to—an order for possession of the premises in question. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

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Krishanlal Ishwarlal Desai
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Bai Vijkor

Gujendragadkar J.

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January, 21.

TILKAYAT SHRI GOVINDLALJI MAHARAJ

v.

THE STATE OF RAJASTHAN AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Nathdwara Temple—Private or public temple—Tests—Validity of enactment providing for proper administration of temple—Constitutionality—Nathdwara Temple Act, 1959 (Rajasthan 13 of 1959) ss. 2 (viii), 3, 4, 5, 7, 10, 11, 16, 21, 22, 27, 28, 30, 35, 36, 37—Constitution of India, Arts. 14, 19 (1) (f), 25, 26, 31 (2).

The history of the Nathdwara Temple in the District of Udaipur showed that Vallabha, who was the founder of the denomination known as Pushtimargiya Vaishnava Sampradaya, installed the idol of Srinathji in a temple and that later on his descendants built the Nathdwara Temple in 1761. The religious reputation of the temple grew in importance and several grants were made and thousands of devotees visiting the temple made offerings to the temple. The succession to the Gaddi of the Tilkayat received recognition from the Rulers of Mewar, but on several occasions the Rulers interfered whenever it was found that the affairs of the temple were not managed properly. In 1934 a Firman was issued by the Udaipur Darbar, by which, inter alia, it was declared that according to the law of Udaipur all the property dedicated or presented to or otherwise coming to the Deity Shrinathji was property of the shrine, that the Tilkayat Maharaj for the time being was merely a custodian, Manager and Trustee of the said property and that the Udaipur Darbar had absolute right to supervise that the

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property dedicated to the shrine was used for the legitimate purposes of the shrine. The management of the affairs by the appellant Tilkayat was not successful and it became necessary that a scheme should be framed for the management of the Temple. On February 6, 1959, the Governor of Rajasthan promulgated an Ordinance, which was in due course replaced by the Nathdwara Temple Act, 1959. The appellant challenged the validity of the Act on the grounds, inter alia, that the idol of Shrinathji in the Nathdwara Temple and all the property pertaining to it were his private properties and, as such, the State Legislature was not competent to pass the Act, that even if the Nathdwara Temple was held to be a public temple, he as Mahant or Shebait had a beneficial interest in the office of the high priest as well as the properties of the temple and that on that footing, his rights under Arts. 14, 19 (1) (f) and 31 (2) of the Constitution of India had been contravened by the Act. It was also urged that the provisions of the Act infringed the fundamental rights guaranteed to the Denomination under Arts. 55 (1) and 26 (b) and (c) of the Constitution. The question was also raised as to whether the tenets of the Vallabha denomination and its religious practices required that the worship by the devotees should be performed at the private temple and so the existence of public temples was inconsistent with the said tenets and practices.

Held, (1) that neither that tenets nor the religious practices of the Vallabha school necessarily postulate that the followers of the school must worship in a private temple.

(2) that in view of the documentary evidence in the case it could not be held that the temple was built by the Tilkayat of the day as his private temple or that it still continues to have the character of a private temple; that though from the outside it had the appearance of a Haveli, the majestic structure inside was consistent with the dignity of the idol and with the character of the temple as a public temple.

(3) that an absolute monarch was the fountain-head of all legislative, executive and judicial powers, that it was of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity, and that this principle applied as much to Hindu monarchs as to any other absolute monarch. Any order issued by such a Ruler would have the force of law and govern the rights of the parties affected thereby; and that, accordingly, the Firman issued by the Maharana of Udaipur in 1934 was a law by which the affairs of the Nathdwara Temple were governed after its issue.

Madhaorao Phalke v. *The State of Madhya Bharat*, [1961] 1 S. C. R. 957, relied on.

(4) that under the law of Udaipur the Nathdwara Temple was a public temple and that the Tilkayat was no more than the Custodian, Manager and Trustee of the property belonging to the temple.

(5) that having regard to the terms of the Firman of 1934 the right claimed by the Tilkayat could not amount to a right to property under Art. 19 (1) (f) or constitute property under Art. 31 (2) of the Constitution; that even if it were held that this right constituted a right to hold property, the restrictions imposed by the Act must be considered as reasonable and in the interests of the public under Art. 19 (5).

Vidya Varuthi Thirtha v. *Balusami Ayyar*, (1921) L. R. 48 I. A. 302 and the *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt*, [1954] S. C. R. 1005, considered.

(6) that the Act was not invalid on the ground of discrimination under Art. 14.

Shri Ram Krishna Dalmia v. *Shri Justice S. R. Tendolkar*, [1959] S. C. R. 279, relied on.

(7) that the right to manage the properties of a temple was a purely secular matter and could not be regarded as a religious practice under Art. 25 (1) or as amounting to affairs in matters of religion under Art. 26 (b). Consequently, the Act in so far as it provided for the management of the properties of the Nathdwara Temple under the provisions of the Act, did not contravene Arts. 25 (1) and 26 (b).

The Durgah Committee, Ajmer v. *Syed Hussain Ali*, [1962] 1 S. C. R. 333, referred to.

(8) that the expression "Law" in Art. 26 (d) meant a law passed by a competent legislature and under that Article the legislature was competent to make a law in regard to the administration of the property belonging to the denomination and that the provisions of the Act providing for the constitution of a Board to administer the property were valid.

Ratilal Panachand Gandhi v. *The State of Bombay*, [1954] S. C. R. 1055, referred to.

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(9) that the scheme envisaged by ss. 3, 4, 16, 22 and 34 of the Act merely allowed the administration of the properties of the temple which was a purely secular matter to be undertaken by the Board and that the sections were valid.

(10) that under s. 5 (2) (g) it was necessary that the members of the Board other than the Collector of Udaipur District should not only profess Hindu religion but must also belong to the Pushti Margiya Vallabhi Sampradaya; and that the proviso to s. 5 (2) (g) which enabled a Collector to be a statutory member of the Board even though he may not be a Hindu and may not belong to the denomination, did not contravene Arts. 25 (1) and 26 (b).

(11) that the expression "affairs of the temple" in s. 16 referred only the purely secular affairs in regard to the administration of the temple and that the section was valid.

(12) that s. 30 (2) (a) in so far as it conferred on the State Government power to make rules in respect of the qualifications for holding the office of the Goswami, was invalid.

(13) that ss. 5, 7, 10, 11, 21, 27, 28, 35, 36 and 37 were valid.

CIVIL APPELATE JURISDICTION : Civil Appeals Nos. 652, 653 and 757 of 1962.

Appeals from the judgment and order dated January 31, 1962, of the Rajasthan High Court in D. B. Civil Writ Petition No. 90 of 1959.

AND

VICE VERSA

(b) Civil Appeals Nos. 654, 655 and 758 of 1962.

Appeals from the judgment and order dated January 31, 1962, of the Rajasthan High Court in D. B. Civil Writ Petition No. 310 of 1959.

AND

VICE VERSA

(c) Civil Appeal No. 656 of 1962.

Appeal from the judgment and order dated January 31, 1962, of the Rajasthan High Court in D. B. Civil Writ Petition No. 421 of 1960.

(d) Writ Petition No. 74 of 1962.

Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights.

M. C. Setalvad, Attorney-General for India, G. S. Pathak, B. B. Desai, V. A. Seyid Muhammad and *B. C. Misra,* for the appellant (in C. A. No. 652 of 1962) and respondent No. 1 (in C. As. Nos. 653 and 757 of 1962).

C. K. Daphtary, Solicitor-General of India, G. C. Kasliwal Advocate-General for the State of Rajasthan, M. M. Tewari, S. K. Kapur, B. R. L. Iyengar,, Kan Singh, V. N. Sethi, B. R. C. K. Achar and *P. D. Menon,* for respondents Nos. 1 and 2 (in C. A. Nos. 652 and 656/62) respondent No. 1 (in C. A. No. 654/62), respondents Nos. 2 and 3 (in C. A. No. 757/62), respondent No. 11 (in C. A. No. 758/62) and appellants (in C. A. Nos. 653, and 655/62).

Sarjoo Prasad, S. B. L. Saxena and *K. K. Jain,* for respondents Nos. 3 to 5 (in C. A. No. 652/62) respondents Nos. 2-4 (in C. A. No. 653/62), respondents Nos. 2, 3, 5, 6 and 7 (in C. A. No. 654/62), the Board and its members (in C. A. No. 655/62), respondents Nos. 3-12 (in C. A. No. 656/62) and the appellants (in C. A. Nos. 757 and 758 of 1962.)

A. V. Viswanatha Sastri, Balkrishna Acharya and *M. V. Goswami,* for the appellants (in C. A. No. 654/62), respondents Nos. 1-10 (in C. A No. 655/62) and respondents Nos. 1-10 (in C. A. No. 758/62).

P. K. Chakravarty, for the appellant (in C. A. No. 656/62).

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G. S. Pathak, B. Datta and *B. P. Maheshwari*, for the petitioner (in W. P. No. 74/62).

C. K. Daphtary, Solicitor-General of India, G. S. Kasliwal, Advocate-General for the State of Rajasthan, M. M. Tewari, S. K. Kapur, B. R. L. Iyengar, Kan Singh, V. N. Sethi and *P. D. Menon*, for respondents Nos. 1 and 2 (in W. P. No. 74/62).

Sarjoo Prasad, S. B. L. Saxena and *K. K. Jain*, for respondents Nos. 3-12 (in W. P. No.74/62).

1963. January 21. The Judgment of the Court was delivered by

Gajendragadkar, J.

GAJENDRAGADKAR, J.—This group of seven cross-appeals arises from three writ petitions field in the High Court of Judicature for Rajasthan, in which the validity of the Nathdwara Temple Act, 1959 (No. XIII of 1959) (hereinafter called the Act) has been challenged. The principal writ petition was Writ Petition No. 90 of 1959; it was filed by the present Tilkayat Govindlalji (hereinafter called the Tilkayat) on February 28, 1959. That Petition challenged the validity of the Nathdwara Ordinance, 1959 (No. II of 1959) which had been issued on February 6, 1959. Subsequently this Ordinance was repealed by the Act which, after receiving the assent of the President, came into force on March 28, 1959. Thereafter, the Tilkayat was allowed to amend his petition and after its amendment, the petition challenged the vires of the Act the provisions of which are identical with the provisions of its predecessor Ordinance. Along with this petition Writ Petition No. 310 of 1959 was filed on August 17, 1959, by ten petitioners who purported to act on behalf of the followers of the Pushtimargiya Vaishnava Sampradaya. This petition attacked the validity of the Act on behalf of the Denomination of the followers of Vallabha. On November 3, 1960,

the third Writ Petition (No. 421 of 1960) was filed on behalf of Goswami Shri Ghanshyamlalji who as a direct descendant of Vallabha, set up an interest in himself in regard to the Nathdwara Temple, and as a person having interest in the said Temple, he challenged the validity of the Act. These three petitions were heard together by the High Court and have been dealt with by a common judgment. In substance, the High Court has upheld the validity of the Act, but it has struck down as *ultra vires* a part of the definition of 'temple' in s. 2 (viii), a part of s. 16 which refers to the affairs of the temple; s. 28, sub-ss. (2) and (3); s. 30 (2)(a); ss. 36 and 37. The petitioners as well as the State of Rajasthan felt aggrieved by this decision and that has given rise to the present cross-appeals. The Tilkayat has filed Appeal No. 652 of 1962, whereas the State has filed appeals Nos. 653 and 757 of 1960. These appeals arise from Writ Petition No. 90 of 1959. The Denomination has filed Appeal No 654 of 1962, whereas the State has filed Appeals Nos. 655 and 758 of 1962. These appeals arise from Writ Petition No. 310 of 1959. Ghanshyamlalji whose Writ Petition No. 421 of 1960 has been dismissed by the High Court on the ground that it raises disputed questions of fact which cannot be tried under Art. 226 of the Constitution, has preferred Appeal No. 656 of 1962. Since Ghanshyamlalji's petition has been dismissed *in limine* on the ground just indicated, it was unnecessary for the State to prefer any cross-appeal. Besides these seven appeals, in the present group has been included Writ Petition No. 74 of 1962 filed by the Tilkayat in this Court under Art. 32. By the said writ petition the Tilkayat has challenged the vires of the Act on some additional grounds. That is how the principal point which arises for our decision in this group is in regard to the Constitutional validity of the Act.

At this stage, it is relevant to indicate broadly the contentions raised by the parties before the High

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Court and the conclusions of the High Court on the points in controversy. The Tilkayat contended that the idol of Shri Shrinathji in the Nathdwara Temple and all the property pertaining to it were his private properties and as such, the State Legislature was not competent to pass the Act. In the alternative, it was urged that even if the Nathdwara Temple is held to be a public temple and the Tilkayat the Mahant or Shebait in charge of it, as such Mahant or Shebait he had a beneficial interest in the office of the high priest as well as the properties of the temple and it is on that footing that the validity of the Act was challenged under Art. 19 (1) (f) of the Constitution. Incidentally the argument for the Tilkayat was that the idols of Shri Navnit Priyaji and Shri Madan Mohanlalji were his private idols and the property pertaining to them was in any case not the property in which the public could be said to be interested. The Denomination substantially supported the Tilkayat's case. In addition, it urged that if the temple was held to be a public temple, then the Act would be invalid because it contravened the fundamental rights guaranteed to the denomination under Art. 25 (1) and Art. 26 (b) and (c) of the Constitution. Ghanshyamlalji pleaded title in himself and challenged the validity of the Act on the ground that it contravened his rights under Art. 19 (1) (f).

On the other hand, the State of Rajasthan urged that the Nathdwara Temple was a public temple and the Tilkayat was no more and no better than its manager. As such, he had no substantial benefical interest in the property of the temple. The contention that the Tilkayat's fundamental rights under Art. 19 (1) (f) have been contravened by the Act was denied; and the plea of the Denomination that the fundamental rights guaranteed to it under Arts. 25 (1) and 26 (b) and (c) had been infringed was also disputed. It was urged that the law was prefectly valid and

did no more than regulate the administration of the property of the temple as contemplated by Art. 26 (c) of the Constitution. The Tilkayat's claim that the two idols of Navnit Priyaji and Madan Mohanlalji were his private idols was also challenged. Against Ghanshyamlalji's petition, it was urged that it raised several disputed questions of fact which could not be appropriately tried in proceedings under Art. 226.

The High Court has upheld the plea raised by the State against the competence of Ghanshyamlalji's petition. We ought to add that the State had contended that the Tilkayat's case about the character of the temple was also a mixed question of fact and law and so, it could not be properly tried in writ proceedings. The High Court, however, held that it would be inexpedient to adopt a technical attitude in this matter and it allowed the merits of the dispute to be tried before it on the assurance given by the learned counsel appearing for the Tilkayat that the character of the property should be dealt with on the documentary evidence adduced by him. Considering the documentary evidence, the High Court came to the conclusion that the temple is a public temple. It examined the several Firmans and Sanads on which reliance was placed by the Tilkayat and it thought that the said grants supported the plea of the State that the temple was not the private temple of the Tilkayat. It has, however, found that the Tilkayat is a spiritual head of the Denomination as well as the spiritual head of the temple of Shrinathji. He alone is entitled to perform 'Seva' and the other religious functions of the temple. In its opinion, the two minior idols of Navnit Priyaji and Madan Mohanlalji were the private idols of the Tilkayat and so, that part of the definition which included them within the temple of Shrinathji was struck down as invalid. In this connection, the High Court has very strongly relied on the Firman issued by the Maharana of Udaipur on December 31, 1934, and it

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has observed that this Firman clearly established the fact that the temple was a public temple, that the Tilkayat was no more than a Custodian, Manager and Trustee of the property belonging to the temple and that the State had the absolute right to supervise that the property dedicated to the shrine was used for legitimate purposes of the shrine. Having found that the Tilkayat was the head of the denomination and the head priest of the temple, the High Court conceded in his favour the right of residence, the right to distribute Prasad and the right to conduct or supervise the worship and the performance of the Seva in the temple. In the light of these rights the High Court held that the Tilkayat had a beneficial interest in the properties of the temple and as such, was entitled to contend that the said rights were protected under Art. 19 (1) (f) and could not be contravened by the Legislature. The High Court then examined the relevant provisions of the Act and held that, on the whole, the major operative provisions of the Act did not contravene the fundamental rights of the Tilkayat under Art. 19 (1) (f); ss. 16, s. 28, sub-ss. (2) and (3), s. 30 (2) (a), ss. 36 & 37, however, did contravene the Tilkayat's fundamental rights acccording to the High Court, and so, the said sections and the part of the definition of 'temple' in s. 2 (viii) were struck down by the High Court as *ultra vires*. The plea that the fundamental rights under Art. 25 (1) and Art. 26 (b) and (c) were contraveneisd did not appeal to the High Court to be well-founded. In the result, the substantial part of the Act has been held to be valid. It appears that before the High Court a plea was raised by the Tilkayat that his rights under Arts. 14 and 31 (2) had been contravened by the Act. These pleas have been rejected by the High Court and they have been more particularly and specifically urged before us by the Tilkayat in his Writ Petition No. 74 of 1962. That, in brief, is the

nature of the findings recorded by the High Court in the three writ petitions filed before it.

Before dealing with the merits of the present dispute, it is necessary to set out briefly the historical background of the temple of Shrinathji at Nathdwara and the incidents in relation to the management of its properties which ultimately led to the Act. The temple of Shrinathji at Nathdwara holds a very high place among the Hindu temples in this country and is looked upon with great reverence by the Hindus in general and the Vaishnav followers of Vallabha in particular. As in the case of other ancient revered Hindu temples, so in the case of the Shrinathji temple at Nathdwara, mythology has woven an attractive web about the genesis of its construction at Nathdwara. Part of it may be history and part may be fiction, but the story is handed down from generation to generation of devotees and is believed by all of them to be true. This temple is visited by thousands of Hindu devotees in general and by the followers of the Pushtimargiya Vaishnava Sampradaya in particular. The followers of Vallabha who constitute a denomination are popularly known as such. The denomination was founded by Vallabha (1479-1531 A. D.)* He was the son of a Tailanga Brahmin named Lakshmana Bhatt. On one occasion, Lakshmana Bhatt had gone on pilgrimage to Banaras with his wife Elamagara. On the way, she gave birth to a son in 1479 A. D. That son was known as Vallabha. It is said that God Gopala Krishna manifested himself to Vallahha on the Govardhana Hill by the name of Devadamana, also known as Shrinathji. Vallabha saw the vision in his dream and he was commanded by God Gopala Krishna to erect a shrine for Him and to propagate amongst his followers the cult of worshipping Him in order to obtain salvation (1). Vallabha then went to the hill and he found the image corresponding to the vision which he had seen in this dream. Soon thereafter, he got a small

*Some scholars think that Vallabha was born in 1473 A.D., vide The Cultural Heritage of India vol. III at p. 347.

(1) Bhandarkar on 'Vaishnavism, S'aivism & Minor Religious systems at p. 77.

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temple built at Giriraj and installed the image in the said temple. It is believed that this happened in 1500 A. D. A devotee named Ramdas Chowdhri was entrusted with the task of serving in the temple. Later on, a rich merchant named Pooranmal was asked by Govardhannathji to build a big temple for him. The building of the temple took as many as 20 years and when it was completed, the Image was installed there by Vallabha himself and he engaged Bengali Brahmins as priests in the said temple, (1).

In course of time, Vallabha was succeeded by his son Vithalnathji who was both in learning and in saintly character a worthy son of a worthy father. Vithalnath had great organising capacity and his work was actuated by missionary zeal. In the denomination, Vallabha is described as Acharya or Maha Prabhuji and Vithalnath is described as Gosain or Goswamin. It is said that Vithalnath removed the idol of Shrinathji to another temple which had been built by him. It is not known whether any idol was installed in the earlier temple. Vithalnath lived during the period of Akbar when the political atmosphere in the country in Northern India was actuated by a spirit of tolerance. It appears that Akbar heard about the saintly reputation of Vithalnath and issued a Firman granting land in Mowza of Jatipura to Vithalnathji in order to build buildings, gardens, cowsheds and workshops for the temple of Govardhannathji. This Firman was issued in 1593 A. D. Later, Emperor Shahajahan also issued another Firman on October 2, 1633, which shows that some land was being granted by the Emperor for the use and expenses of Thakurdwara exempt from payment of dues.

Goswami Vithalnath had seven sons. The tradition of the denomination believes that besides the idol of Shrinathji Vithalnathji received from his father

(1) Bhai Manilal C. Parekh's 'A Religion of Grace'.

seven other idols which were also "Swaroops" (manifestations) of Lord Krishna. Before his death, Vithalnathji entrusted the principal idol of Shrinathji, to his eldest son Girdharji and the other idols were given over to each one of his other sons. These brothers in turn founded separate shrines at various places which are also held by the members of the denomination in high esteem and reverence.

When Aurangzeb came on the throne, the genial atmosphere of tolerance disappeared and the Hindu temples were exposed to risk and danger of Aurangzeb's intolerant and bigoted activities. Col. Todd in the first volume of his 'Annals of Rajasthan' at p. 451 says that "when Aurangzeb prescribed Kanaya and rendered his shrines impure throughout Vrij, Rana Raj Singh offered the heads of one hundred thousand Rajpoots for his service, and the God was conducted by the route of Kotah and Rampoora to Mewar. An omen decided the spot of his future residence. As he journeyed to gain the capital of the Sessodias, the chariot-wheel sunk deep into the earth and defied extrication; upon which the Sookuni (augur) interpreted the pleasure of the deity that he desired to dwell there. This circumstance occurred at an inconsiderable village called Siarh, in the fief of Dailwara, one of the sixteen nobles of Mewar. Rejoiced at this decided manifestation of favour, the chief hastened to make a perpetual gift of the village and its lands which was speedily confirmed by the patent of the Rana. Nathji (the god) was removed from his car, and in due time a temple was erected for his reception, when the hamlet of Siarh became the town of Nathdwara. This happened about 1671 A. D." This according to the tradition, is the genesis of the construction of the temple at Nathdwara. Since then, the religious reputation of the temple has grown by leaps and bounds and today it can legitimately claim to be one of the few leading religious temples of the Hindus. Several

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grants were made and thousands of devotees visiting the temple in reverence made offerings to the temple almost everyday throughout the year. No wonder that the temple has now become one of the richest religious institutions in the country.

The succession to the Gaddi of the Tilkayat has, from the beginning, been governed by the rule of Primogeniture. This succession received recognition from the rulers of Mewar from time to time. It appears that in 1813 A. D. Tilkayat Govindlalji was adopted by the widow of Tilkayat Damodarji and the ruler of Mewar recognised the said adoption. Later, the relations between the ruler of Mewar and the Tilkayat were strained during the time of Tilkayat Girdharlalji. It seems that the Tilkayat was not content with the position of a spiritual leader of the denomination but he began to claim special secular rights, and when the Darbar of Udaipur placed the villages belonging to the Nathdwara Temple under attachment, a protest was made by the members of the denomination on behalf of the Tilkayat. It was as a result of this strained relationship between the Darbar and the Tilkayat that in 1876 Tilkayat Girdharlalji was deposed and was deported from Nathdwara by the order passed by the Rana of Mewar on May 8, 1876.....The reason given for this drastic step was that the Tilkayat disobeyed the orders of the ruling authority and so, could not be allowed to function as such. In place of the deposed Tilkayat, his son Gordhanlalji was appointed as Tilkayat. Girdharlalji then went to Bombay and litigation started between him and his Tilkayat son in respect of extensive properties in Bombay. Girdharlalji claimed the properties as his own whereas his Tilkayat son urged that the fact that Girdharlalji had been deposed by the Rana of Udaipur showed that the properties no longer vested in him. It appears that the Bombay High Court consistently took the view that the order passed by

the Rana of Udaipur on May 8, 1876, was an act of a foreign State and did not effect his right to property in Bombay. It was observed that Girdharlalji was regarded as owner of the property, he had not lost his right as such to the said property in consequence of his deposition, and if he was merely a trustee, he had not been removed from his office by any competent Tribunal vide *Nanabai* v. *Shriman Goswami Girdharji* (1). *Goswami Shri Girdharji Maharaj Shri Govindraiji Maharaj Tilkayat* v. *Madhowdas Premji and Goswami Shri Govardhanlalji Girdharji Maharaj* (2) and *Shriman Goswami Shri 108 Shri Govardhanlalji Girdharlalji* v. *Goswami Shri Girdharlalji Govindrajji* (3). So far as the Nathdwara temple and the properties situated in Mewar were concerned, the Tilkayat Gordhanlalji who had been appointed by the Rana of Udaipur continued to be in possession and management of the same.

Unfortunately, in 1933, another occasion arose when the Rana of Udaipur had to take drastic action. After the death of Goverdhanlalji on September 21, 1933, his grand son Damodarlalji became the Tilkayat. His conduct, however, showed that he did not deserve to be a spiritual leader of the denomination and could not be left in charge of the religious affairs of the Shrinathji temple at Nathdwara. That is why on October 10, 1933, he was deposed and his son Govindlalji, the present Tilkayat, was appointed the Tilkayat of the temple. Before adopting this course, the Rana had given ample opportunities to Damodarlalji to improve his conduct, but despite the promises made by him Damodarlalji persisted in the course of behaviour which he had adopted and so, the Darbar was left with no other alternative but to depose him. That is how the present Tilkayat's regime began even during the lifetime of his father.

(1) 12 Bom. 351. (2) 17 Bom. 600.
(3) 17 Bom. 620

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As on the occasion of the deposition of Girdharlalji in 1833, so on the occasion of the deposition of Damodarlalji, litigation followed in respect of Bombay properties. On January 6, 1934, Damodarlalji filed a suit in the Bombay High Court (No. 23 of 1934) against the Tilkayat and other persons representing the denomination. In this suit, he claimed a declaration that he was entitled to and had become the owner of all the properties mentioned in the plaint and that he was the owner of all the rights, presents, offerings, and emoluments arising in and accruing from the ownership of the idols, Shrinathji and Shri Navnit Priyaji as well as his position as the Tilkayat Maharaj in due course of his succession. In the said suit, the idols of Shrinathji and Shri Navnit Priyaji were added as defendants. At that time, the Tilkayat was a minor. Written statements were filed on his behalf and on behalf of the two idols. A counter claim was preferred on behalf of the idols that the properties belonged to them. Subsequently, the suit filed by Damodarlalji was withdrawn; but the counterclaim made by the idols was referred to the sole arbitration and final determination of Sir Chimanlal H. Setalvad, a leading Advocate of the Bombay High Court. On April 10, 1942, the arbitrator made his award and in due course, a decree was passed in terms of the said award on September 8, 1942. This decree provided that all the properties, movable, and immovable, and all offerings and Bhents donated to the idol of Shrinathji or for its worship or benefit belonged to the said idol, whereas properties donated, dedicated or offered to the Tilkayat Maharaj for the time being, or at the Krishna Bhandar Pedhis if donated, dedicated or offered for the worship or benefit of the idol belonged to the said idol. It also provided that the Tilkayat Maharaj for the time being in actual charge at Nathdwara is entitled to hold, use and manage the "properties of the said idol according to the

usage of the Vallabhi Sampradaya." The said award and the decree which followed in terms of it were naturally confined to the properties in the territories which then comprised British India and did not include any properties in the territories which then formed part of princely India or Native States as they were then known.

Meanwhile, after Damodarlalji was deposed and his son Govindlalji was appointed the Tilkayat, the Rana of Udaipur issued a Firman on December 31, 1934. By this Firman it was laid down that the shrine of Shrinathji had always been and was a religious institution for the followers of the Vaishnavas Sampradayak and all the properties offered at the shrine were the property of the shrine and that the Tilkayat Maharaj was merely a Custodian, Manager and Trustee of the said property for the shrine. It also provided that the Udaipur Darbar had absolute right to supervise that the property dedicated to the shrine is used for legitimate purpose of the shrine. It also made certain other provisions to which we shall have occasion to return later.

When he was appointed the Tilkayat, Govindlalji was a minor and so, the management of the temple and the property remained with the Court of Wards, till April 1, 1948. On that date, the management of the Court of Wards was withdrawn and the charge of the property was handed over to the Tilkayat. It appears that the management of affairs by the Tilkayat was not very happy or successful and the estate faced financial difficulties. In order to meet this difficult situation the Tilkayat appointed a committee of management consisting of 12 members belonging to the denomination some time in 1952. This was followed by another committee of 21 members appointed on June 11, 1953. Whilst this latter committee was in charge of the

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management, some valuables stored and locked in the room in the premises of the Temple of Shrinathji were removed by the Tilkayat in December, 1957. This news created excitement amongst the members of the public in general and the followers of the denomination in particular, and so, the Rajasthan Government appointed a Commission of Enquiry. In the preamble to the notification by which the Commission of Enquiry was appointed, it was stated that the State of Rajasthan as the successor of the covenanting State of Mewar had a special responsibility to supervise that the endowments and properties dedicated to the shrine are safeguarded and used for the legitimate purposes of the shrine. The Commission of the Enquiry made its report on October 11, 1959. This report passed severe strictures against the conduct of the Tilkayat. At this stage, we ought to add that the dispute between the Tilkayat and the Rajasthan Government as to the ownership of the valuable articles removed from the temple was later referred to the sole arbitration of Mr. Mahajan, the retired Chief Justice of this Court. The arbitrator made his award on September 12, 1961, and held that except in regard to the items specified by him in his award, the rest of the property belonged to the Tilkayat; and he found that when the Tilkayat removed the properties, he believed that they were his personal properties.

It was in the background of these events that the State of Rajasthan thought it necessary that a scheme should be drafted for the management of the Temple and this proposal received the approval of the Tilkayat. In order to give effect to this proposal it was agreed between the parties that a suit under, s. 92, Code of Civil Procedure, should be filed in the Court of the District Judge at Udaipur. The parte then thought that the suit would be non-contentious and would speedily end in a scheme of management being drafted with the consent of parties

Accordingly, suit No. 1 of 1956 was filed in the District Court at Udaipur, and in accordance with the agreement which he had reached with the authorities, the Tilkayat filed a non contentious written statement. However, before the suit could make any appreciable progress, Ghanshyamlalji and Baba Rajvi, the son of Tilkayat, applied to be made parties to the suit and it became clear that these added parties desired to raise contentions in the suit and that entirely changed the complexion of the litigation. It was then obvious that the litigation would be a long-drawn out affair and the object of evolving a satisfactory scheme for the management of the affairs of the temple would not be achieved until the litigation went through a protracted course.

It was under these circumstances that the Governor of Rajasthan promulgated an Ordinance called the Nathdwara Ordinance, 1959 (No. II of 1959) on February 6, 1959. The Tilkayat immediately filed his Writ Petition No. 90 of 1959 challenging the validity of the said Ordinance. The Ordinance was in due course replaced by Act 13 of 1959 and the Tilkayat was allowed to amend his original writ petition so as to challenge the vires of the Act. Shortly stated, this is the historical background of the present dispute.

The first question which calls for our decision is whether the tenets of the Vallabh denomination and its religious practices postulate and require that the worship by the devotees should be performed at the private temple owned and managed by the Tilkayat, and so, the existence of public temples is inconsistent with the said tenets and practices. In support of this argument, the learned Attorney-General has placed strong reliance on the observadons made by Dr. Bhandarkar in his work on Vaisnavism, Saivism and Minor Religious Systems, ti 80. In the section dealing with Vallabh and his

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school, the learned Doctor has incidentally observed that the Gurus of this sect ordinarily called Maharajs are descendants of the seven sons of Vithalesa. Each Guru has a temple of his own, and there are no public places of worship. He has also added that the influence exercised by Vallabh and his successors over their adherents is kept up by the fact that God cannot be worshipped independently in a public place of worship, but in the house and temple of the Guru or the Maharaj which, therefore, has to be regularly visited by the devotees with offerings. These temples are generally described as Havelis and the argument is that the said description also brings out the fact that the temples are private temples owned by the Tilkayat of the day. It is true that the observations made by Dr. Bhandarkar lend support to the contention raised before us by the learned Attorney-General on behalf of the Tilkayat, but if the discussion contained in Dr. Bhandarkar's work in the section dealing with Vallabh is considered as a whole, it would be clear that these observations are incidental and cannot be taken to indicate the learned Doctor's conclusions after a careful examination of all the relevant considerations bearing on the point. Since, however, these observations are in favour of the plea raised by the Tilkayat, it is necessary very briefly to enquire whether there is anything in the tenets or the religious practices of this denomination which justifies the claim made by the learned Attorney-General.

What then is the nature of the philosophical doctrines of Vallabh? According to *Dr. Radha Krishnan* (1), Vallabh accepts the authority not only of the Upanishads, the Bhagvad gita and the Brahma Sutras, but also of the Bhagavata Purana. In his works, Anubhasya, Siddhantarahasya and Bhagavata-Tikasubodhini, he offers a theistic interpretation of the Vedanta, which differs from those of Sankara and Ramanuja. His view is called Suddhadvaita, or

(1) "Indian Philosophy" by Dr. Radha Krishnan, pp. 756 and 758.

pure non-dualism, and declares that the whole world is real and is subtly Brahman. The individual souls and the inanimate world are in essence one with Brahman. Vallabha looks upon God as the whole and the individual as part. The analogy of sparks of fire is employed by Him to great purpose. The Jiva bound by maya cannot attain salvation except through the grace of God, which is called Pushti. Bhakti is the chief means of salvation, though Jnana is also useful. As regards the fruit of Bhakti, there are diverse opinions, says *Dasgupta* (1). Vallabha said in his Sevaphala-vivrti that as a result of it one may attain a great power of experiencing the nature of God, or may also have the experience of continual contact with God, and also may have a body befitting the service of God. Vallabha, however, is opposed to renunciation after the manner of monistic sanyasa, for this can only bring repentance, as being inefficacious. Thus, it will be seen that though Vallabha in his philosophical theories differs from Sankara and Ramanuja, the ultimate path for salvation which he has emphasised is that of Bhakti and by Bhakti the devotee obtains Pushti (divine grace). That is why the cult of Vallabha is known as Pushtimarg or the path for obtaining divine grace.

Dr. Bhandarkar points out that according to Vallabha, Mahapushti, or the highest grace, is that which removes great obstacles and conduces to the attainment of God himself. Thus Pushtibhakti is of four kinds: (1) Pravaha-Pushtibhakti, (2) Maryada-Pushtibhakti, (3) Pushti-Pushtibhakti and (4) Sudha-Pushtibhakti. The first is the path of those who while engaged in a worldly life with its me and mine, do acts calculated to bring about the attainment of God. The second is of those who, withdrawing their minds from worldly enjoyments, devote themselves to God by hearing His praise and listening to discourses about Him. The third is of those who already enjoyed God's grace and are made competent

(1) A history on "Indian Philosophy" by Das Gupta, pp. 355—356.

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to aquire knowledge useful for adoration and thus come to know all about the ways of God. The fourth is of those who through mere love devote themselves to the singing and praising of God as if it were a haunting passion. Thus, it would be seen that the tenets of the cult emphasised the importance of Bhakti, and the religious practices accordingly centered round this doctrine of Bhakti.

The practical modes of worship adopted by the members of this cult bring out the same effect. Lord Krishna as a child is the main object of worship. His worship consists of several acts of performance every day in the prescribed order of ceremonies. These begin with the ringing of the bell in the morning and putting the Lord to bed at night. After the Lord is awakened by the ringing of the bell, there is a blowing of the conch shell, awakening of the Lord and offering morning refreshments; waving of lamps; bathing; dressing; food; leading the cows out for grazing; the mid-day meal; waving of lamps again; the evening service; the evening meal and going to bed. These rituals performed with meticulous care from day to day constitute the prescribed items of Seva which the devotees attend every day in the Vallabh temple. In order to be able to offer Bhakti in a proper way, the members of this denomination are initiated into this cult by the performance of two rites; one is Sharana Mantropadesh and the other is Atma Nivedan. The first gives the devotee the status of a Vaishnava and the second confers upon him the status of an Adhikari entitled to pursue the path of service of devotion. At the performance of the first rite, the mantra which is repeated in the ears of the devotee is "Shree Krishna Sharanam Mamah" and on the occasion a 'tulsi Kanthi' is put around the neck of the devotee. At the second initiation, a religious formula is repeated, the effect of which is that the devotee treats himself and all his properties as belonging to Lord Krishna. We have already

referred to the original image which Vallabha installed in the temple built in his time and the seven idols which Vithalnathji gave to his sons. These idols are technically described as 'Nidhi' Swaroops'. Besides these idols, there are several other idols which are worshipped by Vaishnava devotees after they are sanctified by the Guru. It is thus clear that believing in the paramount importance and efficacy of Bhakti, the followers of Vallabha attend the worship and services of the Nidhi Swaroops or idols from day to day in the belief that such devotional conduct would ultimately lead to their salvation.

It is significant that this denomination does not recognise the existence of Sadhus or Swamis other than the descendants of Vallabha and it emphasises that it is unnecessary to adopt ritualistic practices or to repeat Sanskrit Mantras or in cantations in worshipping the idols. Besides, another significant feature of this cult is that it does not believe in celibacy and does not regard that giving up worldly pleasures and the ordinary mode of a house-holder's life are essential for spiritual progress. In fact Vallabha himself lived a house-holder's life and so have all his descendants. This cult does not, therefore, glorify poverty and it teaches its followers that a normal house-holder's life is quite compatible with the practice of Bhakti, provided of course, the devotee goes through the two ceremonies of initiation and lives up to the principles enunciated by Vallabha.

The question which we have to decide is whether there is anything in the philosophical doctrines or tenets or religious practices which are the special features of the Vallabha school, which prohibits the existence of public temples or worship in them. The main object underlying the requirement that devotees should assemble in the Haveli of the Guru and worship the idol obviously was to encourage collective and congregational prayers. Presumably

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it was realised by Vallabha and his descendants that worship in Hindu public temples is apt to clothe the images worshipped with a formal and rigid character and the element of personality is thereby obliterated; and this school believes that in order that Bhakti should be genuine and passionate, in the mind of the devotee there must be present the necessary element of the personality of God. It is true that Vaishnava temples of the Vallabha sect are generally described as Havelis and though they are grand and majestic inside, the outside appearance is always attempted to resemble that of a private house. This feature can, however, be easily explained if we recall the fact that during the time when Vithalnathji with his great missionary zeal spread the doctrine of Vallabha, Hindu temples were constantly faced with the danger of attack from Aurangzeb. In fact, the traditional story about the foundation of the Srinathji temple at Nathdwara itself eloquently brings out the fact that owing to the religious persecution practised during Aurangzeb's time, Srinathji himself had to give up his abode near Mathura and to start on a journey in search of a place for residence in more hospitable and congenial surroundings. Faced with this immediate problem Vithalnathji may have started building the temples in the form of Havelis so that from outside nobody should know that there is a temple within.

It may also be true historically that when the first temple was built in the life time of Vallabha it may have been a modest house where the original image was installed and during the early years just a few devotees may have been visiting the said temple. Appropriately enough, it was then called a Haveli. Later, even when the number of devotees increased and the temples built by the Vallabha sect began to collect thousands of visitors, traditional adherence to time-honoured words described all subsequent temples also as Havelis however big and majestic

they were. Therefore, we are satisfied that neither the tenets nor the religious practices of the Vallabha school necessarily postulate 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 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. Therefore, the first argument urged by the learned Attorney-General in challenging the finding of the High Court that the Srinathji temple at Nathdwara is a public temple, cannot be accepted.

The question as to whether a Hindu temple is private or public has often been considered by judicial decisions. A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may *prima facie* appear to be a public temple ? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry

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in the temple ? Are they entitled to take part in offering service and taking Darshan in the temple ? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple ? Are their offerings accepted as a matter of right ? The participation of the members of the public in the Darshan in the temple and in the daily Acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple. In the present proceedings, no such evidence has been led and it is, therefore, not shown that admission to the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple. Therefore, the case for the Tilkayat cannot rest on any such considerations which, if proved, may have helped to establish either that the temple is private or is public.

There are, however, certain ancient documents which show that the temple cannot be a private temple. We have already referred to the Firmans issued by Akbar and Shahjahan. These Firmans are strictly not material for the purpose of the present dispute because they have no relation to the temple at Nathdwara. However, as a matter of history, it may be worthwhile to recall that the Firman issued by Akbar on May 31, 1593 A. D. shows that Vithalrai had represented to the Darbar that he had purchased on paying its price land from the owners thereof in the Mowzah of Jatipura, situated in the Paraganah, adjoining Gordhan and had caused to be built thereon buildings, gardens, cowsheds and Karkhanas (workshops) for the temple of Gordhan Nath and that he was residing there. Having received this representation, Akbar issued an order that the above-mentioned Mowzah had been given over tax-free into the possession of the above-mentioned Goswami from descendant to descendant. It would thus be seen that though the grant by which the land

in question was exempted from payment of taxes is in the name of the Goswami, there can be no doubt that it was so named on the representation made by the Goswami that he had purchased the land and built structures on it for the temple of Gordhan Nath. Thus, in substance, the grant was made to the Goswami who was managing the temple of Gordhan Nath. The grant of Shah Jahan made in 1633 A. D. is to the same effect. These grants are in reference to the temple built by Vithalrai in Jatipura. We have already seen that the idol of Shrinathji was removed from the said temple and brought to Nathdwara in about 1671.

The earliest document in regard to Siarh is of the year 1672 A. D. The document has been issued by the Rana of Udaipur and it says that "Be it know that Shrinathji residing at Sihod Let uncultivated land as may desire be cultivated till such time. When Shrinathji goes back to Brij the land of those to whom it belongs will be returned to them. If any one obstructs in any way he will be rebuked." The next document is of 1680 A. D. It has been issued by Rana of Udaipur and is in similar terms. It says that when Shrinathji goes back to Brij from Singhad Brahmins will get the land which is of the Brahmins. They will get the land as is entered in previous records. So long as Shrinathji stays here, no Brahmin shall cultivate towards the West of Shah Jagivan's wall up to and across the foot of the hillock. If any one cultivates a fine of Rs. 225/- shall be realised collectively. Fortunately, for Nathdwara, the temple which was then built for Shrinathji for a temporary abode has turned out to be Shrinathji's permanent place of residence. These two documents clearly show that after Shrinathji was installed in what is now known as Nathdwara, the land occupied for the purpose of the temple was given over for that purpose and the actual occupants and cultivators were told that they would get the land back when Shrinathji goes back to Brij.

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We have already cited the extract from Col. Todd's 'Annals of Rajasthan' in which he has graphically described the traditional belief in regard to the choice of Siarh for the abode of Shrinathji. That extract shows that as soon the chariot wheel of Shrinathji stopped and would not move, the chief hastened to make a perpetual gift of the village and its lands which was speedily confirmed by the patent of the Rana. Nathji was removed from his car and in due course of time a temple was erected for his reception. That is how the hamlet of Siarh became the town of Nathdwara. This assurance given by the chief was confirmed by the two grants to which we have just referred. Thus, there can be no doubt that the original grants were for the purpose of the temple.

A deed of dedication executed by Maharana Shri Bhim Singhji in favour of Gusainji in Sambat 1865 also shows that the lands therein described had been dedicated to Shriji and Shri Gusainji and that all the income relating to those lands would be dedicated to the Bhandar of Shriji.

A letter written by the Maharana on January 17, 1825, speaks to the same effect. "Our ancestors," says the letter, "kept the Thakurji Maharaj and the Gosainji Maharaj at the village of Shinhad which is near Udaipur and presented that village to the Thakurji. After this, our ancestors became followers of that religion and agreed to obey orders. They all granted lands and villages for the expenses of the God. Besides these certain lands were granted for the grazing of the cows belonging to the Thakurji." This letter contains certain orders to the officers of the State to respect the rights of the temple and Gosainji.

Consistently with this record, we find a declaration made by Tilkayat Gordhanji in 1932 in which he

stated that "the money of Shri Thakurji as is the practice now, that it is not spent in our private expenditure the same will be followed", though along with this declaration he added that the proprietary right was his own from the time of the ancestors. In conformity with the same, the entry will continue as usual in the accounts of credit and debit as is the continuing mutation. Even though the Tilkayat set up the claim that the temple was private, it is consistently adhered to that the income derived from the properties of the temple is not intended to be and has never been used for the personal requirements of the Tilkayat.

It is true that there are other grants which have been produced on the record by the Tilkayat for the purpose of showing that some gifts of immovable property were made in favour of the Tilkayat. Such grants may either show that the gifts were made to the Tilkayat because he was in the management of the temple, or they may have been made to the Tilkayat in his personal character. Grants falling in the former category would constitute the property of the temple, whilst those falling in the latter category would constitute the private property of the Talikayat. These grants, however, would not affect the nature of the initial grants made to the temple soon after Shrinathji came to Nathdwara. Therefore in our opinion, having regard to the documentary evidence adduced in the present proceedings, it would be unreasonable to contend that the temple was built by the Tilkayat of the day as his private temple and that it still continues to have the character of a private temple. From outside it no doubt has the appearance of a Haveli, but it is common ground that the majestic structure inside is consistent with the dignity of the idol and with the character of the temple as a public temple.

We have referred to these aspects of the matter because they were elaborately argued before us by

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the learned Attorney-General. But as we will presently point out, the Firman issued by the Udaipur Darbar in 1934 really concludes the controversy between the parties on these points and it shows that the Shrinathji Temple at Nathdwara is undoubtedly a public temple. It is therefore, now necessary to consider this Firman. This Firman consists of four clauses. The first clause declares that according to the law of Udaipur, the shrine of Shrinathji has always been and is a religious institution for the followers of the Vaishnava Sampradaya and that all the property immovable and movable dedicated, offered or presented to or otherwise coming to the Deity Shrinathji has always been and is the property of the shrine and that the Tilkayat Maharaj for the time being is merely a Custodian, Manager and Trustee of the said property for the shrine of Shrinathji and that the Udaipur Darbar has absolute right to supervise that the property dedicated to the shrine is used for legitimate purpose of the shrine. The second clause deals with the question of succession and it provides that the law of Udaipur has always been and is that the succession to the Gaddi of Tilkayat Maharaj is regulated by the law of Primogeniture, and it adds that the Udaipur Darbar has the absolute right to depose any Tilkayat Maharaj for the time being if in its absolute discretion such Maharaj is considered unfit and also for the same reason and in the same way to disqualify any person who would otherwise have succeeded to the Gaddi according to the law of primogeniture. The third clause provides that in case the Tilkayat Maharaj is a minor, the Darbar always had and has absolute authority to take any measures for the management of the shrine and its properties during such minority. The last clause adds that in accordance with the said law of Udaipur, the Rana had declared Shri Domodarlalji unfit to occupy the Gaddi and had approved of the succession of Goswami Govindlalji to the Gaddi of Tilkayat

Maharaj, and it ends with the statement that the order issued in that behalf on October 10, 1933, was issued under his authority and is lawful and in accordance with the law of Udaipur.

In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur, it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this Court and it has not been disputed before us, Vide *Madhaorao Phalke* v. *The State of Madhya Bharat* (1). *Ammer-un-Nisa Begum* v. *Mahboob Begum* (2), and *Director of Endowments, Government of Hyderabad* v. *Akram Ali* (3).

It is true that in dealing with the effect of this Firman, the learned Attorney-General sought to raise before us a novel point that under Hindu law even absolute monarch was not competent to make a law affecting religious endowments and their administration. He suggested that he was in a position to rely upon the opinions of scholars which tended to show that a Hindu monarch was competent only to administer the law as prescribed by Smritis and the oath which he was expected to take at the time of his coronation enjoined him to obey the Smritis and to see that their injunctions were obeyed by his subject. We do not allow the learned Attorney-General to develop this point because we hold that this novel point cannot be accepted in view of the well-recognised principles of jurisprudence. An

(1) [1960] 1 S.C.R. 957. (2) A.I.R. 1955 S.C. 352.
(3) A.I.R. 1956 S. C. 60.

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absolute monarch was the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of the public charity. In our opinion, there is no doubt whatever that this universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarchs as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in 1934 is a law by which the affairs of the Nathdwara temple and succession to the office of the Tilkayat were governed after its issue.

Then the learned Attorney-General contended that in judging about the effect of this Firman we should not ignore the background of events which necessitated its issue. Damodarlalji had been deposed by Maharana and it was more in anger that the Firman was issued to meet the challenge of the said incident. Damodarlalji had filed certain suits in the Bombay High Court and it appeared as if a doubt would arise in the minds of the followers and devotees of the temple as to whether the deposition of Damodarlalji was valid or not. It was with a view to meet this specific particular situation that the Firman was issued and so, it need not be treated as a law binding for all times. In our opinion, this argument is clearly misconceived. Whatever may be the genesis of the Firman and whatever may be the nature of the mischief which it was intended to redress, the words used in the Firman are clear and as provisions contained in a statute they must be given full effect. There can be little doubt that after this Firman was issued, it would not be open to anyone to contend that the Shrinathji temple was a private temple belonging to the Tilkayat Maharaj of the day. This law declares that it has always been and would always be a public temple. The validity of this law was not then and is not now open to any

challenge when it seeks to declare that the temple in question has always been a public temple. We have already seen that the original grants amply bear out the recital in cl. 1 of the Firman about the character of this temple. The Firman then clearly provides that the Tilkayat Maharaj is merely a Custodian, Manager and Trustee of the said property and that finally determines the nature of the office held by the Tilkayat Maharaj. He can claim no better and no higher rights after the Firman was issued. The said clause also declares that the Darbar has absolute right to see to it that the property is used for legitimate purpose of the shrine. This again is an assertion which is validly made to assert the sovereign's rights to supervise the administration of public charity. Clause 2 lays down the absolute right of the Darbar to depose the Tilkayat and to disqualify anyone from claiming the succession to the Gaddi. It shows that succession to the Gaddi and continuing in the office of the Tilkayat are wholly dependent on the discretion of the Darbar. The Right of the Darbar to depose the Tilkayat and to recognise a successor or not is described by this clause as absolute. The third and the fourth clauses are consistent with the first two clauses. Reading this Firman as a whole, there can be no doubt that under the law of Udaipur, this temple was held to be a public temple and the Tilkayat was held to be no more than the Custodian, Manager and Trustee of the property belonging to the said temple. It is on the basis of this law that the vires of the Act must inevitably be determined.

The learned Attorney-General has invited our attention to some decisions in which the temples of this cult were held to be private temples. We would now very briefly refer to these decisions before we proceed to deal with the other points raised in the present appeals. In *Gossamee Sree Greedhareejee* v. *Rumanlolljee Gossamee,* (1), the Privy Council held that when the worship of a Thakoor has been

(1) 16 I. A. 137.

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founded under Hindu law, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or that there has been some usage, course of dealing, or circumstances to show a different mode of devolution. Greedhareejee who as the plaintiff appeared before the Privy Council as the appellant had been deposed by the Rana of Udaipur in 1876. He claimed the rights of shebaitship of a certain consecrated idol and as incident thereto to the things which had been offered to the idol. This claim was based on the allegation that by the rule of primogeniture he had preferential right and not his opponent Rumanlolijee Gossamee. The High Court of Calcutta by a majority judgment had held that Greedhareejee's title as a founder had been established and that the bar of limitation pleaded by the respondent applied to the temple and the land on which it was built but not to the image and the movable property connected with it. In the result, Greedhareejee got a decree for so much of his claim as was not barred by lapse of time. This conclusion was confirmed by the Privy Council. It would be noticed that since the dispute was between two rival claimants neither of whom was interested in pleading that the temple was a public temple, that aspect of the matter did not fall to be considered in the said litigation, and so, this decision can be regarded as an authority only for the proposition which it laid down in regard to the succession of the Shebaitship. The learned Attorney-General no doubt invited our attention to the fact that in the course of his judgment, Lord Hobhouse has mentioned that all the male members of the Vallabh's family are in their lifetime esteemed by their community as partaking of the Divine essence, and as entitled to veneration and worship. This observation, however, can be of little help to the Tilkayat in the present proceedings where we have to deal with the matter on the basis of the Firman to which we have just referred. Besides, we

may incidentally add that the Tilkayat's claims to property rights in the present proceedings based on the allegation that the members of the denomination regard all successors of Vallabha with the same respect which they had for Vallabha himself, sounds incongruous with the essential tenets of Vallabha's philosophy.

In *Mohan Lalji* v. *Gordhan Lalji Maharaj* (1), the dispute which was taken before the Privy Council was in regard to the right claimed by the sons of a daughter to the shebaitship of the temple of Vallabha sect, and in support of the said right the sons of the daughter relied upon the earlier decision of the Privy Council in the case of *Gossammee Sree Girdhareejee* (2). In rejecting the plea made by the said sons, the Privy Council observed that the principle laid down in the earlier case cannot be applied so as to vest the shebaitship in persons who, according to the usages of the worship, cannot perform the rites of the office. In that case it was found that the sons of the daughter who were Bhats and who did not belong to the Gosain Kul were incompetent to perform the "diurnal rites for the deity worshipped by the sect" and so, the decision of the High Court which had rejected their claim was confirmed. In this case again neither party was interested in pleading the public character of the temple and so, that point did not arise for decision.

The same comment falls to be made about the decision of the Allahabad High Court in *Gopal Lalji* v. *Girdhar Lalji* (3). It is true that in that case the plaintiff challenged a gift deed executed by one Goswami of the Vallabha sect in favour of another Goswami and in doing so he alleged that the donor Goswami was a Trustee and not the owner of the property. But in the course of the evidence, it was virtually conceded by him that the property belonged to the donor Goswami, and so, the case was

(1) 40 I.A. 97. (2) 16 I.A. 137.

(3) A.I.R 1915 All. 44.

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decided on that basis. In its judgment, the High Court observed that there can be no doubt that if we must regard the property as "trust property" in the strict sense, dedicated for a charitable or religious purpose in the hands of duly constituted trustees of the charitable or religious object, one or more of such trustees would have no power to alienate the trust property or delegate their powers and duties contrary to the trust. But the High Court found that the evidence adduced conclusively established that the property in question was private property and so, the challenge to the validity of the gift was repelled. This decision also cannot be of any assistance in deciding the question as to whether the temple with which the present proceedings concerned is a private or a public temple. Besides, as we have already indicated, this question is really concluded by the Firman of 1934 and so, the temple must be held to be a public temple and in consequence the challenge to the validity of the Act on the basis that the Act has interfered with the Tilkayat's rights of ownership over his private property cannot succeed.

Let us now examine the material provisions of the Act before dealing with the contentions of the Tilkayat that the said provisions contravene his fundamental rights under Art. 19 (1) (f) and Arts. 14 and 31(2) even on the basis that the temple is a public temple. The Act was passed to provide for the better administration and governance of the temple of Shri Shrinathji, at Nathdwara. It consists of 38 sections. Section 2 is a definition section; under s. 2(i) "Board" means the Nathdwara Temple Board established and constituted under the Act, and s. 2 (ii) defines "Endowment" as meaning all property, movable or immovable belonging to or given or endowed in any name for the maintenance or support of the temple or for the performance of any service or charity connected therewith or for the benefit, convenience or comfort of the pilgrims visiting the temple, and

includes—

(a) the idols installed in the temple.

(b) the premises of the temple.

(c) all jagirs, muafis and other properties, movable or immovable, wherever situate and all income derived from any source whatsoever and standing in any name, dedicated to the temple or placed for any religious, pious or charitable purposes under the Board or purchased from out of the temple funds and all offerings and bhents made for and received on behalf of the temple.

but shall not include any property belonging to the Goswami personally although the same or income thereof might hitherto have been utilised in part or in whole in the service of the temple.

Section 2 (viii) defines "temple" as meaning the temple of Shri Shrinathji at Nathdwara in Udaipur District and includes the temple of Shri Navnitpriyaji and Shri Madan Mohanlalji together with all additions thereto or all alterations thereof which may be made from time to time after the commencement of the Act.

Sections 3 and 4 are important provisions of the Act. Section 3 provides that the ownership of the temple and all its endowments including all offerings which have been or may hereafter be made shall vest in the deity of Shri Shrinathji and the Board constituted under the Act shall be entitled to their possession. In other words, all property of the temple vests in the temple and the right to claim possession of it vests in the Board. As a corollary to

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the provisions of s. 3, s. 4(1) provides that the administration of the temple and all its endowments shall vest in the Board constituted in the manner hereinafter provided. Sub-section (2) lays down that the Board shall be a body corporate by the name of the Nathdwara Temple Board and shall have perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and may sue or be sued in the said name. The composition of the Board has been prescribed by s. 5: it shall consist of a President, the Collector of Udaipur District and nine other members. The proviso to the section is important: it says that the Goswami shall be one of such members if he is not otherwise disqualified to be a member and is willing to serve as such. Section 5 (2) prescribes the disqualifications specified in clauses (a) to (g)—unsoundness of mind adjudicated upon by competent Court, conviction involving moral turpitude; adjudication as an insolvent or the status of an undischarged insolvent; minority, the defect of being deaf-mute or leprosy; holding an office or being a servant of the temple or being in receipt of any emoluments or perquisites from the temple; being interested in a subsisting contract entered into with the temple; and lastly, not professing the Hindu religion or not belonging to the Pushti-Margiya Vallabhi Sampradaya. There can be no doubt that "or" in clause (g) must mean "and", for the context clearly indicates that way. There is a proviso to s. 5 (2) which lays down that the disqualification as to the holding of an office or an employment under the temple shall not apply to the Goswami and the disqualification about the religion will not apply to the Collector; that is to say, a Collector will be a member of the Board even though he may not be a Hindu and a follower of the denomination. Section 5 (3) provides that the President of the Board shall be appointed by the State Government and shall for all purposes be deemed to be a member. Under s. 5 (4) the

Collector shall be an ex-officio member of the Board. Section 5 (5) provides that all the other members specified in sub-cl. (1) shall be appointed by the State Government so as to secure representation of the Pushti-Margiya Vaishnavas from all over India. This clearly contemplates that the other members of the Board should not only be Hindus, but should also belong to the denomination, for it is in that manner alone that their representation can be adequately secured. Section 6 gives liberty to the President or any member to resign his office by giving a notice in writing to the State Government. Under s. 7 (1), the State Government is given the power to remove from office the President or any member, other than the ex-officio member, including the Goswami on any of the three grounds specified in clauses (a), (b) & (c); ground (a) refers to the disqualification specified by s. 5 (2), ground (b) refers to the absence of the member for more than four consecutive meetings of the Board without obtaining leave for absence; and ground (c) refers to the case where a member is guilty of corruption or misconduct in the administration of the endowment. Section 7 (2) provides a safeguard to the person against whom action is intended to be taken under sub-cl. (1) and it lays down that no person shall be removed unless he has been given a reasonable opportunity of showing cause against his removal. It would be noticed that by operation of s. 7 (1), the Goswami is liable to be removed, but that removal would, in a sense, be ineffective because the proviso to s. 5 requires that the Goswami has to be a member of the Board so that even though he is removed for causes (b) and (c), he would automatically be deemed to be a member under the proviso to s. 5. It would be a different matter if the Goswami is removed by reason of the fact that he is disqualified on any of the grounds described in s. 5 (2). Such a disqualification may presumably necessitate the appointment of a successor, Goswami in lieu of the disqualified

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one and then it would be the successor Goswami who will be a member of the Board under the proviso to s. 5 (1). This position is made clear if we look at s. 11 which provides that any person ceasing to be a member shall, unless disqualified under s. 5 (2) be eligible for re appointment, whereas other members who are removed under s. 7 (1) for causes specified in clauses (b) and (c) may not be eligible for re-appointment, the Goswami would be entitled to such re-appointment. Section 8 prescribes the term of office at 3 years. Section 9 provides for the filling up of casual vacancies. Section 10 empowers the State Government to dissolve the Board and reconstitute it if it is satisfied that the existing Board is not competent to perform or persistently makes default in performing the duties imposed on it under this Act, or exceeds or abuses its powers; and this power can be exercised after due enquiry. This section further provides that if a Board is dissolved, immediate action should be taken to reconstitute a fresh Board in accordance with the provisions of this Act. Section 10 (2) provides a safeguard to the Board against which action is proposed to be taken under sub-s. (1) inasmuch as it requires that before the notification of the Board's dissolution is issued, Government will communicate to the Board the grounds on which it proposes so to do, fix a reasonable time for the Board to show cause and consider its explanation or objections, if any. Section 10 (3) empowers the State Government, as a provisional and interim measure, to appoint a person to perform the functions of the Board until a fresh Board is reconstituted, and under s. 10 (4), the State Government is given the power to fix the remuneration of the person so appointed. Section 12 makes every member of the Board liable for loss, waste or misapplication of any money or property belonging to the temple, provided such loss, waste or misapplication is a direct consequence of his wilful act or omission, and it allows a suit to be instituted to

obtain such compensation. Under s. 13, members of the Board as well as the President are entitled to draw travelling and halting allowances as may be prescribed. Section 14 deals with the office and meetings of the Board and s. 15 provides that any defect or vacancy in the constitution of the Board will not invalidate the acts of the Board. Section 16 is important. It lays down that subject to the provisions of this Act and of the rules made thereunder, the Board shall manage the properties and affairs of the temple and arrange for the conduct of the daily worship and ceremonies and of festivals in the temple according to the customs and usage of the Pushti-Margiya Vallabhi Sampradaya. Section 17 (1) provides that the jewelleries or other valuable moveable property of a non-perishable character the administration of which vests in the Board shall not be transferred without the previous sanction of the Board, and if the value of the property to be transferred exceeds ten thousand rupees, the previous approval of the State Government has to be obtained. Section 17 (2) requires the previous sanction of the State Government for leasing the temple property for more than five years, or mortgaging, selling or otherwise alienating it. Section 18 imposes a ban on the borrowing power of the Board. Section 19 (1) provides for the appointment of the Chief Executive Officer of the temple, and the remaining four subsections of s. 19 deal with his terms and conditions of service. Section 20 speaks of the powers and duties of the Chief Executive Officer which relate to the administration of the temple properties. Section 21 provides that the Board may appoint, suspend, remove, dismiss or reduce in rank or in any way punish all officers and servants of the Board other than the Chief Executive Officer, in accordance with rules made by the State Government. Section 22 is very important. It provides that save as otherwise expressly provided in or under this Act, nothing

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herein contained shall affect any established usage of the temple or the rights, honours, emoluments and perquisites to which any person may, by custom or otherwise, be entitled in the temple. Section 23 deals with the budget, s. 24 with accounts and s. 25 with the Administration Report. Section 26 confers on the State Government power to call for such information and accounts as may, in its opinion, be reasonably necessary to satisfy it that the temple is being properly maintained, and its administration carried on according to the provisions of this Act. Under this section, the Board is under an obligation to furnish forthwith such information and accounts as may be called for by the State Government. Under s. 27, the State Government may depute any person to inspect any movable or immovable property, records, correspondence, plans, accounts and other documents relating to the temple and endowments, and the Board and its officers and servants shall be bound to afford all facilities to such persons for such inspection. Section 28(1) specifies the purposes for which the funds of the temple may be utilised and s. 28(2) provides that without prejudice to the purposes referred to in sub-s. (1), the Board may, with the previous sanction of the State Government, order that the surplus funds of the temple be utilised for the purposes mentioned in clauses (a) to (e). Section 28(3) requires that the order of the Board under sub-s. (2) shall be published in the prescribed manner. Section 29 deals with the duties of trustee of specific endowment; s. 30(1) confers the power on the State Government to make rules for carrying out all or any of the purposes of the Act; s. 30(2) provides that in particular and without prejudice to the generality of the foregoing power, the State Government shall have power to make rules with reference to matters covered by clauses (a) to (i). Under sub-section (3) it is provided that the rules made under this Act shall be placed before the House of the State

Legislature at the session thereof next following. Section 31 provides that the State Government or any person interested may institute a suit in the Court of District Judge to obtain a decree for the reliefs mentioned in clauses (a) to (e). These reliefs correspond to the relief which may be obtained in a suit under s. 92 Code of Civil Procedure. In consequence, s. 31(2) provides that ss. 92 and 93 and O. I, r. 8, of the First Schedule to the Code of Civil Procedure shall have no application to any suit claiming any relief in respect of the administration or management of the temple and no suit in respect thereof shall be instituted except as provided by this Act. In other words, a suit which would normally have been filed under ss. 92 and 93 and O. I, r. 8, of the Code has now to be filed under s. 31. Section 32 deals with the resistance or obstruction in obtaining possession and it provides that the order which may be passed by the Magistrate in such matters shall, subject to the result of any suit which may be filed to establish the right to the possession of the property, be final. Section 33 deals with the costs of the suit, etc. Section 34 provides that this Act shall have effect notwithstanding anything to the contrary contained in any law for the time being in force or in any scheme of management framed before the commencement of this Act or in any decree, order, practice, custom or usage. Section 35 contains a transitional provision and it empowers the State Government to appoint one or more persons to discharge all or any of the duties of the Board after the Act comes into force and before the first Board is constituted. Under s. 36 it is provided that if any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, give such directions and make such provisions as may appear to it to be necessary for the purpose of removing the difficulty. Section 37 prescribes a bar to suit or proceeding against the State Government for anything done or purported to be done by

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it under the provisions of this Act. The last section deals with repeal and savings. The Rajasthan Ordinance No. 2 of 1959 which had preceded this Act has been repealed by this section. That in brief, is the scheme of the Act.

Later, we will have occasion to deal with the specific sections which have been challenged before us, but at this stage, it is necessary to consider the broad scheme of the Act in order to be able to appreciate the points raised by the Tilkayat and the denomination in challenging its validity. For the purpose of ascertaining the true scope and effect of the scheme envisaged by the Act it is necessary to concentrate on sections 3, 4, 16, 22 and 34. The scheme of the Act, as its preamble indicates, is to provide for the better administration and governance of the temple of Shri Shrinathji at Nathdwara. It proceeds on the basis that the temple of Shrinathji is a public temple and having regard to the background of the administration of its affairs in the past, the legislature thought that it was necessary to make a more satisfactory provision which will lead to its better administration and governance. In doing so, the legislature has taken precaution to safeguard the performance of religious rites and the observance of religious practices in accordance with traditional usage and custom. When the validity of any legislative enactment is impugned on the ground that its material provisions contravene one or the other of the fundamental rights guaranteed by the Constitution, it is necessary to bear in mind the primary rule of construction. If the impugned provisions of the Statute are reasonably capable of a construction which does not involve the infringement of any fundamental rights, that construction must be preferred though it may reasonably be possible to adopt another construction which leads to the infringement of the said fundamental rights. If the impugned

provisions are reasonably not capable of the construction which would save its validity, that of course is another matter; but if two constructions are reasonably possible, then it is necessary that the Courts should adopt that construction which upholds the validity of the Act rather than the one which affects its validity. Bearing this rule of construction in mind, we must examine the five sections to which we have just referred. Section 3 no doubt provides for the vesting of the temple property and all its endowments including offerings in the deity of Shrinathji, and that clearly is unexceptionable. If the temple is a public temple, under Hindu Law the idol of Shrinathji is a juridical person and so, the ownership of the temple and all its endowments including offerings made before the idol constitute the property of the idol. Having thus stated what is the true legal position about the ownership of the temple and the endowments, s. 3 proceeds to add that the Board constituted under this Act shall be entitled to the possession of the said property. If the legislature intended to provide for the better administration of the temple properties, it was obsolutely essential to constitute a proper Board to look after the said administration, and so, all that s. 3 does is to enable the Board to take care of the temple properties and in that sense, it provides that the Board shall be entitled to claim possession of the said properties. In the context, this provision does not mean that the Board would be entitled to dispossess persons who are in possession of the said properties : it only means that the Board will be entitled to protect its possession by taking such steps as in law may be open to it and necessary in that behalf. Section 4 is a mere corollary to s. 3 because it provides that the administration of the temple and all its endowments shall vest in the Board. Thus, the result of reading ss. 3 and 4 is that the statute declares that the properties of the temple vest in the deity of Shrinathji and provides for the administration of the said

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properties by appointing a Board and entrusting to the Board the said administration.

The true scope and effect of these provisions can be properly appreciated only when they are co-related to ss. 16 and 22. Section 16 prescribes the duties of the Board; it requires that subject to the provisions of the Act and the rules framed under it, the Board has to manage the properties and affairs of the temple and arrange for the conduct of the daily worship and ceremonies and of festivals in the temple according to the customs and usages of the Pushti-margiya Vallabhi Sampradaya. It would be noticed that two different categories of duties are imposed upon the Board. The first duty is to manage the properties and secular affairs of the temple. This naturally is a very important part of the assignment of the Board. Having thus provided for the discharge of its important function in the matter of administering the properties of the temple, the section adds that it will be the duty of the Board to arrange for the religious worship, ceremonies and festivals in the temple, but this has to be done according to the customs and usages of the denomination. It is thus clear that the duties of the Board in so far as they relate to the worship and other religious ceremonies and festivals, it is the traditional customs and usage which is of paramount importance. In other words, the legislature has taken precaution to safeguard the due observance of the religious ceremonies, worship and festivals according to the custom and usage of the denomination. Section 22 makes this position still clearer; it provides that save as otherwise expressly provided in or under the Act, nothing herein contained shall affect any established usage of the temple or the rights, honours, emoluments and perquisites to which any person may, by custom or otherwise, be entitled in the temple. The saving provisions of s. 22 are very wide; unless there is an express provision to the contrary in the

Act, all matters which have been saved by s. 22 will be governed by the traditional usage and custom. If only we consider the very wide terms in which the saving clause under s. 22 has been drafted, it will be clear that the legislature was anxious to provide for the better administration of the temple properties and not to infringe upon the traditional religious ceremonies, worship and festivals in the temple and the rights, honours, emoluments and the perquisites attached thereto. Section 34 which provides for the over-riding effect of the Act must be read along with s. 22 and so, when it provides that the Act shall have effect notwithstanding practice, custom or usage, it only means that practice, custom and usage will not avail if there is an express provision to the contrary as prescribed by s. 22.

Reading these five sections together, it seems to us clear that the Legislature has provided for the appointment of a Board to look after the administration of the property of the temple and manage its secular affairs as well as the religious affairs of the temple, but in regard to these religious affairs consisting of the worship, services, festivals and other ceremonies, the custom prevailing in the temple consistently with the tenets of Vallabha philosophy are to be respected. The learned Attorney-General no doubt attempted to read ss. 3 and 4 in a very wide manner and he sought to place a narrow construction on s. 22, thereby indicating that even religious ceremonies and rites and festivals would remain within the exclusive jurisdiction of the Board without reference to the traditional custom or usage. We do not think that it would be appropriate to adopt such an approach in construing the relevant provisions of the Act. We have no doubt that when rules are framed under s. 30 of the Act, they would be framed bearing in mind these essential features of the material provisions of the Act and will help to carry out the object of the Act in keeping the religious part of the services and wor-

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ship at the temple apart from the secular part of the administration of the temple properties. Broadly stated, the former will be carried out according to the traditional usage and custom and the latter according to the provisions of the Act.

On behalf of the Tilkayat, the main contention which has been raised before us by the learned Attorney-General is that his right of property has been infringed under Art. 19 (1) (f) and Mr. Pathak has added that the relevant provisions infringed the Tilkayat's rights under Art. 31 (2) of the Constitution. As we have already indicated this latter contention is raised in the writ petition filed by the Tilkayat in this Court. Now in deciding the validity of these contentions it is necessary to revert to the Firman issued by the Rana of Udaipur in 1934, because the rights of the Tilkayat have to be judged in the light of the said Firman. We have already noticed that the said Firman clearly declares that the Tilkayat is merely a Custodian, Manager and Trustee of the property of the shrine Shrinathji and that the Udaipur Darbar has the absolute right to supervise that the property dedicated to the shrine is used for legitimate purpose of the shrine. Having regard to the unambiguous and emphatic words used in clause 1 of the Firman and having regard to other drastic provisions contained in its remaining clauses, we are inclined to think that this Firman made the Tilkayat for the time being a Custodian, Manager and Trustee, and nothing more. As a Custodian or Manager, he had the right to manage the properties of the temple, subject, of course, to the overall supervision of the Darbar, the right of the Darbar in that behalf being absolute. He was also a Trustee of the said property and the word "trustee" in the context must mean trustee in the technical legal sense. In other words, it is not open to the Tilkayat to claim that he has rights of a Mahant or a Shebait; his rights are now defined and he cannot claim any higher rights after the Firman was issued. There can be no doubt that the right to

have the custody of the property such as the Custodian has, or the right to manage the property such as the Manger possesses, or the right to administer the trust property for the benefit of the beneficiary which the Trustee can do, cannot be regarded as a right to property under Art. 19 (1)(f) and for the same reason, it does not constitute property under Art. 31(2). If it is held that the Tilkayat was no more than a Custodian, Manager and Trustee properly so called, there can be no doubt that he is not entitled to rely either on Art. 19(1)(f) or on Art. 31(2). Therefore, on this construction of clause 1 of the Firman, the short answer to the pleas raised by the Tilkayat under Arts. 19(1)(f) and 31(2) is that the rights such as he possesses under the said clause cannot attract Art. 19(1)(f) or Art. 31(2).

It has, however, been strenously urged before us that the words "Custodian, Manager or Trustee" should be liberally construed and the position of the Tilkayat should be taken to be similar to that of a Mahant of a Math or a Shebait of a temple. Under Hindu Law, idols and Maths are both juridical persons and Shebaits and Mahants who manage their properties are recognised to possess certain rights and to claim a certain status. A Shebait by virtue of his office is the person entited to administer the property attached to the temple of which he is a Shebait. Similarly a Mahant who is a spiritual head of the Math or religious institution is entitled to manage the said property for and on behalf of the Math. The position of the Mahant under Hindu law is not strictly that of a Trustee. As Mr. Ameer Ali delivering the judgment of the Board observed in *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (1), "called by whatever name he is only the manager and custodian of the idol or the institution." When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. In almost every case the Mahant is given the right to a

(1) (1921) L. R. 48 I.A. 302, 311.

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part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a "trustee" in the English sense of the term, though in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration.

This position has been accepted by this Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.* (1). Speaking for the unanimous Court in that case, Mukherjea, J., observed, "Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together, and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right." On this view, this Court held that the right of this character vesting in a Mahant is a right to property under Art. 19(1)(f) of the Constitution. Relying on this decision, it is urged that the Firman should be construed to make the Tilkayat a Mahant or a Shebait and as such, clothed with rights which amount to a right to property under Art. 19(1)(f) and which constitute property under Art. 31(2).

Assuming that the construction of clause 1 of the Firman suggested by the learned Attorney-General is possible, let us examine the position on the basis that the Tilkayat can, in theory, be regarded as a Mahant of the temple. What then are the rights to which, according to the relevant evidence produced in this case, the Mahant is entitled in respect of the temple? As a Tilkayat, he has a right to reside in

(1) [1954] S.C.R. 1005.

the temple; as such Mahant he has a right to conduct or arrange for and supervise the worship of the idol in the temple and the services rendered therein in accordance with the traditional custom and usage. He has also the right to receive bhents on behalf of the idol and distribute *Prasad* in accordance with the traditional custom and usage. So far as these rights are concerned, they have not been affected by the Act, and so, no argument can be raised that in affecting the said rights the Act has contravened either Art. 19(1)(f) or Art. 31(2). It is, however, argued that as a Mahant, the Tilkayat had the right to manage the properties of the temple, to lease them out and in case of necessity, to alienate them for the purpose of the temple; and it is suggested that these rights constitute a right to property under Art. 19(1)(f) and property under Art. 31(2). The learned Attorney-General fairly conceded that there was no evidence to show that the right to alienate had ever been exercised in this case, but he contends that the existence of the right cannot be denied. It is also conceded that the right to manage the properties was subject to the strict and absolute supervision of the Darbar, but it is suggested that even so, it is a right which must be regarded as a right to property. In dealing with this argument, it is necessary to bear in mind that the extent of the rights available to the Tilkayat under clause 1 of the Firman cannot be said to have become larger by virtue of the fact that the Constitution came into force in 1950. It is only the rights to property which subsisted in the Tilkayat under the said Firman that would be protected by the Constitution, provided, of course, they are rights which attract the provisions of Art. 19(1)(f) or Art. 31(2).

This branch of the argument urged on behalf of the Tilkayat naturally rests on the decision of this Court in the case of the *Commissiner, Hindu Religious Endowments, Madras* (1), that right of a Mahant

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does amount to "a genuine legal right" and that the said right must be held to fall under Art. 19(1)(f) because the word "property" used in the said clause ought to receive a very liberal interpretation. It will be recalled that in the said case, this Court in terms and expressly approved of the decision of Mr. Ameer Ali in *Vidya Viruthi Thirtha's* case (1), which exhautively dealt with the position of the Mahant or the Shebait under Hindu law. We have already quoted the relevant observations made in that judgment and it would be relevant to repeat one of those observations in which the Privy Council stated that in almost every case the Mahant is given the right to a part of the usufruct, the mode of enjoyment and the amount of usufruct depending again on usage and custom. It is true that in the passage in Mr. Justice Mukherjea's judgment in the case of the *Commissioner, Hindu Religious Endowments, Madras* (2), this particular statement has not been cited; but having referred to the rights which the Mahant can claim, the learned Judge has added that these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. It is clear that when this Court held that the rights vesting in the Mahant as a manager of the Math amount to a genuine legal right to property, this Court undoubtedly had in mind the fact that usually, the Mahant or Shebait is entitled to be maintained out of the property of the Math or the temple and that the extent of the right to a part of the usufruct and the mode of enjoyment and the amount of the usufruct always depended on usage and custom of the Math or the temple. It is in the light of these rights, including particularly the right to claim a part of the usufruct for his maintenance that this Court held that the totality of the rights amount to a right to property under Art. 19 (1) (f).

(1) (1921) L.R. 48 I.A. 302, 311. (2) [1954] S.C.R. 1005.

That takes us to the question as the nature and extent of the Tilkayat's rights in regard to the temple property. It is clear that the Tilkayat never used any income from the property of the temple for his personal needs or private purpose. It is true that the learned Attorney-General suggested that this consistent course of conduct spreading over a large number of years was the result of what he described as self-abnegation on the part of the Tilkayats from generation to generation and from Tilkayat's point of view, it can be so regarded because the Tilkayat thought and claimed that the temple and his properties together constituted his private property. But once we reach the conclusion that the temple is a public temple and the properties belonging to it are the properties of the temple over which the Tilkayat has no title or right, we will have to take into account the fact that during the long course of the management of this temple, the Tilkayat has never claimed any proprietary interest to any part of the usufruct of the properties of the temple for his private personal needs, and so, that proprietary interest of which Mr. Ameer Ali spoke in dealing with the position of the Mahant and the Shebait and to which this Court referred in the case of *Commissioner, Hindu Religious Endowments, Madras* (1), is lacking in the present case. What the Tilkayat can claim is merely the right to manage the property, to create leases in respect of the properties in a reasonable manner and the theoretical right to alienate the property for the purpose of the temple; and be it noted that these rights could be exercised by the Tilkayat under the absolute and strict supervision of the Darbar of Udaipur. Now, the right to manage the property belonging to the temple, or the right to create a lease of the property on behalf of the temple, or the right to alienate the property for the purpose of the temple under the supervision of the Darbar cannot, in our opinion, be equated with the totality of the powers generally possessed by the Mahant or

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even the Shebait, and so, we are not prepared to hold that having regard to the character and extent of the rights which can be legitimately claimed by the Tilkayat even on the basis that he was a Mahant governed by the terms of the Firman, amount to a right to property under Art. 19 (1)(f) or constitute property under Art. 31 (2).

Besides, we may add that even if it was held that these rights constituted a right to hold property their regulation by the relevant provisions of the Act would undoubtedy be protected by Art. 19 (5). The temple is a public temple and what the legislature has purported to do is to regulate the administration of the properties of the temple by the Board of which the Tilkayat is and has to be a member. Having regard to the large estate owned by the Tilkayat and having regard to the very wide extent of the offerings made to the temple by millions of devotees from day to day; the legislature was clearly justified in providing for proper administration of the properties of the temple. The restrictions imposed by the Act must, therefore, be treated as reasonable and in the interests of the general public.

Turning to Mr. Pathak's argument that the rights constitute property under Art. 31 (2) and the Act contravenes the said provision because no compensation had been provided for, or no principles have been prescribed in connection therewith, the answer would be the same. The right which the Tilkayat possesses cannot be regarded as property for the purpose of Art. 31 (2). Besides, even if the said rights are held to be property for the purpose of Art. 31 (2), there are some obvious answers to the plea which may be briefly indicated.

After Art. 31 (2) was amended by the Constitution (Fourth Amendment) Act, 1955, the position with regard to the scope and effect of the provisions of

Art. 31 (1) and 31 (2) is no longer in doubt. Article 31 (2) deals with the compulsory acquisition or requisition of a citizen's property and it provides that a citizen's property can be compulsorily acquired or requisitioned only for a public purpose and by authority of law which provides for compensation and either fixes the amount of the compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given; and it adds that no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate. Art. 31 (2A) which is expressed in a negative form really amounts to this that where a law provides for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall be deemed to provide for the compulsory acquisition or requisition of property. If, on the other hand, the transfer of the ownership or the right to possession of any property is not made to the State or to a corporation owned or controlled by the State, it would not be regarded as compulsory acquisition or requisition of the property, notwithstanding that it does deprive any person of his property. In other words, the power to make a compulsory acquisition or requisition of a citizen's property provided for by Art. 31(2) is what the American lawyers described as "eminent domain"; all other cases where a citizen is deprived of his property are covered by Art. 31(1) and they can broadly be said to rest on the police powers of the State. Deprivation of property falling under the latter category of cases cannot be effected save by authority of law; this Court has held that the expression "save by authority of law" postulates that the law by whose authority such deprivation can be effected must be a valid law in the sense that it must not contravene the other fundamental rights guaranteed by the Constitution.

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The argument which has been urged before us by Mr. Pathak is that the right to administer the properties of the temple which vested in the Mahant has been compulsorily acquired and transferred to a Board constituted under the Act which Board is controlled by the State. We will assume that the Board in question is controlled by the State; but the question still remains whether the right which is allowed to vest in the Tilkayat has been compulsorily acquired and has been transferred to the Board. In our opinion, what the Act purports to do is to extinguish the secular office vesting in the Tilkayat by which he was managing the properties of the temple. It is well-known that a Mahant combines in himself both a religions and a secular office. This latter office has been extinguished by the Act, and so, it cannot be said that the rights vesting in the Tilkayat to administer the properties have been compulsorily acquired. Acquisition of property, in the context, means the extinction of the citizen's rights in the property and the conferment of the said rights in the State or the State owned corporation. In the present case, the Act extinguishes the Mahant's rights and then creates another body for the purpose of administering the properties of the temple. In other words, the office of one functionary is brought to an end and another functionary has come into existence in its place. Such a process cannot be said to constitute the acquisition of the extinguished office or of the rights vesting in the person holding that office.

Besides, there is another way in which this question may perhaps be considered. What the Act purports to do is not to acquire the Tilkayat's rights but to require him to share those rights with the other members of the Board. We have already seen that the Act postulates that the Mahant for the time being has to be a member of the Board and so, the administration of the properties which was so long carried on by the Mahant alone would here after

have to be carried on by the Mahant along with his colleagues in the Board. This again cannot, we think, be regarded as a compulsory acquisition of the Tilkayat's rights. It is not suggested that the effect of the relevant provisions of the Act is to bring about the requisitioning of the said rights. Therefore, even if it is assumed that the rights claimed by the Tilkayat constitute property under Art. 31(2), we do not think that the provisions of Art. 31(2) apply to the Act. But as we have already held, the rights in question do not amount to a right to hold property under Art. 19(1)(f) or to property under Art. 31(2).

That takes us to the argument that the Act is invalid because it contravenes Art. 14. In our opinion, there is no substance in this argument. We have referred to the historical background of the present legislation. At the time when Ordinance No. II of 1959 was issued, it had come to the knowledge of the Government of Rajasthan that valuables such as jewelleries, ornaments, gold and silver-ware and cash had been removed by the Tilkayat in the month of December 1957, and as the successor of the State of Mewar, the State of Rajasthan had to exercise its right of supervising the due administration of the properties of the temple. There is no doubt that the shrine at Nathdwara holds a unique position amongst the Hindu shrines in the State of Rajasthan and no temple can be regarded as comparable with it. Besides, the Tilkayat himself had entered into negotiations for the purpose of obtaining a proper scheme for the administration of the temple properties and for that purpose, a suit under s. 92 of the Code had in fact been filed. A Commission of Enquiry had to be appointed to investigate into the removal of the valuables. If the temple is a public temple and the legislature thought that it was essential to safeguard the interests of the temple by taking adequate legislative action in that behalf, it is difficult to appreciate how the Tilkayat can seriously

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contend that in passing the Act, the legislature has been guilty of unconstitutional discrimination. As has been held by this Court in the case of *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar* (1), that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, the plea raised under Art. 14 fails.

The next point to consider is in regard to the pleas raised more by the denomination than by the Tilkayat himself under Arts. 25 and 26 of the Constitution. The attitude adopted by the denomination in its writ petition is not very easy to appreciate. In the writ petition filed on behalf of the denomination, it was urged that the Tilkayat himself is the owner of all the properties of the temple and as such, was entitled to manage them in his discretion and as he liked. This plea clearly supported the Tilkayat's stand that the temple in question was a private temple belonging to himself and as such, all the temple properties were his private properties. The denomination was clearly in two minds. It was inclined more to support the Tilkayat's case than to put up an alternative case that the denomination was interested in the management of these properties. Even so, some allegations have been made in the writ petition filed on behalf of the denomination from which it may perhaps be inferred that it was the alternative case of the denomination that the temple and the properties connected therewith belonged to the denomination according to its usages and tradition, and therefore, the management of the said temple and the properties cannot be transferred to the Board. It is this latter alternative plea which is based on Art. 25 (1) and Art. 26(b) of the Constitution. The argument is that the Act contravenes the right guaranteed to the denomination by

(1) [1949] S.C.R. 279, 297.

Art. 25(1) freely to practise its religion and that it also contravenes the denomination's right guaranteed under Art. 26(b) and (d) to manage its own affairs in matters of religion, and to administer its property in accordance with law. For the purpose of dealing with these arguments, we will assume that the denomination has a beneficial interest in the properties of the temple.

Articles 25 and 26 constitute the fundamental rights to freedom of religion guaranteed to the citizens of this country. Article 25 (1) protects the citizen's fundamental right to freedom of conscience and his right freely to profess, practise and propagate religion. The protection given to this right is, however, not absolute. It is subject to public order, morality and health as Art. 25 (1) itself denotes. It is also subject to the laws, existing or future, which are specified in Art. 25 (2). Article 26 guarantees freedom of the denominations or sections thereof to manage their religious affairs and their properties. Article 26 (b) provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion ; and Art. 26 (d) lays down a similar right to administer the property of the denomination in accordance with law. Article 26 (c) refers to the right of the denomination to own and acquire movable and immovable property and it is in respect of such property that clause (d) makes the provision which we have just quoted. The scope and effect of these articles has been considered by this Court on several occasions. "The word "religion" used in Art. 25 (1)," observed Mukherjea, J., speaking for the Court in the case of the *Commissioner, Hindu Religious Endowments, Madras* (1), "is a matter of faith with individuals and communities and it is not necessarily theistic. It undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess

(1) [1954] S.C.R. 1005.

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that religion as conducive to their spiritual well being, but it is not 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."

In *Shri Venkataramana Devara* v. *The State of Mysore* (1), Venkatarama Aiyar, J., observed "that the matter of religion in Art. 26 (b) include even practices which are regarded by the community as parts of its religion." It would thus be clear that religious practice to which Art. 25 (1) refers and affairs in matters of religion to which Art. 26 (b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Art 25 (1) and Art. 26 (b) extends to such practices.

In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites while dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question ? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which

(1) [1958] S.C.R. 895, 909.

practice is an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of *The Durgah Committee, Ajmer* v. *Syed Hussain Ali* (1), and observed that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part ; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 25 (1).

In this connection, it cannot be ignored that what is protected under Arts. 25 (1) and 26 (b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair 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. Therefore, whenever a claim is made on behalf of an individul citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in

(1) [1962] 1 S.C.R. 383, 411.

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matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matters of religion, then, of course, the rights guaranteed by Art. 25 (1) and Art. 26 (b) cannot be contravened.

It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Arts. 25 (1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Arts. 25(1) and 26(b), Latham, C. J.,'s. observation in *Adelaide Company of Jehovah's witnesses Incorporated* v. *The Commonwealth* (1), that "what is religion to one is superstition to another", on which Mr. Pathak relies, is of no relevance. If an obviously

(1) 67 C.L.R. 116, 123.

secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Art. 25(1) and Art. 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Art. 25(1) or Art. 26(b). This aspect of the matter must be borne in mind in dealing with the true scope and effect of Art. 25(1) and Art. 26(b).

Let us then enquire what is the right which has been contravened by the relevant provisions of the Act. The only right which, according to the denomination, has been contravened is the right of the Tilkayat to manage the property belonging to the temple. It is urged that throughout the history of this temple, its properties have been managed by the Tilkayat and so, such management by the Tilkayat amounts to a religious practice under Art. 25(1) and constitutes the denomination's right to manage the affairs of its religion under Art. 26(b). We have no hestitation in rejecting this argument. The right to manage the properties of the temple is a purely secular matter and it cannot, in our opinion, be regarded as a religious practice so as to fall under Art. 25(1) or as amounting to affairs in matters of religion. It is true that the Tilkayats have been respected by the followers of the denomination and it is also true that the management has remained with the Tilkayats, except on occasions like the minority of the Tilkayat when the Court of Wards stepped in. If the temple had been private and the properties of the temple had belonged to the Tilkayat, it was another matter,

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But once it is held that the temple is a public temple, it is difficult to accede to the argument that the tenets of the Vallabha cult require as a matter of religion that the properties must be managed by the Tilkayat. In fact, no such tenet has been adduced before us. So long as the denomination believed that the property belonged to the Tilkayat like the temple, there was no occasion to consider whether the management of the property should be in the hands of anybody else. The course of conduct of the denomination and the Tilkayat based on that belief may have spread for many years, but, in our opinion, such a course of conduct cannot be regarded as giving rise to a religious practice under Art. 25(1). A distinction must always be made between a practice which is religious and a practice in regard to a matter which is purely secular and has no element of religion associated with it. Therefore, we, are satisfied that the claim made by the denomination that the Act impinges on the rights guaranteed to it by Art. 25(1) and 26(b) must be rejected.

That leaves one more point to be considered under Art. 26(d). It is urged that the right of the denomination to administer its property has virtually been taken away by the Act, and so, it is invalid. It would be noticed that Art. 26(d) recognises the denomination's right to administer its property, but it clearly provides that the said right to administer the property must be in accordance with law. Mr. Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative enactment passed by a competent legislature: In our opinion, this argument is wholly untenable. In the context, the law means a law passed by a competent legislature and Art. 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law. In other words, this clause emphatically

brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination. It is true that under the guise of regulating the administration of the property by the denomination, the denomination's right must not be extinguished or altogether destroyed. That is what this Court has held in the case of the *Commissioner, Hindu Religious Endowments Madras* (1) and *Ratilal Panachand Gandhi* v. *The State of Bombay* (2).

Incidentally, this clause will help to determine the scope and effect of the provisions of Art. 26(b). Administration of the denomination's property which is the subject-matter of this clause is obviously outside the scope of Art. 26 (b). Matters relating to the administration of the denomination's property fall to be governed by Art. 26(d) and cannot attract the provisions of Art. 26(b). Article 26 (b) 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; 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 provision under Art. 26 (d) for legislative regulation of the administration of the denomination's property would be rendered illusory.

It is however, argued that the constitution of the Board in which the administration of the property now vests is not the denomination, and since the administration is now left to the Board, the denomination has been wholly deprived of its right to administer the property. It is remarkable that this plea should be made by the representatives of the

(1) [1954] S.C.R. 1005. (2) [1954] S.C.R. 1055.

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denomination who in their writ petition were prepared to support the Tilkayat in his case that the temple and the properties of the temple were his private property. That apart, we think that the constitution of the Board has been deliberately so prescribed by the legislature as to ensure that the denomination should be adequately and fairly represented on the Board. We have already construed s. 5 and we have held that s. 5 (2) (g) requires that the members of the Board other than the Collector of Udaipur District should not only profess Hindu religion but must also belong to the Pushti-Margiya Vallabhi Sampradaya. It is true that these members are nominated by the State Government, but we have not been told how else this could have been effectively arranged in the interests of the temple itself. The number of the devotees visiting the temple runs into lacs ; there is no organisation which comprehensively represents the devotees as a class ; there is no register of the devotees and in the very nature of things, it is impossible to keep such a register. Therefore, the very large mass of Vallabh's followers who constitute the denomination can be represented on the Board of management only by a proper nomination made by the State Government, and so, we are not impressed by the plea that the management by the Board constituted under the Act will not be the management of the denomination. In this connection, we may refer to clause 1 of the Firman which vested in the Darbar absolute right to supervise the management of the property. As a successor-in-interest of the Darbar, the state of Rajasthan can be trusted to nominate members on the Board who would fairly represent the denomination. Having regard to all the relevant circumstances of this case: we do not think that the legislature could have adopted any other alternative for the purpose of constituting the Board. Therefore, we must hold that the challenge to the validity of the Act on the

ground that it contravenes Arts. 25 (1), 26 (b) and 26 (d) must be repelled.

It still remains to consider the provisions of the Act which have been challenged by the Tilkayat and the denomination as well as those which have been struck down by the High Court and in respect of which the State has preferred appeals. We will take these sections in their serial order. We have considered ss. 3, 4, 16, 22 and 34 and have held that these sections are valid because the scheme envisaged by the said sections clearly protects the religious rites, ceremonies and services rendered in the temple and the Tilkayat's status and powers in respect thereof. The said scheme merely allows the administration of the properties of the temple which is a purely secular matter to be undertaken by the Board, and so, it is not necessary to refer to the said sections again.

Section 2 (viii) which defines a temple as including the temple of Shri Navnitpriyaji and Shri Madan Mohanlalji has been struck down by the High Court in regard to the said two subsidiary deities. The High Court has held that the two deities Navnitpriyaji and Madan Mohanlalji are the private deities of the Tilkayat and it was not competent to the legislature to include them within the definition of the temple under s. 2 (viii). It was urged before the High Court that the said two idols had been transferred by the Tilkayat to the public temple and made a part of it, but it has held that there was no gift or trust deed by the Tilkayat divesting himself of all his rights in those two idols and its property and so, the validity of the section could not be sustained on the ground of such transfer. The correctness of this conclusion is challenged by the learned Solicitor-General on behalf of the State. In dealing with this question, the conduct of the Tilkayat needs to be examined. On October 15, 1956 a report

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was made by Mr. Ranawat to the Tilkayat in respect of these two idols. It appears that the grant of some villages in respect of these idols stood in the name of the Tilkayat and after the said villages were resumed by the State, a question arose as to the compensation payable to the owner of the said villages. In that connection, Mr. Ranawat reported to the Tilkayat that it would be to the advantage of the two idols if the said lands along with the idols were treated as a part of the public temple. He cited the precedent of the lands belonging to the Nathdwara Temple in support of his plae. On receiving this report, the Tilkayat was pleased to transfer the ownership of Shri Thakur Navnitpriyaji, Shri Madan Mohanji and Bethaks to the principal temple of Shri Shrinathji. Of course, he retained to himself the right and privilege of worship over those temples and Bethaks as in the case of Shrinathji temple. The Tilkayat also expressed his concurrence with the proposal made in this report and signed in token of his agreement. It appears that after orders were issued in accordance with the decision of the Tilkayat, the two temples were treated as part of the bigger temple of Shrinathji. This is evidenced by the resolution which was passed at the meeting of the Power of Attorney Holders of the Tilkayat on the same day i.e., 15-10-1956. One of the resolutions passed at the said meeting shows that the proposal regarding the temples and Bethaks owned by His Holiness stating therein that His Holiness had been pleased to transfer the ownership thereof to Shrinathji, was considered. That proposal along with the list of temples and Bethaks was produced before the Committee. The Tilkayat was present at the meeting and he confirmed the proposal and put his signature thereon before the Committee. Thereupon, the Committee accepted the proposal with thanks and instructed the Executive Officer to do the needful in that behalf. Thus, the Tilkayat proposed to the Committee of his Power of Attorney

Holders that the two idols and their Bethaks should be transferred from his private estate to the principal temple of Shrinathji and that proposal was accepted and thereafter the two idols were treated as part of the principal temple.

After this transfer was thus formally completed it appears that the Tilkayat was inclined to change his mind and so, in submitting to the Committee a list of temples and Bethaks transferred by him to the principal temple of Shrinathji, he put a heading to the list which showed that the said transfer had been made for management and administration only and was not intended to be an absolute transfer. This was done on or about November 23, 1956.

This conduct on the part of the Tilkayat was naturally disapproved by the Committee and the heading of the list was objected to by it in a letter written on December 31, 1956. To this letter theTilkayat gave a reply on January 7, 1957, and he sought to explain and justify the wording adopted in the heading of the list. It is thus clear that the heading of the list forwarded by the Tilkayat to the Committee must be ignored because that heading clearly shows a change of mind on the part of the Tilkayat and the question as to whether the two idols form part of the principal temple of Shrinathji must be decided in the light of what transpired on October 15, 1956. Judged in that way, there can be no doubt that the Tilkayat solemnly transferred the two idols to the principal temple and in that sense, gave up his ownership over the idols and a formal proposal made in that behalf was accepted by the Committee. In our opinion, the High Court was in error in not giving effect to this transfer on the ground that no gift or trust deed had been duly executed by the Tilkayat in that behalf. A dedication of private property to a charity need not be made by a writing: it can be made orally or even can

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be inferred from conduct. In the present case, there is much more than conduct in support of the State's plea that the two idols had been transferred. There is a formal report made by the Manager to the Tilkayat which was accepted by the Tilkayat; it was followed by a formal proposal made by the Tilkayat to the Committee and the Committee at its meeting formally accepted that proposal and at the meeting when this proposal was accepted, the Tilkayat was present. Therefore, we must hold that the two idols now form part of the principal temple and have been properly included within the definition of the word "temple" under s. 2 (viii). We should accordingly set aside the decision of the High Court and uphold the validity of s. 2 (viii).

The proviso to s. 5 (2) (g) has been attacked by the learned Attorney-General. He contends that in making the Collector a statutory member of the Board even though he may not be a Hindu and may not belong to the denomination, the legislature has contravened Arts. 25 (1) and 26 (b). We have already dealt with the general plea raised under the said two articles. We do not think that the provision that the Collector who is a statutory member of the Board need not satisfy the requirements of s. 5 (2) (g), can be said to be invalid. The sole object in making the Collector a member of the Board is to associate the Chief Executive Officer in the District with the administration of the property of the temple. His presence in the Board would naturally help in the proper administration of the temple properties and in that sense, must be treated as valid and proper. This provision is obviously consistent with the State's right of supervision over the management of the temple properties as specified in the Firman of 1934.

Sections 5, 7 and 11 have already been considered by us with particular reference to the possible

removal of the Tilkayat under s. 7 and its consequences. It may be that in view of the fact that even if the Tilkayat is removed under s. 7 (1) (b) and (c) he has to be again nominated to the Board, the legislature may well have exempted the Tilkayat from the operation of s. 7 (1) (b) and (c). That, however, cannot be said to make the said provision invalid in law.

Sections 10 and 35 have been attacked on the ground that they empower the State Government to leave the administration of the temple property to a non-Hindu. It will be noticed that s. 10 contemplates that if a Board is dissolved for the reasons specified in it, the Government is required to direct the immediate reconstitution of another Board and that postulates that the interval between the dissolution of one Board and the constitution of a fresh Board would be of a very short duration. If the legislature thought it necessary to provide for the management of the temple properties for such a short period on an ad hoc basis, the provision cannot be seriously challenged. What is true about this provision under s. 10, is equally true about the transitional provision in s. 35.

A part of s. 16 has been struck down by the High Court in so far as it refers to the affairs of the temple. This section authorises the Board to manage the properties and affairs of the temple. The High Court thought that the expression "affairs of the temple" is too wide and may include religious affairs of the temple; and since in managing these affairs of the temple, the section does not require that the management should be according to the customs and usages of the denomination, it came to the conclusion that the clause "affairs of the temple" is invalid and should, therefore, be struck down.

We are not satisfied that this view is correct. In the context the expression "affairs of the temple"

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clearly refers to the purely secular affairs in regard to the administration of the temple. Clearly, s. 16 cannot be construed in isolation and must be read long with s. 22. That is why it has been left to the Board to manage the properties of the temple as well as the purely secular affairs of the temple, and so, this management need not be governed by the custom and usage of the denomination. If the expression "affairs of the temple" is construed in this narrow sense as it is intended to be, then there is no infirmity in the said provisions. We may add that the expression "affairs of the temple" has been used in s. 28 (1) of the Madras Hindu Religious and Charitable Endowments Act No. 22 of 1959 in the same sense. Therefore, we would hold that the High Court was in error in striking down the clause "affairs of the temple" occuring in s. 16.

The next section to consider is s. 21. This section gives to the Board complete power of appointment, suspension, removal, dismissal, or imposition of any other punishment on the officers and servants of the temple or the Board, the Chief Executive Officer being exempted from the operation of this section. It has been urged before us that this section might include even the Mukhia and the Assistant Mukhia who are essentially religious officers of the temple concerned with the performance of religious rites and services to the idols; and the argument is that if they are made the servants of the Board and are not subjected to the discipline of the Tilkayat, that would be contrary to Art. 25 (1) and 26 (b) of the Constitution. In considering this argument, we must have regard to the fact that the Mukhia and the Assistant Mukhia are not only concerned with the religious worship in the temple, but are also required to handle jewellery and ornaments of a very valuable order which are put on the idol and removed from the idol every day, and the safety of the said valuable jewellery is a secular matter within

the jurisdiction of the Board. That is why it was necessary that the Board should be given jurisdiction over those officers in so far as they are concerned with the property of a temple. We have no doubt that in working out the Act, the Board will act reasonably and fairly by the Tilkayat and nothing will be done to impair his status or to affect his authority over the servants of the temple in so far as they are concerned with the religious part of the worship in the temple. Since the worship in the temple and the ceremonies and festivals in it are required to be conducted according to the customs and usages of the denomination by s. 16, the authority of the Tilkayat in respect of the servants in charge of the said worship and ceremonies and festivals will have to be respected. It is true that soon after the Act was passed and its implementation began, both parties appeared to have adopted unhelpful attitudes. We were referred at length to the correspondence that passed between the Tilkayat and the Committee in respect of some of these matters. We do not think it necessary to consider the merits of that controversy because we are satisfied that once the Act is upheld, it will be implemented by the Board consistently with the true spirit of the Act without offending the dignity and status of the Tilkayat as a religious head in charge of the temple and the affairs in matters of religion connected with the temple. Therefore, we do not think it would be right to strike down any part of s. 21 as suggested by the learned Attorney-General.

The validity of s. 27 has been challenged by the learned Attorney-General on the ground that it empowers the State Government to depute any person to enter the premises of the temple, though, in a given case, such a person may not be entitled to make such an entry. Even a non-Hindu person may be appointed by the State Government to inspect the properties of the temple and if he insists upon making an entry in the temple, that would contravene the provisions

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of Art. 25 (1) and 26 (b) of the Constitution; that is the argument urged in support of the challenge to the validity of s. 27. We do not think there is any substance in this argument. All that the section does is to empower the State Government to depute a person to inspect the properties of the temple and its records, correspondence, plans, accounts and other relevant documents. We do not think that the section constitutes any encroachment of the rights protected by Art. 25 (1) or Art. 26 (b). If the administration of the properties of the temple has been validly left to the Board constituted under the Act, then the power of inspection is necessarily incidental to the power to administer the properties, and so in giving the power to the State Government to depute a person to inspect the properties of the temple, no effective complaint can be made against the validity of such a power. The fear expressed by the learned Attorney-General that a non-Hindu may insist upon entering the temple in exercise of the authority conferred on him by the State Government under s. 27 is, in our opinion, far-fetched and imaginary. We are satisfied that the power of inspection which the State Government may confer upon any person under s. 27 is intended to safeguard the proper administration of the properties of the temple and nothing more. Therefore, we do not think that s. 27 suffers from any constitutional infirmity. In this connection, we may add that a similar provision contained in the Madras Religious Endowments Act has been upheld by this Court in the case of *The Commissioner, Hindu Religious Endowments, Madras* (1).

That takes us to s. 28 (2) and (3). These two sub-sections have been struck down by the High Court because it thought that they were inconsistent with the view expressed by this Court in the case of *Ratilal Panachand Gandhi* (2). While discussing the validity of these two sub-sections, the High Court has observed "that without entering into an elaborate

(1) [1954] S.C.R. 1005. (2) [1954] S.C.R. 1055.

discussion on the point, we may point out that such provision has been held to be invalid by the Supreme Court in the case of *Ratilal Panachand Gandhi*" (1). The learned Solicitor-General contends and we think, rightly, that the observations on which the High Court has relied support the validity of the two sub-sections and are inconsistent with the decision of the High Court itself. In the case of *Ratilal Panachand Gandhi* (1), this Court was dealing with the validity of ss. 55 and 56 of the Bombay Public Trusts Act. 1950 (No. 29 of 1950). Section 55 of the said Act purported to lay down the rule of *cy pres* in relation to the administration of religious and charitable trust; and s. 56 dealt with the powers of the courts in relation to the said application of *cy pres* doctrine. This Court observed that these two sections purported to lay down how the doctrine of *cy pres* is to be applied in regard to the administration of public trust of a religious or charitable character; and then it proceeded to examine the doctrine of *cy pres* as it was developed by the Equity Courts in England and as it had been adopted by our Indian Courts since a long time past. In the opinion of this Court, the provisions of ss. 55 and 56 extended the said doctrine much beyond its recognised limits and further introduced certain principles which ran counter to well-established rules of law regarding the administration of charitable trusts. It is significant that what the impugned sections purported to authorise was the diversion of the trust property or funds for purposes which the Charity Commissioner or the court considered expedient or proper although the original objects of the founder could still be carried out and that was an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. In support of this view, the tenets of the Jain religion were referred to and it was observed that apart from the tenets of the Jain religion, it would be a violation of the freedom of religion and of the right which a religious

(1) [1953] S.C.R. 1055.

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denomination has, to manage its own affairs in matters of religion, to allow any secular authority to divert the trust money for purposes other than those for which the trust was created. On this view, s. 55 (3) which contained the offending provision, and the corresponding provision relating to the powers of the Court occurring in the latter part of s. 56 (1) were struck down. In this connection, it is, however, necessary to bear in mind that in dealing with this question, this Court has expressly observed that the doctrine of *cy pres* can be applied where there is a surplus left after exhausting the purposes specified by the settler. In other words, the decision of this Court in the case of *Ratilal Panachand Gandhi* (1), cannot be applied to the provisions of s. 28 (2) and (3) which deal with the application of the surplus in fact after this decision was pronounced, the relevant provision of the Bombay Act has been amended and the application of the doctrine of *cy pres* is now confined to the surplus available after the purposes of the trust have been dealt with. The High Court has not noticed the fact that s. 28 (2) and (3) dealt with the application of the surplus funds and that postulates that these two sub-sections can be invoked only if and after the main purposes of the public temple have been duly satisfied. Therefore, we hold that the High Court was in error in striking down s. 28 (2) and (3) on the ground that they are inconsistent with the decision of this Court in the case of *Ratilal Panachand Gandhi* (1). We may add that this position was not seriouly disputed before us by the learned Attorney-General.

The next section is 30 (2) (a). It confers on the State Government the power to make rules in respect of the qualifications for holding the office of and the allowances payable to the Goswami. This sub-section has been struck down by the High Court and the learned Solicitor-General does not quarrel with the conclusion of the High Court. He has, however, fairly conceded that though the first part of

(1) [1954] S.C.R. 1055.

s. 30 (2) (a) may be struck down, the latter part need not be struck down. This latter part allows rules to be framed by the State Government in regard to the allowances payable to the Goswami. We think it is but fair that this part should be upheld so that a proper rule can be made by the State Government determining the quantum of allowances which should be paid to the Goswami and the manner in which it should be so paid. We would, therefore strike down the first part of s. 30 (2) (a) and uphold the latter part of it which has relation to the allowances payable to the Goswami. The two parts of the said sub-section are clearly severable and so, one can be struck down without affecting the other.

In regard to s. 36, the High Court thought that it gives far too sweeping powers to the Government and so, it has struck it down. Section 36 merely empowers the Government to give such directions as may be necessary to carry out the objects of the Act in case a difficulty arises in giving effect to the provisions of the Act. We may, in this connection, refer to the fact that a similar provision is contained in s. 36 of the Jagannath Temple Act (Orissa 11 of 1955). The object of s. 36 in the Act is merely to remove difficulties in the implementation of the Act. It is in that sense that the section must be narrowly construed and the scope and ambit of the power conferred on the State Government be circumscribed. If the section is so construed, it would not be open to any serious objection. Therefore, we are satisfied that the High Court was in error in striking down this section on the ground that the powers conferred on the State Government are too wide.

That takes us to s. 37 which has been struck down by the High Court on the ground that it can be utilised as a defence to a suit under s. 31. We have already noticed that s. 31 empowers a person having an interest to institute a suit for obtaining any of the

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reliefs specified in clauses (a) to (e) of that section. The High Court thought that s. 37 may introduce an impediment against a suit brought by a private individual under s. 31. We are satisfied that the High Court was in error in taking this view. All that this section purports to do is to provide for a bar to any suits or proceedings against the State Government for any thing done or purported to be done by it under the provisions of the Act. Such provisions are contained in many Acts, like, for instance, Acts in regard to Local Boards and Municipalities. It is true that s. 37 does not require that the act done or purported to be done should be done bona fide, but that is presumably because the protection given by s. 37 is to the State Government and not to the officers of the State. The effect of the section merely is to save acts done or purported to be done by the State under the provisions of the Act; it cannot impinge upon the rights of a citizen to file a suit under s. 31 if it is shown that the citizen is interested within the meaning of s. 31 (1). We are inclined to hold that the High Court has, with respect, misjudged the true scope and effect of the provisions of s. 37 when it struck down the said section as being invalid. We must accordingly reverse the said conclusion of the High Court and uphold the validity of s. 37.

The result is that the appeals preferred by the Tilkayat, the denomination and Ghanshyamlalji fail and are dismissed. So does the writ petition filed by the Tilkayat fail and the same is dismissed. The appeals preferred by the State substantially succeed and the decision of the High Court striking down as *ultra vires* part of s. 2 (viii) in relation to the idols of Navnitpriyaji and Madan Mohanlalji; part of s. 16 in so far as it refers to the affairs of the temple; s. 28 (2) and (3), s. 36 and s. 37 is reversed. We however, confirm the decision of the High Court in so far as it has struck down s. 30 (2) (a) in regard to

the qualifications for holding the office of the Goswami but we reverse its decision in so far as it relates to the latter part of s. 30 (2) (a) which deals with the allowances payable to the Goswami. In the circumstances of this case, we direct that parties should bear their own costs throughout.

Appeal dismissed.

CHANDRA DEO SINGH

v.

PROKASH CHANDRA BOSE & ANR.

(S.J. IMAM, K. SUBBA RAO, N. RAGHUBAR DAYAL, and J. R. MUDHOLKAR, JJ.)

Criminal Law—Proceeding under s. 202 Criminal Procedure Code—Revision petition by respondent No. 1 and the other persons—Whether respondent No. 1 has locus standi to contest criminal case before issue of process—Procedural defect—Powers of Magistrate in committal proceedings and in considering evidence—Recording of reasons—Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 202, 203.

A first information report was filed stating that the respondent No. 1 and some others committed murder. Thereafter a person claiming to be a relative of the deceased filed a complaint alleging that the first information report was false and that certain persons other than those stated in the first information report had committed the murder. It was prayed that process be issued against these persons. The Sub-Divisional Magistrate before whom this complaint was filed directed the First Class Magistrate to inquire into the allegation and to make a report. Subsequently the nephew of the deceased filed a complaint alleging that respondent No. 1 had committed the murder. The Sub-Divisional Magistrate directed the First Class Magistrate to enquire into this complaint also and to report. During the enquiry apart from the witness produced