IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 627 OF 2007.

1.Shri Rameshkumar s/o Govindram
Saraf, Aged about 64 years,

2.Shri Kailashchandra s/o Govindram
Saraf, Aged about 63 years,

3.Shri Omprakash s/o Govindram
Saraf, Aged 60 years,

4.Smt. Ashabai w/o Vijaykumar
Saraf, Aged about 50 years, Occupation
Household,

5.Shri Maheshkumar s/o Vijaykumar
Saraf, Aged about 24 years,
Occupation – Business,

6.Miss Swati d/o Vijaykumar Saraf,
Aged about 23 years, Occupation
Service. ….. **APPELLANTS.**

VERSUS

1.Joint Charity Commissioner,
Nagpur.

~~2.Smt. Meerabai d/o Murlidhar Saraf,~~
~~Aged about 75 years, Occupation~~
~~Household.~~
(Deleted vide Courts order dated 14.07.2014)

3.Vinodkumar s/o Murlidhar Saraf,
Aged about 60 years, Occupation
Business (Dead, through L.Rs.)

(i) Smt. Pushpa wd/o Vinodkumar Saraf,
Aged about 74 years, Occupation Housewife,
resident of Sawkaripura, Wardha 442001
(Widow)

(ii) Mr.Nitin s/o Vinodkumar Saraf,
Aged about 48 years, Occupation Service,
resident of Sainagar, Wardha 442001
(Son)

(iii) Mr. Anand s/o Vinodkumar Saraf,
Aged about 44 years, Occupation Business,
resident of Sawkaripura, Wardha 442001
(Son)

(iv) Sau. Sonal w/o Prashant Choubey,
Aged about 42 years, Occupation Housewife,
resident of Krishna Nagar, Wardha 442001
(Daughter)

4.Shri Vishwanath s/o Murlidhar Saraf,
Aged about 5 years,

5.Shri Sureshkumar s/o Murlidhar Saraf,
Aged about 52 years, Occupation Business,

All residents of Saraf Line, Wardha.

6.Smt.Vimlabai Govindprasad Singhania,
Aged about Adult, Occupation Household,
resident of Building No.7, Flat No.162,
Malad Loop Housing Society, Poddar
Park, Malad [East], Mumbai.

7.Smt. Subhilabai Rameshkumar Kejadiwal,
Plot No.921, near Patil House, Day to Day
Provision stores, Deshpande layout,
Central Avenue Road, Nagpur.

8.Smt.Chandabai Vishwanath Singhania,
Aged about 50 years, resident of Elevia
Manor, 2nd Floor, Flat No.201, Chicholi
Bandar Road, Near Kingston Tower,
Malad [West], Mum bai 400 064.

9.Smt.Roopabai Gopalprasad Singhania,
Shah Archade, 2-A Wing, Flat No.1403,
14th Floor, Rani Sati Marg, Above India
Bank, Near Raheja Tipco Height,
Malad [East], Mumbai 400 009.

~~10.[i] Sau.Gunwantabai wd/o Narayandas~~
~~Saraf, Aged about 70 years,~~
~~Occupation Household~~
(Deleted as per Courts order dated 25.01.2021)

10[ii]. Shri Ravikumar s/o Narayandas
Saraf, Aged about 35 years,

Both residents of E-74, Vidarbha Housing
Society, Bajoria Nagar, Yavatmal.

10[iii]. Sau.Sadhana @ Kiran w/o
Lalitkumar Agrawal,
resident of near Punjab Dal and Basan
Mill, Guljirpura, Akola. … .**RESPONDENTS.**

Mr. S.P. Dharmadhikari, Senior Advocate
with Mr. K.N.Shukul, Advocate for Appellants.
Ms.H. Dhande, A.G.P. for Respondent No.1.
Mr.R.L.Khapre, Senior Advocate,
with Mr.D.R. Khapre, Advocate for Respondent Nos.3 to 5.

CORAM : ROHIT W. JOSHI, J.

CLOSED FOR JUDGMENT ON	:	**20.02.2025**
JUDGMENT PRONOUNCED ON	:	**23.05.2025**

JUDGMENT :

The controversy in the present appeal pertains to a property at Wardha known and identified as 'Gopichand Dharamshala'. The core issue to be decided in this appeal is, as to whether the said Dharamshala is a private trust of Saraf Family or a public trust.

2. Both the learned Senior Counsel inform that a substantial part of the record was destroyed in an incident of fire and the record was reconstructed thereafter, however, entire record could not be reconstructed. In the circumstances, the appeal is decided on the basis of available record.

3. The property of Dharamshala was purchased vide sale-deed dated 12.12.1921 (Exh.48). It will be pertinent to mention that one Gopichand Saraf was resident of Wardha. He expired in the year 1970. He was survived by his wife Ramibai and 3 sons namely Dwarkadas, Murlidhar and Govindram. The property of Dharamshala was purchased in the name of Dwarkadas and Govindram. Since they were minors on the date of sale-deed, they were represented through their mother Ramibai. Thereafter vide partition deed dated 16.07.1941 [Exh.28], there was a partition in the family between 3 brothers namely Dwarkadas, Murlidhar and Govindram. Dwarkadas is referred as Party no.1 in the partition deed, while Murlidhar and Govindram together are referred as Party No.2.

4. As stated above, Gopichand Saraf expired in the year 1970, his wife Ramibai expired on 20.12.1984. Dwarkadas, the eldest son of Gopichand expired on 20.02.1977, Govindram, the second son and predecessor of present appellants died on

05.07.1978. Murlidhar, the youngest son and predecessor of respondent nos. 2 to 9 herein, expired after the commencement of the present litigation and during the pendency of the appeal before the District Judge.

5. As stated above, there was a partition, inter-se between three brothers on 16.07.1941. The said partition deed is a registered document. Clause 7 of the said partition deed speaks about Gopichand Dharamshala. Clause 7 of the partition deed reads as under :

> *"7. That both the parties jointly manage, so far, the family Dharamshala at Wardha known as Gopichand Dwarkadas Dharamshala. Hence forward Party No.2 shall manage the same. In case the party No.2 does not want to do so, that will create a legal trust for its management, as it is a religious endowment of the family. None of the parties has any interest in this Dharamshala."*

6. Clause 7 recites that earlier all three brothers were managing the affairs of the Dharamshala. It is stated that after partition, Govindram and Murlidhar, the two brothers referred in the

partition deed as Party no.2, shall manage the affairs of the Dharamshala. Clause 7 further provides that in the event, Govindram and Murlidhar do not intend to manage the Dharamshala, it will create a legal trust for its management. The Dharamshala is referred as a religious endowment of the family. It is also provided that none of the parties shall have any interest in the Dharamshala.

7. It needs to be mentioned that in the year 1955, there was a dispute with respect to the management of the Dharamshala between Govindram and Murlidhar. One Satyanarayan Bajaj was appointed as Manager to manage the affairs of the Dharamshala in the year 1955. This Satyanarayan Bajaj was managing the affairs of the said Dharamshala since the year 1955.

8. On 07.05.1976 one Narayan son of Govindram Saraf lodged a complaint/application with the Charity Commissioner, Mumbai. He has stated in the application that the Dharamshala was constructed at Wardha for public use. He has stated that some shops

were constructed in the Dharamshala, which were let out to tenants with a view to generate income for the purpose of management of the Dharamshala. It is mentioned in the application that Satyanarayan Bajaj was appointed as a trustee for looking after the affairs and management of the Dharamshala. He alleged that the said Satyanarayan Bajaj was not managing the affairs of the Dharamshala properly, he did not maintain proper accounts and also misappropriated funds of the Dharamshala. In view of these allegations Narayan made a request for making appropriate enquiry and to take necessary steps for taking over the management of the Dharamshala.

9. Pursuant to the said application/complaint, an enquiry being Suo Moto Enquiry No.841/1977 was initiated in accordance with Section 19 of the Maharashtra Public Trust Act. The Inspector of Public Trust was directed to conduct an enquiry and submit report. One Shri M.Panse, Inspector submitted his report, pursuant to which objections were called in the matter. Murlidhar Saraf, the predecessor of respondent nos. 2 to 9 filed his reply on 22.01.1980

supporting the report to contend that the Dharamshala was indeed a Public Trust. He claimed to be the sole trustee of the said trust. He stated that on account of differences in between him and his brother Govindram, Satyanarayan Bajaj was appointed as a Manager to manage the affairs of the Trust. Per contra, the appellants contended that the Dharamshala was a family property of Saraf family and not a public trust. The manager Satyanarayan Bajaj also filed reply stating that the property of Dharamshala was a family property of Saraf Family. After conducting enquiry into the matter, the Deputy Charity Commissioner, Nagpur Region, Nagpur passed an order on 31.03.1981, thereby directing registration of Gopichand Dharamshala, Wardha as a Public Trust. A certificate of registration was ordered to be issued in the name of Murlidhar Saraf, holding that he was the sole trustee of the said trust.

10. Aggrieved by the said order, the present appellants who are descendants of Govindram Saraf, filed an appeal under Section 70 of the Act before the Joint Charity Commissioner, Nagpur. The said appeal came to be registered as Appeal No.40/1981. The

learned Joint Charity Commissioner has decided the said appeal vide judgment and order dated 30.07.1981. The contention of the appellants that the Dharamshala was a family property was rejected. It was however, held that the material on record was not sufficient to hold that the Dharamshala was a public trust. The matter was therefore, remanded to decide the issue as to whether the Dharamshala was a public trust or a private trust. The order of remand was not challenged by either party.

11. After the matter was remanded, the same was taken up for consideration by the Assistant Charity Commissioner, Chandrapur Region, Chandrapur. The said Authority has decided the matter vide judgment and order dated 31.01.1991. It is held that the Dharamshala was not a public trust and at best it could be said to be a family trust of Saraf family. The application for registration of the trust was accordingly rejected by the said order. The said authority held that the property was not dedicated to public at large by virtue of Clause 7 of the partition deed. This conclusion is drawn on the basis of the following findings :-

(i) The property is not dedicated to public at large as per Clause 7 of the partition deed.

(ii) The family members treated the property to be a property of the family and not property of public trust.

(iii) 3 brothers, Dwarkadas, Govindram and Murlidhar had filed rent control proceedings under C.P. and Berar Rent Control Order, wherein it was stated that they were the owners of the property of Dharamshala and Shri Satyanarayan Bajaj was appointed as manager to collect rent.

(iv) Murlidhar was in occupation of major portion of the Dharamshala, without paying any rent.

(v) Murlidhar and Dwarkadas had issued a letter to Agrasen Bhavan Committee on 09.09.1976 for transferring the property of Dharamshala, indicating that the Dharamshala was a private property, The letter recites that – *"we 3 brothers have decided that the Gopichand Dharamdas Dharamshala be donated to Agrasen Bhavan Trust."*

(vi) Murlidhar and widow of Dwarkadas had issued a letter dated 29.11.1979, terminating appoint of Satyanarayan Bajaj as manager.

(vii) Legal heirs of Govindram had issued letter asking Satyanarayan Bajaj to continue to hold the office of manager.

(viii) Balance amount after meeting the expenses of Dharamshala was paid to the members of Saraf family.

12. Family members of respondent nos.2 to 9 challenged the said order dated 31.01.1990 passed by the learned Assistant Charity Commissioner by filing an appeal before the Joint Charity Commissioner, which came to be registered as Appeal No.7/1990. The learned Joint Charity Commissioner has allowed the said appeal vide judgment and order dated 24.01.1994. The learned Joint Charity Commissioner allowed the appeal in view of the following :-

(i) Clause 7 of the partition deed recites that no member of the family had interest in the property of Dharamshala, which implies that the property was dedicated to public at large.

(ii) People from all walks of life and from different religion were entitled to use the Dharamshala. The temple in the Dharamshala was also open for worship for public at large.

(iii) In view of the dispute between brother Govindram and Murlidhar, they were bound to create a trust and could not utilize the property of Dharamshala for their own use.

13. This judgment and order dated 24.01.1994, allowing the appeal and holding the Dharamshala to be a public trust was challenged by the branch of present appellants by filing an appeal before the learned District Judge, Wardha vide M.J.C.No.18/1994. The learned District Judge has dismissed the said proceeding vide its judgment and order dated 05.04.2007. The learned District Judge has dismissed the appeal on the basis of following conclusions which are extracted in paragraph No.53 of the judgment :-

> (a) The recitals at col.no.7 of the partition deed at Exh.28 discloses that none of the parties has any interest in Dharamshala.
>
> (b) Use of Dharamshala for public purpose is established as persons from different walks of life used to stay in Dharamshala with free access.
>
> (c) Income from Dharamshala has not been used by or for family of Saraf.
>
> (d) The building never considered as a private one by any member of the family of Saraf.
>
> (e) As per certificate issued by Satyanarayan the rooms were let-out even to Murlidhar on the rent.
>
> (f) Contents in the application Exh.A-1 of

Narayandas @ Narendra to Deputy Charity Commissioner to treat Dharamshala as a public institution.

(g) Murlidhar admitting Dharamshala as a public trust claiming no interest and accepting dedication to Charitable use.

(h) Use of Dharamshala by visitors for several purposes by persons of different religions.

(i) Evidence of deities to Shiv Mandir and Hanuman Mandir located in Dharamshala even without permission of any member of Saraf family.

(j) Report of Inspector Mr.Panse, after enquiry discloses Dharamshala as a public trust.

(k) Entrusting administration of Dharamshala to Satyanarayan Bajaj on 1.2.1955 itself an act of dedication for Charitable purpose due to dispute in management.

(l) No evidence that Saraf brothers at any time enquired about income, expenditure account etc. of Dharamshala as knowingly it was dedicated for Charitable purpose.

(m) Expenditure on Puja, Prasad, Utasav met from fund of Dharamshala and not from the fund of Saraf family.

(n) There is no evidence or proof that there was control of Saraf family over Dharamshala so that it could be held as a private trust or private family property.

14. In this backdrop, the present appeal was filed under Section 72[4] of the Maharashtra Public Trust Act. The appeal is drafted and filed like a Second Appeal in view of the legal position then prevailing. However, in view of the Full Bench decision of this Court in the matter of **Prabhakar Sambhu Chaudhary .vrs. Laxman Baban Mali and others** reported in **2016 [3] Mh.L.J. 202,** the parties are *ad idem* that the appeal will have to be heard and decided like a first appeal.

15. Shri S.P. Dharmadhikari, learned Senior Counsel appearing for the appellants has assailed the findings recorded by the learned Joint Charity Commissioner and the learned District Judge, contending that the findings are contrary to the evidence on record. He contends that the authorities have also failed to take into consideration the relevant documentary and oral evidence while deciding the appeals. He contends that the interpretation of Clause

7 of the partition deed by the authorities is completely erroneous. He further contends that the learned Joint Charity Commissioner had in the first round of litigation, while remanding the matter, categorically held that the public trust was not created by virtue of Clause 7 of the partition deed, and this finding was not assailed by the parties. He therefore, contends that after remand of the matter, the authorities could not have taken a contrary view and hold that a public trust was created by virtue of Clause 7 of the partition deed. The learned Senior Counsel elaborates the submissions by stating that the Dharamshala was in existence even prior to the execution of the partition deed. He states that the partition deed clearly records that Dharamshala was a religious endowment of the family. According to him, the words 'religious endowment of the family' would clearly indicate that the property was not to be treated as a public trust. He submits that the last sentence in Clause 7, which states that no party shall have any interest in the Dharamshala, is required to be read and interpreted harmoniously with other sentences in Clause 7, and when so read and interpreted, it will mean that no party can claim any individual interest since the

Dharamshala was a religious endowment of the entire family.

16. With respect to the evidence on record, the learned Senior Counsel has argued that the burden of proving existence of public trust is on the person who asserts the same and on the establishment of Charity Commissioner. He contends that the respondents have miserably failed to establish the existence of a public trust. According to him, the evidence on record clearly and conclusively establishes that the trust is a family trust, and not a public trust. In support of this submission, he has referred to the following :

(a) All the three brothers had filed an application against a tenant in the Dharamshala, claiming that they were owners of the property and Satyanarayan Bajaj was appointed by them for collecting rent.

(b) He also points out from the contents of the application that eviction proceeding was filed on the ground of bonafide need of family members stating that they wanted to start separate business in the premises after vacating the tenant. This according to him establishes that the Dharamshala is not a public trust, but, a private trust of the family.

(c) Although Murlidhar is in occupation of major portion of the Dharamshala for years he has produced only one rent receipt for the entire period. This rent receipt is issued in his favour by Satyanarayan Bajaj in order to enable him to obtain licence for running spirit business from the Municipal Council. This shows that Murlidhar was in occupation of the Dharamshala as owner, which implies that the Dharamshala is a private family trust.

(d) Widow of Dwarkadas was also in possession of rooms in the Dharamshala without making any payment of rent. This also assumes significance, because Dwarkadas was kept away from the management of the Dharamshala, as per partition deed of the year 1941.

(e) Carpets of Dharamshala were in custody of Murlidhar who use to let out them on rent and collect rent for the same.

(f) After meeting the expenses, the residue was handed over by the manager Satyanarayan Bajaj to Ramibai wife of Gopichand and mother of Dwarkadas, Murlidhar and Govindram.

(g) The management of Dharamshala was with Satyanarayan Bajaj, who was appointed as a manager by the two brothers. There is no evidence regarding involvement of any person other than the family members in the management of the trust, except Satyanarayan Bajaj, who was appointed by two brothers.

(h) The letter issued by Dwarkadas and Murlidhar to Agrasen Bhavan indicates that the Dharamshala was treated as property of the family and not the property of public trust.

(i) The letter issued by Murlidhar and widow of Dwarkadas terminating appointment of Satyanarayan Bajaj as manager also refers the Dharamshala as family trust.

17. As regards, the temple, learned Senior Counsel contends that the area of temple is merely around 100 sq.ft. as against the total area of the Dharamshala, which is around 9000 sq. ft. along

with a double storied building. He contends that the existence of temple in the premises which is visited by members of public at large for worship, will not be determinative of the character of the entire Dharamshala. He also contends that unless members of public visits a temple as a matter of right, the temple cannot be said to be a public trust. He argues that mere unrestricted right of worship will not lead inference that the visitors were worshiping the idols as a matter of right.

18. Per contra, Shri R.L. Khapre, learned Senior Counsel appearing for the respondent nos. 2 to 9 contends that, Clause 7 of the partition deed unequivocally provides that no member of the family shall have any interest in the property of Dharamshala which implies that the family had renounced the property of Dharamshala and that renouncement is obviously not in favour of any individual, but, in favour of public at large. The learned Senior Counsel therefore contends that a public trust has been created by virtue of Clause 7 of the partition deed.

19. He further states that Clause 7 of the partition deed provides that in the event the two brothers Govindram and Murlidhar could not manage the Dharamshala, a legal trust would be created automatically by operation of Clause 7. He has referred to the third sentence in Clause 7 to contend that a trust was to be created automatically in the event of inability of the two brothers to manage the Dharamshala. He contends that admittedly there was a dispute between Govindram and Murlidhar with respect of management of the Dharamshala, and therefore, Satyanarayan Bajaj was appointed to manage the affairs of the Dharamshala, which is sufficient to hold that a public trust came into existence from the year 1955.

20. Shri Khapre, learned Senior Counsel contends that dedication of the Dharamshala was to public at large and not to any identifiable person or group of persons. To make good this submission, he contends that people from all religions and walks of life were allowed to use the Dharamshala for staying. He further states that admittedly there is a temple in the premises in which idols

of Lord Shiva and Lord Hanuman are installed and public at large visits the temple for worshiping the idols without any permission from Saraf family. According to the learned Senior Counsel, when beneficiaries are unidentifiable and fluctuating lot, the trust has to be held to be a public trust and not a private trust.

21. As regards occupation of Murlidhar, learned Senior Counsel contends that he has produced rent receipt and certificate on record indicating his status as a tenant and Satyanarayan Bajaj who has supported the case of the appellants that the Dharamshala is not a public trust, has also stated in his favour that Murlidhar was in occupation of the property as a tenant.

22. He has elaborately relied on the evidence of Mansaram Trivedi, who according to him was the employee of the Dharamshala, to contend that the Dharamshala was infact a public trust.

23. Both sides have placed reliance on several judgments which explain distinction between public trust and private trust. The

judgments lay down the following principles -

(i) When origin of the trust can be ascertained, its nature should be determined on the basis of the document by which it is created.

(ii) The burden of proving existence of a public trust lies upon a person who asserts the same.

(iii) When it is established that a trust was a private trust at any point of time, clear and cogent evidence will have to be led to demonstrate with passage of time it has assumed the character of public trust.

(iv) If beneficiaries are a fluctuating lot of people as against specified individuals the trust will be a public trust.

(v) In case of private trust right of management is restricted to the grantor and his family whereas in case of a public trust right of management is not so restricted.

(vi) Whether the trust is established by private funds or public funds and whether donations are accepted for meeting expenses of the trust is also a relevant consideration.

(vii) Dedication of property may not necessarily be absolute. It can also be partial. If the dedication is absolute, the trust assumes character of public trust. If the dedication is partial, the trust remains a private trust.

(viii) Intention of the donor and his family members which can be inferred from their general conduct and behaviour vis-a-vis property of the trust.

(ix) As regards the temple, the test is as to whether public at large has right to visit the temple for worship. Mere worship by members of general public will not establish that the temple is a public trust, the worship should be as a matter of right.

(x) Size of the temple, vis-a-vis the entire premises.

24. It is generally held in all the cases that it is difficult to lay down any uniform test to determine as to whether a trust is a private trust or a public trust. However, there are certain factors which help in determining the character of a trust. It is also held that all the characteristics may not be established in every case, and therefore, whether a trust is a public trust or a private trust, is required to be ascertained on case to case basis on available evidence.

POINT FOR DETERMINATION.

25. The only point that falls for consideration in the present appeal is – as to whether the Dharamshala is a Public Trust or a Private Trust of Saraf family. However answer to this point depends on several factors which are extracted herein above.

CLAUSE 7 OF THE PARTITION DEED.

26. It is necessary to consider clause 7 of the partition deed since the learned Authorities have held that a public trust is created by virtue of the said clause. The arguments of learned Counsel for the appellants and respondents with respect to Clause 7 of the Partition Deed are reproduced in paragraph nos.13 and 16 above. In short the contention of the appellants is that the Dharamshala was a family Dharamshala, even prior to the partition deed and it continued to be so even thereafter and Clause 7 of the partition deed only deals with the right of management of the Dharamshala, whereas the respondents contend that as per clause 7 the parties have divested themselves of all interest in the Dharamshala, thereby dedicating to public at large, resulting in creation of a public trust.

27. The property of Dharamshala was admittedly purchased vide sale-deed dated 12.12.1941 [Exh.48]. The sale-deed is in the name of Dwarkadas and Govindram. Admittedly they were minors at the relevant time and were represented by their mother Ramibai. This property, which is purchased in the year 1921 is subject matter of Clause 7 of the partition deed. Clause 7 refers to the said property as property of *'Family Dharamshala'*. It is also referred as *'religious endowment of the family'*. The first sentence in Clause 7 states that prior to execution of the partition deed, all three brothers were jointly managing the affairs of the Dharamshala. It is stated in the second sentence that upon execution of the partition deed, the two brothers namely Govindram and Murlidhar [Party No.2], shall manage the affairs of the Dharamshala. A future contingency is considered in the third sentence, that in the event the two brothers did not want to manage the affairs of the Dharamshala, a legal trust will be created for management of the Dharamshala, as it is a religious endowment of the family. The first two sentences indicate that the property in question was treated as Dharamshala even prior

to the execution of the partition deed and all the three brothers were in charge of its management. Perusal of the second sentence indicates that the right to manage was to vest exclusively with Govindram and Murlidhar to the exclusion of their brother Dwarkadas. The third sentence also speaks about the management of Dharamshala. It provides that in the event the brothers do not intend to continue with the management, a legal trust will be created. It needs to be mentioned that what is provided is that a legal trust will be created. Clause 7 does not provide that a public trust will be created in the event the two brothers do not intend to manage the trust. In this context, the last sentence in Clause 7 needs to be interpreted. The last sentence states that none of the parties has any interest in the Dharamshala.

28. Perusal of Clause 7 will indicate that it deals with the right to manage the Dharamshala. Perusal of said clause does not indicate any intention to alter the nature of the Dharamshala. The last sentence cannot be read in isolation, it has to be read in conjunction with other sentences. The word '*Family Dharamshala*'

and '*Religious endowment of the family*', which are mentioned in earlier part of Clause 7, cannot be ignored while interpreting the last sentence. It is necessary to interpret all the sentences harmoniously with a view to ensure that no part or portion of the clause is rendered otiose. The last sentence in Clause 7 when read in conjunction and harmoniously with the earlier portion in the said clause, would mean that the Dharamshala continued to be a Family Dharamshala or Religious Endowment of the Family, and no party could claim any personal or individual interest in the Dharamshala, since the Dharamshala is a joint and collective property of the family, and it was to be used as a family Dharamshala. The purport seems to be that the family as a whole will have interest in the Dharamshala and not any individual member of the family. The intention to dedicate the property to public at large by divesting themselves of rights and interest in the property is not exhibited from reading of clause 7 of the partition deed.

29. It is a settled legal principle that all clauses in a document must be read and interpreted harmoniously in conjunction

with each other, and as far as possible proper meaning should be assigned to each and every clause and word used in the document. However, if such reconciliation is not possible, dominant purpose of the document must be considered and relevant clauses must be interpreted accordingly.

30. The learned Joint Charity Commissioner and learned District Judge has failed to adhere to this legal principle. They have completely ignored the words 'Family Dharamshala' and 'Religious endowment of the family', while interpreting Clause 7. Likewise the said authorities have also failed to appreciate that the intention behind Clause 7 of the partition deed was merely to provide for management of the Dharamshala. The purport of incorporating the clause in the family partition deed was not to dedicate the property for public charity or to alter the nature of the property.

31. It must also be mentioned that the partition deed or any other document in relation to the Dharamshala also does not provide for collection of donations etc., for meeting expenses of the

Dharamshala. There is no evidence that donations, offerings, etc., were ever accepted. The origin of Dharamshala is undisputedly private. It is admittedly nor created out of public funds.

32. In this context, it is necessary to refer to judgment of the Hon'ble Supreme Court in the matter of **Kuldip Chand and another .vrs. Advocate General to Govt. of H.P.** reported in **(2003) 5 SCC 46**. This judgment also pertains to a Dharamshala. The property in question was used as a Dharamshala for around 125 years. The Dharamshala was constructed by one Raj Kumar Bir Singh somewhere around the year 1881. The fourth generation descendants sold the Dharamshala to three individuals. In this backdrop, the Advocate General to the Government of Himachal Pradesh filed a suit under Section 92 of the Code of Civil Procedure seeking a declaration that late Raj Kumar Bir Singh had dedicated the said property to public at large thereby creating a public trust. The suit was initially dismissed, however, the appeal filed by the Advocate General was allowed. The purchasers, thereafter approached the Hon'ble Supreme Court. The Hon'ble Supreme

Court has held that dedication of property of a Hindu for public purpose can either be complete or partial. In case the dedication is complete, a public trust is created. However, if the dedication is partial, it will only create a charity and not a public trust. It is held that merely because the property was used as a Dharamshala for around 125 yeas, would not lead to the conclusion that the dedication of property was absolute, so as to constitute a public trust. The Hon'ble Supreme Court has held that when control of the affairs of the property, such as appointment of chowkidar, appropriation of rent, maintenance of the property etc., is done by the grantor then the dedication cannot be said to be absolute. It is also held that when the grantor does not make provision of donation etc., it is a strong indication that the dedication is not complete so as to the create a public trust. The following tests and guidelines have been prescribed in paragraph no.47 of the judgment.

> *"47. This Court laid down the following tests as sufficient guidelines to determine on the facts of each case whether an endowment is of a public or private nature :*

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the

> *founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."*

33. In view of above the Hon'ble Supreme Court has held that the property of Dharamshala was a private property. The facts of this case are quite similar to the facts involved in the present appeal. In both cases, the property in question was treated as Dharamshala. In the judgment before the Hon'ble Supreme Court, it appears that the entire property was used as a Dharamshala. As against this, here a portion of the property only was being used as a Dharamshala. The present case stands at high pedestal, since major portion of the Dharamshala is in occupation of family members, and only a part of it was used as Dharamshala.

34. As will be apparent from the discussion of evidence hereinafter, in the present case major portion of the Dharamshala was in possession of family members of Saraf family. The evidence

indicates that rooms were allowed to be occupied by travelers. However, it seems that the property was not dedicated for said purpose.

35. It also needs to be mentioned that in the first round of litigation, the learned Joint Charity Commissioner has vide its judgment and order dated 30.07.1981 held that Clause 7 of the partition deed by itself does not create a public trust. In view of said finding, the matter was remanded back to the first authority to decide as to whether the Dharamshala is a public trust of private trust of Saraf family. None of the parties has challenged the said judgment and order. The parties appeared before the Assistant Charity Commissioner and led evidence on the aspect of the character of the Dharamshala, in view of the findings by the first appellate authority/Joint Charity Commissioner that Clause 7 of the partition deed did not create a public trust. Since both sides have accepted the finding that clause 7 by itself does not create a public trust by not challenging the same it is not open for either party to contend that a public trust was created under the said clause.

<u>BURDEN OF PROOF.</u>

36. In view of interpretation of Clause 7, the burden of proof that the Dharamshala is a public trust will be on the respondents. This burden is required to be discharged by leading clear and cogent evidence, as is held in the matter of **Hari Bhanu Maharaj of Baroda .vrs. Charity Commissioner, Ahmedabad** reported in **[1986] 4 SCC 162 :**

> *"10. .....Once materials are found to warrant a conclusion that a Math or Mandir was private in character at the time of its origin, then unless there is clear and definite evidence to show that there had later been a dedication of the institution for the use of the public, the private character of institution will not get effaced."*

The deidication must also be proved to be complete dedication and not partial dedication in view of well settled legal principle that public trust is created only of the dedication in complete and in case of partial dedication the property continues to have private character. Reference in this regard can be had to decisions int he matters of

Maharani Hemanta Kumari Debi and others Vs. Gauri Shankar Tewari and others reported in ***ILR 1941 All 401 (PC), Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao*** reported in ***(1957) AIR (SC) 797 and Kuldip Chand (supra)*** and several other judgments, which consistently agree with the said view.

CREATION OF PUBLIC TRUST IN 1955 IN VIEW OF DISPUTE BETWEEN GOVINDRAM AND MURLIHDAR.

37. Shri Khapre, learned Senior Counsel contends that even if it is assumed that the trust was not created in the year 1941, by virtue of the partition deed, it was certainly created in the year 1955 when due to inter-se dispute between Govindram and Murlidhar, the management of the trust was handed over to Satyanarayan. Referring to the third sentence in Clause 7, Shri Khapre learned Senior Counsel argues that the clause provides for automatic creation of a public trust in the event dispute between brothers in relation to management arises. He has laid great emphasis on the words '*that will create a legal trust*'. He contends that the learned

Joint Charity Commissioner and the District Judge have correctly interpreted the clause to hold that a public trust came into existence by virtue of said clause, in view of failure on the part of Murlidhar and Govindram to manage the affairs of the trust, resulting into appointment of Satyanarayan to manager the same in the year 1955.

38. Shri Dharmadhikari, learned Senior Counsel opposes said submission to contend that even if the brothers could not manage the Trust that by itself will not alter the nature of the Trust. He further contends that only because brothers may not want to look after the management would not divest the family of its interest or rights over the Dharmashala in order to create a public trust. He reiterates that the third sentence on which reliance is placed by Shri Khapre, also refers to the trust as religious endowment of the family.

39. As regards interpretation of third sentence of Clause 7 of the partition deed, as held above, the said sentence cannot be read in isolation, it has to be read harmoniously with all sentences in the clause and also all the words in the said sentence. Clause 7 is

incorporated in the partition deed with a view to provide for management of Dharamshala. The Dharamshala is referred as a family Dharamshala and religious endowment of the family in the partition deed. It is difficult to comprehend that the brothers intended that that only because two brothers may not want to manage the affairs of the Dharamshala, that by itself would divest the family of its rights and interest in the property and create a public trust by dedication of property to public at large. It also needs to be mentioned that the words used in Clause 7 are '*legal trust*' and not '*public trust*'. A private trust can also be termed as a legal trust. The true import of the sentence is that in future if the brothers do not continue with the management of the trust, a proper document providing for scheme of management of the trust will be created for smooth management of the Dharamshala. It does not appear that the parties intended that in the event brothers do not manage the affairs of the trust, a public trust should be created or rather as submitted by Shri Khapre, it shall be created automatically. It needs to be mentioned that even after the year 1955, the parties have treated the property of Dharamshala as their personal property, as is apparent from the evidence on record, which is dealt with hereinafter. It must be mentioned that in his applications before the Charity Commissioner dated 28.11.1979 (Exh.10) and 22.01.1980 (Exh.14), Murlidhar has referred to the trust as Family Dharamshala and also property belonging to HUF of three brothers. In their telegram and letter dated 29.11.1979 issued by Murlidhar and Kamlabai widow of Dwarkadas at Exh.43 and 44 respectively, the Dharamshala is referred as Religious Endowment of the Family. These applications and communications are after the proceeding for registration of trust was initiated. Likewise, the branch of Govindram is consistent in its stand that the Dharamshala is Joint Hindu Family property of Saraf Family. The interpretation of Clause 7 that a public trust has come into existence in view of the dispute between Govindram and Murlidhar, is contrary to contents of the document and also not in tune with understanding of the document by persons who are author to the document and there descendants. The interpretation of the document to hold that the trust came into existence in view of dispute between Murlidhar and Govindram in the year 1955 is untenable and unacceptable. The learned Joint

Charity Commissioner and District Judge have clearly erred in arriving at such finding.

40. Since interpretation of Clause 7 of the partition deed is being considered, it will be necessary to consider as to how the family members themselves have interpreted the said clause. It is well settled that when a question with respect of interpretation of a document falls for consideration, the manner in which the parties to the document interpret the same and have all throughout acted in relation to it is also a relevant consideration.

41. As stated above, the proceeding was initiated on an application moved by Narayan son of Govindram Saraf. He is brother of appellant nos. 1 to 3 and predecessor of appellant nos. 4 to 6. He has stated in his application that the Dharamshala was constructed by his grandfather for public use and that for meeting the expenses of the Dharamshala some shops were constructed in the front portion of the building. He has stated that Satyanarayan Bajaj was appointed as a trustee, who was looking after the affairs of the

trust. Alleging mismanagement and also misappropriation of funds against him, he made a request to the Charity Commissioner to take over the management of the trust.

42. It needs to be mentioned that this stand taken by Narayan is contrary to the stand of his father deceased Govindram. It must also be mentioned that the other descendants of Govindram who are the appellants herein, are consistent in their stand that the Dharamshala is Joint Hindu Family property and not a public trust.

43. Notices were issued pursuant to the said application filed by Narayan. Murlidhar filed an application dated 28.11.1979 requesting time to file his response. In this application he has referred to the trust as a family trust. He suggested that there should be a proper scheme for management of the trust and branches of all the three brothers namely Dwarkadas, Murlidhar and Govindram should be given representation in the managing committee. He filed another application on 30.01.1980 stating that he was sole surviving trustee and that he had no objection to declare the Dharamshala as a

public trust. In his subsequent application dated 22.01.1980, Murlidhar has referred to property of Dharamshala, as property belonging to HUF comprising of three brothers. In this application also, he has stated that he is that sole surviving trustee of the trust. The above applications by Murlidhar indicate that it was his initial contention that the Dharamshala was a family trust or HUF, however, he had no objection for registration of the same as a public trust. However contrary to his earlier position, he has subsequently taken a stand that the Dharmashala is a public trust.

44. It needs to be mentioned here that out of three brothers, Dwarkadas expired on 20.02.1977 and Govindram also expired on 05.07.1978. Murlidhar, the youngest brother was alive and has actively participated in the proceedings. Evidence of Murlidhar is therefore of vital importance. Murlidhar has taken a stand that Dharamshala is a public trust.

45. Deposition of Murlidhar is at Exh.26. In his examination-in-chief, Murlidhar has stated that the property of

Dharamshala was purchased by the mother in the name of his two brothers. He states that Dharamshala was used by travelers [musafirs] for stay and it was also used for functions, such as marriages etc. He has stated about the registered partition deed of the year 1941. He states that in terms of the partition deed, no brother had personal right or interest in the Dharamshala. He has then stated about the dispute between himself and Govindram in relation to the management of the Dharamshala and has stated that in view of above, the management of the Dharamshala was given to Satyanarayan Bajaj. As regards the status of Satyanarayan Bajaj, he has stated that in view of the dispute between the brothers in relation to management of the Dharamshala, Satyanarayan Bajaj was appointed merely as a manager. He claims that he was in possession of some portion of the Dharamshala as a tenant on monthly rent of Rs.35/- since the year 1959. He has also produced one rent receipt and certificate issued by Satyanarayan Bajaj stating that he was in occupation of portion of Dharamshala as a tenant. He denied the suggestion that from the date of purchase till the year 1941, the Dharamshala was used for Saraf family. He also denied the suggestion that proceeds of Dharamshala were utilized by Saraf family. He alleged that the dispute in relation to management of the Dharamshala started because his brother Govindram started appropriating income from the Dharamshala for himself. Murlidhar has stated in his cross examination that he used to record entries regarding payment of rent in his books of accounts. He has stated that since Satyanarayan was not accepting the rent, he was taking entries without making payment of rent. He admitted that the partition deed refers to Dharamshala as family Dharamshala. In his cross-examination, he has stated that the Dharamshala was a joint family trust.

46. The contention of Murlidhar with respect to his possession over certain portion of the Dharamshala is that he is in occupation of the same as a tenant. As against this, the contention of the appellants is that Murlidhar is not in occupation of the property as a tenant, but, as co-owner. The appellants have also contended that apart from Murlidhar, Kamlabai widow of Dwarkadas was also in occupation of major portion of the Dharamshala as owner.

47. In this context, the evidence of Murlidhar is required to be appreciated. If Murlidhar is held to be in occupation of the property as a tenant, then it will lend credence to his contention that the family members treated Dharamshala to be a public trust and acted as such. However, if it is held that Murlidhar was not in occupation of the premises of Dharamshala as a tenant, then it will be a strong circumstance to establish that even Murlidhar did not consider the property to be a property of public trust.

48. Murlidhar has produced on record one rent receipt and a certificate issued by Satyanarayan Bajaj, wherein it is stated that he is in possession of some portion of the Dharamshala as tenant. It will be pertinent to mention that Murlidhar is in possession of the property since the year 1959, however, admittedly he has produced only one rent receipt on record. With respect to this rent receipt, Satyanarayan Bajaj, who is supporting the case of the appellants, has stated that although the rent receipt was issued, Murlidhar has not paid the rent, as mentioned in the receipt. With respect to the

certificate issued by him, Satyanarayan Bajaj has stated that the certificate was issued on the request of Murlidhar. Satyanarayan Bajaj has clarified that Murlidhar was in need of municipal license for his business of Spirit and French Polish, and therefore at the request of Murlidhar, the rent receipt and certificate were issued by him.

49. As stated above, Murlidhar has produced only one receipt on record. In his cross examination on the aspect of occupation of the property, he has admitted that he had only one rent receipt with him. It will be pertinent to note that Murlidhar has taken inspection of accounts of the Dharamshala. He has accepted that he could not find any entries in the accounts regarding payment of rent by him. As regards payment of rent for the shops and godowns in possession of Murlidhar, he has stated that till the year 1974-75 he did not have any account entries to demonstrate payment of rent. He stated that initially he was in possession of two rooms ad-measuring 12 x 24 feet. He stated that he had taken up entries with respect of payment of rent in his account books. He

however, admitted that he did not produce the same on record. He denied the suggestion that he did not pay the rent, however, immediately clarified that rent was not paid because Satyanarayan Bajaj did not accept it.

50. Murlidhar has also admitted that marriages of his children had taken place in the Dharamshala. He has stated that when Dharamshala was utilized for marriages of other people, rent was charged. However, he could not produce any documentary evidence regarding payment of rent for the marriages of his children. Perusal of his cross-examination indicates that he avoided to answer the questions put to him in this regard. He did not divulge the dates of marriages of his children. He did not even speak about the tentative period of of marriages of his children. Questions were put to him in order to contend that he has not paid any charges for the marriage ceremonies of his children, since he considered himself to be a co-owner of the property, and the Dharamshala to be a family Dharamshala and not a public trust. I am in agreement with Shri Dharmadhikari, learned Senior Counsel that the tenor of answers

given by Murlidhar in cross-examination in respect of payment of charges for marriages, indicates that he was intentionally avoiding to give proper answers to conceal that he did not pay any charges for the marriage ceremonies of his children, which were held in the Dharamshala.

51. In this regard, it is necessary to consider the deposition of Vinod (Exh.148), who is son of Murlidhar. He is running a shop in the Dharamshala since the year 1969-70. The shop block in his possession was earlier occupied by Lipton Company as a tenant. He contends that he was paying rent for the shop to the Manager – Satyanarayan Bajaj. However, as per his version in the examination-in-chief, he had rent receipt only for the months of October and November, 1968. These rent receipts are also not produced by him on record. He admitted in his cross-examination, that except for October and November, 1968 he did not pay rent for the shop in his possession. He admitted that his uncle Rameshwar Saraf and Brijmohan Saraf used to reside in the Dharamshala and they expired in Dharamshala only. Perusal of his evidence will demonstrate that

he has failed to establish that he was in occupation of the premises as tenant. As per his own contention, he has paid rent only for two months and thereafter he did not pay any rent. He has failed to prove payment of rent for two months as well. It needs to be mentioned that the premises vacated by the erstwhile tenant have been occupied by him for his business purpose. This is indicative of the fact that the family members considered themselves to be owners of the Dharamshala.

52. It will be pertinent to mention that the three brothers and Satyanarayan had initiated proceedings for eviction of tenants in the Dharamshala. This fact is not in dispute. The said proceeding was registered as Rent Control Case No.59/71-2/1974-75. The contents of the application. Are also not in dispute. Paragraph nos.1 and 4 of the said application read as under :

> "*1. That, the applicants nos.1 to 3 are the owners of House No.8 to 8[5] situated in Old Ward No.1 and New Ward No.25 within the limits of Wardha Municipal Council situated on Nazul Plot No.179, in Block No. XVI of Wardha Nazul Town. Applicant No.4 is authorized by the applicants nos. 1 to 3 to recover the rents from the tenants.*

2. …

3. …

4. That, the applicant no.2 Govindram has five sons – viz- Narendrakumar, Rameshkumar, Kailaschandra, Omprakash and Vijaykumar. Out of these five sons, two [Narendrakumar and Kailaschandra] are in service and the remaining three sons are without employment. The applicant's family is a business community and the applicant no.2 desires to have separate shops for each of his three sons in different commodities. Hence, the applicants want the house, in question for their bonafide occupation."

53. It is thus apparent that all the three brothers, including Murlidhar claimed ownership over the property of Dharamshala. Eviction of tenant was sought on the ground of bonafide need of starting business for the sons of Govindram, who were stated to be unemployed. The contents of this application clearly demonstrate that Murlidhar considered himself to be the owner of the property of Dharamshala along with his brothers, and that the property of Dharamshala was not considered by him to be a property of public trust.

54. The respondents contend that the said statements made in the eviction proceeding before the Rent Controller are self serving statements designed to obtain eviction orders from the said Authority and therefore much weight should not be assigned to the said statements. This statement in the rent control application is required to be appreciated in the light of other evidence on record. It is apparent that in his earlier applications dated 28.11.1979 and 22.01.1980 (at Exhs.10 and 14 respectively) made before the Charity Commissioner Murlidhar has referred to the Dharmashala as a Family Dharmashala as also religious endowment of the family. The same is his stand in the letter terminating appointment of Satyanarayan as Manager. The conduct of all three branches of family including Murlidhar and his son, occupying the Dharmashala for their business purpose and residence without payment of rent also needs to be considered while appreciating the statements made in the rent control proceedings. In the light of the above it is difficult to accept the explanation offered by Mr. Khapre that the said statements are self serving statements and are liable to be ignored as such.

55. It will be also pertinent to mention here that Kamlabai widow of Dwarkadas was also residing in some portion of Dharamshala. The said fact is also not in dispute. Murlidhar has categorically admitted the same in his cross-examination. Perusal of the evidence on record will indicate that there is no material to indicate that Kamlabai was making payment of rent for the portion of Dharamshala in her occupation.

56. Likewise, two sons of Govindram are also in possession of one room each. They have categorically stated that they are also not paying rent for the portion of Dharamshala in their possession. It is their contention that they are owners of the property.

57. Thus, the branches of all three brothers are/were in occupation of portion of Dharamshala. However, none of them have paid the rent. The evidence of Murlidhar regarding payment of rent is completely unbelievable. It rather appears to be false.

58. At this juncture it is necessary to reiterate that Narayan, son of Govindram has stated in his application that the Dharamshala was constructed by the Grandfather for benefit of public at large and that, for the reasons mentioned in his application, the Dharamshala should be registered as a pubic trust. It needs to be mentioned that Narayan, having regard to his age, did not have any personal knowledge about the statement that the Dharamshala was constructed for benefit of public at large. It must also be stated that he altered his stand during the course of evidence and contended that he was misled by Murlidhar who obtained his signature on the said application, and the same was signed by him without knowing the contents thereof. However, he has failed to prove the contention raised in this regard.

59. It is also necessary to state that the other descendants of deceased Govindram i.e. the present appellants are all throughout consistent in their stand that the Dharamshala is Joint Hindu Family property.

60. It is also necessary to state that Satyanarayan Bajaj has stated that Murlidhar was in occupation of the property as a tenant. He however states that Murlidhar never paid rent. He also contends that rent was demanded by him, but, Murlidhar did not pay any heed to his requests. Much weight cannot be given to the said statement of Satyanarayan Bajaj that Murlidhar was in possession of some portion of the premises as a tenant. It needs to be considered that Satyanarayan Bajaj is also a party to the rent control proceedings, as applicant no.4. He has signed the said application as co-applicant along with three brothers. A categorical statement is made in the said application that the property of Dharamshala was owned by three brothers. The fact that Satyanarayan Bajaj did not or could not take any steps for recovery of the rent against Murlidhar, also speaks for itself. It is also pertinent to state that Satyanarayan Bajaj has also not demanded rent from sons of Govindram and Kamlabai widow of Dwarkadas. The statement of Satyanarayan regarding occupation of Murlidhar as tenant also needs to be appreciated and understood in the context of his consistent stand and statement in the deposition that the

Dharamshala was owned by Saraf family.

61. As regards the perception of the family members with respect to the nature of Dharamshala, reference also needs to be made to a telegram and letter dated 29.11.1979 issued by Murlidhar and Kamlabai. Vide the said telegram and letter, Murlidhar and Kamlabai asked Satyanarayan Bajaj not to interfere with the management of the Dharamshala, since his authority was canceled/terminated by virtue of the said telegram and letter. This telegram and letter dated 29.11.1979 are at Exhibits 43 and 44. It is stated in the said letter dated 29.11.1979 that on or around 01.02.1955, all the three brothers had entrusted the management of the Dharamshala to Satyanarayan Bajaj. It is stated that the Dharamshala is a religious endowment of Saraf family. The appellants i.e. descendants of Govindram also issued communication dated 29.11.1979 [Exh.45] asking Satyanarayan Bajaj to continue with the management of the Dharamshala. In this letter, property of Dharamshala is referred as Joint Hindu Family property. Thus all three branches referred to the Dharmashala either as religious

endowment of the family or as joint family property. None has referred to the property as property of a public trust.

62. Likewise, reference also needs to be made to a communication dated 12.01.1975 [Exh.35] issued by Govindram to Satyanarayan Bajaj in relation to affairs of the Dharamshala. Govindram has stated in this letter that his son was in need of space for conducting his business, in as much as in absence of appropriate space for business, he was compelled to conduct his business as a street vendor. This letter which is issued much before the dispute started throws light on the manner in which Govindram looked at the property of Dharmashala. In response to this letter, Satyanarayan has issued communication date 16.01.1975 [Exh.36] to Dwarkadas and Govindram giving details of tenants in the premises of Dharamshala. He has stated that towards left side of the main entrance of Dharamshala, there are three shops in occupation of tenants, who are paying rent of Rs.90/- per month. He has stated that three shops towards the right side of the entrance gate and 4 godowns were in occupation of Murlidhar. He has mentioned in the

said letter that Murlidhar was not paying any rent for the same, and was enjoying the same as an owner. He has stated in this letter that rent receipt dated 30.12.1974 and certificate was issued in favour of Murlidhar on his request for the purpose of obtaining municipal license for his business of Spirit and French polish. Satyanarayan has stated that Murlidhar did not pay any rent, as mentioned in the notice. It needs to be mentioned that the application in rent control proceedings referred above, is dated 23.06.1975. The above communication issued by Satyanarayan to Dwarkadas and Govindram is dated 16.01.1975. It appears that the proceeding for eviction of tenants came to be filed for a bonafide need of sons of Govindram in this backdrop. Murlidhar and Dwarkadas joined Govindram in the rent control proceeding to seek eviction of tenant for bonafide need of sons of Govindram.

63. It is in this view of the matter, it needs to be mentioned that Murlidhar has stated that he did not have account entries regarding payment of rent till the year 1974-75. He has stated that thereafter he has started taking entries regarding payment of rent in

his books of accounts, although rent is not actually paid. It appears that Murlidhar started taking account entries and recording payment of rent in view of the grievance raised by Govindram vide his letter dated 12.01.1975, and reply issued by Satyanarayan on 16.01.1975. Perusal of the said evidence is sufficient to hold that all the three brothers and their family members did not consider Dharamshala to be a public trust. The brothers treated the property as property owned by them or belonging to their family trust.

64. Perusal of judgment delivered by the learned Joint Charity Commissioner and the District Judge in the second round of litigation will demonstrate that all this material evidence is not even considered by them. Material admissions of Murlidhar with respect to nature of his possession are ignored to hold that he was in occupation of the property as a tenant. Likewise evidence of Murlidhar's son Vinod regarding his possession over part of the Dharmashala is also completely ignored.

65. With respect to the rent control proceedings, the learned

District Judge has recorded that the issue of ownership was not the subject matter of the rent control proceeding, and therefore, the statement made by Murlidhar and other two brothers in respect of ownership of the property in the said property cannot be taken as an admission by them. The said finding is absolutely perverse. Although the scope of proceeding was with respect to eviction of a tenant, the brothers were seeking eviction as owners of the property. The bonafide need set up in the application was with respect to the need to start business for three sons of brother Govindram. The learned District Judge has clearly erred in ignoring the said admission on a completely untenable ground that the question of title was not the subject matter of rent control proceeding. The fact that all three brothers claimed ownership and sought eviction of tenants on the ground of bonafide need for starting up business of sons of one of the brother, is sufficient to hold that the family members did not consider the property of Dharamshala to be a property of public trust and claimed ownership over the same.

66. It is also apparent that the family members of all three

brothers are/were in possession of different portion in the Dharamshala without making payment of rent, which also indicates that they treated themselves to be owners of the property. Marriages of family members were held in Dharmashala without payment of any charges.

67. All these circumstances are sufficient to hold that the family members considered Dharamshala to be a family Dharamshala/religious endowment of the family and not public trust. The conduct of the family members subsequent to execution of the partition deed lends credence to the interpretation of Clause 7 of the partition deed that the said clause does not result in creation of a public trust. The last sentence in Clause 7 of the partition deed cannot be interpreted to mean that all three brothers had divested themselves right/interest in the property of Dharamshala and dedicated the same to public at large, so as to create a public trust.

PAYMENT TO RAMIBAI.

68. There is yet another factor which needs to be taken into

consideration. There is evidence on record to suggest that after incurring expenditure towards maintenance and upkeep, payment of taxes and electricity bills etc., the residue was deposited by the manager with Ramibai, mother of all the three brothers.

69. The learned Assistant Charity Commissioner has recorded a finding that there was evidence on record indicating payment by the manager to Ramibai from the year 1968-69 to 1976-77. The learned Assistant Charity Commissioner has referred to account entries in recording finding regarding payment of money by Satyanarayan to Ramibai. Apart from this there is also a letter dated 13.01.1980 [Exh.38] issued by Ramibai to Satyanarayan asking him to pay an amount of Rs.150/- to her before Sankrant festival. The receipt dated 25.06.1980 regarding payment of Rs.150/- to Ramibai is at Exh.39. There is another receipt dated 19.01.1981, regarding payment of Rs.125/- to Ramibai. The evidence indicates that residue was made over to Ramibai after meeting the expenses of the Dharamshala. This is a circumstance which indicates that the family members did not treat the Dharamshala to be public trust.

However, the learned Joint Charity Commissioner and the learned District Judge have held that the payment made by Satyanarayan to Ramibai was without authority and therefore a wrongful act on the part of the manager and family members which will not alter the nature of the public trust. The authorities have held so in view of interpretation of clause 7 of the Partition Deed which according to them resulted in creation of a public trust.

70. Shri Dharmadhikari, the learned Senior Counsel for the appellants contends that the payment of residue by Satyanarayan to Ramibai is another factor which would indicate that the trust is a private trust and not public trust.

71. As against this, Shri Khapre, learned Senior Counsel contends that the findings by the authorities that the payment made to Ramibai was unauthorized is correct and such payment by itself will not be enough to hold that the trust is a private trust and not public trust. He further contends that payment of such paltry sums will not lead the inference that the trust was a private trust and not a

public trust. His contention is that even in cases of public trust, a provision can be made for making payments to the original grantor and or his dependents, will not be sufficient to hold that the trust is not a public trust.

72. It is an admitted position on record that there is no document regulating management of the trust. The document is silent with respect to the management of the Dharamshala. The document is silent with respect to the manner in which proceeds from Dharamshala were to be utilized. The learned Joint Charity Commissioner and learned District Judge have held that act of payment of residue to mother Ramibai by Satyanarayan was illegal. The foundation of this finding is that, the Dharamshala was a public trust. The said inference is drawn without any foundation, except the conclusion drawn by the said Authorities that the public trust was created under Clause 7 of the partition deed, which conclusion is based on erroneous interpretation of Clause 7. Rather it appears that the trust was a family trust and therefore after incurring requisite expenses, the residue was made over by the

manager to Ramibai, the mother. It needs to be mentioned that Murlidhar has contended that dispute between himself and Govindram started with respect to management of Dharmashala because according to him Govindram was appropriating the proceeds of Dharmashala for himself. However his evidence is silent as regards payments made to the mother – Ramibai. He has not objected to payments being made to her. It is not even his case that he was unaware about payments made by Satyanarayn to Ramibai.

73. In the matter of **S. Shanmugam Pillai and others .vrs. K. Shanmugam Pillai and others** reported in **[1973] 2 SCC 312**, income from a property was partially used for charity and partially utilized by the owners. The Hon'ble Supreme Court has held that while making a grant of property and thereby creating a public trust, the grantor may make provision for his maintenance or maintenance of his family member/s from the proceeds of Trust. Such provision for maintenance is legally permissible. It is further held that if major portion of earnings is utilized for charity, the grant shall be considered to be absolute and the trust shall be a public trust and if

major portion was to be retained by the grantor that it will be a case of limited grant and the nature of trust will be a private trust. In the matter before the Hon'ble Supreme Court, there was no clarity on record with respect to income of the property, set apart for charities. In such circumstances the Hon'ble Supreme Court held that since there was no basis to determine the extent of surplus that was likely to be left in the hands of persons managing the charities, it was not possible to hold that the grantor had created a trust with respect to the said properties. The legal principle that, dedication of property for religious or charitable purposes can either be complete or partial is reiterated. After holding so, the Hon'ble Supreme Court has expressed that since the plaintiffs had failed to establish complete dedication, the property retained character of private property. The Hon'ble Supreme Court laid down the legal position in this regard in paragraph nos. 31 and 32 of the said judgment.

74. The evidence on record is insufficient to demonstrate the total income of the trust. There is no clarity in this regard. However, the evidence goes to suggest that there were three tenants

in the property who were paying rent @ Rs.90/- per month. It has also come in the evidence that major portion of the Dharamshala was in possession of the family members who were not paying rent. As regards the travelers/tourists, the evidence is not very clear as regards the charges recovered from them. However, Mansaram, has stated that electricity charges only used to be collected from the travelers who use to stay for short duration in the Dharamshala. Likewise, the evidence also indicates that the open portion of courtyard in the Dharamshala was allowed to be used by artisans for making idols during festive season and some charges were levied for the same. Since there is no clarity on the aspect of total income of the Dharamshala, it will have to held that the respondents have failed to establish complete dedication of the property of Dharamshala for charitable purpose and have thus failed to prove that the Dharamshala is a public trust. It needs to be mentioned that although payment to Ramibai by itself is not sufficient to hold that the trust is a private trust, it will be a very strong circumstance indicating that the trust is a private trust.

TEMPLE.

75. Shri Khapre contends that there is a temple within the premises of Dharamshala and members of public at large visit the temple for worshiping and offering prayers without any restrictions. He contends that there is no evidence to suggest that public at large required any permission for visiting the temple and offering prayers. He therefore contends that the Dharamshala is a public trust.

76. As against this, Shri Dharmadhikari, learned Senior counsel contends that although the evidence on record will suggest that the members of public at large were visiting the temple for offering prayers, the evidence is short of establishing that they used to visit the temple as a matter of right. He has further canvassed that there is no evidence regarding acceptance of donations and offerings from the devotees visiting the temple. He contends that there is no evidence to suggest that the temple is constructed out of public funds or regarding acceptance of grants/donations/offerings for maintenance or observance of festivals, rituals and ceremonies of the temple. He contends that the unrestricted worship by members

of public at large by itself will not be sufficient to hold that people were offering prayers and worshiping the idols in the temple as a matter of right. He further submits that the total area of the property of Dharamshala is around 9000 sq. ft. as against which an area of temple is only around 100 sq. ft. The temple is constructed within premises of Dharmashala major portion of which is utilised for business activity and also as residence by the family members. He therefore, contends that the nature of temple by itself cannot determine the nature of the entire Dharamshala. In view of aforesaid, he contends that the nature of the temple is not relevant to decide the nature of Dharamshala.

77. Shri Dharmadhikari, has placed strong reliance on the judgments of Hon'ble Supreme Court in cases of **Hari Bhanu Maharaj of Baroda .vrs. Charity Commissioner, Ahmedabad** reported in **[1986] 4 SCC 162** and **Sri Radhakanta Deb and another .vrs. Commissioner of Hindu Religious Endowments** reported in **[1982] 2 SCC 226.**

78. In **Hari Bhanu Maharaj [supra]**, one Haribhat Maharaj had built samadhi of his uncle along with it an idol of Lord Ram was also installed. The property was known as Laxman Maharaj Math. After commencement of the Maharashtra Public Trust Act, a fourth generation descendant filed an application under Section 18, for declaration of the Math as a private property. In this context, while holding that the property was a private property, the Hon'ble Supreme Court has held as under.

> *"10. ..... Even if at some subsequent point of time, the owners of the Math had permitted the members of the public to visit the Math and worship at the Mandir; it will only mean that the members of the public would have visited the Mandir as invitees and nothing more.*
>
> *11. .... The decisions lay down that one of the crucial tests for determining whether a temple is intended for private worship or public worship is to find out whether the temple has been constructed within the precincts of residential quarters or in a separate building. In this case the Mandir is within the precincts of the residential quarters of the appellant but the High Court has failed to give due consideration to this aspect of the matter.*

> *12. Another relevant feature which must enter the field of perception when judging whether a Math or Mandir is a public or private one is the size of the construction and its proportion to the entire extent of 1 the property. In this case the evidence is that the total extent of the property is 150'x 170'whereas the extent of space occupied by a Samadhi and the Mandir is only 16'x 12'. It is therefore, obvious that the Math occupies only a small area in the total extent of the property. Admittedly, the other extent of the property is being enjoyed and has always been enjoyed by the appellant and his ancestors for their private use and occupation. This would not be the case if the Math or Mandir was a public institution."*

79. In above matter of **Sri Radhakanta Deb (supra),** one Gopinath Pani had constructed a temple. One Adwait Charandas Babaji was appointed as Sebait and the family members vested management of the temple with him, and kept away from the affairs of the temple. The relevant document executed in this regard recorded that the property was dedicated to the deity and the grantor and his descendants shall have no claim over it. A provision

was made for utilizing proceeds of the temple for meeting the expenses of the temple. The deed also provided that some pious person from the family will oversee the working of the temple, and in the event such person was not available in the family, any person from Vaishnav Sampraday can be appointed for doing the needful. In this context, the question arose as to whether the temple was a public trust or private trust. Considering the legal position, as aforesaid the Hon'ble Supreme Court has held that the temple was founded by members of Pani family. They have made provision for maintenance of the temple. There was no material to indicate that the contribution was called from members of public at large. The relevant document did not provide for associating members of public at large in the matter of management of the temple. As regards right to worship, it was observed that there was no recital in the document regarding entitlement of public at large to offer prayers and worship in the temple as a matter of right. In this backdrop, it is held that the temple was a private temple of Pani family and not a public trust.

80. Perusal of the above extracts from the judgment of Hari

Bhanu Maharaj will make it clear that mere unrestricted worship by members of public at large will not be sufficient to hold that a temple is a public trust. Such worship must be established to be as a matter of right. It is further held that when origin of a temple is private, clear and unambiguous evidence of it assuming public character in future is required to be held that it is a public place of worship. It is also held that the burden to prove that temple of private origin is a public trust is always on a person who alleges that the temple to be a public trust. Apart from this, it is held that the size of temple in relation to the entire property of the alleged trust is also the relevant consideration. If the temple is located in a small portion of the property, the entire property cannot be said to have a character of public trust.

81. It is also necessary to refer to judgment in the matter of **Goswami Shri Vahuji .vrs. Ranchhoddas kalidas and others** reported in **[1969] 2 SCC 853,** in which 5 tests have been laid down which are, [i] whether the built of temple indicates that prima facie it is a public temple, [ii] are members of general public entitle to worship

as a matter of right, [iii] are expenses made from contribution of general public, [iv] are functions and festivals conducted in the temple as are normally conducted in public temples and [v] how do the management and devotees look upon the temple. As regards test nos.[i], the temple does not prima facie appear to be a public temple since it comprises of a small area of around 100 sq.ft. in a building comprising of several shops and rooms. As regards test no.(iii), there is no evidence to indicate that expenses of temple are made out from public funds. It is not even the case of respondents that public funds are utilized for meeting the expenses. On point nos. [ii] and [iv], there is no evidence. The burden of bringing home the circumstances pertaining to point nos.[ii] and [iv] was on the respondents which they have failed to do. As regards test no.(v), the Trust is not viewed as public trust by the family members and as regards the devotees, the evidence is lacking in clarity.

82. It is not in dispute that Dharamshala comprises of plot ad-measuring around 9000 sq. ft. and a double storied building/structure. It is also not in dispute that the portion of

temple is admeasuring around 100 sq.ft. Having regard to the judgment in the matter of Hari Bhanu Maharaj [supra] , it has to be held that the character of temple will not determine the character of the entire property of Dharamshala.

83. Apart from this, it is nobody's case that the temple is constructed out of public funds. Likewise, it is nobody's case that expenses towards maintenance and upkeep of the temple as also for daily pooja, ceremonies and functions that are performed in the temple are made out of public funds. There is no evidence with respect to receipt of grants in the temple. Parties have till recent past i.e. upto the year 1979 or so, contended that the Dharamshala is their family Dharamshala. The temple is only a part of Dharamshala. Having regard to all these circumstances, this Court is of the considered opinion that although the members of public at large are visiting the temple and offering prayers without restriction from the owners is proved, the evidence is not sufficient to hold that public at large is worshiping the temple as a matter of right. This Court is also of the view that having regard to the size of the temple, vis-a-vis the

entire area of the Dharamshala, the nature of the temple will not be determinative of the character of the Dharamshala. Even if the temple is assumed to be public place of worship, that by itself will not be sufficient to hold that the entire Dharamshala is a public trust.

FLUCTUATING BODY OF PEOPLE AS BENEFICIARIES.

84. Shri Khapre, learned Senior Counsel contends that the Dharamshala was used for lodging of members from public at large. This according to him is a charitable purpose. He contends that the right of utilizing lodging facility was not restricted to any identifiable group of people, but, was meant to be exercised by members of public at large across all faiths, sections and society. He therefore, contends that the dedication of the property is to a fluctuating body of people and therefore, the trust is a public trust.

85. Shri Khapre, learned Senior Counsel has contended that since the beneficiaries are members of public at large, the trust must be held to be a public trust. He has placed reliance on the judgments in the matters of – [a] **M.J. Thulasiraman and another .vrs.**

Commissioner Hindu Raligious And Charitable Endowment Administration reported in **[2019] 8 SCC 689**, [b] **Balashankar Maha Shanker Bhattjee and others .vrs. Charity Commissioner of Gujarat State** reported in **1995 Supp [1] SCC 485,** and [c] **Dhaneshwarbuwa Guru .vrs. The Charity Commissioner State of Bombay** reported in **[1976] 2 SCC 417.**

86. In the matter of M.J. Thulasiraman [supra], there was a rock inscription on the property according to which, property was dedicated for the purpose of feeding Bramhins during the festivals of Thiruvotrivur and Mylapore. In this context, the Hon'ble Supreme Court has held that the beneficiaries of the trust were a fluctuating body of a section of people and therefore, dedication of property indicated existence of public trust.

87. The matter of Balashankar deals with a thousand year temple, the origin of which was unknown. There was evidence on record regarding payment to the temple from Government treasury and offerings by devotees. A large number of devotees used to visit

the temple daily. In such circumstances it was held that the temple was held to be a public trust.

88. Similarly, in the matter of Dhaneshwarbuwa Guru, principles that when beneficiaries are fluctuating body of people, the trust must be a public trust. In the said matter, a temple was constructed by the founder with a view to facilitate worship by public at large. The temple was an ancient temple which received a royal grants intermittently, and donations from public at large regularly. In view of these circumstances it is held by the Hon'ble Supreme Court that the temple was a public trust. The Hon'ble Supreme Court has also held that in every case all the features of a public trust may not exist, none the less on the basis of evidence appropriate decision can be taken as regards the character of the trust.

89. Shri Dharmadhikari, learned Senior Counsel counters the submission by stating that the major portion of the property was/is in possession of the family members. He therefore,

contends that the beneficiaries are members of the family. As regards lodging facility, he contends that space which was remaining after utilization of property by family members, only was provided for the said purpose. According to him, all three branches of the family were occupying major portion of the Dharamshala without payment of any rent. He contends that the Dharamshala cannot be treated to be a public trust only because people were allowed to stay there. This submission is made in the alternative without prejudice to his basic contention that the Dharamshala was never utilized for providing lodging facility.

90. In this regard it is necessary to refer to evidence of Mansaram. He is examined as a witness by Murlidhar. Murlidhar has examined him as an employee of the Dharamshala. However, it must be stated that evidence on record does not indicate payment of salary by the Dharamshala to Mansaram. The appellants have also examined a trader in the vicinity who has deposed that, Mansaram was employee of Murlidhar.

91. During the course of his evidence Mansaram has referred to visitors register. Perusal of the registers indicate that some portion of the Dharamshala was utilized for lodging facility.

92. In his cross-examination, Mansaram has stated that there were three tenants in the premises namely [1] Shri Pannalal Vora, [2] Shri Nathuram (Barber) and [3]Dr. Mukteshwar. He has stated that two shops were in possession of Murlidhar. It is not in dispute that Vinod son of Murlidhar is also in possession of a shop in the ground floor. He has stated that there are 5 rooms on ground floor along with Society godown. Likewise he states that there were 6 rooms on the first floor and a kitchen. He has stated that first floor in the Dharamshala was in possession of Kamlabai widow of Rameshwar. During his cross examination, the appellants tried to drive home the point that there were no rooms left for providing lodging facility, since entire property was in possession of the family members. However, the entries in register do indicate that some portion of the building was utilized for providing lodging facilities. However, it needs to be mentioned that there is absolutely no clarity

as regards the portion of the building which was utilized for providing lodging facility. In this regard perusal of evidence of appellant no.3 Omprakash will demonstrate that he has stated that around 3/4th portion of building was in possession of Murlidhar. He has further stated that the Dharamshala was all the while used by members of Saraf family. He has stated that he was in possession of one godown in the Dharamshala and likewise his brother was also in possession of another room. He has stated that they were not paying rent for the same. He has also stated that son of Rameshwar and his relative Kejriwal were also staying in the Dharamshala. These statements made in the examination-in-chief are not challenged in the cross-examination. As against this evidence, the evidence of Murlidhar is completely silent with respect to portion of Dharamshala which was used for providing lodging facility. The evidence of Mansaram also does not throw any light on this aspect.

93. In this regard it is necessary to refer to the judgment in the matter of Kuldip Chand .vrs. Advocate General [supra] , wherein the legal position is reiterated that dedication of property

for charity can either be total or partial. It is held that in case the dedication is only partial, the trust will be a public trust. It is held that merely because a Sarai existed in the disputed property for a long period will by itself not be sufficient to conclude that the property was a public trust. In the said case, the property was used as a Sarai for providing lodging facilities for around 125 years and the same was thereafter sold by descendants of the grantor. In this backdrop dispute arose with respect to nature of the property i.e. whether it was a public trust or not. Having regard to the fact that, people staying in the Dharamshala could stay there without permission only for a period of three days and thereafter permission was required, rent from two shops in the premises was utilized by the owners, Dharamshala was maintained by personal funds of owner, family of owner was in control of management of Dharamshala, public never contributed for maintenance of Dharamshala, it was held that the Dharamshala was private property of the family. The case of appellants stands on a better footing, in as much as, apart from the other circumstances which are common in the reported judgment as well as in the present case, there is one more very important circumstance in the present case that the family members of owners were in occupation of major portion of the Dharamshala and they occupied the same as owners. In view of the above, it needs to be held that only because some portion of the property was used for providing lodging facility, that by itself will not mean that the Dharamshala is a public trust.

94. All the judgments referred by the respondents regarding dedication of property to a flactuating lot are distinguishable on facts. In the present matter, the origin of the Dharamshala is private, major portion of Dharamshala is in occupation of family members of owners, there is no evidence regarding offerings and donations from public at large and public at large is not involved in the management of the property. The partition deed clearly refers to the Dharamshala as a family Dharamshala and religious endowment of the family. The dedication is therefore not complete or absolute dedication. The judgments relied upon by Shri Khapre, therefore are not sufficient to hold that the Dharamshala is a public trust. On the other hand, the present case has a close resemblance with case of

Kuldip Chand referred supra. As noted earlier in the said case, the property was being used as a Dharamshala for around 125 years before it was sold. The following principles are laid down in the said judgment :-

(i) A dedication of property may either be complete or partial.

(ii) When owner retains the property for himself, right of easement in favour of community will not constitute dedication.

(iii) Involvement of public in management and maintenance of the property assumes significance in determining nature of grants.

(iv) When control is retained by owner, dedication cannot be said to be complete.

(v) In the absence of formal document nature of dedication should be determined on the basis of conduct of granter and his heirs.

(vi) In the absence of documentary evidence complete dedication must be established by cogent and satisfactory evidence.

(vii) The evidence should indicate complete extinction of right of the owner over the property.

(viii) Mere user of property by public will not be sufficient to hold that dedication is complete.

(ix) When document is available to prove dedication and the document shows that control and management is retained by founder and provision is made for maintenance of the subject property, that will be conclusive proof to show that endowment was private in nature.

(x) If the endowment does not make any stipulation for offerings and contributions by members of public at large that will be an important endowment circumstance to indicate private nature of endowment.

95. From the findings recorded above, it is clear that:-

(i) Major portion of Dharamshala is in possession of family members;

(ii) Family members are not paying any rent to Dharamshala;

(iii) Management is vested with the family members;

(iv) There is no provision for contribution or donation and factually also such contribution or donation is not proved to be received;

(v) Revenue record is also in the name of family members.

96. All these circumstances lead to the inference that the Dharamshala is a private trust.

INSPECTION REPORT.

97. The learned District Judge and Joint Charity Commissioner have relied upon inspection report and deposition of the Inspector of Public Trust. His deposition and report do not throw light on controversy involved in the matter. He has only expressed that the Dharamshala should be registered as a public trust, relying on Clause 7 of the partition deed. The learned Joint Charity Commissioner has in first round of litigation while remanding the matter for fresh enquiry, has rightly discarded the report.

98. In the considered opinion of this Court correct interpretation of Clause 7 of the partition deed by itself is sufficient to hold that the trust is a private trust of Saraf family. Clause 7 of the

partition deed does not indicate intention on the part of the family members to divest themselves of the ownership rights over the Dharamshala. Dharamshala, which was a family Dharamshala prior to execution of partition deed continues to be a trust even after execution of partition deed. The other circumstances also contribute to indicate that the character of Dharamshala is not of a public trust.

CONCLUSION.

99. It is thus clear that Clause 7 by itself does not create a public trust. It does not speak about dedication of property to public at large by members of Saraf family. The Dharamshala was a family Dharamshala before the execution of partition deed in the year 1941 and its character is not altered by Clause 7 of the partition deed. The evidence on record is not sufficient to hold that the Dharamshala is a public trust. On the contrary, the following circumstances which have come on record are sufficient to hold that the Dharamshala continues to be a private family trust or Saraf family - [i] Major portion of Dharamshala is in possession of family members; [ii] family members are not paying any rent to the Dharamshala; [iii]

family members belonging to the branch of appellants contend that they are owners; [iv] although Murlidhar and his descendants – the respondents, claim to be in possession as tenants, the evidence on record is sufficient to hold that they always treated themselves to be owners of the property, and occupied the same without payment of rent; [v] the management is althroughout with the family members without involvement of the general public, [vi] there is no evidence regarding receipt of any donation or grant, [vii] residue of the proceeds was being deposited with Ramibai [mother], [viii] the evidence on record is insufficient to hold that members of pubic worship the temple as a matter of right, [ix] having regard to the small size of temple which is a part of Dharamshala major portion of which is utilized by the family of grantor for their business purpose and also for residence, the nature of temple will not determine nature of entire Dharamshala, and (x) as regards lodging facility, it appears that a small portion was utilized for said purpose, the major portion being in possession of the family members. The respondents and the establishment of the Charity Commissioner have failed to discharge the burden to establish that the Dharamshala which is admittedly private in origin, has assumed character of a public trust.

100. In view of the findings recorded above, the appeal deserves to be allowed, and is accordingly allowed. The judgment and order passed by the learned District Judge, Wardha in M.J.C.No.18/1994 on 05.04.2007 as also the judgment and order dated 24.01.1994 passed in Appeal No.7/1990 by the Joint Charity Commissioner, Nagpur are hereby quashed and set aside. It is declared that 'Gopichand Dharamshala' is a private Trust of Saraf Family comprising of descendants of Dwarkadas Saraf, Govindram Saraf and Murlidhar Saraf. No costs.

JUDGE

Rgd.