1956

Laxmi Devi Sugar Mills v. Nand Kishore Singh

Bhagwati J.

lant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the charge-sheet. The respondent not having been charged with the acts of insubordination which would have really justified the appellant in dismissing him from its employ, the appellant could not take advantage of the same even though these acts could be brought home to him. We have, therefore, come to the conclusion that the order made by the Labour Appellate Tribunal was correct even though we have done so on grounds other than those which commended themselves to it.

We accordingly dismiss this appeal but having regard to the conduct of the respondent which we have characterised above as reprehensible we feel that the ends of justice will be met if we ordered that each party do bear and pay its own costs of this appeal.

Appeal dismissed.

1956

October 4

DEOKI NANDAN
v.
MURLIDHAR.

[JAGANNADHADAS, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS JJ.]

Hindu Law—Religious endowment—Temple—Public or private —Question of mixed fact and law—Gift to idol—Whether worshippers are the beneficiaries—Dedication to public—Construction of will —Ceremonies relating to installation of idol—User of temple.

The issue whether a religious endowment is a public or a private one is a mixed question of law and fact the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found and is open to consideration by the Supreme Court.

Lakshmidhar Misra v. *Rangalal* ([1949] L.R. 76 I.A. 271), referred to.

The distinction between a private and 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.

Though under Hindu law an idol is a juristic person capable of holding property and the properties endowed for the temple vest in it, it can have no beneficial interest in the endowment, and the true beneficiaries are the worshippers, as the real purpose of a gift of properties to an idol is not to confer any benefit on God, but the acquisition of spiritual benefit by providing opportunities and facilities for those who desire to worship.

Prosunno Kumari Debya v. *Golab Chand Baboo* ([1875] L.R. 2 I.A. 145), *Maharaja Jagadindra Nath Roy Bahadur* v. *Rani Hemanta Kumari Debi* ([1904] L.R. 31 I.A. 203), *Pramatha Nath Mullik* v. *Pradhyumna Kumar Mullik* ([1924] L.R. 52 I.A. 245) and *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra* ([1910] I.L.R. 37 Cal. 128), referred to.

A pious Hindu who was childless constructed a temple and was in management of it till his death. He executed a will whereby he bequeathed all his lands to the temple and made provision for its proper management. The question was whether the provisions of the will disclosed an intention on the part of the testator to dedicate the temple to the public or merely to the members of the family.

Held, that the recital in the will that the testator had no sons coupled with provisions for the management of the trust by strangers was an indication that the dedication was to the public.

Nabi Shirazi v. *Province of Bengal* (I.L.R. [1942] 1 Cal. 211), referred to.

Held further, that the performance of ceremonies at the consecration of the temple (*Prathista*), the user of the temple and other evidence in the case showed that the dedication was for worship by the general public.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 250 of 1953.

Appeal from the judgment and decree dated July 14, 1948 of the Chief Court of Audh, Lucknow in Second Appeal No. 365 of 1945 arising out of the decree dated May 30, 1945 of the Court of District Judge, Sitapur in Appeal No. 4 of 1945 against the decree dated November 25, 1944 of the Court of Additional Civil Judge, Sitapur in Regular Civil Suit No. 14 of 1944.

A. D. Mathur, for the appellant.

Jagdish Chandra, for respondent No. 1.

1956

Deoki Nandan
v.
Murlidhar

1956. October 4. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The point for decision in this appeal is whether a Thakurdwara of Sri Radhakrishnaji in the village of Bhadesia in the District of Sitapur is a private temple or a public one in which all the Hindus are entitled to worship.

One Sheo Ghulam, a pious Hindu and a resident of the said village, had the Thakurdwara constructed during the years 1914-1916, and the idol of Shri Radhakrishnaji ceremoniously installed therein. He was himself in management of the temple and its affairs till 1928 when he died without any issue. On March 6, 1919, he had executed a will whereby he bequeathed all his lands to the Thakur. The provisions of the will, in so far as they are material, will presently be referred to. The testator had two wives one of whom Ram Kuar, had predeceased him and the surviving widow, Raj Kuar, succeeded him as Mutawalli in terms of the will and was in management till her death in 1933. Then the first defendant, who is the nephew of Sheo Ghulam, got into possession of the properties as manager of the endowment in accordance with the provisions of the will. The appellant is a distant agnate of Sheo Ghulam, and on the allegation that the first defendant had been mismanaging the temple and denying the rights of the public therein, he moved the District Court of Sitapur for relief under the Religious and Charitable Endowments Act XIV of 1920, but the court declined to interfere on the ground that the endowment was private. An application to the Advocate-General for sanction to institute a suit under section 92 of the Code of Civil Procedure was also refused for the same reason. The appellant then filed the suit, out of which the present appeal arises, for a declaration that the Thakurdwara is a public temple in which all the Hindus have a right to worship. The first defendant contested the suit, and claimed that "the Thakurdwara and the idols were private", and that "the general public had no right to make any interference".

The Additional Civil Judge, Sitapur, who tried the suit was of the opinion that the Thakurdwara had been built by Sheo Ghulam "for worship by his family", and that it was a private temple. He accordingly dismissed the suit. This judgment was affirmed on appeal by the District Judge, Sitapur, whose decision again was affirmed by the Chief Court of Oudh in second appeal. The learned Judges, however, granted a certificate under s. 109(c) of the Code of Civil Procedure that the question involved was one of great importance, and that is how the appeal comes before us.

The question that arises for decision in this appeal whether the Thakurdwara of Sri Radhakrishnaji at Bhadesia is a public endowment or a private one is one of mixed law and fact. In *Lakshmidhar Misra* v. *Rangalal*(1), in which the question was whether certain lands had been dedicated as cremation ground, it was observed by the Privy Council that it was "essentially a mixed question of law and fact", and that while the findings of fact of the lower appellate court must be accepted as binding, its "actual conclusion that there has been a dedication or lost grant is more properly regarded as a proposition of law derived from those facts than as a finding of fact itself". In the present case, it was admitted that there was a formal dedication; and the controversy is only as to the scope of the dedication, and that is also a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found, and that is open to consideration in this appeal.

It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are

(1) [1949] L.R. 76 I.A. 271.

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in Lewin on Trusts, Fifteenth Edition, pp. 15-16:

"By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained....".

Vide also the observations of Mitter J. in *Nabi Shirazi* v. *Province of Bengal*(1). Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefor? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment? Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties. Vide *Prosunno Kumari Debya* v. *Golab Chand Baboo*(2); *Maharaja Jagadindra Nath Roy Bahadur* v. *Rani Hemanta Kumari Debi*(3) and *Pramatha Nath Mullik* v. *Pradhyumna Kumar Mullik*(4). It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly

(1) I.L.R. [1942] 1 Cal. 211, 227, 228.
(2) [1875] L.R. 2 I.A. 145, 152.
(3) [1904] L.R. 31 I.A. 203.
(4) [1924] L.R. 52 I.A. 245.

laid down in the Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami has the following:

देवग्रामो, देवक्षेत्रमिति, उपचारमात्रम्। यो यदभिप्रेतं विनियोक्तुमर्हति, तत्तस्य स्वम्। न च ग्रामं क्षेत्रं वा यथाभिप्रायं विनियुङ्क्ते देवता। तस्मान्न संप्रयच्छतीति। देवपरिचारकाणां तु ततो भूतिर्भवति, देवतामुद्दिश्य यत् त्यक्तम्।

"Words such as 'village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever property is abandoned for Gods, brings prosperity to those who serve Gods".

Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chapter XI, Verse 26 writes:

देवानुद्दिश्य, यागादि क्रियार्थं धनं यदुत्सृष्टं, तद्देवस्वम्, मुख्यस्य स्वस्वामिसंबन्धस्य, देवानां असंभवात्। न हि देवता इच्छया धनं नियुञ्जते। न च परिपालनव्यापारस्तासां दृश्यते।

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods. For the Gods do not make use of the property according to their desire nor are they seen to act for protecting the same".

Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (*Gaunartha*), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship.

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

In *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*(1), it was held on a consideration of these and other texts that a gift to an idol was not to be judged by the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins C. J. at p. 138 that "the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected" and that "the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedication is designed". Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In *Hindu Religious Endowments Board* v. *Veeraraghavachariar*(2), Varadachariar J. dealing with this question, referred to the decision in *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra* (supra) and observed:

"As explained in that case, the purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust".

When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family,

(1) [1910] I.L.R. 37 Cal. 128. (2) A.I.R. 1937 Mad. 750.

and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

In the light of these principles, we must examine the facts of this case. The materials bearing on the question whether the Thakurdwara is a public temple or a private one may be considered under four heads: (1) the will of Sheo Ghulam, Exhibit A-1, (2) user of the temple by the public, (3) ceremonies relating to the dedication of the Thakurdwara and the installation of the idol with special reference to *Sankalpa* and *Uthsarga*, and (4) other facts relating to the character of the temple.

(1) The will, Exhibit A-1, is the most important evidence on record as to the intention of the testator and the scope of the dedication. Its provisions, so far as they are material, may now be noticed. The will begins with the recital that the testator has two wives and no male issue, that he has constructed a Thakurdwara and installed the idol of Sri Radhakrishnaji therein, and that he is making a disposition of the properties with a view to avoid disputes. Clause 1 of Exhibit A-1 provides that after the death of the testator "in the absence of male issue, the entire immovable property given below existing at present or which may come into being hereafter shall stand endowed in the name of Sri Radhakrishnaji, and mutation of names shall be effected in favour of Sri Radhakrishnaji in the Government papers and my wives Mst. Raj Kuer and Mst. Ram Kuer shall be the Mutawallis of the waqf". Half the income from the properties is to be taken by the two wives for their maintenance during their lifetime, and the remaining half was to "continue to be spent for the expenses of the Thakurdwara". It is implicit in this provision that after the lifetime of the wives, the whole of the income is to be utilised for the purpose of the Thakurdwara. Clause 4 provides that if a son is born to the testator, then the properties are to be divided between the son and the Thakurdwara in a specified

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

proportion; but as no son was born, this clause never came into operation. Clause 5 provides that the Mutawallis are to have no power to sell or mortgage the property, that they are to maintain accounts, that the surplus money after meeting the expenses should be deposited in a safe bank and when funds permit, property should be purchased in the name of Sri Radhakrishnaji. Clause 2 appoints a committee of four persons to look after the management of the temple and its properties, and of these, two are not relations of the testator and belong to a different caste. It is further provided in that clause that after the death of the two wives the committee "*may* appoint my nephew Murlidhar as Mutawalli by their unanimous opinion". This Murlidhar is a divided nephew of the testator and he is the first defendant in this action. Clause 3 provides for filling up of vacancies in the committee. Then finally there is cl. 6, which runs as follows:

"If any person alleging himself to be my near or remote heir files a claim in respect of whole or part of the waqf property his suit shall be improper on the face of this deed".

The question is whether the provisions of the will disclose an intention on the part of the testator that the Thakurdwara should be a private endowment, or that it should be public. The learned Judges of the Chief Court in affirming the decisions of the courts below that the temple was built for the benefit of the members of the family, observed that there was nothing in the will pointing "to a conclusion that the trust was a public one", and that its provisions were not "inconsistent with the property being a private endowment". We are unable to endorse this opinion. We think that the will read as a whole indubitably reveals an intention on the part of the testator to dedicate the Thakurdwara to the public and not merely to the members of his family.

The testator begins by stating that he had no male issue. In *Nabi Shirazi* v. *Province of Bengal* (supra), the question was whether a wakf created by a deed of the year 1806 was a public or a private

endowment. Referring to a recital in the deed that the settlor had no children, Khundkar J. observed at p. 217:

"The deed recites that the founder has neither children nor grandchildren, a circumstance which in itself suggests that the imambara was not to remain a private or family institution".

Vide also the observations of Mitter J. at p. 228. The reasoning on which the above view is based is, obviously, that the word 'family' in its popular sense means children, and when the settlor recites that he has no children, that is an indication that the dedication is not for the benefit of the family but for the public.

Then we have clause 2, under which the testator constitutes a committee of management consisting of four persons, two of whom were wholly unrelated to him. Clause 3 confers on the committee power to fill up vacancies; but there is no restriction therein on the persons who could be appointed under that clause, and conceivably, even all the four members might be strangers to the family. It is difficult to believe that if Sheo Ghulam intended to restrict the right of worship in the temple to his relations, he would have entrusted the management thereof to a body consisting of strangers. Lastly, there is clause 6, which shows that the relationship between Sheo Ghulam and his kinsmen was not particularly cordial, and it is noteworthy that under clause 2, even the appointment of the first defendant as manager of the endowment is left to the option of the committee. It is inconceivable that with such scant solicitude for his relations, Sheo Ghulam would have endowed a temple for their benefit. And if he did not intend them to be beneficiaries under the endowment, who are the members of the family who could take the benefit thereunder after the lifetime of his two wives? If we are to hold that the endowment was in favour of the members of the family, then the result will be that on the death of the two wives, it must fail for want of objects. But it is clear from the provisions of the will that the testator contemplated the continuance

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

of the endowment beyond the lifetime of his wives. He directed that the properties should be endowed in the name of the deity, and that lands are to be purchased in future in the name of the deity. He also provides for the management of the trust after the lifetime of his wives. And to effectuate this intention, it is necessary to hold that the Thakurdwara was dedicated for worship by members of the public, and not merely of his family. In deciding that the endowment was a private one, the learned Judges of the Chief Court failed to advert to these aspects, and we are unable to accept their decision as correct.

2. In the absence of a deed of endowment constituting the Thakurdwara, the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. The witnesses examined on his behalf deposed that the villagers were worshipping in the temple freely and without any interference, and indeed, it was even stated that the Thakurdwara was built by Sheo Ghulam at the instance of the villagers, as there was no temple in the village. The trial Judge did not discard this evidence as unworthy of credence, but he held that the proper inference to be drawn from the evidence of P.W. 2 was that the public were admitted into the temple not as a matter of right but as a matter of grace. P.W. 2 was a pujari in the temple, and he deposed that while Sheo Ghulam's wife was doing puja within the temple, he stopped outsiders in whose presence she used to observe purdah, from going inside. We are of opinion that this fact does not afford sufficient ground for the conclusion that the villagers did not worship at the temple as a matter of right. It is nothing unusual even in well-known public temples for the puja hall being cleared of the public when a high dignitary comes for worship, and the act of the pujari in stopping the public is expression of the regard which the entire villagers must have had for the wife of the founder, who was a pardanashin lady, when she came in for worship, and cannot be construed as a denial of their rights. The learned Judges of the Chief Court also relied on the decision

of the Privy Council in *Babu Bhagwan Din* v. *Gir Har Saroon*(1) as an authority for the position that "the mere fact that the public is allowed to visit a temple or thakurdwara cannot necessarily indicate that the trust is public as opposed to private". In that case, certain properties were granted not in favour of an idol or temple but in favour of one Daryao Gir, who was maintaining a temple and to his heirs in perpetuity. The contention of the public was that subsequent to the grant, the family of Daryao Gir must be held to have dedicated the temple to the public for purpose of worship, and the circumstance that members of the public were allowed to worship at the temple and make offerings was relied on in proof of such dedication. In repelling this contention, the Privy Council observed that as the grant was initially to an individual, a plea that it was subsequently dedicated by the family to the public required to be clearly made out, and it was not made out merely by showing that the public was allowed to worship at the temple "since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away". But, in the present case, the endowment was in favour of the idol itself, and the point for decision is whether it was a private or public endowment. And in such circumstances, proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public. In *Mundancheri Koman* v. *Achuthan*(2), which was referred to and followed in *Babu Bhagwan Din* v *Gir Har Saroon*(1), the distinction between user in respect of an institution which is initially proved to have been private and one which is not, is thus expressed:

"Had there been any sufficient reason for holding that these temples and their endowment were originally dedicated for the tarwad, and so were private trusts, their Lordships would have been slow to hold that the admission of the public in later times possibly owing to altered conditions, would affect the private character of the trusts. As it is, they are of

(1) [1939] L.R. 67 I.A. 1. (2) [1934] L.R. 61 I.A. 405.

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

opinion that the learned Judges of the High Court were justified in presuming from the evidence as to public user which is all one way that the temples and their endowment were public religious trusts". We are accordingly of opinion that the user of the temple such as is established by the evidence is more consistent with its being a public endowment.

3. It is settled law that an endowment can validly be created in favour of an idol or temple without the performance of any particular ceremonies, provided the settlor has clearly and unambiguously expressed his intention in that behalf. Where it is proved that ceremonies were performed, that would be valuable evidence of endowment, but absence of such proof would not be conclusive against it. In the present case, it is common ground that the consecration of the temple and the installation of the idol of Sri Radhakrishnaji were made with great solemnity and in accordance with the Sastras. P. W. 10, who officiated as Acharya at the function has deposed that it lasted for seven days, and that all the ceremonies commencing with *Kalasa Puja* and ending with *Sthapana* or *Prathista* were duly performed and the idols of Sri Radhakrishnaji, Sri Shivji and Sri Hanumanji were installed as ordained in the Prathista Mayukha. Not much turns on this evidence, as the defendants admit both the dedication and the ceremonies, but dispute only that the dedication was to the public.

In the court below, the appellant raised the contention that the performance of *Uthsarga* ceremony at the time of the consecration was conclusive to show that the dedication was to the public, and that as P. W. 10 stated that *Prasadothsarga* was performed, the endowment must be held to be public. The learned Judges considered that this was a substantial question calling for an authoritative decision, and for that reason granted a certificate under section 109(c) of the Code of Civil Procedure. We have ourselves read the Sanskrit texts bearing on this question, and we are of opinion that the contention of the appellant proceeds on a misapprehension. The ceremonies relating to dedication are *Sankalpa*, *Uthsarga* and *Pra-*

thista. *Sankalpa* means determination, and is really a formal declaration by the settlor of his intention to dedicate the property. *Uthsarga* is the formal renunciation by the founder of his ownership in the property, the result whereof being that it becomes impressed with the trust for which he dedicates it. Vide The Hindu Law of Religious and Charitable Trust by B. K. Mukherjea, 1952 Edition, p. 36. The formulae to be adopted in *Sankalpa* and *Uthsarga* are set out in Kane's History of Dharmasastras, Volume II, p. 892. It will be seen therefrom that while the *Sankalpa* states the objects for the realisation of which the dedication is made, it is the *Uthsarga* that in terms dedicates the properties to the public (*Sarvabhutebyah*). It would therefore follow that if *Uthsarga* is proved to have been performed, the dedication must be held to have been to the public. But the difficulty in the way of the appellant is that the formula which according to P. W. 10 was recited on the occasion of the foundation was not *Uthsarga* but *Prasadothsarga*, which is something totally different. '*Prasada*' is the '*mandira*', wherein the deity is placed before the final installation or *Prathista* takes place, and the Prathista Mayukha prescribes the ceremonies that have to be performed when the idol is installed in the *Prasada*. *Prasadothsarga* is the formula to be used on that occasion, and the text relating to it as given in the Mayukha runs as follows:

"ततः.....प्रासादोत्सर्गं कुर्यात्। तत्र मासपक्षाद्युल्लिख्य, इमं शिलेष्टकादार्वादिनिर्मितं.....तत्तद्देवतालोकावाप्तिकामः, कुलद्वयानुग्रहाय, अमुकदेवताप्रीतये, अहमुत्सृजामीति, कुशयवजलानि क्षिप्त्वा, देवं नत्वा, ब्राह्मणान् भोजयेदिति।"

It will be seen that this is merely the *Sankalpa* without the *Uthsarga*, and there are no words therein showing that the dedication is to the public. Indeed, according to the texts, *Uthsarga* is to be performed only for charitable endowments, like construction of tanks, rearing of gardens and the like, and not for religious foundations. It is observed by Mr. Mandlik in the Vyavahara Mayukha, Part II, Appendix II, p. 339

1956

Deoki Nandan v. Murlidhar

Venkatarama Ayyar J.

that "there is no *utsarga* of a temple except in the case of repair of old temples". In the History of Dharmasastras, Volume II, Part II, p. 893, it is pointed out by Mr. Kane that in the case of temples the proper word to use is *Prathista* and not *Uthsarga*. Therefore, the question of inferring a dedication to the public by reason of the performance of the *Uthsarga* ceremony cannot arise in the case of temples. The appellant is correct in his contention that if *Uthsarga* is performed the dedication is to the public, but the fallacy in his argument lies in equating *Prasadothsarga* with *Uthsarga*. But it is also clear from the texts that *Prathista* takes the place of *Uthsarga* in dedication of temples, and that there was *Prathista* of Sri Radhakrishnaji as spoken to by P.W. 10, is not in dispute. In our opinion, this establishes that the dedication was to the public.

(4) We may now refer to certain facts admitted or established in the evidence, which indicate that the endowment is to the public. Firstly, there is the fact that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. And as pointed out in *Delroos Banoo Begum* v. *Nawab Syud Ashgur Ally Khan*(1), it is a factor to be taken into account in deciding whether an endowment is private or public, whether the place of worship is located inside a private house or a public building. Secondly, it is admitted that some of the idols are permanently installed on a pedestal within the temple precincts. That is more consistent with the endowment being public rather than private. Thirdly, the puja in the temple is performed by an archaka appointed from time to time. And lastly, there is the fact that there was no temple in the village, and there is evidence on the side of the plaintiff that the Thakurdwara was built at the instance of the villagers for providing a place of worship for them. This evidence has not been considered by the courts below, and if it is true, that will be decisive to prove that the endowment is public.

(1) [1875] 15 Ben. L.R. 167, 186.

It should be observed in this connection that though the plaintiff expressly pleaded that the temple was dedicated "for the worship of the general public", the first defendant in his written statement merely pleaded that the Thakurdwara and the idols were private. He did not aver that the temple was founded for the benefit of the members of the family. At the trial, while the witnesses for the plaintiff deposed that the temple was built with the object of providing a place of worship for all the Hindus, the witnesses examined by the defendants merely deposed that Sheo Ghulam built the Thakurdwara for his own use and "for his puja only". The view of the lower court that the temple must be taken to have been dedicated to the members of the family goes beyond the pleading, and is not supported by the evidence in the case. Having considered all the aspects, we are of opinion that the Thakurdwara of Sri Radhakrishnaji in Bhadesia is a public temple.

In the result, the appeal is allowed, the decrees of the courts below are set aside, and a declaration granted in terms of para 17(a) of the plaint. The costs of the appellant in all the courts will come out of the trust properties. The first defendant will himself bear his own costs throughout.

Appeal allowed.