

(1983) 06 KAR CK 0007

In the Karnataka High Court

Case No : W.P. Nos. 18785 & 18868 of 1981 and 6209 to 6217 and 10508 of 1982

Sri R.K. Joshi and Others

APPELLANT

Vs

State of Karnataka.

RESPONDENT

Date of Decision : 03-06-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Loka Shikshana Trust (Taking Over of Management) Act, 1982 — Section 3(4)

Citation : (1984) 1 KarLJ 158

Hon'ble Judges : S. G. Doddakale Gowda, J;K. Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-The Loka Shikshana Trust (hereinafter referred to as "the trust") is a public trust registered under the Bombay Public Trusts Act, 1950. It has its registered Office at Hubli. It publishes one prominent Kannada Daily News paper called "Samyukta Karnataka" from Hubli and Bangalore. It also publishes some other periodicals. The Board of Trustees have sold the right of publication of the said daily along with machineries to a private firm. Some persons interested in the trust complaining mismanagement of the affairs of the trust have challenged the validity of that alienation in a suit filed in the District Court, Dharwar. They have also sought a scheme for proper administration of the trust by removing the existing trustees. In that suit, the Court appointed one receiver to manage the publication of the daily news paper and another to collect rents from the immovable properties of the trust. When the suit was thus pending with the receivers managing the properties, the State Government has intervened to take over the management of the trust with those properties alienated. For that purpose, on August 31, 1981 the Governor promulgated an Ordinance called. "The Loka Shikshana Trust (Taking over of Management) Ordinance, 1981 (Karnataka Ordinance 16 of 1981). On March 10. 1982, that Ordinance was replaced by an Act called "The Loka Shikshana Trust (Taking over of Management) Act. 1982" (called shortly as "the Act").

The petitioners in these writ petitions plead passionately for striking down the

Act as unconstitutional.

2. The petitioners in W.P. No 18785 of 1981 claim to be the persons interested in the management of the trust.

The petitioner in W.P. No. 18868 of 1981 is the trust itself, represented by Sri A.R. Diwakar who claims to be the sole trustee.

The petitioner in W.P. No. 10508 of 1982 is a lessee who has taken over a vacant plot belonging to the trust under a term lease and who has built the rein a multistoried building.

The petitioners in W.P. Nos. 6209 to 6217 of 1982 are the tenants occupying some of the premises belonging to the trust.

3. The constitutional validity of the Act is the common writ petitions and they are, therefore being disposed of by this common judgment.

4. Before we refer to the relevant provisions of the Act, it is necessary to say something about the pre-natal history of the legislation. The trust, the management of which has been taken over by the Government was at first established in 1935 by a leading public figure called Sri Ranganatha Ramachandra Diwakar. The objects of the trust, among others, was to educate the public by dissemination of useful news and highlight the public grievances on matters of public interests. It was to establish reading rooms and libraries, printing press and publication house for books, magazines and news papers in Kannada and other languages. It was also to help directly or indirectly societies and institutions which have all or any of the aforesaid objects in view. The main activity of the trust, however, was confined to the publication of "Samyukta Karnataka" a daily news paper from Hubli and in the recent pas simultaneously from Bangalore also.

It is said that the trust in spite of its laudable objects, has been incurring loss with bank balance slowly dwindling and other liabilities steadily increasing. Some say it was due to the mismanagement and misappropriation of funds by the trustees, but the trustees assert that in the very nature of the activities of the trust and the high costs involved, the loss is inevitable and can only be minimised but" not altogether avoided. Be that as it may, we are not concerned with the correctness of the rival reasons. That is a matter which falls for adjudication by the District Court, Dharwar in the pending scheme suit. At this stage, we can only take note, of the fact alleged and indeed not denied by most of the Advocates before us that all was not well in the administration of the trust.

5. With that we may proceed to narrate the facts further. On November 27, 1974, the Board of Trustees sold the right of publication of "Samyukta Karnataka" with the press and allied machineries for rupees sixty-seven lakhs in favour of a private company called "Karnataka Patrika (Pvt) Ltd. Five persons claiming to be the persons vitally interested in the trust, complaining mismanagement of the trust properties, filed Original Suit No. 4 of 1977 in the

Court of the District Judge, Dharwar for removing the trustees and for preparing a scheme for proper management of the trust. The petitioners in W.P. No. 18785 of 1981 are two of the plaintiffs therein. The suit was also for a decree for possession of the trust properties from the alienees. In that suit, Karnataka Patrika (Pvt.) Ltd., which had purchased the trust movables for rupees sixty-seven lakhs was arrayed as the 7th defendant. This alienee appears to have cleverly manoeuvred and in turn even during the pendency of the suit sold its rights and properties for rupees seventy-five lakhs to another company called "Jaya Karnataka News paper Printers (Pvt) Ltd., Bangalore This transferee having boldly and blithely taken over the brunt of the litigation got itself impleaded as the 8th defendant in the suit. We are told that that suit has now almost reached the final stage of disposal.

6. It is now necessary to explain in general terms some of the interim orders made in the aforesaid suit and in the Miscellaneous appeal connected thereto. In 1979, the plaintiffs thereon apprehending that the transferee pendente-lite, that is, M/s Jaya Karnataka News Paper Printers (Pvt.) Ltd.. might in turn dispose of the properties purchased by it, moved the trial court for an order restraining that party from disposing of the properties and also for an order not to discontinue! the publication of the daily news paper. The court after hearing all the parties instead of issuing an injunction, thought fit to appoint that party itself as receiver of the properties on the following terms:

1. Not to shift any of the machineries from No 2, Residency Road, Bangalore, or from Koppikar Road, Hubli, to any other place without the permission of the Court;
2. To file into court a detailed statement as to what all machineries and assets of the Loka Shikshana Trust are in its hands, within two weeks from this day, and
3. The Court takes notice of the assurance given by the 8th defendant, stating that it will not close down the publication of the Samyukta Karnataka daily and directs the, 8th defendant to abide by that assurance ."

The above order was made on September 17, 1979.

7. On January 31, 1980, the publication of the Bangalore edition of Samyukta Karnataka was, however, closed. The plaintiffs thereupon charging the receiver with mismanagement, again moved the trial court for an order to remove the said receiver and to appoint another receiver. On September?, 1980, the court acceded to the plaintiffs' request and appointed the Charity Commissioner as receiver with the following directions:

"He will take charge of the same within two weeks of the date of this order and made a report to the court in that behalf. He will endeavour to see that the, printing press and other machinery etc. are properly used, preserved and protected. He can take all steps required if he so desires to re-establish and to run the Bangalore edition of the Samyukta Karnataka which is now under

closure. He can also substitute himself as the person in charge of the printing and -publishing the newspaper and magazines that are now being published by the 8th defendant on behalf of the Loka Shikshana Trust and for that purpose he is at liberty to take all steps that may be required. He shall render accounts to the court of the profits and loss of the enterprise of which he will henceforward be in charge of, at the end of every quarter. He will at all times seek and receive instructions and directions from this Court in the discharge of his duties as receiver and will at all times subject to the terms and conditions as aforesaid."

The Charity Commissioner took charge of the publication of the news paper, and managed it for some time, but not to the satisfaction of all, much less to his own satisfaction. On December 18, 1980 he filed a memo in the District Court with a request to relieve him as the receiver. He, however, renewed the publication of the Bangalore edition of the Samyukta Karnataka with effect from December 20, 1980. On April 18, 1981, the said memo was listed for orders. The court on that day, accepted the memo and relieved the Charity Commissioner as receiver. Simultaneously, the court with consent of all the parties to the suit, appointed Sri Jiginni, a retired District Judge as receiver to manage the trust publications and movable properties .

8. Interrupting the narration, we must state one other fact. The order of the District Court appointing M/s. Jaya Karnataka Newspaper Printers (Pvt.) Ltd. as receiver in the case was the subject matter of an appeal in this Court in M.F.A. No. 263 of 1979. This Court while entertaining the appeal, made an interim order on January 14, 1980, appointing the Tahsildar, Hubli as receiver in the following terms:

"The counsel on both sides agreed that the same Tahsildar be appointed as receiver to collect the rents in respect of all the properties including those in the possession of respondent-10 and Janardhana Corporation. Accordingly, the Tahsildar, Hubli Taluk, is appointed as receiver in respect of the said properties. The Tahsildar shall take steps to collect rents regularly and deposit the same in the District Court at Dharwar in O.S. No. 4 of 1977 as and when the collection is made."

The said Miscellaneous Appeal appears to have been recently dismissed for default since none of the parties took interest in prosecuting it.

9. When the matter thus stood, the Government of Karnataka promulgated the said Ordinance which has been since substituted by the Act the validity of which is in question before us.

10 We will first try to understand the substance of the Act in telegraphic language and deal in detail some of the provisions as and when it is necessary. The preamble of the Act states that it was expedient to provide for taking over the management of the trust since it was in the protracted litigation and dispute. S. 2(c) defines trust to mean and include all the properties of the trust either in ownership, possession, power or control of the trust. Explanation thereto states

that the properties which were the subject matter of O.S. No. 4 of 1977 on the file of the District Judge, Dharwar and M.F.A. No. 263 of 1977 on the file of this Court and which were in the possession of the receivers appointed by the Court should be deemed to be the part of the trust.

By S. 3, the management of the trust was vested in the State Government initially for a period of two years from the appointed date i.e. from August 31, 1981 and for not more than five years in any event.

Under S. 4, the State Government was empowered to appoint an Administrator to carry on the management of the trust.

Under sub-sec. (3) of S. 4, the Administrator shall be entitled to exercise all the powers of the Governing Body of the trust including the powers to dispose of any property or assets of the trust.

Under sub-sec. (4) of S. 4, every person having possession or control of any trust property was directed to deliver forthwith such property to the Administrator or to any officer of the State Government authorised in that behalf.

Under sub-sec. (2) of S. 3, all contracts whether express or implied in so far as it relates to the management of the business and affairs of the trust shall be deemed to have been terminated on the appointed day.

S. 5 States that the persons affected thereby are not entitled to any compensation for the premature termination of their contract or other arrangement.

Sub-sec. (4) of S. 3 and S. 6 provide for re-vesting of the management of the trust properties in the trustees or other persons entitled thereto upon the expiry of the period of management or at any time earlier thereto.

The Act also contains some miscellaneous provisions.

From the statements contained in the preamble and from the affirmative language employed in the aforesaid sections it will be seen that the State purports to take over the management of the trust for a limited period in order to provide proper management and also in the public interest.

11. The petitioners have challenged the constitutional validity of the Act on the following contentions:

That the trust properties were under the management of the Court through the receivers and it cannot, therefore, be said that there was no proper management. The taking over of the management of the trust and its properties which were under the Court management would be an encroachment on the judicial power of the Court. The Act provides no guidelines for return or redelivery of the properties after the expiry of the period of management by the Government and therefore the Act is uncertain and vague. The Act is also arbitrary and discriminatory since it has taken over only one trust for

management although there are other similar trusts which are being equally mismanaged. The power to dispose of the properties conferred on the Administrator is destructive of the trust itself and cannot fall within the concept of management of the trust. The power to terminate the valid contracts entered into by the trust in regard to the trust properties would be arbitrary, since the persons affected thereby are not entitled to compensation. The Act was enacted with a view to control the news paper for the purpose of achieving political ends of the party in power. The Legislature has no power to declare the disputed and alienated properties as the properties of the trust when the validity of the alienations was pending adjudication in a properly constituted suit in the District Court Dharwar.

12. The State Government while resisting the petitions, has inter-alia, contended: That it was not interested to control the news paper for the purpose of political ends. The management of the properties were taken over for a minimum period in order to put an end to the mismanagement of the trust by vested interests. The litigations connected with the management of the trust have resulted in the mismanagement of the affairs of the trust and therefore the State Government in the public interest was constrained to take over its management.

It was also contended that Art. 31A(1)(b) permits the taking over of the management of any property for a limited period either in the public interest or in order to secure a proper management of the property. The Act was made with a view to achieve that purpose and therefore cannot be called in question on the ground that it is violative of Art. 14 or Art, 19 of the Constitution. The State has no other interest except to ensure proper management of the affairs of the trust. The properties taken over would be handed over to the trustees or to such other person entitled thereto immediately when the period of management by the Government comes to an end.

13. Upon hearing the counsel on both sides, the following questions arise for determination:

(1) Whether in the context and circumstances, the legislature by enacting the Act has nullified the judicial Act and if. so, whether the Act lacks legislative competence?

(2) Whether S. 3(4) and S. 6(2) providing for retransfer of management of the trust and its properties are vague and uncertain?

(3) Whether S. 4(3) confers unguided, unlimited and arbitrary power on the Administrator to dispose of the trust properties and therefore is void under Art. 14 of the Constitution?

(4) Whether the legislature is competent to declare that the disputed properties which are the subject matter of O.S. No. 4 of 1977 on the file of the District Judge, Dharwar and M.F.A. No. 263 of 1977 on the file of the High Court shall be

deemed to be the part of the trust? We take these questions in turn.

14. Re Question No. (1): The Act passed by the State Legislature is concerned with management of the trust and its properties. It is a legislation exclusively relatable to Entry-10 "Trust and Trustees" in List III of the Seventh Schedule to the Constitution. It has received the assent of the President. One cannot, therefore, contend and Indeed not seriously contended for the petitioners that the Act is plainly beyond the legislative competence. The counsel for the petitioners, however, urged that the movable properties concerned in the scheme suit pending in the District Court, Dharwar were under the management of the Court through the receiver That receiver was appointed by the Court in the exercise of its judicial power. The receiver was an officer of the Court and the possession by him was the possession of the Court. Such a possession or management of the properties cannot be nullified by an Act of the legislature. The argument in other words was that the Act by substituting the Administrator for the receiver to manage the properties in dispute has in fact nullified the judicial act and so it lacks legislative competence.

15. It seems to us that the premise upon which this contention was based appears to have been either misunderstood or oversimplified. The exercise of the jurisdiction to appoint a receiver by Courts in. our country is not a matter of *ex debito justitiae*. It is a discretionary power conferred upon Courts and is required to be exercised to preserve the res or subject matter of the litigation until the hearing of the cause. This remedy or to put it more appropriately the interim interference by the Court is essentially preventive in nature when a party fears (*quia timet*) some future probable injury to this rights or interests. The law in this regard has been neatly summarised by Sir John Woodroffe in his collection on "Receivers" (sixth Edition) page 12:

"Relief whether it be given by the issue of an injunction or the appointment of a receiver is granted generally upon the principle *quia timet*; that is, the court assists the party who seeks its aid, because he fears (*quia timet*) some future probable injury to his rights or interests, and not because an injury has already occurred which requires any compensation or other relief."

Or. 40 R. 1 of the Code of Civil Procedure confers on Courts precisely the same power. It reads: "Where it appears to the Court to be just and convenient, the Court may appoint a receiver." The following passage from "Mulla on Civil Procedure Code" 13th Edition, Vol. II page 1535 gives us the history and scope of the words "just and convenient" used in Order 40 Rule 1:

"Just and convenient" These words have been taken from the judicature Act, 1873, S. 25, sub-sec. (8). The words in that Act are "just and convenient", but they have been construed to mean just and convenient. The words "just and convenient" do not mean that the Court is to appoint a receiver simply because the Court thinks it convenient; they mean that the Court should appoint a receiver for the protection of rights or for the prevention of injury according to

legal principles. The order is discretionary and the discretion must be exercised in accordance with the principles on which judicial discretion is exercised."

The main principles upon which the Court should exercise the discretion to appoint a receiver were laid down by Lord Cranworth in case of *Owen v. Homan* 4 HLC 997 at 1032.

"The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation, which is to decide the right of the litigant parties. In such cases, the Court must be necessity exercise a descretion as to whether it will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were in medio, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the right of probate or administration. (1) No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to anyone by taking it, and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The court by taking possession at the instance of the plaintiff may be doing a wrong to the defendants in some cases an irreparable wrong.

It will be seen from the above observations, that the Court of Chancery was not so arbitrarily acting as stated by Seldon in his Table Talk:

"For law we have a measure, and know what to trust to. Equity is according to the conscience of him that is Chancellor; and as that is larger, or narrower, so is equity. This all one as if they should make the standard for the measure the Chancellor's foot. What an uncertain measure would that be; One Chancellor has a long foot; another a short foot; a third an indifferent foot. It is the same think with the Chancellor's conscience".

In the early days of Chancery Court the above remarks might be true, but in the last two hundred years of its existence before its abolition by the Judicature Act, 1873, the Court of Chancery acted on strict rules and precedents. Lord Nottingham who has been styled as "the father of equity" during the time of Charles II, and his successor Lord Harwicke had built up the elaborate structure of modern equity which later became the guiding principles for the Courts. (See: *Principles of Equity*, 17th Edition, by Snell, pages 5 & 6).

16. In *Bhupendra Nath Mukherjee v. Manohar Mukherjee*, 28 CWN. 86, 90, the Calcutta High Court observed:

"The words "just and convenient" in Or. 40, r. 1. of the Code mean that the Court should appoint a Receiver for the protection of property or the prevention of injury according to legal principles and not that the Court can make such

appointment because it thinks convenient to do so. They confer no arbitrary and non-regulated discretion on the Court".

These principles have been reiterated in *Dharendra Krishna Deb v. Surendra Krishna Nandi*, 34 CWN. 440 at 441.

17. It can now, therefore, be said that the appointment of a receiver under Or. 40 R. 1, although discretionary, could be justified only when the Court finds substance in the fear of a party that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives its prompt protection to preserve the property. The Court, however, cannot make such appointment because it thinks convenient to do so. The Court also cannot appoint a receiver merely because it thinks that it is proper to manage the property. If it appoints a receiver, it is essentially for the purpose of preserving the property for application under the decree to be passed. It may ask the receiver to manage the property till the suit is disposed of, but it has no expertise or apparatus to provide for a credible working arrangement to a sinking concern.

18. It was incidentally contended for the petitioners that the Court management of the properties concerned in the scheme suit was in the best interests of all concerned, and it was wholly unnecessary for the State to take over such management. In the first place, this contention is irrelevant to consider the validity of the Act since the Court cannot doubt to go behind the motive for the legislation. Secondly, the contention has also no merit. The publication of "Samyukta Karnataka" with circulation all over the State and out side has had admittedly managerial and financial problems. The plaint averments in the scheme suit O.S. No. 4 of 1977 on the file of the District Court, Dharwar indicate (with which we express no opinion) that the trust had no credible working arrangement. The plaintiffs therein instituted the suit charging the trustees with mismanagement and challenging the alienations made by them as illegal and unwarranted. The successive reports of the last receiver Mr. Jigjinni who was appointed to manage the movable properties and the publication of "Samyukta Karnataka" at Hubli and Bangalore further indicate that it would be difficult to salvage the news paper from the recurring loss unless some remedial measures were immediately taken. He has stated that the Bangalore Unit of the news paper could not be run economically and it could not even pay salaries to the staff and wages to the workmen. In the report dated June 22, 1981, the said receiver has gone on record in revealing a grim picture of the affairs of the publication. He has disclosed that there was not even news print for continuing the Bangalore Edition which has liability upto rupees 19.5 lakhs. He has admitted his helplessness to raise any loan to meet the requirements of day to day publication. He has suggested, among other things, that there should be reduction in staff and review of their salaries with curtailment of transport and printing of magazines.

19. With this unsatisfactory state of affairs in the administration of the trust, it

would be too much to contend that the intervention by the State was unjustified or uncalled for if the State has got the power. The trust in question is a public trust. Public trust is a matter of public concern. The credible management of the trust and the interest of the general public are therefore, closely connected matters. To achieve this twofold purpose, the State has enacted the Act and taken over the management of the trust. This purpose is neither synonymous nor lies in parallel with the purpose for which the Court has appointed the receiver in the scheme suit. It is, therefore, idle to contend that the legislature has nullified the judicial act and so it lacks legislative competence.

20. Re. Question No. (2): Herein we are concerned with the validity of S. 3(4) and S. 6(2) of the Act. They are challenged on the ground that They are vague, indefinite or inadequate. For immediate reference, the sections are set out hereunder:

S. 3(4): "Every person having possession custody or control of any property forming part of the Trust shall deliver forthwith such property to the Administrator or to any officer or other employee of the State Government as may be authorised by the State Government in this behalf".

S. 6(2):. "On and from the date specified under sub-sec. (1), the management of the Trust shall be transferred in accordance with the order, if any, of any court, Tribunal or other authority, and if there be no such order shall be transferred to the governing body (by whatever name called) of the Trust, or such body or person as the case may be, entitled thereto".

S. 3(4) deals with divesting of the management of the trust from the Government immediately after the initial period of two years or after the extended period. S. 6(2) provides for relinquishing the management even before the expiry of the initial period of two years. Both the sub-secs provide that the management of the Trust shall vest in accordance with the order, if any, of any court, Tribunal or other authority, and if there be no such order, it shall vest in the governing body of the trust or such other person entitled thereto. It was urged that these provisions do not provide for any machinery to determine the dispute as to persons entitled to management of the trust and if there is any such dispute, the Government may refuse to relinquish the management and retain the management for an indefinite period.

21. We do not find it possible to accede to this contention. From a plain reading of the said sub-sections along with Ss. 3(1) & 6(1) it will be clear that the management of the trust shall vest in the State Government initially for a period of two years and thereafter it could be extended for such period not exceeding one year at a time. The maximum period of management prescribed under the Act is only five years. If there is no such extension year after year, the management automatically reverts in the person entitled to such management after the initial period of two years. Even within the first two years, it would be open to the Government to relinquish the management if it appears to it that the

purpose of the management has been fulfilled or such management should not be continued for any other reason. We do not find any vagueness or uncertainty in these provisions and on the contrary, we find that the Act expressly lays down the period within which the State could manage the trust and also the maximum period beyond which the State cannot manage the trust. The State in any event cannot retain the trust and manage it for more than five years.

22. As with the vesting, so with the divesting. When the management of the trust is relinquished by the Government or when it is statutorily divested, it shall proprio vigore vest in the person entitled to such management. Such person or governing body of the trust automatically gets the right to manage the trust and also entitled to the possession of the properties from the Administrator. The Administrator with due regard to the provisions of Ss. 3(4) and 6(2) ought to deliver to such person the possession of the properties. If there is any dispute as to the right to manage the trust or any controversy as to title to the properties thereof, the Government cannot continue the management, or postpone the delivery of the properties of the trust upon the period prescribed under the Act. The Government is also not competent to entertain and decide the disputed claims of parties. The Government must leave the contending parties to work out their rights in the other appropriate forum. We, therefore, do not find any substance in the second contention urged for the petitioners,

23.Re: Question No. (3): The question is whether S. 4(3) confers unguided, unlimited an arbitrary power on the Administrator to dispose of the trust property. S. 4(3) reads:

"Subject to the other provisions of this Act and the rules made thereunder and to the control of the State Government, the Administrator shall be entitled, notwithstanding anything contained in any law for the time being in force, to exercise, in relation to the trust, the powers of the governing body of the Trust, including the powers to dispose of any property or assets of such Trust, whether such powers are derived under any law for the time being in force or from the memorandum and rules and regulations of the Trust or from any other source"

Learned Advocate General submitted that there is nothing unusual or arbitrary in the provisions of the section and it has conferred on the Administrator just the powers of the governing body of the trust for the purpose of carrying on the management. On the contrary, counsel for the petitioners urged that the power of disposal conferred on the Administrator is unrelated to the object of the Act and that power is also not subject to the restrictions imposed on the governing body of the trust.

24. On a close analysis of the section, we cannot agree with the submissions of the counsel for the petitioners. Under S. 3, the management of the trust is vested in the State Government. Under S. 4, the Government appoints the Administrator for the purpose of taking over the management of the trust and also to carry on the management thereof. The Administrator shall carry on the

management for and on behalf of the Government. S. 4(3) expressly confers on him the power to dispose of any of the trust properties. If this power had not been expressly conferred upon, and if S. 4(3) had simply stated that the administrator shall be entitled to exercise the powers of the governing body of the trust, then it might be possible to argue that the administrator who is no more than a manager cannot dispose of any property of the trust, since generally though not always, the mere management does not include the power or disposal of the property entrusted for management. It is also doubtful whether the administrator would have impliedly derived all the powers of the trustees. The power to dispose of any trust property by the trustee is not a power which ordinarily falls within the concept of management. The trustee is the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries, but he does not hold it on their behalf". (See: *W.O. Holdsworth v. State of Uttar Pradesh*, AIR. 1957 SC. 887 at 881). Whereas the administrator under the Act is not the legal owner of the trust property much less the State Government. He cannot be the legal owner since the Act is not concerned with the ownership of the trust property. It was perhaps to obviate this legal quibbles, S. 4(3) conferred power on the administrator to dispose of the trust property. Such a power cannot be said to be unrelated to the objection of the Act since it is required to be exercised for the purpose of prudent management.

25. The power conferred by S. 4(3) is also not unguided or arbitrary. The administrator cannot sacrifice a long range reward for a short term gain by selling the trust properties as he likes. It is a cardinal axiom that every power has legal limits, however, wide the language of the empowering Act. H.W.R. Wade says "It is presumed that Parliament did not intend to authorise abuses, and that certain safeguards against abuse must be implied in the Act. These safeguards are matters of general principle, embodied in the rules of law which govern the interpretation of statutes. Parliament is not expected to incorporate them expressly in every Act that is passed. They may be taken for granted as part of the implied conditions to which every Act is subject and which the courts extract by reading between the lines, or (it may be truer to say) insert by writing between the lines. These implied conditions are taken to be part and parcel of the Act, just as much as express conditions. Any violation of them, therefore, renders the offending act ultra vires". (Wade-Administrative Law, Fourth Edition, page 40). If we closely analyse the section it will be seen that there is no unguided or unlimited power given to the Administrator. There are inbuilt constraints located in the section. The section provides that the Administrator shall be entitled to exercise the powers of the governing body of the trust including the powers to dispose of any property of the trust, notwithstanding anything contained in any law. It does not mean that the Administrator shall exercise the power of disposal of the trust property notwithstanding the limitations imposed on the trustees. That is not the purport of the section. The non-obstante clause in the section is equivalent to saying that anything

contained in any law for the time being in force shall not be an impediment for the Administrator to exercise the powers of the governing body of the trust. That goes without saying that if the trustees have any limitation to dispose of the trust property, such limitation equally applies to the Administrator as well. This appears to be the substance of the section.

26. Clause (8) of the trust deed authorises the trustees to transfer, mortgage, lease or otherwise deal with the trust property. But the Bombay Public Trusts Act, 1950 (Bombay Act 29 of 1950) governs the trust in question and regulates the alienations by the trustees. S. 36 of the Bombay Public Trusts Act provides that the management of the trust shall not alienate the immovable property of the public trust or lease for a period extending ten years without the previous sanction of the Charity Commissioner. Besides, the Administrator is under the Control and direction of the Government and he has to naturally take orders from the Government if he wants to dispose of the trust property. Such a power cannot, therefore, be said to be either unlimited or unguided.

27. Even otherwise, it seems to us that the trust cannot successively challenge the validity of the section on the ground that its right to property has been arbitrarily taken away without compensation. In the first place, Art. 31A(1)(b) is a bar. Secondly by the Constitution (44th Amendment) Act, 1978, right to property has been omitted and it has ceased to be a fundamental right although some of its vestiges have been retained in Art. 300A of the Constitution. This amendment came into force with effect from June 20, 1979. It has been now left to the legislature to deprive a person's property by the authority of law, and the aggrieved person cannot move the superior Courts for the enforcement of the fundamental right to property.

28. Re. Question No. (4): Explanation to S. 2(c) of the Act is the real focus of the controversy in this question. It reads:

"For the purpose of this section the properties which are the subject matter of O.S. No. 4 of 1977 on the file of the District Judge, Dharwar and M.F.A. No. 263 of 1977 on the file of the High Court of Karnataka and which are in the possession of the receivers appointed by the Courts in such proceedings shall be deemed to be part of the trust. This shall not in any way prejudicially affect the right of any person in respect of such property."

This is wrongly termed as an Explanation. The proper function of an Explanation is to make the enacted matter plain and not to add or subtract from it. The Explanation does not enlarge or restrict the scope of the provision that it is supposed to explain. But the Explanation before us has a different role to play. It is a deeming provision in the garb of an Explanation which adds to the list of properties of "Trust" defined under S. 2(c) of the Act. In order to understand its true scope and effect, we may first read S. 2(c)(ii).

"2 (c) "Trust" means the Loka Shikshana Trust, a trust registered under the Bombay Public Trusts Act, 1960 (Bombay Act 29 of 1950) and includes,- (i) ***

*** **

(ii) all assets, rights, lease-holds powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, workshops, projects, stores, instruments, machinery, automobiles and other vehicles, cash balances, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession, power or control of the Trust and all documents of whatever nature relating thereto".

It is clear from the above provision that all assets, rights, leaseholds, including projects, stores, machinery, automobiles and other vehicles, cash balances, investments which were immediately before the appointed day i.e., August 31, 1981 in the ownership, possession, power on control of the trust, are the trust properties. But the Explanation thereunder is not wholly concerned with the properties in the ownership, possession, power or control of the trust. It has also taken within its fold the properties which were in the ownership and possession of their parties and which were undisputedly alienated by the trustees. The two matters have been located in the Explanation; (i) O.S. No. 4 of 1977 on the file of the District Judge, Dharwar and (ii) M.F.A. No. 263 of 1977 on the file of this Court It states "that the properties which are the subject matters in those litigations and which are in the possession of the receivers appointed by the Courts in those proceedings shall be deemed to be part of the trust".

29. To understand clearly the contents of the Explanation, we have to back up a bit at the risk of re-petition. The properties which are the subject matter of O.S. No. 4 of 1977 cover not only the properties in the ownership and possession of the trust but also those which have been undisputedly alienated by the trustee in favour of Karnataka Patrike (Pvt) Ltd. That sale was on November 21, 1974 for rupees sixty-seven lakhs. During the pendency of the suit, the said company in turn sold those properties to M/s. Jaya Karnataka News Paper Printers (Pvt) Ltd. Those properties consist of mostly the press and allied machineries with the right of publication of "Samyukta Karnataka" paper. They were admittedly in the ownership and possession of the purchasers. The particulars of the properties concerned in M.F.A. No. 263 of 1977 are not clear from the records. It may, however, be inferred from the terms of the order of this Court appointing the Tahsildar as receiver to collect rents, that they are immovable properties. But one does not know whether all those properties were in the ownership and possession of the trust before the appointed day. Be that confusion, it is beyond the pale of controversy that the movable properties sold by the trust on November 21, 1974 in favour of the Karnataka Patrika (Pvt) Ltd. were not in the ownership, possession, power or control of the trust before the appointed day.

Both the above stated purchasers were to nominate parties to the said suit and they were resisting the reliefs claimed by the plaintiffs. Upon the contentions raised by the parties, the District Court, Dharwar which was lawfully seized of the matter has framed, among others, the following issues for determination:

(1) Are the properties of the trust alienated without justification and contrary to S. 36 of the Bombay Public Trusts Act?

(2) Is the alienation of the trust properties in favour of defendant No. 8 valid and binding?

When these issues were pending adjudication, the State has enacted the Act taking over the management of the "trust" as defined under S. 2(c) with the impugned Explanation. It is against this background, the question is asked whether the legislative was competent to declare that those alienated properties concerned in the pending suit and in the possession of the receivers should be deemed to be the properties of the trust, or to put it briefly, whether the declaration under the said Explanation was outside the scope of legislative action.

30. As a preliminary to the consideration of the question, it will be necessary to advert to the doctrine of separation of powers which was particularly associated with the name Montesquieu. Montesquieu was the first among the political philosophers who saw the need to separate judicial power from the executive and legislative branches. According to him, the power of making a general rule (the legislative power), carrying it out (the administrative or executive), and determining disputes as to its meaning or enforcement (the judicial) should be located in three independent bodies. In 1948, Montesquieu published his *De t' Esprit des Lois* ("The Spirit of Law") There he said:

"When the legislative and executive powers are united in the. same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judiciary power be not separated from the legislative and executive.....There would be an end of every think, were the same man or body, whether of the nobles or of the people to exercise those three powers, that of enacting laws, that of executig the public resolutions, and of trying the causes of individuals.

[See: The excerpts quoted by David Foulkes in Introduction to Administrative Law (Second Edition), page 193].

The doctrine therefore, says two things; first, that there are three kinds of power, and second, that to ensure the liberty of the subject, they ought to be in separate hands. It also impliedly means that no one of these branches of Government should exercise the functions of either of the others.

The message of montesquieu was found echoed in the French Declaration of the Rights of Men and Citizen which in 1789 laid down in Art. 16 that "Every society in which the separation of powers is not determined has no constitution". This Declaration was incorporated in the text of the Constitution of 1971 and the preamble of the Constitution of 1946 which solemnly reaffirmed the rights and freedoms of man and of the citizen consecrated by the Declaration of Rights of 1789.

American political thinkers admired the secret success of the English Constitution, but they did not follow its framework. They on the other hand faithfully followed the doctrine of Montesquieu. They established the structure of a perfect State with three independent departments. Their President directly elected is the most powerful executive. He is independent of the Congress, the legislative body. They separated the judicial power of the State by declaring that it shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain. This is equivalent to a declaration that no judicial power was vested in the Congress or the executive save in cases specifically enumerated. In *Kilbourn v. Thompson*, 103 U.S. 168 (191) the Supreme Court while giving the scope of the Constitution said:

"It is believed to be one of the Chief merits of the American system of written constitutional law, that all the powers entrusted to governments, whether state or national, are divided into the three grand departments of the executive, the legislative and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited in the exercise of the powers appropriate to its own department and no other".

The President sends, from time to time, messages to Congress indicating the course, which in his opinion, it would be desirable that the legislation should follow. But there is no certainty that the Congress will agree with him. They may ignore the messages. They may initiate and pass legislation which may be positively distasteful to the President. His duty, however, is to see that the laws when passed, are duly carried out. He would run the risk of impeachment if he acts subversive to rule of law.

In the United Kingdom, the separation of powers is not part of their constitution. Their executive is answerable to the Parliament. Their Parliament today comprises, as it has for centuries, the House of Lords and the House of Commons. The House of Lords with about 900 members is a part of the judiciary as well as the legislative machinery of the State. The Lords of Appeal in ordinary (the Law Lords) have life peerages and are entitled to membership even after their retirement. The Lord Chancellor who is the highest judicial functionary and who is the head of the entire judicial administration is also a member of the British Cabinet, that is, the Executive. In matters of legislation, the Parliament has unlimited legal power and is supreme. "It can do the greatest things; it can do the smallest. It can make general law for a vast Empire; it can make a particular exception out of them in favour of a particular individual such as the Act in 1887 to enable His Royal Highness the Duke of Connaught to return to England for a limited time for the purpose of being present at the celebration of

Her Majesty's Jubilee without thereby resigning his command in Bombay. It can provide and has in fact provided for boiling the Bishop of Rochester's cook to death for putting poison in his master's food". It used to pass bills of attainder. A bill of attainder is a special act of the House of Commons inflicting capital punishment upon persons supposed to be guilty of high offences such as treason and felony. Such a sentence was without any conviction in the ordinary course of judicial proceedings. (Fortunately this practice had fallen into desuetude since the year 1696). The Parliament can thus do every thing that is not naturally impossible and the Courts in Britain have no power to declare Acts of Parliament to be invalid. This is what is termed as "responsible Government" with an executive always answerable to the legislature.

The case is somewhat different with the federal constitution of Australia. The achievement in that instrument is the combination of the British System of Parliamentary Government containing an executive responsible to the legislature with American federalism. The fact that the responsible Government is the central feature of the Australian constitutional law makes it correct enough to say that they have not adopted the American theory of the separation of powers between the legislature and the executive. They, however, followed the American pattern of strict separation of the judicature. Their Constitution provides that: "The judicial power of the Commonwealth shall be vested in a federal Supreme Court, to be called the High Court of Australia, and in such other Courts as it invests with federal jurisdiction. Like the Americans, they also guaranteed the absolute independence of the judiciary which is the bulwark of the Constitution against encroachment whether by the legislature or by the executive.

In 1787, the American Constitution was drafted. In 1900, the Australian Constitution was enacted by the British Parliament. The world has changed more rapidly in the last few decades than almost in the whole of its previous history. It has now been generally realised in every country that the rigid separation of the three functions of Government-legislative, executive (or administrative) and judicial is bound to fail or it may cause serious inefficiency in government. Benjafield and Whitmore say: "The writers adhere to this view and wholeheartedly agree with those who assert that classification of powers on conceptional basis is probably impossible, and in any event, futile". (See: Principles of Australian Administrative Law, third Edition, page 102). Professor De Smith says "that it is highly acrobatic part of the law an aptitude for verbal gymnastics is of advantages". (See: De Smith-Judicial Review of Administrative Action, Fourth Edition, page 69). The best instance of the impossibility of adhering strictly to such doctrine occurs in the legislative field. For the proper ordering of modern life, a great many regulations have to be enacted to control a vast number of activities. If the whole of this legislative activity has to be carried out by the legislature, then it would break down. The making of minor rules and regulations with the force of law has necessarily to be entrusted to the executive arm of Government. Otherwise, there is no way to govern a complex modern community. Even in countries committed in principle to a separation of powers,

theory is modified by the demands of practical Government. The problem is neatly formulated by Mr. Justice Jackson of the United States Supreme Court *Federal Trade Commission v. Ruberold Co.* (1952) 343 U.S. 470 at 487-488. He points out that the administrative agencies "have become a veritable fourth branch of the Government, which has deranged our three-branch legal theories much as the concept of a fourth dimension unsettles our three-dimensional thinking. Courts have differed in assigning a place to these seemingly necessary bodies in our constitutional system. Administrative agencies have been called quasi legislative, quasi executive or quasi judicial, as the occasion requires, in order to validate their functions. The mere retreat to the qualifying "quasi" is implicit with confession that all recognized classifications have broken down, and "quasi is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed."

31. Adroitly the framers of the Indian Constitution did not favour the separation of powers delimited with scrupulous care in the manner in which it was incorporated in the American and Australian Constitutions. There is no such exclusive vesting of judicial power in the Supreme Court of India and the courts subordinate to it. We have the Union Parliament and the Legislatures of the States with plenary powers in respect of matters which fall within their competence. (Art. 246 & 248). The executive power of the Union is vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution. (Art. 53). The executive power of the State is vested in the Governor and shall be exercised by him either directly or through the officers subordinate to him in accordance with the Constitution. (Art. 154). We have the Supreme Court of India (Art. 124) with original (Art. 131), the appellate (Art. 132, & 133 and 134) and Special Article (Art. 136) jurisdictions. It has also advisory jurisdiction under Art. 143 and power to enforce the fundamental rights under Art. 32. We have a High Court in each State (Art. 214) with powers to issue writs or directions or orders for the enforcement of the fundamental rights and for any other purpose. (Art. 226). The High Court has supervisory jurisdiction over all Courts and tribunals subordinate to it. (Art. 227). But the High Court has no power to superintendence over any court or tribunal constituted by or under any law relating to the armed forces. [Art. 227 (4)]. Even the Supreme Court has no discretion to grant special leave to appeal from the decision of the court or tribunal for the armed forces. [Art. 136 (2)]. The Parliament could make law excluding the jurisdiction of the Supreme Court or other courts in respect of disputes relating to inter-State rivers. [Art. 262 (2)]. Article 323A (inserted by 42nd Amendment Act) also authorises the Parliament to make law for the constitution of tribunals for adjudication of matters set out thereunder. Likewise Art. 323B authorises the State Legislatures to make law for the adjudication of disputes in respect of matters set out thereunder. Such law may exclude the judicial review of all courts except the jurisdiction of the Supreme Court under Art. 136. There is a complete bar to interference by courts in pre-election

matters [Art. 329 (a)].

32. It has been said that "the separation of powers is properly speaking a doctrine not so much about the separation of functions as about the separation of functionaries". This statement is particularly true so far as our constitution is concerned. The framers of our Constitution have provided different procedures and personnel of different qualifications appropriate for deciding different kinds of questions. They have broadly separated the trinity of powers between the legislature, the executive and the judiciary. They have generally accepted courts for "judicial" decisions which have traditionally been so regarded. They have traditionally been so regarded. They have established legislatures to take "legislative" decisions by passing statutes in respect of matters earmarked for them. The Constitution asked the State to separate the judiciary from the executive (Art. 50). The Constitution has given more importance for the protection of personal liberties and for the preservation of rule of law with complete judicial independence. After all the doctrine of separation of powers, as such, guarantees nothing in the practical world of personal liberties and democratic rights. It only expresses the important truth that a concentration of power in one authority carries with it the danger of despotic rule. Such a despotic rule was very much evident in some of our princely states where one person had undifferentiated authority to settle every kind of question of community concern. Such a concentration of powers has been scrupulously avoided in our Constitution.

33. Dealing with the distribution of powers under our Constitution, the present learned Chief Justice of the Supreme Court in *Smt. Indira Nehru Gandhi v. Raj Narain*, A.I.R. 1975 S. C. 2299 P. 2470-2471 (paras 685, 686) observed:

".....The Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions.

* * *

The truth of the matter is that the existence, and the limitations on the powers of the three departments of Government are due to the normal process of specialisation in governmental business which becomes more and more complex as civilisation advances. The legislature must make laws, the executive enforce them and the judiciary interpret them because they have in their respective fields acquired an expertise which makes them competent to discharge their duly appointed functions. The Moghal Emperor, Jehangir, was applauded as a reformist because soon after his accession in the throne in 1605, he got a golden chain with sixty bells hung in his palace so that the common could pull it and draw the attention of the Ruler to his grievances and sufferings, The most despotic Monarch in the modern world prefers to be armed, even if formally, with the opinion of his Judges on the grievances of his subjects."

With this central feature of our Constitution, we shall now endeavour to distinguish between "legislation" and "judicial" decision. Countless pages of paper and gallons of printer's ink have been expended in debate and writing about the essential characteristics of law and judicial power. But, still, there appears to be no satisfactory distinction. After a review of all such statements of the eminent jurists. Mathew, J. In *Smt. Indira Nehru Gandhi v. Raj Narain* A.I.R. 1975 S.C. 2299 (page 2374 para 278) observed:

"According to the historic analysis, the essence of the distinction between legislative power and judicial power is that the legislature makes new law which becomes binding on all persons over whom the legislature exercises legislative power: the judicature applies already existing law in the resolution of disputes between particular parties and Judges may not deviate from this duty. This view of the distinction between the obligation to apply and enforce rules and a discretion to modify rules or make new rules was at one time applied uncompromisingly in describing functions as legislative or judicial. Thus De Loime said that courts of equity as then existing in England had a legislative function. They are, he said, a kind of interior experimental legislature, continually employed in finding out and providing law remedies for these now species of cases for which neither the Courts of common law nor the legislature have as yet found it convenient or practicable to establish any, [See: *The Constitution of England*, New Ed. (1800) p. 149]. Though this would show that neither for logic nor in language has the boundary between legislation and adjudication ever been rigidly and clearly drawn, the distinction between the two is well established."

For the purpose of that case, the learned Judge accepted the following statement of Blackstone, as correct, since it has been approved by the Privy Council in *Liyanage v. The Queen*, (1967) 1 A.C. 259.

"Municipal law, thus understood, is properly defined to be "a rule of civil conduct prescribed by the supreme power in "a State, commanding what is right, and prohibiting what is "wrong". Let us endeavour to explain its several properties, as they arise out of this definition.

And first, it is a rule: not a transient sudden order from a superior, to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attain him of high treason, does not enter into the idea of a municipal law: for the operation of this Act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law." (See: *Commentaries on the Laws of England*, Vol. I, page 44).

The learned Judge finally said:(page 2375, para 284)

"A judgment or sentence which is the result of the exercise of judicial power or of despotic discretion is not a law as it has not got the generality which is an essential characteristic of law. A despotic decision without ascertaining the facts of a case and applying the law to them, though dressed in the garb of law, is like

a bill of attainder, It is a legislative judgment."

In 1932, a Committee on Ministers' powers constituted in England sought to distinguish between legislation and judicial decisions on the following lines:

(a) Legislation in the process of formulating a general rule of conduct, without reference to particular cases, and usually operating in future.

(b) A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:

(1) the presentation (not necessarily orally) of their case by the parties;

(2) the ascertainment of any disputed facts by evidence adduced by the parties, often with the assistance of argument on that evidence;

(3) the submission of argument on any disputed question of law;

(4) a decision which disposes of the whole matter by a finding upon disputed facts and "an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law". (See: The excerpts quoted-The Principles of Australian Administrative Law, Third Edition, by Benjafield and Whitmore, page 104).

Generally, the judicial power consists in the authoritative determination of disputes as to liabilities and rights on the basis of the pre-existing law. Griffith, C.J. of the High Court of Australia in *Huddart, Parker & Co. (Pvt.) Ltd. v. Moorehead* (1909) 8 CLR 330 observed:

I am of the opinion, that the words "judicial power" as under: S. 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

This statement has been approved by Privy Council as one of the best definitions, in *Shell Company of Australia v. Federal Commissioner of Taxation* (1930)44 CLR 530 (544). The Privy Council, however, added the following negative propositions on the subject:

(1) "A tribunal is not necessarily a court in this strict sense because It gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a court; (6) nor because it is a body to which a matter is referred by another body."

Professor Colin Howard after a review of all the decisions arising under S. 71 of the Australian constitution, gives his conclusion:

"The concept of judicial power has a variety of characteristics, the relative prominence of each of which varies with the context. Those to which the Courts have attached the most significance hitherto as indicating a conferment of judicial power have been power to make a binding declaration of right by reference to pre-existing law, relative absence of discretion in arriving at a decision, power to enforce a decision arrived at and legislative intention as revealed by the general context and history of the Act. Which of these criteria is to be regarded as influential in any particular case depends on the circumstances. The direction in which this part of the law has moved has been away from abstract definition of judicial power towards recognition that many functions are common to both judicial and non-judicial bodies and take their character from the context accordingly. The functions of courts in the past have been manifold. They will no doubt continue to be so in the future. In consequence it is often possible to characterize a given power as judicial for no other reason than that it has traditionally been so regarded. (See: Australian Federal Constitutional Law, page 150).

Whatever be the merits and demerits of the distinction sought to be made between legislative power and judicial power, and whatever be the political usefulness of the separation of powers in our Constitution, one thing is clear that our legislatures cannot decide matters which the Country courts are lawfully seized. Chandrachud, J. (as he then was) in *Smt. Indira Nehru Gandhi v. RajNarain* AIR 1975 SC 2299 at page 2471, para 687 tersely observed:

".....But the function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute or it could, with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed. Princely India, in some parts, of ten did it."

The learned Judge continued: (para 2471, para 689)

"I do not suggest that such an encroaching power will be pursued relentlessly or ruthlessly by our Parliament. But no Constitution can Survive without a conscious adherence to its fine checks and balances. Just as Court ought not to enter into problems entwined in the "political thicket", Parliament must also respect the preserve of the Courts. The principle of separation of powers is a principle of restraint which "has in it the precept, innate in the prudence of self-preservation (even if history has not repeatedly brought it home), that discretion is the better part of valour". (See; *Social Dimensions of Law and Justice*-Julius Stone (1966 D. 663). Courts have, by and large, come to check their valorous propensities. In the name of the Constitution, the Parliament may not also turn its attention from the important task of legislation to deciding court cases from which it lacks the expertise and the apparatus. If it gathers facts, it gathers facts of policy. If it records findings, it does so without a pleading and without framing any issues. And worst of all, if it decides a Court case, it decides without hearing the parties

and in defiance of the fundamental principles of natural justice."

34. In the light of these principles and the decisions to which we have called attention, it can be safely said that the Legislature for the purpose of taking over the management of the trust has recorded a parallel finding on some of the issues set down for adjudication in the scheme suit pending before the District Judge, Dharwar. It has declared that the disputed properties concerned in that suit should be deemed to be the trust properties. That declaration has been made with no evidence or guidance. It was solely based on its own discretion. It was nothing but a legislative judgment or despotic discretion. Such a judgment or discretion, in our opinion, patently falls outside the legislative field.

35. Learned Advocate General, however, did not dispute and indeed cannot dispute the nature and effect of the declaration under S. 2(c), but he urged that that declaration was for a limited period and without prejudice to the right of any person in respect of such property and therefore it was within the legislative power. It is true that the Explanation to S. 2(C) of the Act expressly states that that shall not in any way prejudicially affect the right of any person in the concerned property. But that is like an epitaph which the dead cannot take advantage of, or say, like the consoling words to a person who has been robbed of everything. During the period of Government management, the person legitimately entitled to the properties has no remedy. He cannot come anywhere near the properties. The properties are also liable to be disposed of by the administrator, and even if they are not disposed of, there is no guarantee that they would be returned to him with the pristine purity.

36. It remains only to deal with two short points which the learned Advocate General took at the outset of his submission; one rested on Art. 31A(1)(b), and the other on the locus standi of the petitioners to challenge the validity of the said Explanation. He submitted that Art. 31A(1)(b) permits the State to take "any property" for the purpose of management for a limited period. This contention has got only to be referred to be rejected since Art. 31A(1)(b) is not a legislative power. It only gives protection to a statute enacted for the purpose of taking over the management of any property for a limited period. Secondly, the Act in question was not meant to take any property of any person for the purpose of management, but was designed to take over the management of the trust and its properties. If the properties did not belong to the trust, then plainly the Act has no application.

37. The second contention which relates to the locus-standi of the Petitioners to challenge the validity of the Explanation, is as fragile as the first. It was urged that the purchasers who are primarily affected by the impugned Explanation have not come up before the Court and the petitioners are not the aggrieved persons. It is true that the purchasers have not assailed the validity of the Explanation to S. 2(c) but the trust which has sold the disputed properties in the said suit is one of the petitioner before us. It is very much concerned with the validity of the Act since it is answerable to the purchasers. We, therefore, reject

both the contentions.

38. In the result, these Writ Petitions are allowed in part. Explanation to S. 2(c) of the Act so far as it relates to the properties which were sold by the trust in favour of M/s. Karnataka Patrika (Pvt.) Ltd. and which were in the possession of the receiver appointed by the District Court, Dharwar in O.S. No. 4 of 1977 is declared to be invalid. The rest of the Act, however, is kept undisturbed. There shall be a direction against the State and the Administrator to return such properties to the possession of the receiver if the said suit is still pending, and if the suit has been disposed of, then they must be handed over to the person who is legitimately entitled thereto.

39. In the circumstances of the case, we make no order as to costs.