(2004) 08 JH CK 0034

Jharkhand High Court

Case No: Letters Patent Appeal No''s. 332, 333, 334, 335, 336 and 346 of 1997 (R)

Shrenik Bhai Kasturbhai and Others		APPELLANT
	Vs	
Ganpat Rai Jain and Others, State of Bihar and Others and Seth Chandulal Kasturchand and Others Ratnesh Kumar Jain and Others Vs State of Bihar and Others		RESPONDENT

Date of Decision: Aug. 24, 2004

Acts Referred:

- Bihar Land Reforms Act, 1950 - Section 3, 3(1), 3A, 4
- Bihar Reorganisation Act, 2000 - Section 34(4)
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 298
- Forest (Conservation) Act, 1980 - Section 2
- High Court of Jharkhand Rules, 2001 - Rule 38, 39
- Patna High Court Rules, 1916 - Rule 11, 12

Citation: (2004) 2 BLJR 1611 : (2004) 4 JCR 1

Hon'ble Judges: P.K. Balasubramanyan, C.J; Tapen Sen, J; Hari Shankar Prasad, J

Bench: Full Bench

Advocate: Siddhartha Shankar Ray, Gopal Subramanium and U.N. Bhachawat, Basudeo Prasad, Ashok Jain, E.R. Kumar, Raj Shekhar Rao, Ashok Gandhi and R.N. Sahay, in L.P.A. Nos. 332-336 of 1997, R.K. Jain, Ram Balak Mahto, Bhaiya Nagendra Narain, Manoj Goel, D.K. Jain and P.K. Prasad, in L.P.A. No. 346/97, for the Appellant; R.K. Jain, Ram Balak Mahto Bhaiya Nagendra Narain, Manoj Goel, D.K. Jain and P.K. Prasad, Siddhartha Shankar Ray, Gopal Subramanium and U.N. Bhachawat, Basudeo Prasad Ashok Jain, E.R. Kumar, Raj Shekhar Rao, Ashok Gandhi and R.N. Sahay, A.K. Sinha, AG, Manjul Prasad, SC (Land Ceiling) and Shamim Akhtar, SC II, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Balasubramanyan, CJ.

1. These appeals arise from two cross suits, Title Suit No. 10 of 1967 and Title Suit No. 23 of 1968 on the file of the Subordinate Judge''s Court at Giridih. Title Suit No. 10 of 1967 was filed by nine persons said to be the managing trustees of Seth Anandji Kalyani Trust of Ahmadabad, claimed to be a Trust registered under the Bihar Hindu Religious Trusts Act, 1953 and submitting that the said institution is a representative institution of the Swetambar Murti Pujak Jain Community of India. It is also stated in the plaint that the plaintiffs were suing also in their individual capacities representing Swetambar Murti Pujak Jain Community of India. Sanction to sue in terms of Order I, Rule 8 of the CPC was also sought for. The suit was essentially against six defendants in their individual capacity and also as representing the Digambar Jain Community of India. Defendants 1 to 6 were sought to be sued as representing the Digambar Jain Community of India by invoking Order I, Rule 8 of the Code of Civil Procedure. Reliefs prayed for were, a declaration that the defendants had no right to put up any building or structure of any kind anywhere in or upon the Parasnath Hill as described in the body of the plaint; to restrain the defendants by a permanent injunction from putting up any building or structure anywhere in or upon Parasnath Hill, and from stocking and collecting materials in or upon any part of the Parasnath Hill; for a mandatory injunction directing the defendants to remove the construction which they had put up and to remove the materials used therefore and other incidental reliefs. Defendants 1 to 6 representing the Digambars not only resisted the suit, but also filed a suit of their own, Title Suit No. 23 of 1968 against the said Anandji Kalyanji Trust and its trustees and as representing the Swetambar Murti Pujak Jain Community of India, for a declaration that the agreement relied on by the plaintiffs in Title Suit No. 10 of 1967 was null and void; that it was not binding on the Digambar Community and for other incidental and consequential reliefs. The suits were jointly tried and after trial, the trial Court decreed both the suits in part declaring the right of the plaintiffs in Title Suit No. 10 of 1967, the Anandji Kalyanji Trust, in the Parasnath Hill, inspite of the vesting of the same in the State of Bihar under the Bihar Land Reforms Act and restraining the defendants therein from putting up any construction in the property and directing them to demolish the construction they had putup. The right of the Digambars to worship in the places of worship in the Hill, was recognized, but the declaration sought for by the Digambars regarding the agreement entered into between Anandji Kalyanji Trust and the State of Bihar, was denied finding that the agreement was valid. Though in T.S. No. 10 of 1967 at a subsequent stage, the State of Bihar was also impleaded as defendant No. 7 on an objection being raised by defendants 1 to 6 that the suit was bad for non-joinder of the State of Bihar, no relief was claimed in that suit against the State of Bihar.

2. Appeals were filed in this Court by all the parties. First Appeal Nos. 145 and 146 of 1990 were filed by Anandji Kalyanji Trust and its trustees challenging respectively the decrees in T.S. No. 10 of 1967 and T.S. No. 23 of 1968. The opposite parties, the Digambar, filed F.A. Nos. 54 and 55 of 1990 respectively challenging the decrees in T.S. No. 23 of 1978 and T.S. No. 10 of 1967. The State of Bihar filed First Appeal No. 82 of 1990 challenging the decree in T.S. No. 10 of 1967 granted in favour of Anandji Kalyanji Trust and the plaintiffs therein as representing the Swetambar Murti Pujak Jain Community. These appeals were heard together by a learned single Judge. The learned single Judge allowed the appeals filed by the defendants in Title Suit No. 10 of 1967 and dismissed that suit filed by Anandji Kalyanji Trust. The learned single Judge also decreed in part Title Suit No. 23 of 1968 filed by the Digambar Jains and declared that the agreement entered into between Anandji Kalyanji Trust and the Government of Bihar on 5.2.1965, Exhibit 9(a), was null and void. Feeling aggrieved, these appeals are filed; Letters Patent Appeals Nos. 332, to 336 of 1997 by the Trustees of Anandji Kalyanji Trust and Letters Patent Appeal No. 346 of 1997 by the plaintiffs in Title Suit No. 23 of 1968 representing the Digambaris. These appeals have a chequered history. They were originally heard in the Ranchi Bench of the Patna High Court by a Division Bench as per the dispensation of the business in this Court. The Division Bench posted the appeals for judgment to a particular date. On that day, when the Presiding Judge who had written the judgment, pronounced and signed the judgment, the second Judge on the Bench, declined to sign it. He did not pronounce a judgment of his own, if he was in disagreement with the view taken by the other Judge. This unprecedented conduct on the part of one of the Judges in not either signing the judgment in agreement or delivering a judgment of his own if he was dissenting from it, prompted the Chief Justice of the Patna High Court to withdraw these appeals from the Ranchi Bench to be heard at Patna and in exercise of his power under Rule 11 of Chapter II of the Patna High Court Rules, the Chief Justice referred the appeals to be heard by a Full Bench. The learned Chief Justice also fixed a quorum for the Full Bench consisting of five Judges. The five Judges constituting the Full Bench heard an application filed on behalf of the appellants praying for the issue of a certified copy of the judgment prepared and delivered by one of the Judges at the Ranchi Bench and also clarified that the appeals would be re-heard, --as distinct from examining the correctness or otherwise of the view taken by one of the Judges constituting the Division Bench in the Ranchi Bench, --and the appeals were adjourned to 20.11.2000. Meanwhile, the State of Jharkhand was formed when the Bihar Re-organization Act, 2000 came into force with effect from 15.11.2000. These appeals were then made over to this Court as ordered by the Chief Justice of the Patna High Court. In this Court/the then Chief Justice constituted a Full Bench of three Judges for hearing and disposing of the appeals. It is thus that these appeals have come up before us for hearing.

3. An objection was sought to be raised on behalf of the appellants, Anandji Kalyanji, that the appeals have not properly been sent down to this Court by the Patna High

Court in terms of Section 34 of the Bihar Reorganisation Act. We have overruled that contention by the order delivered on 7.7.2004. We find that the objection was raised without proper care and without verifying the events leading to the transfer and it was raised at a time when the Court was trying to hear and dispose of the appeals arising from the suits filed in the years 1967 and 1968, almost 40 years ago.

4. When the hearing on merits commenced on 7.7.2004, senior counsel for the appellant in LPA No. 333 of 1997 sought to raise a contention that these appeals could be heard only by a Full Bench of five Judges in view of the constitution of a Full Bench of five Judges by the Chief Justice of the Patna High Court before the reorganization of the State of Bihar. Counsel contended that in terms of Section 34(4) of the Bihar Reorganisation Act, 2000, the order made by the Chief Justice of the Patna High Court must be deemed to be an order passed by the Jharkhand High Court and consequently, the said order was binding on the Chief Justice of the newly created Jharkhand High Court and a Full Bench of three Judges could not be constituted by the Chief Justice. There was no dispute that the Chief Justice of the Jharkhand High Court on receiving these appeals in this Court in the year 2002, had constituted a Full Bench of three Judges, for hearing these appeals. No objection that the appeals had to be heard only by a Full Bench of five Judges was raised until the hearing of the appeals commenced after an earlier abortive attempt to hear these appeals one year back. Even then, considering that it was an objection sought to be raised on the basis of the provision in Section 34(4) of the Bihar Reorganisation Act, we consider that it will be proper to deal with that objection before we charter our future course, either by delivering a judgment on merits or by ordering the constitution of a fresh Full Bench having a quorum of five Judges for a fresh hearing of the appeals.

5. Section 34(4) of the Bihar Reorganisation Act provides that any order made by the High Court at Patna before the appointed day in a proceeding pending in that Court and which is certified to be heard by the Jharkhand High Court, would not only be treated as an order of the Patna High Court, but also as an order made by the High Court of Jharkhand in relation to that proceeding. We find on a scrutiny of the materials that the Chief Justice of the Patna High Court of the undivided State of Bihar, had only passed an order in terms of Rule 11 of Chapter II of the Patna High Court Rules, that the matter must be heard by a Full Bench, no doubt, fixing the quorum for the Full Bench by naming five Judges. We are not certain, on the scheme of Section 34 of the Act, whether such an administrative order fixing the quorum of the Full Bench which has to hear the matter, is an order that comes within the purview of Sub-section (4) of Section 34 of the Act. If we understand it in that manner, we may also have to say that we cannot change the quorum or the Judges nominated by the Chief Justice at Patna and that can lead to an impossible position and these appeals can never be heard in this Court at all, since the Judges who constituted the quorum of five Judges have all been retained as Judges of the Patna High Court and none of them has been sent down to this Court as a Judge of a

Jharkhand High Court. That apart, we find that the reference by the Chief Justice of the Patna High Court was to a Full Bench. We have already noticed that it was by virtue of Rule 11 of Chapter II of the Patna High Court Rules that the Chief Justice directed that the appeals be heard by a Full Bench. Rule 12 of the said Rules provides that a Full Bench shall be a bench of any number not less than three Judges. The corresponding Rules in the High Court of Jharkhand Rules, 2001, framed after the reorganization of the State, are Rules 38 and 39 of Chapter VI. While Rule 38 provides that the Chief Justice may direct that any appeal may be heard by a Full Bench notwithstanding anything contained in the Rules, Rule 39 provides that a Full Bench shall be a Bench of any number not less than three Judges. As we understand the order of the Chief Justice at Patna, the Chief Justice had only constituted a Full Bench for hearing these appeals and ofcourse, while constituting that Full Bench, he had also fixed a quorum of five Judges to constitute the Full Bench. When the matter came to this Court, in our view, at best, it can be said that the Chief Justice was bound by the order of the Chief Justice of the Patna High Court referring the matter to a Full Bench. But to say that the Chief Justice was also bound to appoint five Judges to constitute the Full Bench is not seen to be warranted by anything contained in Section 34(4) of the Act. Since the matter is referred to a Full Bench, it is in the discretion of the Chief Justice, considering the availability of Judges in a particular Court and the exigencies of work, to decide that the Full Bench need be only of three Judges, the minimum required by Rule 12 of the Patna High Court Rules corresponding to Rule 39 of the High Court of Jharkhand Rules, 2001. It may be remembered that while the Patna High Court had 32 Judges at the relevant time, the number of Judges in this Court was only 12 and a prolonged hearing of these appeals for a month or two by a Bench of five Judges would have seriously affected the work of this Court. In our view, so long as the appeals are heard by a Full Bench, whatever be the number of Judges, no objection can be taken on the basis that the appeals have to be heard only by five Judges and not by three Judges. After all, as held by the Supreme Court in Ittavira Mathai Vs. Varkey Varkey and Another, , no litigant has a vested right to have an appeal heard only by a Full Bench having for its constitution five Judges. We therefore, overrule the objection raised in that behalf by senior counsel for the appellants in LPA No. 33 of 1997.

HISTORICAL BACKGROUND

6. The Jain Religion reveres 24 Tirthankaras and some of their disciples. Though according to the Supreme Court, the Jains do not believe in God or the supreme being, they believe in the worship of the Tirthankaras. It is believed that twenty, out of the twenty-four Tirthankaras, lived and attained ''Nirvana'' in the Parasnath Hill situate in Hazaribagh district (now part of Giridih District) of the erstwhile undivided State of Bihar, and presently in the State of Jharkhand. It is not clear when the dispute about the mode of worship among the Jains began and schism developed between the two sections of Jains who have come to be known as the Swetambaris and the Digambaris (though it appears to be in about 500 AD). Inspite of this divide,

the two factions of Jains continued to worship the Tirthankaras and continued to believe that the Parasnath Hill was the last resting place of twenty of the Tirthankaras and to treat the top of the Hill as a centre of pilgrimage. Thus, the Parasnath Hill had a religious significance for the Jains in general, whether they belonged to the Swetambar sect or to the Digambar sect. It is also seen that there are sub-sects in these two main sects. The bone of contention in this litigation is this Parasnath Hill.

7. The dispute between the two groups inevitably reached the Court not once, but a number of times. The Swetambari interest was represented by the Jain Swetambar Society. The Privy Council held ultimately that the title to the Hill vested with the Raja of Palganj, though the Jains in general had a right of worship in the tonks, temples and charans located on top of the Hill. The Anandji Kalyanji Trust or the Firm, Anandji Kalyanji (there is a dispute about this) purchased the rights of the Raja of Palganj. There was a rival contender to the right and title, in the Raja of Nawangarh and the Anandji Kalyanji Trust also obtained a perpetual lease of a part of the Hill from the said Raja. An attempt made by the Digambaris to establish a claim hot only for worship, but also for the management of the tonks, temples and charans, was not accepted by the Privy Council in AIR 1933 193 (Privy Council) . We do not think that it is necessary to further delve into the background details in view of the fact that they have been dealt with fully in the judgment of the Trial Court and in that of the learned single Judge in appeal. Suffice it to say that Anandji Kalyanji Trust obtained rights over the Hill and the Privy Council had upheld the right of Swetambaris to be in management of the tonks, temples and charans on the top of the Hill with an unfettered right in the Digambaris to worship in twenty of the tonks, charans and the temple of Goutam Swamy, without any restriction and without permission from the Swetambaris and in respect of the other four tonks, temples and charans only with the permission of the Swetambaris, with no right in Digambaris to put up any construction of their own on the Hill without permission in that behalf from the Swetambaris. Of course, the Digambaris have a case that the claim for management of the Jain Swetambar Society was upheld only in respect of the four tonks and the Jal Mandir constructed by them and did not extend to the ancient places of worship, the twenty tonks and the temple of Gautam Swamy. From the year 1933, till the present suits were filed, there were some minor disputes, but there was no change in the position recognised by the Privy Council by the decision that was binding on both the groups.

8. At this stage, it is necessary to refer in some detail to the Anandji Kalyanji Trust, the plaintiff in Title Suit No. 10 of 1967. According to the plaintiffs in that suit, Anandji Kalyanji was a Trust protecting the interest of Swetambar Murti Pujak Jains in India. When the Privy Council held that the Raja of Palganj was the owner of the Hill, this body, by a resolution, Resolution No. 11 dated 12.3.1912 (Part of Exhibit 6), decided to acquire the rights of the Raja of Palganj. The said resolution reads :

"Rai Saheb Badirdasji Bahadur has come down here from Calcutta and Sheth Valabhjibhai Jirjibhai on behalf of the Rai Saheb made known as stated hereinbefore, the particulars of the efforts made by him (the Rai Saheb) at great pains, for Shikharji Tirtha (Holy place). The same are as follows. It has been arranged that for taking the Palgunj against Shikharji, Rs. 2,42,000 (two lacs and forty thousand) should be paid in cash once for all and Rupees 4,000 (four thousand) should be paid in every year. And by this arrangement, as to the Rupees 1,500 (Fifteen Hundred) which are received from the income which will be received from the Hill as the right of the Raja of Palganj, that too we are to take. Particulars as Government with respect to this. On the said sanction being granted the above sum and besides, amount to the extent of Rupees 15,000 (fifteen thousand) necessary for the Vakils (charges) and other expenses, will be required. This is what was stated.

Consequent upon the statement of these particulars Mr. Maneklal Ghelabhai proposed and Mr. Ambalal Bapubhai seconded as follows :--

This is a very good business indeed And the sum mentioned above should be paid by Sheth Anandji Kalyanji after debiting the same to the Samet Shikharji. Tirtha account; and authority should be vested in the managing representatives to do all business that: may be necessary and proper to be done in connection with the said matter. And congratulations should be given to Raj Badri Dasji Bahadur for this act of his."

A Resolution as stated above was passed at the Meeting of the local representatives. The same is confirmed and it is resolved that if the managing representatives think it proper to strike out or add anything or to make alterations in the conditions or amount mentioned in the said Resolution, full authority is given ton them to do that also.

The above Resolution having been seconded by Shah Maganlal Kankuchand of Vijapur was unanimously carried."

It was thereafter that Anandji Kalyanji purchased the rights of the Raja of Palganj by sale deed dated 9.3.1918 marked Ext. 7. It may be noted that there is no specific description of the property transferred in the deed, but the deed refers to a plan drawn to scale. Annexed to it. It is noticed by the learned single Judge in his judgment that the sketch was not produced by the plaintiffs in Title Suit No. 10 of 1967 while producing Ext. 7. On verification of the original, we find this to be correct. This makes the documents incomplete the makes it difficult for the Court to identify the exact property that was conveyed thereunder. It is stated that the Swetambari sect consists of three major sub-sections, the Murti Pujaks claimed to be represented by Anandji Kalyanji Trust, the Sthanakvasis and Terapanthis. The plaintiffs in T.S. No. 10 of 1967 claim to represent the Swetambari Murti Pujak Jain Community of India. It is also seen that when an interim order was made in these appeals, that was sought to be challenged by the Jain Swetambar Society claiming

that they had the right to manage these places of worship, but that challenge did not succeed. Suffice it to say that, Anandji Kalyanji Trust seems to represent only a section of Swetambari Jains. There is also considerable controversy regarding the expression in Gujarati, ''Pedho as to whether it means a firm or a Trust. The Digambaris have a case that Anandji Kalyanji was only a firm and not a Trust as claimed by the plaintiffs in T.S. No. 10 of 1967.

SUBSEQUENT DEVELOPMENTS

9. The Bihar Land Reforms Act, 1950 came into force on 25.09.1950. The Act was enacted to provide for the transference to the State, of the interests of proprietors and tenure-holders in land, of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazaars, mines and minerals. Section 2(i) of the Act defines ''estate'' as meaning any land included under one Entry in any of the general registers of revenue paying lands and revenue free lands prepared and maintained under the law for the time being in force by the Collector of a district and includes revenue free land not entered into any register and a share in or of an estate. Section 3(1) of the Act confers power on the State Government by a notification, to declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. Sub-sections (2) and (3) lay down the procedural requirements in respect of the publication of notification to be issued u/s 3(1) of the Act. After the Land Reforms Act had come into force, but before any notification was issued u/s 3(1) of the Act, the Anandji Kalyanji Trust entered into an agreement with the State Government u/s 38(1) of the Indian Forests Act for management of Parasnath Hill Forests, as a reserved and protected forest. It may be appropriate to notice the position obtaining in the Parasnath Hill. It is stated in the plaint in T.S. No. 10 of 1967 that the area of Parasnath Hill was 25 sq. km. or roughly 16,000 acres. It is seen that out of this, the Raja of Palganj had transferred an extent of 2,000 acres to one Boddam for the purpose of a tea plantation. 700 acres were said to be in possession of the cultivators who were subsequently recognized as a raiyats under the Land Reforms Act. There was also a sanatorium in the Hill. An attempt to establish a piggery by Boddam was thwarted by the intervention of the Court which restrained him from doing so, since that would have hurt the sentiments of the Jain Community. It was also recognized by the Courts that the Hindus had a right to hold a mela in the Parasnath Hill once a year and the tribals had a right to celebrate their hunting festival in the Hill once in a year.

10. On 02.05.1953, the State of Bihar issued Exhibit K/1, Notification u/s 3(1) of the Bihar Land Reforms Act. Then notification was to the effect that the estate described in the Schedule annexed to the notification and belonging to the proprietors named in* the schedule, have passed to and become vested in the State under the provisions of the Bihar Land Reforms Act from the date of publication of that notification. The Parasnath Hill was an estate scheduled to that notification and the

proprietor thereof was shown as Nagar Seth Kastur Bhai Mani Bhai in his individual capacity, as representative of the whole Swetambar Murti Pujak Jain Community of India and as the President of the firm of Seth Anandji Kalyanji of Ahmadabad in Bombay. This was followed by another proclamation Exhibit K-1/1 and a notification Exhibit A/II u/s 3-A of the Bihar Land Reforms Act as amended by the Bihar Land Reforms Amendment Act XX of 1953. The proclamation dated 21.9.1954 was to the effect that the State Government intends to take within three months from the date of publication of that proclamation, all intermediary interests in the district of Disthanga, Gaya Monghyr, Hazaribagh, Purnia, Saharsa, Champaran and Palamau. This was followed by Exhibit A/II dated 26.1.1955, notification u/s 3-A of the Act. According to the State of Bihar, from the notified land u/s 3 of the Bihar Land Reforms Act, an extent of 46.28 acres was kept separate and that extent was in the actual control and management of Anandji Kalyanji Trust and it v/as separately demarcated and kept out of the management under the Forest Act agreement. According to PW 11, the power-of-attorney of the plaintiffs who had given instructions for the preparation of the pleadings and had signed the plaint on their behalf, the Gazette notification, Exhibit K/1 dated 02.05.1953 was seen by him in June, 1953 and he had come to know of that stand of the Government of Bihar with respect to the Parasnath Hill. There was no immediate challenge to it. On 14.04.1964, more than 10 years after the notification under the Bihar Land Reforms Act, eight persons describing themselves as followers of the Swetambar Murti Pujak Jain Religions denomination, in their individual capacity and also in their capacity as the trustees of Seth Anandji Kalyanji Pedhi, filed W.P. 58 of 1964 before the Supreme Court under Article 32 of the Constitution of India challenging the notification. By order dated 21.04.1964, the writ petition was allowed to be withdrawn with liberty to file a writ petition under Article 226 of the Constitution of India in the High Court, if so advised. Seth Anandji Kalyanji and its office bearers who claim to be the trustees, did not pursue their challenge by filing a writ petition in the High Court. This resulted in the notification being issued u/s 3(1) of the Bihar Land Reforms Act continuing to operate and not being challenged in any appropriate mode known to law by Anandji Kalyanji Pedhi and the petitioners claiming to represent the Swetambar Murti Pujak Jains.

11. It is seen that Anandji Kalyanji managed to persuade the then Government of Bihar to enter into an agreement with the Anandji Kalyanji Trust. The said agreement is marked Exhibit 9/a in the suit. It was on 05.02.1965. The agreement was entered into on behalf of the Government of Bihar and Seth Kasturbhai Lalbhai of Ahmadabad, President of the Board of Trustees on behalf of Seth. Anandji Kalyanji of Ahmadabad representing the Jain Swetambars Murti Pujak Community of India. Under that agreement, the State of Bihar recognized and undertook to respect all the rights declared as belonging to Seth Anandji Kalyanji by the judgment of the Calcutta High Court in Appeal No. 280 of 1890 and the rights acquired by them thereafter, not to interfere or to do anything or permit anything to be done

which may constitute violation of such rights of Anandji Kalyanji. The Government also declared that the temples, dharmshalas, etc. on the Hills are not covered by the vesting notification dated 02.05.1953 and that Seth Anandji Kalyanji shall retain full control of their temples, and shrines, hills and religious sites and perform their pujas and worship as before, without any let or hindrance. The parties agreed that the management of the forests should be carried on by the Forest Department of the State of Bihar in accordance with the relevant laws and the State agreed not to interfere in the performance of religious rites and ceremonies by the sect represented by Seth Anandji Kalyanji or not to do anything to hurt their religious sentiments or their rights of ownership. It was agreed that the net profits of the forests was to be shared annually between the State and Seth Anandji Kalyanji in the ratio of 40:60. The Parties also agreed that no compensation as envisaged by the provisions of the Bihar Land Reforms Act was payable and that that question did not arise in view of the settlement arrived at and recorded therein. There were other covenants which are not of great importance at this stage, except that Seth Anandji Kalyanji had the full liberty to remove timber or other forest produce as required by it for religious purposes. It is stated that as per this agreement, in addition to 0.86 acres allegedly excluded from the notification u/s 3(1) of the Bihar Land Reforms Act and 46.28 acres separated from the forest earlier, a further extent of 351.89 acres was also being made available to Seth Anandji Kalyanji by the Government and the rest of the area would continue to be managed by the forest department.

12. Presumably, apprehending that their rights were sought to be affected, the Digambars in their turn, entered into an agreement with the State of Bihar, Exhibit D/1, on 05.08.1966. Therein, the State assured the Digambars that their right, including the right of worship and other recognised rights would not in any manner be affected by the agreement, Exhibit 9/a, entered into by the Government with Anandji Kalyanji on 05.02.1965.

The Suits.

13. The suit, T.S. No. 10 of 1967 was filed on the averment that Anandji Kalyanji Trust had title and possession over the Parasnath Hill which had an extent of 25 sq. km. or roughly 16,000 (sixteen thousand) acres; that on the basis of the agreement entered into with the Government of Bihar, Anandji Kalyanji was in possession of the Hill and entitled to hold an extent of an area falling within a radius of half a kilometer of the tonks and temples on the top of the Hill; that defendants 1 to 6 in the suit representing the Digambaris and their followers, were trying to interfere with the possession of Anandji Kalyanji Trust over the Hill; that the Digambars had no right to do so, that their right was confined to worship in the tonks and temples, in some of them, in their own right and in others, with the permission of the Swetambaris; that the defendants had put up an unauthorized construction in the form of a shed on a portion of the property having a dimension as described in the body of the plaint; that the Digambars had no right to put up a construction of their own without

permission of the plaintiffs and that the defendants were liable to be directed by a mandatory injunction to remove the structure put up by them and also to remove the materials brought by them to the site. Thus, the claim was on the basis that the plaintiffs had absolute title and possession over the Parasnath Hill and that they were entitled to enforce that right in the suit. Though at a subsequent stage, on an objection by defendants 1 to 6 in the suit, the State of Bihar was impleaded as defendant 7, the relief portion in the plaint was not amended and no relief was claimed against the State of Bihar. Even at this stage, we think it appropriate to notice that the plaint did not contain a schedule of the suit property and there was no description of the boundaries and other relevant details regarding the Parasnath Hill in the plaint. There was no description of the area with reference to boundaries, survey numbers, extent and the other relevant details describing the property in respect of which a decree for permanent injunction was being sought for. As regards the relief of mandatory injunction, in paragraph 21 of the plaint, there was a description of the area in which the alleged construction was put up with reference to boundaries, Khatha, Khewat, village and the district. Though as regards the mandatory relief, this could be taken as adequate description in the plaint, the same cannot be said of the relief of declaration and permanent injunction. On our part, we are inclined to take the view that the plaint did not satisfy the requirements of Order VII, Rule 3 of the Code of Civil Procedure. The Trial Court should have returned the plaint for rectification of this defect, or at least should have directed the plaintiff to amend the plaint by including a proper description of the plaint schedule properties in the accepted mode, before proceeding with the suits.

14. It was pleaded in the plaint that the suit was by the Trustees of Anandji Kalyanji Trust and as representing the Swetambar Murti Pujak Community of Jains. The Parasnath Hill belonged to the Trust on behalf of the Murti Pujak, that the Hill was sacred to the Community, that it did not vest in the State under the Bihar Land Reforms Act; that its possession was never taken though a notification u/s 3(1) of the Act was issued, that the notification was not proper and was not duly published; that the State had entered into an agreement with Anandji Kalyanji on 2.5.1965, that Anandji Kalyanji was in possession the defendants 1 to 6 had a right to interfere with the absolute title and possession of the Trust and that Anandji Kalyanji was entitled to the reliefs prayed for.

15. Defendants 1 to 6 representing the Digambaris, resisted the suit by pleading that whatever title might have vested in Anandji Kalyanji Trust prior to the coming into force of the Bihar Land Reforms Act, on 25.09.1950, on the coming into force of that Act, the right title and interest of Anandji Kalyanji Trust had vested in the State of Bihar in view of the notification issued u/s 3(1) of that Act on 02.05.1953 as published in the Gazette, and hence, the plaintiff was not entitled to any relief based on the alleged title and possession over the Parasnath Hill. As regards the claim based on the agreement dated 5.2.1965 with the Government of Bihar, it was contended that the said agreement was void being against the scheme of the Bihar

Land Reforms Act; was opposed to public policy and was discriminatory in that it chose to give favourable treatment to a small group of Jains known as Murty Pujaks, as against the entire Jain Community which had the right to worship in places of worship located on the Hills. It was also contended that the plaintiffs were never in possession or the management of the places of worship on the Hills and they were not entitled to the injunctions sought for, since the injunctions, if granted, would amount to an interference with the right to the Digambaris to worship the tonks, temples and charans located on the Parasnath Hill. Since the plaintiffs have neither title nor possession over the property, the plaintiffs were not entitled to any relief and the suit was liable to be dismissed. The State of Bihar, originally, filed a written statement submitting that the land had vested in the State under the Bihar Land Reforms Act; that the State had entered into an agreement with Anandji Kalyanji Trust in the light of the right to worship, available to Swetambari Jains and on the strength of that right, the right of the Digambaris to worship, could not be interfered with by the Swetambaris to the extent it was recognized by judicial decisions. Later, towards the close of the proceedings in the suit, the State filed an application for amendment of the written statement seeking to raise a plea that the land had vested in the State of Bihar, that the agreement entered into by the State of Bihar and Anandji Kalyanji Trust, was void in law; that it was vitiated by mistake and misrepresentation and that the plaintiffs could claim no relief based on the agreement it had relied on. The Trial Court rejected that application for amendment. The State of Bihar filed a revision against that order. While the revision was pending, the suit itself was finally disposed of by the Trial Court and consequently, the revision was withdrawn by the State of Bihar. But the State of Bihar filed an appeal against the decree of the Trial Court in T.S. No. 10 of 1967 and the memorandum of appeal challenged the order of the Trial Court refusing the amendment of the written statement prayed for by it.

16. Not satisfied with their challenge to the agreement dated 05.02.1965, relied on by Anandji Kalyanji Trust in their written statement, the Digambaris in furtherance of their defence, filed the Suit, Title Suit No. 23 of 1968 praying for a declaration that the said agreement entered into between the State of Bihar and the Anandji Kalyanji Trust was void in law, being opposed to public policy and contrary to the provisions of the Bihar Land Reforms Act. Consequential reliefs were also prayed for. This suit was resisted by Anandji Kalyanji Trust by pleading that the Digambaris were estopped from raising such a contention in view of Ex. D1 agreement dated 05.08.1966 entered into by them confirming the agreement entered into by Anandji Kalyanji Trust and that even otherwise, there was no merit in the challenge to the agreement between Anandji Kalyanji and the State of Bihar. Anandji Kalyanji Trust pleaded that the Digambaris were not entitled to any relief. The State of Bihar which was defendant 1 in that suit, took the stand it took in its written statement in Title Suit No. 10 of 1967, but reiterating that the land had vested in the Government under the Bihar Land Reforms Act and that the Government was not precluded from

entering into the agreement like the one relied on by Anandji Kalyanji Trust and that the rights of the Digambaris was not intended to be affected by it.

17. The Trial Court, after trial, overruled the contention of the plaintiffs in T.S. No, 10 of 1967 and held that the entire Hill had vested in the Government in terms of the Notification issued u/s 3(1) of the Bihar Land Reforms Act. It held that the Government had not taken actual possession of the land even though documents were created indicating that possession had been taken. It was further held that the agreement entered into by the Government with Anandji Kalyanji Trust was valid even in the face of the Bihar Land Reforms Act, even though the provision made therein for sharing of profits of the forests that had vested in the State at 60:40 with Anandji Kalyanji Trust, was void in law, being opposed to the provisions of the Bihar Land Reforms Act; that otherwise, there was no reason to find against the agreement, that the agreement was valid and binding on the Government and that the Digambaris were estopped from questioning its validity in the light of the subsequent agreement Ext. D1 they themselves had entered into with the Government and that the plaintiff in T.S. No. 10 of 1967 were entitled to a decree restraining the Digambaris from trespassing into any portion of the Hill and are also entitled to a decree for mandatory injunction directing defendants 1 to 6 to remove the constructions attempted to be put up by them. The Trial Court recognized that defendants 1 to 6, the Digambaris had the right to worship in the tonks, temples and charans and held that, that right would not be affected by the decree for injunction. Though the Digambaris did not have the right to put up any construction and the unauthorized construction attempted was liable to be removed, Anandji Kalyanji Trust must permit the Digambaris to construct a Dharamshala in some portion of the property by giving the Digambaris, permission to do so as and when it was sought for. Thus, the suit was decreed, subject to the above observations. Since Ext. 9(a) agreement was found valid, inspite of one of its clauses being found invalid, the Trial Court dismissed Title Suit No. 23 of 1968 filed by the Digambaris.

THE APPEALS

18. Appeals were filed by all the parties in the High Court. The appeals were heard by a learned single Judge who came to the conclusion that Ext. 9(a) agreement dated 05.02.1965 entered into by Anandji Kalyanji Trust with the State of Bihar, was invalid in view of the Bihar Land Reforms Act and the provisions therein and that the plaintiff could claim no right based on the agreement. The learned single Judge thus found reason to interfere with the decreeing of the suit filed by Anandji Kalyanji. But, in view of his finding that the agreement on the basis of which reliefs were claimed by Anandji Kalyanji Trust could not be enforced being invalid, the learned single Judge declared that the agreement relied on by Anandji Kalyanji Trust, being an agreement arrived at between a sect of the Jain Community and the State Government, was null and void.

19. Challenging the decision of the learned single Judge in the appeals, these Letters Patent Appeals were filed. The Division Bench heard the appeals and posted them for judgment on 21.7.2000. On that day, the Presiding Judge, Justice Chaudhury S.N. Mishra pronounced a judgment affirming the decision of the learned single Judge and dismissing all the appeals. But Mr. Justice A.K. Sinha did not sign that judgment; nor did he pronounce a judgment of his own. We have already dealt with this aspect earlier. But at this stage, what we are noticing is that Justice Chaudhury S.N. Mishra agreed with the learned single Judge in holding that there was a vesting under the Bihar Land Reforms Act by the issuance of the notification Ext. K-1 u/s 3(1) of the Act; that possession of the estate was actually taken by the State on 2.4.1964 pursuant to that vesting; that Anandji Kalyanji Trust had lost all its rights and possession over the Parasnath Hill. The learned Judge further held that Anandji Kalyanji Trust had never administered or managed the tonks, charans and dharamshalas on the Hill; that they were being looked after on behalf of Swetambaris by the Jain Swetambar Society and that Anandji Kalyanji Trust, the plaintiff in Title Suit No. 10 of 1967, had no possession over the property prior to the agreement entered into on 5.2.1965. after considering the relevant aspects, the learned Judge agreed with the conclusion of the single Judge that the said agreement was null and void. Proceeding from there, the learned Judge affirmed the decision of the learned single Judge and dismissed the appeals.

20. In view of the refusal of the other Judge of the Division Bench to sign the judgment and the undue notoriety the case and this Institution acquired by such conduct, the Chief Justice withdrew the appeals to the Court at Patna and referred the same for being heard by a Full Bench in exercise of his powers under Rule 11 of Chapter II of the Rules of the High Court of Patna, 1916. While referring the matter to the Full Bench, the learned Chief Justice also stated as follows :

"The opinion of the Presiding Judge of the Division Court as rendered on 21st July, 2000 will be before the Full Bench. The Full Bench as constituted, will have before it the record of the cases for hearing as a reference to affirm or modify the opinion on record or render such opinion as it may deem fit."

The Full Bench of five Judges, on 12.9.2000, considered this aspect and decided to re-hear the appeals, rather than proceeding to consider whether the judgment or opinion rendered by Mr. Justice Chaudhury S.N. Mishra was correct, or it called for interference. This is what the Full Bench stated :

"A request was also made by the learned Advocates appearing for the parties to clarify whether this Full Bench has been constituted for re-hearing of the appeals or only to hear them on certain terms of reference. In our view, having regard to the facts and circumstances of the case as also the request of the learned Advocates, it would be proper to re-hear the entire matter."

We have already indicated above and in our order dated 7.7.2004, how the appeals came to this Court and before the Full Bench of three Judges, as constituted by the Chief Justice of the newly created Jharkhand High Court. We have also dealt with the objection that the appeals must be heard by five Judges and not by three Judges. In view of the decision taken by the Full Bench in its order dated 12.9.2000 to re-hear the entire matter, we proceeded to re-hear the appeals, independent of the opinion delivered by Mr. Justice Chaudhury S.N. Mishra, though of course, learned senior counsel for the Digambaris, read out to us the opinion of Mr. Justice Chaudhury S.N. Mishra, as part of his arguments, commending the acceptance of the views expressed by the learned Judge.

THE POINTS

21. The first point that falls for decision is whether the land in question, about 16,000 acres in extent, vested in the State Government in terms of the notification issued u/s 3(1) of the Bihar Land Reforms Act. We may notice here that both the Trial Court and the learned single Judge in the First Appeals, held that the land vested in the Government pursuant to Exhibit K-1 notification issued u/s 3(1) of the Act.

22. It was argued on behalf on Anandji Kalyanji Trust by senior counsel that the notification u/s 3(1) of the Act was bad in law for the reason that the person shown as the proprietor in the notification published in the Gazette, was really dead when the notification was issued; that the notification was not published as required by Section 3(2) of the Act in two newspapers; that such publication was mandatory and in the absence of such publication, the notification must be deemed to be invalid, non-est and still- born. It was pointed out that the Supreme Court in Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others, , has held that the requirement of Section 3(2) of the Act regarding publication in two newspapers was mandatory; that the amendment to Section 3 brought about by the Bihar Act XX of 1954 was not retrospective and that such an amendment could not save the failure to get the notification published in two newspapers. The Trial Court held that even assuming that the person shown as representing Seth Anandji Kalyanji representing the Murti Pujak Jains of the Swetambar sect was actually dead at the time of the notification, since the name of Anandji Kalyanji was shown along with its representative character regarding the Murti Pujak Jains, the fact that the person representing the entities was dead, would not matter. The purpose of showing the name of the proprietor was only to give notice to the concerned, about the notification vesting the land in the Government. The alleged death could not affect the validity of the notification since the purpose was only to describe the title holder to the estate that was vesting in the State. There was adequate description of the title holder of the property and on that basis the notification could not be challenged as invalid. The Trial Court also took the view that by virtue of the Validation Act, 1969 subsequently doing away with the requirement of publication in two newspapers during the relevant period, the contention raised in that behalf by

Anandji Kalyanji Trust lacked substance. Thus, it was held that there was a valid and complete vesting. The learned single Judge agreed with this position. The findings are challenged before us.

23. It was argued on behalf of the respondents that the purpose of the notification was to describe the estate that was to vest, that the description was without defect, that the title holder namely, Anandji Kalyanji was shown and that was sufficient in law. Counsel also pointed out that if the person Kasturbai Manibai shown as representing Anandji Kalyanji was dead, it was for the appellants to get the revenue records corrected and they cannot take advantage of their own omission to get the successor''s name entered in the records, and that the State was entitled to proceed on the basis of the existing revenue records while issuing the notification. Counsel relied on the decision of the Supreme Court in Guru Datta Sharma Vs. State of Bihar, , in support. Counsel also submitted that though the amendment to Section 3(2) of the Act was held to be not retrospective by the Supreme Court in Girvar Prasad v. Dukhulal AIR 1988 SC 90, the failure to publish in two newspapers even if taken to be a fact, cannot invalidate the notification in view of the Bihar Land Reforms (Validation) Act, 1969, Act 2 of 1969. Counsel also referred to the plea in defence that publications were effected in two newspapers and that there was no omission or defect as pleaded.

24. The argument based on the decision in Guru Datta Sharma Vs. State of Bihar, , was sought to be met by counsel for the appellants by submitting that there was difference between Section 14 of the Bihar Private Forests Act and Section 3(1) of the Act and since the validating Act did not retrospectively delete Section 3(2) of the Act as it stood prior to its amendment by Act XX of 1954, the foundation of the judgment rendered by the Supreme Court had not been taken away and so long as there is no retrospective amendment or deletion of Section 3(2) of the Act, the requirement thereunder must be held to be mandatory, as held by the Supreme Court. It was also pointed out that the State has not clearly pleaded that the notification was published in two newspapers and in any event, it was for the State to have produced copies of the newspapers, if, in fact, the publication was effected.

25. We are inclined to agree with the finding of the Trial Court concurred in by the learned single Judge that the notification u/s 3(1) of the Act complied with the requirements of Section 3(1) of the Act and the plea that the person shown as representing Anandji Kalyanji was dead at the relevant time, even if taken to be established, may not have the effect of nullifying the very notification. As observed by the Trial Court, the property to be vested in the State has been clearly described and the ownership of the property is also clearly described as Anandji Kalyanji Trust representing the Swetambar Murti Pujak Samithee and it was adequate to put the owner on notice of issuance of the notification.

26. We find that as far as Patna High Court is concerned, and the High Court of Jharkhand for that matter, the position is covered by an earlier Division Bench

decision of the Patna High Court in Rebati Ranjan and Another Vs. The State of Bihar and Others, . Therein, Ramaswamy, J, (as he then was) speaking for the Bench held that it was not incumbent upon the State Government to mention in the notification u/s 3(1) of the Act the correct name of the proprietor or the tenure-holder. The section did not require that the Government should give notice to the proprietor before it issued the notification. The section did not stipulate that the Government should conduct a judicial inquiry into the question as to who was the proprietor of the estate which is to be notified. The section nowhere expressly stated that the correct specification of the proprietor''s name was a condition precedent to the jurisdiction of the State. In the opinion of the Division Bench, the identity of the estate that was to vest was the only relevant matter to be investigated on the question whether the title to the estate had passed to and become vested in the Government. The mention of the proprietor''s name in the notification was merely descriptive; it was not a condition of jurisdiction. Even If the name of a wrong proprietor was mentioned in the notification the title to the estate would pass and become vested in the Government so long as the identity of the estate was clear enough. The failure of the State Government to mention the correct name of the proprietor or tenure-holder did not invalidate the notification u/s 3(1) of the Act, nor did it prevent the title to the estate or tenure passing to or becoming vested in the State Government u/s 3(1) of the Act. This decision of the Division Bench has stood and had governed the field, though as regards the question whether the publication in two newspaper was mandatory or not, the view expressed by the Division Bench could not be considered to be correct in the light of the decision of the Supreme Court in Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others, . In the light of the above decision which has been accepted and followed all these years, we see no justification in differing from the Trial Court and the learned single Judge in their conclusion that the notification u/s 3(1) of the Act was not bad on the ground that it showed the name of a dead person as representing the proprietor.

27. In Guru Datta Sharma Vs. State of Bihar, , the notification issued u/s 14 of the Bihar Private Forests Act, mentioned the name of the landlord, but that was incorrect in the sense that, that landlord, the Raja of Ranka, who was the proprietor of the estate, had parted away with the right over the forest by a Mokrari lease in favour of Manjhis and Manjhis were not shown as the owners. The Supreme Court noticed that it was never the case of the appellant before that Court that the mention of the proprietor''s name in the notification had misled anyone as regards the identity of the land.

28. PW 11 who had signed the plaint as the Power of Attorney on behalf of the plaintiffs and who was in charge of the preparation of the pleadings and who took part in the negotiations leading to the agreement relied on by Anandji Kalyanji Trust, has clearly admitted in paragraphs 31 and 64 of his evidence that the Gazette notification was published; that he had seen the Gazette notification dated 2.5.1963 in June, 1953, and that he was aware of the attempt made by the Government to

declare that Parasnath Hill had vested in the Government under the Bihar Land Reforms Act. In view of this position emerging, this part of the argument on behalf of Anandji Kalyanji has to be overruled.

29. As regards the absence of publication in two newspapers, the evidence of PW 11 and the other evidence adduced on the side of Seth Anandji Kalyanji, do not establish that the notification was not published in two newspapers. Defendants 1 to 6 in T.S. No. 10 of 1967 have pleaded that the notification was published in two newspapers and had given the names of the two newspapers. In its written statement, the State of Bihar referred to the notification u/s 3(1) of the Act and to the notification subsequently issued u/s 3-A of the Act, and raised an omnibus plea that the notification was published in English and in Hindi dailies. It is not very clear from that written statement whether the reference is to the first notification u/s 3(1) of the Act, or the subsequent notification u/s 3-A of the Act or it is to both the notifications. As a matter of fact, the case in that behalf, possibly because of the Validation Act, 1969, dispensing with the requirement of publication in newspapers, does not seem to have been seriously pursued in the sense that no attempt is seen to have been made to produce the newspapers or cite their production or to give further details regarding them in evidence. In the light of the pronouncement by the Supreme Court earlier indicated, it cannot be said that the publication in the newspapers was not mandatory at the relevant time.

30. In this context, the effect of the Validation Act has to be considered. Section 2 of that Act reads as follows :--

"2. Validation of certain action taken under the Bihar Land Reforms Act. 1950.--Notwithstanding anything contained in Sections 3, 3-A and 3-B of the Bihar Land Reforms Act, 1950 (Bihar Ac XXX of 1950), or notification issued, all actions taken or all things done in respect of the vesting of the estates or tenures in the State during the period commencing from the 25th day of September, 1950 and ending with the commencement of the Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954), shall always be deemed to have been validly issued, taken or done and shall not be called in question merely on the ground of non-compliance or irregular compliance of the provisions of the said section except the provision of Sub-section (1) of Section 3 and Sub-section (1) of Section 3-A of the said Act."

As we understand it, the section does retrospectively take away the need for publishing the notice in two newspapers in respect of a notification issued u/s 3(1) of the Act between 25.9.1950, the date of coming into force of the Bihar Land Reforms Act, and the commencement of Act XX of 1954, amending Section 3 of the parent Act, doing away with this requirement. By removing the requirement with effect from 25.9.1950, the Validating Act has really taken away the foundation of the judgment of the Supreme Court in Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others, . It was not really an attempt by the Legislature to nullify the judgment, but it was really an attempt to take away the foundation of that

judgment by dispensing with the requirement during the relevant period, which was found to be mandatory by the decision. Therefore, we are inclined to overruled the argument raised in that behalf on behalf of Anandji Kalyanji Trust. We are also not Ignoring the submissions of learned counsel for Digambaris that the decision of the Supreme Court relied on by Anandji Kalyanji was not Inter-parties and the argument raised as above by counsel for Anandji Kalyanji Trust was not available in this case. Then, we have also to consider the impact of Article 141 of the Constitution of India while considering this argument. We do not think that for the purpose of this case, we need pursue that aspect, in the light of our conclusion as above.

31. We may also notice that subsequent to the insertion of Sections 3-A and 3-B into the parent Act by Act XX of 1954, a further notification was issued u/s 3-A of the Act giving notice of vesting of all intermediary interests in the District of Hazaribagh in the Government. Admittedly, the lands at the relevant time were in the District of Hazaribagh. In our view, the definition of intermediary in Section 2(jj) Introduced by Amending Act XX of 1954, meaning a proprietor, tenure-holder, under-tenure-holder and a trust, covers the Anandji Kalyanji Trust and the said notification also brings about the extinction of right, if any, of the firm Anandji Kalyanji. Of course, it is pointed out on behalf of Anandji Kalyanji that there cannot be two vestings and going by the relevant definition, the date of vesting is the date of issue of the notification u/s 3(1) of the Act and the defendants including the State must succeed or fail on the validity of the first notification u/s 3(1) of the Act.

32. The argument on behalf of Anandji Kalyanji Trust based on the alleged conflict between the dates of vesting under the notifications u/s 3(1) of the Act and Section 3-A(1) of the Act, cannot be accepted in the light of the decision of the Full Bench of the Patna High Court, in The State of Bihar v. Raja B.K.N. Singh 1961 BLJR 446. Therein, their Lordships have held that there was no conflict between a notification published u/s 3(1) of the Act and a notification u/s 3-A of the Act and that the combined effect of Sections 3 and 3-A was that the general notification issued u/s 3-A of the Act, would not affect the estate and tenure that had passed to and become vested in the State u/s 3 of the Act, It will affect only such tenures and estates which were not covered by any notification issued previously by virtue of Section 3 of the Act. The notifications issued under Sections 3 and 3-A were not in conflict with each other. There was no repugnancy. The effect of this decision which again had been the law declared In the State for all these years is that even if there was no vesting by virtue of the notification u/s 3(1) of the Act, the rights of Anandji Kalyanji Trust over the property purchased by it and taken on perpetual lease by it from the Raja of Nawangarh stood extinguished by the notification Ext. A/II issued u/s 3-A of the Act. We need not pursue this aspect further since on the materials, we are inclined to agree with the Trial Court and the First Appellate Court in their conclusion, that there was a valid notification issued u/s 3(1) of the Act and there was no defect in that notification which would justify our holding that no consequences flowed from that notification.

33. An attempt was made by senior counsel appearing for the Anandji Kalyanji Trust to contend that we have to decide the disputes raised in the context of the un-amended Bihar Land Reforms Act, 1950 and ignoring the amendments brought about by Act XX of 1954 and the Validation Act of 1969. Of course, if an amendment is not seen to be retrospective, the Court can take the view that the said amendment would not affect the rights or obligation of the parties acquired or incurred. But if the amendment is retrospective, the amendment has to be given effect to. Here, both the parent Act and the Amendment Act are in the Ninth Schedule to the Constitution. The amendment has to be given full play. In that context, we have noticed that Section 3(2) of the Act was amended by Act XX of 1954, but no retrospective effect was given to that amendment. But the Bihar Land Reforms (Validation) Act, 1969, by Section 2 thereof, which we have quoted earlier, did do away with the requirement of the publication in newspapers as earlier envisaged by Section 3(2) of the parent Act. We have considered the effect of that Validation Act. The other provision which was relied on and which underwent an amendment is Section 4(f) of the Act. The section, as un-amended, contemplated the taking of charge by the Collector of an estate or tenure and of all interests vested in the State u/s 4 of the Act. Section 6(c) of the Amendment Act XX of 1954 amended Section 4(1) of the Act with retrospective effect. Section 6(c) read :
"In clause (f), for the words, "take charge", the words, "be deemed to have taken charge" shall be substituted and shall be deemed always to have been substituted."

Obviously, we cannot let our imagination boggle and we have necessarily to read Section 4(f) of the Act as substituted; from its very inception and we have to deem that the Collector has taken charge, rather than to took for evidence whether the Collector took charge as sought to be canvassed by learned counsel for Anandji Kalyanji Trust. To the extent, therefore, that the Act stood amended with retrospective effect the Court has necessarily to go by the amended provision and the blanket argument of counsel for Anandji Kalyanji Trust that we must test the relevant matters in the light of the pristine Act, cannot be accepted. The question will depend on the nature of the amendment brought about.

34. In this context, much of the arguments raised on the question whether the Collector had taken charge of the estate that vested u/s 3(1) of the Act, is not of much avail to Anandji Kalyanji. We have to take it that on the issuance of the notification u/s 3(1) of the Act, the right of Anandji Kalyanji Trust vested in the Government and the Collector took charge of the property as deemed by Section 4(1) of the Act, subject of course to the argument based on the proviso therein.

35. Before we proceed to consider the scope of the proviso to Section 4(f) of the Act, and the arguments based thereon, we think it proper to consider the question whether possession of the estate was actually taken by the Government. We have already held that the rights of Anandji Kalyanji Trust vested in the Government as found by the Trial Court and by the learned single Judge in the First Appeal. The

consequence of that finding is provided by Section 4 of the Act, as amended by the Bihar Land Reforms Act, 1974. Section 4 reads thus :

"Section 4. Consequences of the vesting of an estate or tenure in the State.--Notwithstanding anything contained in any other law for the time being in force or any contact and notwithstanding any non-compliance or irregular compliance of the provisions of Sections 3, 3-A and 3-B except the provisions of Sub-section (1) of Section 3 and Sub-section (1) of Section 3-A, on the publication of the notification under Sub-section (1), of Section 3 or Sub-section (1) or Sub-section (2) of Section 3-A, the following consequences shall ensue and shall be deemed always to have ensued, namely :

(a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazaar (mela) and ferries and all other sairali interests, as also his interest in all such-soil including any rights in mines and minerals whether discovered or undiscovered, or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under- raiyats) shall with effect from the date of vesting, vest absolutely in the State free from all membrances and such proprietor or tenure-holder shall cease to have any interests in such estate or other than the interests expressly saved by or under the provisions of this Act."

Section 4(g) as substituted by Act 16 of 1959 enabled the Collector to take possession of the estate that had vested after issuing a notice in that behalf. In this context, according to the State and the Digambaris, the State took possession on 2.4.1964 pursuant to the direction in that behalf from the appropriate authority. It may be noted that the Swetambaris had raised some claims regarding the places of worship and the Anandji Kalyanji Trust had claimed the right to retain the property acquired on purchase from the Raja of Palganj, and on perpetual lease from the Raja of Nawangarh, and this led to some prolongation of the proceeding. But it may be noted that the forests of Parasnath Hill had gone into possession of the State by virtue of the agreement entered into by Anandji Kalyanji Trust in terms of Section 38(1) of the Indian Forests Act and the forests were under the possession and control of the State Government. After the notification u/s 3(1) of the Act, on an application by the Government, the mutation was changed and the name of the proprietor of the estate was changed into the State of Bihar as is clear from Ext. J/1/4 and Form F, marked Ext. 1-1/5 in the suit. As admitted by Anandji Kalyanji Trust, their request to the State Government to spare the Parasnath Hill was rejected by the Chief Minister on 01.4.1964 in the presence of a representative of Swetambar Jain Murti Pujak Committee. This fact is admitted in the writ petition. W.P. No. 58 of 1964, filed in the Supreme Court. Pursuant to the rejection, it is seen that a telegram dated 01.4.1964 (Ext. C-1/10) was issued by the Revenue Secretary to the Deputy

Commissioner, Hazaribagh, (He is the District Collector) to immediately take possession of the Parasnath Hill which vested in the State on 2.5.1953 and to report compliance to the Government. As per the Act, it is the Collector who has to take possession. It also intimated that Sri Gopal Prasad who was apparently an employee of the Swetambaries was appointed as Manager. Ext. C. 1 of even date clarified that the Deputy Commissioner was to take over possession of the Parasnath Hill forests and Gopal Prasad was to look after the religious privileges of the Jain Community. Pursuant to this, possession was taken, as is clear from Exts. C-1/6, C-1/4 and the other documents marked Ext. C series. We find that the learned single Judge has elaborately discussed this evidence. We may also notice that the Trial Court found against the taking of possession by the State by simply asserting that the taking of possession was only a paper transaction, a finding which is seen to be unacceptable in the light of the documents in that behalf and in the absence of any evidence in this regard on the side of Anandji Kalyanji Trust. Moreover, the elaborate document, any evidence relied on by the State including the communication Ext. C-1/4 dated 3.4.1964 by the Collector to the Additional Collector, Hazaribagh, reporting the taking over of possession after fulfilling the requisite formalities and the subsequent transfer of possession to the Divisional Forest Officer, the appointment of additional staff and the subsequent correspondence, cannot be ignored or brushed aside as was improperly done by the Trial Court. The documents Ext. C series referred to above clearly support the finding of the learned single Judge that possession was, in fact, taken by the State Government pursuant to the vesting and in terms of Section 4(g) of the Act. No doubt, sitting in appeal, under Clause 10 of the Letters Patent, we are free even to disagree with a finding of fact rendered by the learned single Judge. But then, there must be adequate reasons for such disagreement. We have found that the Trial Court was in error in appreciating the effect of the records available which clearly established the taking over of possession by the State. There was no positive evidence on the side of Anandji Kalyanji that could justify the brushing aside of the official correspondence and their legal effect. It is also not shown that there was any legal impediment in taking possession. There was no challenge pending in any Court of law or before any Authority under the Act. On going through the relevant contemporaneous documents, we can only agree with the conclusion of the learned single Judge that possession was, in fact, taken of the estate that had vested in the State.

36. In this context, we must also notice that the vesting notification, the taking charge of or the taking of possession of, was never directly challenged by Anandji Kalyanji Trust and they have become final. Though W.P. No. 58 of 1964 was filed in the Supreme Court on 14.4.1964, inter alia, admitting that possession had been taken and that an employee of Anandji Kalyanji had been appointed as Manager, but challenging the vesting and taking over, the same was withdrawn with liberty to file a petition under Article 226 of the Constitution of India if so advised. But no such writ petition was filed in the High Court. Nor was any proceeding initiated under the

Act either in terms of Section 21 of the Act or otherwise, to seek cancellation of either the notification, or of the taking the charge or the taking over of possession by the concerned authorities under the Act. Anandji Kalyanji thus allowed the proceedings to become final. We have considerable doubt whether in this suit filed by Anandji Kalyanji Trust based on a subsequent agreement entered into by it with the State Government, Anandji Kalyanji Trust is entitled to raise a challenge to the notification, to the taking charge of the estate and to the taking of possession of the estate. Even assuming that such a challenge is possible, when the agreement entered into by it with the State Government, on which it has based it cause of action, is being attacked by the other side, we are satisfied on the evidence in the case, that pursuant to the vesting, the State had taken possession of the vested estate through the concerned authorities and the property passed into the possession of the State. Thus, Anandji Kalyanji Trust not only lost its title and the right to possession, but also lost its possession over the estate. This part of the finding rendered by the learned single Judge deserves to be affirmed. We may also notice here, that there is no specific provision in the Act enabling the issue of a notification cancelling the vesting on a notification and the consequences that follow. Still, whether a power in terms of Section 24 of the Bihar and Orissa General Clauses Act (corresponding to Section 21 of the General Clauses Act) is available to cancel the notification issued under a social legislation like the Act is a moot question. Any way, not such mode was attempt was attempted here.

37. In this context, we have also to notice that the very agreement Ext. 9(a) relied on by Anandji Kalyanji proceeds on the basis that the right and possession of Anandji Kalyanji stood extinguished. The State only agreed that the temples, dharamshalas etc. on the Hill are not covered by the notification Ext. K/1 dated 2.5.1953 and that Anandji Kalyanji shall retain full control of their temples and shrines, hills and re-religious establishments and perform their puja and worship as before. The area thus said to be excluded from vesting was Khewat No. 7 having an extent of 0.86 acres on top of the Hill. Thus is clear from Ext. K/1 notification itself which embraces the entire Touzi No. 20/1, reinforced by the change of mutation in favour of the State of Bihar from Anandji Kalyanji Trust as indicated by Ext. J-1/4 and Ext. 1-1/5 Form F.

38. The main argument on behalf of Anandji Kalyanji Trust was that the Collector could not have taken charge of the estate comprising the Parasnath Hill and the places of worship in the light of the proviso to Section 4(f) of the Act. It was contended that the proviso to Section 4(f) was an independent provision and it was a provision which divested the vesting covered by notification u/s 3(1) of the Act as it were. It was submitted that even if the vesting had taken placed, the Collector could no take charge u/s 4(f) of the Act or take possession in terms of Section 4(g) of the Act, because the property belonged to a religious trust. We shall read the relevant provision at this stage :

"Section 4(f) The Collector shall be deemed to have taken charge of such estate or tenure and of all interests vested in the State under this section :

Provided that nothing contained in this clause or in any other provision of this Act shall be deemed to authorize the Collector to take charge of any institution, religious or secular, of any trust or any building connected therewith or to interfere with the right of a trustee to apply the trust money to the objects of the Trust."

The argument is that the proviso cannot be understood merely as a qualification of the power u/s 4(f)of the Act. It was an independent provision precluding the Collector from taking charge of an estate or precluding the operation of the fiction contained in Section 4(f) of the Act from operating. Once it is shown that Seth Anandji Kalyanji was a trust of a religious character, the Collector could not take charge of any institution of that trust and that would mean that the Collector was precluded from taking charge of the Parasnath Hill including the places of worship since it belonged to a trust. The contention that Seth Anandji Kalyanji was a trust at the relevant time is seriously disputed on behalf of the Digambaris. We shall deal with that later. But for the moment this contention on behalf of Anandji Kalyanji Trust cannot be accepted in the light of the decision of the Division Bench in Rebati Ranjan and Another Vs. The State of Bihar and Others, , already referred to. In paragraph 4 of that decision, the question that posed was whether the State Government had the authority under the Act to notify properties belonging to a religious or charitable trust. After an examination of the relevant provisions and the relevant arguments, it was held that they do vest and that annuity instead of compensation was payable for such vesting. In Shri Durgaji and Another Vs. State of Bihar, , speaking on the proviso, their Lordships stated, "On the face of it, this proviso does not prohibit the vesting of trust properties other than those mentioned in the proviso in the State", Their Lordships also held that a property according to the definition include a person holding an estate in trust and such rights also pass to the State on vesting. Here, a vesting has been found. The taking over of possession has also been found. On the materials, it is only possible to hold that an extent of 0.86 acres in Khewat No. 7 did not vest and it having places of worship, was not taken charge of or taken possession of by the Collector. In paragraph 9 of their plaint in T.S. No. 10 of 1967, Anandji Kalyanji has clearly pleaded that the places of worship were all located in Khewat No. 7. It is also admitted in paragraph 10 of the plaint in T.S. No. 10 of 1967 that the notification u/s 3(1) of the Act dated 2.5.1953 took in the Parasnath Hill, Touzi No. 20/1, Thana No. 95 belonging to Anandji Kalyanji, though in paragraph 11 it was pleaded that the Act was not applicable to any religious institution and It is asserted that the notification was issued under a misapprehension. The main part of Section 4(f) deems that the Collector has taken charge of the estate or tenure that has vested in the State. In the face of this fiction, it has to be held that the Parasnath Hill, Touzi No. 20/1 was taken charge of by the Collector. The proviso did not stand in the way since the places of worship were in Khewat No. 7. having an extent of 0.86 acres.

39. It is contended that the Bihar Land Reforms Act was only a measure of land reforms and had no application to objects and places of worship which are religious institutions. The observation of the Supreme Court in The State of Bihar Vs. Sir Kameshwar Singh, , has clarified the object of the Act and the Act never intended to acquire objects and places of worship, wince they are religious institutions. Even if the words used in a statute are capable of more than one interpretation, the Court should prefer that interpretation which would suppress the mischief and advance the purpose of the Act and not the one which would render the Act unconstitutional as being arbitrary and unreasonable. With respect, we have to notice that the Bihar Land Reforms Act and the subsequent amendments have all been included in the Ninth Schedule to the Constitution precluding any challenge based on alleged violation of rights under Articles 14 and 19 of the Constitution of India. The argument is that even then, the Court has to ensure that the basic structure theory propounded in Keshavananda Bharati case is not transgressed while interpreting the provision. With respect, we see no merit in this submission. Land Reforms Acts and even vesting of private forests have been saved as agrarian reforms and have been found valid by the Supreme Court in numerous decisions. The Bihar Act and its amendments have also been included in the Ninth Schedule, giving it the umbrella of protection. The enactment of laws for distribution of lands with the object of fulfilling the goal of socialism introduced in the preamble to the Constitution, cannot be said to affect the basic structure of the Constitution. We are, therefore, satisfied that nothing turns on this argument raised on behalf of Anandji Kalyanji Trust. It is not possible to accept the argument that the notification issued u/s 3(1) of the Act should be read down as not to include the Parasnath Hill. It is seen that Parasnath Hill was a revenue paying estate. It consisted of a vast area of forests fetching income to the owner thereof. The owner had leased out an extent of two thousand acres for a plantation. Seven hundred acres were being cultivated by raiyats. There were other structures like sanatorium which was later converted into a Dak Bungalow on the Hill. The Raja of Palganj was getting income from the lands. Even Anandji Kalyanji had bargained with the State while entering into the agreement Ext. 9(a) for sharing the profits from the forests at 60:40. The definition of estate in the Act includes forest land. As explained in the decision of the Patna High Court referred to earlier, even places of religious worship were within the purview of vesting under the Act. The said decision has held the field all these years. The decision of the Supreme Court in Labanya Bala Devi v. State of Bihar, 1994 (3) SCC 725, and Brigunath Sahai Singh v. Md. Khalilure 1996 (1) PLJR (SC) 65, also support this. We, therefore, find no merit in the. contention on behalf of Anandji Kalyanji that the Parasnath Hill should be treated as excluded from the vesting. It is also not possible to accept the argument that Parasnath Hill, as a whole, was a place of religious worship. No doubt, the Hill as a whole, was considered sacred by the Jains of all hues, but that was because of the Hill at the top, containing the Samadhis of 20 of the Tirthankaras and Charans and of monuments erected in respect of the other four Tirthankaras believed in by the Jains. The observation of the Calcutta High

Court and that of the Privy Council generally stating that every foot of the Hill is treated as sacred by Jains, cannot be taken as the rendering of a decision that the whole of the Hill is a place of religious worship that cannot vest in the State of Bihar under the Land Reforms Act. As we have noticed, according to the view held by the Patna High Court, which has not been questioned all these years, a religious trust can and does vest in the State on the issuance of a notification u/s 3(1) of the Act. We may notice here that Anandji Kalyanji Trust itself, though after receipt of a notice u/s 40 of the Act, made a claim for compensation for these lands under the Act, as if it were a property held by an individual, though at a later stage, it claimed annuity on the basis that this was a Trust. What we mean to notice here is that the conduct on the part of Anandji Kalyanji itself indicates that even if it was a religious Trust as claimed by Anandji Kalyanji, what it could took for was annuity in place of compensation for the vesting payable under the Act. We find that the relevant aspects have been duly and properly considered by the learned single Judge while holding that the lands have vested in the Government under the notification u/s 3(1) of the Act and that the lands have also passed into the possession of the Government subsequent to the said notification. On a re-consideration of the relevant materials, in the light of the elaborate arguments addressed before us, we respectfully agree with the conclusion of the learned single Judge in that behalf.

40. There was considerable dispute before us whether Anandji Kalyanji did not adorn the mantle of a Trust only after the coming into force of the Bihar Land Reforms Act and the issuance of the notification u/s 3(1) of the Act. The resolution, Ext. 6, which we have quoted earlier, does not indicate that the purchase was for charitable purposes. Actually, the resolution emphasized that the purchase from the Raja of Palganj was a good business deal. Normally, a trust comes into existence when there is a dedication of the corpus for religious or charitable purposes or at least of the income from the properties for charitable purposes. The purpose must be eleemosynary. A trust can be created by a deed or can be implied from the circumstances. In other words, it must be either an express dedication or an implied dedication. There is nothing to show that there was any dedication of Parasnath Hill, including the forest for any charitable purpose. The Raja of Palganj obviously treated it as a property fetching an income, though he undertook the obligation of reserving and protecting the shrines and charans on the top of the Hill. He had even laid a claim to the offerings in the shrines and there was ultimately an agreement by which he agreed to receive Rs. 1,500/- from the Jain Swetambar Society towards his share of the offerings at the shrines. It is no doubt true that places of worship on the top of the Hill containing tonks of the 24 Tirthankaras, their Charans and the Temple of Gautam Swamy and the Jal Mandir were places of worship of the Jain Community. But there is no evidence to show that there was dedication of any part of the Hill for charitable purposes or of a major portion of the income therefrom, for a religious purpose by the Raja of Palganj. Anandji Kalyanji Trust was a body which probably was doing charitable work and was protecting the interests of the Murti

Pujak Jain Community of India. Merely because Anandji Kalyanji purchased the property from the Raja of Palganj, it does not necessarily impress the property with the character of a Trust. We must notice here that originally there was no temple or even enclosure around the tonks and charans. Only subsequently, some constructions were attempted which resulted in some litigations, but there was no case at an early stage that there was a dedication of the property for religious or charitable purposes. The Privy Council had found that it Was not debut tar property. Even in the plaint in T.S. No. 10 of 1967, except the claim that Seth Anandji Kalyanji Trust was registered as a Trust under the Bihar Hindu Religious Trust Act, 1953 and that the whole of Parasnath Hill must be deemed to be a religious institution, there is no specific plea that there was ever a dedication of the property either by the Raja of Palganj or by the assignee, Anandji Kalyanji for any religious or charitable purpose. Nor is there any plea that the entire income from the property was dedicated for the use of the Jain places of worship on top of the Hill. Therefore, in the absence of even a specific pleading in that behalf, there is considerable force in the argument on behalf of the Digambaris that it has not been shown that a Trust was created in respect of the land in question. We find from the registration obtained after the coming Into force of the Land Reforms Act, and the notification issued, that a trust called ''Parasnath Hill'' was not registered, ion the coming into force of the Bihar Hindu Religious Trust Act, 1953, and Anandji Kalyanji was shown to be the Trustee. Along with an application filed before the learned single Judge under Order XLI, Rule 27 of the Code of Civil Procedure, Anandji Kalyanji had attempted to produce a copy of the application said to have been made for registration of the Trust to Indicate that what was sought was registration of the Trust, Anandji Kalyanji and not a Trust by the name of Parasnath Hill. An explanation was attempted before us that the certificate of registration, Ext. 10, and Ext. 10-A, was in that Form because the Bihar Act applied only to Parasnath Hill and not to the other properties held by Anandji Kalyanji outside the State. But the fact remains that the registration as a Trust in this State was only after the coming into force of the Bihar Land Reforms Act and it was not in the name "Anandji Kalyanji".

41. In this context, we must notice the argument on behalf of the Digambaris that Anandji Kalyanji Trust, at no time, had the real management of the tonks and charans on the top of Parasnath Hill. What was recognised by the Privy Council and the Calcutta and Patna High Courts was the right of the Jain Swetambar Society which was different from Anandji Kalyanji Trust and Anandji Kalyanji represented only the Murti Pujak Jain Community of India which was only a section of the Swetambar sect, which Itself was only about 30 percent of the total Jain population, the balance 70 percent being, Digambar Jains. The case of Anandji Kalyanji sought to be supported by production of some accounts is that a portion of the income was being expended by Anandji Kalyanji for providing facilities for pilgrims on top of the Hill. But the proviso to Section 4(f) of the Act contemplates an application of the trust money to the objects of the trust. The learned single Judge has taken the view

that the existence of the trust prior to coming into force of the Land Reforms Act had not been established by Anandji Kalyanji. There is no clear evidence to indicate that there was an express or implied dedication of the property for the benefit of Jain Community by Anandji Kalyanji or the dedication of the entire income of the property for a religious or a charitable purpose, so as to enable the Court to infer that the land was impressed with the character of a trust property. In other words, we find it not possible to hold that the learned single Judge was wrong in holding that it has not been established that Anandji Kalyanji was a Trust prior to the claim being raised after the Bihar Land Reforms Act came into force and the notification u/s 3(1) of the Act was issued. On out part, we are inclined to think that what is relevant is not merely the question whether Anandji Kalyanji was registered or otherwise, but whether the property was an institution of a trust, for, what the proviso to Section 4(f) of the Act excludes is "any institution, religious or secular of any trust, or any building connected therewith".

42. The proviso to Section 4(f) of the Act also provides that the Collector shall not Interfere with the right of a trustee to apply the trust money to the objects of the Trust. Though we find in the plaint In T.S. No. 10 of 1967 that there was the plea that the Collector was not entitled to take charge of any trust and hence he did not take charge of the Parasnath Hill and a further plea that the income derived by Anandji Kalyanji from the forest on the Parasnath Hill was being applied at all material times for the objects of the Trust, we find that no specific issue based on the character of Anandji Kalyanji as a religious or secular institution of a trust was got tried or adjudicated upon. In the judgment while dealing with issues 6, 7, 9 and 13, the Trial Court has not entered any finding that the entire income or a major portion of the income derived from Parasnath Hill was being expanded by Anandji Kalyanji for the purpose of the places of worship situate in Khewat No. 7 having an extent to 0.86 acres. It was incumbent upon Anandji Kalyanji to establish that as a trustee, it had the right to apply the income derived from Parasnath Hill for the objects of the Trust and in that context what exactly were the objects of the Trust. It had also to establish that Anandji Kalyanji was in institution of a religious or secular character and it was a trust. Though some accounts are said to have been produced regarding the income and expenditure relating to Anandji Kalyanji, and adjudication on its entitlement to exemption under the proviso was not sought for and secured by Anandji Kalyanji in the Trial Court.

43. According to the Chambers Dictionary, an ''institution'' means a society or an organisation established for some objects especially cultural, charitable or beneficient or the building housing it. According to Ramanatha Aiyer''s Law Lexicon, the word, ''institution'' properly means the "organisation organized or established for some specific purposes, though it is sometime used in statutes and in common parlance in the sense of the building or establishment in which the business of such a society a carried on." It is not possible to hold on the materials that the entire Parasnath Hill constituted the Institution of a Trust. "The Trial Court, which granted

relief of Anandji Kalyanji had itself held while discussing issue No. 13 that "So the entire Parasnath Hill cannot be said to be religious institution of the Swetambar Murti Pujak Community of India, nor the entire Hill was ever under their possession. But at the same time, it is crystal clear from the above discussed facts, evidence and documents that the said Parasnath Hill minus the area of raiyati land and the area under Jharia Water Board under Touzi No, 21/1 is the property of a Trust and its possession by the Government could not have been taken u/s 4(g) of the Bihar Land Reforms Act; rather it should have been dealt with as provided u/s 4(f) of the Bihar Land Reforms Act." So, even if the argument based on the proviso to Section 4(f) of the Act were to be upheld, it could only be held that the Collector could not be deemed to have taken charge of the land in Khewat No. 7 having an extent of 0.86 acres containing the tonks, charans and mandirs.

44. An attempt was made by the senior counsel appearing for Anandji Kalyanji in LPA No. 332 of 1997 (R) to argue that the extent of 397 acres, including 0.86 acres in Khewat No. 7 should be held to have not vested in the Government under the Act. With respect, we may say that there was no such specification of any 397 acres in plaint in T.S. No. 10 of 1967 and no specific case relating to such an extent was put forward by the plaint. There was also no description of the location of 397 acres in the plaint. It is no doubt true that while referring to the agreement, Ext. 9(a) dated 5.2.1965, it is pointed out that as per the said agreement it was agreed to exclude the extent of half a mile round about the temple on the Parasnath Hill. It was also pleaded by way of an amendment of the plaint that the right to ownership, possession and control over the area of the half a mile round-about the temple on the Parasnath Hill recently demarcated by the State of Bihar was in no way affected by the subsequent agreement Ext. D1 dated 5.8.1967 entered into by the Digambaris. The evidence shows that as on the date of the plaint, in T.S. No. 10 of 1967, the area of half a mile around the place of worship had not been demarcated and no possession had been handed over to Anandji Kalyanji of that extent. In view of our finding, in agreement with the learned single Judge, that Touzi No. 20/1 was taken possession of by the Collector, Anandji Kalyanji had to specifically plead and prove that they were put back in possession of 397 acres by the State on the basis of the agreement, Ext. 9(a). As we have noted, the said 397 acres has also not been specifically described in the plaint. No plan of it was also got prepared by taking out a commission. The finding by the Trial Court and the learned single Judge is that the entire Touzi No. 20/1 had vested in the State and we have also agreed with that finding. Therefore, strictly speaking, as on the date of the Suit, T.S. No. 10 of 1967, Anandji Kalyanji had no possession over the area of half a mile around the temples, and tonks on the top of the Hill. Admittedly, the so called 397 acres in part of Touzi No. 20/1 which had vested in the State and possession of which had been taken. Hence, it has necessarily to be held that Anandji Kalyanji had lost not only its right over 397 acres but also its possession over it. The attempt, to separate an extent of 397 acres from the entire Hill in Touzi No. 20/1 made at the stage of the Letters

Patent Appeal, cannot be upheld. In fact, if one were to go by the plaint in T.S. No. 10 of 1967, no distinction had been made between the extent of half a mile around the temple and the entire Hill. On the basis of the pleadings the submission regarding the area of half a mile around the temple of Parasnath Hill, equally apply to the forest area outside it and which is under the Management of the Forest Department of the State of Bihar as the agent of Anandji Kalyanji. At best, what can be said is that the area of half a mile around the temples or places of worship was intended to be left in the management of Anandji Kalyanji by the State under Ext. 9(a) agreement dated 5.2.1965. But that cannot enable Anandji Kalyanji to contend that the said extent must be dealt with separately and held to have not vested in the State under the provisions of the Bihar Land Reforms Act. We have, therefore, no hesitation in rejecting the attempt made to distinguish between an extent of 397 acres on top of the Hill from the rest of the lands forming the Parasnath Hill.

45. It may also be noted that there is no plea in the plaint that the area of half a mile around the tonks and Charans is a religious institution. This extent said to be covering 397 acres was in fact, declared as a protected forest by notification Ext. K/1/2/ dated 14.4.1964. Ext. 4/C dated 31.1.1968 shows that the extent of 397 acres was demarcated only on 31.1.1968 and that Ext. 3/W dated 24.2.1968 Ext.3/C dated 20.8.1968 tend to show that the said extent was separated from the protected forest only after the filing of T.S. No. 10 of 1967. This was obviously done on the basis of Ext. 9(a) agreement and not on the basis that the land had not vested in the State. Therefore, it is not possible to accept the case that 397 acres so called, did not vest in the State pursuant to the notification u/s 3(1) of the Act or that the possession thereof was not lost to Anandji Kalyanji on the vesting.

46. We have considerable doubt whether Anandji Kalyanji Trust is entitled to challenge the vesting under the Bihar Land Reforms Act and the consequences that flowed including the making of a claim for compensation by Anandji Kalyanji in this suit based on the rights acquired under the agreement dated 5.2.1965. Though on possession being taken of the land vested by virtue of the notification u/s 3(2) of the Act, a writ petition was attempted to be filed in the Supreme Court by Anandji Kalyanji, the same was withdrawn with liberty to approach the High Court under Article 226 of the Constitution of India, which was never done. Therefore, as far as Anandji Kalyanji is concerned, both the vesting, taking of the possession and the deemed taking of charge u/s 4(f) of the Act have all become final. In view of Section 35 of the Act, the Civil Court has no jurisdiction to decide or deal with any matter in respect of which action has been taken under Chapters II to VI of the Bihar Land Reforms Act. The vesting and the consequent taking of charge and possession are included in Chapter II of the Act. Therefore, even otherwise, the said actions could not be challenged in the present suit. Anandji Kalyanji entered into an agreement with the Government subsequent to the loss of right and possession and by virtue of that agreement, bargained for the religious site containing 0.86 acres and some are around it, said to be 397 acres, to be given back to its control. It is clear from the

agreement itself and the subsequent documents produced that an extent of 46.28 acres were originally separated from the forest that was being managed by the Government through the forest department and by virtue of the agreement dated 5.2.1965, a further extent of 351.89 acres was to be left in the control of Anandji Kalyanji. Thus, in T.S. No. 10 of 1968 based on the said agreement, it is not open to Anandji Kalyanji to raise a contention that its right were not lost under the Bihar Land Reforms Act. In fact, the agreement dated 5.2.1965 tends to show that the said agreement and the giving away of the extent of 397 acres by the State to Anandji Kalyanji, was in lieu of compensation payable by the State under the Bihar Land Reforms Act. In T.S. No. 23 of 1968 filed by the Digambaris challenging the validity of that agreement and seeking a declaration that it is invalid; it may be open to Anandji Kalyanji to defend the agreement by trying to show that it was not against the terms of the Land Reforms Act or that it was permitted by the Land Reforms Act or that it was not against any law for the time being in force or it was not opposed to public policy. But these defences available would not enable Anandji Kalyanji to rake up the controversy that the land had not vested in the Government or that it could not have vested in the Government. Suffice it to say that, we are inclined to the view that such a contention or challenge to the notification u/s 3(1) of the Act and its consequences is not available to Anandji Kalyanji in these suits. But we have dealt with those arguments on the assumption that such pleas are available to Anandji Kalyanji to be raised in these suits since they were strenuously argued. What we would like to emphasize is that this aspect also cannot be lost sight of while entertaining the arguments raised on behalf of Anandji Kalyanji regarding the vesting and its consequences.

47. Arguments were attempted based on the agreement entered into under the Indian Forests Act and acts done by the forests authorities. The agreement Ext. 9 dated 17.11.1951, after the coming Into force of the Land Reforms Act on 25.9.1950, but before the issuance of the notification, Ext. KI dated 2.5.1953 was relied on. According to us, this agreement cannot have any bearing on the vesting under the Land Reforms Act. Similarly, the fact that the forest authorities set apart 16.28 acres of land while demarcating what they were to manage, cannot also have any bearing on the question. The same is the position regarding the demarcation of 397 acres after Ex. 9(a) agreement was entered into. The fact that the forest authorities were ignorant of the effect of the Land Reforms Act, or the vesting thereunder or they were easy tools in the hands of Anandji Kalyanji, cannot effect the operation of the Land Reforms Act. The forest authorities are not authorities under the Land Reforms Act. Nor can the Forest Acts or the agreements thereunder have any bearing on the rights of parties under the Land Reforms Act regarding an estate or intermediary rights. We, therefore, overrule the contentions based on the actions under the Forest enactments.

48. After the Parasnath Hill had vested in the State of Bihar and possession had been taken by the State, Anandji Kalyanji Trust representing the Murti Pujak Jain

Community entered into an agreement with the Government of Bihar. The agreement is marked Ext. 9(a) and it is dated 5.2-1965. It is an agreement in the name of the Governor in terms of Article 299 of the Constitution of India, and it is one entered into by the State with Anandji Kalyanji Trust. Though the agreement does not specify it, the minutes of the discussions preceding it, Ext. 27 dated 16.9.1964 shows that it was to be one in terms of Section 38 of the Indian Forest Act. By virtue of that agreement, the Government, on an alleged recognition of the rights of the Jain Swetambar Murti Pujak Community of India, proceeded to declare that temples, dharmshala etc. on the Hills are not covered by the notification dated 2.5,1953 issued u/s 3(1) of the Act and that Anandji Kalyanji shall retain full control of their temples, shrines, hills and religious establishments and perform their pujas and worship as before, without any let or hindrance from the State. The Government also purported to agree that the State will continue to look after the forests, but that the net profits of the forests would be shared annually between the State and Anandji Kalyanji Trust in the ratio of 40:60. It was also agreed between the parties that there was no question of payment of compensation as envisaged by the provisions of the Bihar Land Reforms Act in view of the settlement arrived at between the parties. By virtue of that agreement, the Government practically agreed to return the land which had vested in it under the Act and which it had taken possession of from the alleged original owner, Anandji Kalyanji Trust. It is seen that in addition to 46.28 acres which was allegedly separated while demarcating the forest for management earlier, a further extent of 351.89 acres was to be excluded, to be held by Anandji Kalyanji and the rest of the forest area recognized to be owned by Anandji Kalyanji Trust, was to be managed by the State, through its Forest Department and the income therefrom shared with Anandji Kalyanji, the State taking the lesser share of the income. It was on the strength of this agreement that Anandji Kalyanji filed Title Suit No. 10 of 1967 for the reliefs claimed in the plaint. Originally, only the Digambaris represented by Defendants 1 to 6 were impleaded and they promptly raised a contention that this agreement was invalid and would confer no right or possession on Anandji Kalyanji Trust. At this stage, we may again notice that the Digambaris themselves entered into Ext. D1 agreement dated 5.8.1966 referring to the agreement entered into by Anandji Kalyanji Trust and getting the Government to declare that the rights of the Digambaris as recognised by judicial decisions and acquired otherwise, would not, in any manner be affected by the agreement between the Government and Anandji Kalyanji dated 5.2.1965. In addition to challenging the agreement, Ext. 9(a) dated 5.2.1965 in their written statement in Title Suit No. 10 of 1967, the Digambaris also filed Title Suit No. 23 of 1968 challenging that agreement and seeking a declaration that it was invalid in law. Anandji Kalyanji Trust resisted the claim of the Digambaris by pleading that the agreement was valid in law and by further pleading that the Digambaris were estopped from questioning the validity of that agreement in view of their entering into Ext. D1 agreement recognizing the existence of Ext. 9(a) agreement entered into by Anandji Kalyanji Trust. The State, which was impleaded

at a subsequent stage, in T.S. No. 10 of 1967, did not question the validity of the agreement in the original written statement it filed, though it proceeded to assert that the entire hill had vested in it by virtue of the notification issued u/s 3(1) of the Bihar Land Reforms Act. But at the fag end of the trial, the State filed an application for amendment of the written statement by seeking to challenge Ext. 9(a) agreement as null and void, since it was opposed to public policy and was based on misrepresentation and mistakes of fact. That Trial Court refused the prayer for amendment of the written statement, but in view of the pleadings of the Digambaris questioning the validity of Ext. 9(a) agreement, raised and tried an issue ''whether the agreement dated 5.2.1965 executed by the State of Bihar was legal, valid and enforceable in law''. It also raised an issue, ''whether even after the vesting of the estate in the State of Bihar, the rights of the State ceased to exist upon execution of Ext. 9(a) agreement and whether that agreement would not govern the rights of the parties?'' It also raised the issue ''whether the Digambars were entitled to raise the question regarding the validity or the binding nature of the agreement dated 5.2.1965?'' The Trial Court, on the issue of the entitlement of the Digambaris to question the validity of the agreement, held that they were not entitled to raise the question, since they were estopped by their conduct from questioning the validity of Ext. 9(a) agreement. As regards the State, in view of the rejection of its application for amendment of the written statement, the Trial Court held that the State of Bihar was also bound by the agreement. But the learned single Judge in appeal, held that the agreement was opposed to public policy; that it was void in view of the provisions of the Bihar Land Reforms Act, that it was vitiated by misrepresentation on the part of Anandji Kalyanji Trust which was really a representative of only one faction of Swetambar Jains, namely the Swetambar Murti Pujak Community of Jains and that the agreement was also vitiated by mistakes. The learned single Judge held that the amendment of the written statement sought for by the State should have been allowed and could be allowed in the circumstances, since the question was already covered by the issues raised in the Trial Court and tried by the Trial Court and no new material was necessary even if those pleas were entertained. Thus the amendment of the written statement prayed for was also allowed. Holding that the agreement was null and void, in T.S. No. 23 of 1968, the learned single Judge granted a declaration that the agreement was null and void. The findings of the learned single Judge and the consequent declaratory relief granted by him to the Digambars, are in serious challenge in these appeals.

49. We will, first of all, deal with the challenge to the allowing of the amendment to the written statement of the State. The State, as we have noticed, was impleaded at a later stage in the suit. Even though the State was impleaded, no relief was claimed against the State. The State filed a routine written statement admitting that an agreement dated 5.2.1965 was entered into and indicating that the rights of parties are governed by that agreement. But the State did plead that the rights of Anandji Kalyanji Trust over the property had vested in the State under the Bihar Land

Reforms Act. After pleading that the agreement was perfectly valid and had been acted upon and that it was entered into out of deference to the religious sentiments of the Community, it was also pleaded that the agreement was in substitution of the statutory compensation payable under the Bihar Land Reforms Act. It was also pleaded that the entire estate including the Hill vested in the State of Bihar, as provided in Section 4(6) of the Bihar Land Reforms Act and also as provided u/s 4(f) of that Act. It was stated that by virtue of that vesting, the collector was to take charge. But he actually did not take charge of the institution which was held to be sacred by the Jain Community, or the Trust or buildings connected therewith which were managed and controlled by Seth Anandji Kalyanji Trust. It was also pleaded that in terms of the agreement, an area of half a mile radius around the temples, which had been taken charge of, had been excluded from the boundaries of the protected forests of the Parasnath Hill and they were admitted to be in the exclusive possession of Seth Anandji Kalyanji Trust. What was attempted to be done by the amendment was to introduce the plea that the agreement was hit by the Bihar Land Reforms Act and that the State was misled into entering into that agreement, since it was misrepresented by Anandji Kalyanji Trust that it was the representative of the entire Jain Community, whereas it was only a representative of the Murti Pujak Community of Jains representing only a faction of the Swetambaris. As we have noticed, even though the State did not specifically plead that the agreement was void in its original written statement, the said plea was raised by defendants 1. to 6 against whom reliefs were claimed by Anandji Kalyanji Trust on the basis of that agreement. When the suit was filed on the basis of the agreement by the plaintiff, it was open to the defendants to defend that suit by pleading that the plaintiff could found no cause of action on that agreement, since that agreement was against a law in force, was opposed to public policy and was void in law. This was what the Digambaris did in their written statement and the aspect was covered by a specific issue. The Digambaris had also filed Title Suit No. 23 of 1968 for declaration that the agreement was null and void and that suit was jointly tried with the suit filed by Anandji Kalyanji Trust. Therefore, the issue whether Ext. 9(a) agreement entered into by the State of Bihar and Anandji Kalyanji Trust representing the Murti Pujak Jain Community, was valid or was null and void in view of the provisions of the Bihar Land Reforms Act and for other reasons had necessarily to be decided. To that extent, the plea of the State sought to be introduced by an amendment to the written statement was nothing new. Similarly, the plea of the State that the agreement was opposed to public policy and hence unenforceable was also a plea that arose in the light of the pleadings of the Digambaris and was a plea which could be entertained even by an Appellate Court for the first time in an appropriate case. A plea based on public policy could be entertained even without a specific plea in the pleadings since a Court is not expected to ignore public policy or violation of a statute to grant relief to a party. Therefore, to that extent also, the permission granted for amending the written statement by the State could not be faulted. But the position may be different regarding the plea of mutual mistake and

misrepresentation sought to be pleaded by the State in its amended written statement. These were pleas that depended on the facts to be pleaded and in terms of Order VI, Rule 4 of the Code of Civil Procedure, the State had to set out in its pleadings the facts on which those pleas were sought to be sustained. The allowing of the amendment in respect of those aspects cannot be found to be sustainable in the facts and circumstances of the case. To that extent, we find merit in the contention raised on behalf of the appellants when it is submitted that even if such an amendment incorporating pleas of mistake and misrepresentation was being allowed, the matter could have been finally decided in the Appellate Court and the suit should have been remanded for a proper decision on those questions in the light of the additional written statement that may be filed by Anandji Kalyanji Trust and the case that may be tried on the basis of that pleading. But as regards the plea that the agreement in an illegal contract being against the Land Reforms Act in force and that it is opposed to public policy, no new material was needed and all the materials were already on record and the case would be finally decided at the appellate stage.

50. Learned senior counsel appearing for the Digambaris tried to argue that it was open to defendants 1 to 6 plead that the agreement between Anandji Kalyanji Trust and the State Government was vitiated by misrepresentation on the part of Anandji Kalyanji Trust. What was contended was that Anandji Kalyanji Trust had held out to the State that it was the sole representative and protector of the Jain Community which had a right of worship in the places worship on top of the Hill and this was contrary to its own case, as can be seen from the evidence in the case. Counsel also submitted that the litigation, though in the form of suits in the civil Court was in a sense, a public interest litigation and in such a litigation, it was open to the Digambaris to challenge the agreement on all available grounds including the grounds in law available to the State, the other party to the agreement. Counsel also pointed out that the argument based on public policy and the doctrine of public trust could clearly be raised by the Digambaris and in that context, they could also raise a plea that the agreement sought to be enforced against them, in the sense of claiming reliefs based on that agreement, could be resisted by the Digambaris by pointing out that the agreement was procured by Anandji Kalyanji Trust by misrepresentation of facts, by misleading the Government and by playing a fraud on the State Government and the citizens of the State.

51. It appears to us that the plea of fraud and voidness of an agreement stands on a different footing from a case of misrepresentation or mutual mistake. The case based on misrepresentation or mutual mistake can only make the transaction voidable and it was for the State to plead the relevant facts and to seek to avoid the transaction. Therefore, the argument on behalf of Digambaris does not appear to be sustainable for upholding the plea that the amendment of the written statement in its entirety was rightly allowed by the single Judge. We think that allowing of the amendment to the extent it raised the plea that the agreement, Ext. 9(a), would tend

to defeat the Land Reforms Act, that it was opposed to public policy and was vitiated by fraud, --whether this plea has been substantiated is a different question, --was justified. But to the extent the amendment of the written statement regarding the plea of misrepresentation and of mutual mistake was sought to be raised, the amendment of the written statement could not have been allowed. Even if allowed, Anandji Kalyanji ought to have been given an opportunity to meet that case, if the Court found that the pleading was adequate. To that extent, we interfere with the decision of the learned single Judge. We may also notice that as regards the plea of misrepresentation and mistake, obviously, a fresh trial would be warranted since facts will have to be pleaded and established in support of those pleas and the State has to show not merely a unilateral mistake, but a mutual mistake, which alone could vitiate the agreement. But this fresh trial will be unnecessary, if we agree with the learned single Judge, on the other aspects.

52. In the view we have taken as above, we have necessarily to consider whether the agreement was one which would tend to defeat the Bihar Land Reforms Act and hence illegal or was void in law being opposed to public policy, being in the teeth of the provisions and the scheme of the Bihar Land Reforms Act and whether it was vitiated by fraud practiced on the State. The Trial Court had held that the agreement was void in part to the extent there was a provision for sharing of profits from the vested lands (the forests) in the ratio of 40:60 between the State and Anandji Kalyanji Trust. But the Trial Court proceeded to uphold the rest of the agreement, more or less, on the basis that Digambaris were estopped from questioning the validity of the agreement in view of the fact that they themselves had entered into Ext. D/1 agreement acknowledging the existence of Ext. 9(a) agreement and seeking to get clarified that their rights would not be affected by Ext. 9(a) agreement. The learned Appellate Judge has differed with the Trial Court on this aspect and has found that there could be no estopped against the statute and there could be no estopped against Digambaris from raising the contention that the agreement on the basis of which reliefs are claimed against them, is void in law, being opposed to public policy. The learned Judge also affirmed the finding of the Trial Court that the clause relating to sharing of profits from the vested lands was void. He has also found that the stipulation that no compensation would be payable under the Bihar Land Reforms Act to the proprietor of the estate, would be against the statutory scheme and the specific provisions of the Act and hence void in law and opposed to public policy. The learned Judge consequently declared in Title Suit No. 23 of 1968, that the agreement was null and void.

53. No serious attempt was made before us to challenge the finding of the Trial Court, affirmed by the learned single Judge, that the agreement in so far as it related to the sharing of profits of the forest lands which had vested in the State u/s 4 of the Bihar Land Reforms Act, was void in law. We have already held that the entire land, other than 0.86 acres covered by Khewat 7 had vested in the State. Once there is vesting of the lands in the State, one has to look at the provisions of the Act

to find out whether any authority constituted under the Act, or the State Government had a right to divest itself of the land so vested. One has to search in vain for finding such an enabling provision in the Bihar Land Reforms Act. In fact, there was no argument that there was such a power. What was sought to be contended was that the right to enter into such an agreement was traceable to the Government Grants Act, or to Article 298 of the Constitution of India and the State, as the sovereign, was free to enter into such an agreement and give back the land to the person from whom it was taken on the basis of the notification issued u/s 3(1) of the Act, we must notice that there is no plea based on Government Grants Act either in the plaint in T.S. No. 10 of 1967 or in the written statement in T.S. No. 23 of 1968. We find that the agreement Ext. 9(a) does not trace the source of power as the Government Grants Act. But it is seen from Ext. 27, the discussions that preceded the execution of the agreement that the agreement was contemplated as one u/s 38 of the Indian Forests Act. If one were to treat it as an agreement u/s 38 of the Indian Forests Act, obviously it could not cover or remove the effect of vesting under the Bihar Land Reforms Act. Moreover, the Government Grants Act only provides, by Section 2 thereof, that even if any restriction is imposed in a grant made by the Government, the grant would be construed on its terms and Section 3 only keeps off the effect of the Transfer of Property Act on some of the aspects. That this is the scope of the Government Grants Act is clear from the decision of the Privy Council in AIR 1946 127 (Privy Council) , and the decision of the Supreme Court in the The State of U.P. Vs. Zahoor Ahmad and Another, . In that decision, it was held that the mere fact that the State was the lessor in a case, by itself would not make that lease a Government Grant within the meaning of the Government Grants Act. There was no evidence, in that case, of the character of the land or of the making of the lease or in the contents of the lease, to support a plea that it was a grant within the meaning of the Government Grants Act. It was also stated that the meaning of Sections 2 and 3 of the Government Grants Act was that the scope of that Act was not limited to affect the provisions of the Transfer of Property Act only. The Government had an unfettered discretion to impose any condition, limitation or restriction in its grants. In The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, , the Supreme Court has held that the object of the Crown Grants Act as declared in the preamble was to remove certain doubts as to the extent of the operation of the Transfer of Property Act and as to the power of the Grant or to impose limitations and restrictions upon grants and other Transfer of lands made by it or under its authority. Section 2 indicated that the provisions of the Transfer of Property Act did not apply to Crown Grant. Section 3 was a declaration that all provisions, restrictions, conditions and limitations shall take effect according to their tenor. Their Lordships quoted with approval the following observations from Jagannath Baksh v. United Provinces AIR 1996 PC 127.

"These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of

Property Act, 1882, and must be read with reference to general context and could not be construed to extend to the relations between a sanad-holder and his tenant. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution Act."

Their Lordships proceeded to say that Section 3 must also be construed in the light of the preamble and so construed, it could not, for the reasons given, have any bearing on the rights of the parties.

54. As we have noticed, there was no plea based on the Government Grants Act and the factual foundation for raising that plea had not been laid by Anandji Kalyanji in its pleadings as held necessary by the Supreme Court in The State of U.P. Vs. Zahoor Ahmad and Another, . The Government Grants Act would only enable Anandji Kalyanji to contend that the rule against perpetuity may not hit the transaction or that some of the other restrictions imposed by the Transfer of Property Act may not have effect on the agreement. It would not enable it to contend that the State had absolute freedom under the Act to give away public property or the property that vested in the State by the operation of a statute, the Bihar Land Reforms Act.

55. As regards the reliance placed on the power available under Article 298 of the Constitution of India, it appears to us that the said power is not unlimited or un-canalised. The power cannot be exercised in derogation of the provisions of the Bihar Land Reforms Act, or to nullify the effect of an Act of the Legislature. Moreover, as the estate had vested in the State, it cannot give away the property, since the doctrine of public trust compels the Government to dispose of the property only for market value or as envisaged by the Act. Obviously, the intention behind the abolition of zamindari and the take over of estates and intermediary rights was the distribution of land among agricultural labourers, village artisans and marginal farmers and the alleged executive power could not be exercised to nullify the object sought to be achieved by the Bihar Land Reforms Act. The State cannot also give back to the erstwhile proprietor the vested land and that too, against the terms of the ceiling law enacted. It is, therefore, not possible to accept the argument that there was unfettered power to the executive to give away the estate vested in it under the Bihar Land Reforms Act, in effect, nullifying the provisions of the Act as regards one proprietor whose estate has vested in the State. Acceptance of such an arbitrary power in the State would also result in breaching the frontiers of Article 14 of the Constitution of India. We are, therefore, of the view that the agreement cannot be shielded from attack by placing reliance on Article 298 of the Constitution of India.

56. We have held that the estate, namely Parasnath Hill, other than 0.86 acres covered by Khewat 7 containing places of worship, had vested in the State under the notification issued u/s 3(1) of the Act. We have also held in agreement with the learned single Judge that possession had also passed to the State on the vesting in terms of Section 4(f) of the Act. The State is deemed to have assumed management

of the property in terms of Section 4(f) of the Act. We have also noticed that there is nothing in the Bihar Land Reforms Act which prevented the properties of a religious trust vesting in the State as held by the decision of the Patna High Court referred to earlier. It is in this background that we have to consider whether the agreement, Ext. 9(a) can be held to be valid or enforceable at the instance on Anandji Kalyanji Trust.

57. We do see some force in the submission on behalf of the Digambaris that Anandji Kalyanji Trust apparently induced the State to enter into the agreement, Ext. 9(a), by holding out that it represented the entire Jain Community. What was recognized by the decision of the Privy Council was the right of the Jains to worship in the tonks, temples and Charans on the Hill and, at best, the right of the Jain Swetambar Society or the Swetambaris in general, to be in the management of all the shrines with an unfettered right in the Digambaris to carry on their worship in 20 of the tonks and the temple of Gautam Swamy and the dharamshalas they were thus maintaining. To the extent the agreement proceeded as if Anandji Kalyanji was the sole representative of Swetambar Jain Community or of the Jain Community itself, it must be stated that the agreement was based on a misunderstanding on the part of the State as to the correct position. May be, that was the result of misrepresentation on behalf of Anandji Kalyanji. But as we have noticed, the case of misrepresentation or mistake (it has to be shown to be a mutual mistake) could not be pursued by the State or the Digambaris in the absence of an adequate plea by the State in that behalf. We are also not certain that except to a limited extent, the Digambaris are entitled to challenge Ext. 9(a) agreement on the ground that it is vitiated by misrepresentation or mutual mistake, a defence that might have been open to the other contracting party. But that does not preclude the Digambaris from raising a contention that the agreement was illegal and was opposed to public policy it being against the scheme of the Bihar Land Reforms Act and it having the effect of defeating the Act itself. Under the Act, all estates and intermediary rights, including forests vested in the State on a notification u/s 3(1) of the Act being issued and/or on a notification u/s 3(a) of the Act being issued. Nothing stands in the way of even a religious institution or a Haat or a bazaar vesting in the State under the Act. The decisions on the question rendered by the Patna High Court and the Supreme Court in that behalf support this position. Therefore, the mere argument that Anandji Kalyanji was a Trust, does not enable it to contend that its lands are immune from the effect of the Bihar Land Reforms Act. Moreover, in this case, after the possession was taken pursuant to the notification u/s 3(1) of the Act earlier issued, Anandji Kalyanji Trust attempted to challenge the same in Supreme Court by filing a writ petition in that behalf, but that petition was withdrawn with liberty to file a writ petition in the High Court by invoking Article 226 of the Constitution of India. The facts remains that Anandji Kalyanji Trust did not file a writ petition challenging the vesting or the taking of possession by the State. On the other hand, it is seen that Anandji Kalyanji applied for compensation under the Act, as if it was the owner,

just like any other individual, though, at a later stage, it raised a claim that it was entitled to annuity, since it was a Trust. In other words, no claim either under the Act or a challenge under Article 226 of the Constitution of India, was pursued by Anandji Kalyanji with the result that the notification, the vesting, the assumption of charge and the taking of possession under the Act, all became final as regards the Parasnath Estate notified under the Act. Any action by the State to divest itself of the estate in the teeth of the scheme for payment of compensation contained in the Bihar Land Reforms Act and in the absence of any provision in that Act for returning of the land to the owner has to be held to be against the terms, intent and purpose of the Act. Therefore, it must be held that the agreement to re-surrender the lands to Anandji Kalyanji is against the mandatory provisions of the Statute, defeated the provisions of the Act and even otherwise, it was opposed to public policy, having the result of jettisoning the entire scheme of the Bihar Land Reforms Act.

58. Once the land vested in the State, the Land is held by the State in public trust. State is not entitled to distribute or give away the land. That the doctrine of public trust has application is clear from the decisions of the Supreme Court in Sri Bagawati Tea Estates Ltd. and Another Vs. Government of India and Others, , and M.C. Mehta Vs. Kamal Nath and Others, . It is also clear from the decisions that the land which had become the property of the State could not be given away except for its market value, if it was permissible on the scheme of the Act [see State of Kerala and others Vs. M. Bhaskaran Pillai and another, . Therefore, the agreement entered into by the State not only goes against the scheme of the Bihar Land Reforms Act, but it also violates the doctrine of public trust. To that extent, the agreement entered into by the State and Anandji Kalyanji Trust is unenforceable being opposed to public policy. It must also be held to be one that tended to defeat the Bihar Land Reforms Act. The Trial Court struck down the clause in the contract stipulating that out of the profits from the forests, 60 percent will be taken by Anandji Kalyanji Trust and the balance 40 percent alone will be taken by the State, as being clearly violative of the Scheme of the Bihar Land Reforms Act. The Trial Court found the said clause in the agreement to be invalid and declared it so. This was not sought to be seriously challenged on behalf of Anandji Kalyanji Trust either before the learned single Judge or in the course of arguments before us. The argument proceeded as if the attempt was to save the 397 acres ceded under Ext. 9(a) agreement to Anandji Kalyanji Trust by the State. It must be noticed that the total extent of Parasnath Hill was about 16,000 acres and except for a small portion at the top, which is seen to be 0.86 acres, the rest was the forest. Therefore, the estate that vested in the State was the forest. The State was entitled to the entire income from this forest and was liable to pay compensation to Anandji Kalyanji in terms of the Act. As regards the entire extent, including the 397 acres sought to be given free to Anandji Kalyanji, the State forfeited its right to the property and instead of paying the compensation statutorily payable, decided to share the profits with Anandji Kalyanji, Anandji Kalyanji being the major sharer of the profits. As regards the 397 acres, there was not even a

sharing of profits. In other words, the clause relating to almost the entire property, other than the places of worship, has been found to be invalid by the Trial Court and by the learned single Judge, though the Trial Court proceeded to say that Anandji Kalyanji could be recognized as having right and possession over 397 acres ceded by the State under Ext. 9(a) agreement. Once the clause relating to almost the entire property has been found to be invalid, it appears to us that the whole of the agreement would have to be declared to be invalid since the rest of the property was simply given away by the State when it had right to that property and it had an obligation to pay compensation as fixed by the Act. We cannot understand the clause that has been struck down by the Trial Court as separable or severable from the entire transaction. When even the clause relating to sharing of profits is found invalid, how can the provision for giving away 397 acres free be sustained? The answer is obvious. In view of this, the invalidity of the clause relating to almost the entirety of the property would mean that the entire agreement must be found to be illegal and void. This is in addition to the fact that the agreement is bad, since it is* against the terms of the Bihar Land Reforms Act and the scheme of that Act. What we are pointing out is that on the finding that the clause relating to the property, other than the 397 acres, is invalid, the rest of the agreement cannot survive and the whole of the agreement has to be treated as null and void. At this stage, we cannot also forget that the rights that were recognized by the Privy Council were of the Swetambar Jains or of the Jain Swetambar Society and Anandji Kalyanji Trust, the plaintiff in Title Suit No. 10 of 1967 entered the picture only in the year 1918 after taking an assignment of the rights of Raja of Palganj, after the Privy Council had held that the title to the Hill vested with the Raja. The land is now being given away to Anandji Kalyanji representing at best, the Murti Pujak Community of Swetambar Jains. In other words, Anandji Kalyanji does not even represent the Entire Swetambar Jain Community. It is pointed out that almost 70 to 80 per cent of Jains are Digambaris and among the 20 to 30 per cent of Jains who are Swetambaris, the Murti Pujak Jains are only in a minority. When places of worship on the Hill are available for the entire Jain Community for worship, the executive cannot make over the land to the representative of a faction in the manner in which it was done. The agreement from that angle appears to be unconscionable and is not one which could be upheld by a Court. Anandji Kalyanji, the plaintiff, has based its cause of action on such an agreement and, in our view, on the principle stated in Holman v. Johnson, ex-dolo molo non oritur actio, Anandji Kalyanji cannot maintain the action.

59. It is no doubt true that the State of Bihar sought to raise this contention only at a belated stage by seeking an amendment of the written statement and that was disallowed by the Trial Court. But the learned single Judge, in our view, was right in allowing that part of the amendment of the written statement sought for by the State. Firstly, that issue had already arisen and had been tried in the suit in the light of the pleadings of the Digambaris. Secondly, the plea that the transaction would tend to defeat the Bihar Land Reforms Act and that it was opposed to public policy

are ones that could be raised even in the appellate Court and even without specific pleadings in that behalf. Actually, once such an aspect is raised, it is the duty of the Court to consider whether the agreement relied on was one against a statute of against public policy and whether it was proper to grant relief to the party suing on the basis of such an agreement. Since the agreement, in our view, is void in law, we are satisfied that Anandji Kalyanji could not seek any relief based on the agreement. Neither the Digambaris nor the State can be estopped from raising such a plea based on opposition to public policy, or based on violation of a legislation brought in as an agrarian reform. The Trial Court held that defendants 1 to 6 were estopped from raising the contention that Ext. 9(a) agreement was invalid. This is on the basis that defendants 1 to 6 had entered into a subsequent agreement with the Government along the same lines as Ext. 9(a) seeking to protect their rights of worship. But we must notice that no land was given away to the Digambaris by Ext. D/1 agreement. Moreover, the Digambaris had not held out anything to Anandji Kalyanji and Anandji Kalyanji had not acted on that representation to its detriment. The subsequent conduct of the Digambaris in entering into Ext. D/1 agreement also does not amount to a representation estopping them from questioning the validity of the agreement relied upon against them. Then other aspect relied on is that defendants 1 to 6 had applied for permission to put up a construction for the benefit of Digambari pilgrims based on the two agreements. The learned single Judge held that in a case like the present one, there was no question of an estoppel. The question of estoppel was considered by the Division Bench of the Patna High Court in State v. Raja B.K.N. Singh 1961 BLJR 446, with reference to the Bihar Land Reforms Act and a notification issued u/s 3, or 3-A of the Act. The Court had held that the State could not be bound by a wrong representation about the operation of Section 3 or 3-A of the Act and the there could be no estoppel against the statute and there was no estoppel against denying the title of the plaintiff who has based his claim on the acts of the authorities under the Act, which were found to be invalid.

60. The finding of the Trial Court that the Digambaris were estopped from challenging the agreement Ext. 9(a) was commended for our acceptance. It was contended that by entering into Ext. D/l agreement dated 5.8.1966, the Digambars had recognised the existence of the agreement Ext. 9(a) entered into the Anandji Kalyanji and had also bargained for the right on the basis of that Ext. 9(a) was a subsisting agreement which was said to estop Digambaris from challenging the transaction. The Trial Court in a cursory manner upheld the plea of estoppel as against the Digambaris. It must be noted that Digambars were not a party to Ext. 9(a) agreement. At best, what the Digambars had done was that they entered into another agreement with an idea of protecting their rights by acknowledging that the State had entered into an agreement with Anandji Kalyanji ceding to Anandji Kalyanji certain rights over the places of worship and some extent of land surrounding It. By entering into such an agreement, it is not possible to say that Digambars are estopped from pointing out that Ext. 9(a) entered into by Anandji

Kalyanji with the State Government was one that would tend to defeat the provisions of the Land Reforms Act or is a fraudulent attempt to get over the effect of a welfare legislation like the Bihar Land Reforms Act or that it was one opposed to public policy. First of all, it is well known that there could be no estoppel against a statute. A plea based on violation of a statute or violation of an agreement being opposed to public policy could not be rejected on the ground of any estoppel. The mere recognition of the fact that Anandji Kalyanji had intended an agreement with the Government by Digambars in view of their entering into D/l agreement, cannot enable Anandji Kalyanji to found a case of estoppel as against the Digambars or justify the claiming of reliefs based on an agreement which is found to be otherwise illegal and opposed to public policy. Learned single Judge, in our view, was fully justified in holding that there was no question of the Digambars being estopped from questioning the validity or enforceability of Ext. 9(a) agreement as them.

61. The State, of course, was the other contracting party in Ext. 9(a). In the original written statement, the State had no attacked the agreement. But by way of an amendment, the State attacked the agreement on the ground that the agreement, if recognised, would defeat the provisions of the Land Reforms Act and on a further ground that it was one opposed to public policy. These the two pleas are pleas that could be raised even in the Appellate Court for the first time and even without being raised in the written statement. These pleas were also sought to be raised by the State by way of amendment of the written statement in the Trial Court, though somewhat belatedly. But we find that the learned single Judge was justified in allowing that part of the amendment of the written statement. When one contracting party ceased to abide by a contract on the ground that it is illegal being one, if permitted to stand, would defeat the provisions of the Bihar Land Reforms Act and on the other, that it was opposed to public policy, a plea of estoppel cannot successfully be raised by the other contracting party. A Court of law, confronted with a question whether an agreement was illegal, being one that would lend to defeat the provisions of the enactment brought forward as an agrarian reform in furtherance of promoting even distribution of wealth, or on the ground that it was opposed to public policy, could not grant relief to the contracting party relying on the agreement by invoking a theory of estoppel against the other contracting party. In such a situation, it is the duty of the Court to refuse to enforce the agreement or give effect to that agreement. Therefore, the argument that the State was estopped from challenging the agreement or from resiling from it cannot be accepted in the circumstances of the case. The learned single Judge, in our view, was Justified in rejecting this contention as a whole.

62, When by operation of a statute and exercise of power thereunder, the properties have come to vest in the State, the State cannot, by a private treaty, return a part of that property to the person against whom the Act was applied and action was taken. Such a private treaty cannot be recognised by the Court on the ground that having entered into such a treaty, the Government was estopped from pleading that the

said treaty was opposed to public policy or if it is allowed to stand, it would tend to defeat the provisions of the Land Reforms Act. In this context, we have to notice again that the Trial Court had found that one of the essential terms of the agreement regarding sharing of profits of the forest lands was illegal and unenforceable and had declared it void. No serious attempt was made to challenge that finding either before the learned single Judge or before us. In fact, learned senior counsel appearing in LPA No. 332 of 1997 specifically submitted that he was not questioning that finding but was accepting it and arguing the appeal on that basis. Once part of the agreement has thus been found to be illegal and opposed to public policy, there could be no estoppel in challenging the agreement in so far as it relates to another portion of the agreement. In the light of the finding by the Trial Court which was not seriously disputed either before the learned single Judge or before us that one of the essential terms of the agreement was illegal and void, the plea of estoppel sought to be raised is found to be unsustainable.

63. Senior counsel argued that Ext. 9(a) was entered into by the State and Anandji Kalyanji Trust by way of a settlement of a disputed claim and hence it could be sustained as a compromise. When a Government does something against the scheme of a Legislation, like the Bihar Land Reforms Act and in violation of public policy, and breach of the doctrine of public trust and gives away the property of the State, it is doubtful whether such a plea can prevail to validate the agreement. Here, there was a vesting by virtue of the notification issued as early as on 2.5.1953 and nothing was done by Anandji Kalyanji to challenge that notification. Of course, on 19.11.1952 Anandji Kalyanji had entered into Ext. 9 agreement u/s 38(1) of the Indian Forest Act agreeing for the management of forests described as having an extent of 12,308.48 acres, 19.23 squire miles, by entrusting it to the Government for management. But the issuance of the notification u/s 3(1) of the Act changed the picture and brought about an extinguishment of the right of Anandji Kalyanji over the entire extent purchased by it from the Raja of Palganj and obtained by it on lease from the Raja of Nawangarh, including the forest earlier entrusted for management to the Government. Whatever doubt there might have been about the extinguishment of the right, stood removed by Annexure A/II notification dated 26.1.1955 issued u/s 3-A of the Act. The estate and/or the intermediary rights of Anandji Kalyanji had thus clearly vested in the State in terms of the Act and the State could dispose of that estate only in accordance with the relevant provisions of the Land Reforms Act. There is no provision in the Bihar Land Reforms Act which enabled the State to give away the land or the estate vested in it, to a person from whom it was taken. The Government could only pay compensation as envisaged by the Act and could possibly distribute the land among the deserving as envisaged by the concept of land reforms introduced in the country and as explained by the Supreme Court in various decisions. Therefore, on the face of it, an attempt to return an area of about 397 acres to the person from whom it was taken is found to be against the scheme of the statute and is also opposed to public policy underlying

the enactment of the Land Reforms Act. As we have noticed, the notification Ext. K/1 dated 2.5.1953 was never challenged by Anandji Kalyanji in any mode known to law. May be, they were raising claims before the Government that the land involved contained their places of worship. But that is different from saying that there was a challenge to the vesting notification issued under the Act. It is seen from the evidence that even the Chief Minister was moved by Anandji Kalyanji and the Chief Minister, in the presence of the representative of Anandji Kalyanji, rejected the claim of Anandji Kalyanji. It was thereafter that a direction was given to the Collector to take possession and the Collector, the authority under the Act to take possession of the vested land, took possession of the land described as the Parasnath Hal Forest in Touzi No. 20/1.. Even this taking of possession was not effectively challenged by Anandji Kalyanji, though it attempted a writ petition to the Supreme Court, but withdraw the same with the liberty to move the High Court. An argument that the withdrawal was not only with a view to move the High Court under Article 226 of the Constitution of India, but was because of the negotiations going on with the Government, is not supported by any legal evidence. Even assuming that it has any relevance, the fact that is to be noted is that no writ petition was filed in the High Court and the whole proceeding under the Act was permitted to become final. It is thereafter that the State purported to enter into Ext. 9(a) agreement with Anandji Kalyanji Trust. The theory of the existence of a dispute and a settlement of a disputed claim propounded by senior counsel in an attempt to salvage the agreement cannot be accepted in the circumstances. The position was clear and that was that the estate had been lost to Anandji Kalyanji under the Land Reforms Act. There was not even a valid subsisting claim by Anandji Kalyanji pending in any Court of law or before any authority under the Act.

64. The Act has not conferred any overriding power on the State Government. The State Government cannot act against the Land Reforms Act and the scheme. It cannot also ignore the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 under which a maximum limit was fixed in respect of land which could be held by a person and as regards a Trust, assuming that Anandji Kalyanji was a Trust, the maximum extent it could hold was only 45 acres. Therefore, by no stretch of imagination, an extent of 397 acres could be ceded to Anandji Kalyanji, the erstwhile intermediary or landlord, or could be returned to it by the Government, violating the provisions of the Land Reforms Act and inconsistent with the public policy underlying that Act. The scheme for payment of compensation cannot be jettisoned by returning a part of the extent, or the whole of it, in lieu of compensation. An agreement which is against the terms of a statute is an illegal agreement incapable of conferring any right on a party seeking to derive benefits from such an agreement. There could be no estoppel against the other contracting party when an agreement is found to be illegal. The theory of settlement of disputed claims cannot also prevail over such an illegality. Therefore, the argument that the agreement could be upheld as a settlement of a disputed claim

has to be rejected both on the ground that there was no legal subsisting dispute about the vesting and on the further ground that an illegal contract could not be sustained on the basis of the theory of a compromise propounded on behalf of Anandji Kalyanji. The compromise being illegal, would itself be invalid. Therefore, we overrule that argument.

65. In our view, the learned single Judge has correctly dealt with the questions of estoppel and validity of Ext. 9(a) agreement. We, therefore, confirm his findings on these aspects.

66. An argument was raised that the Anandji Kalyanji was entitled to relief based on adverse possession. There was no issue raised based on adverse possession in the Trial Court. The learned single Judge in appeal rejected the plea based on adverse possession sought to be raised before him by pointing out that it was a mixed question of fact and law and Anandji Kalyanji not having raised this plea in the pleadings or at the time of arguments in the Trial Court, could not be permitted to agitate the plea for the first time. The learned Judge also held that there was no question of Anandji Kalyanji having perfected a right or title by adverse possession, since it was dispossessed after the vesting under the Land Reforms Act. The plea was also not tenable in the light of the agreement, Ext. 9(a) entered into by Anandji Kalyanji. The learned Judge also observed that the plea was being raised as an afterthought. We are Inclined to agree.

67. It is sought to be argued that the plea of adverse possession arises out of the plea of the Digambaris and the State that the agreement dated 2.5.1965 was void. The fact that there was no specific pleading in the plaint in T.S. Nos. 10 of 1967 and in the written statement in T.S. No. 23 of 1968 was not material since the plea was being raised only in answer to the case set up in defence by the other side. The facts necessary for establishing a plea of adverse possession have been supplied by the defendants in T.S. No. 10 of 1967 and on that basis, the plea could have been upheld by the learned single Judge. We find it difficult to appreciate this contention. A case of adverse possession or acquisition of title by prescription, has to be specifically pleaded and proved. An animus to hold the property against the true owner by disclaiming the title of the true owner, is necessary. There must be clear evidence of hostile possession for well over the statutory period. These elements cannot be gathered from the written statement or the defence raised by the opposite parties. These are facts to be pleaded and established by a plaintiff seeking to rest his case on adverse possession. Moreover, after the vesting of the right, title and interest of Anandji Kalyanji in the State, by virtue of the notification Ext. K/I. Anandji Kalyanji was dispossessed in April, 1964 and we have agreed with the learned single Judge in holding, that possession was taken under the Land Reforms Act. The suit was filed in the year 1967, three years after such dispossession. On the facts and on the findings rendered, it is impossible to conceive of a case of adverse possession. Once the possession is lost by the possessor to the true owner, no question of any adverse

possession arises as against the true owner. Moreover, hostile possession for over 30 years has to be established against the State. The notification Ext. K/I was itself only on 2.5.1953. Thus, the plea based on adverse possession appears to be totally untenable. The claim that Anandji Kalyanji was in open, continuous and uninterrupted possession and enjoyment of the property is a plea that cannot be appreciated in the context of the fact that Anandji Kalyanji was the owner of the property having acquired the same from the Raja of Palganj and was holding it on its own title, which title, of course, stood divested by the notification issued u/s 3(1) of the Bihar Land Reforms Act. There was also dispossession as found by the learned single Judge and as found by us earlier. Therefore, even if Anandji Kalyanji had any possession of any extent of the land that vested in the State, it could only be based on Ext. 9(a) agreement dated 2.5.1965 and such possession cannot ripen into adverse possession or a prescriptive title within two years. The learned single Judge was therefore fully justified in rejecting the case of adverse possession sought to be argued for the first time before him. We therefor, overrule this contention.

68. It was argued that the suit of Anandji Kalyanji. T.S. No. 10 of 1967, could be decreed without anything more, on the basis of the pleas in defence. This argument again is not seen to be acceptable. When the entire Jain Community of India has a right to worship in the majority of the tonks and charans on the Hill in its own right, the exercise of that right cannot be interfered with and it is that right that the Digambars have put forward in their defence. The case of the plaintiff is based on agreement, Ext. 9(a), and once that agreement is found to be illegal, being opposed to the Bihar Land Reforms Act and one opposed to public policy and the doctrine of public trust, it necessarily follows that Anandji Kalyanji is not entitled to any relief in its suit. There is no plea based on possessory title set up in the plaint and if the State is found to be the true owner on the basis of the vesting, no relief based on possessory title could be granted against the true owner, once the Court finds that the agreement entered into is void in law. Moreover, as we have noticed earlier, no relief is claimed against the State. What is sought to be done is to enforce the right based on a void agreement as against the Digambaris. Whatever may be the contents of the rights of the Digambaris, Anandji Kalyanji cannot get any injunction restraining Digambaris in the circumstances, de hors Ext. 9(a) agreement, since the earlier right recognised of managing the temples, tonks and charans was that of the Jain Swetamber Society, distinct from Anandji Kalyanji Trust which represented only the Murti Pujak Jains forming only a part of the Swetambar Sect. Therefore, this argument on behalf of Anandji Kalyanji has also to be negatived.

69. Coming to the appeal filed by the Digambaris, it is seen that the relief claimed by them in Title Suit No. 23 of 1968, in addition to the declaration that Ext. 9(a) agreement entered into by Anandji Kalyanji and the State is void, are a mandatory injunction directing Anandji Kalyanji to demolish some new constructions sought to be put up by it and a permanent injunction restraining Anandji Kalyanji from making any further construction in Parasnath Hill for a declaration that the Digambaris are

entitled to construct a dharamshala or a Rest House on the Parasnath Hill and restraining Anandji Kalyanji from interfering with the Digambars from enforcing any of their rights over the Hill. The Trial Court, --though it substantially dismissed the suit, --observed that Digambaris were justified in trying to put up a dharamshala for the convenience of the Digambar Jain pilgrims, but in view of the fact that the right to the Hill vested in Anandji Kalyanji, what the Digambaris could do was to put up the constructions only with the permission of Anandji Kalyanji. The Trial Court practically directed Anandji Kalyanji to grant such permission if it was applied for by Digambars. The learned single Judge rejected the claim for the relief since it was conceded by the senior counsel on behalf of the Digambaris that if Ext. 9(a) agreement was found void, equally, the Court had to find that the agreement D/1 entered into by the Digambaris with the Government was also void. In the light of this, we are not satisfied that a case for further relief has been made out by the Digambaris. But at the same time, it is clear that the unfettered right of Digambars to worship in 20 tonks, charans and the temple of Gautam Swamy, cannot in any manner be interfered with by Anandji Kalyanji representing the Murti Pujak Community of India. That right of the Digambaris are liable to be protected. But we are not inclined to disturb the refusal by the learned single Judge of not granting any other relief to the Digambaris than the one granted to them by the Trial Court. But in view of the finding that Anandji Kalyanji has no subsisting right over the Parasnath Hill in view of the vesting under the Land Reforms Act, the condition imposed by the Trial Court that permission of Anandji Kalyanji was necessary for construction of a dharamshala cannot be sustained. The learned single Judge, consisting with his finding should have modified this part of the decree. We hold that the Digambaris could put up a dharamshala not inconsisting with the mode of their worship, only with the permission of the Government in whom the land has vested. Of course, now that the Forest Conservation Act, 1980 has also intervened, no construction can be put up in the Parasnath Hill forest, without the prior consent of the Central Government as envisaged by Section 2 of the Conservation Act. This clarification alone is warranted in the suit filed by the Digambaris in addition to the relief already granted by the single Judge and which we have confirmed.

70. The title deed produced by Anandji Kalyanji, Ext. 7 as obtained from the Raja of Palganj, does not contain the description of the property sold by the Raja and purchased by Anandji Kalyanji. The document, Ext. 7 speaks of a map annexed to the deed of transfer, but that map or sketch containing the description of the property has not been produced by Anandji Kalyanji. In the plaint also there is no proper description of the property involved in the suit, except, as originally noticed by us, regarding the area in respect of which mandatory injunction is being sought for. The same is the position regarding the description of 397 acres said to have been made over to Anandji Kalyanji pursuant to the agreement dated 5.2.1965. It is somewhat surprising that the plaint containing an inadequate description of the property involved in the suit was entertained by the Trial Court. In a sense it appeals

to be too late in a day to deny relief based on such a defect. But the Court cannot forget this fact when it passes a decree for prohibitory injunction or declares or recognizes a right in the property. The Court cannot grant a decree in the absence of a proper description of the property in respect of which the relief is being granted. We may also notice that even in the suit, no attempt was made to take out a survey knowing commission for the purpose of identifying the disputed properties and to get it properly demarcated in a plan, so that the plan prepared by the Commissioner could at least be attached to the decree while clarifying the rights of parties. Suffice it to say that what we get ultimately is that an extent of 0.86 acres was excluded and that another extent of 46.28 acres was also separated from the forest area after the management of the forest was taken over on the basis that the said extent was also necessary for a proper up-keep of the places of worship. In the absence of a proper identification, the reliefs claimed by Anandji Kalyanji in T.S. No. 10 of 1967 cannot be granted.

71. Considering that the places of worship on top of the Parasnath Hill have been the subject of prolonged litigation between the two sects of Jains, it appears to us to be necessary to direct the State to make the necessary arrangements for the proper up keep and maintenance of the places of worship and also for providing reasonable amenities to the pilgrims to the Hill. Since the entire land other than 0.86 acres in Khewat No. 7 had vested in the State under the Bihar Land Reforms Act, the State has an obligation not only to pay compensation for the lands vested in the State under the Act, but also an obligation to ensure that the places of worship comprising 0.86 acres of land are properly maintained, administered and looked after. We think that it would be in the interests of all concerned, if we direct the State of Jharkhand which has come in, in the place of the State of Bihar to constitute a body for the proper management of the places of worship in Khewat 7 and the extent of 46.28 acres which was earlier considered necessary for the purposes of the places of worship. We may notice here that there is nothing to show that the Raja of Palganj had any title over the shrines, tonks and charans located in 0.86 acres in Khewat No. 7 and the Raja did not pretend to sell that extent or those structures to Anandji Kalyanji when he executed Ext. 7 sale deed in the year 1918. In that situation. It is difficult to find that the title to 0.86 acres vested in Anandji Kalyanji. The title over the rest of the property had vested in the State in terms of the Bihar Land Reforms Act. It is in that context that the State has the obligation to make arrangements for the convenience of the pilgrims consistent with the mode of worship in the shrines and without affecting the religious sentiments of the Jain Community as a whole.

72. It is true that as between the Digambar Jains and the Jain Swetambar Society, it was held by the Privy Council in AIR 1933 193 (Privy Council) , that the management of the shrines was being done by the Swetambar Society, but that the Digambari Jains had unrestricted right of worship as of right over 20 tonks, charans and the temple of Gautam Swamy, but that they had a right of worship in fur tonks and the

Jal Mandir only with the permission of the Jain Swetamber Society. The argument on behalf of the Digambaris that the Murti Pujak Swetambar Jains or the Jain Swetambar Society representing the Swetambaris did not have a right to impose their mode of worship on the Digambaris was upheld in that manner. These are aspects that have to be taken note of by a welfare State when dealing with the sacred places of worship of a Community like the Jain Community. As a beginning, the State can appoint an administrator for the places of worship to be assisted by a committee consisting of the representatives of the Digambari Community, the Jain Swetamber Society, the Anandji Kalyanji or the Murti Pujak Community and any other sub-sect of Jainism as deemed fit by the Government. It would also be appropriate to appoint the Collector of the District as the Chairman of the committee, so that he can keep a watch over the activities of the administrator and the committee assisting him. Such an arrangement would be in the Interests of all concerned and would also protect the interest of the Jain Community as a whole. Even an enactment along the lines of the Gurvayur Devaswam Act can be thought of, But what ultimately matters is that the State should ensure that all pilgrims to the places of worship on the Hills have the freedom to worship without departing from the traditions of that worship.

73. It may also be possible for the State to consider whether the management of 46.28 acres could not be handed over to the Committee to be constituted, at the same time ensuring that the same represents all the sects of Jainism and is not confined to the Digambaris or Swetambaris or the Murti Pujak Swetambars of the Jain Community or to other sub-sects of that Community. There is some indication that the extent of 46.28 acres was at one time demarcated and hence there may not be any difficulty in identifying that portion. If a statutory or administrative body is created for the management of the shrines and the places of worship, there should be no difficulty in handing over the management and possession of the said extent and the 0.86 acres in Khewat 7 to that body. Since in the suit, such reliefs are not prayed for and the suit are not ones u/s 92 of the Code of Civil Procedure, we refrain from framing a scheme ourselves and leave it to the Government to take the necessary steps. Consistent with our decision, the Government will have no difficulty in proceeding with the cancellation of the agreements dated 5.2.1965 and 5.8.1966 with the two groups of Jains for which steps were earlier initiated or for which even now steps can be initiated and completed. The State is directed to do so.

74. This leaves the State with an obligation to pay the compensation due under the Bihar Land Reforms Act to Anandji Kalyanji Trust. Proceedings for determination of compensation show that Anandji Kalyanji claimed it, but the proceedings were closed, because Anandji Kalyanji did not pursue its claim, presumably because of the agreement dated 5.2.1965. Since In agreement with the learned single Judge, we have held that the agreement dated 5.2.1965 is void in law, necessarily, Anandji Kalyanji cannot base any right on that agreement and is relegated to the position of an owner whose rights vested in the State by virtue of the notification u/s 3 of the

Bihar Land Reforms Act. It is for Anandji Kalyanji to work out its claim for compensation as envisaged by the Act.

75. It was argued on behalf of Digambars that there was no evidence on the side of Anandji Kalyanji to show that any part of the income from Parasnath Hill was ever utilized for the purposes of the places of worship on top of the Hill. Except stating that accounts of the Trust have been produced, no specific attempt was made to demonstrate that any part of the income from the Hill was, as a matter of fact, used for the purpose of maintaining shrines, tonks and charans on top of the Hill. It cannot be forgotten that the offerings (chadhawa) from the shrine was being taken by Jain Swetamber Society and, according to Anandji Kalyanji, by Anandji Kalyanji Trust. That income was also available with the Trust, if we go by the case put forward on behalf of Anandji Kalyanji. Whether such income was used for the construction of some charans or platforms and the Jal Mandir was a matter that required to be considered when considering the question of the source of the expenditure incurred. But on that aspect, there is not much evidence which would enable the Court to come to a definite conclusion whether the income was properly accounted for or not. It appears from the evidence of PW 11 that Anandji Kalyanji representing the Murti Pujak Jains was having a general account regarding its activities, some of which were charitable and which were spread all over the country. But it is not shown by evidence that any particular income was expended for the purposes of the places of worships in Parasnath Hill.

76. In the result, the appeals, LPA Nos. 332 to 336 of 1997 (R) are dismissed. LPA 346 of 1997 (R) is also dismissed, subject to the clarification regarding permission and subject to the suggestions made for State action. In the circumstance the parties are directed to bear their respective costs.

ORDER

Dated : 24.8.2004

Immediately after we pronounced the judgment, a request was made for staying the operation of our judgment. In the circumstances, we are not satisfied that there is any justification in doing so. May be, the First Appellate Court had granted an order of status quo when it rendered the judgment, but now that as far as this Court is concerned, the appeals have been finally decided, that fact by itself is that not a ground for acceding to the prayer. In the nature of the directions we have issued to the State, we feel that it would be better if the State acts as early as possible to protect the rights of all Jains. We reject the prayer.