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Drohende Enteignung von Kirchengelände in Ranchi

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Briefe, Bittschriften u. Verhandlungsunterlagen betr. Streitfrage um Landbesitz; drohende Enteignung von Grundbesitz d. indischen Gossner-Kirche (GELC) nach d. Urban Land Ceiling Act (Kopien)

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Gossner Mission

Drohende Enteignung von Kirchengelände in Ranchi

1987-1992

Brief wg. drohender Enteignung von Kirchengeländen

GOSSNER EVANGELICAL LUTHERAN CHURCH

IN CHOTANAGPUR & ASSAM

(Registered Under Societies Registration Act. XXI of 1860)

Vide No. 273-J of 30-7-1921

Rev. C. S. R. Topno
M. A. B. D. M. Th.
Pramukh Adhyaksh

Rev. S. Toppo
B. A. L. Th.
Up Pramukh Adhyaksh

Shri [illegible] S. Topno
B. A. (hon. [illegible])
Secretary

Rev. S. K. Jojo
B. A. B. Th.
Treasurer

Head Office :
G. E. L. church Ranchi
Bihar/India. Phone 23358

Ref

Date 9-9-92

Shri P. V. Narshima Rao
Hon'ble Prime Minister of India
New Delhi

Shri Laloo Prasad Yadav
Hon'ble Chief Minister of Bihar
Patna

Shri S. B. Chavan
Hon'ble Home Minister, Govt. of India
New Delhi

Archiv!

Respected Sir,

With due respect we most humbly beg to submit for your kind and immediate intervention to save and protect the secular character of India.

In recent past, attempts have been consistently made to sow the seeds of Communalism in South Chotanagpur region so much so such attacks and onslaughts are now being aimed at to squeeze out the Christian Mission from here. The latest incident which has compelled us to knock at your door is an order issued on the G.E.L. Church, Ranchi by the Deputy Commissioner (District Magistrate) Ranchi under the Urban Land Ceiling Act.

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It is regretted that while a petition to exempt the Church, a religious voluntary and non-profitable organisation and registered under the Societies Act. the Dy. Commissioner, Ranchi should have notified the lands of the church on which there are Schools, Colleges hostels and such other public utility services. The said order prima facie malafide and prejudiced, because of its non-applicability on religious organisation like church, temples and mosques wherever they exist in this country.

In this context, we beg to point out that the G.E.L. Church has a record of humanatarian work among the people spread all over India. It has its own constitution under which everyone of its office-bearers is elected. It depends on subscription and donations for its sustenance

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Only recently a vacant ground has been converted into a Shopping Complex, 'under lease'. The amounts thus received are used for development, expansion and opening new educational, welfare and medical services in the area under its possession of the total area of 121.17 Acres the notification issued under the Ceiling Act included 89.05 Acres whereon the various educational institutions as mentioned above are situated.

We may be allowed to state here that the entire action of the Dy. Commissioner, Ranchi originate since the construction of a shopping complex drew the attention of some of the local wealthy people propelled by a communal political party. A leader of the said party intervened in a case before the then Dy. Commissioner Mr. B.K. Sinha against the construction of the complex.

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Mr. Sinha holding a Court after obtaining a detailed report on the subject from the Deputy Collector, in charge Land Reforms (DCLR). The then D.C. passed a judgement on 18-2-88 in favour of the Church. In his 64-page judgement the learned D.C. having annalysed all the legal aspects of the case allowed the G.E.L. Church to go ahead with the construction work of the Shopping Complex which occupies only 0.5 Acres.

Having failed to put obstruction in the way of the Church, the said forces continue their attacks on the Church in various forums and Courts, ending in the present notification by the D.C., Ranchi under the ULC Act. If religious organisations would have fallen under this Act - it would have been notified long back. Further, when an exemption petition is pending with the State Govt. there was no hurry to notify the land under the G.E.L. Church possession.

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The moot question arises whether under the Constitution of India any religious organisation, be it a Hindu, Muslim, Sikh or Christian organisation, has the right to pursue their rites. We would further point out that the present local administration has persistently been prejudiced against the Church and it smacks of extreme communalism. We are very sorry to submit this point but there is no place where we could appeal and get a hearing. We do never request for anything which is not in our right, but will the secular face of the country be allowed to be tarnished by a coetrie of communal forces aided and abetted by an administration violating all norms of natural justice and secularism and fundamental rights of any religious organisations as guaranteed under the Constitution of India.

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All relevant documents are enclosed for your kind perusal and immediate action. In the light of the facts stated above we appeal to your honour to be kind enough to intervene and help to maintain the image of secularism intact from the attacks of communal forces.

Thanking you,

Yours faithfully,

(Rev.C.S.R.Topno)
Pramukh Adhyaksh

Enclo:-
1) ABOUT OURSELVES
2) Photo copy of Judgement of the then Dy.Commissioner Mr. B.K. Sinha of 18-2-88.
3) Copy of petition filed with State Govt. through the Chief Minister,Bihar for exemption from Urban Land Ceiling in July'88.
4) Current order of present Dy.Commissioner of 18-8-92

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ABOUT OURSELVES

The Gossner Evangelical Lutheran Church (in short G.E.L. Church) is a registered institution having been registered in the office of the Registrar, Joint Stock Companies, Patna under the Societies, Registration Act., 21 of 1860 its area is comprised of areas in the State of Bihar, Madhya Pradesh, Orissa, West Bengal, Assam & other places in the country.

The Institution is based on democratic system and principles governed by a duly approved and adopted constitution of the year 1960. The post of all the constitents from the lowest unit (Pracharak Pan) to the highest body (Kendriya Salakhari Sabha Samitee in short (K.S.S.S.) are elective. Elections are held every three years. The entire institution is divided in five Anchals - North West Anchal, South East Anchal, Madhya Anchal Orissa Anchal, and Assam Anchal along with a special area known as Headquarters Congregation. Its head office is located at G.E.L. Church Campus, Main Road, Ranchi.

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It is an institution to promote religion, to care, preserve and expand congregations, Schools, Colleges, Hospitals, Egangelistical and charitable work. The expenses are met by the subscription raised from its members and the income non-profit non-commercial basis) derived out of properties situated in the States mentioned above.

The Headquarter is situated at Main Road, Ranchi known as G.E.L. Church campus in which there are colleges, Schools, Residential buildings, shops etc. let-out on lease the income of the said are utilised by the institution for the above aims and objects. The Deputy Commissioner(District Magistrate) Ranchi has also came to the same finding in his order dated 17-2-88 passed in MISC Case No. 59 R-27 at '86-87 .

A portion of the land of the G.E.L. Church campus was donated as ~~rent-free gift~~ by Government (Vide Govt. of Bengal as Letter No. 248-A dt. 24-3-62 and other portion by Maharaja of Chotanagpur as a rent-free gift. In the Ranchi Municipal Survey 1929 the land were also recorded in the name of the institution.

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Since 1940 the institution has been letting out open lands and buildings to augment the income of the institution for meeting out its expenses for its aims, objects and activities relating to religious, educational medical, charitable and social activities and works on non-profit and non-commercial basis for the benefit of the public, Ministry of Defence is also one of its tenants for some portion under the occupation of Military Engineering Service (M.E.S.) and similarly the State of Bihar is also a tenant which runs a Co-operative training centre upon its lands.

Recently the institution with a view to augment its income has erected and constructed some shops. During the constructions the Local B.J.P. through its local leader and ex-M.L.A. Shri Nani Gopal Mitra raised objections before the Deputy Commissioner (District Magistrate) Ranchi wherein he claimed that the lands belonged to the Govt. it should be taken over and all the work of constructions be stopped.

The allegations were fully enquired into by the Deputy Collector in-charge Land Reforms Ranchi who submitted

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a detailed report. The learned Deputy Commissioner, Ranchi by his order dt. 18-2-88 in Misc. Case No. 59-B-28 of 86-87 negativated the objection of Shri N.G. Mitra, Jyoti Prakash & others and held in para 41 of the order that the G.E.L.Church is the absolute owner of the property and it has every right to construct shops by way of market. The Christians are as good Indians as Hindus, Muslims, Budhists and others and on that fundamental principles this country is being governed" It has further been held in para 40 of the order that "Had the intervenor (Shri N.G. Mitra) been so concerned of the sanctity of religious institution he should have been equally quick to point out the existence of shops in some temples & mosques. I think if the church has gone against its constitution & religious purpose by constructing market over land owned by its, than I think the Hindu temples & mosques have equally gone against the religious principles by constructing shops and markets within their premises. The right of equality is a fundamental right guaranteed under the Constitution of India". The order which means in 61 page is if gone thoroughly the entire matter would be vidid and crystal clear.

On the petition of the said Shri N.G. Mitra, the Deputy Commissioner, contrary to his order dated 18-2-88, xxxx wherein he has held that the G.E.L. Church has not violated any provision of Law in the Construction of shops, has issued a notice directing the Church to stop further construction on the allegaion that for construction, no permission was obtained from him that is D.C. cum competent authority.

There does not appear to be any provision in the Urban land (Ceiling and regulation) act which requires any permission from D.C. cum competent authority for any construction.

The order of D.C. dated 18-7-88 is an order passed by the D.C. cum competent authority. The D.C. it seems under some pressure might have been compelled to send this notice, thus it appears that the notice sent on the basis of application is not legal, under section 29 and 30 of the Urban Land (Ceiling & Regulation) act the competent authority is authorised to regulate only the construction of dwelling units (defined under section 2(E) meant only for residential purpose. In the instant case the Church at present is not proceeding in construction of dwelling units. As such it is clear that D.C. has not authority to stop construction of Building, Market, Schools, Colleges and other non dwelling units. Since the Church has not

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violated any provision of the Urban land(Ceiling & regulation) act so it seems there is a move to harass the church and minorities.

Not only that but the compound walls and the walls of the buildings of Ranchi City are full of filthy and derogatory slogan against the G.E.L. Church and its properties etc. at the instance of B.J.P.

B.J.P. through its local leaders and followers with sinister motives are creating situations of circumstance with a view to flare up communal disharmony against the members and followers of G.E.L. Church who are members of minority community. If it is not checked immediately, grave situation with dire consequences may arise.

To crown all in para 26 of the order of D.C. dt.18-2-88 it would be found that Shri N.G. Mitra in open court gave out a threat para 26 of the order runs as follows:

"It is also worth mentioning that the intervenor Mitra has delivered in open court a warning that were the judgement not delivered in his favour and those constructions were not stopped, he and his party would launch agitations against the court". Hence your intervention is immediately solicited for saving the interest of minority community the church and its members and followers its properties and its religious, educational, charitable, medical , Social and other related activities and works.

Pramukh Adhyaksh

(*President*)

G.E.L. Church in Chotanagpur

ORIGINAL JUDGEMENT RUNS IN 64 PAGES

TRUE COPY

Form of Order Sheet

In the Court of the Deputy Commissioner, Ranchi

Misc. Case No. 59-R-28/1986-87

Jyoti Prakash Minz and others

Vrs.

12-10-87
18-2-88

S. Mohan M.G. G.E.L. Church Ranchi

Sl.No.	Date of order. or proceeding.	Order with the signature of the Court.	Office action taken with date
1	2	3	4

ORDER

1. This is a peculiar case of its kind. The petition had been filed by one Jyoti Prakash Minz, son of Late Prabhu Sahay Minz, resident of village Sewai Goria Bhar P.S. Simdega, District Ranchi , Emen Xalxo daughter of late Sadrak Xalxo resident of village Tisawal, Chainpur District Gumla, Asha Tirkey, daughter of the late Jaiman Tirkey resident of village Tisawal, P.S. Chainpur, Dist. Gumla, and, Gabriel Tigga son of late Prabhusahay Tigga, resident of village Kadru, P.S. and District Ranchi. The opposite party in the instant case happened to be S. Mohan M.G. Pramukh Adhyaksh, G.E.L. Church, Main Road, Ranchi and Paulus Topno Secretary G.E.L. Church, Main Road, Ranchi It was urged on behalf of the petitioners that they were the representatives of the G.E.L. Church congregation from different parts of Chotanagpur. They all belong to the scheduled Tribe Community and are citizens of the country.

2. It was submitted that on the 10th July, 1919 the G.E.L. Church in Chotanagpur and Assam had been accorded autonomy by the orders of the then Governor General-in-Council and landed properties of the entire G.E.L. Church had been handed over the G.E.L. Church and the trustees of the Church under the frame work of the law of the Governor General-in-Council, for the purpose of protection and promotion of the interests of the G.E.L. Church. The G.E.L. Church in Chotanagpur and Assam was registered vide their registration No. 273-J dated 30-7-1921. After independence the jurisdiction of the Governor General-in-Council

was transferred to scheduled fifth of the Constitution of India The O P s have recently made a conspiracy with business magnet as and his capitalists of Ranchi. They have started construction of a business centre in the campus of the G.E.L. Church under plot No. 793 ward No. 5, situated at the Main Road of Ranchi Municipality, after having accepted large sums of money as pagri and without makings the Assistant Agent and Agent to the Governor General-in-Council i.e. the Deputy Commissioner, Ranchi and the Commissioner, South Chotnagpur Division as parties in transactions of the properties of the G.E.L. Church by virtue of the then Rule of law of the Governor General-in-Council. It was further alleged by the applicants that the construction of the business centre in the campus of G.E.L. Church, Ranchi was being made in contravention of the policy and rule of law of the Government of India.

3. The petitioners were asked by the court to establish the jurisdiction of this court to go into such matters and to adjudicate the same. As the court , at that time, was of the opinion that it was a matter of interm edine fidferences within the Church itself rather than a legal issue confronting the court. The petitioners were therefore directed to establish the jurisdiction of this court to adjudicate over this matter.

4. In the meantime, one Nano Gopal Mitra, member of the Bhartiya Janta Party and an earstwhile member of the Bihar Legislative Assembly from Ranchi Constituency, appeared before this court and prayed that he be impleaded as an intervenor in this case. The main argument of Shri Mitra was that the land in question is Government land and it is being usurped by the members of the opposite party. The G.E.L. Church is allegedly making illegal construction on Government land without having the appropriate authority. He further alleged that the Government land meant for religious and charitable purposes, is being converted into commercial and which is for the benefit of certain individuals within the G.E.L. Church.

5. A copy of this petition has also been filed before the Deputy Commissioner, Ranchi in his executive capacity which had been in to the learned Land Reforms Deputy Collector, Ranchi for this enquiry and report. The learned Land Reforms Deputy Collector, Ranchi enquired into the matter and has submitted his report. This report of the learned Land Reforms Deputy Collector has also been included as a piece of evidence for the consideration of this court.

contd........p/3

6. Both the parties we reheard at length by this Court. They were also allowed to file their written arguments and other documents relevant to the facts of this Case. Shri Nani Mitra in fact has filed several written arguments, supplementary to one another. His main argument was filed on 14-7-1987. Subsequently a petition was filed on behalf of the original petitioner Jyoti Prakash Minz and other vide their petition dated 14-7-87. They have followed it up with a written argument dated 21-7-87. Subsequntly the intervenor Nani Gopal Mitra has filed a supplementary argument on 14-10-87. Some documents were also filed on behalf of the opposite party S. Mohan M.G. and other on 4-8-87 along with a number of documents All these arguments and documents have been fully considered.

7. At the very out set it shall be necessary to define the jurisdiction of the court. It can be clearly mentioned here that the jurisdiction of this court is not universal. This is essentially a revenue Court. The jurisdiction of this court is a limited one. During the course of argument it was stated by the opposite party that there is a title suit pending before the Civil Court of competent jurisdiction. In so far as the matters which relate to the dispute regarding title, this court is not concerned at all. The The sole jurisdiction of this Court extends to matters which fall under its purview either under the Chotanagpur Tenancy Act, 1908 or as a matter of right as a Revenue Court. Therefore, only the following matters are to be considered by this court. The allegation that the land under consideration is Government land and that the opposite parties have been making construction over it without having taken the prior approval of the Government of Bihar or the Government of India, and that it cannot be put to commercial uses, are the primary matters for the consideration of this court.

8. As per the points discussed in the preceding paragraphs the following facts and issues can be framed (i) That whether the land in question is Government land.

(ii) That as of now, whether the government has any say in the management of this land or the G.E.L. Church.

(iii) That whether the opposite parties are violating some Government rights in undertaking this construction.

Contd.......p/4

(iv) That whether the undersigned can in anyway restrain the members of the opposite party from undertaking this construction.

9. To understand the nature of the dispute correctly, we have to go into the root of the problem. The G.E.L. Church has, accordingly to the report of the Kanungo of the Urban Land Ceiling Department, a total of 120-17 acres of Land, situated in mauza Sirom in Thana No. 210 within the Town Anchal of Ranchi District. These include M.S., Plot No. 774, and another 121 M.S. Plot.

10. A brief history of the G.E.L. Church is, that the German Missioneries had founded a Church known as the German Evangelical Lutheran Church which was also known in short as the G.E.L. Church. This Church has been founded in the year 1862. It is an admitted fact that a total of 46.27 acres of Land at mauza Sirom, was donated rent free by the Government of Bengal vide its letter No. 248 A dated the 24th March 1862. The remaining 75.67 acre of land in village Sirom were donated by the Maharaja of Chotanagpur. It was given as a rent free grant by the Maharaja of Chotanagpur to the German Evangelical Lutheran Church. This Church ~~of Chotanagpur~~ was being managed and controlled by the German Missioneries.

11. After the First World War broke out between the British Empire and the German Alliance, the properties of the G.E.L. Church were taken over by the Government of India. The Government General-in-Council declared all the properties of the German Evangelical Lutheran Church, including the aforementioned property, to have vested into the custodian of Enemy property Assam, Bihar and Orissa, in excercise of the powers u/s 7 of the Enemy Trading Act of 1916. This custodian of Enemy property of the provinces of Assam, Bihar and Orissa was vested with full and absolute powers of selling, managing or otherwise dealing with this property.

1. The custodian of Enemy propety of the province of Assam, Bihar and Orissa transferred the entire properties of the German Evangelical Lutheran Church to Messers B. Foley and W.B. Hecock, the Rev. J.Z. Hodge, Prof. S.C. Mukherjee and Rev. G.J. Dann by means of

Contd . . . P/5

two Indentures, one dated 1st. October, 1918 and the other dated 13th. October, 1919, though both these aforementioned indentures have not been produced before this court for its examination by either of the parties . A reference is however, made in the indenture dated 19th of November, 1929 in respect of the aforementioned indenture.

12. Indiian Legislature passed Act IX of 1921. This Act validated the aforementioned two indentures, about which a reference has been made in the preceding paragraph. It also created a Body Corporate under the name and Style of " The Mission Trust of Northern India". The transferees of the aforementioned indentures of 1919 became Trustees of the trust. This Mission Trust of Northern India had been created with perpetual succession and common seal as a trustee in the above mentioned inducture.

13. In the year 1929 by indenture made on the 12th of November, 1929 the Mission Trust of Northern India a body corporate with perpetual succession and a common seal, created under Act IX of 1921, transferred all the properties under consideration to a Board of Trustees which consisted of (1) Mr. .D.M. Panna, Deputy Magistrate, Ranchi (2) Mr. P. Hurad, Secretary Church Council, Ranchi and representatives of the German Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, and (1) Rev. M. Prehn, missionery Ranchi and (2) Rev. A. John, Missionery, Kinkel representative of the Gossner Missionery Society Berlin and (1) Rev. R.M. Dunkelbuger, Missionery Rajahmundri, South India and representative of National Lutheran Council of America and (1) Mr. P.O. Philip, Secretary, National Christian Council Poona.

14. Thus the present Gossner Evangelical Lutheran (Autonomous) Church in Chotanapur and Assam had taken birth by means of this indenture. The deed of Indenture further mentioned that is had been the desire of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, the Gossner Missionery Society Berlin, and National Christian Council of India, Burma and Celon and the National Lutheran Council of America, that the property under consideration shall be handed over to the Gossner Evangelical Lutheran (Autonomous) Church, Chotanagpur and Assam. This was done with a view that a sense of responsibility should grow amongst the local christian population. The above organisation

Contd . . . P/6

therefore recommended for the consitution of the Board of Trustees and further recommended that the management of the property should vest /in the Board of Trustees for a period of ten years. After the expiry of this period the property should be transferred to the Gossner Evangelical Lutheran (Autonomous) Church.

15. The indenture further mentions that the ~~Governor~~-General-in-Council, after consideration of the said desire and recommendation, gave its consent and approval to the transfer of the property by the Trustees of the Mission Trust of Northern India to the Board constituted as per indenture date 12th November, 1929 for a period of ten years, for the benefit of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. After the expiry of the said period of ten years, it was further decided by the Governor-General-in-Council to transfer the property to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, Absolutely.

15. The Mission Trust of India transferred the property under consideration to this Board of Trustees " to b held by them for a period of ten years from the date of these present, in trust, and for the benefit of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, which shall eventually take over such property and on the expiry of the said period of ten years, to transfer the same to the said Gossner Evangelical Lutheran (Autonomous) Church absolute". In other words, the Board of Trustees was being given a responsibility with the intention that if it bears the responsibility correctly and well, the property shall be transferred to it absolutely, after the expiry of 10 years. This was an experiment of responsibility being awarded upto the Board of Trustees. It is also significant to note that one of the members included a Deputy Collector, Mr. D.M. Panna of Ranchi. He was the Government representative in this Board of Trustees.

16. The Board of Trustees were authorised by para 4 of the indenture- " (a) TO TRANSFER or make over (i.e. -the permanently or temporily and either by way of Lease or Licence or permission to use or occupy for fixed terms or periods or permissively, at will

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or otherwise, and with or without power of resumption and with or without the reservation of any rent and upon or subject to such terms and conditions or restrictions, if any, as the trustees may think fit to impose, the trust properties or any part thereof to the trustees of or any body society or Association charged with the Administration of the property or affairs or the carrying on of the work of any such Mission or Missions, Church or Churches as aforesaid of to any other person or persons the may think fit upon such Trusts, for or in aid or furtherance of all or any of the purposes objects or work of such Mission or Missions, Church or Churches, as the trustees may think fit, provided that this present power shall not be exercised in any case of a transfer of a permanent character or any lease or handing over for a fixed term (not being one of or affecting income or revenue only) without the previous consent or approval of the Governor-General-in Council may prescribe the te ms or conditions of any such transfer or handing over as a condition of giving his consent or reoval thereto. (b) To sell exchange partition lease or otherwise dispose of the trust properties or any of them or any interest therein for money or other valuable consideration as fully, as if they, were absolute owners.

(c) To borrow money on mortgage of the trust properties or any of the same or any part thereof or otherwise provided that money so borrowed on mortgage shall not exceed two thirds of the estimated selling value at the date of the mortgage of the property proposed to be mortgaged.

(d) To purchase land or property or any interest therein or employ money in the improvement of land or property".

16.1 It is to be noticed here that the Board of Trustees were vested with the power to transfer, sell, borrow or purchase land or property. However, this power was to have been exercised in a very limited manner. This was not an absolute power vested into the board of trustees but was a conditional power subject to a certain limitation imposed by the indenture itself. This limitation included consent of the Governor-General-in-Council.

This was an experiment bring trried out that, whether the board of trustees or the individual members of the trust are in a position to manage the property or not. And this is the underlying them and the spirit of the deed of indenture.

17. Now we come to the year 1940. As it has been laid down in the deed of indenture dated 12-11-1929, the Board of trustees managed the properties for a period of 10 years It is the claim of the opposite party that after the expiry of 10 years, as it has been laid down in the forementioned deed of indenture of the year 1929, the Chief Secretary to the Government of Bihar vide his letter No. 1166/C Ranchi dated the 9th May, 1940 conveyed the consent and approval of the Govern General-in-Council to the transfer of the entire properties held by the Board mentioned above to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. Accordingly, the aforementioned properties were transferred by a deed of indenture dated 17-6-1940 by the duly constituted board of trustees, to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, absolutely, and the transferror board in respect of the said properties, was extinguished from the date of registration of the deed of indenture dated 17-6-1940. The transfer was absolutely in favour of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam with the consent and approval of the Govenor General-in-Council, which had been communicated by the letter of the Chief Secretary of the Government of Bihar. Thus the property which had belongs to the German Evangelical Lutheran Church since the year 1862 REVERTED to it absolutely and forever by indenture of the year 1940 The opposite party by the above indenture have acquired absolute right to transfer by way of lease, licence, to sell, exchance, partition, lease or otherwise the property for money or other valuable consideration to borrow money or mortgage, to purchase land or, property and to EMPLOY MONEY in the improvement of land and property.

18. The petitioner Jyoti Prakash Minz and the internenor have, however, strongly challenged this contention of the opposite party. It has been argued by the intervenor that in the indenture of the year 1919 and another indenture of the year 1929 in favour of the Board of trustees consisting of Sri. D.M. Panna and others by the Mission Trust of Northern India. Limitations have been especially mentioned in clauses 4,5 & 6 of the indentures, which say that any transfer/sale/exchange/partition or otherwise of the trust properties, can not be made without the previous sanction and approval of the Governor-General-in-Council. The intervenor has further submitted in writing that the Mission Trust of Northern India, who was the transferee from Messers B. Foley and others, were the then trustees of the Board of Trustees constituted by the Indenture dated 12th November, 1929.

19. The question then arises whether the right which was not being possessed by the vendor can be possessed by the vendee. He further states, "the answer is negative. Here is the case in which the vendor has got limited power for disposing of the property either in form of lease/sale/exchange etc." That the admission on behalf of the intervenor is that the present Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, who claim to be the trustees of the property, cannot have a better right than its vendor had that the indenture created in the year 1929 has in para 4 Clause (a), in the last eight lines that start from the word" provided that the present power shall not be exercised in any case of transfer of permanent character, or lease, of land, for a fixed term (of not being one of affecting income only) without the previous consent or approval of the Governor-General-in-Council of India".

20. The intervenor has further submitted that sub-para 3 of para 4 of the indenture of the year 1929 says that with the permission of Governor-General-in-Council the trustees may create document only" as if they were absolute owners" but condition precedent is that the previous sanction of Governor-General-in-Council is a must. The words "as if" are meaningful. It indicates they are not owners of the property but they can act" as if" they were

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owners. That also , after the previous sanction and approval of the Governor-General-in-Council. Meaning thereby, that they are not absolute owners, as now the trustees are claiming, and to make it more clear after clause (d) andabove para 5, it is specifically mentioned "PROVIDED ALWAYS". Un para 6 of the indenture of the year 1929 it says that theBoard of Trustees desire to handover the Trust property to the G.E.L. CHurch (Autonomous) in Chotanagpur and Assam for ten years and after ten year to make the G.E.L (Autonomous) Church of Chotanagpur and Assam govern the property the property absolutely, to manage the affairs without the help of the vendors, and it never meant that the G.E.L. (Autonomous) Church of Chotanagpur and Assam was absolute owner of the proerty, as an individual or otherwise. If that be so, the condition laid down in para 4 and 5 will be meaningless. So it is definite that the word "Absolutely" is used within the limitation as explained in para 4 and 5 of the indenture. To make it more clear, it is submitted that the word "Absolutely" is used for transfer and not for the ownership, of the properties. Property of the Trust is always under limitation so far permanent transfer, exchange and lease is concerned.

21. The intervenor has vehemently argued that the power of the Governor-General-in-Council cannot be taken away by a deed created by a private trust in favour of another private trust. There is not specific Act enacted till now under which the power of the Governor-General-in-Council, presently the Central Government of India has been with drawn or repealed or made in effective. Until and unless it is specifically said so, in the Act, the Control of Governor. General-in-Council will continue to exist over the transactions of the properties to be made by the Trustees of G.E.L. (Authnomous) Church in Chotanagpur and Assam.

22. The internvenor has further argud that in para 6 of the in denture of the year 1949, the word 'absolute' is now here mentioned. If the intention of the vendor was to make the transfer absolute, the very word'absolute' should have been mentioned therein. But the words "absolute" is for the purpose of managing and holding the properties for G.E.L. (Autonomous) Church in Chotanagpur and Assam. The meaning thereby is to develop the function of the Church, which

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is for the benefit of the General public. The next para of the indenture that is para 7, of the year 1940, is the basis of the claim that the G.E.L. (Autonomous) Church in Chotanagpur and Assam became the absolute owner. It is submitted that the chief Secretary to Government of Bihar in grant in prior permission or Sanction dated 9th May, 1940, has not used a single word making the vendor absolute owner of the property and the word absolute is no-where mentioned. It goes to suggest that the G.E.L. (Autonomous) Church in Chotanagpur and Assam is never and cannot be the absolute owner of the property. The word 'absolutely' used in sub-para 2 of para 7 is used with a purpose of, say, that the G.E.L. Church will be absolutely entitled to control the Missionary work without the help of any other Mission.

23. It has further been submitted by the intervenor that after the enforement of the constitution of India no foreign nation can have any property absolutely or as absolute owner, within the territory of India. But as per the indenture of 1925, the Board of Trustees must consist of a representative of the National Lutheran Council of America, and representative of Gossner Missionery Society Berlin and the representative of National Christian Council of India, Burma and Cylon. In this regard it has been submitted by the intervenor that the indenture under which the Board of Trustees is created, contains, that in the Board foreign nationalist must be there, and if it is so, a foreign national cannot be made absolute owner of the proerty which violates the provisions of the Constitution of India, and which will create a constitution of India, and which will create constitutional problem if the stand of the Church is to be taken into consideration that they are the absolute owners.

24. The intervenor has also submitted that in para 7 it is speciffically mentioned " It is further agreed provided always that the national Lutheran Council of America will continue to represent only so long as the council contimues to contribute funds for the support of G.E.L. (Autonomous) Church in Chotanagpur and Assam. And till now there is no declaration by the Church, the O.P. , that whether the National Lutheran Council of America contribute to the fund or not, and if they do contribute, what is the amount or what her G.E.L. (Autonomous) Church informed the Government of India,

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that the National Lutheran Council of America has stopped the aid and as per the condition they are no longer members of the Board of Trustees. In absence of suchh information to the Government it is presumed that the foreign nationals are members of the very Board which claims to be absolute owner of the properties and which can not be allowed under the Constitution of India.

25. The intervenor has argued that the property in dispute is not mutated. He has, therefore, held that the property continues to belongs to the Goverment of India. The Government of India as it is has been mentioned earlier while dealing with the argument of the intervenor, has inherited the property from the Governor-General - in-Council. Therefore, the deed of indenture of 1940 only ~~xxxxx~~ vests absolute ownership into the opposit party for the purposes of management of the property and for no other purpose at all. The O.P.; therefore, cannot alter the nature of the property or construct market over it or part with it or mortgage it in any other way except with the permission of the Central Government . As this permission has not been obtained, the construction being under taken by the opposite party and the lease of shops being made to different individuals, is outright illegal, and the same should be stopped forthwith.

26. It is also worth mentioning here, that the intervenor Mitra has delivered in open court a warning, that were the judgment not delivered in his favour and those constructions were not stopped , he and his party would launch an agitation against the Court.

27. In sum and substance if can be inferred from the argument of the intervenor which has been made at great length, by himself , and by his lawer, thetenor of which is that the property in question was transferred by the Custodian of Enemy property of the Province of Assam, Bihar and Orissa to individuals, Mr. ME. Foley and others. The infividuals were organised in form of a Mission Trust of Northern India. They subsequently trransferred the property to a Board of Trustees. The power of the Board of Trustees was a limited power. The individuals who did not have absolute power of the property could not have vested any better right upon the Board of

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Trustees. Subsequently the management of the property was transferred absolutely to the Board of Trustee. However, the ownership had not been vested with the absolute management was transferred to the Board of Trustees the ownership of proerty continued to vest with the Governor-General-in-Council. After independence powere of the Governor-General-in-Council vested in to the Central Government of India. Therefore the Central Government of India continues to be absolute omner of the property. It is only the management which has been transferred to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. Therefore the power of the G.E.L. Church in respect of property is a limited one. They have not obtained the consent of the Central Government or the construction of this market. They have also not obtained the consent of the Government of India as regarding the sale and leasing out of the property. Therefore, the construction being made is outright illegal.

28. However, the matter has to be considered from the hindsight of history. It has to b admitted that the grant ofland made by the Government of Bengal and by the Maharaja of Chotanagpur to the German Evangelical Lutheran Church. Subsequently, with the declaration of the First World War the property vested absolutely into the Government of India under the provisions of Section 7 of the Enemy Trading Act of1916. The Governor-General-in-Council made a notification to this effect. The property was handed over to the custodian of Enemy Property of the provinces of Assam, Bihar and Orissa, for management. The power of the Custodian of this Management was absolute. Therefore we can say that the propety which was being owned by the German Evangelical Lutheran Church had vested into the Government of India, being headed by the Governor-General-in-Council, absolutely, in exercise of the sovereign power of the State. This sovereign power of the State to resume property or to take over property under provisions of different legislation cannot be questioned at any time. Under orders of the Governor-General-in-Council subsequently, the Custodian of Enemy property of the provinces of Assam, Bihar and Orissa transferred the property to individuals Messers B. Foley and others. It was in the year 1921 that the Government of India enacted Act IX of 1921. By means of this enactment, the transfer of the property to individuals were subsequently regularised andMission Trust of Northern India was created. This Mission Trust of Northern India had been created under the provisions of Act IX of 1921. The power of the Government to enact legislation cannot be questioned at any time. It was in exercise

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of this absolute and sovereign power of the Government that the Mission Trust of Northern India was created and the property vested into it. The argument of Mr. Mitra, that individuals Messers B. Foley and others could not bestow any better right in respect of this property to the Mission Trust of Northern India than ~~whit~~ what they had, is absolutely incorrect, in view of this fact. It was,on the contrary,the Government of India which had directed the custodian of Enemy property of the provinces of Assam, Bihar and Orissa, to transfer, the property in a limited manner to individual Messers B. Foley and others for the same of Management. It was the exercise of the sovereign right of the State which manifested ifself through legislation vide Act IX of 1921, that bestowed the property upon the Mission Trust of Northern India. Therefore, to say that it was an imperfect right which was bestowed upon the Mission Trust of Northern India, is not correct. This right was a perfect right bestowed upon it under legislation. No doubt there were certain limitations upon the exercise of this right. These limiations had been expressed therein.

29. It was in the year 1929 , that a not her deed of indenture was made. This deed of indenture has been referred to in detail in the preceding paragraph. I feel that we need not go into the details of that deed of indenture at this stage. However, by that deed of indenture the property was transferred to a Board of Trustees, by the Mission Trust of Northern India, and the Board of Trustees were given certain power to transfer, to sell , to borrw and to purchase properties. However, these power have not absolutely vested into the Board of Trustees. It is significant to note that a Government official namely Mr. D. Panna, a Deputy Magistrate of Ranchi was made a first member of the Board of Trustees. Firther it was stipulated in the deed of indenture itself that these power shall be exercised with the previous consent of the Governor -General-in-Council. Therefore, it is very much an agreed porposition that the power bestowed upon the Board of Trustees was not an absolute power. However, it is specifically mentioned in the deed of indenture itself that the desire of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam (which was registered under the Societies Registration, Act, 1861) was that the property should be handed over it after exposing them to an experience of self management and a sense of responsibility. Paragraph 5 and paragraph 6 and paragraph 7 of the deed of

indenture of 1929 are worth reproduction here. " (v) AND WHEREAS it is desire of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, the Gossner Missionery Society, Berlin. The National Christian Council of India, Burma and Cylon, and the National Lutheran Council of America, that the property specified in the schedule here to shall be handed over to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, but to allow for the growth of a sense of responsibility it is recommended that the property shall be vested in a Board of Trustees consisting of two representatives of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, two representative of the Lutheran Council of America, so long as that body continued to aid the Church in Chotanagpur with funds and one representative of the National Christian Council of India, Burma and Cylon, to be held by such Board of Trustees for a period of ten years and that after the expirty of the said period of ten years the said property shall be transferred to the Gossner Evangelical Lutheran (Autonomous) Church (VI) AND WHEREAS the Governor-General-in-Council after consideration of the said desire and recommendation has given his consent and approval to the transfer of the said property by the Trustees to a Board constituted as above for a period of ten years from the date of these presents in trust for the benefit of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam and after the expiry of the said period of ten years to transfer the said property to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam and after the expiry of the said period of ten years to transfer the said property to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam absolutely , (VII) AND WHEREAS the persons named above as forming the Board have been duly appointed and constituted representative for this purpose by their respective Societies or Missions"

30. This makes it absolutely clear that it was the property of German Evangelical Lutheran Church. This property had vested into the Government of India in exercise of its sovereign power expressed through a legislation. The Government of India for the sake of management, vested the property first with individuals, and then into the Mission Trust of Northern India. Subsequently it was transferred to Board of Trustees, with perfect right, for the sake of management. However, the deed of indenture clearly mentioned that

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i# was the desire of the Government of India that this was being donsidered as an experiment. After an expir/y of ten years the Government of India could consider an absolute transfer of the property to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. The contention of Mr. Mitra that this pwer of individuals was imperfect and a limited one, and they could not convey it absolutely to another party falls flat, in view of the fact. It is mentioned here at the cost of repitition that this power was vested by the Government of India in exercise of its power and jurisdiction. The argument of Mr. Mitra is totally devoid of substance.

31. Now we come to the deed of indenture of 1940. Here the argument of Mr. Mitra is that conveyance made to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam was not an absolute one in sense of ownership but it was only absolute for the sake of management. The ownership continued to reside in the Governor-General-in-Council. Subsequently after independence it was transferred to the Central Government. However, for this, we have to examine in details the body of the deed of indenture dated 17/6/1940. This indenture was made between the Board of Trustees consisting of the following persons (1) Dr. L. Canauday, Missionery, P.L.C. Mission, Guntur, Madras presidency, (2) Dr. R.B. Manikam, Secretary, National Christian Council, India, Burma and Cylon. Nelson Square, Nagpur, Central Provinces. (3) Rev. J............President of the Gossner Evangelical Lutheran (Autonomous) Church, Chotanagpur and Assam, Ranchi Chotanagpur, Bihar (4) Rev. W. Ralsick, Missionery working in the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam (5) F. N. Topno Esqr. Secretary, Gossner Evangelical Lutheran (Autonomous) Churdh in Chotanagpur and Assam, Ranchi and (6) D.M. Panna Esqr. a member of the Provincial Civil Service, Purulia, District Manbhum, Bihar. The First paragraph of the deed of indenture is "(I) Where as by two orders made by the Governor-General of India in council in excercise of the power conferred on him by section 7 of the Enemy Trading Act, 1916, the properties particulars and descriptions of which are given in the schedule below and which wer owned and possessed by the G.E.L. Mission in Chotagagpur and Assam were vested in the custodian of Enemy property. (II) AND were as by two indentures, one dated 1st October, 1919 and the other dated 13th. October, 1919, executed by the custodian of Enemy

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property of the provinces Assam and Bihar and Orissa respectively, of the one part and Messers B. Foley, W.B. Heyeeck, the Rev. J.Z. Hodee Prof. C. Mukherjee and the Rev. C.J. Benn, of the other the said properties were transferred to the letter in trust for the purpose and with the powers specified in the said indenture (III) AND WHERE AS by the Act IX of 1921 passed by the Indian Legislature, validating the said indenture, a body corporate under thename and style of the Mission Trust of Northern India " With perpetual succession and common seal was created as the Trustees under the said indentures (IV) AND WHERE AS it was the desire and recommendation of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam the Gossner Missionery Society, Berlin the National Lutheran Assam the Gossner Missionery Council of India Burma and Ceylon that the properties specified in the schedule here to annex to should be handed over to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, but to allow for the growth of a sense of responsibility the said propety should be vested in the Board of Trustees for a period of ten years and after expiry of the said period of ten years the said properties should be transferred to the Gossner Evangelical Lutheran (Autonomous) Church. (V) AND WHERE AS the Govenor-General-in-Council after consideration of the said properties by the Trustees, theMission Trust of Northern India, to a Board of Trustees for a period of ten years in trust of the benefit of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam and after the expiry of the said period of ten years to transfer the said properties to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, the beneficially above named. (VI) AND WHERE AS by the an indenture dated the 12th of November, 1929 the Mission Trust of Northern India, the Trustees above referred to transferred the said properties to the Board (being the Board of Trustees duly appointed and constituted for the purpose by their respective societies or Missions) to be held by the Board for a period of ten years from the said date and on the expiry of the said period of ten years to transfer the same to the beneficially and theBoard has since then been holding and managing properties in trust for the beneficiary (VII) AND WHERE AS the Chief Secretary to the Govt. of Bihar, Polictical Department (S~~p~~pecial Section) by his letter No. 1166/C dated Ranchi, the 9th. May 1940 has

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conveyed the consent and approval of the Governor-General of India to the transfer of the properties held in trust by the Board to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. Now thisindenture witnesseth that in pursucance of the direction contained in clause VII of the said indenture of the 12th day of November 1929 the Board do hereby transfer to the Gossner Evangelical Lutheran (Autonomous) Church the properties fully described in schedule below, absolutely and the Trust created in favour of the Board in respect of the said properties in entinguished on and from this date."

31. Here theargument of the intervenor is that the term transfer shall be governed by the dictionary meaning of the word and not by the meaning in respect of the ownership. We have hence to examine how the dictionary has defind the term transfer. The ~~oxford~~ Oxford Dictionary defines the term transfer as change, possession, move (2) handover possession of properties etc. (3) convey (a drawin etc) from one surface to another (4) change from one train,bus etc. to another ; move from one occupation, possession etc to another. Further Oxford Illustrated Dictionary defines the word 'transfer as convey, translate, transport, handover one person, place etc. to another (law convey title, property etc.) legal process ; convey (design etc.) from one process to another etc. change from one station, line route etc. to another, to continue his joining transfer (specially football play or his services) to another blood group. A transfer as now, being transferred; specially (law) conveyance or property, as share etc. from one person to another. Now we come to the Transfer of properties Act. This Act governs the transfer of property to be made in India regarding moveable and non-moveable property both. Section of 5 of the Act. defines transfer ofproperty. It reads as follows " In the following sections " the transfer of property " means an act by which a living conveys property in present or in future to one or other living persons or to himself and one or more living persons.

31. 2. In this section "Living person" included a company or association or body of individual whether incorporated or not but nothing here in contain shall affect any law for the time being in force relating to transfer of proerty to or by companies, assiciation or bodies or individuals. "Now in the Transfer of property Act. the term transfer means a processor an act by which something is made over to another. It does not however mean that the making over of the thing should always be absolute. One may transfer the property for a limited period or one may transfer absolutely by sale, gift or exchange

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of another property. What is primarily here is that the property had been handed over and the act of handing over is the transfer. In other words, it is to be observed here that the definition of the word transfer in this act is used in the widest and most general sense comprehending all the aspects of the contract which pass real right or interest as they are given in this act, in property, from one person to another.

32. 2. Thus it is quite clear that the terms transfer is a wide term and it includes a transfer which may be absolute or which may be conditional or for a limited period. To this extent there can be no disagreement with the argument put forward by Mr. N.G. Mitra.

32. However, in the instant case it is absolutely clear not only from the words of the indenture but also from the previous back ground, that this transfer had been made absolutely in terms of title. As it has been already mentioned on several occasions that the property was the absolute property of the German Evangelical Lutheran Church. From the German Evangelical Lutheran Church it passed on to the Govt. The Govt. gave it for management to certain individuals. These individuals subsequently organised themselves in the form of the Mission Trust of Norther India. The Mission Trust of Northern India passed on the title, under the directive of the Government inexercise of its absolute power to the Board of Trustees. It has stipulated in the deed of indenture 1929 very clearly thatafter theexpiry of ten years the properties should be transferred absolutely to the Gossner Evangelical (Autonomous) Church in Chotagagpur and Assam. Thiswas in consonance with the desire of the Governor-General-in-Council, that the property should be transferred absolutely not only for management in absolute terms. The deed of indenture of the year 1940 mentions that this desire had been conveyed by the Chief Secretary to the Govt. of Bihar vide his letter No. 1166/C dated 9/5/1940. A copy of this letter has been produced by the opposite party for the benefit of this court. The letter is so important in content that it is fit to be quoted here. "This is president of the Maha Sabha and Autonomous Church of Ranchi, P.O. Hinoo, Ranchi the 9th May 1940. Under the indenture dated the 12th Nov. 1929 the Mission Trust of Northern India administering the G.E.L. Mission property, handed over the said property to Board of Trustees for a period of ten years, at the end of which the property was to be transferred absolutely to the G. E. L.

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(Autonomous) Church. The period of ten years was completed on 7th November 1939 and I am directed to say that the (transfer) may now be affected in accordance with clause VII of the indenture of 1929. The Governor General gives his consent to the property being transferred.

The actual transfer is a matter of settlement between the Board of Trustees and Autonomous Church.

The Secretary to the Board of Trustees has been informed accordingly.

I have the honour to be,

Sir,

Your most obedient servant
Sd/- Y.A. Godbole,
Chief Secretary to Government.

32. 1. This letter of the Chief Secretary to the Government of Bihar under consideration clearly mentions in no unambigous terms that the transfer was to have been absolute. It also refers to para VII of the deed of indenture of 1929 had laid down the desire of the Governor-General-in-Council to transfer the property absolutely to the Gossner Evangelical Lutheran (Autonomous) Church in Chotanapur and Assam. The argument of Mr. Mitra that the terms transfer shall take dictionary meaning and not legal meaning is a curious one here. Not only the dictionary meaning but the terms transfer as defined under the Transfer of proerty act of 1982 is a very wide term which not only indluded transfer by ohter modes which have not found mention in the Act itself, which may otherwise be expressly transferred. Therefore, there is nonthing either in the deed of indenture of 1929 or in the deed of indenture of 1940, or in the letter under consideration of the Chief Secretary of the Government of Bihar to say that the transfer made was only the transfer for the sake of ~~manag~~ management and not for the ownership of property. In fact the continuity of History and the legal powers of the Govt. of India will excercise under the Enemy Trading Act 1916 which forms the basis for the transfer clearly show that the transfer made had been absolute. The argument that the transfer had been made only for the sake of management is given by Mr. Mitra, I believe, out of his anxiety to throw a spanner in the work of construction of market place being done by the G.E.L Church. It is totally devoid of either legal substance, and has no merit in it. It arises our of a faulty under standing of legal points.

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33. This is further supported by the fact that the entire land has been recorded in Municipal survey 1929 in the name of the G.E.L. Mission in column 4 of the Khatian. The name of the G.E.L. Mission in column 4 of the Khatian. The name of the Mission Trust of India has been entered in the column of occupier.

~~XXX~~ 34. Another fact which is of great significance here is that a return had been submitted by the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, in respect of the properties owned by it under section 6 of the Urban Land (Ceiling & Regulation) act of 1976. A draft publication has also been made in respect of the properties owned by the Church declaring 3, 45, 158 Square meters of land as surplus. This would roughly amount to 89 acres. The G.E.L. Church has filed its objection to the draft publication. The case is pending before the Competent Authority. This goes a long way to establish that the Competent Authority. This goes a long way to establish that the Competent Authority has also recognised the ownership and possession of the G.E.L. Church and on the basis of it, it has accepted the return filed by the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam and has initiated proceeding under the Urban land Ceiling and Regulation Act, 1976. This totally believe the argument of the intervenor that the property is not registered in the name of Church, and as such, it does not belong to it. It is only being occupied and ~~mag~~ manageed by it. Bothe these arguments cannot go together. If the property in deed belongs to the Government there would not have been any application of the Urban Land Ceiling & Regulation Act. On the contrary if the proceeding has been initiated , it presuposes that the Gossner Evangelical Lutheran(Autonomous) Church in Chotanagpur and Assam has been recognised as at least a land holder of this property.

35. Thus, at the end it can be said that in so far that the first issue is concerned that whether the land is Government land or not we can come to the conclusion on the basis of the afore mentioned consideration that the land in question is not Government land and it absolutely in the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, and the contention of the intervenor that it does not do ~~sx~~ so, has been proved incorrect on the basis of the aforemention arguments.

36. Now we come to the next issue that whether Government has any say in the management of this property or not. It may be mentioned

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here that on the basis of the conclusion arrived at the respect of the first issue it is more than abundantly clear that the property under consideration is the private property of the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam. This property is subject to all the laws prevailing in the State and the country. It is subject to the Chotanagpur Tenancy Act of 1908, the Urban Land (Ceiling and Regulation) Act 1976 and so many other Acts and regulations which have been framed by the Government of Bihar However, to the best of my knowledge no Act or regula ion has been framed as yet which allows the Government to interfere with the management of private property. The argument of the intervenor that the ownership of property is a limited one and that no major changes in structure or in structure or in management of the property can be made without the prior concurrence of the Central Government has already been rejected in the preceeding paragraphs. Therefore, over and above there is no rules or regulation within my knowledge, which allows the Government to interfere with the personal property of a body.

36.1 Attention here has to be drawn to the Constitution law in this matter. Right to property has been recognisedas one of the fundamental rights by the Constitution of India. No person is to be deprived of his property save by the authority of law as it has been laid down in Article 31 of the Constitution. This provision excludes the possibility of arbitrary deprivation of one's property by the state. It also excludes that any interference by the State in exerdises of an individual's property except as provides under the provisions of law . An individual has unquestioned right to exercise his ownership over his property. The state cannot interfere except, that it may acquire the property under the provisionsof law. Therefore, the right of an individual or body of individual or corporate body to own a property is unquestioned. The suggestion of Shri Mitra that this is an abrieged right and the state should interfare with it, amounts to an violation and negation of the principal of Fundamental Rights to property as contained under Article 31 of the Constitution of India and it is at its best unconstitutional and ultravires.

Therefore , it is not fit to be accepted.

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37. The third issue is that whether the opposite parties are violating any Government right undertaking the construction. In this record it has been pointed out by the O.P. that they have obtained permission of the concerned authorities i.e. Ranchi Regional Development Authority, for undertaking this construction and their map has duly been passed and approved by the Chairman of the R.R.D.A. in this regard. They have also submitted a photo state copy of the map duly approved by the Vice Chairman R.R.D.A. on 4-12-1948. Thism map duly clearly shows that the map for construction has been approved by the concerned authority. It is significant here to note that all the concerned construction have to have prior approval of the R.R.D.A. which is the concerned authority in this matter. There is no other authority which is competent to approve plans or construction. Therefore, the opposite party has acted very well within law to have taken the prior, approval for this construction. The R.R.D.A. has also gone into other considerations like the F.A.R. etc. before giving this permission. It may be mentioned here that the opposite party has not violated any right of the Government in undertaking this construction.

38. It may also be mentioned here that one argument of the intervenor was that the property was initially meant for religious and charitable purposes. Construction of market is not religious or charitable purpose. Thereby constructing market on the ground of G.E.L. Church, the Church has violated its own construction and has also violated the trust of people which has been placed in it. As the same time it has also violated Govt. rules under which the gift has been made. However, it may be mentioned in this regard that the Church has a democratic construction which provides election after every three years. The functioneries, at various levels, are elected by a process of election which has been provided in the construction of the church. I do not think that we need to go into the constitution of the church in detail. Neither we need to go into the process of election of the different beneficieries of the church. If the election of an certain functionary of the church has to be challenged the same may done before the Civil court of competent jurisdiction. This court has no powers to go into the factors relating to the election of different functionaries of the church and that the election has been done in correct manner or not. However, it suffices to show that the church hasa body, which has been duly

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elected and the same cannot be challenged before this court. So far the purposes of this court the elected body, shall be deemed to be competent and final. This elected body has taken a decision to this effect that in order to augment the activities of the Church and in order to add more building space to the Gossner College which is being run in the same they needed money. Since money was not forth coming from any othersource and since most of the member of the church are too poor to contribute in a significant manner to the construction of the Gossner College and also for undertaking several charitable and religious activities of the Church it become necessary for the church to devise wasy and means by which its resources could be sugmented. Therefore, they have not violated any condition of their character and they have not betraued the trust of their people in undertaking this construction. They have rather fulfilled the expectations laid on them by the members of the church by undertaking this construction and by providing better resources andbetter services to the members of the church at large and to the people of Ranchi on the whole.

39. However, in so far this court is concerned its only obejective is to see as to whether any of the revenue law has been violated or not. It has already been mentioned that this is a abolute property of the church. There is no paper to indicate that the ownership or possession was a conditional, one. It has already been proved that the church enjoys absolute ownership in respect of this property. The term absolute means that it can either sell, lease, exchange or gift the property or undertake construction over it. The petitioners or the intervenor have not been able to put any evidence whatsoever in this court which would indicate that the ownership of the church is conditional or that the ownership was only meant for religious and charitable purposes. It does not suffices to say that the church being a charitable and religious machinery should only engage in charitable and religious activities and it has no tight to augment its resources. It is quite customary in all the charitable institutions which are not being financed by the Government to have come ways and means by which its purposes can be fulfilled. The constitution of the church clearly provides that the resources of the church should be used for charitable and religious purpose, and to the best of our

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knowledge we have the reasons to believe that they are being used to this effect. This includes the right of the church to augment its resources.

40. This takes us to go many other institutions. It is customary to find that a large number of shops are attached to most of the temples in this town. The best example in this regard can be the Kali Temple situated on the church road or the famous Mahabir Temple near the Taxi Stand. Both these temples, have a number of shop attached to them. There are so many Hindu temples which have also got shops attached to them. Like wise nearly all the mosques have small shops attached to them built on the premises of the moseques and let out and hired to other persons. This is supposed to be the wokf property by means of which the reasources of the wokfs are maintained and the worship etc. are being done. Therefore, it is strage hereto note that the intervenor has not raised his voice aginst the locations of these shops in thetemples or the mosques. On the contrary his worath has been totally directed against the Gossner Evangelical Lutheran (Autonomous) Church in Chotaganpur and Assam, which is a charitable institution. Had the intervenor been so concerned of sancitity of the religious institution be should have been equally quick to point out the existance of shops in some temple and mosques. I think that if the church has gone against its constitution or religious purpose, by constructing market over lands owned by it, then I think the Hindu temples and the mosques have equally gone against the religious principles by constructing shops and market within their premises. The right to equality is a fundamental right guaranteed under the constitution of India. Articles, 14, 15 and 16 of Constitution of Indian deal with these rights. These rights include equality of opportunity and equality before laws. The state is clearly debarred from discriminating between citizens and groups of religious, caste, creed et. Therefore, it will be quite unfair on part of the Government authorities to turn a blind eye to what is a normal phenomenon in the case of the Hindu temple or the Muslim mosque and to direct its attentin in precluding the Gossner Evangelical Lutheran (Autonomous) Church from constructing the market. If such step were to be taken by the administration or by the Government it will amount to violation or right to equality, which will be claimed by the G.E.L. Church in comparision

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to other bodies and would be totally unconstitutional. Another point which is to be significantly noticed here is that a number of shops have already been constructed on the GEL Church premises. These shops were constructed some more than twenty years back. These shops are located right on the Main Road. They have been let out to big business magnetes like M/s. Ratanlal Tarachand and others. Significantly, Shri Nani Gopal Mitra who has been the Member of legislative Assembly representing Ranchi Constituency, for two terms in the past has never filed an application earlier, when these shops were being constructed. He has also never objected to the construction and letting out of the shops which have been in existence for more than two decades to different business magnates of Ranchi. It remains unknown to the court as to why he has chosen to vehmently oppose construction of these shops quite contrary to the principles of equality and to the principles of there being no discrimination based on any grounds whatsoever. It is unfortunate that a person of his stature and his eminence who was also an erstwhile principal of College and a very highly respected professor of this town to undertake such a move. It remains a secret as to why he has chosen to do so.

41. Now we come to the last of the issues that whether the undersigned can in any way restrain the members of the O.P. from undertaking this construction. It has already been discussed that the opposite party has not violated any laws. They have the right of equality. I fail to understand, as it has already been establishedthat the contention of the intervenor regarding the ownership of property being a limited one and the ownership vesting in the central Government of India has already been proved incorrect on what grounds can be possibly plead that the undersigned should interfere in the construction of the market . If the GEL Church, which is the absolute, owner of the property, chooses to construct a market, it is the business of the church. What the undersigned can do is to regulate the the construction. However, as the church is already armed with the necessary permission of the R.R.D.A. which is the concerned authority, there appears to be no way in which the State or the district administration can interfere with the construction of the market.

42. It is significant to note that this matter has been raised at different legal forms in the past. It has already been placed for the consideration of the court by the members of the O.P. that some members

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of the GEL Church under the leadership of one Rev. Niranjan Ekka Rev. Nirmal Minz and others left the GEL Church and formed a separate church of their own. They in title suit No. 107 of 1977 challenged the members of the opposite party and claimed the property. The title suit was lost by the claimant. The judgement of the title appeal No. 19 of 1984 made by the learned sub-judge has been filed for the perusal of the court. The learned sub-judge has ~~xxxxx~~ has helf in the above mentioned judgement of title appeal No. 19 of 1984 that the litigants were not members of the O.P. and they did not have any right or title over the property. It is true that a temporary injuction was obtained by the O.P. It was however automatically vacated after that the final order has been passed in title appeal No. 19 of 1984 on 1-9-1986.

42. It is also worth mentioning here that the O.P. as it appears from the papers and documents filed by the opposite party, had fought a title suit of 1985 which has been filed by Zacharious Lakra and other against the O.P. seeking intervention of the court against the construction of the shopping centre on the similar ground to that in the instant case. The injunction order contained in this case against the O.P. had been vacated by the court by its order dated 5-2-1986.

43. One Mahabir Prasad Adukia also filed a title suit which refers to title suit No. 26 of 1987. He also sought injunction restraining the O.P. from going a head with the allotment of the shop. The learned Sub-Judge Shri S. K. Murari vide his order dated 6-7-1986 has rejected the plea of the plaintiff Mahabir Prasad Adukia for restraining the O.P. from proceeding with the allocation of the shops. The last paragraph of the judgement of the learned sub-judge is most significant in this matter :-

" In fact no legal contract was ever complicate between the parties which can be enforced by this court. So I find that theplaintiff has got no prima facie case for adjudication. The balance of convenience is also not in the favour of the plaintiff for the grant of temporary injunction. The plaintiff shall not suffer any irreparable loss if the injunction is not granted. In the result it is thefefore ordered that the prayer of the temporary injunction restraining the defendants from allotting the shop rooms to other persons is rejected".

44. The O.P. had also moved before the Hon'ble High Court Judicature Patna at its Ranchi Bench vide CWJC No. 1412 of 1987(R) Shri Bishwanath Prasad & other Vrs. State of Bihar and others. In that case it has been claimed that the land belongs to the Government of Bihar and O.P. are unauthorisedly making construction over the same. This petition was subsequently withdrawn by the petitioners.

45. It is also significant to note here that the petitioner namely Shri. Jyoti Prakash Minz and others had also moved the Hon'ble High Court of Judicature of Patna at its Ranchi Benchvide writ petition CEJC No. 1639/1987(R) seeking the intervention of the court to restrain the O.P. from proceeding with the construction of the market. Their lordships, Uday Sinha and N.S. Rao vide their order dated 3/11/1987 have recorded. "Heard learned counsel for the parties at length. We are not satisfied that the Gossner Evangelical Lutheran Church is state within the meaning of Article 12 of the constitution. We therefore, see no merit in the application. It is dismissed accordingly. Later-After application had been dismissed in limine the learned counsel for the petitioner prayed for leave under Article 133 of the constitution. In our view there is no question of law much less substantial which needs to be decided by the Supreme Court. Prayer for certificate is rejected."

46. All these examples show that the members of the petitioners both the petitioner Jyoti Prakash Minz and others and the intervenor Nani Gopal Mitra have tried their luck on all possible legal forms for restraining the O.P. in construction of the market. It is remarkable here that in all the legal forms they have been losing the battle consistently. Therefore it alsostands to reason that their view point has been agitated and heard by several legal courts and has been consistently rejected. It suffices to show that had there been merit in their argument it could have been accepted one forms or the other. Practically the same point which has been before this court also been against before the Hon'ble Court and the Hon'ble High Court had found no merit in the case at all. It had not even given in case of Jyoti Prakash Minz leave of appeal under Article 133 of the constitution. Therefore it stands to reason that the view point adopted by the petitioner Jyoti Prakash Minz and others and the intervenor Nani Gopal Mitra had not found favour in

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any of the court concerned.

47. At the end a few words must be mentioned about the judicial role of the Deputy Commissioner. The Deputy Commissioner is required to administer laws in his executive capacity. However, when ~~the~~ he presides over the court he functions in a quasi-judicial capacity. These functions are independent of each other. In a graded heirahical system of judicially like the onewe have orders passed by the Deputy Commissioner are subject to appeal. To subject the court to threats of agitation would only serve to undermine the judicial independence, which is the main pillar of our constitution. In am sure that we can do without such excercise in sabrerattling.

48. It is also worth a mention here that the Constitution of India guarantees equality to all Indians in matters of opportunities and before law. There can be no discrimination against one individual or groups on ethnic or religion or other grounds. The Christians are as good Indians as Hindus, Muslims, Budhists and others. What is good for paul shall also hold good for peter. This is the fundamental principle on the basis of which this country is being governed. It is well accepted that the future of the Country is secure till so long as all communities and ethnic group contimue to have respect inequal measures for secularism, the greatest gift of the Indian Constituion and faith in the capacity of her officials to implement the same. We cannot affor to imperial the future of the nation.

49. Let a copy of ~~the~~ this order be sent to the Commissioner, South Chotanagpur Division for information and necessary action.

Sd/- B.K. Sinha. 18.2.88
(B.K. Sinha)
Deputy Commissioner, Ranchi

Dicteded & Corrected.
Sd. B.K. Sinha
Deputy Commissioner, Ranchi
18.2.88

Typed by
Sd/- Illegible

Compared by
Sd/- Illegible

Pet-No. 1204 Words 18010

COPY OF THE PETITION FOR EXEMPTION
FILED WITH THE GOVT: OF BIHAR
JULY - 1988

To,

The Hon'ble Chief Minister,
Government of Bihar,
P A T N A

Gossner Evangelical Lutheran Church in
Chotanagpur and Assam, Main Road, Ranchi - Petitioner

The humble petition on behalf of the petitioner above name u/s 20 of the Urban Land (Ceiling & Regulation) Act 1976 for exemption from the operation of the said Act most respectfully shewith as follows : -

1. That the petitioner is a society registered under the Societies Registration Act 1860 (Act No. 21 of 1860) bearing registration No. 27JJ dated 30-7-1921. The petitioner Society has been registered for the object to preserve and extend the pure teaching of the Gospel and right administration of the Sacraments,

To conserve the Unity of the truth. To minister in the love of Jesus Christ etc. for which adequate provision has been made in Constitution of the Church commonly known as Gossner Evangelical Lutheran Church, in short called G.E.L. Church, situated at Main Road, Ranchi.

Copy of the institution of the Church is being filed for the sake of easy reference and marked Annexure- 1.

2. That the said G.E.L. Church as per its constitution has several Boards, one of which is called as Board of Properties, which is presently under the Pramukh Adhyaksha (President) of the Church (Dr. Rev. Martin Tete and it is in that capacity the present application is being filed through the said functionary.

3. That the petitioner holds and possesses amongst others, the Church buildings, School and college buildings, residential quarters for the office bearers of the Church, the teaching staff of the educational institutions etc. being comprised within N.S. Plot Nos. 725, 774 to 795, 803 to 809, 812, 814, 904 to 915, 918, 920, 922, 924 to 926, 963, 955, 929 to 937, 941 to 946, 948, 950, 952 to 975, 1001 to 1004 1174 to 1190 & 1192 to 1204 area 121.94 acres as lands appartment to the said buildings all being enclosed by a boundary wall all around with arrangement for internal roads which are held by the petitioner for non-profit and non-commercial purposes.

A list of properties in G.E.L. Church compound is being filed marked Annexure-2 & to this petition.

4. That the petitioner states and submits that in view of the petitioner being a corporate

society for religious, educational, medical and charitable purposes and holding the said buildings and lands for non-profit and non-commercial purposes the provisions of Chapter III of the Urban Land (Ceiling & Regulation) Act 1976 are not applicable to the petitioner as provided under section 19(1)(iv), 19(1)(vi) and 19(1)(vii).

5. That despite the above provisions of law as aforesaid, the Deputy Commissioner-cum-Competent Authority, Ranchi has purported to initiate Urban Land Ceiling Proceeding being Case No. ULC395 of 1976 (State Vrs. Secretary, Board of Properties, G.E.L. Church in Chotanagpur and Assam, Ranchi under section 8 of the Urban Land (Ceiling & Regulations) Act 1976 and a draft statement said to be prepared under section 8(1) of the said Act was served upon the petitioner's Board of Properties through the then

Secretary on 2-7-1988, in spite of the said provision being not applicable to the petitioner.

6. That the Board of Properties of the petitioner was thereupon obliged to file its objection to the said draft statement before the Deputy Commissioner-cum-Competent Authority, Ranchi in the aforesaid U.L.C. Case No. 395 of 1976 wherein the question of non applicability of any of the provisions of Chapter III including sections 3 to 24 of the said Act has been specifinally raised.

Copy of the said objection is being filed for easy reference and for substantiating the said stand of the petitioner and marked Annexure - 3 to this petition.

7. That though the matter has remained pending for over 12 long years but the same has been allowed to take its own course in a leisurely and sluggish manner and the petitioner's Board of

Properties has been regularily attending the said proceeding ever since its initiation.

8. That on the one hand the matter has remained pending since long as aforesaid but on the other hand at the instance of politically motivated persons and who are not in any way connected with the Church or its properties have been raising a gogie for serving their own selfishness and in fact two writ applications being C.W.J.C. Nos. 1412 of 1987(R) and 1639 of 1987(R) were filed before the Hon'ble High Court, Ranchi Bench, when the Board of Properties commenced construction of building on the portion of the said lands for raising funds for the maintenance and support of the Church and its other educational and philanthropic institutions as the

financial conditions of the church has miserably deteriorated. Both the said writ cases were however rejection by the Hon'ble High Court summarily at the admition stage itsklf.

Xerox copies of the aforesaid orders in C.W.J.C. Nos. ‡412 of 1987(R) and 1639 of 1987(R) are being filed herewith and marked as Annexure - 4 and 5 to this application.

9. That in the like manner the same questions were sought to be agitated before the Deputy Commissioner-cum-Competent Authority, Ranchi in his administrative capacity who get the matter thoroughly enquired into and on consideration of petitioner's show cause, enquiry report and other materials by terms of his elaborate and well reasoned order dated 18-2-1988 passed in Misc. Case No.59-R-28/86-87

rejected the said move of the concerned persons dubbing the same as wholly unjustified and unwarranted in the facts and circumstances of the case.

Xerox copy of the order dated 18-2-1988 in Misc. Case No. 59-R-28/86-87 is being filed herewith and marked as Annexure- 6 to this petition.

10) That a bare perusal of the said order would abundantly demonstrate the purposes for which the lands are held and used/utilised by the petitioner. The petitioner craves leave of Your gracious self to reproduce hereinbelow the relevant excerpts of the said order referred to hereinabove.

38. "It may also be mentioned here that one argument of the intervenor was that the property was initially meant for religious and charitable purposes . Construction of market

is not a religious or charitable purposes.

Thereby constructing market on the ground of G.E.L. Church the Church has violated its own constitution and has also violated the trust of people which has been placed in it. As the same time it has also violated Government rules under which the gift has been made. However, it may be mentioned in this regard that the Church has a democratic constitution which provides election after every three years. The functioneries, at the various levels, are elected by a process of election which has been provided in the constitution of the Church. I do not think that we need to go into the constitution of the Church in detail. Neither we need to go into the process of election of the different beneficiaries of the Church. If the election of a certain functionary of the Church has to be challenged the same may be done before the Civil Court of competent jurisdiction. This court has no powers to go into the factors relating to the election of different functionaries of the Church and that the election has been done in corrêct manner or not. However, it sufficies to show that the Church has a body, which has been duly elected and the same cannot be challenged before this court. So far the purposes of this court the elected body, shall be deemed to be competent and final. This elected body has taken a decision to this effect that in order to augment the activities of the Church and in order to add more building space to that Gossner College which is being run in the same they needed money. Since money was not forthcoming from any other source and since most of the members of the Church are too poor to contribute in a significant manner to the construction of the Gossner College and also for undertaking several charitable and religious activities of the church it become necessary for the church to devise ways and means by which its resources could be augmented. Therefore, they have not violated any condition of their charter and they have not betrayed the trust of their people in undertaking this construction. They have rather fulfiled the expectations laid on them by the members of the church by undertaking this construction and by providing better reaources and better services to the ~~xx~~ members of the Church at large and to the people of Ranchi on the whole.

39. However, in so far this court is concerned its only objective is to see as to whether any of the revenue law has been violated or not. It has already been mentioned that this is a absolute property of the Church. There is no paper to indicate that the the ownership or possession was a conditional one. It has already been proved that the Church enjoys absolute ownership in respect of this property. The term absolute means that it can either sell, lease , exchange or gift the property or undertake construction over it.

The petitioners or the intervenor have not been able to put up any evidence whatsoever in this court which would indicate that the ownership of the church is conditional or that the ownership was only meant for religious and charitable purposes. It does not suffices to say that the church being a charitable and religious machinery should only engage in charitable and religious activities and it has no right to augment its resources.

It is quite customary in all the charitable institutions which are not being financed by the Government to have some ways and means by which its purposes can be fulfilled. The constitution of the Church clearly provides that the resources of the Church should be used for charitable and religious purposes, and to the best of our knowledge we have the reasons to believe that they are being used to this effect. This includes the right of the church to augment its resources.

40. This takes us to go many other institutions. It is customary to find that a large number of shops are attached to most of the temples in this town. The best example in this regard can be the Kali Temple situated on the Church Road or the famous Mahabir Temple near the Taxi Stand. Both these temples have a number of shops attached to them. There are so many Hindu temples which have also got shops attached to them. Likewise nearly all the mosques have small shops attached to them built on the premises of the mosques and let out and hired to other persons. This is supposed to be the wokf property by means of which the resources of the wakfs are maintained and the ~~worsh~~ worship etc. are being done. Therefore, it is strange here to note that the intervenor has not raised his voice against the locations of these shops in the temples or the mosques. On the contrary his waxrath has been totally directed

against the Gossner Evangelical Lutheran (Autonomous) Church in Chotanagpur and Assam, which is a charitable institution. Had the intervenor been so concerned of sanctity of the religious institutions he should have bee equally quick to point out the existence of shops in some temples and mosques. I think that if the church has gone against its constitution or religious purposes, by constructing market over lands owned by it, then I think the Hindu temples and the mosques have equally gone against the religious principles by constructing shops and markets within their premises. The right to to equality is a fundamental right guaranteed under the constitution of India. Articles 14.15 and 16 of the Constutution of India deal with these rights . These rights include equality of opportunity and equality before laws. The state is clearly debarred from discriminating between citizens and groups of citizens on grounds of religion, caste, creed etc. Therefore it will be quite unfair on part of the Government authorities to turn a blind eye to what is a normal phenomenon in the case of the Hindu temple or the Muslim mosque and to direct its attention in precluding the Gossner Evengelical Lutheran (Autonomous) Church from constructing the market. If such step were to betaken by the administration or by the Government it will amount to violation or right to equality, which will be claimed by the G.E.L. Church in comparison to other bodies and would be totally unconstitutional. Another point which is to be significantly noticed here is that a number of shops have already been constructed on the G.E.L. Church premises. These shops were constructed some more than twenty years back. These shops are located right on the Main Road. They have been let out to big business magnets like M/s. Ratanlal Tarachand and others. Significantly, Sri Nani Gopal Mitra who has been the Member of Legislative Assembly, representing Ranchi Constituency for two terms in the past has never filed an application earlier, when these shops were being constructed . He has also never objected to the construction and letting out of the shops which have been in existence for more than two decades to different business magnates of Ranchi. It remains unknown to the court as to why he has chosen to vehmently oppose construction of these shop quite contrary to the principles of equality and to the principles of there being no discrimination based on any grounds whatsoever. It is unfortunate that a person of his stature and his eminence who was also an earstwhile Principle of College and a very highly respected professor of this town to undertake such a move. It remains x a secret as to why he has chosen to do so."

11) That the said order of Deputy Commissioner and the said relevant excerpts are itself telling in nature regarding the public, religious and charitable character of the petitioner and the purposes for which the said lands and buildings were and are being used.

12) That nevertheless the Deputy Commissioner-cum-competent Authority Ranchi ignoring its own order contained in Annexure -4 has purported to issue a notice dated 18-7-88 to the petitioner to show cause for constructing the commercial complex and letting it on lease without the permission of the Deputy Commissioner-cum-competent authority Ranchi and in persuance of the said notice the petitioner has already submitted its show cause on 2-8-1988.

Copy of the aforesaid show cause filed on 2-8-88 is being filed herewith and marked asAnnexure -7 to this petition.

13) That it appears that at the behest of some interested person the Vice Chairman of Randhi Regional Development Authority issued a notice dated 19-7-88 without any lawful authority calling upon the petitioner to produce the necessary permission from

Competent Authority for building construction. The petitioner has already submitted its reply on 29-7-1988.

Xerox copy of the aforesaid reply submitted on 29-7-88 is being filed herewith and marked an Annexure - 8 to this petition.

14) That in view of the rambling and vexilating attitude of the different officers of the State against the petitioner it is necessary and expedient in the interest, of different charitians which constitute a substantial section of the public and that of the petitioner which maintains public institutions, to exempt the lands held by the petitioner from the operation of the provision of Chapter III of the Urban Land (Ceiling & Regulation) Act. 1976 by way of abundant caution.

15) That the petitioner would suffer serious loss and undue hardship if it is not granted exemption from the operation of the provisions of Chapter III of the Urban Land (Ceiling & Regulation) Act 1976 as authorities of the state appear to be adamant and

and determind to harass and humiliate the petitioner and its office bearers.

In view of the forgoing facts and circumstances, the instant application is being filed by / on behalf of the petitioner by way of abundant caution for preventing from and safeguarding the petitioner, its office bearers and the properties of the ~~Chxxxh~~ Church against recurrent official onslaught.

It is therefore prayed that your Graciousself may kindly be pleased grant exemption with regard to the ~~gxxxxx~~ lands held by the petitioner from the operation of Chapter II of the Urban Land(Ceiling and Regulation) Act 1976.

And for this act of kindness the petitioner shall ever be grateful to Your Graciousself.

ULC Case No 293/76 In the court of G.C. Ranchi

ORDER

Briefly stated facts of the case are as follows :-

1. Gossner Evangelical Lutheran Church (hereinafter referred to as landholder has filed a return under Section 6 of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as ' The Act'). On verification of the Return it was found that landholder (Opposite Party) held 4,76,848.66 Square metres of land in Ranchi town. It was further found that under the provision of the Act, landholder (Opposite Party) was entitled to retain 1,22,690.26 Sq.metres of land only and it was found that the land measuring 3,54,158.40 Sq.metre is surplus, accordingly a Draft Notification under Section 8(1) of the Act was published on 21.7.87. The landholder (Opposite Party) filed objection under Section 8(ii) of the Act.

2. While the proceeding was pending the landholder (Opposite Party) in contravention of provisions of the Act and without permission of the Authority constructed a Commercial Complex on the vacant land wherein large number of Commercial shops, double storied has been constructed after receiving huge amount of SALAMI from the individual to whom shop has been leased or let out. The construction of the Commercial

Complex over the vacant surplus land is clear violation of the provision of the Act. During the course of progess of the construction by the landholder (Opposite Party), a direction was issued by the competent authority to stop the construction, against which the landholder (Opposite Party) moved the Hon'ble High Court and thereafter some other writ petitions were also filed.

3. The Hon'ble Court by its order dated 5.8.91 passed in C.W.J.C.No. 1515 of 19[illegible](R) directed the Deputy Commissioner to decide the applicability of the Act as a preliminary issue and then to proceed with the merit of the case. Accordingly, the matter was heard on the preliminary issue in detail and an order was passed on 13.11.91 wherein and whereunder it was held that the Act is applicable in this case of the landholder (Opposite Party) and it was decided that the case should proceed on merit.

4. The case was allowed for adjournment to various dates on the request of landholder (Opposite Party), namely on 18.12.91, 8.1.92, 22.1.92, 12.2.92 and 26.2.92. On 4.3.92 a prayer was made on behalf of the landholder (Opposite Party) for adjournment to enable it to move Hon'ble High Court against the order [illegible]ted

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आदेश और पदाधिकारी का हस्ताक्षर

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13.11.91. The adjournment was opposed by the Government Pleader on the ground that 3½ months have lapsed since the passing of the order and that the landholder (Opposite Party) had ample time to move the Hon'ble High Court against it. But during this period the landholder (Opposite Party) have not moved the Hon'ble High Court. He further objected that this is merely a delatory tactics by the landholder (Opposite Party). Since it was found that the landholder (Opposite Party) has not taken any step for filing writ petition against the order dated 13.11.91 for nearly 3½ months and the case was an old one and because of delay and latches on the part of landholder (Opposite Party) the petition for adjournment was rejected and the case was fixed for 11.3.92 for hearing. On 11.3.92 hearing of the case could not be taken and was adjourned to 25.3.92. On 25.3.92 the landholder (Opposite Party) appeared and asked for adjournment on the ground that the Advocate is ill. On the same date it was found that the landholder (Opposite Party) moved the Hon'ble High Court and filed two other writ petitions namely C.W.J.C. No. 2817/91(R) and C.W.J.C. No. 2821/91(R) and it was found that the Hon'ble High Court observed in its order dated 17.12.91 that the case under the Act be disposed of within two months. This fact was suppressed by the landholder (Opposite Party) in the application filed for adjournment. The order of the High Court was passed on 17.12.91 but the landholder (Opposite Party) while seeking adjournment on 4.3.92 did not disclose that the Hon'ble High Court has directed to dispose of the case within two months. Instead of that the landholder (Opposite Party) sought adjournment to file appeal petition on the ground that they proposed to file petition against the order dated 13.11.1991. The suppression of the facts by the landholder (Opposite Party) that the High Court has directed to dispose of the matter within two months and yet seeking for adjournment of the case when it was fixed for hearing on 25.3.1992 was not bonafide for these reasons the adjournment application was rejected. While rejecting the petition of the landholder (Opposite Party) for adjournment it was ordered that the case will be heard ex-parte against the landholder (Opposite Party) if it does not participate in the hearing and shall be disposed of after hearing the State and the Intervener. The case was accordingly heard on 25.3.1992 and the landholder (Opposite Party) was given an option of filing written argument. The landholder (Opposite Party) did not file any written argument hence on the materials available the case proceeds on ex-parte and it was ordered that the case will be posted on 8.4.1992 for orders.

5. After the above order was passed on 25.3.92 the landholder (Opposite Party) moved the Hon'ble High Court against the order passed on 13.11.91 and the case was numbered as C.W.J.C. No. 1052/92(R). The Hon'ble High Court by its order dated 27.3.92 has observed that any order passed in the Ceiling Case will be subject to the order passed in the writ petition (C.W.J.C. No. 1052/92(R).

6. In the meanwhile a letter from the Government Pleader was received in this office with regard to filing of the above writ petition and wherein it was required that a counter-affidavit be filed in C.W.J.C. No. 1052/92(R).

7. In the circumstances that the Hon'ble High Court in its order in C.W.J.C.No. 1052/92(R) has directed that any order passed in the Ceiling case shall be subject to the result of the writ petition. Since there was no stay order in disposal of the Ceiling case, it was considered necessary that the case be now disposed of and accordingly the matter is being proceeded hereunder.

8. The landholder (Opposite Party) has filed an objection to the Draft Notification

under Section 8(1) of the Act on 26.10.87. In the objection petition following points have been raised by and on behalf of the landholder (Opposite Party),

(i) As per provision of Section 19(iv), the Act would not be applicable to the landholder,

(ii) As per the provision of Section 19(vi), the Act will not be applicable to the landholder,

(iii) As per the provision of Section 19(vii), the Act will not be applicable to the landholder;

(iv) Under the provision of the Act, Government can exempt such Institution from the applicability of the provisions of the Land Ceiling Act.

9. For convenience Point No. (i),(ii) and (iii) are being taken up together as common questions are involved with regard to applicability of the provisions of the Act. In order to appreciate the objection of the landholder (Opposite Party) the provision of Section 19(iv), 19(vi) and 19(vii) are extracted below :-

10. "Section 19(1)(iv) :- Any public charitable or religious trust (including waqf) and required and used for any public charitable or religious purposes :

Provided that the exemption under

(4)

this clause shall apply only so long as such land continues to be required and used for such purposes by such trust :

11. Section 19(1)(vi) :- Any such educational, cultural, technical or scientific institution or club (not being a corporation established by or under Central or Provincial or State Act referred to in Clause (i) or a Society referred to in Clause (vii) as may be approved for the purposes of this clause by the State Government by general or special order, on application made to it in this behalf by such institution or club or otherwise :

Provided that no approval under this clause shall be accorded by the State Government unless that Government is satisfied that it is necessary so to do having regard to the nature and scope of the activities of the institution or club concerned, the extent of the vacant land required bonafide for the purposes of such institution or club and other relevant factors;

12. Section 19(1)(vii) :- Any Society registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purpose :"

13. The landholder (Opposite Party) has files return under the Act wherein they have described the Organisation to be a Society registered under the Societies Registration Act as Gossener Evangelical Lutheran Church in Chhotanagpur and Assam with headquarters at Ranchi. In the return the landholder (Opposite Party) has not shown to be an institution as religious or public charitable Trust. Assuming that the above Society is a charitable and religious Trust, but in order to find out as to whether the provision of Section 19(1)(iv) of the Act is applicable under the facts and circumstances of the case to the Opposite Party. It is not disputed by the landholder (G.E.L. Church) that there was a vacant land over which a commercial complex-Cum-shopping centre has been constructed by the Opposite Party (G.E.L. Church) or by his Agent during the pendency of ceiling proceeding the land thus it being used for trading and commercial activities on a normal term of getting Salami and settling on sales and the land has been dealt as any private individual could have been dealt with the said land. In order to attract the provision of Section 19(1)(iv) of the Act, two requirements are necessary that the vacant land should belong

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to any public charitable or religious Trust and used for any public charitable or religious purposes. Unless both these criteria is attracted benefit of said Section 19(1)(iv) will not be attracted. The proviso to such section is very important for the determination of the point at issue which inter alia provided that exemption under the said clause shall apply only so long as such land continues to be required and used for such purposes by such Trust. As has been stated above the land is not being used for in public charitable or religious purposes and thus Section 19(1)(iv) is not applicable to the facts of this case and objection in this regard is accordingly rejected.

14. Similarly, Section 19(1)(iv) provides that the provision of this Act will not apply to any such Educational, Cultural, Technical or Scientific Institution or Club as may be approved for the purpose of this Clause by the State Government by general or special order. The proviso to said clause further provides that no approval under this clause shall be accorded by the State Government unless Government is satisfied that it is necessary so to do having regard to the nature and scope of the activities of the institution etc.

to the extent of the vacant land required bonafide for the purpose of such institutions or Clubs. The landholder (Opposite Party) has not get any approval from the State Government by any general or special order nor the provision of the Act will apply to this institution. The limitation on the power of the State Government under proviso of the said clause to grant approval is very important, namely such approval can be given only when the Government is satisfied that it is necessary so to do having regard to the nature and scope of the activities and that the Government has to decide the extent of vacant land required bonafide for the said purpose. As stated above the Government has not granted any exemption in favour of the landholder (Opposite Party).

15. It is further to be noticed that the claim of the landholder (Opposite Party) is contradictory in as much as in the return he has claimed to be a Society registered under the Societies Registration Act and if that be so then clause (vii) of sub-section (1) of Section 19 be attracted and not clause (iv) and (vi) of the Act. On the other hand a contradictory stand has been taken that it is a pu[illegible] charitable and religious Trust and yet a[illegible]

[illegible] has been taken that it

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is an educational institution, the stand of the landholder (Opposite Party) is vacilating. Be as it may, I have already held that Clause (iv) and (vi) of sub-section (1) of Section 19 is not attracted in the facts and circumstances of the case.

16. The next objection of the landholder (Opposite Party) is that the Act is not applicable in view of Clause (vii) of sub-section (1) of Section 19. Clause (vii) of sub-section (1) of Section 19 will be attractive only if the land is used for any non-profit and non-commercial purposes. As it has been stated above that the landholder (Opposite Party) has used the vacant land for commercial and trading activities by constructing shopping complex and leasing them out to individual trader, shop-keeper or business man on receiving salami and on rental basis.

17. It is further to be noticed that the Government Pleader appearing on behalf of the State had produced on record an advertisement which was published in Ranchi Express of the issue dated 3rd of April, 1992, published from Ranchi, wherein it has been advertised that the " A.C. MARKET AT G.E.L. CHURCH/COMPLEX, RANCHI IS ALMOST READY TO SERVE YOU. THIS MAGNIFICENT CENTRALLY AIR-CONDITIONED MARKET IS ANOTHER

PRESENTATION FROM BUILDERS ENTERPRISES, THE BUILDERS OF G.E.L. SHOPPING COMPLEX."

"A.C. MARKET IS GOING TO BE ANOTHER LAND MARK IN THE HISTORY OF RANCHI WHICH CONTAINS 43 MODERN SHOPS AND IS AVAILABLE FOR SHO-KEEPERS OF JEWELLERY, GARMENTS, FOOTWEARS, FANCY DRESSES CONFECTIONARY AND WHAT NOT ??"

The said advertisement was also annexed to the counter-affidavit filed on behalf of the Respondents in C.W.J.C. No. 1052/92(R). This fact also shows that the land belonging to landholder (Opposite Party) which is being claimed that it belongs to the Society, is being used not for any non-profit and non-commercial purposes, rather is being used for commercial purposes for earning huge profits.

18. The landholder (Opposite Party) had produced the balance sheet which shows that it has earned an income from the said land to the tune of one crore during the period 86-87. Thus from this fact it is evident that Clause (vii) of sub-section (1) of Section 19 is not applicable to the facts of the case of the Opposite Party. Thus the objection of the Opposite Party that the provision of the Ceiling Act is not applicable in view of Clause (iv),(vi) and (vii) of sub-section (1) of Section 19 has no substance and the said

objection is rejected. I hold that the provision of Ceiling Act is applicable in the case of the G.E.L.Church (Opposite Party).

19. It has been next contended on behalf of the landholder (Opposite Party) that under Section 20 of the Act the Government can exempt such institution from the provision of the Land Ceiling Act and therefore the declaration under the Act be not made. The contention of the Opposite Party is misconceived. Section 20 of the Act enables the State Government to grant exemption if the Government on consideration of the relevant factors, considers it necessary or expedient in public interest, may exempt such land subject to such condition as may be specified in the order. It is not the case of the petitioner that Government in exercise of the power under Section 20 has granted exemption with regard to the land in question. Since the Government has not granted any exemption question of applicability of that Section does not arise. This point accordingly is disposed of as not maintainable and is rejected.

20. Having held that the provision of the Act is applicable I proceed to decide as to how much area of the land the landholder (Opposite Party) is entitled to retain and how much area is surplus with the petitioner.

But before dealing with the said question I would also like to dispose of one more point raised on behalf of the landholder namely they have referred the order dated 18.2.88 passed by the then Deputy Commissioner in Miscellaneous Case No. 59-R 28/86-87 and it has been contended that by the said order the then Deputy Commissioner has passed an order in their favour. In reply to the said objection the Government Pleader has submitted that the said order was not passed in this proceeding on any objection filed on behalf of the landholder (Opposite Party) under Section 8 of the Act, rather the proceeding was started on a complaint filed by the different persons about the illegality which was being committed by the landholder (Opposite Party) by making illegal construction of building on the vacant land and in the said proceeding the State of Bihar was not a party. Be as it may be on perusal of the order I am satisfied that the order was not passed on submission of any return by the Opposite Party nor against the Draft Statement published under Section 8 of the Act.

21. That according to the return submitted by the landholder (Opposite Party) it is undisputed that the landholder holds 4,76,848.66 -

Square metres of land. Section 4 provides for the different Ceiling limits for the landholder belonging to different categories as enumerated under the said Section and in different town. The land in question is in the town which is category 'D' for Urban Agglomeration in Schedule I, and thus a person is entitled to hold 2,000 Sq. metres of land. Said Section further provides that where on the land there is a building with dwelling unit therein the extent of such other land occupied by the building and the land appertaining therein shall also be taken into account in calculating the extent of vacant land held by such persons.

22. The landholder (Opposite Party) claimed in its return that they were having their Church, School building and residential house for their staff and employee on an area measuring 1,22,690.26 Sq.metres along with the appurtenant area. This extent of area shall be excluded while computing the ceiling limit as has recently been held by the Supreme Court in Meera Gupta V/s. State of West Bengal reported in (1992) 2 SCC 494. But that building complex including Shopping Centre known as G.E.L. Church Shopping Complex and the Air Condition Market under constructed which were, and are admittedly constructed after the appointed day and during

the pendency of this Ceiling proceeding shall be treated as "vacant land" and shall be taken into consideration in calculating the extent of area which the landholder is entitled to retain. Hence after excluding the covered area where the landholder has its Church, School, residential house etc. which the landholder has prior to the appointed day, the landholder has been holding 4,76,848.66 sq. metres of vacant land which is beyond ceiling limit. The maximum area the landholder entitled to hold is 1,22,690.26 Square metres. The remaining 3,54,158.40 Square metres of vacant land including newly constructed Shopping Complex etc. are declared as excess vacant land held by the landholder. Let a final statement u/s 9 of the Act be prepared and issued.

19.8.92

Deputy Commissioner &
Competent Authority,
Ranchi.

Dictated & corrected
by me.

19.8.92

Deputy Commissioner &
Competent Authority,
Ranchi.

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31.8.92

24/8/92

24/8/92

31/8/92

4.52
24.30
19.50
17.05
6.5.35

SCHEDULES OF PROPERTIES IN G.E.L. CHURCH COMPOUND RANCHI

AT RANCHI

			ACRES
1.	Babuline (Residential Quarters)	....	2
2.	Pilgar Line (do do)	....	1
3.	Bethesada Girls High School	....	10
4.	President's Area	....	1
5.	KSS Residential Quarters	....	1½
6.	Garrison Engineers (Office & Quarters) (Proposed Gossner College)	....	8
7.	Cemetary	...	5
8.	Central Co-operative Trng. Inst.	...	3
9.	Settled with tenants (along old Hazaribagh Road)	...	2
10.	Proposed Housing Scheme	...	2
11.	Tank	...	5
12.	Youth Centre	...	1½
13.	Gossner College	...	6
14.	Already settled with tenants (Gossner College Campus)	...	2
15.	Proposed Park	...	3
16.	Theological College	...	6
17.	GEL Church Printing Press	...	1½
18.	Christ Church	...	2
19.	Theological College Play Ground	...	5
20.	Proposed College Girls Hostel	...	1
21.	Gossner Boys Middle School	...	4½
22.	Teachers Training School	...	5
23.	Bethesda Girls Middle School	...	8½
24.	Master Line (Teachers Quarters)	...	1½
25.	Play Ground on North	...	3
26.	Stadium (Now as paddy field)	...	6
27.	North West Anchal	...	3
28.	Already settled with tenants (North)	...	½
29.	Gossner High School with Play Ground	...	12
30.	Settled with tenants Main Road	...	1
31.	KSS & Girls Hostel	...	2
32.	S.E. Anchal	...	½
33.	Gossner Compound North(Residential)	...	1½
34.	Proposed Housing Scheme (North)	...	1½
35.	Roads	...	2.00
		Total Areas	121.00