CASE NO.:
Appeal (civil) 3563 of 2006

PETITIONER:
State of West Bengal & Ors.

RESPONDENT:
Sri Sri Lakshmi Janardan Thakur & Ors.

DATE OF JUDGMENT: 21/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising Out of S.L.P. (C) No.1613 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Calcutta High Court holding that an endowment which was the subject matter of controversy was private in nature. After so holding, the High Court directed the Revenue Officer and Ex-officio Deputy Land and Land Reforms Officer to decide afresh the matter taking note of the observations made and the findings recorded. It was directed that the decision was to be taken after affording all concerned parties opportunity of hearing.

The background facts in a nutshell are as follows:

Revenue officer initiated proceedings registered as 3/Hoogly of 2002 under Section 14T(6), 14T(9), 14M(5) and 14M(6) of the West Bengal Land Reforms Act, 1955 (in short the 'Act') to cause enquiry in order to ascertain the total extent of land held by Deity Sri Sri Lakshmi Janardan Thakur (hereinafter referred to as the 'Deity') and to decide the question as to whether the endowment is of public or private nature and connected issues. It is to be noted that under the Act, the Revenue Officer is the Ex-Officio Deputy Land and Land Reforms officer.

By order dated 3.12.2001, the Revenue Officer disposed of the proceedings allowing the Deity to retain 24.22 acres of land and directed vesting of rest of the land in the State. The Revenue Officer held that the endowment was of public nature exclusively for charitable and religious purpose and therefore was entitled to retain 7 standard hectares of land in terms of Section 14M(6) of the Act. Challenging the said order, an application numbered as O.A. 328 of 2002 was filed by the Shebaits of the said Deity before the West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to as the 'Tribunal')claiming that the character of the Deity was private in nature. Aforesaid O.A. was disposed of by the Tribunal directing the applicants to prefer statutory appeal under the provisions of the Act before the District Land and Land Reforms Officer, the designated appellate authority. Respondents preferred the statutory appeal in terms of Section 54 of the Act before the appellate authority. The appeal was

registered as Appeal Case No. 52 of 2002. By order dated 31.5.2002 the appellate authority rejected the appeal and confirmed the order passed by the Revenue Officer.

Being aggrieved by the said judgment an appeal (O.A. No. 2175/2002) was preferred before the Tribunal claiming properties of the Deity as absolute and not the personal property of its Shebaits.

The Tribunal after hearing the parties rejected the OA holding that the contentions raised by the applicants before it were rightly rejected by the appellate authority for cogent reasons based on solid and unassailable materials.

Challenging the said judgment of the Tribunal, a Writ Petition was filed before the Calcutta High Court which was registered as W.P.L.R.T. No. 101 of 2003. A Division Bench of the Calcutta High Court by the impugned judgment allowed the Writ Petition, set aside the orders passed by the Revenue Officer, the appellate Authority and the Tribunal. As noted above certain directions were given. The High Court inter alia held that the dedication was not made for the use or benefit of the public at large or even a specified class of it and therefore the endowment was of private nature. It was noticed that neither the management nor the control over the expenditure was of the public and therefore set aside the orders.

In support of the appeal, learned counsel for the appellant-State and its functionaries submitted that the High Court has fallen into grave errors by ignoring the fact that the respondents have taken different stands at different points of time. They themselves have accepted that the endowment was of a public nature. Reference in this is made to various orders including an order passed by a High Court in an earlier Writ Petition and the prayer made in the Writ Petition filed before the High Court.

Learned counsel for the respondents on the other hand submitted that the High Court has rightly taken note of the factual position in the proceeding under Section 44(2)(a) of the West Bengal Estates Acquisition Act, 1953 (in short the 'Acquisition Act'), wherein it was clearly held that Deity is entitled to benefits as provided under Sections 6(1)(i) and 6(2) and proviso to Section 17 of the Acquisition Act. This order dated 24.8.1968 it is submitted, was not challenged. The Arpannama (religious endowment) clearly shows the character of the endowment.

Per adjudication of the controversy, certain provisions and factual aspects need to be noted. Section 5 of the Acquisition Act deals with effect of Notification issued under Section 4 of the Acquisition Act. Section 6(1) is of significance and reads as follows :

6. "Right of intermediary to retain certain lands \026 (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting \026

(a) land comprised in homesteads:

(b) land comprised in or appertaining to

buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or license.

Explanation.\027For the purposes of this clause 'tenant' shall not include a thika tenant as defined in the Calcutta Thika Tenancy Act, 1949:

(c) non-agricultural land in his khas possession including land held under him by any person, not being a tenant, by leave or license, not exceeding fifteen acres in area, and excluding any land retained under clause (a)

Provided that the total area of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him:

Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the Land Acquisition Act, 1894."

xx xx xx xx xx

Till 1981 there was no ceiling in respect of religious or charitable endowment, be private or public. In 1981 the Land Reforms Act was amended and provisions of Sections 14M(5) and (6) become effective and the ceiling area was prescribed. For the first time distinction was made between private and public charitable institutions.

Sections 14 M (5) and (6) read as follows:-

"(5) The lands owned by a trust or endowment other than that of a public nature, shall be deemed to be lands owned by the author of the trust or endowment and such author shall be deemed to be a raiyat under this Act to the extent of his share in the said lands, and the share of such author in the said lands shall be taken into account for calculating the area of lands owned and retainable by such author of the trust or endowment, and for determining his ceiling area for the purposes of this Chapter.

Explanation. \027 The expression "author of trust or endowment" shall include the successors-in-interest of the author of such trust or endowment.

(6) Notwithstanding anything contained in sub-section (1), a trust or an institution of

public nature exclusively for a charitable or religious purpose or both shall be deemed to be a raiyat under this Act and shall be entitled to retain lands not exceeding 7.00 standard hectares, notwithstanding the number of its centres or branches in the State".

In B.K. Mukherjea's The Hindu Law of Religious and Charitable Trust, Tagore Law Lectures the distinction between a public and private charitable trust has been set out in the following terms:

"Distinction between public and private purpose _Gifts for individuals \026 The line of distinction between a public purpose and a purpose which is not public is very thin and technical and is difficult of an easy definition. Tudor in the 5th edition of his book an 'Charities' thus summed up the principles deducible from the cases on the subject:

"If the intention of the donor is merely to benefit specific individuals, the gift is not charitable, even though the motive of the gift may be to relieve their poverty accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth, without giving to any particular individuals the right to claim the funds, the gift is charitable."

Religious endowments are of two kinds, public and private. In a public endowment, the dedication is for the use or benefit of the public at large or a specified class. But when property is set apart for the worship of a family god, in which the public are not interested, the endowment is a private one. It is a question of tact whether a temple is a private or a public one. The extent of properties belonging to the temple, the course of conduct of the devotees, the supervision exercised by the founder and his descendants whether the rents and profits are exclusively utilised for the temple for a long period are relevant factors to be taken into consideration whether a temple is a public one or a private one as also public visiting the temple for Darshan and worship, appearance of the temple, association of members of public with the management and earlier statements or admission of parties.

In order to ascertain whether a trust is a private, following factors are relevant:

(1) If the beneficiaries are ascertained individuals;
(2) If the grantor has been made in favour of an individual and not in favour of a deity;
(3) The temple is situated within the campus of

the residence of the donor;
(4) If the revenue records or entries suggest the land being in possession of an individual and not in the deity. On the other hand an inference can be drawn that the temple along with the properties attached to it is a public trust:
(1) If the public visit the temple as of right
(2) If the endowment is the name of the deity.
(3) The beneficiaries are the public.
(4) If the management is made through the agency of the public or the accounts of the temple are being scrutinized by the public.

A bare reading of the High Court's judgment show that factual position has not been considered in its proper perspective and in fact High Court has not referred to several relevant documents and materials. In the earlier writ petition i.e. Civil Writ Petition No.4941(W) of 1976 decided on 16.7.1980 a learned single judge after referring to the submissions made on behalf of the Deity noted as follows:

"He submitted that as a matter of fact out of the income of the Debutter properties Educational Institutions and Dispensaries are run by the Shebaits of the said Deity and the said facts unmistakably point out that the properties are utilized for religious and charitable purpose of public nature. Although there is force in the contention of Mr. Mitra, it is not necessary for me to decide at the present stage as to whether the Debutter properties are really utilized for religious and charitable purpose of public nature."

(underlined for emphasis)

In the written notes of arguments filed before the Revenue Officer, it was inter alia stated as follows:

"This endowment of the said Sri Sri Laxmi Janardan Thakur is absolutely debuttor deity is public in nature. In fact this is an absolute public Debuttor Estate with religious and charitable in nature and that Estate will enjoy the protection as given by W.B.L.R. Act, 14M Sub Section 5."

(Underlined for emphasis)

Similarly, in the writ Petition filed one of the prayers was as follows :

"A writ of and/or in the nature of declaration, declaring that the properties dedicated in favour of the deities absolutely used for religious and charitable purposes, the Revenue Officer cannot tagged the said properties with the personal properties of the Nandis and the Order so passed by the Revenue Officer, Appellate Authority and the

learned Tribunal are bad, illegal and contrary to law."

The order on which reliance has been placed by learned counsel for the respondent was passed on 21.1.2003. Obviously at that time the question of ceiling vis a vis private and public institutions were not relevant.

The High Court does not appear to have considered all the relevant aspects and has come to abrupt conclusion and the following findings have been recorded:

"No material has been shown by the petitioners which satisfies the requirements for holding the said endowment as to public nature."

In the fitness of things, it would be appropriate to set aside the order of the High Court and remand the matter to it for consideration afresh. It shall consider the effect of the order in the earlier writ petition, effect of the submission made and the written statement and the prayer in the writ petition. These aspects shall be considered along with other materials to be placed by the parties. Needless to say on consideration of all the relevant material the High Court shall dispose of the writ petition in accordance with law.

In the ultimate result the appeal is allowed, with no orders as to costs.