes of the persons interested is a positive

direction to the State Government to take those wishes into consideration in the manner to be prescribed by the Rules framed under the Act. This provision furnishes, in our view, a safeguard against the appointment of the Chairman and the members of the Committee to manage the trusts, who do not subscribe or adhere to the tenets of a particular religion or denomination to which the trust belongs. No such appointment can be made which contravenes the fundamental rights guaranteed under Arts. 25 and 26 of the Constitution, and if any such appointment is made, those who have a right to challenge it can do so and have the appointment struck down. In this view clause (e) of sub-s. (.1) of s. 52 read with sub-s. (5) of s. 53 as interpreted by us cannot be held to be invalid.

Lastly we will consider the validity of sub-s. (3) of s. 17 which provides that an application to be presented under sub-s. (1) of that section "shall be accompanied by such fee, if any, not exceeding five rupees. and to be utilised for such purposes. as may be prescribed" Rule 18 of the Rules specifies the rates of fee payable on different values of the trust property enumerated therein. and further provides that the fee shall be credited to the Consolidated Fund of the State. The High Court seems to have accepted the contention of the learned Advocate for the petitioners that for the levy to be a fee, there must at least be a provision that the amount so collected should not be paid into the Consolidated Fund of the State or should state that it should be utilization separately for the upkeep of the machinery for registration and since the Act does not specify for what purpose the fee would be, utilised and has left it to the, State Government to denote the purposes in the Rules sub-s. (3) of S. 17 does not levy a fee but a tax, which the State Legislature has not the power under List if of Schedule VII to. the Constitution to levy.

Under the Constitution a distinction has been made between a tax and a fee and in each of the legislative lists power has been given for levy of various forms of taxes. There is an entry in each of the three lists as regards fees which could be levied in respect of any of the matters dealt with in the list. As was observed by Latham, C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board(1): "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". These observations were approved by this Court in Sri Lakshmindra Thirtha Swamiar of Sri Shirar Mutt's case, (supra) where Mukherjea, J., as he then was, said that the essence of taxation is compulsion and imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. that is to say, that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. A fee on the other hand is payment for a special benefit or privilege which the individual receives. It is regarded as a sort of a return or consideration for services rendered and should on the face of the legislative provision be co-related to the expenses in curved by Government in rendering the services. In that case s. 76 (1) of the Madras Hindu Religious and Charitable Endowmen's Act, 1951 (Madras Act XIX of 1951) which related to the payment of annual contribution stated that it was for the purpose of properly administering the religious trusts and institutions wherever they existed. In determining whether that levy was a tax or a fee one of the material facts taken into consideration to negative the theory that it was a fee was that the money raised by levy of the contribution was not earmarked or specified for defraying the expenses that the Government bad to incur in performing the services. All the collections went to the Consolidated Fund of the State and all the expenses bad to be met not out of those collections but out of the general revenues by a proper method of appropriation as was done in case of other Government

expenses. Though this was so it was nonetheless observed at p. 1044 : "That in itself might not be conclusive". But as there was total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of s. 76. it was observed that the theory of a return or counter-payment or quid pro quo could not have any possible application to that case. Thus case was considered in The Secretary, Government of Madras, Home Department & Another v. Zenith Lamp & Electrical Ltd. (2) by 60 C.L.R. 263, 276. (2) C.A. No. 293 of 1967 decided on November. 11, 1972.

the, Constitution Bench of this Court, of which one of us (Dwivedi, J.) was a party. Sikri, C.J., referring to the observations of Mukherjea, J., in Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt's case (supra) that the fact collections went to the Consolidated Fund was not in itself conclusive thought that not much stress can be laid on this point, because Art. 266 of the Constitution requires that all revenues raised by the State shall form part of the Consolidated Fund. He considered the observations of the Privy Council in Attorney-General for British Columbia v. Esquimalt and Nanimo Railway Company Others(1) and distinguished it, because the Privy Council did not have to deal with fees and taxes but interpreted the word "taxation" in s. 22 of the Act therein considered, to mean a compulsory levy by the State. Whether it was fee or tax did not matter. The only question was whether it was compulsory levy, In the Zenith Lamp & Electrical Ltd's case (supra) it was found that there was not enough material to determine whether the fees taken in Courts under Entry No. 3 of list II of Schedule VII to the Constitution were taxes or fees namely, whether the State was making a profit out of the administration of civil justice or whether the amounts so collected from those fees were spent on the administration of civil justice. In that view the case was remanded to the High Court to decide whether the impugned fees were court fees or taxes on litigants or litigation.

The case of the State, in this case is that the fee is a sort of contribution levied on public trusts towards meeting the expenses incurred by the State Government in rendering services to the public trusts through the agency of the Devasthan Department and that according to the budget provision for the year 1964-65 the expenditure on the Devasthan Department was Rs. 2,76,715/- as against the income of only Rs. 3,000/- for the same year from the registration fee. This averment in the reply of the Commissioner, Devasthan Department, was not controverted by the petitioners either by a reply thereto or by any other material produced by them. In these circumstances, the mere fact that the amount was paid under r. 18 into the Consolidated Fund is by itself not sufficient to hold that the levy under s. 17(3) of the Act is tax. As the income by way of fees is far below the expenditure incurred on the Devasthan Department, the levy would be a fee. In this view, s. 17(3) cannot be held to be invalid and ultra vires the powers of State Legislature. We express no opinion on the question whether s. 17(3) can be declared to be invalid on account of Rule 18 requiring the fee to be deposited in the State Consolidated Fund, In Civil Appeal No. 1647 of 1967 the Act has been challenged on the grounds similar to these in the other appeals and no separate arguments were addressed, except those advanced by the respondents' Advocate in the other appeals. This appeal also will be decided accordingly The question whether the two temples which the State contended were public trusts and the petitioner averred were his private property was not agitated before the High Court, as the petitioner was then content to have the matter disposed of. in accordance with the (1) I.L.R. 43 Bom. 507 decision in the Writ Petition which is the subject matter of the second set of appeals. It was

open to him to have invited the High Court to give a finding on the question whether the two temples were his private property but since he has not done so the question cannot be gone into this appeal. The appropriate authority under the Act will however decide this question before applying the Act to these temples.

In the result the appeals of the State are allowed. The direction given in the Writ Petition No. 50 of 1962, out of which Appeal No. 1083 of 1967 arises, that Rikhabdevji is a Swetamber temple and that the State of Rajasthan should constitute a Committee for its management as provided under the Act is set aside. In this appeal as also in appeals Nos. 1119 and 1647 of 1967, the decision of the High Court that s. 17(3) and s. 52(1) (d) and (e) are void and unconstitutional is also set aside. Appeals Nos. 1092 and 1087 of 1967 filed by the respective respondents are dismissed. In the circumstances, each party will bear its own costs.

P.B.R.

Appeals No. 1092 and 1087 of 1967 dismissed. Appeals Nos. 1119 and 1647 of 1967 allowed.

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