

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7940 of 2015

Anurag Krishna Sinha S/o Late Gopal Krishna Sinha, P.S.- Kotwali, P.O.-
G.P.O. Patna, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Department of Law, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Sr. Advocate
Mr. Abhay Shankar, Advocate
Mr. Shayameshwar Kumar Singh, Advocate

For the Respondent/s : Mr. P. K. Shahi, AG
Mr. Ajay Behari Sinha, GA-8
Mr. Sanjiv Kumar, Advocate
Mr. Amish Kumar, Advocate
Mr. Neeraj Raj, AC to GA-8
Mr. Suryakant, AC to GA-8

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-02-2024

The challenge is to a legislation which took
over the Smt. Radhika Sinha Institute and Sachidanand
Sinha Library (for short “the Institute & Library”) from its
Trustees for better management and development.



2. Learned Senior Counsel Sri. Sunil Kumar appeared for the petitioner, who is the Trustee/Honorary Secretary and the Chief Executive Officer of the Institute and the Library. Learned Advocate General, Sri. P.K. Shahi, appeared for the State.

3. The learned Senior Counsel appearing for the petitioner referred to the earlier similar action of the State to take over 'the Institute & Library' for which two ordinances were brought out in the year 1983, which got lapsed. On a challenge raised, a Division Bench of this Court, despite the lapse, held that the vesting under the ordinance will have an enduring effect. The Hon'ble Supreme Court reversed the decision of the Division Bench expressing surprise at the rejection of the writ petition after taking note of the fact of both the ordinances having lapsed without any legislative measure having been taken during the currency of the ordinances. The vesting was adjudged to be life-less by the Hon'ble Supreme Court. The judgment of the Hon'ble Supreme Court was in the year 1996 and the State did not attempt any action for long years. In the year 2015, again, the State came with the present legislation.



4. The impugned legislation does not disclose any public interest on which the acquisition is made. Further there is no compensation awarded to the trustees; the legislation having provided for a maximum of a measly one rupee for the legacy of a great son of Bihar, who was the Chairman of the Constituent Assembly. The learned Senior Counsel also graphically described the life of Dr. Sachidanand Sinha and the history behind the formation of the Trust; which completes a century as on this year. The terms of the deed were specifically read over to impress upon us the ownership vested on the Trustees, who are also in the line of succession of Dr. Sachidanand Sinha and his wife Smt. Radhika Sinha. They were continuously in management of the affairs of 'the Institute & Library' for the entire period in which the Trust was in existence and had complied with every condition of the agreement entered into with the State, which is produced as Annexure-2.

5. On the challenge to the Act, it is argued that it is confiscatory in nature for reason of and compensation being totally absent and there being no public interest disclosed, which are necessary ingredients for enforcing the States



eminent domain under Article 300A of the Constitution of India. The Act, as has been brought out, is violative of Article 14 and Article 19(1)(g) of the Constitution.

6. The State lacks legislative competence to enact a law on a trust and the trustees. 'the Institute & Library' is covered under the Indian Trust Act brought out under Entry 10 of the Concurrent list (List III) of Schedule VII of the Constitution of India. An Act of the State legislature, for acquisition of property, cannot impinge upon the legislation brought out by the Union Parliament. Reliance is placed on *Hari Krishna Mandir Trust v. State of Maharashtra & Others* reported in (2020) 9 SCC 356, wherein the essential ingredients for exercising the power of eminent domain was laid out. Existence of public purpose and adequate compensation are imperative in the State action of an acquisition, both absent in the impugned legislation.

7. Section 7 of the Act makes the compensation illusory and renders the enactment confiscatory and expropriate especially since the building was constructed with the personal funds of the original settlor and the huge



collection of books, publications and periodicals also belonged to the settlor. *T.M.A. Pai Foundation & Other v. State of Karnataka & Others* reported in (2002) 8 SCC 481 is relied on to contend that the library and the access provided therein is a systematic activity carried on by the Trustees which they have a right to continue and cannot be deprived of, unless there is overwhelming public interest and adequate compensation paid. Reliance is also placed on *B.P. Sharma v. Union of India* reported in (2003) 7 SCC 309.

8. Learned Advocate General on the other hand points out that the Trust formed in 1926 was subject to a metamorphosis when Annexure-A2 agreement was entered into with the State in the year 1955. The State had been funding 'the Institute & Library' till date, but the activities have become defunct. The Library is kept open, but there are no foot-falls therein. The activity of the Trust and the objectives with which the Trust is formed has become defunct for all practical purposes. The State which is financing 'the Institute & Library' by grants-in-aid, intends to infuse new life into the activities of 'the Institute &



Library’, thus ensuring enduring recognition to the memory of the original settlor. The preamble specifically speaks of better management and development of ‘the Institute & Library’, which is the public purpose with which the Act is enacted.

9. The Bihar State Public Library and Information Centre Act, 2008, was enacted in which Section 3 specifically speaks of State Libraries; which the Institute & Library is, as per the agreement entered into in the year 1955. Insofar as the contention, with respect to special enactment having precedence above the general enactment, it is argued that the principle has no application insofar as the Indian Trust Act and the subject Act is concerned. The ownership of the properties is sought to be taken over and since the enactment itself in its Preamble speaks of development and better management of ‘the Institute & Library’, this is the public interest and there is no question of any digression from the objectives of the trust.

10. Indian Trust Act is one to regulate the activities of Trusts, its formation, its conduct, its revocation and so on and so forth and does not affect the acquisition of



the property which is relatable to the ownership and not the obligation of the trust; which is attached to such ownership. Reliance is placed on *Ishwari Khetan Sugar Mills (P) Ltd. and Other v. State of Uttar Pradesh and Others* reported in *(1980) 4 SCC 136* and *Shri Krishna Gyanoday Sugar Ltd. and Another v. State of Bihar* reported in *(2003) 4 SCC 378*. While asserting that there is no question of compensation, since the Institute had been run with the funds of the State all through, the learned Advocate General submits that they are open to any valid claims made by the Trustees. It is also pointed out that the ownership of the property in any event, is with the State since ‘the Institute & Library’ is situated in a property given on lease, by the State, for the establishment of ‘the Institute & Library’; which would be continued after the State takes over the Trust.

11. Learned Senior Counsel for the petitioner would specifically refer to the interim order passed in the above case and inform us that while the English version speaks of a requisition, the Hindi version speaks of acquisition. It is pointed out that the consequence of vesting



results in the deed of trust, deed of agreement and deed of lease being deemed to be replaced and dissolved. There is no question of the Trust being dissolved since it can only be under Section 79 of the Indian Trust Act.

12. Learned Advocate General, on the other hand, points out that the vernacular version of the enactment has to be relied on and what was intended was an acquisition of 'the Institute & Library' for a public purpose, which is for its development and better management. As far as the consequences of vesting, though the same is not happily worded, it only intended that the Management would be taken over by the State and all Committees and Sub-Committees under the deed of trust would cease to have any powers of administering the affairs of 'the Institute & Library' after the enactment.

13. In controverting the ground raised of impinging upon a Union legislation, the learned Advocate General has placed before us the decision in *Ishwari Khetan Sugar Mills (P) Ltd.* (supra) wherein the State of Uttar Pradesh by a legislation, attempted to acquire industrial undertakings involved in manufacture of sugar, in



larger public interest. One of the grounds of attack was that the State legislature had no legislative competence; which had two distinct limbs of argument. The first limb was that under Entry 52, List-I, the Parliament enacted the Industries (Development and Regulation) Act, 1951 (for brevity 'IDR Act') wherein a declaration was made in Section 2 and sugar industries were included in the First Schedule of the Act. Hence it goes out of Entry 24, List-II; wherein the State legislature has control over industries, only subject to the provisions of Entries-7 and 52 of List-I. The learned Judges, by a majority compared the declaration under Section 2 of the IDR Act to Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957 (for brevity 'M & M Act') under Entry 54, List-I. It was held that the expression in the declaration under the M & M Act: *'to the extent hereinafter provided'*(sic) and the absence of such expression under the IDR Act was inconsequential. It was held by majority that though Parliament was entitled to make a declaration in respect of industry or industries under Entry-52, List-I, in public interest, the control exercised is not abstract and has to be concrete and specific. It was held



that the absence of the expression; *'to the extent herein provided'*, while assuming control of the sugar industries, would not lead to the conclusion that the control assumed was something in abstract, total and unfettered *de hors* the provisions of the IDR Act. In addition to this, the learned Judges also delineated the trite principle of examining the pith and substance of a legislation, when its validity is challenged on the ground of absence of legislative competence.

14. Reliance was placed on *Union of India v. H.S. Dhillon; (1971) 2 SCC 779, Kerala State Electricity Board v. Indian Aluminium Co.; (1976) 1 SCC 466* and *State of Karnataka v. Ranganatha Reddy; (1977) 4 SCC 471* and the principle of examining the pith and substance of an enactment was reaffirmed to find an incidental trespass, incapable of invalidating the law. It was held: *"If in pith and substance a legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, the Act as a whole would be valid notwithstanding such incidental trenching."* (sic paragraph



13). Looking at the provisions of the IDR Act, it was held that it does not deal with the ownership of industrial undertakings and is primarily concerned with the development and regulation of the declared industries. The power of the Central Government to assume direct management or control of industrial undertakings would survive even after the acquisition of scheduled undertakings under the State Act, was the finding.

15. It was held that in pith and substance the Act was one enacted under Entry 42, List-III and was not an incidental power exercised under Entry 24, List-II. We specifically extract Paragraph 25 of *Ishwari Khetan Sugar Mills (P) Ltd.* (supra): -

“25. There is thus a long line of decisions which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42 List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State Legislature to legislate for acquisition of property remains intact and untrammelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry 52 List I, a further



power of acquisition is taken over by a specific legislation.”

16. In the minority judgment of two learned Judges, they opined that the terms of the declaration under the IDR Act limiting the control exercised by the Central Government could be dealt with in an appropriate case; which issue was not “*sufficiently covered*” before them in the instant case. Still, there was concurrence insofar as the impugned legislation; acquiring sugar industries, falling within Entry 42 of List-III, not possible of being related to either Entry 52 of List-I or Entry 24 of List-II. Looking at the pith and substance of the enactment, it was held that the legislation was one for acquisition of the undertaking and it was not the exercise of an incidental power under an Entry in the State list. In *Shri Krishna Gyanoday Sugar Ltd.* (supra) the contention raised that *Synthetics & Chemicals Ltd. V. State of U.P (1990) 1 SCC 109* overruled *Ishwari Khetan Sugar Mills (P) Ltd.* (supra) was negated.

17. Likewise, the subject legislation, impugned in the present writ petition, is one under Entry 42 of List-III, in pith and substance. It is clearly the exercise of power of



acquisition, which does not even incidentally trench upon the Indian Trust Act, as enacted under Entry 10 of List-III of the VIIth Schedule. The arguments were addressed on an assumption that the institution which is a Trust is a private trust governed by the Indian Trust Act. We have our own reservations, about such assumption, looking at the deed of Trust authored by the settlor; but, for the moment, for the sake of argument, we will assume it to be a private trust and deal with the contention regarding the impugned legislation trenching upon the power of the Parliament as exercised by enacting the Indian Trust Act under Entry 10 of List-III of the Seventh Schedule.

18. We have to immediately notice the statement of Objects & Reasons of the Trust Act, which speaks of codifying the law relating to Trusts. Hence, even a private trust cannot be assumed to be one statutorily created under the Indian Trust Act but all the same the creation and functioning, would be regulated by the law as codified under the enactment. We also have to specifically notice the definition of Trust which is “*an obligation annexed to the ownership of property*” (*sic*). Hence, the obligation travels



with the ownership of the property. Even if there is acquisition of the property, as in the present case, for the better administration of the Trust, the obligation travels with such acquisition and annexes itself to the entity which has acquired the property; which in the present case is the State.

19. As we observed above, we are not convinced that the settlor intended the Trust to be a private trust and it was not in fact, a private trust. The settlor was Dr. Sachidanand Sinha and in Annexure-1, the deed of declaration of trust, the trustees were stated to be the settlor and those holding different public offices like, the Chief Justice of the High Court of Patna, Member of the Executive Council, Minister of Education of the Government of Bihar and so on and so forth.

20. Pausing here, we have to state that the Bench being comprised of the Chief Justice, we queried to both the parties as to whether there is any objection in this Bench hearing the matter; despite the fact that in the last nine months of the Chief Justice assuming office there was not even one meeting of the trustees convened. Both the learned Senior Counsel categorically submitted that there is



no objection.

21. Coming back to the deed, the settlor first recorded the cherished desire of his wife Smt. Radhika Sinha to establish an institute with the object of *“providing the public of Patna and its neighbourhood with a place for intellectual and social intercourse by founding an institute comprising a library, reading room, a hall for public meetings and social gatherings and also by providing sufficient recreation grounds for healthy sports and games”* (sic). It is to give effect to the said desire of the settlor’s wife; the settlor wrote a letter to the first Governor of Bihar and Orissa offering a sum of Rs. 50,000/- out of the sale proceeds of the ancestral property of his wife for the establishment of the institute. The Governor on being requested by the settlor, accepted the office of Patron of the said institute and on 28.03.1922 the foundation stone of the Institute was laid and the settlor erected and completed buildings for the Institute with the said sum of Rs. 50,000/-.

22. The settlor in addition to the aforesaid amounts also made over to the said Institute the collection of books, made by himself, numbering about 10,000



volumes, of the approximate value of Rs. 1,00,000/-. 'the Institute & Library' was thus opened at the inaugural gathering on 09.02.1924 and the Trustees were declared as having been appointed to hold and possess the said Institute & Library upon the trust hereinbefore created. There was a further sum of Rs. 50,000/- made over to the Trustees by way of bank deposit for the maintenance and upkeep of the said Institute & Library. The Trustees were also to hold and possess the said messuages and premises as also the money, books, furniture and appurtenances and any other property, movable and immovable, for all or any of the purposes of the presents. Hence, the dedication made by the settlor was in favour of the public of Patna and its neighbourhood, an unascertainable collective of people; the general public.

23. . Whether a trust is public one or a private one, as held in *Deoki Nandan v. Murlidhar AIR 1957 SC 133*, is essentially a mixed question of law and fact. The cited case, a classic case, decided the question whether a Thakurdwara, a religious institution, was an endowment for the public at large or a private one. The dedication, as in this case, was admitted and the dispute was confined to the



scope of such dedication, to decide which, it was held, first the principles of law are to be stated and the scope determined on the application of the stated law. The principles of law were stated thus; extracted from paragraph 5: -

5. ... The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in Lewin on Trusts, 15th Edn., pp. 15-16:

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

Vide also the observations of Mitter J. in Nabi Shirazi v. Province of Bengal [ILR (1942) 1 Cal 211, 227, 228] . Applying this principle, a religious endowment must be



held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

24. Even in the case of a temple, though the idol installed therein has the status of a juristic person, it was found that the established law is that the endowed properties are owned by the idol only in an ideal sense. The idol cannot use, enjoy, dispose of or even protect its properties and hence has no real beneficial interest in the endowment. Quoting from the authoritative religious texts, it was found that the deity has no beneficial enjoyment of the properties and its ownership is only in a figurative sense and the true purpose of a religious endowment is not to confer any benefit on the Gods, but to felicitate spiritual benefit to the devotees. The dedication to a deity, thus is a compendious expression of the pious purpose for which the dedication is designed. Once the dedication to an idol is understood in that perspective, then the question to be decided is as to who are the beneficiaries, or in the case of a temple, whether the intention of the settlor was to confer the benefit of worship to specified individuals, the general



public or any specified portion thereof. The established principle, based on the above theory, was held to be that, if the dedication is for the worship of a family idol, then it is a private endowment; for the benefit of an ascertained group of individuals comprising only of the family members and when the dedication is not to a family or a specified individual or a group of individuals and is in favour of a general body of worshippers, then the endowment can only be regarded as public.

25. In *Deoki Nandan* (supra), to understand the true nature of dedication, (i) the Will, which speaks of the intention of the testator and the scope of dedication, (ii) the user of the temple (iii) the ceremonies of consecration and (iv) other facts were examined. The testator had two wives and no issues and the construction of the Thakurdwara was to install the idol. The income from the properties were to be divided equally; one half going to the two wives jointly and the other half to the Thakurdwara, which after the death of the wives, was in its entirety, to be used by the Thakurdwara. It provided for a contingency of a son being born to the testator, in which event the properties



were to be divided equally between the son and the Thakurdwara, which contingency never occurred. The wives were to maintain accounts and the surplus, after meeting the expenses, were to be deposited in a fixed deposit, to be utilized as and when possible, for purchase of properties in the name of the deity. A Committee of four persons were appointed, of whom two were not the relatives of the settlor, nor even from the same caste. After death of the wives the Committee was given the option to appoint a nephew, the defendant in the suit, as Mutawalli, but not mandatory and only on unanimous opinion of the Committee. There was also a clause specifically disentitling any near or remote heir from raising any claim on the property and any suit filed was stated to be improper on the face of the deed. The recitals of the Will were held to reveal indubitably, an intention to dedicate the Thakurdwara to the public and not merely to the family members of the settler.

26. The Will, distinguished from a deed of endowment; in the absence of the latter, the user was established by way of evidence. The villagers examined, deposed on their worship carried out freely and without any



interference and it was also stated that the construction was made by the testator, at the instance of the villagers. Though a dedication to a deity would survive even without any ceremonies of consecration, in the cited case the dedication and the ceremonies, made with great solemnity and in accordance with the *sastras* were admitted by both sides. The attendant facts, supporting an endowment in favour of the public, were noticed as, (i) the idols having been installed on a pedestal, (ii) that too in premises separate from the residential quarters, (iii) the *pujari* being appointed from time to time and (iv) the fact that there was no other temple in the village, which supports the deposition regarding the construction having been made at the request of the villagers.

27. We are quite conscious of the fact that, the present proceedings are not, one in which oral evidence is led, but only on affidavit. However, we have to notice the admitted facts as coming out from the deed. In *Deoki Nandan* (supra) the evidence was looked into since there was no deed of dedication as such; which in the present case is available. As we noticed, the intention is clear and



the beneficiaries are the general public, '*the public of Patna and its neighbourhood*' (sic); an unascertainable mass constituting the general public, for whom a place is facilitated for '*intellectual and social intercourse*' (sic), by founding an '*Institute comprising a Library, Reading room and a Hall for public meetings and social gathering*' (sic). The provision is also intended to be used as '*recreation ground for healthy sports and games*' (sic).

28. The Trustees are also four at (a) *ex-officio* Trustees; the Chief Justice, the Prime Minister, Bihar, (succeeded by the Chief Minister, Bihar) the Minister of Education and the Vice-Chancellor of the Patna University. The other trustees are, (b) two to be nominated by the settlor or his representative, to be made within six months of vacancy and on failure by the other Trustees, (c) eight to be nominated initially by the settlor, for life, and on death by the other Trustees and (d) the settlor; and after his death, his legal heir. Hence the Trustees are not the family members of the settlor and the settlor himself retains only for himself a trusteeship which after his death devolves on his legal heir. The character and status of the Trustees is



another pointer to the indubitable presumption that the dedication was one for a public purpose and not a private one; conferring on it all the characteristics of a public trust and not a private trust. Thus, there is no application of the Indian Trust Act; which even if applicable, we already held, there arises no impingement on the legislative power of the Parliament and there is not even an incidental trenching by the impugned enactment.

29. In *Union of India v. Nareshkumar Badrikumar Jagad (2019) 18 SCC 586 (2019) 18 SCC 586* review filed by the Union of India was allowed finding *locus* to file a review despite being a third party. A Trust property was leased out to a mill which was taken over by the National Textile Corporation Ltd. The lessor Trust filed a suit for eviction which was decreed and it travelled up to the Hon'ble Supreme Court wherein the Civil Appeal of the NTPC was dismissed. The review was on account of a Vesting Act by which the textile undertaking vested in the Union. It was held that the statutory or protected tenancy rights of the Mill stood transferred and vested in the Union. The landlord Trust was required to take appropriate



recourse against the Union to get back possession of the property. Hence, it cannot be the position at all that the Trust property is absolved from any statutory vesting or acquisition by reason only of its character.

30. The assertion that the Trust is a private one covered under the Indian Trust Act also arises from Clause 12 of the deed, which reads as under: -

“(12). If for any reason whatsoever the trust under these presents shall fail, the entire trust property including the said Smt. Radhika Sinha Institute and Sachchidanand Sinha Library building, books, furniture, trust once given or settled by the settler together with all income accumulation and interest thereof shall revert back to and be vested in the settler or his legal representative.”

31. This is also the provision based on which the petitioner claims that the lack of compensation vitiates the enactment as expropriate and one invalid. Answering the ground of inadequate compensation, in the teeth of our finding that the trust is a public one; the beneficiaries are the public, an unascertainable group of people, the members of which would be in the state of a constant flux. The legal



heirs of the original settlor derive no benefit from the dedication, neither proprietary rights, on nor monetary benefits from, the property, which is on a lease from the Government. The buildings constructed, though with the sale proceeds of the ancestral properties of the wife of the settlor, clearly is dedicated in furtherance of the object of the trust, as is the case with the books acquired by the settlor in his lifetime for himself, but dedicated unconditionally. **B.P. Sharma** (supra) has no application since there is no professional activity involved in managing the trust, which in any case is with the Committee of Trustees and not the individual Trustee, the petitioner herein.

32. In so far as the validity of the aforesaid clause of reversion and vesting of all properties on the legal heirs of the settlor, we need only refer to **Radha Sundar Dutta v. Mohd. Jahadur Rahim AIR 1954 SC 24**. It was held so in Paragraph 11 & 13: -

11. ... Now, it is settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein, while the other will render one or



more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim 'ut res magis valeat quam pereat'.

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13. ... If, in fact , there is a conflict between the earlier clause and the latter clause and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the latter clauses and not 'vice versa.'

Both these extracts apply squarely. The general purport of the dedication being to constitute a public trust, the extracted clause of reversion, would frustrate the very object of dedication. In any event, the extracted clause (12) being later to the earlier recitals; clearly demonstrating the intention of the settlor, the objects and purpose would prevail over the reversion to legal heir; which later clause would be rendered nugatory.

33. We have also to pertinently notice that the Trustees had substantially changed the management of the affairs of the Trust, the nomination of the Trustees and the manner in which the affairs of the Trust are carried out, by bringing in the State Government as a major contributor in



furtherance of the objects of the Trust itself. This is evident from Annexure 2, a deed of agreement executed on 20.04.1955 by the Trustees and the Governor of Bihar; who executed it in the status of representing the Government of Bihar. The agreement was executed pursuant to the Government expressing an intention to raise 'the Institute & Library' to the status of a Central Library for the State of Bihar. The ownership and management of the land, buildings, furniture, fixtures, books, and periodicals, as well as other properties and assets, were to remain as, then presently vested in the Trustees.

34. The Institute & Library were to be treated at par with a Government aided educational institution of the State and the Government was permitted the use of the same as a State Central Library for the implementation of any governmental scheme of Library reorganisation in the State, subject to the restrictions as may be imposed by the Trustees, which restrictions were also confined to external circulation of the books and periodicals belonging to 'the Institute & Library'. By the said agreement the Trustees conceded to the Government the right to audit the accounts



of income and expenditure, especially for reason of the financial assistance offered to cover the expenses, as approved in the budget or supplementary budgets of 'the Institute & Library'. The Trustees also conceded a set of rooms in the Institute building, free of rent, for the accommodation of the Office of the Superintendent of Library, Bihar, who would also act as *ex-officio* Chief Librarian of the Institute and the Library, responsible for the general supervision of the working and administration of 'the Institute & Library', subject to the general control and direction of the Trustees.

35. The Trustees were required to frame a set of rules for regulating the employment and service conditions of the staff, which had to be approved by the Government. In addition to the *ex-officio* Trustees, four of the life-Trustees were to be appointed from among the nominees of the State Government. The disbursement of grants for any structural improvements of fresh constructions to be made, as sanctioned by the Government could further impose conditions as the Government desires.

36. It was also specifically stated that on breach



of the terms of the agreement, the Government may, at their discretion, stop all further grants to 'the Institute & Library'. For all intend & purpose, the management of 'the Institute & Library' stood transferred to the Government; who as submitted by the learned Advocate General, has been financing 'the Institute & Library' from that date. The subject enactment was only to vest the Trust and its properties, in the Government for better functioning and also for furtherance of the objects of the Trust, for which the dedication was made by the settlor, as evidenced from the original deed of dedication. It has to be immediately noticed that the State on takeover cannot digress from the objects of the Trust and the same has to be followed through.

37. The only right retained with the Trustees, after Annexure-2 agreement were; (i) ownership and management of the land, buildings, furniture, fixtures, books, and periodicals, as well as other properties and assets then vested in the Trustees, (ii) restrictions as may be imposed by the Trustees of external circulation of the books and periodicals belonging to 'the Institute & Library' and (iii) the general control and direction of the Trustees, which



by the subject enactment cease to exist in the Trustees.

38. The petitioner herein, the Executive Officer, as we have already found, had neither proprietary interest nor monetary benefits flowing to him from the Institute & Library nor was it a professional activity, which he in any case is demonstrably, not qualified to undertake. As evident from Annexure-2 one qualified so to do, the Superintendent of Libraries, Bihar, was appointed as the *ex-officio* Chief of the Library; even earlier to the vesting and with consent of the Trustees.

39. The learned Senior Counsel appearing for the petitioner had placed considerable reliance on *Hari Krishna Mandir Trust* (supra), in which the proprietary rights of a Trust relating to an immovable property was considered in the teeth of Article 300(A) of the Constitution of India, which was found to include proprietary/hereditary interest in the right of management of a religious endowment. The deprivation of such property, though possible under a legally initiated acquisition proceedings in public interest, would necessarily have to be compensated, irrespective of the purpose for which the acquisition is



made. Failure of payment of compensation would result in deprivation of property without specific legal authority.

40. There was no question dealt with in the said case of whether the Trust was a private one or a public one. The Trust had acquired the property by way of a valid sale effected by the owner. Contiguously lying properties included in one plot assigned by the Municipal Corporation (for brevity, 'the Corporation') were divided into four, two of which remained with two individuals, the third with the Trust, and the fourth, a private road, which was shown in the records as being in the name of the two persons managing the Trust, who had purchased it from the original owner. There was no question of acquisition of the Trust property, since 'the Corporation' records also showed the property in the name of two individuals; the father and daughter. Despite repeated communications issued by 'the Corporation' that the private road was in the name of the two individuals, who were running the Trust in the said property, the authorities found that 'the Corporation' is the owner in respect of the land, and there is no reason to assume that the Trust would permit the other two property



owners, the user of the road.

41. The reliance placed on Section 88 of the Regional and Town Planning Act 1966 to assert vesting of the land in ‘the Corporation’, was held to be not possible, only on reading the said provision in isolation. It was found that there was a provision for compulsory acquisition of land for the purposes of a regional plan, development plan, or town planning scheme which had not been done in the proper manner. It was found that the proper consideration of Section 88 enables vesting only when the land is acquired for the purposes of a development scheme. Further, it was held that ‘the Corporation’ cannot be considered to have any right over the land, and in any event, the holder of the land had conceded easementary rights to the owners of the other two lands. ‘the Corporation’ was never shown as the owner of the private road, and the road was held jointly by the three property owners. It was in that context that it was held that, though the right to property is not a fundamental right, it is still a constitutional right under Article 300(A) and a human right; deprivation of which can only be by legally permissible measures enabling due compensation to be paid



to the person who is deprived of such rights. The vesting, as per the impugned enactment, divests the Trustees of the minimal authority that remained with them after Annexure-2 and vests the complete obligation of the Trust, on the Government of Bihar.

42. In the present case, we have already found that the beneficiaries are an unidentified, unascertained group of persons comprised of the public in Patna and its neighbourhood; making the Trust a Public Trust. The petitioner herein, who was the Executive Officer, we reiterate, did not have proprietary rights, nor could he draw any monetary benefits from his office as Executive Officer. He had not been carrying on any professional activity, and for all purposes, 'the Institute & Library' was financed by the State Government and the State Librarian was acting as the *ex-officio* Chief Librarian of the Library who was all entrusted with the responsibility of the general supervision of the working and administration of 'the Institute & Library' subject only to the general conduct and direction of the Trustees.

43. The Trustees themselves had given over the



reins of the administration to the State Government for the purpose of financing the functioning of ‘the Institute & Library’. The acquisition now made is only one step further in taking over the entire control of ‘the Institute & Library’, which is a public Trust. The public interest is clear from the recitals ‘for better management and development’ in the Preamble of the enactment. It also indicates the intention of the State Government to carry on the objects of the Trust, the intention behind the dedication made; to further such intention of the settlor and fulfil the desire of the settlor’s wife.

44. *Shri Krishna Gyanoday Sugar Ltd.* (supra)

was also a challenge to the enactment of the State legislature providing for the acquisition and transfer of certain sugar undertakings in the State of Bihar. As noticed from *Ishwari Khetan Sugar Mills (P) Ltd.* (supra), the acquisition impugned falls under Entry 42 of List III, which was reaffirmed, finding that an examination of the mutually competing claims of Entry 7 and Entry 52 of List I and Entry 24 of List II is not at all necessary. ***Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India; (1970)***



1 SCC 248 was relied on and the following extracts was made;

... "in its normal connotation "property" means "the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on anothers' courtesy; it includes ownership, estates and interests in corporeal things, and also rights such as trademarks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured".

45. The expression undertaking in the impugned Act was found to be clearly meaning a going concern with all its rights, liabilities, and assets. As already held by us, in the present case, the Trust as such has been acquired by the State, the beneficiaries of which is the general public of Patna and its neighbourhood, and the petitioner, who is only the Chief Executive Officer, is not deprived of any right which has a monetary value. There is no injury caused to him insofar as the object of the Trust, as intended by his



predecessor, who was the settlor, would be carried on further by the State Government. The mere difference in the terms employed in English and in the vernacular, respectively, being requisition and acquisition, is inconsequential.

46. The vesting occurs of ‘the Institute & Library’ on the State Government for the purpose of better management and development of ‘the Institute & Library’. The objects of the Trust cannot be digressed from by the State Government nor is it intended to be, as is disclosed from the impugned enactment. Whatever rights, powers and duties that remained with the Trustees, in the management of ‘the Institute & Library’ as was available after Annexure-2 agreement was entered into, would also vest completely in the State Government by the impugned enactment.

47. We find absolutely no reason to entertain the writ petition and dismiss the same but hasten to add that the vesting does not absolve the State Government from carrying on the objects of the Trust; which obligation attaches itself to the Trust taken over by the State Government, who has the responsibility to further the



intention of the original settlor.

48. The writ petition stands dismissed without any order on costs.

(K. Vinod Chandran, CJ)

Rajiv Roy, J. I agree

(Rajiv Roy, J)

Sharun/PKP-
Aditya/-

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