

Dhaneshwarbuwa Guru Purshottambuwa, Owner of Shri Vithal Rukhamai Sansthan

Vs

The Charity Commissioner, State of Bombay

Civil Appeal No. 1231 of 1968

(P.K. Goswami, Syed M. Fazal Ali JJ)

01.03.1976

JUDGMENT

GOSWAMI, J. -

1. The question that arises in this appeal by special leave is whether Shri Vithal Rukhamai Sansthan at Amalner (East Khandesh) was a private devasthan or a public religious trust.

2. There was a saint endowed with spiritual powers by the name of Sakharam Maharaj at Amalner. The deity of his worship was Shri Vithal Rukhamai. Although the origin of the sansthan is dipped somewhat in antiquity and direct testimony was lacking, it has never been dispute that Sakharam Maharaj constructed a temple in the year 1817 at Amalner an installed the aforesaid deity according to religious rites. He also acquired certain properties and the said temple with the properties constituted Shri Vithal Rukhamai Sansthan of Amalner. The sansthan had movable property of the value of Rs. 19,164 and immovable properties of the value of Rs. 1,06,000 and the average gross annual income as well as the average annual expenditure was Rs. 11,000.

3. After the passing of the Bombay Public Trust Act, 1950 (No. 29 of 1950) (briefly the Act) an application under Section 18 of the Act was filed by three persons Bhaskarrao Chimanrao Deshmukh, Ramrao Sahebrao Deshmukh and Ramkrishna Tryambak Deshpande, as constituted attorneys of Vasudeobuwa who was described in the application as the "owner" of the property. The word 'buwa' means saint. The application was made on May 29, 1952, to the Assistant Charity Commissioner, Poona, under protest and without prejudice to the claim made therein that the sansthan was not public trust. In view of the penal provision under Section 66 of the Act in the case of non-compliance with Section 18(1) of the Act the said application was made ex abundanti cautela. The Assistant Charity Commissioner after requisite notice made an enquiry into the matter in accordance with the provisions of the Act. On behalf of the applicants representing the sansthan evidence of the attorney Ramkrishna Deshpande was recorded and he was cross-examined by the assessors as well as by the Assistant Charity Commissioner. Some documents were also produced on behalf of the sansthan. Three witnesses were examined on behalf of the Assistant Charity Commissioner and were afforded in opportunity to the applicants' pleader for cross-examination. At the close of the enquiry the Assistant Charity Commissioner by his order of August 25, 1956, held that sansthan to be a public trust and ordered its registration as a public trust under the Act.

4. The applicants thereupon filed an appeal under Section 70 of the Act before the Charity Commissioner, Bombay, who by his order of August 31, 1957, affirmed the decision of the Assistant Charity Commissioner.

5. That led to an application under Section 72 of the Act to the District Judge of West Khandesh at Dhulia which was duly filed on behalf of Purshottambuwa who meanwhile succeeded Guru Vasudeobuwa as "owner" of the sansthan. The learned District Judge reversed the decision of the Charity Commissioner by his order of October 16, 1959, and declared the sansthan to be a private property and not a public trust.

6. The Charity Commissioner then appealed under Section 72(4) of the Act to the High Court of Bombay. The High Court by its order of December 19/20, 1962, set aside the order of the District Judge and held the sansthan to be a public trust under the Act and restored the order of the Charity Commissioner. Hence this appeal by special leave which was obtained on March 29, 1968, after condonation of delay in the peculiar circumstances of the case arising out of revocation by the High Court of its earlier certificate in favour of the appellant on account of default of deposit of security.

7. As noted earlier there was both oral and documentary evidence adduced in this case. The learned District Judge relied mostly on the documentary evidence for his conclusion in favour of the appellant. The High Court took note of both oral as well as documentary evidence. The High Court particularly relied upon an admission of the appellant's witness, Ramkrishna Deshpande, when he stated that "we cannot prevent people from going to the temple as the temple is meant for the darshan by the public".

8. It is not disputed by Mr. Bal appearing on behalf of the appellant that the sansthan in question is an endowment. His only contention is that it is a private religious endowment and not a public one. He submits that there is no evidence of long user of this temple by the public as a matter of right. Mr. Bal further contends that the High Court failed to consider all the material documents filed on behalf of the appellant except only Ex. 35 and that the conclusion was highly erroneous being contrary to the one that had been reached by the District Judge on appraisal of the entire documentary evidence.

9. Before we proceed further, it may be appropriate to note the definitions of 'public trust' and 'temple' in Section 2(13) and Section 2(17) respectively of the Act which read as follows :

Section 2(13) : 'Public trust' means an express or constructive trust for either a public religious or charitable purpose, or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment

Section 2(17) : 'Temple' means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship.

10. Relying upon the above definitions Mr. Bal submits that there is absolutely no evidence in this case about dedication to the public or public user of the temple as a matter of right.

11. Since the grievance of the appellant is directed against the High Court's absolute failure to consider all the documentary evidence, we may deal with that aspect first.

12. The earliest document produced in this case is a 'sanad' (Ex. 42) of November 1, 1863. This sanad was granted by the then British Government during the reign of Queen Victoria in favour of "Devasthan Shri Vithal Rukhamai". The sanad refers to the entry in the village accounts. The entry

mentioned therein is in a village accounts in the Khandesh Collectorate for the year 1860-61, field Nos. 623 and 624 measuring 14.5 acres of land in the name of the holder as Devasthan Shri Vithal Rukhamai, Manager Balkrishnabuwa, Guru Govindbuwa, Amalnerker. There are significant recitals in the sanad to the following effect :

It is hereby declared that the said land shall be continued for ever by the British Government as the endowment property of Shri Vithal Rukhamai of Kasabe Amalner Taluka Amalner on the following conditions, that it to say, that the managers thereof shall continue faithful subject of the British Government, and the said land shall be continued for ever as endowment inam without increase of land tax over the said fixed amount.

13. the amount fixed was Rs. 17/4/0 per annum.

14. It is true that the High Court has not referred to this sanad but the District Judge did. The District Judge held that

. . . the expression in the sanad cannot be in any way determinative of the nature of the temple or religious endowment as a public trust.

15. It is, however, difficult to accept the conclusion of the District Judge. The sanad being an ancient royal grant is a very important piece of evidence to show that although Sakharam Maharaj, the founder of the temple, had already been succeeded by Guru Govindbuwa and the latter by Balkrishnabuwa, the land had been held in the year 1860-61 in the name of the devasthan. It is in the name of the devasthan alone that the grant was continued by the Government. This would go to show that the Government recognised the sansthan with the temple as a public religious endowment and only on that basis the grant was continued. Apart from that the temple was shown to have a manager and not an owner as such. In the absence of anything to the contrary of a convincing nature, a grant by the Government in favour of the temple describing the property to be in charge of a manager leads to an unerring inference that the property is a public religious endowment.

16. From the evidence of Ramkrishna Deshpande, one of the constituted attornies, we find the origin and the devolution as follows :

The originator of this sansthan is Sakharambuwa. After Sakharam there came Govindbuwa. He was followed by Balkrishnabuwa. Then came Prahladbuwa. Thereafter Tukarambuwa came to gadi. After him there was Krishnabuwa and after him there was Balkrishna. Then came Vasudeo. After him the present Buwa Purshottam came to gadi. This gadi goes to shishya from the guru.

17. This evidence of Ramkrishna Deshpande stands corroborated by the sanad which shows in the year 1860-61 the manager of the sansthan as Balkrishnabuwa Guru Govindbuwa. Guru Govindbuwa was the second in the line of succession after Sakharam, the founder, and Balkrishnabuwa being the third in the line. It is clear from the sanad that the Government treated the temple as a public religious endowment.

18. The next document in sequence is a varaspatra of February 28, 1969 (Ex. 35) executed by Guru Govind Balkrishnabuwa in favour of Prahladbuwa. This is document which was relied upon both by the District Judge as well as by the High Court. Varaspatra is a deed of nomination by which an adhikari for the sansthan was nominated in order to take charge of the property, maintain and

continue the religious worship of the deity as per tradition as well as of the celebration of the festivals in accordance with the customary practice of the sansthan. The appellant draws our attention to the following recitals in the above deed :

I have been carrying on the malaki of Shri Sansthan Amalner

19. According to the appellant this would go to show that the executant of the document Balkrishnabuwa described himself as 'malak' (owner) of the sansthan. It is further pointed out that while nominating Prahlad as adhikari, Balkrishnabuwa stated in the said document as follows :

You are entitled to the ownership of all the incomes that will come before the deity, Shri Samarth and during the swari (procession) as well as the income of Inam Najrana and the income of movable and immovable property.

* * * *

The entire ownership of the sansthan and all the movable and immovable property etc. pertaining to the sansthan is of yours. That ownership is of your own. Your bhauband and others have no right whatsoever over the same. You are free to give and take as per the shishya-sampradaya as has been done previously.

20. From the above, the appellant contends that the sansthan was a private property and it was also transferred to the shishya adhikari to maintain it as his own property. We are unable to accept this submission as we find some other significant recitals in the document itself warranting a contrary conclusion. Although it is stated in the document that Balkrishnabuwa was "carrying on the malaki", he at the same time states with regard to the sansthan thus :

. . . the same was entrusted to me by Shri Guru Maharaj

* * * *

I, therefore, thought that I should entrust the work of the sansthan to you and have appointed you to the said sansthan.

21. The nature of devolution is explicit in the above extract.

22. Although there is use of the words owner and 'malaki' in the above recitals, the entire tenor of the document read as a whole goes to show that the property has always been treated as truest property even by the adhikari saints and the adhikaris or the disciples who succeeded one after the other were not owners but trustees of the property. This ancient document read as a whole does not admit of any other interpretation consistent with the nature of the property and the avowed object and purpose of the founder clearly revealed therein which has been carried into effect by successive loyal and devoted disciples. The words 'malaki' and 'owner' in the context, are not used in the broad sense to indicate an absolute character of personal ownership.

23. The next document is vyavasthapatra (Ex. 41) of April 25, 1997. We find from the evidence of Ramkrishna that the shishya is appointed by the Maharaj who happens to be holding the gadi at the relevant time. This fact is borne out by the recitals in Ex. 41. This document may be described as a deed of nomination or will whereby it appears Krishnabuwa whose guru was Tukaram Maharaj nominated Balkrishna Gangadhar Dhanurkar, as the devadhikari of the gadi to succeed him. The

appellant submits that Balkrishna was bestowed a 'malaki' as the term appears in this document.

24. Although the High Court has not dealt with this document, there is a reference in its judgment to the contents of the same as being similar to Ex. 35. The principal emphasis on both these documents Ex. 35 and Ex. 41 is that the words 'owner' and 'malaki' were used in the recitals. As stated above we are unable to hold that recital in these documents taken as a whole can reasonably lead to the conclusion that the sansthan is a private property.

25. After the turn of the century, coming now to comparatively recent times, there are four documents Exs. 40, 37, 39 and 38 dated September 10, 1929, July 15, 1936, July 2, 1946 and January 28, 1949, respectively, In Ex. 40 the party taking the gift is described as vahiwatdar panch of Shri Sakharam Maharaj, Sansthan, Vithalwadi, Amalner. The donor, an old agriculturist of a different taluka viz. Erandole, writes :

I give the gift deed in writing as follows :

With the object of giving possible held through me to the above sansthan, I have given in gift may ancestral immovable property

* * * *

I have given in gift the abovementioned property as aforesaid of my free will for the purpose of religious work in order that my life may be of bliss as I have no male issue and wife.

* * * *

The said field should be used for the sansthan from generation to generation. The above sansthan has become full owner thereof.

26. In the gift deed Ex. 37 executed by three businessmen of Amalner there are recitals to the similar effect :

When we were joint, the said field was given as a gift to you for the service of the sansthan, viz., Shri Vithal Rukhamai Sansthan, Amalner and was given in your possession. Now all our movable and immovable estate is partitioned orally. Hence the gift deed of the said field, which had remained unexecuted, has been executed today

27. The said gift deed was in favour of archak (worshipper) Vasudeobuwa Guru Balkrishnabuwa. Again, in the gift deed Ex. 39 the donee is described a "Shri Rukhmini Pandurang Sansthan, Sansthan Amalner Sakharam Maharaj at present Vasudevbuwa Guru Balkrishna Maharaj". The following recitals in the said document are eloquent :

This land is given to your in charity as per the order of (my) mother with a religious view and with an intention of benefiting others with the object of achieving happiness in this world and in the next world according to the shastras and the above land is given in your possession this day. Hence you are the full owner of the land and you ar free as full owner thereof to manager and carry on the vahiwat of the said land by right of ownership perpetually from generation to generation on the strength of this writing.

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The dindi of the said sansthan from Amalner remains at Shivgaon on the 30th of Jestha Vadhya or on the 1st of Ashad Shudha according to practice every year. You should spend the income of the said property for the purpose of naivedya for the deity Pandurang at night that day.

The beneficiaries of this gift are clearly the unascertained Hindu public and not ascertained individual and the donee is trustee accepting the gift on behalf of the sansthan.

28. The last deed of gift is Ex. 38 and the donee is "Shri Vasudev Buwa Guru Balkrishna Buwa" described as the worshipper carrying on the "vahiwat of Shri Vithal Rukhamai Sansthan". The deed goes on to say :

I have full faith in Shri Sakharam Maharaj. Hence with the intention (object) that some service may be rendered by me for his devasthan, I have given in gift out of love the below mentioned property valued at Rs. 600, six hundred, without taking any consideration from you for the purpose of expenses of performing worship and offering naivedya food.

29. All the above gifts were donated to the devasthan and for the maintenance of worship therein. These gifts were not made in favour of individuals as such in order that the beneficiaries of the gifts will be only those individuals. It is clear that the beneficiaries of the deeds are the deity and the sansthan and the gifts were made with the object of maintenance of the worship of the deity for the benefit of the Hindu public as a whole. The expression in the recitals that "you are free as the full owner thereof" does not convert the gift which is expressly in favour of the deity or sansthan into that in favour of an individual as private property. The appellant relies on all these documents for the purpose of showing that the endowment is private only because ownership of donor is transferred to the donee. We are, however, unable to accede to this submission. It is very significant that in the last gift deed Ex. 38 of January 28, 1949, there is a most reverential reference to Shri Sakharam Maharaj and his devasthan when Sakharam Maharaj had departed in the past century. Not much can be made therefore from the expression "His devasthan" to convert the property into a private endowment. The reference to Sakharam Maharaj Sansthan, wherever it appears, is only for the purpose of identification and commemoration of the hallowed saint who had admittedly founded the same.

30. The principles of law of determination of the question whether an endowment is public or private are fairly well-settled. This Court observed in *Deoki Nandan v. Murlidhar* (1956 SCR 756 : AIR 1957 SC 133) as follows :

The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter, they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.

31. This Court further held :

When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of worshippers, the question whether and

endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

(See also State of Bihar v. Smt. Charusila Dasi (1959 Supp 2 SCR 601, 613 : AIR 1959 SC 1002))

32. Distinguishing the decision of the Privy Council in Babu Bhagwan Din v. Gir Har Saroop ((1939) 67 IA 1 : AIR 1940 PC 7) on the ground that the properties in that case were granted not in favour of an idol or temple but in favour of one Daryao Gir who was maintaining the temple and to his heirs in perpetuity, this Court further held in the above decision :

But, in the present case, the endowment was in favour of the idol itself, and the point for decision is whether it was private or public endowment. And in such circumstances, proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public.

33. This Court also distinguish the aforesaid Privy Council decision of Babu Bhagwan Din's case in Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi ((1960) 1 SCR 773 : AIR 1960 SC 100).

34. This Court also observed in Narayan Bhagwantrao Gosavi Balajiwale's case that is also unusual for rulers to make grants to a family idol.

35. In Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan ((1964) 1 SCR 561 : AIR 1963 SC 1638), this Court has to consider about a Hindu temple being a private or public and observed as follows :

Where evidence in regard to the foundation of the temple is not clearly available sometimes, judicial decision rely on certain other facts which are treated as relevant.

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Are the members of the public entitled to an entry in the temple ? Are they entitled to take part in offering service and taking darshan in the temple ? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple ? Are their offerings accepted as a matter of right. The participation of the members of the public in the darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor or consider in determining the character of the temple.

36. In Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas ((1970) 2 SCR 275 : (1969) 2 SCC 853) this Court observed as follows : [SCC p. 861, para 16]

In brief the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple.

37. The learned Counsel for the appellant relied upon the decision in Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das ((1971) 3 SCR 680 : (1971) 1 SCC 574) and drew our attention to the following observations therein : [SCC pp. 580, 581, paras 15, 17]

Thus, the mere fact of the public having been freely admitted to that temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which given strength to the inference that the user was as of right.

* * * *

Examples do occur where the founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for preparation of certain rights and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases it would be the grantor and his descendants who are the only persons interested in seeing that the institution is kept up for their benefit. Even if a few ascetics are fed and given shelter, such a purpose is not to be deemed an independent charity in which the public or a section of it has an interest. Such charities, as already stated earlier, appertain to a private debutter also.

38. We do not find that there is any difference in the ratio of the principles followed in the above decision. The case went against the Board in the above decision in the absence of "evidence of a reliable kind" of public user as "evidence of dedication".

39. It is not always possible to have all the features of a public trust in given case. Even some of the tests laid down by this Court may, in a given case, be sufficient to enable the court to come to a conclusion about the character of the trust.

40. We cannot agree that the High Court was not right in giving due importance to the admission of the constituted attorney Ramkrishna Deshpande that they "cannot prevent people from going to the temple as the temple is meant for the darshan by the public". The consciousness of the constituted attorney about the nature of the property, which has been held out for more than a century as public religious endowment, adds to the effect of the documentary evidence produced by the appellant in this case in favour of the same conclusion. It has to be remembered that the founder Sakharam Maharaj was a celibate and the successive disciples who succeeded as adhikaris of the gadi were also celibates. From Ex. 36, the first varaspatha of February 28, 1869, one gets a full picture of the working of the sansthan :

The service and bhajan etc. of the deity have to be made as per the order of the Guru according to the sampradaya.

* * * *

..... you should perform the bhajan as was being done as per the shishya

sampradaya and perform the bhajan in chaturmas at shriketra Pandharpur regularly and thereafter you should come to Amalner and keep up the practice of celebrating the festivals etc. of Shri Sakharan Maharaj regularly as was being done. You should maintain the mandali (committee) of the sansthan and continue the whole mandali (committee) with unanimous opinion. You know the vahiwat of the sansthan as is going on. You should continue the same accordingly in future . . .

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That ownership is of your own. Your bhauband and others have no right whatsoever over the same. You are free to give and take as per the shishya sampradaya has been done previously. The Deshmukhs and Deshpande at Kashav-Amalner have been rendering service to the said sansthan faithfully. You should make arrangement to accept service from them as being done accordingly and so on rendering service and performing bhajan etc. faithfully as mentioned herein as per the vaishnavasampradaya as being done from before.

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41. We have also seen from the evidence of Ramkrishna Deshpande :

All the buwas are saints. People go for darshan because these people were saints. This sansthan is based on the principle of shishya parampara. This property goes from guru to his shishya.

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The residents of the place where the bhajans are performed attend these bhajans. In the days of Pandharpur fair the Maharaj remains present. He stays there for about 4 months. During his stay at Pandharpur bhajans are performed daily. During the fair his shishyas perform the bhajans. While returning from the pilgrimages also he performs bhajans. Maharaj also attends other fairs at Nasik etc. At that time also his shishyas accompany him. By shishyas I mean the disciples as well as followers. Shishyas are few but the followers are in large numbers.

In the utsava at Amalner many saints of other place, shishyas and followers take part. The persons who attend this year besides shishyas and followers are about ten thousand. The followers and saints are paid their cost of journey. All their expenses of boarding and lodging are met by this sansthan. The bhajans at Pandharpur performed by Maharaj are attended by the public.

Ramkrishna Deshpande concludes his evidence by stating :

I contend that this is a private temple because others cannot perform puja without permission of Maharaj.

42. The oral and documentary evidence leave no room for doubt whatsoever that the sansthan and the temple are public religious endowments. Even is acknowledged public temple any an everybody cannot perform puja in the sense in which the head pujari daily performs at various stages. Public is not and may be allowed to the innermost sanctum where the deity is installed except under special circumstance with special permission. That would, however, not lead to the conclusion that the temple is a private temple. Worshippers are not merely the accredited daily pujaris but also the multitude of the public who go to the temple for darshan of the deity and for offerings. The

contention of Ramkrishna Deshpande in his evidence, therefore, is without any force.

43. When the origin of an endowment is obscure and no direct oral evidence is available, the Court will have to resolve the controversy about the character of the trust on documentary evidence, if any, the object and purpose for which the trust was created, the consistent manner in which the property has been dealt with or managed by those in charge, the manner in which the property has long been used by the public, the contribution of the public, to all intents and purpose, as a matter of right without the least interference or restriction from the temple authorities, to foster maintenance of the worship, the accretion to the trust property by way of grants from the State or gifts from outsiders inconsistent with the private nature of the trust, the nature of devolution of the property, are all important elements in determination of the question whether a property is a private or a public religious endowment. We are satisfied that in this case all the above tests are fulfilled.

44. To sum up from the documentary and oral evidence produced, the following features are present in the present case :

- (1) The deity installed in the temple was intended by the founder to be continually worshipped by an indeterminate multitude of the Hindu public.
- (2) In order to facilitate worship by the public, the founder also intended that regular bhajan, kirtan and worship shall be maintained and annual ceremonies and processions for pilgrimage shall be conducted by the saints in succession nominated by the reigning saint.
- (3) There has been no evidence of any hindrance or restriction in the matter of continuous worship by the public extending over a long period.
- (4) More than a century ago the temple in its own name was recipient of land by royal grant and the same has been managed by the saints in succession as manager not as personal or private property.
- (5) Gifts of land by members of the public from the taluka and outside it in favour of the temple or of the sansthan for the purpose of maintenance of the worship.
- (6) Collection of subscriptions were made from house to house by taking Maharaj and also for 'Gulal' ceremony.
- (7) Holding out of the sansthan to all intents and purpose as a public temple.
- (8) Treating of the sansthan by those who are connected with the management as intended for user by the public without restriction.
- (9) Absence of any evidence in the long history of the sansthan to warrant that it had any appearance of, or that it was ever treated as, a private property.

45. While each case of endowment as to its character depends on the particular history, tradition and facts, the presence of the above features in the instant case lead to the inescapable conclusion that Shri Vithal Rukhamai Sansthan at Amalner is a public trust within the meaning of Section 2(13) of the Act.

46. In the result the appeal fails and is dismissed. We will, however, made no order as to costs.

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