HEIR OF DECEASED MAHARAJ PURSHOTTAMLALJI MAHARAJ, JUNAGAD

v.

COLLECTOR OF JUNAGAD DISTRICT & OTHERS

SEPTEMBER 9, 1986

[R.S. PATHAK AND RANGANATH MISRA, JJ.]

Hindu Law of Religious Endowments:

Bombay Public Trusts Act, 1950: ss. 2(13), 2(17) and 18—Haveli of Pushti Margi cult—A temple—Whether public trust—Tests to be applied.

Guruseva, Pradeshseva and Charanseva bhets—Offerings made at the feet of Guru—Distinct from those made before deity or put in Golak—Whether constitute personal income of Guru—Doctrine of Brahma Sambadha.

Shrimad Vallabhacharyaji was the founder of Pushti Margi Sampradaya. Goswami Madhavraiji was a direct lineal descendant of the founder. He came over to Junagad in Saurashtra from Amreli district of Gujarat in the year 1776 with his own deity on the invitation of the Muslim Nawab. Impressed by his attainments the Nawab made grants of property both for residence as also cultivation. On the property gifted for residential purpose Madhavraiji raised a Haveli. It housed the deity in the ground floor and in the first floor thereof Goswami Madhavraiji and after him his descendants and members of their families have been living generation after generation.

The Bombay Public Trusts Act, 1950 was extended to Saurashtra area of Gujarat State in the year 1961. The appellant, the widow of Maharajshree Purshottamlalji, a lineal descendant of the founder, who had been in charge of the management of the Haveli and its assets, both moveable and immoveable, ever since the demise of her husband in 1955, made an application to the Assistant Charity Commissioner under s. 18 of the Act in October, 1961 contending that the Haveli and its properties did not constitute a public trust. The Assistant Charity Commissioner and the Charity Commissioner found that the institution was

A a public trust and that all the forty items of property belonged to the trust.

In appeal by the appellant, the High Court held that (i) the Haveli Mandir was a public trust within the meaning of s. 2(13) read with s. 2(17) of the Act; (ii) the moveable and immoveable properties which were thirty eight in number belonged to the trust; (iii) the appellant was the trustee of the temple and its properties, and the succession to the trusteeship was by inheritance without the sanction of the State, and (iv) Guruseva and Charanseva Bhets offered by the devotees of Vallabha cult formed part of the public trust, on the view that once Brahma-Sambadha is established, the Guru as also every devotee in the cult loses his individuality and his very existence (apart from the physical) merges with the Lord.

In the appeal to this Court intervention by devotees was permitted mainly on the ground that the High Court had dealt with and relied upon religious custom and practice of the Pushti Margi cult and the treatment given by the High Court was wrong. It was contended for the appellants that the bhets to the Guru were offerings to him as distinct from offerings to the deity and in consideration of the feature that the Vallabha Sampradayin Guru enjoyed a special position, these offerings must be held to be his and not that of the deity.

Allowing the appeal in part and dismissing the connected appeal, the Court,

HELD: 1. Pushti Margi Vaishnavas following the Vallabha Cult are Hindus and the Hindu Law of religious endowments is applicable to their havelies. It was, therefore, not necessary in the instant case, to scan their religious philosophy to decide the issue. [711E]

2. The High Court was right in holding that the Haveli and the listed thirty-eight items of property constituted a public trust under the Bombay Public Trusts Act, 1950 and that succession to trusteeship was by inheritance without sanction of the State. In reaching that conclusion the Court has scrutinised the evidence, both documentary and oral, keeping the proper perspective in view, appropriately utilised the five way test formulated by this Court and the other features relevant in determining the character of a Hindu temple, and taken note of the position that Goswami Maharaj enjoyed among the devotees as their spiritual leader. In a dispute of this type, a single or a few features

would not provide the conclusive basis for the decision to be arrived at. The entire material has to be scanned and the ultimate decision has to rest on the sum total view. [715A-B; 714F-G]

Tilkayat Shri Govindlalji Maharaj v. *The State of Rajasthan and others,* [1964] 1 SCR 561; *Goswami Shri Mahalaxmi Vahuji* v. *Rannchhoddas Kalidas and Ors.,* [1970] 2 SCR 275; and *Tagore Law Lectures on Hindu Law of Religious and Charitable Trusts by Dr. B.K. Mukherjea,* refereed to.

3.1 The proceeds of the Guruseva and Pradeshseva do not constitute part of the public trust. [716G]

3.2 Vallabha and his descendants enjoyed a special position in the community of devotees. They have been leading collective and congregational prayers within the Haveli and acting as the religious preceptor of the devotees. It is customary for a devotee to make offerings at the feet of the Maharaj when he meets him in the Haveli or during his visits to areas coming within the territorial limits of the Haveli. [715D-E]

3.3 There is a distinction between an offering made before the deity or put into the Golak and that put at the feet of the Guru. In the earlier case, it is clearly a gift to the deity while in the latter, in the absence of anything more, it would be one to the Guru, for what is laid at the feet of the Guru is intended to be an offering to him and not to the deity. [716E]

3.4 The doctrine of Brahma-Sambadha is not applicable to the instant case, for nothing has been shown from the record to justify the conclusion that the Guru is only a conduit pipe between the devotee at one end and the Lord on the other so as to lead to an inference that whatever is offered at the feet of the Guru belongs to the Lord. The preceptor has his position and if he is not a conduit pipe in the sense stated, what is laid at his feet out of reverance by the devotee must belong to him. In view thereof the finding of the High Court on this issue cannot, therefore, be sustained. [716B-C]

Commissioner, Hindu Religious Endowments, Madras v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* [1954] SCR 1005, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3168 & 3167 of 1986

From the Judgment and Order dated 21.9.1984 of the Gujarat High Court in First Appeal no. 163 of 1974 and Civil Application No. 9 of 1982

B.K. Mehta, A.B. Maniar and Ms. Indu Sharma for the Appellant in C.A. No. 3168 of 1986.

P.H. Parekh and P.K. Manohar for the Appellant in C.A. No. 3167 of 1986.

S.H. Seth, T.U. Mehta, Vimal Dave, C.D. Kakkad, Ajay, Rajeshwar Rao and M.N. Shroff for the Respondents.

T.S. Krishnamoorthy Iyer and Mukul Mudgal for the Intervener in C.A. No. 3168 of 1986.

Anil K. Nauriya and K.L. Hathi for the Intervener in C.A. No. 3167 of 1986.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These two appeals by special leave assail the judgment of the Gujarat High Court substantially affirming the appellate decision of the Charity Commissioner that the Pushti Margiya Moti Havali at Junagad and thirty-eight items of its properties constitute a public trust under the Bombay Public Trusts Act, 1950.

The appellant is the widow of Maharajshri Purshottamlalji who admittedly was a lineal descendant of Shrimad Vallabhacharyaji, the founder of the Pushti Margi Sampradaya. Purshottamlalji passed away in 1955 and, after him, the appellant has been in charge of the management of the Haveli and its assets both moveable and immoveable. The Bombay Public Trusts Act, 1950, (hereinafter referred to as 'the Act') was extended to Saurashtra area of the Gujarat State in the year 1961. In October 1961, the appellant made an application to the Assistant Charity Commissioner at Rajkot under section 18 of the Act contending that the Haveli and its properties did not constitute a public trust. An inquiry followed to determine the character of the institution and the Assistant Charity Commissioner and the Charity Commissioner found that the institution was a public trust and all the forty items of property belonged to that trust. The High Court on appeal by the appellant has, however, recorded the following findings:

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(i) Whether the Haveli Mandir of Madan Mohanlalji situated at Junagad is a public charitable trust within the meaning of section 2(13) read with section 2(17) of the Act?

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(ii) Whether the moveable and immoveable properties described in appendices A and B in the judgment of the Charity Commissioner belong to the said public trust?

(iii) What is the mode of succession to trusteeship of the trust?

C

(iv) What are the sources of income of the said trust?

The High Court went into the matter at great length, settled the tests to be applied for determining the character of the institution by carefully referring to several decisions of the Judicial Committee of the Privy Council, different High Courts and this Court; examined the documentary as also the oral evidence analytically and relied upon the following features for coming to the conclusion that the Haveli and the thirty-eight properties constituted a public trust:

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(1) Grants of property by the State of Junagad for construction of Haveli and its upkeep; gifts of immoveable properties from time to time by devotees.

(2) Donations for repairs, renovation and expansion from the devotees of the Sampradaya;

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(3) Tablets placed on the walls of the Haveli showing particulars of substantial donations;

(4) Right of darshan enjoyed by devotees at large;

(5) Holding of religious festivities and performances on grand scale;

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(6) Placing of Golaks (hundies) in different parts of the haveli for collection of offerings from devotees visiting the temple;

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(7) Service rendered by the devotees for maintenance and upkeep of the haveli;

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(8) Treatment meted by the State over the years towards the temple;

(9) The get-up of the Haveli; and

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(10) The contents of the application for registration of the haveli (Exh. 36) and the stand of the appellant with reference to the same.

While dealing with these features, the High Court considered certain other aspects—some connected with the above and others not—and in an elaborate and well-considered judgment came to the conclusions which have already been indicated.

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In this Court intervention by devotees was asked for mainly on the ground that the High Court had dealt with and relied upon religious customs and practices of the Pushti Margi Cult and the treatment given by the High Court was wrong. This Court permitted intervention confined to written submissions. Eleven thousand and twelve affidavits came to be filled by the devotees of the cult and at the hearing, one of them on his persistent request, was heard for some time. A plea was made that the questions in dispute could be disposed of without going at length into the religious philosophy of the Cult. Admittedly Pushti Margi Vaishnavas following the Vallabha Cult are Hindus and the Hindu law of religious endowments is applicable to their havelis. It is, therefore, unnecessary to scan their religious philosophy at length to decide the present dispute.

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This Court had occasion twice to deal with disputes relating to the nature of temples of this cult and it is appropriate that we refer to them at this stage. A five Judge Bench in *Tilkayat Shri Govindlalji Maharaj* v. *The State of Rajasthan and others,* [1964] 1 SCR 561 was called upon to adjudicate the character of the famous Nathdwara Temple. It had been canvassed on behalf of the Tilkayat that it was against the tenets of the Vallabha School to worship in public temples. This Court held:

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"Therefore, we are satisfied that neither the terms nor the religious practices of the Vallabha School necessarily postulates that the followers of the School must worship in a private temple, some temples of this cult may have been private in the past and some of them may be private even

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today. Whether or not a particular temple is a public temple must necessarily be considered in the light of the relevant facts relating to it. There can be no general rule that a public temple is prohibited in Vallabha School."

This conclusion appeals to us and we are also bound to accept the same as a correct proposition. In *Goswami Shri Mahalaxmi Vahuji* v. *Rannchhoddas Kalidas and Ors.*, [1970] 2 SCR 275 where the dispute related to the character of the Haveli at Nadiad, a three Judge Bench followed the conclusion in *Tilkayat's* case (supra) that there was no restriction on worship in public temples in the Vallabha tenets. It was further stated:

> "Yet another contention taken on behalf of the appellant is that the architecture of the building in which Gokulnathji is housed and the nature of that building is such as to show that it is not a public temple. It was urged that that building does not possess any of the characteristics of a Hindu temple. It has not even a dome. This contention again has lost much of its force in view of the decision of this Court referred to earlier (Tilakayat's case). Evidence establishes that Vallabha's son and his immediate successor Vithaleswar had laid down a plan for the construction of temples by the Vallabha Sampradayes. He did not approve the idea of constructing rich and costly buildings for temples. Evidently he realized that religious temple buildings were not safe under the Mohamedan rule. For this reason he advised his followers to construct temples of extremely simple type. The external view of those temples gave the appearance of dwelling houses. It appears to be a common feature of the temples belonging to the Vallabha Sampradayes that the ground floor is used as the place of worship and the first floor is used as the residence of Goswami Maharaj....."

The Haveli at Nadiad was held to be a public trust notwithstanding its appearance of a residential house and the fact that in the upper floor, the Goswami Maharaj had his living abode. In *Mahalaxmi*'s case (supra) this Court again said:

> "If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have

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originated as a private temple or its origin is unknown or lost in antiquity, then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In these cases the Courts have to address themselves to various questions such as:

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(i) Is the temple built in such imposing manner that it may *prima facie* appear to be a public temple?

(ii) Are the members of the public entitled to worship in that temple as of right?

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(iii) Are the temple expenses met from the contributions made by the public?

(iv) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?

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(v) Have the management as well as the devotees been treating that temple as a public temple?"

The High Court has found in this case that the Haveli was a public temple from the inception. It took into account the fact that the haveli was built upon the land donated by the Ruler of Junagad and for its upkeep sumptuous provisions had been made by the State. The material on record justifies the inference drawn by the High Court that when Goswami Madhavraiji came to Junagad in response to the invitation carrying his deity with him, he obviously did not come with the mental frame of raising a haveli. That became possible on account of the gifts made by the Ruler. Therefore, it would be quite appropriate to affirm the finding of the High Court that the haveli was built out of the grants made by the Nawab and gifts and offerings made by the devotees around that time.

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Mr. Mehta, learned counsel for the appellants seriously challenged the finding of the High Court that the haveli and its properties constituted a public trust. We have given a close look to the judgment and are of the view that the High Court scrutinised the evidence—both documentary and oral—keeping the proper perspective in view. The five way test formulated by this Court in Mahalaxmi's case (supra) and the other relevant features referred to by Dr. B.K. Mukherjea in the

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Tagore Law Lectures on Hindu Law of Religious and Charitable Trusts for use as tests in determining the character of a Hindu temple have been appropriately utilised by the High Court while assessing the evidence. The large contributions by the devotees evidenced by tablets placed on the walls of the haveli, contributions by members of the public for its repairs and expansion, the clear evidence regarding the manner and scale in which festivities are celebrated at the haveli, public grants of property made for the upkeep of the institution, interference with the management of the haveli by the State when a minor succeeded to trusteeship, the fact that the members of the public had darshan freely and without let or hindrance from the appellant and her predecessors (the two instances of obstruction having rightly been rejected by the High Court), placing of golaks or hundies at different places within the haveli for collection of contributions from the devotees, that the State had either remitted the rent or adopted a quit rent basis for the lands granted to the haveli, the fact that the Junagad State levied and collected a cess for the maintenance of the haveli, the other havelis or temples of the Sampradaya under the control of the disputed haveli had been accepted as public trusts and were registered as such and the like were justifiedly utilised by the High Court as features and materials for holding that the haveli was a public trust. The High Court did take into account certain other features from which support was sought by the appellant for her stand that the haveli was a private trust and did not come within the ambit of the Act. These are the features like some of the grants being personal, the Barkhali Abolition compensation not having been settled on annuity basis, the upper portion of the haveli being used as private residence of the Goswamiji, the mode of accounting, the income being shown as personal in the returns under the Income-tax Act and the like. We find that the High Court has also appropriately taken note of the position that Goswami Maharaj enjoyed among the devotees as their spiritual leader and upon an assessment of the total evidence, it has reached its conclusions. In a dispute of this type, a single or a few features would not provide the conclusive basis for the decision to be arrived at. On the other hand, the entire material has to be scanned and the ultimate conclusion has to rest on the sum total view. That is exactly what the High Court has done.

The tests to be applied for deciding whether a temple is public or private have been laid down in a catena of cases by this Court and reference to them was made by learned counsel for the parties in course of the hearing. Since we are recording a judgment of affirmance

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and the tests are well-known, we do not propose to advert to them now. In agreement with the High Court we hold that the Haveli and the listed thirty-eight items of property constitute a public trust under the Act and we also affirm the finding that succession to trusteeship is by inheritance without sanction of the State.

B

We have now to examine the correctness of the conclusion reached by the High Court regarding the character of the *guruseva bhet* and *charanseva bhet*. The High Court has found that these also are a part of the source of income and according to it, these constitute an important source of income of the trust. It is the accepted situation that Vallabha and his descendants enjoyed a special position in the community of the devotees. In *Tilkayat*'s case, (supra) this Court pointed out:

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> "It is significant that this denomination does not recognise the existence of Sadhus or Swamis other than the descendants of Vallabha ....".

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It is the practice of Goswami Maharaj to lead collective and congregational prayers within the haveli and act as the religious preceptor of the devotees. It is customary for the devotee to make offerings at the feet of the Guru when he meets the Maharaj. Such offerings are known as *charan seva* or offerings at the feet of the Guru. It is also the accepted position that the Guru moves about among the devotees living in different areas coming within the territorial limits of the haveli. It is equally customary for devotees who meet the Guru while he is on the move outside the headquarters to make similar offerings and these are known as *Pradesh Seva*. The High Court has towards the end of its judgment adverted to these gifts and said:

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> "In addition thereto, Gurubhet and Charanseva bhets given to the concerned Maharaj also formed substantial portion of the temple income. As the evidence shows more than 70% of the temple income springs from the source of pradesh seva and guruseva bhet. We fully concur with the finding of the Charity Commissioner in this aspect."

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This finding of the High Court has been seriously assailed by appellant's learned counsel. Support has been sought from the observations of the Constitution Bench judgment of this Court in the *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* [1954] SCR 1005 to contend that

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A the bhets to the Guru are offerings to him as distinct from offerings to the deity and in consideration of the feature that the Vallabha Sampradayin Guru enjoys a special position, these offerings must be held to be his and not of the deity. The High Court has taken the view that once *Bramha-Sambadha* is established, the Guru as also every devotee in the cult loses his individuality and his very existence (apart B from the physical) merges with the Lord. This has been an overstretching of the doctrine. Though we do not intend to enter into the religious rites and practices of the cult, nothing has been shown from the record to justify the conclusion that the Guru is only a conduit pipe between the devotee at one end and the Lord on the other so as to lead to the conclusion that whatever is offered at the feet of the Guru C belongs to the Lord.

In *Shirur Mutt* case (supra), this Court was considering the vires of the provision in section 30 of the Madras Hindu Religious and Charitable Endowment Act, 1951, which required the personal gifts (Pada Kanikkais) to be duly accounted for and to be spent for the D purpose of the Mutt. The gifts were taken for granted to be personal and examination was not undertaken to ascertain whether such gifts laid at the feet of the Guru were personal or otherwise. Yet inferentially support is available for the view that what is laid at the feet of the Guru is intended to be an offering to him and not to the deity. There is a distinction between an offering made before the deity or put into the E Golak and put at the feet of the Guru. In the earlier case, it is clearly a gift to the deity while in the latter, in the absence of anything more, it would be one to the Guru. The High Court, by accepting the doctrine of *Bramha Sambadha* reached the conclusion that such gifts were also to the deity. Though the character of *pada Kannikaris* was not in issue before this Court in *Shirur Mutt* case, the fact that the Court pro- F ceeded on the footing that such gifts were personal is a feature which cannot be overlooked. The preceptor has his position and if he is not a conduit pipe in the sense stated above, what is laid at his feet out of reverence by the devotee must belong to him. We are not in a position to uphold the finding of the High Court on this score and would conclude that the proceeds of the *Guruseva* and *Pradesh Seva* do not consti- G tute part of the public trust. The High Court has said that these two sources contribute seventy per cent of the income of the trust. No argument was raised on this aspect by either side. We, however, hope and trust that the Goswami Maharaj or in his absence, his lawful heir succeeding him, will continue in his discretion to allow the trust of which he is the administrator to draw upon this source as and when H necessary.

The appeal is partly allowed. Parties are directed to bear their respective costs throughout.

Ajanta Estate Agency, the appellants in the connected appeal entered into an agreement with the trustee to purchase certain properties during the pendency of the litigation arising out of the enquiry under the Act. Once the properties are held to belong to the public trust, the appellants would have no claim to enforce and the appeal has to fail. We dismiss the appeal without any direction for costs in this Court.

P.S.S. Appeal dismissed.