or abandoned property under any law for the time being in force in Pakistan" and not "which was treated". Therefore, if any property is taken hold of after August 14, 1947 and that property is subsequently declared to be exacuee property, even so the person, if he seizes that property without paying for it or without giving any other property in exchange for it, would come within the ambit of s. 2 (*d*) (*iii*).

Therefore, in our opinion, the reference must fail on the preliminary ground that we have no jurisdiction to interfere with the finding of fact arrived at by the District Judge. We are also of the opinion that even if we were to go into the question of fact and accept the view of the Deputy Custodian General that the flat belonging to Bhagwandas Kripalani was allotted to Abdul Kadar on October 9, 1947, even so the case of Abdul Kadar cannot fall under s. 2 (*d*)(*iii*) and he cannot be declared an evacuee.

—The result is that the reference must be rejected. The petitioner to pay the costs of Abdul Kadar. No order as to costs of the other parties.

Reference rejected.

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Chainani and Mr. Justice Vyas.

LAXMAN BALVANT BHOPATKAR AND OTHERS, APPELLANTS (ORIGINAL APPLICANTS) *v.* THE CHARITY COMMISSIONER, BOMBAY, RESPONDENT (ORIGINAL OPPONENT)*

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Bombay Public Trusts Act (Bom. Act XXXIX of 1950), ss. 2 (13), 9 (4) 11 —Lokmanya Tilak's Will relating to 'Kesari' and 'Maratha' Chapkhana—Trust-deed to carry out the objects of the Will—Whether the Kesari Maratha Trust a 'public Trust' as defined in the Act—Construction of Trust-deed.

The Trust Deed executed on August 16, 1920 to fulfil the wishes expressed by Lokamanya Tilak in his Will dated April 5, 1918, stated the following as the purposes of the Trust:—

(1) Awakening in the minds of the people a consciousness of their political rights by spreading the knowledge of politics through the "Kesari" and the "Maratha" being two newspapers; and

(2) Organising various public movements calculated to promote the national ideal.

Held, (*i*) that the first purpose being an object of general public utility, was a 'charitable purpose' within the meaning of cl. (4) of s. 9 of the Bombay Public Trusts Act;

(*ii*) that the second purpose did not amount to a 'charitable purpose' under s. 9 of the Act as the nature and character of the public movements which were to be promoted for furthering the national ideal were not even indicated, much less specified in the Deed;

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(*iii*) that even though the second purpose was non-charitable the trust created under the Deed was a 'public trust,' as defined in s. 2 (13) in view of the provisions of s. 11 of the Act inasmuch as one of the two purposes was a 'charitable purpose'.

The Trustees of Tribune Press, Lahore v. *The Commissioner of Income-Tax Punjab.*[1]

Bowman v. *Secular Society Ltd.*[2] *The Bonar Law Memorial Trust* v. *The Commissioner of Inland Revenue,*[3] *The Commissioner of Inland Revenue* v. *The Temperance Council of The Christian Churches of England and Wales,*[4] *Thornton* v. *Howe,*[5] *De Themines De Bonnevai,*[6] *Tetlley* In re. *National Provincial and Union Bank of England Ltd.* v. *Tetley,*[7] *Ormrod* v. *Wilkinson,*[8] *Subhas Chandra Bose* v. *Gordhandas I. Patel,*[9] *In re Tilak Jubilee Trust Fund,*[10] *Income-Tax Commissioner* v. *Pemsel,*[11] *In Re Macduff*: *Macduff* v. *Macduff,*[12] *All India Spinners Association* v. *Commissioner of Income-Tax,*[13] *In Re Hopkinson* (deceased); *Lloyds Bank Ltd.* v. *Baker and Others,*[14] *Emperor* v. *Bal Gangadhar Tilak,*[15] referred to.

Held, the provision in the Trust Deed that some small amount out of the Trust Fund should be spent every year for celebrating the *Ganesh Utsav* did not make the celebration of *Ganesh Utsav* one of the purposes of the Trust, the purpose of the *Utsav* being merely an incident in the management of the Trust.

FIRST Appeal under s. 72 (4) of the Bombay Public Trusts Act, 1950 against the decision of V. S. Bakhale, Esquire, District Judge, Poona.

The facts are sufficiently set forth in the Judgment.

S. G. Patwardhan and *D. P. Dhupkar,* for the Appellants.

V. S. Desai, for the Respondent.

Vyas J.—This appeal arises from an order passed by the learned District Judge of Poona dismissing Miscellaneous Application No. 325 of 1954 filed under s. 72 of the Bombay Public Trusts Act by the trustees of the Kesari Maratha Trust, and it raises an interesting question under the Bombay Public Trusts Act, viz. whether the Kesari Maratha Trust is a public trust under the Act.

The circumstances under which the trustees of the Kesari Maratha Trust filed the above application under s. 72 of the Bombay Public Trusts Act are these: The two newspapers "Kesari" and "Maratha" were started by Lokamanya Tilak in Poona. Lokamanya Tilak died in the year 1920. Before his death he made a will on April 5, 1918, at Colombo making certain dispositions of his property. The only provisions of the will with

1. (1939) 41 Bom. L. R. 1150, P. C.
2. [1917] A. C. 406.
3. (1933) 17 T. C. 508.
4. (1926) 10 T. C. 748.
5. (1862) 31 Beav. 14.
6. (1928) 5 Russ. 288.
7. [1923] 1 Ch. 258.
8. (1898) 2 Ch. 638.
9. (1939) 42 Bom. L. R. 89.
10. (1941) 43 Bom. L. R. 1027.
11. [1891] A. C. 531.
12. [1896] 2 Ch. 451.
13. (1944) 47 Bom. L. R. 233.
14. (1949) 1 All. E. R. 346.
15. (1908) 10 Bom. L. R. 848.

which we are concerned in this appeal are those which occur under the caption "Chhapkhana" (Printing Press). The Testator stated in this part of his will that a public Trust had been created by him in respect of his "newspapers, office, press, foundry, library of the newspapers and the moneys which had been deposited as security." The testator also gave a direction that an amount of Rs. 75 per month should be paid to his son as rent for the premises occupied by the office of the newspapers, the printing press etc. There was a further direction for the continuance of a certain relative of the testator in the office of the Manager of the Press. It was also directed by the testator that the editorial policy of the newspapers "Kesari" and "Maratha" should continue unchanged. From the words "मी पब्लिक ट्रस्ट केला आहे." in cl. 1 under the caption "Chhapkhana" (printing press), one might get an impression that a public Trust was constituted by the testator by his will in respect of the newspapers, the printing press etc. However, as no Trust was in fact created by Lokmanya Tilak during his life-time, his sons and executors under his will executed a trust-deed on August 16, 1920. That trust-deed is exhibit 12 on the record of this case. It may be noted that the will made by Lokmanya Tilak is also a part of this record and it is exhibit 11. The trust-deed dated August 16, 1920 stated that it was executed for fulfilling the object of Lokmanya Tilak and for giving effect to the provisions of his will. Clause 1 of the trust-deed provides as follows:

> "Even since the time the deceased Lokmanya Bal Gangadhar Tilak took up the news-papers, namely the 'Kesari' and the 'Maratha', he with an object in view did acts of public service such as awakening the consciousness of political rights among the people by spreading through those papers among them the knowledge of politics and organising various other public movements and doing other things calculated to promote the national ideal, and this deed of trust is made to serve as a means of carrying out that very object of his for ever and without any interruption after his death."

There was a direction in the trust deed that the policy of the newspapers was to be decided upon by the trustees in accordance with the testator's wishes expressed by him in his will. The trust-deed further made a provision for reverter in case the object of the trust failed entirely. In cl. 11 of the trust-deed, there was a provision made for the celebration of Ganesh Utsav out of the funds of the trust. In the year 1936 a question arose whether this trust (Kesari Maratha Trust) was a charitable trust as contemplated by the Income-tax Act. It was the contention of the trustees that the income of this trust was exempt from being assessed to income-tax. On the other hand, the income-tax authorities wanted to levy a tax upon the income of this trust. This resulted in a reference, being Reference No. 3 of 1936, being made to the High Court under s. 66, sub-s. (2), of the Income-tax Act. It was a reference made by the Commissioner of Income-tax. That reference was heard by a Divisional Bench of this Court consisting of Chief Justice Beaumont and Mr. Justice Rangnekar.

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In that reference the contention of the trustees of the Kesari Maratha Trust was that the trust was for a charitable purpose and was therefore not subject to the provisions of the Income-tax Act. This contention was over-ruled by the High Court. The High Court held that cl. 1 of the trust-deed could not be construed as constituting a charitable trust, as the purposes mentioned in this clause were too vague and wide to constitute a charitable trust within the meaning of the Income-tax Act. In their Lordships' opinion, although some of the purposes mentioned in cl. 1 were no doubt charitable, there were others which were not charitable and it was possible that the whole of the funds might be applied to non-charitable purposes. Chief Justice Beaumont who delivered the judgment of the Bench in that reference said:

"The purposes include organising public movements, and even if you limit those general words by the words 'calculated to promote the national ideal', it seems to me impossible to say that the promotoin of public movements calculated in the view of the trustees to promote the national ideal can be regarded as necessarily of public utility."

The learned Chief Justice then went on to observe:

"It seems to me clear that under cl. 1 of this trust-deed the whole of the profits of the newspapers could be applied for any one of the various objects specified and, therefore, if any of those objects do not fall within the definition of a charitable object, then the clause cannot be regarded as constituting a charitable trust, and, as I have said, in my view some of the objects of the trust certainly go beyond the definition of charitable trust."

It was further observed by the learned Chief Justice in that case that the promotion of national ideal was not necessarily an object of public utility. For these reasons, it was held that the Kesari Maratha Trust was not a charitable trust within the meaning of the income-tax Act, as some of the objects of the trust were too vague and wide to be regarded as charitable. The result of this decision was that since 1936 this trust was not treated as a charitable trust for the purposes of the Income-tax Act. Then, in the year 1950, the Bombay Public Trusts Act was enacted by the State Legislature and in 1952 a question arose as to whether the Kesari Maratha Trust was liable to be registered under the provisions of that Act. The Assistant Charity Commissioner, Poona, held that this trust was a public trust within the meaning of the Bombay Public Trusts Act and was, therefore, liable to be registered. From that decision the trustees appealed and in appeal the Charity Commissioner confirmed the decision of the Assistant Charity Commissioner. Thereupon, the trustees filed Miscellaneous application No. 325 of 1954 in the District Court at Poona under s. 72 of the Bombay Public Trusts Act. Relying on the decision of Chief Justice Beaumont and Mr. Justice Rangnekar in the High Court Reference No. 3 of 1936, which was a reference under s. 66, sub-s. (2) of the Income-tax Act, the trustees contended in their application No. 325 of 1954 that the Kesari Maratha Trust was not a public trust and

that, therefore, the provisions of the Bombay Public Trusts Act would not apply to it. The learned District Judge held that, according to cl. 1 of the trust-deed, the purposes of the trust-deed were : (1) Political education; (2) Creating a consciousness of political rights amongst the people; and (3) Public activities which are conducive to the promotion of the national goal. Then the learned District Judge said in the course of his judgment that the

"Creation of a political consciousness was a part of political education."

and observed:

"Political education, creating a consciousness of political rights, cannot be regarded as an object which can invalidate a trust.....It cannot, however, be said that political education, that is education in the birth rights of man, on which as is well known the Late Lokmanya laid frequent emphasis, creating a consciousness in the people of this country of their birth right, is a purpose which any court in modern times can hold to be one which is not for public benefit."

This is a somewhat involved expression, but it is clear that in the view of the learned Judge the purposes of spreading political education and creating political consciousness amongst the people were charitable purposes and, therefore, the trust created by the trust-deed was a public trust.

Regarding cl. 11 of the trust-deed which deals with the celebration of Ganesh Utsav, the learned District Judge observed that it did not constitute a religious purpose of the trust. In his view, secular gatherings often begin with or end with prayers and yet "the purpose of such gatherings continues to be secular in spite of the religious prayers." The learned Judge was of the opinion that "the performance of this Utsav (Ganesh Utsav) was not a purpose of the trust, but was an incident in the management of the trust" and that "the Utsav and its performance cannot influence the answer to the question whether the purpose of the trust was charitable." The trustees, feeling aggrieved by the decision of the learned District Judge that the Kesari Maratha Trust is a public trust, have appealed and the question which arises for our decision is whether the trust constituted by the trust-deed exhibit 12 dated August 16, 1920 is a public trust under the Bombay Public Trusts Act. It may be noted that although Lokmanya Tilak stated in his will in cl. 1 under the caption "Chhapkhana" (Printing Press) that he had created a public trust, he had not in fact created any public trust during his life-time. That was why after his death his sons and the executor under his will constituted this trust to respect his wishes and fulfil the object he had in view. Now, a 'public trust is defined in s. 2, sub-s. (*13*), of the Bombay Public Trusts Act. Section 2, sub-s. (*13*), lays down:

" 'Public Trust' means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

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To understand what a charitable purpose under the Bombay Public Trusts Act is, we must turn to s. 9 of the Act, and it is with cl. (4) of s. 9 that we are concerned in this case. Clause (4) of s. 9 says that for the purposes of the Act (Bombay Public Trusts Act, 1950), a charitable purpose includes the advancement of any object, other than the objects mentioned in cls. (1), (2) and (3), of general public utility, but does not include a purpose which relates exclusively to sports or exclusively to religious teaching or worship. Now, therefore, in this case we have to consider whether the purpose of the trust constituted by this trust-deed, exhibit 12, was the advancement of any object of general public utility.

Although the object of this trust which was founded upon the will of Lokmanya Tilak is not specified in cl. 1 of the trust-deed, cl. 1 refers to the doing of certain things for the fulfilment of that object. It is, therefore, clear, in our view, that the doing of those things is the purpose of the trust. Those things are: (1) Awakening in the minds of the people a consciousness of their political rights by spreading the knowledge of politics through the newspapers "Kesari" and "Maratha"; and (2) Organising various public movements calculated to promote the national ideal. It is clear, therefore, that these are the purposes of this trust as mentioned in cl. 1 of the trust-deed. In Reference No. 3 of 1936 also Chief Justice Beaumont and Mr. Justice Rangnekar, dealing with the purposes of this trust, had said:

> "Some of the purposes, no doubt, are charitable, but others are not, and the whole of the funds may be applied to non-charitable purposes. The purposes include organising public movements, and even if you limit those general words by the words 'calculated to promote the national ideal', it seems to me impossible to say that the promotion of public movements calculated in the view of the trustees to promote the national ideal can be regarded as necessarily of public utility."

It is, therefore, doubtless that the purposes of this trust were: (1) Awakening amongst the people a consciousness of their political rights by spreading the knowledge of politics amongst them through the newspapers "Kesari" and "Maratha" and (2) Organising various public movements calculated to promote the national ideal. Now, so far as the second purpose is concerned, it cannot amount to a charitable purpose under the Bombay Public Trusts Act. As the nature and character of the public movements which were to be promoted for furthering the national ideal were not even indicated, much less specified, it seems impossible to say that the organisation of public movements which in the opinion of the trustees might be calculated to promote the national ideal can be regarded necessarily as an object of general public utility within the meaning of cl. (4) of s. 9 of the Act. Those public movements would obviously not fall under any of the other clauses of s. 9 either. Clearly, therefore, the second of the two purposes mentioned in cl. 1 of the trust-deed cannot be considered a charitable purpose.

As to the first purpose, viz. the purpose of awakening consciousness of political rights amongst the people by spreading the knowledge of politics through the newspapers "Kesari" and "Maratha", Mr. Patwandhan says that it is a political object and he contends upon the authority of judicial decisions that the advancement of a political object cannot be a charitable purpose and that the trust for such a purpose cannot be considered a valid trust. In this connection, Mr. Patwardhan has referred us to a decision of the Privy Council in *The Trustees of Tribune Press, Lahore* v. *The Commissioner of Income-Tax, Punjab.*[16] In that case, there were three trusts created by a will of Sardar Dayal Singh and the third trust was declared by the 20th and 21st paragraphs of the will. 21st paragraph provided:

"That it shall be the duty of the said Committee of Trustees to maintain the said press and newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said press and newspaper after defraying all current expenses in improving the said newspaper, and placing it on a footing of permanency."

Dealing with this clause, the Trustees of the Tribune Press contended that a consideration of the way in which the newspaper had been carried on in the past made it clear that it had not been used for the propagation of a fixed policy such as might bring the case within the decision in *Bowman* v. *Secular Society Ltd.*[17] or *The Bonar Law Memorial Trust* v. *The Commissioners of Inland Revenue.*[18] It was argued on behalf of the Trustees that there was no question there of any dominant political purpose or of the propagation of some definite legislative measure as in *The Commissioners of Inland Revenue* v. *The Temperance Council of the Christian Churches of England and Wales.*[19] It was also contended for them (the Trustees) that in so far as the newspapers dealt with politics, it did so only incidentally in the course of supplying its public with enlightened information on all subjects of general interest. On the other hand, it was submitted for the Commissioner of Income-tax that the declared object of the trust was the perpetual propagation of the political views of the founder, which could not be considered a charitable purpose. In the present case also Mr. Patwardhan for the Kesari Maratha Trust contends that the declared purpose of the trust under cl. 1. of the trust-deed was the perpetual propagation of the political policy of Lokmanya Tilak and that, therefore, the purpose could not be considered a charitable purpose. Mr. Patwardhan says that Lokmanya Tilak had clearly expressed himself in his will dated April 5, 1918 that the editorial policy of his newspapers was to be maintained and was never to be departed from. According to Mr. Patwardhan, the editorial policy of the newspapers "Kesari" and "Maratha" which was in the nature of political propaganda was sought to be perpetually propagated by the trust-deed and this would impart a

16. (1939) 41 Bom. L. R. 1150.
17. [1917] A. C. 406.
18. (1933) 17 T. C. 508.
19. (1926) 10 T. C. 748.

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political character to the trust. Upon these submissions Mr. Patwardhan contends that the awakening of political consciousness amongst the people through "Kesari" and "Maratha" is also not a charitable purpose and, therefore, this trust is not a public trust.

In the body of their Lordships' judgment in the Tribune case, their Lordships referred to the House of Lords case of *Bowman* v. *Secular Society Ltd.* Mr. Patwardhan also relies upon it. In that case, Lord Parkar, in the course of his Lordship's address, said at pages 441 and 442:

"A trust to be valid must be for the benefit of individuals, which this is certainly not, or must be in that class of gifts for the benefit of the public which the courts in this country recognize as charitable in the legal as opposed to the popular sense of that term. Moreover, if a trustee is given a discretion to apply trust property for purposes some of which are and some are not charitable, the trust is void for uncertainty.....The abolition of religious tests, the dis-establishment of the Church, the secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognise such objects as charitable. It is true that a gift to an association formed for their attainment may, if the association be unincorporated, be upheld as an absolute gift to its members, or, if the association be incorporated, as an absolute gift to the corporate body; but a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit and therefore cannot say that a gift to secure the change is a charitable gift. The same considerations apply when there is a trust for the publication of a book. The Court will examine the book, and if its objects be charitable in the legal sense it will give effect to the trust as a good charity but if its object be political it will refuse to enforce the trust."

In support of his observations, his Lordship relied on *Thornton* v. *Howe*[20] and *De Themmines* v. *Bonneval*[21] Mr. Patwardhan relies upon this authority (*Bowman* v. *Secular Society Ltd.*) to fortify his contention that the Kesari Maratha Trust, being a trust for the attainment of the political object which Lokmanya Tilak had in view, would be an invalid trust.

In Tetley In re: *National Provincial and Union Bank of England Ltd.* v. *Tetley,*[22] a testator had directed by his will that his trustees must apply one-fifth of his residualy estate for such patriotic purposes or objects and such charitable institution or institutions or charitable object or objects in the British Empire as they in their absolute discretion should select. Mr. Justice Russell delivering judgment in this case posed a question:

"Must every application of the fund for a patriotic purpose be beneficial to the community and therefore charitable?"

His Lordship then went on to answer that question, and he answered it thus (p. 262):

"It seems to me that it is impossible to hold that, What is or is not patriotic is in many cases mere matter of opinion. Subsidising a newspaper for the promotion of particular political or fiscal opinions would

20. (1862) 31 Beav. 14. 21. (1928) 5 Russ. 288.

22. [1923] 1 Ch. 258.

be a patriotic purpose in the eyes of those who considered that the triumph of those opinions would be beneficial to the community. It would not be an application of funds for charitable purpose."

The gist of the decision was that in certain circumstances, subsidising a newspaper might be a patriotic purpose; but if the subsidising was done for promoting particular political opinions, it would *not* be a charitable purpose. It may be noted that *Bowman* v. *Secular Society Ltd.* was followed by Mr. Justice Russell in this case.

In *Ormrod* v. *Wilkinson,*[23] the vicar of a parish by his will dated in 1897 devised to the vicar for the time being a building used as a village club and reading room to be maintained for the furtherance of Conservative principles and religious and mental improvement and to be kept free from intoxicants and dancing. It was held to be a good charitable gift. Mr. Justice Stirling said that as the essential portion of the gift was for the furtherance of religious and mental improvement, it was a gift for a charitable object. Had it been a gift for the furtherance of conservative principles alone, a different position might have arisen, about which Mr. Justice Stirling refrained from expressing an opinion. To quote Mr. Justice Stirling (p. 641):

"Whether or not a gift for the furtherance of Conservative principles is a good charitable gift is a question upon which I do not think it necessary to express any opinion in this case, because it seems to me that the reading which is suggested is not the true one, but that this is a gift for the furtherance of Conservative principles and religious and Mental improvement in combination. It is either a gift for the furtherance of Conservative principles in such a way as to advance religious and mental improvement at the same time, or a gift for the furtherance of religious and mental improvement in accordance with Conservative principles; and in either case the furtherance of religious and mental improvement is, in my judgment, an essential portion of the gift. It is, therefore, a gift in one form or another for religious and mental improvement, no doubt in combination with the advancement of Conservative principles; but that limitation, it appears to me, is not sufficient to prevent it from being a perfectly good charitable gift, as undoubtedly it would be if it were a gift for the furtherance of religious and mental improvement alone."

Relying upon these cases and especially the Tribune case in which their Lordships of the Privy Council held that if the dominant purpose of a trust was a political purpose, it would not be a charitable purpose, Mr. Patwardhan contends that as the purpose of the Kesari Maratha Trust was the advancement of a political cause by the propagation of a certain political policy, the purpose would not be a charitable purpose and the trust would not be a public trust.

Mr. Patwardhan has next drawn our attention to a decision of this Court in *Subhas Chandra Bose* v. *Gordhandas I. Patel.*[24] It was a case in which a testator, having by his will given four

23. (1898) 2 Ch. 638.

24. (1939) 42 Bom. L. R. 89.

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legacies to his relations and friend, disposed of the residue of his estate in these words:

"The balance of my assets after the disposal of the abovementioned four gifts is to be handed over to B to be spent by the said B or by his nominee or nominees according to his instructions for the political uplift of India and preferably for publicity work on behalf of India's cause in other countries."

A question arose in that case whether the further direction constituted a valid charitable bequest. Decisions in *Bowman* v. *Secular Society Ltd.* and the Tribune case were followed and it was held that whatever meaning one attached to the expression "political uplift of India," it was impossible to give effect to it as a valid trust, because it was too vague for the Courts to enforce it and that therefore the gift failed.

In re Tilak Jubilee Trust Fund,[25] the objects of the Lokamanya Tilak Jubilee National Trust Fund were set out in sub-cls. (*a*), (*b*), (*c*), and (*d*) of cl. 11 of the trust deed dated December 31, 1920. The objects were : (*a*) The advancement of any purpose which might in the uncontrolled opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional. (*b*) The political advancement of India having for its goal the acquisition of complete national autonomy or 'Swarajya' to be attained by all constitutional agitation and means. (*c*) The diffusion of political education and knowledge as to the political affairs of India and propagandist work both in India as well as in any part of the word outside India having for its aim the acquisition of complete national autonomy or 'Swarajya' as aforesaid. (*d*) Any object which might conduce to any of the aforesaid objects. It was held by a Division Bench of this Court consisting of Chief Justice Beaumont and Mr. Justice Kania as he then was that the trust was for a political purpose and that it did not fall within the purview of s. 4 (3) of the Income-tax Act. Dealing with the object in sub-cl. (*a*) Chief Justice Beaumont, in the course of his judgment, observed that sub-cl. (*a*) included the advancement of any purpose which might in the uncontrolled opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional. Having regard to the language of sub-cl. (*a*), the learned Chief Justice observed that it was impossible to say that the Managing Committee might not regard purposes, which were not according to law charitable, as being nevertheless of national importance for the inhabitants of British India, and the committee might regard methods as constitutional which the law would not regard as constitutional. Then the learned Chief Justice went on to say (p. 1031):

25. (1941) 43 Bom. L. R. 1027.

"I know of no authority for the proposition that a gift for such purposes as a particular individual or individuals may consider to be charitable is good. There are many purposes which an individual, acting quite *bona fide*, may regard as charitable, but which the law does not so regard. Therefore, I think sub-cl. (*a*) goes too far."

Dealing with sub-cl. (*b*) also, the learned Chief Justice said (p. 1031):

"I think sub-cl. (*b*) goes too far also, because it is really a gift for political purposes."

Thus so far as sub-cl. (*b*) of the trust in *In re Tilak Jubilee Trust Fund* was concerned, it was held to be a gift for political purposes and as to sub-cl. (*a*), the provisions were considered too vague and wide and, therefore, the trust was held invalid. So far as sub-cl. (c) was concerned, the learned Chief Justice did not deal with it in the course of his judgment, but Mr. Justice Kania, who delivered a concurring judgment, referred to it and observed (p. 1033):

"Sub-clause (c) whilst containing the words 'political education and knowledge' couples the same with 'propagandist work both in India as well as in any part of the world outside India' and also falls within the rule stated in *Tribune case.*"

It would appear that in view of the coupling of "political education and knowledge" with "propagandist work," the Court thought that the political education and knowledge were to be used for propagandist work and that, therefore, the two objects were not distributive but were inseparably connected. It was because 'political education and knowledge' and 'propagandist work' were considered as inseparably connected that the whole of the object mentioned in sub-cl. (c) was construed as being non-charitable. In the present case, however, as I shall point out a little later, the two purposes mentioned in cl. 1 of the trust-deed are dissociable and therefore distinct and distributive purposes. Both of them cannot be rolled into one purpose so as to call it a political and therefore a non-charitable purpose.

In Halsbury's Laws of England, Third Edition, Volume 4, the learned author has said at page 242:

"A trust for the attainment of political objects is invalid, not because it is illegal—for everyone is at liberty to advocate or promote by any lawful means a change in the law—but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore, cannot say that a gift to secure the change is a charitable gift."

These observations were made on the authority of *Burman* v. *Secular Society Ltd.*, to which I have already referred. Then at page 243, the learned author has said:

"A trust for furthering the views of a particular political party, whether under the guise of an educational centre or a fund of adult education on party lines, is not charitable."

Mr. Patwardhan for the trustees relies upon these observations and contends that as the trust constituted by the trust-deed in this case was substantially for furthering the views

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of the political party which was founded by Lokmanya Tilak, the purpose of awakening political consciousness amongst the people by diffusing political education was really a political purpose and not a charitable one.

We have considered the various decisions to which our attention is invited by Mr. Patwardhan. In our view, *Bowman* v. *Secular Society Ltd.*[26] and other English cases cited by Mr. Patwardhan will not assist the trustees in this case. The English law regarding charity is materially different from the law on the subject in this country, in that the "advancement of any object of general public utility" is not one of the heads of charity in English law. In *Income-tax Commissioner* v. *Pemsel,*[27] an effort was made by Lord Macnaghten to classify charitable objects, and Lord Macnaghten said (p. 537):

> "'Charity' in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

It would appear that so far as the first two divisions are concerned, they are almost identical with cls. (*1*) and (*2*) of s. 9 of the Bombay Public Trusts Act, 1950. But so far as the fourth division in Lord Macnaghten's classification is concerned, the language thereof is substantially different from the language of cl. (*4*) of s. 9 of the Bombay Public Trusts Act, 1950. The fourth division of charity in England, in Lord Macnaghten's words, is "trusts for other purposes beneficial to the community," whereas cl. (*4*) of s. 9 of the Bombay Public Trusts Act, 1950, relates to "the advancement of any other object of general public utility." As Keeton says in his "Law of Trusts," the first attempt in the English Law to define 'charity' for legal purposes was contained in the Statute 43 Eliz., c. 4. and even today, in England purpose is not charitable unless it is within the spirit and intendment of the preamble to 43 Eliz., c. 4, which was expressly preserved by s. 13 (*2*) of the Mortmain and Charitable Uses Act, 1888. The position in the case before us is entirely different. We are governed by the provisions of the Bombay Public Trusts Act, 1950, and it is the language of cl. (*4*) of s. 9 which must be considered and given effect to while deciding the question whether the Kesari Maratha Trust is a trust for a charitable purpose or not.

That the position under the English law and the Indian law regarding charity is different was pointed out by their Lordships of the Privy Council in the Tribune case. It was pointed out that under the English law, a purpose, though it may be of general public utility, may not yet be a charitable purpose. It is scarcely necessary to say that under the Bombay Public Trusts Act, 1950, if an object is of general public utility, it would always be considered a charitable object. In the Tribune case their Lordships were not prepared to hold that the property

26. [1917] A. C. 406. 27. [1891] A. C. 531.

referred to in the 20th and 21st paragraphs of the will was held for the purpose of 'education' in the sense of that word as it appears in s. 4 of the Income-tax Act. *Prima facie,* therefore, in their Lordships' view, the only question for decision was whether that property was held under trust wholly for the advancement of an object of general public utility. That it was so held was the conclusion reached by Mr. Justice Tekchand of the Lahore High Court, who contrasted the wide terms of the exempting clause in the Indian Income-tax Act with the observations of Lord Lindley in the case of *In re Macduff*: *Macduff* v. *Macduff*[28] where, after referring to a well-known passage in Lord Macnaghten's speech in *Commissioners for Special Purposes of Income-tax* v. *Pemsel,*[29] Lord Lindley said that in English law there might be some purposes of general utility which might be charitable and some which might not, the true test being the spirit of intention of the Statute of Elizabeth (43 Eliz. c. 4). Thus, according to Lord Lindley, the position in English law is that, although the purpose may be one of general utility, it may or may not be considered charitable, the true test upon the subject being found in the spirit or intention of the Statute of Elizabeth.

In *Subhas Chandra Bose* v. *Gordhandas I. Patel*[30] also the learned Chief Justice, referring to the case of *Commissioners for Special purposes of Income Tax* v. *Pemsel*[29] said that all that Lord Macnaghten meant was that charity in the legal sense might embrace purposes beneficial to the community, but that all purposes beneficial to the community were not charitable. The learned Chief Justice then observed (p. 114):

> "However, undoubtedly under English case law a gift for general public utility is not a good charitable gift, because it might be employed for purposes which are not considered charitable."

The position, therefore, is that under English law, even though the purpose of a trust may be one for general public utility, it would not necessarily be considered a charitable object. The position under s. 9, cl. (4), of the Bombay Public Trusts Act, 1950, is clearly different.

In *All India Spinners Association* v. *Commissioner of Income-tax,*[31] which is a Privy Council case, we find the following classical passage emphasising the difference between the English law and the Indian law relating to charity:

> "It is now recognised that the Indian Act must be construed on its actual words and is not to be governed by English decisions on the topic. The English decisions on the law of charities are not based upon definite and precise statutory provisions. They have been developed in the course of more than three centuries of the Chancery Courts. The Act of 43 Elizabeth (1601) contained in a preamble a list of charitable objects which fell within the Act, and this was taken as a sort of chart or scheme which the Court adopted as a ground work for developing the law. In doing so they made liberal use of analogies so that the modern English law can only be ascertained by considering

28. [1896] 2 Ch. 451.
29. [1891] A. C. 531.
30. (1939) 42 Bom. L. R. 89.
31. (1944) 47 Bom. L. R. 233, P. C.

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a mass of particular decisions often difficult to reconcile. It is true that s. 4 (*3*) of the Act has largely been influenced by Lord Macnaghten's definition of charity in *Commissioners for Special Purposes of Income-Tax* v. *Pemsel*,[32] but that definition has no statutory authority and is not precisely followed in the most material particular; the words of the section are 'for the advancement of any other object of general public utility,' whereas Lord Macnaghten's words were 'other purposes beneficial to the community'. The difference in language, particularly the inclusion in the Indian Act of the word 'public', is of importance. The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction, and, though they may sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances, that emerge under conditions of Indian life."

It is, therefore, clear upon the authority of the above pronouncement of their Lordships of the Privy Council that the definition of what is a charitable purpose, which is contained in the Indian Act, must be construed according to the actual words and the English decisions are to be referred to merely for deriving guidance and for no further use. They have no binding authority on the question of construction of the words used in the Indian Act.

In Re Hopkinson (Deceased), Lloyds Bank Ltd. v. *Baker and others.*[33] Mr. Justice Vaisey referred to the Tribune case and pointed out that the state of law which was considered in the Tribune case was very different from the law on the subject prevailing in England. Mr. Justice Vaisey said that he would "like to mention an important case in the Privy Council, *Tribune Press, Lahore* v. *Income-tax Commissioner, Punjab, Lahore,* where a very different state of law had to be considered, because in that part of India at that time the ambit of permissible trusts had been extended from charitable purposes as we understand them in this country so as to include the advancement of any other object of general public utility." Clearly thus the advancement of any object of general public utility, which under the Indian law is considered a charitable object, is not always considered so under the English law.

In *In re The Lokamanya Tilak Jubilee National Trust Fund, Bombay,*[34] also it was pointed out by Chief Justice Beaumont that the definition of charitable purposes in s. 4, sub-s. (*3*), of the Indian Income-tax Act went further than the definition of charity to be derived from the English cases, and the reason was that the definition under the Income-tax Act embraced purposes of general public utility. Thus the volume of judicial decisions shows that the legal position regarding charity, under the English law and the Indian Law, is substantially different. Therefore, the English decisions cited by Mr. Patwardhan cannot be of much assistance to his clients in construing cl. 1 of the trust-deed, exhibit 12.

It may be remembered next that some of the decisions relied upon by Mr. Patwardhan are cases under the Income-tax Act

32. [1891] A. C. 531.

33. (1949) 1 All. E. R. 346.
34. (1941) 43 Bom. L. R. 1027.

or the Charitable Endowments Act. The Tribune case and Tilak Jubilee Trust Fund case were cases under the Income-tax Act. *Subhas Chandra Bose* v. *Gordhandas Patel*[35] was a case under the Charitable Endowments Act. Under both these Acts, in order that a trust may be held to be a charitable trust all the objects of the trust must be charitable objects. That is not the position under the Bombay Public Trusts Act, 1950. Section 11 of this Act lays down that a public trust, created for purposes some of which are charitable or religious and some are not, shall not be deemed to be void in respect of the charitable or religious purpose, only on the ground that it is void with respect to the non-charitable or non-religious purpose. For this reason also the English cases, to which we are referred by Mr. Patwardhan, would not assist the trustees.

There is another reason also why we think the English cases would not help Mr. Patwardhan's clients. Mr. Patwardhan overlooks the fact that the diffusion of knowledge of politics amongst the people, thereby awakening political consciousness amongst them, and the advancement of political object are not identical things. He is in error when he considers that the two are inseparable. Making people politically conscious by spreading the knowledge of political science amongst them is education by itself. It has a distinct educative value, as it educates public opinion, makes people see things for themselves and imparts understanding to them as to their rights. Creating political consciousness amongst the people has no less educative value than creating, for instance, civic consciousness or social consciousness. If, in addition to arousing people's consciousness as to their rights by spreading knowledge of political theory amongst them the people are asked to put the awakened consciousness to a political purpose, then of course it would be political object; but so would it be if even civic consciousness or social consciousness is put to a political purpose. The point is that the mere imparting of knowledge to, or awakening of consciousness, in, the public as to their rights civic, social or political, would not by itself be a political object. Teaching of any text book on constitutional law or political theory would make the people politically conscious. But nobody can say that these subjects are taught in educational institutions with a definite political purpose. In our opinion therefore the mere awakening of a consciousness amongst the people making them realise what their political rights are, would not amount to a political purpose unless the awakened consciousness is sought to be put to a political purpose. It may be noted in this context that the carrying on of a political propaganda with a definite well-defined object in view is an entirely different thing from making people just conscious of their political rights and leaving it to their judgment how to use that consciousness. Knowledge of political rights is always a good thing, whereas the propaganda carried on for a particular purpose may or may not benefit people. In cl. (*l*) of the trust-deed, as I have already stated, the purposes

35. (1939) 42 Bom. L. R. 89.

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mentioned are two: (1) Awakening political consciousness amongst the people by spreading knowledge of politics amongst them and (2) Organising various other public movements calculated to promote the national ideal. Mr. Patwardhan says that these two purposes are not distributive purposes, but are closely connected together, and that since both the purposes were intended to serve as means of carrying out the object which Lokmanya Tilak had in view, which was a political object, both would be political purposes. We have considered this submission carefully, but are unable to accept it. In our view the two purposes mentioned in cl. 1 are distributive purposes. Each can be carried out independently of the other. Awakening of political consciousness amongst the people by spreading knowledge of politics through 'Kesari' and 'Maratha' could be done without resorting to the organisation of public movements where people may be exhorted to achieve the national ideal. On the other hand, the organisation of public movements calculated to promote the national ideal could be done without spreading the knowledge of politics through the newspapers. It is true that in so far as both the purposes of the trust were intended to be carried out for fulfilling the object which Lokmanya Tilak had in view, it might be said that they were related to the object of Lokmanya Tilak. But the fact that each of these purposes of the trust was so related to or connected with the said object would not mean that the purposes themselves were inter-related. The relation of each of these purposes to the object of Lokmanya Tilak would not detract from the individual and independent character of each purpose. It would not subordinate one purpose to the other, nor would it merge one purpose in the other. Holding of public meetings and organising public activities for exhorting the public to adopt and pursue a particular policy for attaining a particular goal is one thing, whereas making people politically conscious by spreading knowledge of political science through newspapers and leaving it to the judgment of the people so made politically conscious to determine what path or policy they should follow for the attainment of the goal is a totally different thing. There is no connection or inter-dependence between them. The objective may be one. But the means, the methods for attaining it may be different and it is clear that the purposes of the trust as mentioned in cl. 1 were the means to be adopted or methods to be followed for achieving the object of Lokmanya Tilak. They are, therefore, distributive purposes. As the purposes are distributive purposes and as, in our view, the first purpose is a charitable purpose, the fact that the second purpose may be a non-charitable purpose would not detract from the trust being a public trust under the Bombay Public Trusts Act. This is clear as s. 11 of the Act lays down that a public trust created for purposes some of which are charitable and some are not shall not be void in respect of the charitable purpose simply because it is void with respect to other purposes which are non-charitable purposes.

It is undeniable that creating awareness of human rights in the minds of the people is a matter of general public good. Imparting knowledge of political science to the people, whether through text books or newspapers, is as much an object of general public utility as for instance the imparting of knowledge of social, mental or moral science. It would make people see things for themselves, would dispel their ignorance as to their rights and would enable them to determine their own course of action instead of other person or persons determining it for them. In our view, therefore, making people conscious of their rights as citizens of this country would be an object of general public utility and would accordingly be a charitable purpose under cl. (*4*) of s. 9 of the Act. Accordingly even if the second purpose be held to be a non-charitable purpose, the trust would be a public charitable trust in view of the provisions of s. 11 of the Act.

I may now add a few words about cl. 11 of the trust-deed. Clause 11 deals with the celebration of Ganesh Utsav on the premises of Gaekwad Wadi out of the funds of the trust, and the question is whether this also could be considered as one of the purposes of the trust. Mr. Desai for the State contends before us that this also, viz. the celebration of Ganesh Utsav, would be one of the purposes of the Trust and that the said purposes, being a public religious purpose, the trust would be a public trust. In our view, the celebration of Ganesh Utsav is not one of the purposes of the trust. As the learned District Judge has pointed out in the course of his judgment, it is not unusual that secular gatherings begin with and end with the recitation of certain prayers. Just as a recitation of prayers is done for invoking divine blessings, so also the celebration of Ganesh Utsav is done, according to the popular belief, for the purpose of invoking the blessings of Ganesh. Therefore, simply because the authors of the trust provided in cl. 11 of the trust deed that the Ganesh Utsav should be celebrated we are not prepared to go to the length of holding that it was one of the purposes of the trust. As the learned District Judge has said, the purpose of this Utsav was "an incident in the management of the trust". After all, what the authors of the trust directed in cl. 11 was that some small amount out of the trust funds should be spent every year for celebrating the Ganesh Utsav. This, in our view, would not make it one of the purposes of the trust.

Mr. Patwardhan has invited our attention to *Emperor* v. *Bal Gangadhar Tilak*[36] in support of his contention that Lokmanya Tilak was the leader of a political party. It is undoubtedly true that Lokmanya Tilak was a great leader of men and a great gentleman; but what we are concerned with in this case is strictly to construe the provisions of the trust-deed, exhibit 12. We are told that the "Kesari" and "Maratha" newspapers were organs for propagating the views which Lokmanya

36. (1908) 10 Bom. L. R. 848.

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Tilak held. That may be so. What we have to decide, however, is whether the awakening of political consciousness amongst the people by spreading the knowledge of politics is a charitable object. For the reasons mentioned by us in the judgment, we have come to the conclusion that it is a charitable object.

In the result, as we come to the conclusion that the Kesari Maratha Trust is a public trust, the appeal must fail and be dismissed with costs. Costs to come out from the trust funds.

Appeal dismissed.

G. N. V.

APPELLATE CIVIL

Before Mr. Chagla, Chief Justice and Mr. Justice Dixit.

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THE STATE OF BOMBAY, APPLICANT *v.* THE AHMEDABAD EDUCATION SOCIETY, OPPONENT.*

Bombay Sales Tax Act (Bom. V of 1946), ss. 2 (c), (g), 8—Meaning of 'dealer' in s. 2 (c), 'Sale' in s. 2 (g) and the expression "business of selling or supplying goods" in s. 2 (c)—An educational Society setting up a brick factory and lime kiln and producing bricks and lime for use in its buildings,—Furnishing bills to building contractors and debiting to their account—Sale of surplus bricks without any profit to others—Steel imported by the Society directly from Belgium for its buildings and disposed of at the directions of Controller of Steel—Whether Society a 'dealer'—Whether a profit making motive is an essential ingredient in order that an activity should constitute a 'business'—Construction of Taxing statutes—Object of Sales Tax Act.

An educational Society whose object was not to carry on the business of selling or supplying goods but to economise on the construction of its own buildings, is not rendered a 'dealer' within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946, by reason of any of the following:

the Society setting up a lime kiln and brick factory, producing lime and kiln for use in its own buildings, furnishing of bills in respect of the supply of bricks and lime to the building contractors and debiting their account with the amounts of such bills; selling surplus bricks without any profit to others; importing steel for the purposes of its buildings and disposing of it as directed by the Steel Controller.

Quœre.—Whether a profit-making motive is essential to render an activity a business.

Per Chagla C. J.—"Every Taxing statute must be construed strictly in favour of the subject and it is necessary that the Court must look at the provisions of a taxing statute in order to determine upon whom and in what circumstances the incidence of tax should fall, and when we look at the various provisions of the Sales Tax Act it is clear that substantially and broadly speaking the Legislature wanted to tax business people who did the business of selling various commodities which were made liable to tax."

Reference made by the Bombay Sales Tax Tribunal under s. 23 of the Bombay Sales Tax Act, 1946.

*Civil Reference No. 19 of 1955.

Corresponding to s. 2 (c) is s. 2 (6) of the Bombay Sales Tax Act, 1953.