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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2293 of 2009
With
R/CROSS OBJECTION NO. 177 of 2011
In
R/FIRST APPEAL NO. 2293 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
	Yes	-

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MAHARANASHRI MAHIPENDRASINHJI PARMAR HEIR OF PRUTHVIRAJSINH (DECEASED THRU' LEGAL HEIRS) & ORS.
Versus
ADMINISTRATOR SHREE AMBAJI MATA DEVSTHAN TRUST AMBAJI & ORS.

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Appearance:
MR ABHISHEK M MEHTA(3469) for the Appellant(s) No. 1
MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS ARCHANA R ACHARYA(2475) for the Respondents

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 24/12/2025

ORAL JUDGMENT

1. Present First Appeal No. 2293 of 2009 is filed by the appellant under Section 72(4) of the Bombay Public Trusts Act [hereinafter be referred to as “the Act”] challenging the impugned judgment and order dated 03.06.2008 passed by the learned Principal District Judge, Banaskantha at Palanpur in Civil Misc. Application No. 49 of 1979, whereby the learned District Judge has dismissed the application.

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2. Cross Objection No. 177 of 2011 is filed by the appellant – original respondent No.1 challenging the impugned judgment and order dated 03.06.2008 passed by the learned Principal District Judge, Banaskantha at Palanpur in Civil Misc. Application No. 94 of 1981, whereby the learned District Judge has dismissed the application.

3. That the present proceedings is arising out of the dispute with regard to the registration of the temple and its property and privileges to the appellant has right to offer puja on the 8th day of Navratri and to perform the Havan in the temple and to wave the Chamar before the Goddess. Further the appellant has right to see that while he performed the puja and rendered service to the Goddess, pilgrims are shut-out or excluded from the temple premises. So before parting with the issue involved in the present proceedings, the history is required to be seen as there is two part i.e. one is pre - independence of India and another is post – independence of India.

3.1 **The *History of Danta* :-** The Maharana of Danta State enjoys special influence from having in his territory the famous shrine of Amba Bhavani, where in August, September, October and November, pilgrims of all rank visit, their costly offerings coming in the end into the Rana's exchequer. That Amba Bhavani, a celebrated shrine and place of pilgrimages situated near river Saraswati in the Arasur Hills, at the south-west end of the Aravalli range, on north frontier of Mahi Kantha, about fifteen miles north of the State of Danta. It's origin stream of votaries never quite ceases, but thrice a year, from all sides, thousands of pilgrimages visiting the holly shrine. The Rana of Danta, as custodian of the temple, received all offerings as well as

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fees from the pilgrims. The original records and extracts show that the shrine of Amba Bhavani is situated on the Arasuri Hills in the Danta State that it is very ancient, famous and pilgrims from all parts, visit it and offer costly presents and in turn, the same was received by Maharana of Danta as custodian. The said fact supported by numerous documents produced before the different Courts in different proceedings and it is mentioned in Forbes' Rasmala. Exhibit 55 is certified extract from the Land Alienation Register. It shows that the Alliance is Mata Ambaji of Arasur Mountain Manager Matadara Patel, column No.4 shows that it is devasthan class III columns 5 to 91 show that a Sanad dated 06.11.1863 was issued by the then Governor of Bombay to the holders namely Bhudar Bhagvan and Bhudar Nagarand that though it was assessed at Rs.8/- only and Rs.1/- per annum was payable to the Government for it. That the Sanad of 1863 was issued in the name of Shree Mata Ambaji of Arasur Mountain and Bhudar Bhagvan and Bhuder Nagar of Village: Matadaras were shown as Vahivatdars (Administrators) therein. In one of the documents i.e. Village Form No.9 [Inam Lands Register] for the year 1901 – 1902 A.D., the owner shown in column No.4 as Ambaji Mata Arasuri which is situated and fallen within territorial limits of Village: Chhadavad, but it is subsequently shown to have been transferred to Paldi Village and the name of Vahivatdars or Village Mamlatdars is not shown at all in the register, but that of the Goddess alone is shown. Whereas from 1916-1917 to 1928 – 1929 A.D. of the Record of Rights, it shown that the land as Devsthan Inam in column No.2 and shown as holder Shree Ambaji Mata Arasuri subsequently (as a result of the order in inquiry passed on 12.12.1923) the words Vahivatdar Shivshankar Atmaram shown upto 1924 A.D. the owner as registered in the Record of Rights was the Goddess and even after 1923, the name of Vahivatdar of

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Goddess was shown as Shivshankar Atmaram. In similar one another document namely Pahani Patrak from 1911-1912 to 1915 – 1916 A.D. the Ambaji Mata Arasuri shown as holder. In column No.10 to 14, it shows the tenants from 1911-1912 to 1915-1916 and from 1911-1912 to 1915 – 1916, in column No.11, it has been stated that the rent note dated 17.04.1913 issued in the name of Sendha Keval and name of the owner is shown as "Mata Arasuri Ambaji Bhavan in Exhibit 58 and sanctioned by Taluka vide No. 4752 dated 09.06.1913. Subsequently for the year 1922-1923 to 1926 – 1927, the name of Kovaji Trikam was entered and, thereafter, the name of Shivshankar Atmaram was shown as Vahivatdar and not the owner of the temple. Thereafter, one Muljibhai has made an application for entering his name as Vahivatdar of the disputed property i.e. Arasuri Amba Bhawani in the revenue record. The application came to be rejected on 03.08.1923 and, thereafter, Ruler of Danta State applied to the Mamlatdar to enter the name of Vahivatdar and substitute his name and Mamlatdar has granted application on 28.06.1934. Against the said order dated 28.06.1934, an appeal was preferred before the Prant Officer and in turn, the Prant Officer allowed the appeal and reversed the entry in favour of the Danta State. During that period, two inquiries were made by the revenue authorities in 1923 and 1934 and during the course of inquiry, statement of Shivshankar was recorded. Meaning thereby that in all these earlier proceedings, Maharana was not holly shrine of Arasuri Amba Bhavani and all these facts came on record in one of the Civil Suit being Civil Suit No. 1239 of 1934 filed by the then Maharana of Danta State before the Civil Court, Ahmedabad against Shivshankar and ultimately, the Court has recorded the findings. That the present appellant was the Vahivatdar and he is entitled for recovery of the loan as he is having constructive possession of the

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suit land but the certain fact is relevant and it is extracted from that judgments. So the appellant is not original owner but by virtue of ruling State at that relevant point of time he became the owner of the property and all these facts are established before the concerned Court. Even there is one another suit filed by Maharana of Danta State against one Ambalal Harjibhai being Civil Suit No. 641 of 1937 and the finding recorded by the concerned Civil Court is relevant and it is part of the record. On perusal of the same, it appears that this fact is of 1934 that it was a decision of the concerned Court that the Maharana of Danta State is not owner of the property but he is merely being a Sevapat and custodian or manager of its properties. These findings were recorded by the concerned Court and this became final and no further challenged to that effect. So this pre-independence history is reflected that the appellant was not the owner of the property, but he was considered to be custodian and administrator of the property and being Ruler of the Danta State in whose jurisdiction, the property is situated and, therefore, he is considered to be administrator of the property. Thereafter, in 1947, the India became an independent nation and then from 1950, the independent nation governed under the Indian Law. Thereafter, the property is managed and registered in the registry of the Government of India and all the erstwhile Ruler entered into merger agreement with the Government of India wherein the then erstwhile Ruler has to show their prior property and their personal property in the register and not to show that this property is declared to be private property and other property as personal property and, therefore, considering all these facts, subsequent history was arisen after Alienation of property in the Indian Government. It is very interesting to referred to and relied upon the historical outline of list of Ruling Princes, Chiefs and Leading –

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Personages in Rajputana and Ajmer" – Government of India Publication at Exhibit 112 which reads thus:-

"The Ruling House of Danta belongs to the Barad Sect of the Parmar Rajputs, having descended in direct line from Vikramaditya, the famous monarch of early Indian Tradition. In ancient times the family ruled at Nagar Tatta in Sindh, but the persistent and pressing invasions of the Muhammedans on that Province forced them to move elsewhere. Raja Jasrajji, the then Ruler of Sindh, came to Mount Arasur, and laid the foundation of the present State of Danta in 1068 A.D. His successors extended and consolidated their domain.

The State entered into political relations with the British Government in 1812 A.D."

3.2 That the dispute started with relates to ownership and having privileges is from the merger agreement and, thereafter, the correspondence entered into by and between the then Government of Bombay, for which the merger agreement executed by and between the Governor General of India and Maharana of Danta State on 05.10.1948. Thereafter, consecutively, the State of Bombay, time and again, had written a letter to the Maharana of Danta State about the property reflected in the documents at Exhibits 122 to 145. From perusal of Exhibit 147, the Government Notification issued by the India has decided to abolish Mundka Tax and Motor Tax levied from the pilgrims, who visited Arasuri Ambaji temple by the then Maharana of Danta State. Therefore, the suggestion put forwarded by the then State Government of Bombay suggesting to the erstwhile Ruler to create public trust and the Maharana can be appointed as executive trustees of the trust and for that several correspondences were entered into by and between the Maharana and erstwhile Government of Bombay, but ultimately, the same was not accepted till separation

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of the State of Maharashtra to State of Gujarat. From 1960, the State of Gujarat came into force and immediately in 1961 the application was moved by the administrator for registration of the trust on 02.11.1961. The said application was objected by the then Ruler namely Prithvirajsinh against registration of the trust and, therefore, the same was registered as Inquiry Case No. 796 of 1961. After considering objection, the trust was registered on 12.01.1962.

3.3 Being aggrieved, the erstwhile Ruler filed Revision Application No.10 of 1962 before the Charity Commissioner which came to be dismissed on 14.08.1962.

3.4 Being aggrieved and dissatisfied by the order dated 14.08.1962, the appellant preferred an appeal being Appeal No. 54 of 1962 before the Charity Commissioner, which was also dismissed on 18.02.1964. Against the order dated 18.02.1964 passed by the Charity Commissioner, Maharana Prithvirajsinh had filed Misc. Civil Application No. 17 of 1962 before the Principal District Judge. The Principal District Judge, Banaskantha at Palanpur by order dated 31.03.1964 partly allowed the application and remanded the matter back to the Deputy Charity Commissioner and the Deputy Charity Commissioner had decided the matter on 16.08.1973. Till that moment, all the authorities have not considered rights of privileges in favour of the appellant. Against the order dated 16.08.1973, an appeal came to be filed by the appellant being Appeal No. 45 of 1973 before the Joint Charity Commissioner which was dismissed on 08.06.1979 and again it was further challenged by way of preferring Misc. Civil Application No. 49 of 1979 before the District Court, Banaskantha at Palanpur. So far as the registration of the trust is concerned, the Joint Charity

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Commissioner has, by dismissing the appeal, granted relief in favour of the appellant with regard to the privileges i.e. to perform the puja on the Arasuri Navratri Ashtmi of Ashwin Maas and given special privileges to the appellant. Being aggrieved, the trust has filed Civil Misc. Application No. 94 of 1981 before the District Court, which was dismissed on 03.06.2008.

3.5 The Joint Charity Commissioner / District Court declared that Prithvirajsinh has right to offer puja on 8th day of Navratri and to perform the Havan and to wave the Chamar before the Goddess. Further, the appellant has a right to see that while performing the puja and rendering services to the Goddess, pilgrims are shut-out or excluded from the temple premises.

3.6 Being aggrieved and dissatisfied by the aforesaid order, the appellant has filed the present appeal challenging the registration of the trust whereas the trustees have also filed cross objection challenging the direction issued by the Joint Charity Commissioner and the District Court.

3.7 That the appellant had preferred Special Civil Suit No. 12 of 1970 before the learned Principal Senior Civil Judge, Banaskantha at Palanpur, subsequently, the same was transferred to the Court of learned Principal Senior Civil Judge, Danta and the suit was renumbered as Special Civil Suit No. 1 of 2017. In the said suit, the appellant has prayed the following reliefs:-

(1) That the defendant be ordered to forthwith handover quiet and peaceful possession of the “suit properties”.
(2) That the defendant be ordered to render a true and faithful

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accounts of all the income, profits, benefits and offerings realized, recovered, received and/or derived at the said temple and/or from the suit properties.

(3) That the defendants be ordered to pay to the plaintiff the amounts that may be ascertained to be due on taking of the accounts as prayed for in the preceding prayer.

(4) That all accounts be taken, directions given and orders passed for the aforesaid purposes.

(5) That pending the hearing and final disposal of the suit, the court receiver of some other fit and proper person to be appointed receiver of the said temple and the said properties with all powers under O.40, R.1 of C.P.C.

(6) That pending the hearing and final disposal of the suit, the defendant, their servants, agents be restrained by an order and injunction of this Court from dealing with and/or in any manner disposing off or alienating the said properties.

(7) Ad-interim reliefs in terms of above prayer No. 5 and 6 and cost of suit.

3.8 The concerned Court below except the prayer 7(c), rest of the prayers made in the suit was denied and rejected the suit while awarding cost of Rs.50,000/-.

4. On the second limb after execution of merger agreement in 1948, the appellant approached the High Court of Judicature at Bombay by way of preferring writ petition being Special Civil Application No. 915 of 1953 for the purpose of restraining the State Government to take any coercive action and to disturb the possession of private properties of the the Maharana and to implement the merger agreement. The said petition was allowed by the High Court of Bombay on 23.03.1954 and granted stay in favour of the appellant.

4.1 Being aggrieved by the order dated 23.03.1954 passed by the High Court of Bombay, the Union of India had filed Appeal No. 112 of 1954 before the Hon’ble Supreme Court and the Hon’ble Supreme

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Court, while referring the findings recorded by the High Court of Bombay, vide judgment and order dated 03.12.1957, had reversed the order passed by the High Court of Bombay and made certain observations, which read as under:-

(1) That the Appeal abovementioned be and the same is hereby allowed and the Judgment and Order of the High Court of Bombay dated 23rd March, 1954 allowing the Special Civil Application No. 915 of 1953 filed by the Respondent herein above be and the name are hereby set aside and the said Special Civil Application be and the same is hereby dismissed.

(2)(a) That the Respondent herein do pay to the Appellants herein the taxed costs of this Appeal incurred by them in this Court as well as the taxed costs thereof in the High Court, together with the costs incurred in this Court in Civil Miscellaneous Petition No. 915 of 1953 in the High Court.

(2)(b) That the costs so incurred by the Appellants in the Court in the Appeal as well as in the Civil Miscellaneous Petition No. 356 of 1954 above-mentioned be taxed by the Taxing Officer of this Court.

(3) That the Order of this Court dated 26th April, 1954 in Civil Misc. Petition No. 356 of 1954 appointing the Respondent herein, as Receiver of the temple properties which were the subject matter of the dispute in the Appeal be and is hereby vacated.

(4) That the Respondent herein do relinquish charge in favour of and make over possession of the temple properties in dispute to the Appellants herein above and render accounts to the High Court of Bombay and that the security, if any, furnished by the Respondent in pursuance of Clause (4) of this Court's order dated 26th April 1954 shall be dealt with by the said High Court in accordance with its orders.

4.2 Eventually, the appellant had filed Special Civil Application No. 507 of 1969 seeking to declare that the properties of Ambaji temple for a decision as to whether they were the private properties of the

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petitioner or they were the State properties of the Danta State. Special Civil Application No. 55 of 1970 was filed by the petitioner on the same ground that the disputed properties were declared to be personal and private in nature of erstwhile Ruler and the merger agreement entered into between the predecessor of the appellant not to be implemented. Both the petitions were dismissed and the findings recorded by the High Court are not further challenged and the same become final.

5. Heard Mr.Abhishek Mehta, learned counsel for the appellant, and Mr.Kamal Trivedi, Advocate General with Ms.Archana Acharya, learned counsel for respondents at length.

6. Mr.Abhishek Mehta, learned counsel for the appellant has submitted the same facts which are narrated in the memo of appeal and also submitted that the learned District Judge has erred in dismissing the appeal / application and upholding the order of the Deputy Charity Commissioner in Inquiry No. 796 of 1961 to register the temple as public religious trust. He has submitted that the learned District Judge has committed an error in not framing the issue and deciding the issue as to whether a trust was existence under Section 19 of the Act. He has submitted that the learned District Judge has failed to appreciate the fact that prior to the merger of Danta there could not be a public trust of the temple and there was no evidence that public trust came into existence after the merger of Danta. He has submitted that respondent No.1 failed to discharge the burden of proof which was lying upon it to prove that the trust was in existence and such trust was a public trust. He has submitted that the Farman of late Maharana Bhavanisinhji was the law of the then Sovereign

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Ruler and it declared the shrine and properties appertaining thereto as the private properties of Maharana of Danta. He has submitted that the learned District Judge has committed an error in observing that though some of the officers attached to the shrine were receiving salary from the State Treasury before the merger of Danta, the temple was being treated as a State Property or a State Department and the Union Government did not recognize the ownership rights of the Ruler over the said shrine. He has submitted that the appellant and his ancestors allowed the members of the public to worship Shree Ambaji Mata at the temple at the relevant time and with condition as prescribed by them from time to time subject to the right reserved to them to exclude any member of the public from worshiping the deity and the Amba Bhavani Mata is the Kuldevi of the appellant and ancestors of the appellant consecrated and built the temple in the year 1136. He has submitted that the claim of ownership of the appellant of the temple and its properties was accepted by the Government vide letter dated 12.07.1949 at Exhibit 121. He has also submitted that the appellant and his ancestors administered the properties to the temple, collected offering made at the shrine, prescribed and regulated the expenditure in connection with the said shrine and utilized part of the offering to maintain their position and prestige as the hereditary worshipers custodians and guardians of the shrine.

6.1 Over-and-above the aforesaid oral submissions, Mr.Mehta, learned counsel has made the following written submissions.

The subject matter of dispute in the present proceedings is in respect of the registration of the Trust viz. "Shree Arasuri Ambaji Mata Devasthan" by the Administrator appointed by the then Government

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of Gujarat for the administration of the Ambaji Mata Temple, Ambaji. The said Administrator made an application being Inquiry No.796 of 1961 to the Deputy Charity Commissioner, Ahmedabad under Section 19 of the BPT Act. In this regard, originally, 14 issues were framed and thereafter 3 issues were raised by the Appellant / its predecessors (Exhibit 233). That the case of the Appellant, inter-alia, in a nutshell, is that the said temple and its properties belong to the Appellant and the temple is a private temple and not a Public Temple and that the formation and registration of the Trust is bad in law and not sustainable.

That the said registration of the Trust was thereafter challenged by the Appellant / its predecessors in title and subsequently, the matter went up to the District Court at Palanpur under Section 72 of the BPT Act, the Ld. District Court in Civil Misc. Application No.17 of 1962 was pleased to set aside the registration and remanded the matter back to the Deputy Charity Commissioner, Ahmedabad by way of judgment and order dated 31.03.1964 (Exhibit 42) for de-novo adjudication, with the direction to Deputy Charity Commissioner, Ahmedabad to hold the inquiry under Section 19 of the BPT Act and decide the same after hearing the Appellant/its predecessors in title.

That on remand, the Deputy Charity Commissioner, Ahmedabad, passed order dated 16.08.1973 in Inquiry No.796 of 1961 directing registration of the Trust under Registration No. A/420.

In all, 14 issues were framed by the Deputy Charity Commissioner and on an application preferred by the Appellant / its predecessors, 3 additional issues being Issues No.15, 16 and 17 were also framed, burden of which to prove was on the Appellant / its predecessors. All the issues were decided against the Appellant / its predecessors.

That the said order dated 16.08.1973 was challenged before the Joint Charity Commissioner in Appeal No.45 of 1973 filed by the Appellant wherein in all, 5 issues were framed. That by way of order dated 08.06.1979, Issues No.1 to 4 came to be answered against the Appellant / its predecessors and in favour of the Respondent and the findings of the Deputy Charity Commissioner, Ahmedabad in this regard came to be confirmed, however Issue No.5 came to be answered in favour of the Appellant / its predecessors in title and against the Respondent herein. Issue No.5 is reproduced hereinbelow:

"Whether the Appellant proved that he enjoys certain privileges with

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the deity and temple and whether the Appellant/its predecessors is entitled to declaration that these privileges ought to be recognised?"

That the said Issue No.5 emanates from Issues No.15, 16 and 17 framed by the Deputy Charity Commissioner while deciding Inquiry No.796 of 1961 by way of the order dated 16.08.1973. In this regard, the Joint Charity Commissioner, after considering the evidence on record, while reversing the only one finding of the Deputy Charity Commissioner in the order dated 16.08.1973 and answering Issue No.5 in favour of the Appellant /its predecessors, came to a definitive conclusion, that the Appellant / its predecessors has been enjoying privileges in connection with the deity and those privileges have been recognized after the merger and the Appellant / its predecessors have the right to offer puja on the 8th day of Navratri and to perform Havan in the temple and to wave the Chamar before the goddess and has a right to see that while the Appellant / its predecessors perform this puja and render service to the goddess, the pilgrims are shut out or excluded from temple premises and that the same is a hereditary right.

That against the aforesaid order dated 08.06.1979 passed in Appeal No.49 of 1973 by the Joint Charity Commissioner, Ahmedabad, the Appellant herein preferred Civil Misc. Application No.49 of 1979 and the Respondent herein preferred Civil Misc. Application No.94 of 1981, both under Section 72 of the BPT Act before the Ld. District Court, Palanpur and both the applications referred to hereinabove came to be dismissed by way of the order dated 03.06.2008.

Against the aforesaid order dated 03.06.2008 passed by the Ld. District Court, Palanpur in Civil Misc. Application No.49 of 1979 and in Civil Misc. Application No.94 of 1981, the Appellant as well as the Respondent Trust are before this Hon'ble Court by way of the present First Appeal No.2293 of 2009 and Cross Objections No.117 of 2011.

That from record it transpires that there is no scheme relating to the Trust framed by any competent court or authority however the Government of Bombay, by its Resolution No. DEV 1157-W dated 17.03.1960 (Exhibit 2) framed Rules for the management of the Trust. In this regard, the application which was made for registering the Trust with the Deputy Charity Commissioner, Ahmedabad was made on 02.11.1961 (Exhibit 1) which was after a period of more than eight months from the Resolution dated 17.03.1960.

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In this regard, the application itself is not maintainable in view of the Section 18(4)(b) read with proviso to Section 18(7) of the BPT Act in as much as, the application for registration as per Section 18(4)(b) is required to be made within a period of three months of its creation if the same is created after the BPT Act having come into force. It is submitted that the application has been submitted after a period of more than eight months on the Resolution dated 17.03.1960.

It is further submitted that Mr. R.P. Shah as Administrator has not placed his authority from the Committee authorising him to prefer the application for registration of the Trust which also is a mandatory requirement. Under what authority said Mr. R.P. Shah as administrator has made the application (Below Exhibit 1) is not coming on record and the name of the Administrator Mr. R.P. Shah does not also figure in the list of Trustees of the Trust and in view of the aforesaid, the registration of the Trust is contrary to the provisions of the BPT Act and the Trust formation is unsustainable in itself and the same goes to the root of the controversy. The judgment of the authorities below is completely silent in this regard.

That according to the Appellant / its predecessors, there could not have any public trust as the temple is a private temple and property of the Appellant / its predecessors and does not have any features of a public temple and that the Government has no authority to create a trust or appoint trustees or seek registration of the temple and its properties as a public trust.

That as far as the temple and its properties are concerned, the say of the Appellant, all throughout, starting from the inquiry right up to the District Court, has been that the temple and its properties are the private properties of the Appellant / its predecessors and the temple is not a public temple but a private temple and therefore, the formation of the trust giving a public trust element to the temple is completely erroneous and without merit.

Bar of res-judicata in view of the merger agreement dated 05.10.1948 and the subsequent events leading to the judgment of the Bombay High Court dated 23.03.1954 in Special Civil Application No.915 of 1953 and the subsequent decision of the Hon'ble Supreme Court dated 03.12.1957 in Appeal No.112 of 1954.

(1) That there is no dispute regarding the fact that the Appellant/its predecessors were the rulers of the State of Danta prior to its merger

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under the Merger Agreement dated 04.10.1948 (Exhibit 117).

(ii) That ample evidence was brought on record before the Deputy Charity Commissioner, Ahmedabad in the Inquiry Case No.796 of 1961 and thereafter, in all proceedings, till the impugned judgment was rendered by the District Court which is under challenge. The same will be referred to subsequently however what is relevant is the fact that the Appellant / its predecessors have been shut out on the ground of the applicability of res judicata in the subject proceedings by holding that the judgment of the Hon'ble Supreme Court dated 03.12.1957 in appeal no.112 of 1954 has closed all doors and that the Appellant / its predecessors cannot contend that the subject temple and its properties are the private properties of the Appellant / its predecessors. That the said contention is required to be addressed since, according to the Appellant/its predecessors, the authorities. have wrongly interpreted and applied the judgment dated 03.12.1957 and its observations have settled the aspect of the ownership and nature of the subject temple.

In this regard, it would be relevant to state that

That HH Shri Prithviraj Singh Danta became the Maharana after his father, HH Shri Bhavani Singh abdicated the throne in his favour and thereafter on 05.10.1948 (Exhibit 117), HH Shri Prithviraj Singh signed the merger agreement with the Dominion of India and in this regard, the administration of the State of Danta came to be transferred to the Dominion of India on 06.11.1948.

Under the merger agreement dated 05.10.1948, it was provided that the Maharana shall be entitled to full ownership and enjoyment of all private properties, as distinct from State properties, belonging to the Maharana on the date of the agreement. There were only two kinds of properties. contemplated under the agreement viz. private property of the ruler and State property.

That in the merger agreement in Article 3, it was provided that the Maharana would furnish to the Dominion of India and inventory of all immovable properties, security and cash balances held as private property and that if any dispute arises as to whether any item or property is the private property of Maharana or State property, it shall be referred to such officer with judicial experience as the Dominion Government may nominate and the decision of that officer shall be

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final and binding of both parties.

That in the list provided by the Maharana on 25.11.1948 (Exhibit 118) amongst other properties, inter alia, under Heading B, which provided details of shrines, villages, farms etc. three items viz. (1) Shrine of Shree Ambaji, (II) Mount Gabbar and (iii) all moveable and immovable properties dedicated to and bequeathed upon the said shrine of Ambaji were listed including certain lands and properties situated outside Danta State but dedicated to Shrine of Shree Ambaji.

The Government of Bombay acting on behalf of the Dominion of India, by way of letter dated 12.07.1949 by one Shri H.D. Bhatt (Exhibit 121) along with a copy of the inventory accepted by the Government of India, which letter was written by the Chief Secretary and the same also sought a clarification from the Maharana on the decision of the Government as regards the shrines, villages etc. in list B and to intimate the reaction to the Government. In the list of Inventory under Heading A, the Government of Bombay did not accept certain items as private property and clarified the same and claiming the same as Government property, however, under Heading B, mostly items were accepted as that of the Petitioner in the inventory, albeit, excluding the forest which were considered by the Government of Bombay as State property and further, a clarification in respect of the Ambaji temple was also provided by way of a note which states as "all these properties shall be managed by a Trust to be created by Government. His Highness the Maharana will be the Chairman of the Board of Trustees which would include the representatives of the local area and the representatives of the Bombay Government."

That the aforesaid letter dated 12.07.1949, if perused, does not in any manner State that the Government was claiming the temple and its properties as Government properties as was claimed in respect of the forest's land and in fact the Government accepted the temple and its properties as the private property of the Maharana, with a rider that there would be a Trust to manage the temple and the Chairman of the Board of Trustees would be the Maharana.

That the Maharana, by way of letter dated 16.08.1949 (Exhibit 122) replied to the aforesald letter dated 12.07.1949 stating that in respect of the properties enumerated in List B, the Maharana's father was going to take up the same along with other items, with the State Ministry and that the outcome would be informed in due course.

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That the Maharana thereafter addressed letter dated 18.02.1950 (Exhibit 123) to one Shri M.D. Bhatt, Chief Secretary to the Government of Bombay conveying his regret in accepting the arrangement put forward by the Government of Bombay in respect of the Ambaji Temple and its properties as mentioned in List B of inventory and stating that the temple and its properties should be treated as the Maharana's Private Properties and are required to be managed exclusively by the line of rulers of Danta State as was done in the past since the foundation of the State.

That in response to the aforesaid letter and request made by the Maharana, the Chief Secretary of Bombay State addressed a letter dated 27.03.1950 (Exhibit 124) insisting on creating a Trust as contemplated in the note to the inventory and requesting for furnishing the list of properties attached to the temple. The Maharana thereafter refused to accept the stand taken in the letter dated 27.03.1950 and in this regard, addressed a letter dated 31.05.1950 (Exh.125).

Thereafter, another letter was addressed on 16.07.1950 (Exhibit 126) by the Maharana to Shri M.D. Bhatt, Chief Secretary of Bombay State wherein it was clarified that the Government had never claimed the temple and its properties as Government Properties and that therefore, the Government could not decide as to whether the Trust could be formed to manage the temple and its properties and the very fact that the Government wanted the Maharana to be connected with the management clearly shows that the temple and its properties were that of the Maharana and the Maharana has been taking care and managing the temple and its properties as its own private property.

That subsequently, the Maharana also addressed correspondences to the Dominion of India and in this regard, a letter dated 07.04.1951 (Exhibit 127) was addressed by one Mr. Buch, Secretary of Ministry of State to the Maharana where again, there was no mention of the temple /Its properties being treated as Government property. The same is discernible from the letter dated 07.04.1951. What is relevant is also the fact that the author of the letter dated 07.04.1951 on behalf of the Government of India stated

"*it is on the other hand a religious institution and as such the Government of Bombay have to make arrangements for its management by constituting a Trust*".

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"*In view of Your Highness' peculiar position we are anxious to maintain your association with the temple and it was this consideration that actuated us to propose Your Highness should be Chairman of the Board of Trustees.*"

"*Finally, I am to say that the available evidence goes to show that the Temple properties were looked after by Your Highness as manager or custodian and not as proprietor...*"

That thereafter another letter dated 09.05.1951 (Exhibit 128) was addressed by the Maharana to Shri H. Gopalaswami Ayyangar, Minister of State, Government of India with a request not precipitate the matter further.

The same was met with the response by way of letter dated 26.05.1951 from Mr. N.M. Buch, Ministry of State, Government of India stating that it would be appropriate that the Maharana be associated with the proposed Trust as Chairman of the Board of Trustees otherwise the matter will be dealt with in accordance with the ordinary law of life.

Subsequently, discussions took place which were not futile and a decision was sought to be thrust upon the Maharana and in this regard, a letter dated 26.12.1952 (Exhibit 132) was addressed threatening to take possession of the temple and its properties instead of appointing a person to arbitrate between the parties as provided in the merger agreement.

That series of correspondences further ensued between the parties which are forming part of the record viz, letter dated 02.01.1953 (Exhibit 134), letter dated 02.01.1953 (Exhibit 135), letter dated 21.01.1953 (Exhibit 136), letter dated 21.01.1953 (Exhibit 137), letter dated 27.01.1953 (Exhibit 138), letter dated 17.03.1953 (Exhibit 139), letter dated 09.04.1953 (Exhibit 140), letter dated 19.05.1953 (Exhibit 141), letter dated 25.05.1953 (Exhibit 142).

That since there was no outcome to the discussions between the parties, the Maharana addressed letter dated 25.05.1953 (Exh.142, Pg.546) to His Excellency, the President of India. to refer the question for opinion to the Hon'ble Supreme Court.

That the Maharana also suggested that the matter should be referred

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to Arbitration however, the same was also turned down on the basis that there is no dispute between Union Government and the Maharana in respect of the properties, since the dispute did not arise out of the merger agreement and that the Temple and its properties were never claimed as State Properties but the Government wanted to create a Trust to manage the same.

(iv) Without prejudice, the Government of India through the Government of Bombay in the letter dated 07.04.1951 (Exhibit 127) has categorically admitted that "Finally, I am to say that the available evidence goes to show that the Temple properties were looked after by Your Highness as manager or custodian and not as proprietor".

(v) That the Appellant / its predecessors were constrained to file a writ petition being SCA No.915 of 1953 seeking a writ of mandamus before the Hon'ble Bombay High Court and for appropriate directions ordering the Respondents to desist from taking possession of the property or interfering with the rights of the Appellant / its predecessors in relation to the said properties and to permit the Appellant / its predecessors to exercise their rights unhampered etc. The said writ petition being SCA No.915 of 1953 was allowed by way of judgment dated 23.03.1954 (Exhibit 132), it was, inter-alia, observed that the case of the State is that if it is trust property and that the Appellant / its predecessors has no right or interest in the property and assuming that the State is right, it is not open to the State to deprive a citizen of its property without having recourse to the ordinary courts of the land and that there is ample machinery under the Public Trust Act which Government can utilise and the Hon'ble Bombay High Court was pleased to allow the petition with a direction on the Respondents preventing them from taking possession of any of the properties which were subject matter of the petition and with a further direction to restore to the Appellant / its predecessors any of the said properties taken possession by them and of which they are in possession.

(vi) That the said judgment dated 23.03.1954 of the Bombay High Court was carried by way of Civil Appeal No.112 of 1954 by the Union of India wherein, the Appeal came to be allowed by way of Judgment dated 03.12.1957. That the relevant aspects which are forming part of the judgment are as follows:

The Hon'ble Supreme Court was pleased to observe as under:

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"*The only other matter that falls for consideration is whether Government can take possession of these properties without having recourse to the Courts. But that is not a matter we can consider here. This is a writ petition. It is brought by the Respondent. He is not shown to have any title and all he now claims after his other contentions have failed, is that at the least he has a possessory title. But there is not a kind of right that can be agitated in a writ petition.*"

(vii) That as far as the aforesaid aspects are concerned, it is discernible that the observations made in the sald judgment dated 03.12.1957 by the Hon'ble Supreme Court were decided in light of the prayers made by the Appellant/its predecessors in the writ petition which came to be dismissed.

(viii) The issue of the formation of a Trust and its maintainability were never an issue which was raised or adjudicated by the Hon'ble Supreme Court. In fact, the Hon'ble Supreme Court made it clear that the aspect of possessory title cannot be agitated in a writ petition meaning thereby the Appellant / its predecessors are required to undertake appropriate proceeding in this regard before the appropriate forum.

(ix) That as far as the aspect of res judicata being applicable in the present proceedings is concerned, the authorities below have completely misdirected themselves in rejecting the contentions of the Appellant/its predecessors on the ground of res judicata. The principle of res judicata clearly does not apply in the present set of facts and circumstances more particularly when the issue involved in the present proceedings is in respect of the inquiry undertaken under the provisions of the BPT Act and whether the formation of the trust is just, legal and proper. The contentions of the Appellant / its predecessors cannot be thrown out on the ground of the issue being closed by the Hon'ble Supreme Court when the Hon'ble Supreme Court itself has stated that the right of the Appellant / its predecessors cannot be considered in a writ petition.

(x) That the formation of a Trust right from the inquiry undertaken by the Deputy Collector in the year 1961 under Section 19 of the BPT Act and whether the same is proper or not is required to be considered on the basis of the material available on record and not on the basis of res judicata. Certain observations made by the Hon'ble Supreme Court have been made in the facts of the case which was contended before the Hon'ble Supreme Court which was in respect of

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the conduct of the Government in taking forceful possession of the temple and its properties and the same has no bearing on the aspect of the registration of the Trust to manage the temple and its properties as the principles for deciding the formation of a Trust being legal or illegal are different and require compliancies with the provisions of the BPT Act as well as the documents available on record to justify whether the trust is a public trust or not, the burden of which was required to be discharged by the Respondent herein who have miserably failed to discharge the same and unfortunately, the authorities below have overlooked the said aspect.

(xi) That the issues raised and decided by the Hon'ble Supreme Court are issues which are not directly or substantially involved in the present proceedings and at best may be considered as being collateral or incidental to the issues decided by the Hon'ble Supreme Court and therefore, the decision of the Hon'ble Supreme Court will not act as res judicata in the present proceedings or for that matter of fact in other proceedings which are pending between the parties in other forums.

(xii) That the Dominion of India in all the correspondences has never stated that the temple and its properties were Government properties and all that was conveyed that the trust was required to be formed to regulate the functioning of the temple. Whether the Government can create a trust in a property which is a public property or a Government property cannot be decided in any proceedings other than under the provisions of the BPT Act and therefore also, the Appellant/its predecessors cannot be shut out on the ground of res judicata.

(xiii) That if Article 363 is to operate as a Bar, then, in that case, the judgment of the Hon'ble Supreme Court is required to be considered in light of the aspect of Article 363 where there is a bar in interference by Courts in disputes arising out of treaties and agreements etc. and the observations made by the Hon'ble Supreme Court while setting aside the judgment of the Hon'ble Bombay High Court cannot be considered as they are in the realm of obiter dicta and therefore also, the so called applicability of res judicata is without application of mind.

(xiv) The prayers and the reliefs sought for by the Appellant / its predecessors before the Hon'ble Bombay High Court are completely different and neither directly or substantially the same in the present

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proceedings which proceedings are in respect of the formation of the trust at the behest of the Respondent herein. .

(xv) That in the humble submission of the Appellant/its predecessors, the authorities below have completely erred in applying the provisions of res judicata more particularly when under the BPT Act, the Respondent was the Applicant who was desirous of getting the Trust registered and it was the contention of the Appellant/its predecessors that a trust could not have been registered for which material evidences have been placed on record and the same has to be decided as per the evidence led by the parties. Further, the Hon'ble Supreme Court has left the right of the Appellant/ its predecessors open to ventilated grievances before the appropriate forum as disputed facts cannot be considered in a writ petition which disputed facts required leading of evidence. Therefore, the impugned orders/judgments of the authorities below including that of the Ld. District Court are required to be set aside.

Farman dated 29.09.1948 (Exhibit 409) is a formal promulgation of law and in view thereof Maharana, Danta is the owner of the shrine temple and its properties:

12. That all the authority of the erstwhile Danta State vested completely in the then ruler only. That there was no constitution in the Danta State. That the oral orders of the then Maharana were considered as law of Danta State. That a farman dated 29.09.1948 (Exhibit 409) declared by the predecessor of the present appellant who was then Maharana of Danta State is the existing law under Article 366 Clause 10 of the constitution of India and till date is continued in force until altered or repealed or amended by a competent legislative or other competent authority as provided under Article 372 of the Constitution of India. That the farman dated 29.09.1948 is not a grant or contract but is a formal promulgation of law, declaring the existing rights and laying down the code of conduct and continued in force till this date. That the farman dated 29.09.1948 is the law and in view thereof Maharana, Danta is the owner of the shrine temple and its properties. That the copy of the said farman was sent to the Revenue Department of the erstwhile Danta State and evidence of the same can be made out from the letter dated 18.07.1960 issued from the office of Collector addressing the predecessor of the present appellant.

The said farman has been proved in evidence and is part of the record

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of the authorities below. The said farman has been completely ignored or irrelevant considerations and the authorities below including the District Court have not considered the same in the appropriate manner and have discarded the same.

That Hon'ble Supreme Court in case of Tilkayat Shri Govindialji Maharaj vs. State of Rajasthan and ors. reported in AIR 1963 SC 1638 rendered its judgment on 21.01.1963, wherein, Hon'ble Supreme Court has specifically relied on the farman issued by the Maharana of Udaipur on 31.12.1934 and appreciated the effect of the farman being the law of the land as the same was issued by the Maharana of Udaipur who was absolute monarch in whom all the legislative, judicial and executive powers of the State were vested with. It was further observed by the Hon'ble Supreme Court by relying on the several other observations in the judgment passed by the Hon'ble Supreme Court as mentioned therein that any order issued by such a ruler has the force of law and did govern the rights of parties affected thereby.

That Article 372 of the Constitution of India provides for continuance in force of the existing laws and their adaptation and further provides that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until they are altered or repealed or amended by competent legislature or authority. That the expression law In force also includes statutory law and custom or usage having force of law as well as common law. That the farman in question was issued by the Maharana much before the Constitution of India came into effect and the same is saved by the said Article 372 and is in the nature of legislative enactment and also in the nature of law of the land and cannot be ignored in light of Article 13(3)(a) of the Constitution of India. That the said farman has not been declared illegal or set aside or repealed by any proceedings and stands legally valid as on today and the said farman of late Maharana Bhavani Singhji below Exh.409 could not have been ignored as the same was the law of the then sovereign ruler and the same declared the shrine and the properties appertaining thereto as the private properties of the Maharana of Danta. It is rather surprising that the said farman has been deliberately ignored on the ground that it was not urged before the Hon'ble Supreme Court and suffered from constructive res judicata. The aspect of constructive res judicata does not come in picture in view of the fact that the only authority which can decide the aspect of public or private trust is the authorities under the BPT Act and the issue before the Hon'ble Supreme Court

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was in respect of the forceful possession of the temple and its properties being taken by the Government and not in respect of the ownership or the aspect of trust being private or public and therefore, there could not have been any bar of res judicata since the decision of the Hon'ble Supreme Court was on the ground that the judgment of the Bombay High Court was without jurisdiction and the same could not have been entertained in view of the peculiar facts and circumstances and more particularly when, the aspect and the observations made by the Hon'ble Supreme Court were incidental to the issue and would not operate as res judicata and constructive res judicata. On frivolous grounds, the farman has been ignored which could not have been legally unsustainable and therefore also, the impugned judgment of the Hon'ble District Court confirming the decision of the authorities below, to the extent as aforesaid, is illegal and unsustainable.

Burden of Proof and the aspect of whether a trust exists under Section 19 has not been discharged by the Respondent.

That the burden to prove that the property in question i.e. the temple and its properties are public temple or in the nature of public religious trust, for which a public trust is required to be registered under the BPT Act has not been discharged by the Respondent Trust. In stark distinction, the burden of proving that the said temple and its properties are private properties and not having a public character has been duly discharge by the Appellant / its predecessor.

That under Section 19 of the BPT Act, the first preliminary issues of whether a trust exists in terms of Section 19 of the BPT Act has not been decided and/or the Respondent Trust has failed to prove that a trust exists. There is no evidence on record to show that a trust ever existed prior to the merger of the Danta State with the Dominion of India or a Trust came into existence after the merger. The Respondent has failed to lead evidence in this regard.

The aspect of the public visiting the temple as of right giving the nature of public character to the temple.

It is respectfully submitted that the Ld. District Court and the Authorities have completely failed in coming to a conclusion that the public at large was visiting the temple as of right and therefore, the temple was a public temple and not a private temple. That the authorities below as well as the District Court have completely erred

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by discarding the voluminous record of evidence and more specifically in respect of the following aspects:

(a) The temple was of the ownership of the Appellant / its predecessors.

(b) That the Appellant / its predecessors were collecting taxes like mundkavero from the pilgrims and that the Appellant /its predecessors were allowing the members of the public to worship in the temple at such times and under such conditions and decided from time to time and to exclude any members of the public from worshiping of deity.

(c) That the Appellant/its predecessors was entitled to perform puja on the 8th day of Navratri as a hereditary right.

(d) Undisputed fact that the entire management of the temple and its properties was under the control of the Appellant /its predecessors and that the same has been acknowledged by the officers of the Dominion of India while corresponding with the Appellant / its predecessors. The very fact that concerned officer of the Dominion of India in all correspondences have admitted the fact that the management of the temple was in the hands of the Appellant/its predecessors which is undisputed fact.

(e) That Goddess Amba Bhawani Mata is the kuldevi of the Appellant / its predecessors and the Appellant / its predecessors consecrated and build the temple of Shree Ambaji in the year 1136.

(f) That the Appellant / its predecessors had set apart certain villages and towns of Ambaji and made grants for the up keep and maintenance of the temple.

(g) That the Dominion of India had accepted the claim of the Appellant/its predecessors regarding the ownership of the temple and its properties in letter dated 12.07.1949 of Shri M.D. Bhatt, representing the Dominion of India (Exh.121, Pg.516).

(h) The specific exhibited documents being Exh.121, 129 and 103 and the fact that the note appended to the list of the temple and its properties were not claimed by the Dominion of India but a suggestion was made to create a trust of the said temple and its properties.

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(i) Exhibit 103 with its enclosures, draft trust deed accepted the Appellant / its predecessors' position as hereditary custodian, manager and shebait of the temple and its properties.

(j) The aspect of the State taking possession of the temple and its connected properties clearly implies that the same was in the possession of the Appellant / its predecessors.

(k) The rights of the subject properties remained intact even after the merger agreement and did not get extinguished.

(l) That the admitted fact on record that the Appellant / its predecessors were having hereditary right to do puja in the temple which was based on ample record and documentary evidence.

(m) The aspect of the Appellant / its predecessors claims as Shibait or the property and the temple being a public trust was never decided by the Hon'ble Supreme Court.

(n) The documents like rasmala (Exhibit 273), Imperial gazette and Bombay gazetteer (Exhibit 111) and report from the Census of India (Exhibit 272) showing the aspect of the Appellant / its predecessors being the owners of the temple and having established the deity and the said deity being the family deity of the Appellant / its predecessors and the worship of the same has been going on for centuries by the Maharanas from generations to generations, have been ignored while deciding the aspect of ownership and private property in favour of the Appellant / its predecessors. That strong and credible evidence was led by the Appellant/its predecessors however, as against the same, the Respondent and their witnesses have only relied upon folk lore. The aforesaid documents are not mythology and are part of the Government's own documents and records viz. Imperial gazette and Bombay gazetteer and the said documents have been brushed aside without there being material evidence contradicting the same.

(o) That the statement of the Sarpanch produced at Exh.231/10 is in respect of post-independence and that too after 1950 and the same does not lead to any conclusion that the temple is a public temple. As stated above, the fact that the pilgrims increased after 1950 is inconsequential and could not be a ground to disbelieve regarding the said temple and its properties being private properties of the Appellant/its predecessors or being public religious temple to the

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contrary.

(p) The aspect of res judicata or constructive res judicata or estoppel has been dealt with in detail in the preceding para.

(q) That the issues regarding and in the matter of trust pertaining to public property or private property or the formation of a trust are issues which are to be decided under the BPT Act by the concerned authorities. When the Hon'ble Supreme Court passed the judgment, the issue of registration of trust was not even in picture. The authority is required to hold an inquiry under Section 18, 19 and 20 of the BPT Act which is completely different than the issues which have been decided by the Hon'ble Supreme Court. The existence of a trust or its properties was not even a question referred to either expressly or by implication in the proceedings before the Bombay High Court or before the Hon'ble Supreme Court. In this regard, reference is made to decision in the case of B. Shama Rao vs. Union Territory of Pondicherry reported in AIR 1967 SC 1480, wherein the Hon'ble Supreme Court has held that "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principle laid down therein." Further, in the case of Ramniklal Dwarkadas Modi vs. Mohanlal Laxmichand and others, reported in AIR 1977 GUJ. 15, wherein it has been observed that "A decision of the Supreme Court is not to be read as a statute, a decision of the Court is only an authority to what it actually decides."

(r) The entire case of the Respondent is based on res judicata which is wrongly made applicable on the basis of the decision of the Hon'ble Supreme Court (Exh.279, Pg. 1153-1169). What has been lost sight of is the fact that the Hon'ble Supreme Court has in the aforesaid judgments also observed that Article 363 of the Constitution of India operates as a bar in respect of a dispute arising out of the merger agreement. The present dispute is not a dispute out of the merger agreement but in respect of the nature of the property where the Appellant / its predecessors, though have been accepted as the owners, managers and shibait of the temple and its properties in question, the Government was interested in establishing a trust in respect of the administration of the temple and its properties. The entire dispute before the Hon'ble Supreme Court was the apprehension of taking forceful possession by the State of the temple and its properties from the Appellant / its predecessors.

(s) That it is not understood as to how the documentary evidence

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could be discarded and the Ld. District Court and the authorities below could have come to a conclusion that a temple came into existence before idol worship was Introduced amongst the Aryans. The said observation and conclusion is completely perverse and without any material on record and a fiction of imagination of the authorities below. That the authorities below and more particularly the Ld. District Court have admitted the fact of the permission being taken to enter the Garbh Dwar and having admitted so, it is surprising that without any material to the contrary, on an absurd presumption that the permission was not required to do Darshan from outside from the Garbh Dwar and that general public to do Darshan without permission. That the other material also which shows that the Appellant / its predecessors had set out villages for the up keep of the temple and its properties has also been discarded without application of mind.

(t) There is a categorical finding in favour of the Appellant / its predecessors that it emerges from record that the Appellant / Its predecessors were collecting all the offerings made to the shrine which was done in their capacity as rulers of the erstwhile State of Danta. Having observed so, the only inference that could be drawn was that the administration, control and ownership of the said property was that of the Appellant / its predecessors and the said material could not have been discarded as has been done by the Appellant/its predecessors. That it is also on record that the villagers were gifted by the Appellant / its predecessors for the up keep of the temple and its properties which is sufficient material on record in favour of the Appellant / its predecessors. Whatever inferences have been drawn against the Appellant / its predecessors are in the realm of "may" and not based on any credible material.

The aspect of the Appellant / its predecessors being manager and shibait or vahivat karta of the temple and its properties.

(u) Without prejudice, it is also a categorical admission by the Ld. District Court that

(i) The ruler of Danta has been described as custodian or manager, if not the owner.

(ii) That the Ld. District Court has also admitted that in the two suits filed in Ahmedabad Court, the then Maharana Bhavani Singhji described himself as "vahivat karta of the shrine". The High Court also

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observed that the ruler was the manager of the shrine and that ruler in His capacity as the ruler was the custodian or manager of the shrine.

(iii) The fact of the temple being public or private has to be seen on the basis of the evidence and not on the basis of any fact of post-merger situation.

The aspect of the Appellant / its predecessors having certain rights in connection with puja of deity.

That as far as the Appellant / its predecessors are concerned, the authorities below have rightly arrived a conclusion that the Appellant / its predecessors were enjoying certain rights in respect of puja etc. which has been going on and has been recognised as hereditary rights flowing through generations and the same are also recognised after the merger and the same pertains to the right to offer puja on the 8th day of Navratri and to perform Havan and the temple wave the chamar before the goddess and to see that during puja and rendering service to the goddess, the pilgrims are shut out or excluded from the temple premises. That the aspect of the aforesaid right being a hereditary right has been considered and answered in favour of the Appellant / its predecessors by the Joint Charity Commissioner wherein it has been held that the Appellant / its predecessors enjoyed the aforesaid rights even prior to the merger of the State with the Dominion of India and the same has been confirmed by the Charity Commissioner as well as the Ld. District Court.

That on remand, the Deputy Charity Commissioner, Ahmedabad, passed order dated 16.08.1973 (Pg.1-310) in Inquiry No.796 of 1961 directing registration of the Trust under Registration No. A/420.

In all, 14 issues were framed by the Deputy Charity Commissioner and on an application preferred by the Appellant / its predecessors, 3 additional issues being Issues No.15, 16 and 17 were also framed, burden of which to prove was on the Appellant / its predecessors. All the issues were decided against the Appellant / its predecessors.

That the said order dated 16.08.1973 was challenged before the Joint Charity Commissioner in Appeal No.45 of 1973 filed by the Appellant wherein in all, 5 issues were framed (Pl. See Pg.1490). That by way of order dated 08.06.1979 (Pg.1487-1526), Issues No.1 to 4 came to be

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answered against the Appellant / its predecessors and in favour of the Respondent and the findings of the Deputy Charity Commissioner, Ahmedabad in this regard came to be confirmed, however Issue No.5 came to be answered in favour of the Appellant/ its predecessors in title and against the Respondent herein. Issue No.5 is that "Whether the Appellant proved that he enjoys certain privileges with the deity and temple and whether the Appellant / its predecessors is entitled to declaration that these privileges ought to be recognised?"

That the said Issue No.5 emanates from Issues No.15, 16 and 17 framed by the Deputy Charity Commissioner while deciding Inquiry No.796 of 1961 by way of the order dated 16.08.1973 (Pg.1-310). In this regard, the Joint Charity Commissioner, after considering the evidence on record, while reversing the only one finding of the Deputy Charity Commissioner in the order dated 16.08.1973 and answering Issue No.5 in favour of the Appellant/its predecessors, came to a definitive conclusion, that the Appellant / its predecessors has been enjoying privileges in connection with the deity and those privileges have been recognised after the merger and the Appellant / its predecessors have the right to offer puja on the 8th day of Navratri and to perform Havan in the temple and to wave the Chamar before the goddess and has a right to see that while the Appellant / its predecessors perform this puja and render service to the goddess, the pilgrims are shut out or excluded from temple premises and that the same is a hereditary right.

That thereafter the Ld. District Court passed the impugned judgment wherein, while rejecting the contentions of the Appellant, the only relief which was granted which was in respect of the hereditary rights to offer puja on the 8th day of Navratri in the manner prescribed and conduct by the Appellant / its predecessors over centuries.

That as far as the said hereditary rights are concerned, the same have been given in favour of the Appellant / its predecessors on the basis of credible material evidence, both documentary and oral which is brought on record.

That the witnesses examined during the course of hearings and as has been brought on record by way of documentary as well as oral evidence including the witnesses examined on behalf of the State have admitted the said position unequivocally.

Even after the possession was taken by the Government of Bombay,

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the Appellant / its predecessors has continued with the said rights and has offered puja on the 8th day of the Navratri and the said aspect has been confirmed by the so-called administrator of the temple appointed on behalf of the State of Gujarat.

The interveners in the subject matter before the authorities below have also confirmed the same and have even their statement in favour of the Appellant / its predecessors confirming the said situation regarding the Appellant / its predecessors offering puja on the 8th day or Navratri which has continued after the merger. There has been no obstruction from the trust or the state and even now, the said situation is presently prevailing where the Appellant / its predecessors is getting the right to do puja in the particular manner on the 8th day of Navratri.

That as far as the Appellant are concerned, it is respectfully submitted that the Appellant does not in any manner create a situation or dictate terms to stall the pilgrims from doing their darshan and the door to the temple premises is never closed or pilgrims are never shut out or excluded from the temple premises. The Appellant herein is required to do puja which has been conduced since centuries by His Predecessors and the same is an established religious right which is recognise not only by the Appellant but by the members of the clan. Nevertheless, the Appellant in no manner obstructs the flow of pilgrims while doing the puja in the temple and assures that no such situation will be ever created at any point of time where any inconvenience is caused to the public at large and more specifically the pilgrims as the Appellant has as much faith, if no less in the Ambaji Mata who is the family deity and the Appellant has immense respect for all pilgrims who visit the temple for the Darshan of the deity during the Navratri festival.

The Hon'ble Courts including the Hon'ble Supreme Court and the Hon'ble High Courts have recognised hereditary right to offer puja under the Constitution of India more particularly Article 25 and 26 of the Constitution of India.

That the settled religious practice as that which is followed in respect of the Appellant / its predecessors on the 8th day of Navratri is a recognised religious practice at the temple for centuries.

That as far as the authorities under the BPT Act are concerned, the authorities have the jurisdiction to decide the said aspect as the same

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is directly relatable to the functioning of the temple and its administration and the jurisdiction conferred in the authorities is provided in BPT Act.

Issues have been framed in this regard by the authorities and the part of the judgment upholding the hereditary rights in favour of the Appellant/its predecessors is just and proper.

It is therefore humbly submitted that the impugned judgment of the Ld. District Court on the authorities below be set aside and the contentions of the Appellant / its predecessors in respect of the temple and its properties being private properties and further that the formation of trust is bad in law be upheld and appeal of the Appellant / its predecessors being First Appeal No.2293 of 2009 be allowed by quashing and setting aside the impugned judgment and the cross objection No.117 of 2011 preferred by the Respondent Trust challenging the hereditary rights of the Appellant/ its predecessors to do puja on the 8th day of Navratri be dismissed."

6. In support of his submissions, Mr.Mehta, learned counsel has relied upon the following decisions:-

(1) Sajjadanashin Sayed Md. B.E.Edr.(D) By Lrs. Vs. Musa Dadabhai Ummer and others, (2000) 3 SCC 350;

(2) Ameer – Un - Nissa Begum and others Vs. Mahaboob Begum and others etc., AIR 1955 SC 352;

(3) Director of Endowments Vs. Syed Akram Ali, AIR 1956 SC 60;

(4) Tikayat Shri Govindlalji Maharaj Vs. State of Rajasthan and others, Civil Appeals No. 652, 653 and 757 of 1962 dated 21.01.1963;

(5) Pichai Vs. The Commissioner for Hindu Religious and Charitable Endowments (Administration Department), Madras and others, Appeal No., 769 of 1963 dated 29.07.1970;

(6) B. Shama Rao Vs. The Union Territory of Pondicherry, 1967 SCC OnLine SC 29;

(7) Ramniklal Dwarkadas Modi Vs. Mohanlal Laxmichand and

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others, 1977 (18) GLR 32;

(8) Marthanda Varma Vs. State of Kerala and others, (2021) 1 SCC 225;

(9) Tilkayat Shri Govindialji Maharaj vs. State of Rajasthan and ors. reported in AIR 1963 SC 1638;

(10) B. Shama Rao vs. Union Territory of Pondicherry reported in AIR 1967 SC 1480;

(11) Ramniklal Dwarkadas Modi vs. Mohanlal Laxmichand and others, reported in AIR 1977 GUJ. 15;

(12) State Of Gujarat Versus Vora Fiddali Badruddin Mithibarwala, AIR 1964 SC 1043 more particularly paras 56 to 64, 96, 97, 127 to 135;

(13) Raj Kumar Narsing Pratap Singh Deo Versus State Of Orissa, AIR 1964 SC 1793 more particularly para 8 to 15;

7. Mr.Kamal Trivedi, learned Advocate General has submitted that a Merger Agreement came to be executed between the Governor General of India and the Ruler of Danta State, i.e. the appellant. He has submitted that all private properties in the sole ownership of the appellant would remain distinct from the State properties and the appellant would provide an inventory of all the immovable property, securities and cash balance held by him as private property before 31.12.1948. He has submitted that pursuant to the above Merger Agreement, the appellant addressed a communication to the Secretary, Ministry of States, New Delhi, wherein an inventory was provided treating the same as his private properties though the shrine of Shri Arasuri Ambaji Mata Devasthan in Ambaji town was within the Danta State. He has submitted that the right claimed in favour of the appellant with regard to the temple was referred to as to be finally

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treated as State property, which shall be managed by the Government by creation of a trust, wherein the Maharana would be the Chairman of the Board of Trustees. According to Mr.Trivedi, learned Advocate General, the appellant preferred Special Civil Application No.915 of 1952, which was allowed and restrained the Union Government and the Government of Bombay from taking possession of the temple in question and against the said order, the Union of India and others have preferred an appeal being Civil Appeal No. 112 of 1954 before the Hon'ble Supreme Court which came to be allowed and quashed and set aside said order and also observed that the appellant was not shown to have any title of the temple. He has further submitted that the administrator appointed by the Government made an application being Inquiry No.796 of 1961 to the Deputy Charity Commissioner, Ahmedabad for the registration of Arasuri Ambaji Mata Devsthan as a trust under Section 19 of the Bombay Public Trust Act, 1950 and after first round of litigation, the Deputy Charity Commissioner on remand i.e. second round of litigation passed an order registering the Arasuri Ambaji Mata Devsthan as a public trust. He has submitted that the Court passed a common order, dismissing the writ petitions being Special Civil Application No 507 of 1969 and Special Civil Application No.55 of 1970 filed by the appellant and the aforesaid dismissal of the writ petitions was based on the findings to the effect that (i) in view of the above referred order dated 03.12.1957 of the Hon'ble Supreme Court, the first prayer for declaration regarding the alleged claim of private ownership of the temple and the properties appurtenant thereto, cannot be granted and (ii) the second prayer in terms of Merger Agreement to issue a writ of mandamus to Union of India for nominating an officer having judicial experience and to refer to him

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the dispute in respect of the temple and the properties appurtenant thereto for a decision as to whether they were private properties of the Appellant or they were the State properties of Danta State, can also not be granted, in view of a bar of the jurisdiction of the Hon'ble High Court under Article 363 of the Constitution for enforcement of any merger. Mr.Trivedi, learned Advocate General has submitted that the Joint Charity Commissioner, while passing the order, has confirmed the finding of the Deputy Charity Commissioner that the appellant is not entitled to claim the temple as his private property and the appellant is not the Shebait of the temple, which is a public temple and after merger, he has no right to appropriate, wholly or in part the offerings made to the Goddess, but at the same time declaring that the Appellant is having hereditary right to offer puja to Goddess on every 8th day of Navratri and to perform the Havan and to wave the Chamar before the Goddess in the temple. He has submitted that prior to the second round of litigation, since 02.01.1961, when for the first time the Inquiry Case No.796 of 1961 was initiated by the Administrator, which was ultimately remanded back by the Ld. District Court, vide its order dated 31.03.1964 at no point of time till the rendition of the order dated 08.06.1979 passed by the Joint Charity Commissioner, it was ever established on the basis of the admitted evidence on behalf of the Appellant herein before any Forum that he was also acting as a shehait in the temple, with a hereditary right to perform the Havan and to wave the Chamar before the Goddess in the temple. He has submitted that the learned District Judge, Palanpur dismissed Civil Misc. Application No. 49 of 1979 filed by the Appellant - Maharana as well as Civil Misc. Application 94 of 1981 filed by the Administrator of the Trust, both under Section 72 of the Act of 1950 against the aforesaid order dated

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08.06.1979 passed by the Joint Charity Commissioner. He has submitted that the learned District Judge has committed an error in holding that the appellant was rightly declared as the person enjoying privileges recognized after merger with conferment of right to offer Puja on the 8th day of Navratri and to perform the Havan in the temple and wave the Chamar before the Goddess and has also right to see that while doing so, the pilgrims are shut out or excluded from the temple premises, in view of the same being the hereditary right of the appellant. He has submitted that being aggrieved and dissatisfied by the order dated 03.06.2008, the appellant preferred the captioned First Appeal before this Court under Section 72(4) of the Act of 1950, whereas, respondent No 1 also filed cross-objection, more particularly against the aforesaid observations regarding the offering of puja, etc. in the temple. He has further submitted that learned Principal Civil Judge has dismissed Special Civil Suit No 1 of 2017 (Old No. 12 of 1970) filed by the appellant seeking for almost similar reliefs, which are in question in the present proceedings, while imposing a cost of Rs.50,000/- and the said judgment of the learned Principal Civil Judge has been not disturbed in the pending appeal filed by the appellant herein against the same in the Ld. District Court, Palanpur. Mr.Trivedi, learned Advocate General has submitted that the appellant cannot claim any undeserving and unwarranted privilege, and more particularly in respect of - (i) the temple and the properties appurtenant thereto, which have been declared to be the State properties belonging to the public at large and, also (ii) any alleged hereditary right to offer puja to Goddess in the temple on the every 8th day of Navratri and perform the Havan and to wave the Chamar before the Goddess in the temple, while shutting out the citizen, which is otherwise longing and thronging to exercise their

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fundamental right to do very things under the Constitution. He has submitted that if the appellant is permitted to do so, it would not only result into utter discrimination and violation of the fundamental rights of the people at large, but the same would also be in contravention of the above-referred orders of the Hon'ble Supreme Court as well as this Court.

7.1 Mr.Trivedi, learned Advocate General has submitted that in view of the aforesaid discussion, the captioned appeal of the appellant deserves to be dismissed, while allowing the cross-objection preferred by respondent No.1 against the order dated 03.06.2008 of the learned District Judge, Palanpur to the extent to which it declares that the appellant has been enjoying privileges in connection with the deity and those privileges have been recognized after the Merger and so he (Appellant) has the right to offer puja on the 8th day of Navratri and to perform the Havan in the temple and to wave the Chamar before the Goddess and he has right to see that while he performs the puja and renders services to the Goddess, the pilgrims are shut-out or excluded from the temple premises and that this is a hereditary right.

8. Per contra, Ms.Archna Acharya, learned counsel for respondent No.1 and appellant in Cross Objection No. 177 of 2011 has submitted that the learned District Judge has committed an error in granting the relief which is not sought for by the appellant in Civil Misc. Application No. 49 of 1979 and in setting aside the order dated 08.06.1979 passed by the Joint Charity Commissioner in Appeal No. 45 of 1973 as well as the order passed by the Deputy Charity Commissioner in Inquiry No. 796 of 1961 and in spite of the same, the learned District Judge has exceeded his jurisdiction in declaring that the appellant has

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been enjoying privileges in connection with the deity and privileges have been recognized after merger and so he has right to offer puja on 8th day of Navratri and to perform the Havan in the temple. She has submitted that learned District Judge has erred in not considering the grounds raised in Civil Misc. Application No. 94 of 1981 and Charity Commissioner has also erred in not appreciating the evidence so far as point No.5 for determination is concerned and also erred in relying on references in Rasmala the Imperial Gazetteer and the Bombay Gazette. She has submitted that the learned District Judge ought to have held that the Joint Charity Commissioner had no jurisdiction to decide the question of special privileges as appellate officer and thus, the only Civil Court has jurisdiction to decide the suit for declaration of such right. She has submitted that the appellant has failed to establish his ownership over the temple or that he had spent any amount towards maintenance etc. and hence, the appellant was only collecting money from the pilgrims who visited for darshan and was also collecting tax known as Mundka Vero. She has submitted that in view of the depositions of various witnesses, it is crystal clear that the appellant had no right whatsoever over the temple in question. She has submitted that the story of the appellant that his ancestors having brought the “idol” from Nagar Thatta is false and temple in question, there is no “idol” and there is “Yantra” only. While referring the deposition of witness of the appellant at Exhibit 379, she has submitted that Bhuralal Chimanlal Dave was the Su-Treasury Officer of Shri Mataji (Ambaji Mahal) and was the servant of the Danta State and was paid monthly salary and doing the work of collecting the income of the temple in question and other income of the State from the Ambaji Mahal including Ambaji. She has also submitted that the Muka Tax and other Taxes were levied by Maharan as a Ruler and

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not in his personal capacity. According to Ms. Acharya, learned counsel, it is not correct to say that the Charity Commissioner has merely inquisitorial powers and all the proceedings before it are in the nature of inquisitorial proceedings. The Charity Commissioner is also a judicial or quasi-judicial authority who has to determine certain questions which are brought before it under the relevant provisions of the Act. It is submitted that the bar of jurisdiction Civil Court cannot decide as to whether a property is of public trust or not. She has submitted that the first appeal being meritless deserves to be dismissed and the cross objection deserves to be allowed and the impugned judgment and order deserves to be quashed and set aside.

8.1 In support of her submissions, Ms.Acharya, learned counsel has relied upon the following decisions:-

(1) State Of Gujarat Versus Vora Fiddali Badruddin Mithibarwala, AIR 1964 SC 1043 more particularly paras 56 to 64, 96, 97, 127 to 135;
(2) Raj Kumar Narsing Pratap Singh Deo Versus State Of Orissa, AIR 1964 SC 1793 more particularly para 8 to 15;
(3) Tilkayat Shri Govindlalji Maharaj Versus State Of Rajasthan, AIR 1963 SC 1638
(4) Goswami Shri Mahalaxmi Vahuji Versus Ranchhoddas Kalidas, AIR 1970 SC 2025
(5) Ram Mandir Indore Versus State Of Madhya Pradesh, (2019) 18 SCC 94
(6) Draupadi Devi Versus Union Of India, (2004) 11 SCC 425
(7) AIR 1963 SC 593

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Duea lex, sed lex - Even if the law is strict for severe, it must be followed.

9. The issues involved in the present appeal are required to be decided, which read as under:-

(1) whether the authorities i.e. Deputy Commissioner, Charity Commissioner and the learned Principal District Judge, though have held that all the properties are the public properties and part of the public trust, however, while granting privilege to offer worship on 8th day of Aasho Maas and special puja ceremony is to be performed by the appellant by restraining the public at large not to enter at that time is just and proper?

(2) Whether the authorities, while rejecting other prayers, has justified in passing the order and granting privileges in absence of any rightful ownership is proved before the concerned Court in any of the proceedings or not?

(3) Whether the orders passed by all the authorities are liable to interference while exercising appellate jurisdiction or not?

10. In view of the above, this Court is of the view that the appellant or his predecessor-in-title i.e. erstwhile Ruler of Danta State failed to establish his right over the properties in question. In that circumstances, whether any privileges granted by the authorities is just and proper. On going through the evidence led before the concerned authorities, it appears that during the proceedings of registration of the trust, which was subsequently submitted by the appellant and registered as Inquiry Case No. 796 of 1961, which came to be challenged by way of preferring Revision Application and the said Revision Application was dismissed on the ground of jurisdictional

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error. That the said order is required to be challenged before the Appellate Authority, but not by way of revision application then ultimately the order was challenged by way of filing an appeal. That while deciding the appeal, the authority below has observed that the appellant failed to establish, by producing any cogent and material evidence, that the disputed property is private and personal property mentioned in the list of merger document.

11. That at the first instance, before pre - independence of India as the history narrated hereinabove, the appellant has preferred different special proceedings against two different parties before the concerned Court with a prayer to get possession etc. In those suit, the concerned Court has categorically recorded the finding that the appellant or his predecessor i.e. erstwhile Ruler was merely administered the temple of Arasuri Amba Bhavani and, therefore, he was even not recognized in those proceedings also as owner of the property merely because he was erstwhile Ruler and prior to pre-independent Ruler is the owner of the property of their territorial jurisdiction and without permission or wish, nobody even allowed to enter the holly shrine. The certain documentary evidence which were part of the record, from their correspondence, a complaint was filed against the erstwhile Ruler of Danta State inter alia contending that they were charging an admission fees to enter into the State and to visit or offer prayer to the Goddess before the then the Governor General of Maharashtra. On perusal of the contents of the letters, it reveals that the appellant was merely a Ruler of Danta State and, therefore, he is charging Mundka Tax and Vehicle Tax which was excessive in nature. After independence, the State of Bombay has discontinued all taxes which were imposed by the then Ruler of

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Danta. The subsequent correspondence by the State of Bombay with the erstwhile ruler of the Danta State. On perusal of the contents of those letters, it prima facie appears that though the Government has tried to convince the erstwhile Ruler of Danta State for conferring the trust or whole shrine situated nearby area Mata Arasuri Amba Bhavani and the erstwhile Ruler to be appointed as managing trustee in the trust. But it seems that the erstwhile Ruler i.e. predecessor of the appellant has never responded to the request of the Government and ultimately, till 1958 all the correspondences show that the erstwhile Ruler has not signed performa document sent for offering him to constitute trust and to become the managing trustee of the trust known as Arasuri Amba Maata Temple Trust. Thereafter, after bifurcation of the State, when the State of Gujarat came into force w.e.f. 01.05.1960, they have also requested but ultimately it was not accepted by the predecessor of the appellant's erstwhile Ruler of the Danta State. Every time instead of accepting, the appellant's erstwhile Ruler has objected and claimed the ownership of the property claiming offering made to the Goddess Arasuri Amba Bhavani and also asked for share from the income of the holly shrine. It is evident from the above referred history that immediately after merger agreement signed when the Government of Bombay has written a letter to act upon the agreement, the appellant immediately approached the High Court of Bombay by way of preferring the writ petition and in turn, ultimately, the Court has dismissed the claim put forward by the appellant way back in 1953, despite this, the appellant is continuously prescribing even after more than 75 years of independence and till date fighting for the same. In the Court of law, the appellant has failed to establish his right over the properties in question. On perusal of the material on record, it appears that it was

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not originally owned by the predecessor or ruler of the Danta State but from 1963, the property was in possession of the person who referred earlier and since erstwhile Ruler, the property was gifted for offering to the Ruler the appellant became administrator of the property as Ruler of the Danta State. That is how the disputed property came into hands of the erstwhile Ruler. Even on all counts, the Joint Charity Commissioner though found all the issues against the appellant. Thereafter, there is no need to give any privileges to offer special worship and permit the appellant on 8th day of Navratri and to allow him to perform special puja and restrained lacs of people not to enter inside the temple while the appellant is performing the puja, is absolutely erroneous, illegal and uncalled for. Therefore, I am of the opinion that the orders passed by the authorities registering the trust is in consonance with the settled principles of law and, no interference is required to be called for in the present appeal. On perusal of the oral evidence as recorded in the civil suit on behalf of the appellant and the findings recorded by the learned Civil Judge, it appears that the learned Civil Judge has rightly observed that the appellant failed to establish that he was the owner of the disputed property, however, accordingly, as per the committee report prepared by the State Government, the appellant was allowed to perform the special puja on 8th day of Navratri in Aarasuri Amba Bhavan which in my view, is completely unjustifiable and erroneous.

12. On perusal of the judgment and order passed by the learned District Judge, it appears that the learned Judge has, while considering the averments and submissions of both the sides, framed the following issues.

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(1) Whether the learned Lower Appellate Court has erred in confirming the finding that the Ambaji Mata Shrine is a public temple?

(2) Whether the learned Lower Appellate Court has erred in confirming the finding that the appellant (petitioner) is not a shebait of the temple and the finding that he has no right after the merger to appropriate wholly or in part the offerings made to the Goddess?

(3) Whether the learned Lower Appellate Court has erred in declaring that the appellant has been enjoying privileges in connection with the deity and those privileges have been recognized after the merger and so he has the right to offer puja on the 8th day of Navratri and to perform the Havan in the temple and to wave the Chamar before the Goddess and he also has a right to see that while he performs the puja and renders services to the Goddess, the pilgrims are shut-out or excluded from the temple premises and that this is a hereditary right?

(4) Whether the order of the learned Lower Appellate Court requires any interference by this Court?

(5) What order?

12.1 After considering the oral as well as documentary evidence, the learned District Judge has answered the aforesaid issues accordingly.

13. The learned District Judge has discussed the evidence in paras – 10 to 14 and has categorically held that the lower Appellate Court, while confirming the finding that the Amba Mata shrine is a public temple has confirmed and no interference is at the hand of the

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learned District Judge. So the learned District Judge has discussed the evidence against the concurrent finding recorded by the Deputy Charity Commissioner and Charity Commissioner and again the same came to be confirmed by the learned District Judge and they all have unequivocally and unanimously held that Aarasuri Amba Maata shrine is a public temple and it is not a private property as shown by the appellant. Under such circumstances, when the rest of the issues which were framed and answered in negative then in that case the learned District Judge ought not to have granted the special privileges only because before independence the Ruler of erstwhile Danta State was performing special puja as after independent there was no evidence found that the State of Bombay or State of Gujarat has recognized this customary privileges and whether it is continued during those period or not. No evidence to that effect were produced before the Deputy Charity Commissioner or the Charity Commissioner and, therefore, prior to the date of remand the matter on 16.08.1973, there was no order with regard to any special privileges observed by the authorities below and only after the matter was remanded back in the year 1973, for the first time, the authority has granted permission to offer worship to the deity on the special day i.e. Ashthami of Ashwin Maas Navratri and never granted permission for special pooja and, therefore, the order passed by the Charity Commissioner and confirmed by the learned District Judge granting permission for special pooja is completely erroneous and unjust. So far as issue No.2 is concerned, it was specifically held that the appellant was not considered to be shebait and has no right after merger agreement signed by the then ruler highness late Shri Prithvirajsinh. Therefore, the privilege considered and recognized by the Deputy Charity Commissioner is wholly untenable and is completely erroneous

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because the appellant has failed to establish his case. Under the circumstances, the special privileges cannot be granted in favour of the appellant. Thus, the impugned judgment and order passed by the learned District Judge confirming the orders passed by the Joint Charity Commissioner and Charity Commissioner, is unjust and illegal. Though on one hand all the authorities came to the conclusion that it was a public trust which required to be registered and the appellant has no right or title or claim and on other hand, the authorities recognized the privileges to the appellant, in my view the same is completely illegal, unjust and against the facts of the case. Thus, the observation qua special privileges and offering pooja on 8th day of Ashwin Maas Navratri is required to be quashed and set aside.

14. In view of the order passed by the Hon'ble Supreme Court and this Court, unless and until the appellant is established his right over the property, he is not permitted or allowed to perform any special puja on 8th day of Ashwin Maas navratri.

15. So far as the cross objection filed by the respondent No.1 is concerned, with regard to the permission granted to perform special puja is concerned, now the cross objection deserves to be allowed.

16. The decisions referred and relied upon by the appellant and the respondents are discussed hereinabove and in view of the ratio laid down by the Hon'ble Supreme Court, the same is not applicable to the facts of the present case. It is pertinent to note that till date, the appellant has not succeeded in any Court of law with regard to the fact that the disputed property i.e. shrine of Aarasuri Amba Maata temple is a private property.

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17. As observed by the Hon'ble Supreme Court that in case bar imposed under Article 363 of the Constitution of India that all the disputes relating to the merger agreement there was separate machinery is provided and, therefore, the claim of the appellant regarding shrine is a private property is not tenable.

18. Once the Hon'ble Supreme Court has concluded that part, now it is not binding and it is a decision of the Constitutional Bench. Therefore, now it is open for this Court to re-examine or re-look the judgments and, hence, the reasons / findings recorded by the Hon'ble Supreme Court has no room as contended by Mr.Mehta, learned counsel that there was window open by the Hon'ble Supreme Court. In my opinion, this Court cannot go into the fact that whether the Hon'ble Supreme Court has opened any window or granted any liberty to the appellant to prefer appropriate proceedings. Under the circumstances, the findings recorded by the authorities, I am in complete agreement with the findings recorded by the Charity Commissioner and/or learned District Judge in granting privileges and performing the puja on special occasion and giving permission to enter into sanctorum and also permitted for Chamar to Goddess Amba is completely illegal, erroneous and unreasonable. Even while dismissing the petitions by this Court in earlier round of litigation more particularly Special Civil Application No. 55 of 1970, the Court has observed that in view of the decision of the Hon'ble Supreme Court, it is not open for this Court to enter into the issue and grant any relief in favour of the appellant. Under such circumstances, it is required to be noted that the appellant has also challenged the order passed by the Civil Court in Special Civil Suit No. 1 of 1970 before this

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Court by way of preferring the first appeal which is pending at present. If any observation made by this Court in the present appeal, it is having direct impact and and barring on that first appeal is therefore restrained at this juncture. This Court is not entering into the merits or de-merits of the findings recorded by the concerned Civil Court in the said Special Civil Suit.

19. That the Hon'ble Apex Court in 1957 has by constitutional judgment held that the petitioner has no right over the temple or property of the temple, once the property is bequeathed to the deity then it is opportunity of that deity and appellant cannot claim right over the temple or its property as it is public property. In fact earlier also, the Hon'ble Supreme Court has decided the issue relating to the ownership and hereditary rights. After the merger agreement signed by predecessor / erstwhile Ruler of Danta State; whether any right or privilege survive or not and till date no right or any claim was crystallized in the Court of law. It was held by the Hon'ble Supreme Court that for challenging the merger agreement, there was/is separate machinery provide under Article 363 way back in 1957 by delivering the judgment by the Constitutional Bench. If it is considered as res judicata then this Court is not competent to deliver any opinion on that aspect and, therefore, under such circumstances, the findings recorded by all the authorities with regard to the claim over the temple trust is just and proper and the direction given to the authorities to register the trust, in my humble opinion, is not in consonance with the facts of the case. So far as the State assumes the charge and management of the temple is not violative the provisions of the constitutional right enshrined under Article 25 and 26 of the Constitution of India.

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20. The Arasuri Ambaji temple is one of the Shakti Peetha attracting crore of pilgrims from across India for centuries. Applying the ratio laid down by the Hon'ble Supreme Court in the case of **Sri Marthanda Varma (D) Thr. Lrs. Vs. State Of Kerala**, reported in **(2021) 1 SCC 225** reaffirmed in the case of Padmanabhaswamy temple that the worship is open to the public as of right and the endowment is for a public religious purpose. Consequently, the claim of private ownership or exclusive hereditary rights cannot be sustained. Therefore, under such circumstances, I am of the opinion that the Arasuri Ambaji temple is a public religious institution and the deity is juristic person owning endowed property. In the case of **Deoki Nandan Versus Murlidhar**, reported in **AIR 1957 SC 133**, the Hon'ble Supreme Court has considered that shebaitship is not an ownership, but a limited property right is distinct from religious duty and, therefore, the claim of the appellant pre-dominantly seeks proprietary ownership rather than custodial service is not at all tenable in the eyes of law. The effect of merger and covenant unless was crystallized to asserts by the Hon'ble Supreme Court in the case of Padmanabha Swamy Temple reserved royal trusteeship which was also offer to the appellant by the then Government of Bombay but was not accepted by the erstwhile Ruler of Danta State and management has been continuously carried out by the administrator of the State Government along with other trustees and it is uninterrupted and, therefore, when there is no close expression preserved trusteeship of the Arasuri Ambaji temple listing not equivalently to the constitutional protection. In fact, the management was assumed by the State of Bombay since 1953 and it was never restored in favour of the appellant and his predecessor under the

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essential religious practice have not been interfered with by the Court of law. Even Articles 25 and 26 do not protect the secular administration and thus, the State Management is constitutionally valid. In the case of Padmanabhaswamy, the Hon'ble Supreme Court has observed that the religious rights were explicitly protected under the merger agreement. In the present case, there was no explicit right or privileges protected under the merger agreement. Even the Government of Bombay in its correspondences which are on record clearly transpires that though the request was made but the Government has not accepted those requests and extinguished the request of the then Ruler and, therefore, after 75 years all executing the merger agreement, the appellant cannot claim of any privileges or any right over the property. It was further observed by the Hon'ble Supreme Court in the case of *Deoki Nandan* (supra) that the rights flow from the terms of dedication and not from the political authority or social trial. In the present case, neither of the autorities has recognized or conferred upon the Maharana the status of Shebait nor has any religious purpose been shown to be performed by him, in fact, Seva puja performed by the pujari of the temple. Even prior to the pre-independence, it was performed only by the pujari and, therefore, the findings recorded by the authorities with regard to the right over the property are completely in consonance with the facts of the case and in view of the settled legal principles pronounced by the Hon'ble Supreme Court in the aforesaid decisions. So far as the registration of trust which was upheld by the authorities is concerned, I am of the opinion that it is upheld and no custodial privileges can be granted in favour of the appellant, but it is in fact bad in law once he has failed to established before the concerned authorities with regard to ownership and shebaitship. Therefore, such privileges cannot be

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granted in favour of the appellant at all.

21. Even the Parliament enacted the Constitution (Twenty Sixth Amendment) Act, 1971 which came into force on 28.12.1971. The Statement of Objects and Reasons for said Amendment indicates that the concept of Rulership, with privy purses and special privileges unrelated to any current functions and social purposes, was incompatible with an egalitarian social order. Government have, therefore, decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for this purpose, apart from amending the relevant provisions of the Constitution, to insert a new Article therein so as to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses privileges. This Constitutional Amendment deleted Articles 291 and 362; and inserted Article 363A which now expressly stipulates inter alia that any person who was recognized to be the Ruler of an Indian State or his Successor, shall, cease to be recognized, as such Ruler or Successor, and all rights, liabilities and obligations in respect of Privy Purses stand extinguished. Article 366(22) was also accordingly amended and in terms of the amended definition, "Ruler" now means, inter alia, the person who was recognized as the Ruler of an Indian State or as a successor to such Ruler, before the commencement of said Constitutional Amendment. With the deletion of Article 291, the rights, liabilities and obligations with respect to Privy Purses stood extinguished. The guiding principles emanating from Article 362 that in exercise of legislative or executive power, due regard shall be had to the guarantee or assurance given in any Covenant or agreement referred to in Article 291 also ceased to exist.

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Meaning thereby that after this amendment, no Ruler can claim any privileges or right over the property and cannot seek any relief under the covenant signed by the erstwhile Ruler or his predecessor. Even in the case of Padmanabhaswamy, the Hon'ble Supreme Court has distinguished with trust and trustees, religion endowment Sevapath concept suggests right and interest. The principle was summarized by the Hon'ble Supreme Court in the case of ***Sri Marthanda Varma*** (supra) with regard to the Sevapanth and shebaitship for long time in para 91.3, 91.4, 91.8 and 91.9 as under:-

> *"**91.3.** The legal character of a shebait cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait. (Profulla Chorone Requitte v. Satya Chorone Requitte [Profulla Chorone Requitte v. Satya Chorone Requitte, (1979) 3 SCC 409] .)*
>
> ***91.4.** Shebaitship in its true legal conception involves two ideas : The ministrant of the deity and its manager; it is not a bare office but an office together with certain rights attached to it. (Manohar Mukherji v. Bhupendranath Mukherji [Manohar Mukherji v. Bhupendranath Mukherji, 1932 SCC OnLine Cal 85 : ILR (1933) 60 Cal 452] .)*
>
> ***91.8.** 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*

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> *to some extent, is still a genuine legal right. (Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] .)*
>
> ***91.9.*** *Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of shebait both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. (Angurbala Mullick v. Debabrata Mullick [Angurbala Mullick v. Debabrata Mullick, 1951 SCC 420: AIR 1951 SC 293 : 1951 SCR 1125])"*

22. In view of the aforesaid decision of the Hon'ble Supreme Court, now the appellant cannot claim an ownership or any right over the property which belongs to the deity and even by virtue of amendment, he cannot claim for any privilege of performing puja on a particular day in a way as he claiming and thereby curtail right of the pilgrims to perform puja and to offer their prayer where more than lacs of people visiting during the period of Asho Maas Navratri and on 8th day of Asho Maas Navratri, the huge pilgrims visiting the temple of holly shrine Arasuri Ambaji temple and in midst of huge crowd no privileges can be granted in favour of the appellant. Therefore, privileges which is granted by the Deputy Charity Commissioner and confirmed by the Charity Commissioner and further confirmed by the learned District Judge, is not just and proper and the same deserves to be quashed and set aside.

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23. In the case of **Bala Shankar Maha Shanker Bhattjee Vs. Charity Commissioner Of State Of Gujarat** reported in **AIR 1995 SC 167**, the Hon'ble Supreme Court has held and observed in para 8, 9, 10, 12, 14, 18, 19, 20, 21 as under:-

> *"**8.** Black's Law Dictionary, 6th Edition, at page 1512 defines 'Public trust' to mean by one constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; public trusts and charitable trusts may be considered in general as synonymous expressions. At page 1510 'Charitable trust' has been defined as 'Trusts designed for the benefit of a class or the public generally. They are essentially different from private trusts in that the beneficiaries are uncertain. In general, such trust must be created for charitable, educational, religious or scientific purposes.' In P. Ramanatha Aiyhar's 'The Las Lexicon' Reprint Edition 1987, at page 1298 'Public and Private Trust' has been defined as 'in the case of a temple an idol publicly constituted and publicly accessible in which the appearance may be what one may describe as ambiguous, one would except and ought to insist upon clear evidence of permission given or licence given and permission withheld because it is equally true that a private individual may construct, out of his private purse, a private temple and idol retaining the control and management in his own hands and that of his family or some other selected individuals and so conduct himself as to provide conclusive evidence of dedication by implication and by conduct. There is a board difference when one comes to construe a dedication, between conduct which shows that the owner of property is giving individuals and conduct which shows that he intends certain members of a class whom he desires to benefit to act indiscriminately without permission that is to say, as of right. A useful test, for a Judge to apply to see whether the evidence satisfies the conditions of the private trust, is to ask himself whether any of the acts testified to by the witnesses could have been prevented or penalised by proceedings for trespass. In private trust the beneficial interest is vested absolutely in one or more individuals who are, or within a given time, may be definitely ascertained. On the other hand public trust has for its object the members of an uncertain and fluctuating body and the trust itself is of a permanent and*

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indefinite character and is not confined within the limits prescribed to a settlement of a private trust.

9. *Deoki Nandan V/s. Murlidhar, 1956 SCR 756, is a leading Judgement of this Court by a Bench of four Judges. In that case the facts found were that one Sheo Ghulam, a pious childless Hindu, constructed Thakurdwara of Sri Radhakrishnaji in Balasia village of District Sitapur. He was in management of the temple till his death. He executed a 'Will' bequeathing all his properties to the temple and made provisions for its proper management. The question arose whether the temple was dedicated to the public and whether the temple was a public or private temple. This Court laid down that the issue whether the religious endowment as a public or a private is a mixed question of law and facts, the decision of which must be taken on the application of the legal concepts of public and private endowment to the facts found and it is open to consideration of this Court. The distinction between a private or a public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. An idol is a juristic person capable of holding properties. The properties endowed for the temple vest in it, but the idol has no beneficial interest in the endowment. The true beneficiaries are its worshipers. On facts it was found that the temple was a public temple. In Tilkayat Shri Govindalalji Maharaj V/s. State of Rajasthan, (1964) 1 SCR 561 the Constitution Bench of this Court held, on construction of evidence, that Nathdwara temple of Udaipur is a public temple with management of the trustee of the property belonging to the temple. In Narayan Bhagwantrao Gosavi Balajiwale V/s. Gopal Vinayhak Gosavi, (1960) 1 SCR 773:(AIR 1960 SC 100) a Bench of three Judges held that the long user by the public as of right and grant of land and cash by the rulers, taken along with other relevant facts were consistent only with the public nature of the endowment. It was held that Sri Balaji Venkatesh at Nasik and its Sansthan constituted charitable and religious trusts within the meaning of the Charitable and Religious Trusts Act, 1920. In that context this Court also considered the question of burden of proof and held that it would mean of two things, namely, (1) that a party has to prove an allegation before it is entitled to a Judgement in its favour; and (2) that the one or the other of the two contending parties has to introduce evidence on a*

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contested issue. The question of onus is material only where the party on which it is placed would eventually lose if it failed to discharge the same. Where issues are, however, joined, evidence is led and such evidence can be weighed in order to determine the issues, the question of burden becomes academic."

10. *In Ram Saroop Dasji V/s. S . P. Sahi, Special Officer-in-Charge of the Hindu Religious Trusts, (1959)Suppl (2) SCR 583, another Constitution Bench reiterated the distinction between the public and private trust. In the former the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it, answering a particular description. In the latter, the beneficiaries are definite and ascertained individuals or who within a time can be definitely ascertained. The facts that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference on the matter and would not make the trust a private trust. It was held that Sri Thakur Laxmi Narainji was a public trust within the meaning of S.2(e) of the Bihar Hindu Religious Trusts Act, 1950. In Goswami Shri Mahalaxmi Vahuji V/s. Ranchhoddas Kalidas, (1969) 2 SCC 853, relied on by the appellant, this Court construing whether a public trust or a private trust laid down the following tests:*

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

(2) Are the member of the public entitled to worship in that temple as of right-

(3) Are the temple expenses met from the contributions made by the public-

(4) Whether the Sevas and Utsvas conducted in the temple are those usually conducted in public temples-

(5) Have the management as well as the devotees been treating that temple as a public temple-

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On the facts of that case, it was held that Haveli at Nadiad was a public temple. In that context this Court emphasized that the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regards to worship, the consciousness of the Manager and the consciousness of the devotees themselves as to the public character of the temple are relevant factors which would go to establish that the temple is whether public or a private one. The true character of a particular temple is to be decided on the basis of diverse circumstances.

12. *In T.D. Gopalan V/s. Commr. of Hindu Religious and Charitable Endowments, (1973) 1 SCR 584, relied on by the appellants, the facts were that the Mandapam was constructed on their own land. The Garbha Griha in front of the mandapam, stone idols called Dwarabalakas on either side and implements necessary for offering puja in the mandapam existed. The Commissioner declared it to be a public temple but in the suit the trial Court declared it to be a private temple. On appeal, the High Court reversed the decree of the trial Court and held that the temple was a public temple on the ground that members of the public had been worshipping at the shrine without let or hindrance, and that the temple was being run by contributions and by benefactions obtained from members of the public. This Court considered the nature of the temple, place of worship attaching importance to the origin of the temple, the management thereof by the members of the family and absence of any endowed property etc., declared it to be private temple and confirmed the decree of the trial Court. While considering those facts, this Court held that the origin of the temple, the manner in which its affairs were managed, the nature and extent of the gifts received by it, the rights exercised by devotees in regard to worship therein, the consciousness of the Manager or devotees themselves as to the public character of the temple are facts which go to establish whether a temple is public or private. In the absence of Dwajasthamba or Nagara bell or Hundial in the temple were considered to be factors to declare the temple to be a private temple. In Dhaneshwarbuwa Guru Purshottambuwa V/s. Charity Commissioner, (1976) 3 SCR 518 , while reiterating the well-settled distinction between private trust or public trust, this Court emphasised the deity installed in the temple was intended by the founder to be continually*

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worshiped by an indeterminate multitude of the Hindu public without any hindrance or restriction in the matter of worship by the public extending over a long period. Receipt of the Royal grant, gifts of the land by members of the public, absence of any evidence in the long history of the Sansthan to warrant that it had any appearance of, or that it was ever treated as, a private property are some of the features to lead to an inescapable conclusion that Shri Vithal Rukhamai Sansthan was to be public trust within the meaning of sec. 2(13) of the Act.

14. *In Sri Radhakanta Deb V/s. Commr. of Hindu Religious Endowments, (1981) 2 SCC 226, this Court was to consider whether Radhakanta Deb in Orissa State is a public or private trust. This Court held that each case has to be decided with reference to the facts proved therein and it is difficult to lay down any test or tests which can be of universal application. Where the origin of the endowment is lost in antiquity or shrouded in mystery, there being no document or reliable entries to prove its origin, the task of the Court becomes difficult and it has to rely merely on the circumstantial evidence regarding the nature of the user of the temple. It was also further held that allowing the public to worship by itself would not make an endowment public unless it is proved that the members of the public had a right to worship in the temple. On the facts, in that case, it was held that the temple, in question, was a public temple.*

18. *From the aforesaid discussion the following principles of law would emerge.*

19. *A place in order to be a temple, must be a place for public religious worship used as such place and must be either dedicated to the Community at large or any section thereof as a place of public religious worship. The distinction between a private temple and public temple is now well settled. In the case of former the beneficiaries are specific individuals; in the latter they are indeterminate or fluctuating general public or a class thereof. Burden of proof would mean that a party has to prove an allegation before he is entitled to a Judgement in his favour. The one or the other of the contending parties has to introduce evidence on a contested issue. The question of onus is material only where the party on which it is placed would eventually lose if he failed to discharge the same. Where, however, parties joined the issue, led evidence, such*

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evidence can be weighed in order to determine the issue. The question of burden becomes academic.

20. *An idol is a juristic person capable of holding property. The property endowed to it vests in it but the idol has no beneficial interest in the endowment. The beneficiaries are the worshipers. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler or Govt.; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The true character of the temple may be decided by taking into consideration diverse circumstances though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple it is not conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the head man leaves, the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.*

21. *Dedication to the public may be proved by evidence or by circumstances obtainable in given facts and circumstances. In given set of facts, it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment when property is set apart for the worship of the family idol, the public are not interested. The mere fact that the management has been in the hands of the members of the family itself is not a circumstance to a conclude that the temple is a private trust. In a given case management by the members of the family may give rise to an inference that the temple is impressed with the character of a private temple and*

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> *assumes importance in the absence of an express dedication through a document. As stated earlier, consciousness of the manager or the devotees in the user by the public must be as of right. If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple. The origin of the temple, when lost in antiquity it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and circumstances of a given case. No set of general principles could be laid.*

Nemo est supra leges meaning thereby that no one is above the law. Every one regardless of status, power or position is subject to and accountable under the same laws:-

24. I have considered the averments the appeal as well as cross objection and material placed on record and the oral submissions canvassed by the learned counsel for the respective parties and also considered the written submissions made on behalf of both the parties. I have also perused the record and proceedings of the case and the impugned judgment and order passed by the learned District Judge and the decisions cited at the Bar.

25. From the above referred decisions of the Hon'ble Supreme Court as well as of this Court, it is crystal clear that the Arasuri Ambaji Temple is a public temple and, therefore, the order of registering the trust under the Gujarat (Bombay) Public Trust Act is hereby upheld and, therefore, the first appeal filed by the appellant deserves to be dismissed.

26. In view of the decision of the Hon'ble Supreme Court in the case of **Bala Shankar Maha Shanker Bhattjee**(supra), no privileges is

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required to be considered in favour of the erstwhile Ruler of the appellant and the order of granting privileges deserves to be quashed and set aside and the cross objection deserves to be allowed.

27. In view of the aforesaid facts and circumstances of the case, the first appeal filed by the appellant is hereby dismissed. Cross Objection filed by the original respondent No.1 is hereby allowed. The impugned judgment and order passed by the learned District Judge in Civil Misc. Application No. 94 of 1981 is quashed and set aside. Registry is directed to send back the record and proceedings to the concerned trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

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