IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

OP.No. 12870 of 2002 (F)

PETITIONER :

SHREE NAVANAGAR SADAVRAT TRUST
A PUBLIC CHARITABLE TRUST REGISTERED
UNDER THE PROVISIONS OF THE BOMBAY PUBLIC TRUST ACT,
1950, HAVING ITS OFFICE IN MOOLJI JAITHA BUILDING 187,
PRINCESS STREET, MUMBAI-400 002.
REPRESENTED BY ITS TRUSTEE RAJNIKANT CHANDRAKUMAR JAITHA.

BY SRI.E.K.NANDAKUMAR,SENIOR ADVOCATE
SRI.J.P.SEN, SENIOR ADVOCATE
ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.PAULOSE C. ABRAHAM

RESPONDENT(S):
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1. STATE OF KERALA, THROUGH THE
   CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. SECRETARY, REVENUE DEPARTMENT,
   STATE OF KERALA, THIRUVANANTHAPURAM.

3. LAND REVENUE COMMISSIONER,
   THIRUVANANTHAPURAM.

4. DISTRICT COLLECTOR,
   THIRUVANANTHAPURAM .

BY SR GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 08-04-2015 , THE COURT ON 08-12-2015 DELIVERED
THE FOLLOWING:

sts

OP(C).NO.12870/2002

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE INDENTURE OF TRUST DATED 18/10/1872

P2 COPY OF AGREEMENT DATED 17/7/1919 TO PURCHASE 15 CENTS OF LAND IN THIRUVANANTHAPURAM BY M/S. MULJI JETHA & COMPANY

P3 COPY OF THE AGREEMENT DATED 31/7/1940 TO PURCHASE 22 CENTS OF LAND IN THIRUVANANTHAPURAM BY M/S. MULJI JETHA & COMPANY

P4 COPY OF THE APPLICATION DATED 13/5/1952 UNDER BOMBAY PUBLIC TRUSTS ACT, 1950

P5 COPY OF THE CERTIFICATE OF REGISTRATION DATED 9/10/1952

P6 COPY OF THE EVIDENCE OF DEVIDAS RUPJI DATED 14/4/1954 IN SUIT NO.635 OF 1954

P7 COPY OF THE ORAL JUDGMENT DATED 14/4/1954 IN SUIT NO.635 OF 1954 OF THE HON'BLE CITY CIVIL COURT AT BOMBAY

P8 COPY OF THE DECREE DATED 14/4/1954 IN SUIT NO.35 OF 1954 PASSED BY THE HON'BLE CITY CIVIL COURT AT BOMBAY

P9 COPY OF THE ORDER DATED 12/1/1959 OF THE CITY CIVIL COURT, BOMBAY ON NOTICE OF MOTION IN SUIT NO.635 OF 1954

P10 COPY OF THE NOTICE OF ENQUIRY DATED 17/2/1988 ISSUED BY CHARITY COMMISSIONER, MAHARASHTRA STATE

P11 COPY OF THE NOTICE OF DRAFT PLANNING SCHEME DATED 9/1/1992.

P12 COPY OF THE LETTER DATED 20/2/1992 FROM PREMCHAND BABULAL OSWAL, THE CONSTITUTED ATTORNEY OF THE APPELLANT TRUST TO THE DEVELOPMENT AUTHORITY.

P13 COPY OF THE REPORT OF TAHSILDAR DATED 19/1/1995

P14 COPY OF THE NOTICE DATED 16/8/1997 ISSUED BY DISTRICT COLLECTOR, THIRUVANANTHAPURAM

P15 COPY OF THE ORDER DATED 2/9/1998 OF THE DISTRICT COLLECTOR UNDER SECTION 6 OF THE KERALA ESCHEATS & FORFEITURES ACT, 1964

P16 COPY OF THE ORDER DATED 23/12/1998 OF THE HON'BLE HIGH COURT IN O.P.NO.1492 OF 1998-C

P17 COPY OF THE AFFIDAVIT DATED 7/4/1999 OF SHRI VALLABAI CHATURBHUJ

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P18 COPY OF THE ORDER DATED 8/10/1999 PASSED BY THE COMMISSIONER OF LAND REVENUE

P19 COPY OF THE ORDER DATED 13/10/2000 PASSED BY THE SECRETARY, GOVERNMENT OF KERALA, REVENUE DEPT.

P20 COPY OF THE ORDER DATED 4/1/2001 IN CMP NO.708 OF 2001 IN O.P.NO.352/2001 OF THE HIGH COURT OF KERALA

P21 COPY OF THE JUDGMENT DATED 4/9/2001 IN O.P.NO.352/2001 OF THE HON'BLE HIGH COURT OF KERALA

P22 COPY OF THE ORDER DATED 15/2/2002 PASSED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT

P23 COPY OF THE CERTIFIED EXTRACT FROM THE REGISTER MAINTAINED BY THE CHARITY COMMISSIONER, MUMBAI

P24 COPY OF THE JUDGMENT DATED 21/7/1997 PASSED BY THE HON'BLE HIGH COURT IN O.P.NO.12130/97

P25 COPY OF PHOTOGRAPH OF THE PROPERTY.

/TRUE COPY/

P.S.TO JUDGE

sts

“CR”

Thottathil B. Radhakrishnan, J.

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O.P.No.12870 of 2002

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Dated this the 8th day of December, 2015

Judgment

1. This original petition invoking Article 226 of the Constitution of India is filed challenging Ext.P15 order passed by the District collector under the provisions of the Kerala Escheats and Forfeitures Act, 1964, hereinafter referred to as the Escheats Act and Exts.P18 and P22 decisions of the Land Revenue Commissioner and the Government of Kerala confirming the Collector's decision.

2. Heard the learned Senior Advocate for the petitioner and the learned Senior Government Pleader.

3.Acting on information stated to have been given by a person that the parcel of land with building, which is involved in this litigation; 'property' for short, hereinafter; has escheated, the District Collector directed the Tahsildar to conduct a preliminary enquiry. Through Ext.P13, the Tahsildar reported that the property belonged to Shri Navnagar Sadavarat Trust which is the petitioner in this original petition. The Collector thereafter extended opportunity of hearing to the petitioner and issued the impugned Ext.P15 as an order under Section 6 of the Escheats Act. The Land Revenue Commissioner confirmed the Collector's decision in an appeal filed by the petitioner under Section 7 of that Act. The petitioner challenged that decision before the Government. Initially, there was an order of remit to the Commissioner to decide on two issues which, according to the Government, were relevant. This Court, through an original petition, set aside that remand. Thereafter, the Government issued the impugned Ext.P22 whereby it confirmed Ext.P18 decision of the Land Revenue Commissioner and Ext.P15 decision of the Collector.

4.The grounds of challenge levied against the impugned orders supported by the arguments by the learned Senior Advocate appearing for the petitioner raise three issues. First is that the consistent stand of the statutory authorities being that the property belonged to a trust as reported by the Tahsildar, there is no question of any escheat particularly under Section 3 of the Escheats Act which deals only with situations of death of a person intestate and without leaving heirs. The second issue raised is that a due enquiry by the Tahsildar under the directions of the Collector had categorically showed that the property belonged to the petitioner trust and such finding having been acted upon by the Collector to issue Ext.P15 order, there was no jurisdiction to probe into or adjudicate upon the question as to whether the said trust held title to the property.

This argument is footed on the fundamental premise that the impugned orders stand on the basic assumption that the property belonged to a trust as stated in the Tahsildar's report. The third is that the property was dealt with as part of the properties of the petitioner trust as is evidenced by the decisions of the Bombay City Civil Court evidenced through Exts.P7, P8 and P9 rendered under the Bombay Public Trusts Act, 1951, for short, the 'Bombay Act'. Ext.P5 is the certificate of registration of the petitioner under that Act. It is argued that the evidentiary value of Exts.P7, P8 and P9 taken along with Ext.P5 is that they stand affirming, among other things, that the property is part of the trust properties in the hands of the petitioner. It is hence contended that those acts of the authorities and Court under the Bombay Act are public acts records and judicial proceedings which were to be given free faith and credit throughout the territory of India as envisaged by Article 261 of the Constitution of India. It is also argued that the decree of the

Bombay City Civil Court conclusively establish in rem the title of the petitioner Trust to the property.

5.The learned Senior Government Pleader argued that action was initiated on the basis of the information furnished by a person and the Tahsildar's report that the property belonged to the petitioner trust is of no consequence which could impair the jurisdiction of the Collector to further examine as to whether the property is escheat in terms of Section 3 of the Escheats Act. He further argued that the statutory authorities had concluded that all the trustees having died long ago, there was no question of any continuing trust at the point of time when the property was purchased by M/s.Mulji Jetha & Company. The further submission on behalf of the respondents is that the District Collector, the Land Revenue Commissioner and the Government, were within jurisdiction and propriety in refusing to act on the materials provided to show the certification of registration of the petitioner trust under the Bombay Act and on decisions of the City Civil Court, Bombay. He also argued that in terms of sub-section 2 of Section 7 of the Escheats Act, an appellate order by the Board of Revenue (the Land Revenue Commissioner) shall be final subject only to the provisions of Section 11 of that Act which provides a clause saving the right to sue through a suit against any decision, order or proceeding taken under Chapter II of the Escheats Act.

6.As noted above, the first plea of the petitioner is as to lack of jurisdiction to invoke the provisions of the Escheats Act having regard to the terms of Section 3 thereof; and that, in view of the contents of the report of the Tahsildar following the enquiry as directed by the Collector, the issuance of notice for the proceedings was itself without jurisdiction. The Tahsildar's enquiry is governed by Rules 6 and 7 of the Kerala Escheats and Forfeitures Rules, 1965; for short, the 'Escheats Rules'. The next contention is that the effect of the certificate of registration of the petitioner trust under the Bombay Act and the decisions of the Bombay City Civil Court in relation to trust's properties, including the property that is subject of the impugned orders, is that any further action of the nature impugned in this original petition is legally excluded; more particularly because the decision of the Bombay City Civil Court appointing trustees for the trust in lieu of the de facto trustee is a decision in rem and also one to which Article 261 of the Constitution applies. These contentions are fundamentally focussed against the initiation of the proceedings and the applicability of the Escheats Act and resultantly, give rise to issues relating to jurisdiction to initiate and carry on proceedings under the Escheats Act leading to the resultant impugned decisions. So much so, the plea on behalf of the Government that this original petition ought not to be entertained on the basis of the availability of a right to sue in a civil court is repelled.

That apart, it also needs to be noted that the person who gave the information initially moved this Court and obtained a direction through O.P.No.16991 of 1994 requiring the Collector to conduct an enquiry. Proceedings were thus prompted through a direction of this Court. As already noted, the earlier order by the Government remitting the matter for reconsideration by the Land Revenue Commissioner was also interfered by this Court. In the original petition in hand, filed in 2002, it will be too late in the day for the original petitioner to be turned off on the plea that he has an alternate remedy under the Escheats Act. It makes no difference whether the statutory proceedings obtained finality subject only to the decision in such a suit since such statutory prescription as to finality does not preclude visitation in exercise of writ jurisdiction under Article 226 of the Constitution. For these reasons, it is held that the objection raised by the State to the original petition, based on availability of alternate remedy, cannot be upheld. It is accordingly overruled.

7. Ext.P13 report of the Tahsildar is a statutory one. It clearly states that the property belonged to Mulji Jetha Company and those properties were handed over to the trust formed in 1872 by name Shri Navnagar Sadawarat Trust. The report enumerates the persons who were the trustees of that trust. The report proceeds to say that there is an interim trust deed dated 22.7.1970 whereby Smt. Vela Bhai Chaur Puj, Shri. Jayaraj Dwaragadas, and Shri. Krishnakant Chandrakumar were elected as continuing trustees and they have elected Shri. Bhagavandas Ramadas as Managing Trustee. Pursuant to the hearing with notice to the petitioner, the Collector did not come to any conclusion that the property did not belong to that trust. After enumerating the different facts, particulars and the documents produced by the petitioner, the Collector proceeded to consider Section 3 of the Escheats Act and stated that law

recognises a trust as a legal person who can sue and be sued and therefore, a trust property is not excluded by the statute from being escheat in cases mentioned in Section 3 of the Escheats Act. The inclusion of the item of property as subject matter of the proceedings before the Bombay City Civil Court under the Bombay Act and those proceedings and the certification by the authority in relation to trusts in Bombay were treated as matters to be ignored because the proceedings before the Bombay High Court were rendered ex parte. Thus, the Collector concluded that the property does not belong to the trust and the property has escheated. It has been so held even without identifying the person who is to be treated as having died intestate and without leaving heirs in relation to the property in terms of Section 3 of the Escheats Act.

8. The Land Revenue Commissioner, through Ext.P18 appellate order, fundamentally approached the issue venturing to investigate as to whether the

petitioner trust has title to the property. It was also held that as the trustees who constituted the trust of 1872 had died by 1904, the trust had ceased to exist from that year onwards and that Bombay City Civil Court's decree of 1954 does not say that the plaintiffs therein are appointed as trustees of the petitioner trust created in 1872.

9. In its first decision in the matter, the Government through Ext.P19 dated 13.10.2000 noted that the two important issues that arose for consideration is as to whom the property alleged to be escheat belonged and whether such titleholder died intestate without legal heirs. The Government noted the finding in the Collector's order that the trust has come to an end on the death of its trustees and stated, quite rightly, that the said finding presupposes that the title vests in the said trust in respect of the said lands; meaning thereby, the properties of the trust. In Ext.P19, the Government also noted the inconsistency in the Collector's order which

also held that the lands vested in Mulji Jetha Company. The Government correctly concluded that the title in the land cannot vest in more than one entity. The Government then posed questions though Ext.P19: Whether the trust came to an end in 1904 on the death of its trustees? Whether a public trust would come to an end? Can the properties settled on trust revert to the settlers? Even if the objects of the trust have been exhausted, would not the doctrine of “cy pres” apply to a charitable trust? Whether a property belonging to a public trust be escheat to Government under the Escheats Act? Pointed reference was made by the Government in Ext.P19 to the manner in which a trust can be extinguished in terms of Section 77 of the Indian Trust Act, 1882. Though the Government remitted the proceedings for reconsideration by the Land Revenue Commissioner, that remand was set aside by this Court.

10.Though I mused as to whether it would have been better to permit the aforenoted order of remit to be given effect to, on a deeper consideration, it is clear that no issue relating to extinguishment of trust, reversion, or the application of the doctrine of 'cy pres' would arise in such a case during the course of investigation and decision under Section 6 of the Escheats Act or a preliminary enquiry under the Escheats Rules. I proceed to state the reasons for this view.

11.Section 3 of the Escheats Act reads as follows:

> “3.Escheats.- Where a <u>person dies intestate and without leaving legal heirs</u>, all his property shall be escheat and shall belong to the Government.”
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> (emphasis supplied)

The only event in which Section 3 of the Escheats Act would apply is the death of a person to whom property may belong and when that person dies <u>intestate</u>. Only natural persons can be treated as persons who die. On this issue, profitable reference is made on behalf of the petitioner to <u>Ratilal Gandhi & Ors. v. State of Bombay and Ors.</u> (AIR 1954 SC 388). Juristic persons and legal connotations under which anything other than a 'natural person' falls within the definition of 'person' do not suit the provisions in Section 3 of the Escheats Act. When the concepts of a person dying intestate and of a person so dying without legal heirs are terms and concepts abundantly clear and certain in legal parlance and also to common sense and common course of human conduct of thinking, the Legislature cannot be attributed with any intention to visit any entity other than a 'natural person', the property of which could be held as escheat as a consequence of Section 3 of the Escheats Act. The provisions of Section 3 of the Escheats Act apply only to a 'natural person', and not beyond.

12.The Tahsildar's report (Ext.P13) refers to Smt. Vela Bhai Chaur Puj as one of the trustees as per the interim Trust Deed dated 22.7.1970.

Smt.Velabhai Chaturbhuj had sworn to Ext.P17 affidavit on 7.4.1999 and had filed it before the Commissioner of Land Revenue when the appeal was pending at that end. She specifically states in paragraphs 3 and 6 of that affidavit that Chaturbhuj Gordhandas who was the sole proprietor of M/s.Mulji Jetha & Co. was her husband and he died intestate on 25th September, 1962 and all the assets of M/s.Mulji Jetha & Co. had vested in her as his sole heir. In the course of the proceedings carried by the statutory authorities, it was seen that the land was purchased by Mulji Jetha Company. Traversing the counter affidavit filed on behalf of the State, it is seen that the plea of Smt.Velabhai Chaturbhuj in Ext.P17 that she is the widow of Chaturbhuj Gordhandas, who was the sole proprietor of M/s.Mulji Jetha & Co. and that she is continuing to run that business as its sole proprietress are not denied by the Government. Even through that affidavit, she has placed on record the fact that the property belongs to that trust. Even if it is otherwise, it can only be held that she is an heir to the estate of Chaturbhuj Gordhandas in whose name the property was originally acquired. In that view of the matter also, there is no question of any escheat in relation to the property. Therefore, on facts, the petitioner's claim to the property in question stands with the affidavit in its support by the surviving heir of Chaturbhuj Gordhandas and the certificate issued regarding the trust and the decisions rendered by the Bombay City Civil Court (Exts.P5, P8, P9, P10 and P11) in terms of the provisions of the Bombay Act. Those materials and supporting further documents which are exhibited, unequivocally show that the petitioner is entitled to claim the property, had exercised acts of possession and had disbursed payables in relation to the property.

13.On to the issue of jurisdiction raised by the petitioner based on the report of the Tahsildar, it needs to be noted that while the Village Officer and the Tahsildar have the duty to act in accordance with Rules 4 and 5 of the Escheats Rules when they receive information, in cases where the Collector receives information, the Tahsildar has to be required to conduct a preliminary enquiry. Such an enquiry was carried out by the Tahsildar leading to the conclusion that the property belongs to the petitioner and cannot be treated as escheat. Having regard to the nature and scope of the provisions of the Escheats Act, such an enquiry is to find out as to whether the property subjected to the enquiry is escheat. Any claim of rival title to the property would not be an issue in an inquiry or investigation under the Escheats Act and Escheats Rules since adjudication on such a question is not within the domain of the statutory authorities under that Act and those Rules. Therefore, when the Tahsildar had reported that the property belongs to the petitioner trust, any further enquiry could have been had only if the Collector doubted the veracity of the report of the Tahsildar. The conclusion in the Collector's decision is that the property did not belong to the trust but to the Mulji Jetha Company which is nothing a proprietary concern of Chaturbhuj Gordhandas whose widow is the deponent of Ext.P17 affidavit. Therefore, if the property does not belong to the trust, it belongs to the deponent of Ext.P17. She has clearly stated in that affidavit that the property is part of the trust property of the petitioner. Those properties are also dealt with in competent jurisdiction under the Public Trusts Act on the judicial side and on the executive side regarding certification. So much so, the initiation of the proceedings against the property by treating it as escheat is without jurisdiction.

14.Now, I proceed to consider the reliability and value of Exts.P5, P7, P8, P9 and P10 during the course of proceedings under the Escheats Act.

15.The Escheats Act was made to provide for the administration, supervision, custody and disposal of escheats and unclaimed property. Chapter II of that Act deals with escheats. I refer only to the provisions in that chapter since the impugned action was initiated only on the premise that the property is escheat and therefore, belongs to the Government. The scope of preliminary enquiry, investigation and decision in terms of Sections 4 and 6 taken along with the effect of that decision, as stated in Section 8, show that the decision making process in terms of Sections 4 to 6 would fundamentally depend upon the question whether a person in possession of any movable or immovable property has died intestate and without legal heirs. The enquiry under Section 4 is as to whether the deceased has died intestate and whether he has left any legal heirs. The investigation and decision on any claim preferred following the publication under Section 5 is to be done by taking in all evidence produced by the claimant.

16.Ext.P5 is the certificate of registration issued under the provisions of the Bombay Act regarding the registration of Shri Navanagar Sadavarat Khata as a public trust. Such registration and issuance of certificate are part of the statutory and official functions of the authority concerned under the Bombay Act. Ext.P8 is the judgment, order and decree issued by the Bombay City Civil Court appointing five persons as the trustees of the Trust created by deed of settlement between Moolji Jaitha and Sunderdas Mooljee. Five persons including Bai Velabai Chaturbhuj Gordhandas and Chaturbhuj Gordhandas were thereby appointed as trustees of that Trust. Ext.P9 is the resultant decree which will evidence, among other things, that the property which is the subject matter of the impugned proceedings was the sixth item dealt with through that decree, as belonging to the said trust. Ext.P10 is the public notice given under the Bombay Act for enquiring into objections, if any, regarding the inclusion of the properties of the trust in the register. That notice included the item which is dealt with through the impugned proceedings. Ext.P10, like Ext.P7, is issued as part of the official functions of the competent authority.

17.Exts.P8 and P9 are issued by the Bombay City Civil Court. They are judicial decisions including judgment, order and decree. That the property dealt with through the impugned proceedings was subject matter of Exts.P8, P9 and P10 is beyond doubt in view of the entries as to details of lands and description as given in Ext.P14 notice issued by the District Collector following the report of the Tahsildar.

18.While Ext.P5 is in relation to an entry in a public and official book or register and Ext.P10 is an entry which is part of official record, Exts.P7, P8 and P9 are judgments, orders or decrees. Section 35 of the Indian Evidence Act, 1872 provides that any entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specifically enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact. It cannot be disputed that the authorities who made the entries and issued Exts.P5 and P10 were public servants. Those entries are made in official records. That entry is itself a relevant fact in terms of Section 35. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (e) to that section provides that the Court may presume that judicial and official acts have been regularly performed. While it endeavours to draw a presumption of the nature mentioned in Illustration (e), it shall also have regard to the fact that a judicial act, the regularity of which is in question, was performed under exceptional circumstances. These are the broad parameters within which the rule embodied in Illustration (e) to Section 114 operates. This principle is founded on the maxim omnia praesumuntur rite et solemniter esse acta, which means that all acts are presumed to have been rightly and regularly done. The policy of law appears to be that a court of justice would uphold official, judicial, and other acts, rather than to render them inoperative. Where there is general evidence of acts having been legally and regularly done in the course of discharge of official duties by a public servant, the validity of those acts would be presumed; however of course, providing room for rebuttal of such presumption. The ordinary rule is that everything is presumed to be duly and rightly performed until the contrary is shown.

19. In so far as judgments, orders and decrees are concerned, beyond the laws governing the realm of presumptions in relation to public, official and

judicial acts, Sections 40 to 44 of the Evidence Act would come into play. Section 41 deals with the relevancy of judgment, order or decree of a competent court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which has the effect of affecting the legal character as spelt out in that Section. Exts.P7, P8 and P9 do not belong to that class. Sub-section 13 of Section 2 of the Bombay Act defines a 'public trust' to mean an express or constructive trust for either a public religious or charitable purpose or both and to include the different entities included therein. Section 21 of that Act provides for entries in register and sub-section 2 of that section provides that those entries, subject to the provisions of that Act and subject to any change recorded under the provisions which follow Section 21, shall be final and conclusive. Section 30 includes a provision for constructive notice as well, as regards the entries made in the register. Section 31 bars a suit to enforce a right on behalf of a public trust which has not been registered under that Act. Section 50 enumerates different situations where a suit may be instituted with leave of the Charity Commissioner and Section 52 excludes the application of Sections 92 and 93 of the Code of Civil Procedure, 1908 to public trust. The Preamble to the Bombay Act declares the legislative intention to regulate and make better provision for the administration of public religious and charitable trusts in the State of Bombay. The predominant thrust is that the Act deals with trusts which are public trusts. The definition of 'public trust' in Section 2(13) of the Bombay Act uses the terms 'means' and 'includes'. At its opening limb, the definition clause provides that 'public trust' means an express or constructive trust for either a public religious or charitable purpose or both. 'Public charitable purpose' includes the existence of a corresponding right in the beneficiary to enjoy such beneficial interests in that public trust. Decrees, judgments and orders of courts under a legislation dealing with public trust relate to matters of public nature relevant to the trust, trustee, beneficiary, trust property, beneficial interest and instrument of trust. The substance of Exts.P7, P8 and P9 judgment, order and decree rendered by the Bombay City Civil Court under the provisions of the Bombay Act dealt with such matters of public nature as are relevant to the enquiry under the Escheats Act when such enquiry and investigation are made in relation to property which is part of the trust property as evidenced through Exts.P5, P7, P8, P9 and P10. Hence, the judgment, order and decree evidenced by Exts.P7, P8 and P9 fall in the category of those judgments which could be considered in terms of Section 42, and not merely under Section 43, since they relate to matters of a public nature relevant to the enquiry under the Escheats Act since those decisions rendered by the Bombay City Civil Court dealt with public trusts. So much so, those judgment, order and decree are relevant to the enquiry under the Escheats Act and ought to have been relied upon in the absence of contradicting better materials.

20.Exts.P7, P8 and P9 having been rendered by a competent court and Exts.P5 and P10 having been shown to have been issued under due authority under the Bombay Act, they have to be given full faith and credit throughout the territory of India in view of Article 261 of the Constitution, in the light of the provisions of the Evidence Act noted above, which fall under clause (2) of Article 261 of the Constitution as well. There is nothing on record impeaching upon or impairing the credibility of all those official and judicial documents which stand with the affidavits filed in support thereof. That being so, the materials on record in the proceedings before the statutory authorities under the Escheats Act were of such nature that they could not have been ignored within the format of the laws as detailed in this paragraph.

21.The result of the aforesaid discussion is that the impugned Exts.P22, P18 and P15 are without jurisdiction. They are hence liable to be quashed and the proceedings initiated with the issuance of Ext.P15 shall stand dropped. Respondent no.1 is liable to restore possession of the properties covered by the aforesaid proceedings and which were taken possession of, to the petitioner.

22.Petitioner has claimed mesne profits. In the absence of materials on the basis of which mesne profits, if due, could be quantified, that claim is rejected leaving open issue as to the petitioner's eligibility to it, or otherwise, in terms of the laws.

In the result, this original petition is allowed in part as follows:

i.The impugned Exts.P22, P18 and P15 are quashed.

ii.It is ordered that the proceedings initiated as per Ext.P15 shall stand dropped by the force of this judgment.

iii.Respondents are directed to restore possession of the property covered by Exts.P22, P18 and P15 proceedings and which were taken possession of, to the petitioner.

iv.The petitioner's claim for mesne profits is declined.

v.No costs.

Sd/-
Thottathil B. Radhakrishnan
Judge

Sha/011215

-true copy-

PS to Judge