IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das &Ors. etc. etc. ... Respondents

AND

OTHER CONNECTED CIVIL APPEALS

COMPILATION OF JUDGMENTS REGARDING SRI SABANAYAGAR TEMPLE, CHIDAMBARAM

BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE ON RECORD:EJAZ MAQBOOL

MANU/TN/0058/1939

Equivalent Citation: AIR1939Mad682, (1940)ILRMadras172, 1939-50-LW126, (1939)2MLJ11, 1939 MWN 643

IN THE HIGH COURT OF MADRAS

Decided On: 03.04.1939

Appellants: **Ponnuman Dikshitar and Ors.**
Vs.
Respondent: **The Board of Commissioners for the Hindu Religious Endowments and Ors.**

Hon'ble Judges/Coram:
Venkataramana Rao and Newsam, JJ.

Case Note:
Trusts and Societies - Jurisdiction - Appeal for raising questions in regard to non-applicability of Hindu Religious Endowments Act and want of jurisdiction in Board to frame scheme - Held, in present case, from scheme it was found that did see to proper performance of their duties by archakas, paricharakas and had immediate control over internal servants of devasthanam as well as over office establishment in accordance with usage - In regard to putting up of sheds, Managing Committee of Trustees might in their discretion select such sites as would be proper places for putting up temporary sheds for opening stalls during festival occasions - Scheme should come into operation from 01- 06-1939 - Appeal dismissed.

JUDGMENT

Venkataramana Rao, J.

1. Appeal No. 306 of 1936.- This is an appeal from the judgment of the learned District Judge of South Arcot modifying a scheme framed by the Madras Hindu Religious Endowments Board in regard to the temple of Sri Sabanayakar alias Nataraja of Chidambaram. This action was filed as a representative suit on behalf of the Dikshitars (who are said to be over 200 in number) who claim to be trustees - archakas and poojaris of the said temple. Before the learned District Judge various questions as to jurisdiction were raised. It is unnecessary for us to mention all of them. It is sufficient for us to say that one of the main questions raised in this behalf was in regard to the non-applicability of the Hindu Religious Endowments Act and the consequent want of jurisdiction in the Board to frame a scheme. The contention of the Dikshitars is that the suit temple is only a private temple and not a public religious institution within the meaning of the Act and therefore the Board had no jurisdiction to frame a scheme. Another contention in regard to jurisdiction was that even assuming that the Board had jurisdiction, the provisions of Sections 62 and 63 of the Act were not complied with, in that the Board could frame a scheme on its own initiative only if there was mismanagement and not merely because it would be proper to frame a scheme in the interests of efficient administration of the temple. The learned District Judge disallowed all the contentions on behalf of the plaintiffs and upheld the scheme of the Board but only modifying it in some particulars with a view to satisfy some of the objections raised on behalf of the plaintiffs. Mr. Rajah Aiyar on behalf of the plaintiffs-appellants confined his objections mainly to the scheme, though incidentally he made mention of the two main objections which we have outlined in regard to the jurisdiction of the Board to frame the scheme. So far as the question of jurisdiction based on the non-applicability of the Act is concerned,

the learned Counsel, we think, wisely refrained from pressing it because it cannot be seriously doubted that the suit temple is a public institution within the meaning of the Act and not a private temple as contended for. We agree that some of the grounds on which the learned District Judge purported to hold against the plaintiffs may not be valid, but having regard to the character of the temple it seems to us that it would be too much to contend that this is a private temple. So early as 1885 when the question was raised in a suit by the Dikshitars, Muthuswami Aiyar and Shephard, JJ., in their judgment dated 17th March, 1890, in A.S. Nos. 108 and 1 59 of 1888 observed that it was not denied that the institution was being used as a place of public worship from time immemorial and that there was no particle of evidence in support of the assertion that this ancient temple of Sri Nataraja was the private property of the Dikshitars. Even now it is not denied that this temple is held to be very sacred by all the Saivites in this Presidency and is resorted to as a place of public worship. The other contention of Mr. Rajah Aiyar with reference to the Board's jurisdiction to frame a scheme under Section 63 is that the Board could frame a scheme when it takes action suo motu only if it finds mismanagement. There is a finding in this case that there was mismanagement, but it seems to us that the Board can always take action if it has reason to believe that a temple is being mismanaged. In this case there was ample material on which it could take action on its own initiative. It accordingly instituted an enquiry and then proceeded to frame a scheme. Once the Board takes action suo motu, we think even though it may ultimately find that there was no mismanagement, nevertheless it can frame a scheme if it is necessary for the proper administration of the temple that a scheme should be framed. Section 62 imposes a restriction to taking action suo motu by confining it to a case where the Board has reason to believe there is mismanagement but once it initiates an enquiry, the power to frame a scheme is not restricted to a case of mismanagement. Under Section 63 it can frame a scheme on any one of the grounds mentioned therein, namely, mismanagement or improper alienation of endowed property or in the interests of proper administration of the endowment. When we put this aspect of the matter to Mr. K. Rajah Aiyar, he very properly refrained from pressing this contention. His main complaint was that while the scheme was sub judice and while the question of jurisdiction was being agitated by the plaintiffs and while the Board's proceedings in regard to the scheme were stayed, the Board took action under Section 65-A for the purpose of notifying the temple. It seems to us very undesirable that the Board should have taken any steps in regard to the notification of this temple. The procedure in regard to notification ought not to be lightly resorted to, unless and until there is such serious mismanagement of a temple as would justify an ouster of the trustees in charge of a temple from their office. The scheme was framed in 1933 and proceedings relating to its modification were pending in the District Court and the scheme had not been given any fair trial. It could not possibly be said that the scheme was not worked satisfactorily by the trustees and that therefore in the interests of proper administration of the temple it was necessary for the Board to take the drastic step of having the temple notified. We trust and hope that the Board would drop all proceedings in the matter and allow the scheme as modified by the District Court and as modified by us to be given a fair trial and would give the trustees a fair opportunity to carry on the administration in accordance with the scheme.

2. Now coming to the actual scheme, so far as we can see it is a perfectly innocuous scheme and the Board has interfered as little as possible with the internal administration of the trustees. But the learned District Judge has out of regard for the sentiment of the trustees modified the scheme in certain particulars which we believe ought to satisfy a most scrupulous trustee. Even this however does not seem to satisfy the plaintiffs because for ages they have been going on with their traditional methods of administration and any slight variance naturally evokes some sort of

hostility. We think that in the proper administration of the temple a scheme such as the one in question is absolutely necessary because the trustees are more than 200 in number and it would be impossible in the very nature of things to expect proper administration by such an unwieldy body. The main objections of Mr. Rajah Aiyar to the scheme as modified by the District Court relate to paragraph 4, paragraph 8(f) and paragraph 10 of the scheme. Paragraph 4 relates to the appointment of nine trustees annually, six by election and three by nomination. This is objected to by Mr. Rajah Aiyar on the ground that the principle of election would introduce a factious spirit and that when there are nearly 230 trustees every one of them would not according to the principle proposed have the chance of participating in the management of the affairs of the temple in accordance with the time-honoured custom which prevailed among them. It was to satisfy this sentiment that the learned District Judge modified the clause by introducing the principle of nomination in regard to three of the trustees, leaving six to be elected by the Dikshitars among themselves. Even this would not satisfy the Dikshitars because every one of the trustees may not have a chance of participating in the management and therefore some method must be devised by which their wishes should be respected in regard thereto. We think that a provision by which all persons who have been appointed by election should be declared ineligible for office for a period of five years from the termination of their office would meet the justice of the case. We accordingly modify paragraph 4 of the scheme by adding that six trustees who will be appointed by election should not stand for re-election for a period of five years from the termination of their office. Paragraph 8(f) relates to the duties of the manager in regard to the proper performance by the archakas, paricharakas and other internal servants of the devasthanam and the office establishment, of their work. What Mr. Rajah Aiyar objects to is the word "control" which may connote that a servant like the manager can control the trustees some of whom happen to be archakas and paricharakas. We modify paragraph 8(f) by deleting the words "immediate control" and by saying

> Do see to the proper performance of their duties by archakas, paricharakas and have immediate control over the internal servants of the devasthanam as well as over the office establishment in accordance with the usage.

3. In paragraph 10 the following sentence will be added:

> In regard to the putting up of sheds, the Managing Committee of Trustees may in their discretion select such sites as would be proper places for putting up temporary sheds for opening stalls during festival occasions.

4. The scheme shall come into operation from the 1st June, 1939.

5. The appeal is dismissed with costs of the first respondent (to come out of the temple funds) which we fix at Rs. 250.

6. The Letters Patent Appeals are not pressed. Dismissed. No costs.

impugned order before the High Court was implemented to avoid possible contempt proceedings that did not take away the right of the appellants to prefer an appeal and question correctness of the impugned order.

3. Learned counsel for the respondent on the other hand supported the judgment.

4. It has been noted by this Court that if even in cases where interim relief is not granted in favour of the applicant and the order is implemented that does not furnish a ground for not entertaining the appeal to be heard on merits. (See : *Nagar Mahapalika v. State of U.P.* [2006(5) SCC 127]. Similar view was also take in *Nagesh Datta Shetti v. State of Karnataka* [2005(10) SCC 383].

5. In *Union of India v. G.R. Prabhavalkar & Ors.* [1973(4) SCC 183] it was observed at para 23 as follows:

> "Mr Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous."

6. Above position was also noted in *Union of India v. Narender Singh* [2005(6) SCC 106 =2006-1-L.W.553].

7. Above being the position the impugned order of the High Court cannot be maintained and is set aside. The writ appeal shall be heard by the High Court on merits about which we express no opinion. The appeal is allowed to the aforesaid extent. No costs.

ATMS/VCJ/VCS

2009-1-L.W. 826

IN THE HIGH COURT OF JUDICATURE AT MADRAS

2.2.2009/ W.P.No. 18248 of 2006 and M.P.Nos.2/2006 and 1/2008

R.Banumathi, J.

W.P.No. 18248 of 2006:

Sri Sabanayagar Temple, Chidambaram rep. by its Secretary of Podhu Dikshidar, Chidambaram. ... Petitioner

Vs.

1. The State of Tamil Nadu rep. by Secretary, Department of Tamil Development, Religious Endowments & Information Department, Fort St. George, Chennai-9.
2. The Commissioner, Hindu Religious Endowments, Nungambakkam High Road, Chennai-34.
3. M.P.Sathiyavel Murugan, Founder/Director, Tamil Vazhipattu Payirchi Maiyam, Adambakkam, Chennai-88.
4. U.Arumugasamy. ... Respondents

[3rd Respondent and 4th Respondent are ordered to be impleaded as Respondents in the Writ Petition as per the Orders in M.P.No.2/2006 and M.P.No.1/2008 dt. 02.02.2009.

M.P.No.2/2006 :

M.P.Sathiyavel Murugan, Founder/Director, Tamil Vazhipattu Payirchi Maiyam,

Adambakkam, Chennai-88.
... Petitioner/ Proposed Respondent.

Vs.

1. Sri Sabanayagar Temple, Chidambaram, rep. by its Secretary to Podhu Dikshidars, Chidambaram.
2. The State of Tamil Nadu rep. by Secretary, Department of Tamil Development, Religious Endowments & Information Department, Fort St. George, Chennai-9.
3. The Commissioner, Hindu Religious Endowments, Nungambakkam High Road, Chennai-34. *... Respondents*

M.P.No.1/2008 :
U.Arumugasamy.
... Petitioner/Proposed Respondent.

Vs.

1. Sri Sabanayagar Temple, Chidambaram, rep. by its Secretary to Podhu Dikshidars, Chidambaram.
2. The State of Tamil Nadu rep. by Secretary, Department of Tamil Development, Religious Endowments & Information Department, Fort St. George, Chennai-9.
3. The Commissioner, Hindu Religious Endowments, Nungambakkam High Road, Chennai-34. *... Respondents*

W.P.No.18248/2006 : Writ Petition filed under Art. 226 of the Constitution of India to issue Writ of Certiorari calling for the records of the 1st Respondent made in G.O.Ms. (D) No.168 dated 09.5.2006 and quash the same.

M.P.No.2/2006 and M.P.No.1/2008 : Petitions are filed to implead the Petitioners as Respondent in W.P.No.18248/2006.

***Tamil Nadu Hindu Religious and Charitable Endowments Act** (1959), Section 45(1), Executive officer, appointment of, Scope, 6(18), 6(20)/Religious institution, 107,114/Revision, **Constitution of India,** Articles 25, 26/Religious denomination, 226.*

Writ petition was filed by Sri Sabanayagar Temple, Chidambaram rep. by its Secretary of Podhu Dikshidar, Chidambaram challenging order of the Government passed in revision confirming the order of the Commissioner, HR & CE dated 31.7.1987 appointing Executive Officer for Sri Sabanayagar Temple, Chidambaram under Sec.45 (1) of HR & CE Act— Respondents contended that the appointment of Executive Officer was only to streamline the administration of the temple and not to displace the Podhu Dikshidars from the temple — Stand of the Government is that Petitioner has failed to perform the lawful duties enjoined on them u/s.28 of the Act — It is averred that Podhu Dikshidars have not maintained the accounts and that the offerings to the temple by worshipers have not been accounted for by them and that for effective supervision, better management and administration, appointment of Executive Officer is very much essential. **Para 4**

Held: Executive Officer was appointed only to streamline the administration of the temple and not to dislocate Podhu Dikshidars from the temple — For invoking Art. 26 of the Constitution, Podhu Dikshidars have to prove that they established the temple; and they maintained the temple — There is no piece of evidence produced by Podhu Dikshi-

dars to show that they have established the temple. **Paras 88, 39**

Podhu Dikshidars can claim protection under Article 25 of Constitution — It may be that form of worship may be protected under Article 25 and 26 (a) of Constitution — But right to manage the temple or offerings or Kattalais [endowment] are not integral to religion or religious practice and as such are amenable to statutory control — Podhu Dikshidars are not entitled to the protection in particular clauses (b) and (d) of Article 26 of Constitution as 'religious denomination' in the matter of management, administration and governance of the temple under the Act — Appointment of Executive Officer is not ultra vires Article 25 and 26 of Constitution of India. **Para 57**

Section 45 of the Act could not be taken to confer an unguided or arbitrary power on the Commissioner — Power under the Section has got to be exercised in terms of the policy of the Act, i.e., to provide for administration and governance of the religious and charitable institutions and endowments under the State. **Para 61**

In a case where institution is under maladministration and mismanagement, Commissioner can exercise the power under Sec. 45 (1) of the Act. **Para 73**

On the face of it, there is failure to perform the lawful duties as enjoined on them under Sec.28 of HR & CE Act — Commissioner was justified in exercising power under Sec.45 (1) of the Act to appoint Executive Officer for better management and administration of the temple —The order has not infringed the rights of Podhu Dikshidars nor is violative of provision of HR & CE Act warranting interference. **Paras 80,81, 94**

***Constitution of India**, Articles 25, 26, 226/Religious denomination — Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), Section 45(1), Executive officer, appointment of, Scope, 6(18) read with 6(20)/Religious institution, 107,114/Revision.*

Writ Petitioner Secretary of Podhu Dikshidar challenges the final order passed by the Government dismissing the Revision Petition filed by the Petitioner under Sec.114 of HR & CE Act. The impugned order of the Government confirms the order of the Commissioner, HR & CE dated 31.7.1987 appointing Executive Officer for Sri Sabanayagar Temple, Chidambaram under Sec.45 (1) of HR & CE Act. Para 1

Important question arises whether Sabanayagar temple is a 'religious denominational temple' within the meaning of Article 26 of Constitution of India. Para 14

The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of the management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust property by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination itself which has been given to the right to administer its property in accordance with law. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is

guaranteed by Article 26 (d) of the Constitution. Para 30

For the purpose of invoking Art. 26 of the Constitution, Podhu Dikshidars have to prove two facts:-

1) That they established the temple.

, They maintained the temple. Para 39

Hence, as held by the Supreme Court that the burden of proof lies on the Podhu Dikshidars to prove that the temple was established and maintained by the said Podhu Dikshidars. There is no piece of evidence produced by Podhu Dikshidars to show that they have established the temple. Para 40

The informations contained in the book and the various informations said to be available in the temple would clearly indicate that the temple was administered by the persons appointed by Kings and Dikshidars were only looking after the pooja services relating to the temple. Para 47

Assuming that the observations of the Division Bench remains unchallenged, such observation might hold good only for Podhu Dikshidars. Since there is nothing to show that Podhu Dikshidars have established the temple, Sri Sabanayagar temple is (sic) shown to be a 'denominational temple'. Para 48

The point falling for consideration is whether appointment of Executive Officer infringes the Constitutional right of the Podhu Dikshidars. Para 50

In the light of the well-settled principles if we examine the instant case, Podhu Dikshidars can claim protection under Article 25 of Constitution. It may be that form of worship may be protected under Article 25 and 26 (a) of Constitution. But right to manage the temple or offerings or Kattalais [endowment] are not integral to religion or religious practice and as such are amenable to statutory control. As has been consistently held by the Supreme Court that the secular activities are subject to statutory control. When examined in the light of the well-settled principles, Podhu Dikshidars are not entitled to the protection in particular clauses (b) and (d) of Article 26 of Constitution as 'religious denomination' in the matter of management, administration and governance of the temple under the Act. As such appointment of Executive Officer is not ultra vires the Article 25 and 26 of Constitution of India. The contention that appointment of Executive Officer is violative of Article 25 (b) and (d) of the Constitution is untenable and devoid of substance. Para 57

Section 45 of the Act could not be taken to confer an unguided or arbitrary power on the Commissioner. The power under the Section has got to be exercised in terms of the policy of the Act, i.e., to provide for administration and governance of the religious and charitable institutions and endowments under the State. Power under Sec.45 of the Act can be and has to be exercised by the Commissioner appropriately in such a case. The power vested in the Commissioner being a drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from the management and administration of the institution. Therefore it is, that natural justice and fair play require that the Commissioner should properly exercise the power under Sec.45 (1) of the Act, after being satisfied that the institution is not properly managed and the administration requires to be toned up or improved. Para 61

Ordinarily in the case of a hereditary trustee in charge of an institution he is clothed with plenary powers in the matter of management as well as the administration of the temple in that he would be entitled to the possession of all the properties of the temple and to secure the income in cash and kind and in the shape of offerings, to make disbursements and to draw up a budget and to exercise control over all the office holders and servants and be in charge of the temple and responsible for the maintenance of the records, accounts and registers. By the appointment of Executive Officer under Sec.45 (1) of the Act coupled with conferment of powers, the position of the trustee would be relegated to the position of non-entity. Para 72

It is not as if the Commissioner cannot exercise power under Sec.45 (1) of the Act. In a case where institution is under maladministration and

mismanagement, Commissioner can exercise the power under Sec. 45 (1) of the Act. In cases of improper management by a temple / religious institution, it would be necessary for the Commissioner to appoint Executive Officer. The exercise of that power depended not on the whims and fancies of the Commissioner, but upon the decisions arrived at on the facts of each case on application of mind by the Commissioner to the question whether Executive Officer is necessary in the interest of the institution. Para 73

Only if the Commissioner had exercised the power under Sec. 45 of the Act on extraneous ground or on irrelevant consideration, only then that exercise can be challenged as outside the purview of Sec.45 (1) of the Act. Para 74

On the face of it, there are failure to perform the lawful duties as enjoined on them under Sec.28 of HR & CE Act. The instances are:- (i) Petitioners have not maintained the accounts; (ii) Petitioners have not realised the income due to the temple; (iii) Offering to the God by the worshippers have not been accounted for by them as trustees; and (iv) Missing / loss of gold jewels. Para 80

After hearing the parties and upon examination of the allegation of mismanagement, Commissioner was satisfied to appoint Executive Officer to streamline the administration of the temple. In the order dated 31.7.1987, though Commissioner may not have referred to each and every one of the alleged acts of mis-mangement and maladministration, having regard to the nature of allegations, Commissioner was justified in exercising power under Sec.45 (1) of the Act to appoint Executive Officer for better management and administration of the temple. Para 81

While the performance of poojas and rituals are protected under Article 26 (a) of Constitution, the matter of administration of the properties are to be in accordance with law and exercising the power under Sec.45 (1) of HR & CE Act, such secular activities could be regulated. Para 85

Held: Executive Officer was appointed only to streamline the administration of the temple and not to dislocate Podhu Dikshidars from the temple. Pursuant to the order passed in Rc.No.52754/82/L1 dated 31.7.1987, R.Jayachandran, Grade-I Executive Officer was appointed as Executive Officer of Arulmighu Sabanayagar temple. Proceedings in Rc.No.52754/82/L1 dated 05.8.1987 contains Appendix defining the powers and duties to be exercised and performed respectively by the Executive Officer and Secretary of Podhu Dikshidars. By reading of Appendix, it is seen that the Executive Officer was put in custody of all immovable, livestocks, grains and other valuables. Executive Officer shall be responsible for the collection of all income and moneys due to the institution. Executive Officer has to function in coordination with the Secretary of Podhu Dikshidars. In fact, as seen from the Rule 15 Secretary of Podhu Dikshidars shall have power to operate on Bank Accounts, but cheque book and pass book shall remain in the custody of the Executive Officer. Para 88

Apart from the allowable expenditure, the other expenditure by the Executive Officer would be with the approval of Secretary of Podhu Dikshidars. Para 89

As seen from Rule 6(a), all the Office holders and servants shall work under the immediate control and superintendence of Executive Officer subject to the disciplinary control of the Secretary of Podhu Dikshidars under Sec.56 of HR & CE Act. It is not as if by the appointment of Executive Officer, Podhu Dikshidars are displaced from the temple in performance of rituals or administration. Only for better management and administration, it has been stipulated in the Rules that both Executive Officer and Podhu Dikshidars are to function in co-operation with each other. Thus, it is clear that there is clear demarcation of the powers to be exercised by the Executive Officer and Podhu Dikshidars. Para 90

Exercising judicial review under Article 226 of Constitution, this Court does not sit as a Court of appeal to re-analyse the facts and evidence. Suffice it to note that there are serious allegations of mismanagement regarding the jewels. The annual jewel verification pointed out by the learned Senior Counsel are just only verification. The annual verification report would only state "மற்ற

விவரங்களுக்குஅறிக்கையில்காண்க". Therefore, it cannot be said that in the annual jewel verification, Podhu Dikshidars have given clean chit. Para 92

The very statement of accounts for the year 2007 would prima facie indicate that the income of the temple was not properly accounted for and proper accounts are not maintained. Para 93

The order has not infringed the rights of Podhu Dikshidars nor violative of provision of HR & CE Act warranting interference. Para 94

In the result, both the Petitions are allowed and the Petitioners in M.P.No.2/2006 & M.P.No.1/2008 are ordered to be impleaded in the Writ Petition as Respondents 3 and 4 respectively. Para 102

(1949) 50 L.W. 126 = 1939 II MLJ 11 [*Ponnuman Dikshitar and another v. The Board of Commissioners for the Hindu Religious Endowments, Madras and others*];

AIR 1999 SC 3567 [*Sri Kanyaka Parameswari Anna Satram Committee and others v. Commr. HR & CE Dept. and others*]; AIR 1996 SC 1334 [*Pavani Sridhara Rao v. Govt. of A.P. and others*];

1952 (I) MLJ 557 [*Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. The Commissioner, Hindu Religious Endowments Board, Madras*];

AIR 1965 SC 1153 [*Gulabchand Chhotalal Parikh v. State of Gujarat*];

(1954) 67 L.W. 1270 = AIR 1954 SC 282 *Commissioner Religious Endowments v. Lakshmindra Swaminar & (1983) 1 SCC 51 S.P.Mittal v. Union of India*];

In AIR 1984 SC 51 *Acharya Jagadishwaranand Avadhuta v. Police Commissioner, Calcutta*;

AIR 1995 SC 2089 [*Bramchari Sidheswar Shai v. State of West Bengal*];

(1962) 1 SCR 383 : AIR 1961 SC 1402 [*Durgah Committee v. Syed Hussain Ali*];

(1997) 4 SCC 606 [*Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others*];

100 Law Weekly 240 [*The Asst. Commr. HR & CE, Salem and others etc., v. Nattamai K.S.Ellappa Mudaliar and others*];

Acharya Jagdishwaranand Avadhuts etc., v. Commr. of Police, Calcutta and another, AIR 1984 SC 51;

Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383 : AIR 1961 SC 1402;

S.P.Mittal v. Union of India, (1983) 1 SCR 729 at p. 774 = AIR 1983 SC 1;

"Thillai Perunkovil Varalaru" by Vidwan K.Vellaivaranan;

[*Davis v. Benson*, 133 U.S. 333];

(1996) 2 SCC 498 [*Pennalal Bansilal Pitti and others v. State of A.P. and another*];

Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055 : AIR 1954 SC 388];

(1997) 8 SCC 422 [*Shri Jagannath Temple Puri Management Committee, rep. through its Administrator and another v. Chintamani Khuntia and others*];

(1996) 8 SCC 705 [*Sri Sri Sri Lakshamana Yatendrulu and others v. State of A.P. and another*];

(1976) 89 L.W. 195 = AIR 1976 Mad. 264 [*M.E.Subramani and others v. The Commissioner, HR & CE (Admn.), Madras and others*];

1995-2-LW-213 [*K.Ekambaram, M.Kailasam v. The Commissioner, HR & CE (Admn.), Madras-24 and others*];

2007-1-LW 72 [*N.Sivasubramanian v. The Government of Tamil Nadu, rep. by its Secretary, HR & CE Dept. Chennai-9 and others*];

AIR 2001 SC 661 [*Hindustan Lever Limited v. Director General (Investigation and Registration), New Delhi and another*];

(2003) 11 SCC 693 [*Collector of Central Excise, Bangalore v. Gammon Far Chems Ltd.*];

(2005) 12 SCC 256 [*Raj Kumar Mehrotra v. State of Bihar and others*];

(10)

1997 (2) SCC 745 [*Bhuri Nath and others v. State of J & K and others*];

1996 (2) SCC 498 [*Pannalal Bansilal Pitti and others v. State of A.P. and another*]; and

2008 (8) MLJ 365 [*Bibijan and 49 others v. Anwarsha Idgah & Mosque Avuila Durga, Panruti and 70 others*]; — **Referred to.**

W.P. dismissed.

For Petitioner in W.P.No.18248/2006 and 1st Respondent in M.P.2/2006 & 1/2008 Mr. B.Kumar Senior Counsel for Mr.K.Chandrasekaran

For Petitioner in M.P.No.2/2006 and M.P.1/2008 : Mr.R.Gandhi Senior Counsel for Ms.Hemalatha and Mr.R.Sagadevan

For Respondents in W.P.No.18248/2006 and 2nd and 3rd Respondents in M.P.2/06 & 1/08. Mr. R.Ramasamy Addl. Advocate General for Mr.R.T.Chandrasekaran, Spl.GP [HR & CE]

COMMON ORDER

Writ Petitioner Secretary of Podhu Dikshidar challenges the final order passed by the Government dismissing the Revision Petition filed by the Petitioner under Sec.114 of HR & CE Act. The impugned order of the Government confirms the order of the Commissioner, HR & CE dated 31.7.1987 appointing Executive Officer for Sri Sabanayagar Temple, Chidambaram under Sec.45 (1) of HR & CE Act.

2. Administration of Sri Sabanayagar Temple, Chidambaram has been the subject matter of litigation for about a century. Dispute relating to administration of temple has had chequered career. For the understanding of contentious points raised, it is necessary to briefly refer to the earlier litigations and the background.

3. Scheme of Administration & O.S.No.16/1933) (1939) II MLJ 11

(i) Arulmigu Sabanayagar Temple (Natarajar) at Chidambaram, Cuddalore District is a Public Hindu Religious Institution, within the meaning of Sec.6 (18) read with Sec.6 (20) of HR & CE Act and all the provisions of the said Act are applicable to the above said temple. The erstwhile Hindu Religious Endowment Board settled a "Scheme of Administration" in Board's Order No.997 dated 08.5.1933 under Tamil Nadu Act II of 1927.

(ii) Some of the Podhu Dikshidars have filed suit in O.S.No.16/1933 on the file of District Court, South Arcot to set aside the Board's Order on the ground that temple is an absolute private property of Podhu Dikshidars and out side the scope of the Madras Hindu Religious Endowment Act, 1927.

(iii) District Court, Cuddalore rejected the Dikshidar's claim of the temple being private and passed a decree modifying the scheme settled by HR & CE Board in O.A.No.73/1932. On appeal filed by Dikshidars in A.S.No.306/1936, High Court confirmed the scheme with some modifications which has been reported in (1939) II MLJ 11.

(iv) G.O.Ms.No.894, Rural Welfare Dept. dated 28.8.1951) G.O.Ms.No.1278, Revenue Dept. dated 21.5.1954

Though the temple had been declared as a public temple, provisions of the Act could not be enforced. Hence, in order to enforce the provisions of the Act, temple was notified under Chapter VI (A) u/s.65 of the Act in G.O.Ms.No.894, Rural Welfare Dept. dated 28.8.1951. The said Government Order was challenged in W.P.Nos.379 and 380/1951 by Dikshidars and the notification was quashed by the Judgment dated 13.12.1951. Challenging the Order in W.P. Nos. 379 and 380/1951, Government have filed C.A.No.39/1953 before the Supreme Court. Meanwhile, by G.O.Ms.No.1278, Revenue Dept. dated 21.5.1954, State Government cancelled the above notification and the Civil Appeal was therefore withdrawn.

(v) W.P.No.5638/1982:-

Stating that Podhu Dikshidars have failed to carryout the lawful orders issued by the Department and the Management of the temple was unsatisfactory, notice in Rc.No.52754/1982/B6 dated 20.7.1982 was issued to the Secretary of Podhu Dikshidars pointing out several irregularities in the administration of the temple and its properties and the proposal to appoint an Executive Officer. That order was challenged by the Secretary of Podhu Dikshidars in W.P.No.5638/1982 before the High Court, Madras. By the Judgment dated 09.8.1983, High Court directed that the aforesaid notice would be treated only as show cause notice and not as a decision and that it was open to the Dikshidars to putforth their objections that were available to them including the vires of Sec.45 of HR & CE Act.

(vi) Pursuant to the direction of the Court, Secretary of Podhu Dikshidars have filed reply on 09.01.1984. Thereafter, enquiry was conducted by the Commissioner. Main contention of Dikshidars was that appointment of Executive Officer would be interfering with their rights guaranteed under Art. 26 of Constitution of India. Commissioner has passed an order on 31.7.1987 observing that appointment of Executive Officer is only to look after the administration of the temple and the management of the properties. Commissioner observed that appointment of Executive Officer will not mean interference with the rights of Dikshidars relating to religious practices in the temple.

(vii) W.P.Nos.7843/1987 & W.A.No.145/1997:-

As against the order of appointment of Executive Officer, again Podhu Dikshidars have filed W.P.No.7843/1987 before the High Court. Executive Officer has assumed charge of the temple on 10.8.1987. High Court has not stayed the appointment of Executive Officer, but stayed only Rule 3 i.e. powers and duties of the Executive Officer. W.P.No.7843/1987 was dismissed on 11.2.1997 which was challenged by Podhu Dikshidars in W.A.No.145/1997. In the Writ Appeal, Court has directed Podhu Dikshidars to file a Revision u/s.114 of HR & CE Act before the Respondents. Further, the Court has ordered stay of Clause-III to continue till the disposal of the Revision.

(viii) Consequently, Podhu Dikshidars have filed Revision Petition before the Government under Sec.114 of the Act. Revision was rejected by the Government in G.O.Ms.No.168 TDC & RE Dept. dated 09.5.2006 which is now challenged in this Writ Petition.

4. Opposing the Writ Petition, Respondents have filed counter stating that the appointment of Executive Officer was only to streamline the administration of the temple and not to displace the Podhu Dikshidars from the temple. Stand of the Government is that Petitioner has failed to perform the lawful duties enjoined on them u/s.28 of the Act. It is averred that Podhu Dikshidars have not maintained the accounts and that the offerings to the temple by worshipers have not been accounted for by them and that for effective supervision, better management and administration, appointment of Executive Officer is very much essential.

5. Onbehalf of the Writ Petitioner, Mr.B.Kumar, learned Senior Counsel has made an elaborate submissions inter alia contending that the direction of the Court in W.P.No.5638/1982 to issue fresh show cause notice was not kept in view. Learned Senior Counsel inter alia made the following submissions:-

Once the Court directed the Government to consider the matter on merits, the Authority should have elaborately enquired into merits of

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the matter. Neither the Commissioner nor the Government had gone into question of mismanagement.

Before appointment of Executive Officer, Sec.45 does require issuance of show cause notice. Unless there is enquiry and finding, the administration of the temple by Podhu Dikshidars cannot be interfered with.

As per the decision in 1952 I MLJ 557, the temple is a denominational temple and the Writ Petitioner derived its right from its constitution and Petitioner is entitled to the protection under Art.26 of Constitution of India.

In view of Sec.107 of HR & CE Act, provisions of the Act are not to affect the rights of the religious denomination.

Appointment of Executive Officer is an interference with the religious affairs and the same is violative of Art.226 of Constitution of India.

6. Contending that right to administer the property does not mean maladministration of the property, Mr. R.Ramasamy, learned Addl. Advocate General inter alia made the following submissions:-

Sri Sabanayagar temple is a public temple.

Podhu Dikshidars do not have separate faith or religious tenets other than that of Hindu faith and therefore, Podhu Dikshidars are not 'religious denomination'

Expression used by the Commissioner 'for better and efficient management' cannot be construed that the Commissioner has shifted the basis.

There had been number of omissions and commissions to mismanagement and mismanagement continues. Executive Officer was appointed to set right the mismanagement, better and efficient management of the temple.

In 1952 (1) MLJ 557 nowhere it was held that Chidambaram temple is a 'denominational temple.

After appointment of Executive Officer, his powers and duties are demarcated and Podhu Dikshidars are not completely obliterated from the administration of the temple.

7. Impleading Petitioner Arumugasamy is 79 years old Sanyasi and claim to be a devotee of Lord Shiva, a Sivanadiar living at Kumudimoolai village, Bhuvanagiri Taluk, Chidambaram. I have also heard at length Mr. R.Gandhi, the learned Senior Counsel for the Impleading Petitioner.

(i) Grievance of the said impleading Petitioner is that he was not permitted to sing Devaram at Chidambaram Natarajar temple and that impleading Petitioner was beaten and chased away by Dikshidars. In this regard, on 04.07.2000, criminal case was registered by the Chidambaram Town Police in Cr.No.318/2000. In Crl.M.P.No.851/2001, the Addl. District Judge/Chief Judicial Magistrate, Cuddalore passed an order on 05.10.2001 dismissing the complaint. Challenging that order, Petitioner filed Crl. R.C.No.528/2002 which was dismissed by the High Court. Challenging that order, Petitioner has filed SLP No.909/2004 and the same is said to have been admitted by the Supreme Court.

(ii) Grievance of the said Impleading Petitioner is that he was not permitted to recite Devaram and Thiruvasagam at Thiruchitrambala Medai of Chidambaram temple. Earlier, Petitioner has filed W.P.No.2261/2004 wherein the Court has permitted the Petitioner to go inside the temple and recite Devaram and Thiruvasagam. Jt. Commissioner of HR & CE, Mayavaram rejected the Petitioner's request (12.12.2004). Petitioner filed Revision before the Commissioner, HR & CE in R.P.No.67/2007 wherein the Commissioner set aside the order of Jt. Commissioner and permitted the impleading Petitioner Arumugasamy to recite Devaram and Thiruvasagam at Thiruchitrambala Medai in the Natarajar temple. The order of the Commissioner was challenged by Podhu Dikshidars

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by filing W.P.No.18424/2007 wherein the impleading Petitioner is arrayed as 3rd Respondent. Writ Petition filed by Podhu Dikshidars [W.P.No.18424/2007] was dismissed on 22.5.2007. Against which Writ Appeal [W.A.No.776/2007] was preferred which was also dismissed on 06.12.2007.

(iii) From the submissions of the learned Senior Counsel appearing for the impleading Petitioner, it comes to be known that impleading Petitioner Arumugasamy is a Sivanadiar and is a interested person in the proper administration of the temple. Stating that impleading Petitioner is unable to recite Devaram and Thiruvasagam in the temple in a fear and that he apprehends danger from Dikshidars, Petitioner had filed impleading Petition in M.P.No.1/2008 seeking to implead himself in the present Writ Petition.

(iv) According to the impleading Petitioner, he came to know about the Writ Petition filed by Podhu Dikshidars after the Executive Officer had taken charge and management of the temple. Petitioner averred that since Stay was granted, Executive Officer is unable to perform any acts and Petitioner had filed the impleading Petition.

(v) Drawing Court's attention to various dates and events, learned Senior Counsel for the impleading Petitioner submitted that the impleading Petitioner was assaulted by Dikshidars inside the temple on various occasions and that Petitioner is a necessary party to be impleaded so as to protect the ancient temple. Learned Senior Counsel also drawn Court's attention to number of criminal cases filed against Dikshidars either at the instance of the Petitioner or at the instance of other devotees.

(vi) Mr. R.Gandhi, learned Senior Counsel for the impleading Petitioner placed reliance upon G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein Government has passed an order permitting any devotee can become a Archaga, irrespective of caste and colour. On the basis of the said G.O., impleading Petitioner made an attempt to recite Devaram and Thiruvasagam at Thiruchitrambala Medai and that Podhu Dikshidars had filed suit in O.S.No.176/2006 against the impleading Petitioner.

(vii) Learned Senior Counsel for the impleading Petitioner would submit that to implement the said G.O. and to sing Devaram and Thiruvasagam and also for peaceful worship, appointment of Executive Officer was justified. Learned Senior Counsel would further submit that impleading Petitioner is necessary party as he is interested in fighting the worshipping right.

(viii) In M.P.No.2/2006, Impleading Petitioner Sathiyavel Murugan is the Founder/Director of Tamil Vazhipattu Payirchi Maiyam functioning at No.12/F1, 11th street, New Colony, Adambakkam, Chennai-88.

(ix) According to the Impleading Petitioner Sathiyavel Murugan he is interested in promoting Tamil Mantrams as per Agamas in various places including Foreign countries with religious affairs and Impleading Petitioner is interested in the subject matter and as such he has to be impleaded as Respondent in the Writ Petition.

(x) Onbehalf of Podhu Dikshidars, Mr. B.Kumar, learned Senior Counsel submitted that if at all the impleading Petitioner Arumugasamy had any grievance, he has to approach the HR & CE Board and as such Petitioner cannot be impleaded as Respondent in the Writ Petition. Learned Senior Counsel would further submit that the impleading Petitioner has been instigated to cause disturbance to the worship in the temple and that he is not a necessary party to the Writ Petition.

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8. Having regard to the submissions, the following points arose for consideration:-

1) Whether Chidambaram Sabanayagar temple is a denominational temple?

2) Whether Podhu Dikshidars are right in contending that the temple is the denominational temple and that there can be no interference with the administration of its property?

3) Whether Petitioner is right in contending that the alleged mismanagement was in as early as in 1980 and there has been no fresh material to show that the mismanagement continues?

4) When the original show cause notice was based on one set of alleged mismanagement, can Commissioner/Government change the basis of mismanagement?

5) Whether the impugned order is vitiated due to alleged paradigm shift in the enquiry as contended by the Petitioner.

6) Whether the appointment of Executive Officer is an interference with the religious affairs and whether the same is violative of Art.26 of Constitution of India.

9. About the temple :-

Sri Sabanayagar Temple, Chidambaram is a public temple of Hindu Religious Institution within the meaning of Sec.6 (18) read with Sec.6 (20) of Tamil Nadu HR & CE Act, Chidambaram Temple is a famous Hindu temple dedicated to Lord Shiva located in the heart of the temple town of Chidambaram. Chidambaram Temple dedicated to Lord Shiva (Siva) in His form of the Cosmic Dancer, Nataraja (நடராசர்) is a temple complex spread over 40 acres in the heart of the city. Lord Natarajar is the symbolic representation of the supreme bliss or aananda natanam. Saivaites believe that a visit to Chidambaram leads to liberation.

10. Dikshidar, the priests of the temple are also called "Thillaivaazh Andhanar" [தில்லைவாழ் அந்தணர்]. 'Dikshidar', meaning the priests who reside in Thillai and perform poojas/religious rites. Dikshidars are considered the foremost amongst the devotees of Lord Shiva.

11. Settlement / Scheme of Administration:-

The erstwhile Hindu Religious Endowment Board settled a "Scheme of Administration" in Board's Order No.997 dated 08.5.1933 under the Tamil Nadu Act II of 1927. The salient features of the above Scheme as per Board's Order are:-

(i) All the properties, movable and immovable, which have been dedicated and which will be dedicated to the deity, shall vest with the deity (Clause 3).

(ii) The active management should vest in the Committee, consists of 9 members who were to be elected from among the Podhu Dikshidars (Clause 4).

(iii) To manage the affairs of the temple and to assist the Committee, the Board shall appoint a Manager, on payment of salary (Clause 5).

(iv) The Managing Committee should establish hundials for the deposit of voluntary and compulsory offerings and also to fix a rate for the performance of Archana etc. (Clause 8 (a) and (b).

(v) The Manager shall maintain the accounts of the temple and registers as per the directions of the superiors (Clause 8 (a) and (b).

(vi) He [Manager] shall look after the Court matters.

(vii) The Manager shall exercise control over the servants, paricharakams, archakas, and office holders of the temple (Clause 8 (f).

(viii) The Managing Committee shall be responsible to put up sheds to let out (for rent) during festival occasions (Clause 10)".

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12. In O.S.No.16/1933:-

Claiming that the temple is an absolute private property of Podhu Dikshdars and outside the scope of HR & CE Act. Podhu Dikshidars have filed suit in O.S.No.16/1933. District Court, Cuddalore rejected Podhu Dikshidars claim that the temple being private property and passed the decree modifying the scheme settled by HR & CE Board in O.A.No.73/1932. On appeal filed by the Podhu Dikshidars in High Court in A.S.No.306/1936, High Court confirmed the scheme with some modifications. The judgment of the High Court has been reported in 1939 II MLJ 11 = (1949) 50 L.W. 126 [*Ponnuman Dikshitar and another v. The Board of Commissioners for the Hindu Religious Endowments, Madras and others*].

13. In the said decision, High Court has recorded a finding that it cannot be doubted that the suit temple is a public institution within the meaning of the Act and not a private temple as contended by Podhu Dikshidars. The observations of the High Court in the said decision read as follows:-

> " ..... So far as the question of jurisdiction based on the non-applicability of the Act is concerned, the learned counsel, we think, wisely refrained from pressing it because it cannot be seriously doubted that the suit temple is a public institution within the meaning of the Act and not a private temple as contended for. We agree that some of the grounds on which the learned District Judge purported to hold against the plaintiffs may not be valid, but having regard to the character of the temple it seems to us that it would be too much to contend that this is a private temple. So early as 1885 when the question was raised in a suit by the Dikshitars, Muthuswami Aiyar and Shephard, JJ., in their judgment dated 17th March, 1890, in A.S.Nos.108 and 159 of 1888 observed that it was not denied that the institution was being used as a place of public worship from time immemorial and that there was no particle of evidence in support of the assertion that this ancient temple of Sri Nataraja was the private property of the Dikshitars. Even now it is not denied that this temple is held to be very sacred by all the Saivites in this Presidency and is resorted to as a place of public worship. ....."[underlining added]

14. Whether the temple is denominational temple:-

Before we go into merits of the matter, it is necessary to consider the contention of Podhu Dikshidars that Petitioners are religious denomination within the the meaning of Article 26 of Constitution of India and therefore, the temple is protected under Article 26 of Constitution of India. In the light of the contentions, important question arises whether Sabanayagar temple is a 'religious denominational temple' within the meaning of Article 26 of Constitution of India.

15. Onbehalf of the Petitioners, learned Senior Counsel Mr. B.Kumar, has contended that Petitioners Podhu Dikshidars are a 'denomination' entitled to the protection under Article 26 of Constitution of India. Placing reliance upon AIR 1999 SC 3567 [*Sri Kanyaka Parameswari Anna Satram Committee and others v. Commr. HR & CE Dept. and others*] and AIR 1996 SC 1334 [*Pavani Sridhara Rao v. Govt. of A.P. and others*] and other decisions, learned Senior Counsel has submitted that in view of the decisions of the Supreme Court Petitioners are to be construed as 'religious denomination' enjoining a special status under Article 26 of Constitution of India and therefore, the order appointing Executive Officer is not sustainable.

16. Learned Senior Counsel for the Petitioner further submitted that right of administration to denomination itself subject to such restrictions and regulations as may be provided by law. It was further argued that appointment of Executive Officer would take away the right of administration from the

hands of Podhu Dikshidars all together and vest in other authority which would be violative of Article 26 (d) of Constitution of India.

17. Learned Senior Counsel for the Petitioner would submit that Podhu Dikshidars being a religious denomination enjoins a special status under Article 26 of Constitution of India. It was further argued that as religious denomination, the temple and Podhu Dikshidars are enjoined with the complete autonomy in the matter of deciding rights and ceremonies and administration of the property. It was further argued that the impugned G.O. seeking to appoint Executive Officer deprives Podhu Dikshidars and their right to manage Sri Sabanayagar temple at Chidambaram and violative of fundamental rights under Article 26 of Constitution of India.

18. Laying emphasis upon Sec.107 of HR & CE Act, learned counsel for the Writ Petitioner submitted that the provisions of HR & CE Act is not to affect the rights of denomination or any section thereof protected under Article 26 of Constitution of India.

19. Sec.107 of T.N. Hindu Religious & Charitable Endowments Act, 1959 reads as under:-

> 107. Act not to affect rights under Article 26 of the Constitution :- Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution.

20. In support of the contention that Podhu Dikshidars are denomination and are entitled to protection under Article 26 of Constitution of India, reliance was mainly placed upon 1952 (I) MLJ 557 [*Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. The Commissioner, Hindu Religious Endowments Board, Madras*]. In the said case, Dikshidars contended that the temple income is their only source of livelihood and that they are 'religious denomination'. In the said decision, Podhu Dikshidars' contention was that appointment of Executive Officer would amount to interference with the religious affairs and the same is violative of Art.26 of Constitution of India. In 1952 (1) MLJ 557, Division Bench held that Podhu Dikshidars are 'religious denomination'. On behalf of the Petitioners, it was contended that Division Bench of this Court has held that Petitioners are entitled to protection under Article 26 of Constitution of India and the finding that Petitioners are a 'denomination' rendered by the Division Bench was under the Constitution of India. It was mainly argued that the above decision was not based on any interpretation of HR & CE Act, but based on the interpretation of Constitution of what 'denomination' means. In Sri *Shirur Mutt case* [1952 (1) MLJ 557], Division Bench had observed that both Sri Shirur Mutt and Podhu Dikshidars of Sri Sabanayagar temple are 'denomination' and are entitled to protection under Article 26 of Constitution of India.

21. It was further argued that since Government has not challenged the findings in the judgment in 1952 (1) MLJ 557. Podhu Dikshidars are 'religious denomination', the decision in 1952 (1) MLJ 557 has become final as against Podhu Dikshidars and the said decision would operate as res-judicata.

22. Placing reliance upon AIR 1965 SC 1153 [*Gulabchand Chhotalal Parikh v. State of Gujarat*], the learned Senior Counsel for the Petitioner contended that when the question was decided in Writ Petition under Article 226 of Constitution, any subsequent suit between the same parties with respect to the same matter, it would operate as res-judicata because principles of res-judicata is based on public policy.

23. Contending that Podhu Dikshidars are 'religious denomination' much emphasis was laid upon the decision is 1952 (1) MLJ 557 [*Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. The Commissioner, Hindu Religious Endowments Board, Madras*]. In the said decision, Sri Shirur Mutt and Podhu Dikshidars of Sabanayagar temple, Chidambaram challenged certain provisions of Madras Hindu Religious and Charitable Endowments Act (XIX of 1951). While considering the grounds of challenge, Division Bench of this Court gone into the nature and character of Dikshidars and whether the order of the Board appointing Executive Officer would affect the right of Dikshidars in the administration of temple and its properties. Observing that services to God is the only source of livelihood and examining the nature of 'Kattalais', Division Bench held as follows:-

> "The Dikshidars have no other emoluments and they combine in themselves the functions of a trustee as well as an archaka. They have no inams and they have to devote their time exclusively to look after the affairs of the temple and carry on the worship in it by an internal arrangement made by them over a century ago as evidenced by the rules which have been framed by them and which are in vogue even at the present day. They are prohibited from taking up any other avocation and therefore they must necessarily depend for their livelihood consisting of as many as 250 families of 1,500 members on what they receive at the temple either as Dakshina or as offerings of food known as pavadai and other offerings made to the deity. They are bound up with the temple and service of God is the only source of their livelihood. These in brief are the usages of the temple obtaining for several centuries. .... "

24. Considering the question whether Podhu Dikshidars are a denomination and whether right as denomination is infringed within the meaning of Art. 26 of Constitution, Division Bench proceeded to observe as follows:-

> "Looking at from the point of view, whether the Podhu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26 it seems to us that it is a clear case, in which it can safely be said that the Podhu Dikshitars who are Smartha Brahmins, form and constitute a religious denomination or in any event, a section thereof. They are even a closed body, because no other Smartha Brahmin who is not a Dikshitar is entitled to participate in the administration or in the worship or in the services to God. It is their exclusive and sole privilege which has been recognised and established for over several centuries. The notification seriously interferes with their rights to manage the affairs in matters of religion to own and acquire movable and immovable property, and even to administer such property in accordance with law. A law which substantially deprives the religious denomination of its right to administer the property of the denomination leaving only a scintilla of the right in the denomination cannot be justified and upheld as an exercise of the power to regulate the administration of the institution. Nor is it a reasonable restriction within the meaning of the Article 19 (5) of the Constitution."

25. The Division Bench further held that provisions of HR & CE Act to the extent that they restrict the power to exercise right to a property are not reasonable restrictions within the meaning of Article 19 (5) and must consequently held to be invalid. Division bench further held that institution has right guaranteed under Article 25 of Constitution to practice and propagate the freely religion of which he and his followers to be adherence.

26. In the said decision, Podhu Dikshidars were equated and held to be analogous to Matathipathi, Division Bench has further held as under:-

" ..... In the case of Sri Sabhanayakar Temple at Chidambaram with which we are concerned in this petition, it should be clear from what we have stated earlier in this judgment, that the position of the Dikshitars, labelled trustees of this temple, is virtually analogous to that of a Matathipathi of a Mutt, except that the Podhu Dikshitars of this temple, functioning as trustees, will not have the same dominion over the income of the properties of the temple which the Matathipathi enjoys in relation to the income from the Mutt and its properties. Therefore the sections which we held ultra vires in relation Mutts and Matathipathis will also be ultra vires the State Legislature in relation to Sri Sabhanayagar Temple, Chidambaram, and the Podhu Dikshitars who have the right to administer the affairs and the properties of the temple. As we have already pointed out, even more than the case of the Srivalli Brahmins, it can be asserted that the Dikshitars of Chidambaram form a religious denomination within the meaning of Article 26 of Constitution."

27. In the context of the provisions of HR & CE Act and in the light of the submissions, it has to be seen whether Petitioner Podhu Dikshidars is a 'denomination' and whether Sri Sabanayagar temple, Chidambaram is a 'denominational institution'.

28. Article 26 of Constitution of India to which reference has been made reads as follows:-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage it own affairs in matters of religion

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

29. Subject to public order, morality and health, every religious denomination or any section thereof has the right to administer its property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The later is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose.

30. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of the management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust property by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination itself which has been given to the right to administer its property in accordance with law. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution [Vide AIR 1954 SC 282 = (1954) 67 L.W. 1270 *Commissioner Religious Endowments v. Lakshmindra Swaminar & (1983) 1 SCC 51 S.P.Mittal v. Union of India*].

31. Referring to Oxford Dictionary the word 'denomination' and considering the scope of meaning of 'religious denomination', in AIR 1954 SC 282 : (1954) 1 SCR 1005 [*The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*], the Supreme Court has held as follows:-

"As regards Art. 26, the first question is, what is the precise meaning or connotation of the ex-

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pression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name". It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, - in many cases it is the name of the founder - and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Art.26 contemplates not merely a religious denomination but also a section thereof, the Maths or the spiritual fraternity represented by it can legitimately come with the purview of this Article."

32. In AIR 1984 SC 51 *Acharya Jagadishwaranand Avadhuta v. Police Commissioner, Calcutta*, the question came up for consideration whether Ananda Marga was a 'religious denomination. Pointing out nature of living of Ananda Marga, the Hon'ble Supreme Court observed that Ananda Marga satisfied all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; they have a common organisation and the collection of these individuals has a distinctive name and Ananda Marga, therefore can be appropriately treated as a religious denomination, with the Hindu religion.

33. Question whether the followers of Shri Ramakrishna are a 'religious denomination' came up for consideration before the Supreme Court in AIR 1995 SC 2089 [*Bramchari Sidheswar Shai v. State of West Bengal*]. The Supreme Court observed that the followers of Shri Ramakrishna have a common faith and that they have a common organisation and they are designated by a distinct name. It was therefore held that the persons belonging to or owing their allegiance to Ramakrishna Mission or Ramakrishna Math belong to a religious denomination within the Hindu religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India. As a necessary concomitant thereof, they have a fundamental right of establishing and maintaining institutions for a charitable purpose under Article 26 (a) of the Constitution of India, subject to course, to public order, morality and health envisaged in that very Article.

34. Observations of the Division Bench in 1952 (1) MLJ 557 that Podhu Dikshidars are a 'denomination' are to be tested in the light of well-settled principles laid down in various decisions of the Supreme Court.

35. In (1962) 1 SCR 383 : AIR 1961 SC 1402 [*Durgah Committee v. Syed Hussain Ali*] another Constitution Bench considering the ratio laid down in Shirur Mutt case explained *Sri Venkataramana Devaru case* [AIR 1958 SC 255] and had laid down that the words "religious denomination" under Art.26 of Constitution must take their colour from

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the word religion and if this be so the expression 'religious denomination' must also specify three conditions, namely, it must be (1) a collection of religious faith, a system of belief which is conducive to the spritual well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name.

36. In (1997) 4 SCC 606 [*Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others*], the Supreme Court held that "believers of Shiva form of worship are not a denominational sect or section of Hindus, but they are Hindus as such."

37. In view of the consistent view taken by the Supreme Court, the observations of the Division Bench can hardly have any binding effect. In fact, in W.P.No.7843/1987, learned single Judge has also taken the view that in view of the judgment of the Supreme Court, the observations of the Division Bench in 1952 (1) MLJ 557 (supra) may not have significance. Whatever be the observation of the Division Bench in 1952 (1) MLJ 557, the observations of the Division Bench ought to be read in the light of the decision of the Supreme Court in Sri Shirur Mutt case. Observation of the Division Bench in 1952 (1) MLJ 557 that appointment of Commissioner by notification procedure would deprive the right of Podhu Dikshidars to manage their property and vesting it Executive Officer would be a serious inroad upon the rights of Dikshidars can no longer have binding effect.

38. Referring to various decisions on 'religious denomination' in 100 Law Weekly 240 [*The Asst. Commr. HR & CE, Salem and others etc., v. Nattamai K.S.Ellappa Mudaliar and others*], Justice Srinivasan (as his Lordship then was) observing that Senguntha Mudaliar cannot claim to be a 'religious denomination' held as follows:-

"26. The Supreme Court had occasion to reiterate its view on the interpretation of the words "religious denomination" in *Acharya Jagdishwaranand Avadhuts etc., v. Commr. of Police, Calcutta and another*, AIR 1984 SC 51. The question which arose for consideration in that case was whether Ananda Marga could be accepted as a religious denomination. While answering the question in the affirmative, the Court made a reference to the test laid down by Mukherjea, J. In the *Shirur Mutt case*, AIR 1954 SC 282 referred to earlier and observed as follows:-

"This test has been folowed in the Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383 : AIR 1961 SC 1402. In the majority judgment in *S.P.Mittal v. Union of India*, (1983) 1 SCR 729 at p. 774 : AIR 1983 SC 1 at pp. 20-21 reference to this aspect has also been made and it has been stated:-

"The words 'religious denomination' in Art. 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'Religious denomination' must also satisfy three conditions:

1. It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;

2. Common organisation; and

3. Designation by a distinctive name."

.....

30. As seen from the decision of the Supreme Court, the words 'religious denomination' must take their colour from the word 'Religion'. It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic cord which connects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen that Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. There is absolutely no evidence on record to prove

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that the members of the community have common religious tenets peculiar to themselves other than those which are common to the entire Hindu community. .... "

39. Establishment and maintenance of Sri Sabanayagar temple:-

For the purpose of invoking Art. 26 of the Constitution, Podhu Dikshidars have to prove two facts:-

1) That they established the temple.

2) They maintained the temple.

40. In AIR 1968 SC 662, the Supreme Court held that the words "Establish and Maintain" in Art. 26 (a) of Constitution must be read conjunctively and it is only those institutions which a religious denomination establishes, which it can claim to maintain and that right under Clause (a) of Art. 26 will only arise where the institution is being established by the said denomination. Hence, as held by the Supreme Court that the burden of proof lies on the Podhu Dikshidars to prove that the temple was established and maintained by the said Podhu Dikshidars. There is no piece of evidence produced by Podhu Dikshidars to show that they have established the temple.

41. Special features of Chidambaram Sabanayagar temple:-

One of the special features of Chidambaram temple is the bejeweled image of Nataraja. It depicts the Lord Shiva as the Lord of the dance Bharatanatyam. The Lord wearing a gentle smile, steps on the demon's back, immobilizes him and performs the Ananda thaandava (the dance of eternal bliss) and discloses his true form. The Ananda Tandava posture of Lord Shiva is one of the famous postures recognised around the world by many. This celestial dancing posture is said to have attracted world wide devotees. Chidambaram temple is an ancient and historic temple dedicated to Lord Shiva Nataraja and Lord Govindaraja Perumal, one of the few temples where both the Shaivite and Vaishnavite deities are enshrined in one place. Apart from 'Nataraja' idol 'Perumal' is also in the temple and apart from Saivites, Vaishnavites also attend the temple for worshipping.

42. Nextly, we may consider whether Sri Sabanayagar temple, Chidambaram has been proved to have been established and maintained by Podhu Dikshidars. By a reading of the book titled "Thillai Perunkovil Varalaru" by Vidwan K.Vellaivaranan (first published in 1987), it is seen that the temple was established by 'Chola Kingdom'. Drawing Court's attention to certain passages in the book, learned Addl. Advocate General submitted that the temple was under the administration of 'Kings' and the same is evident from the facts and the information available in the temple.

43. The following works/renovation works are said to have been done during the reign of 'Chola Kings'. "King Aditya Chola I who ruled Chola Empire between 871 AD and 907 AD decorated the Vimanam of Chidambaram temple with gold plates. This information is available in Thiruthondar Thiruvanthathi (திருத்தொண்டர் திருவந்தாதி-65) written by Nambiandaar Nambi (11th Century AD)."

"The temple was under the administrative control of the Kings and it is evident from the facts that the first prakaram of the Chidambaram temple was known as Vicrama Chola Thirumaligai, second prakaram as Kulothunga Chola Thirumaligai and third prakaram as Thambiran Thiruveethi. Western Gopuram (tower) was known as Kulothunga Chola Thirumaligai Puravayil (குலோத்துங்க திருமாளிகை சோழன் புறவா..ில்) (South Inaidna Epicraphy No.22)."

"During the period of Kulothunga Chola II (1133 AD to 1150 AD) several renovation works took place in Chidambaram Temple which include gold plating the எதிர் அம்பலம், உட்கோபுரம் யனே திருச்சுற்று மாளிகை. con-

struction of seven tier gopuram, expanding the Sivakami Ambal Sannathi, construction of temple Chariots and the construction of mandapam in the Sivaganga Tank within the temple."

44. Major repairs and renovation works are said to have been carried out only by three Kings. Referring to Chola Kings, Pandia Kings, Pallava Kings and Vijayanagara Kings and the works done by them in the temple, there is said to have been donation of gold and jewels by various Kings and patrons to the temple.

45. Dikshidars were entitled to do pooja services in Sri Sabanayagar temple. Over all administration of the temple was vested with Kings. In this regard, learned Addl. Advocate General has drawn Court's attention to the following passage in the Book :-

"கூத்தபெருமானுக்கு உரிமைத் தொழில் பூண்டுவாழும் இவ்வந்தணர்கள் தில்லைத் திருக் கோயிலினுள் ளே இறைவன் பூசனைக்குரிய அகத் தொண்டுகளை செய்து வாழுபவர்கள்(Page 66)."

46. It was submitted that the temple administration was directly under the control of Kings and as such 'Thillai' was called (தனியூர் பெரும்பற்ற புலியூர்). It was submitted that one or two officials deputed by Kings used to stay at 'Thillai' and supervised the temple administration. The temple staff, people of Thillai and the dignitaries used to consult these officials and undertake various responsibilities. This is said to be evident from the rock inscriptions of King Koperunsingan I period.

"தொண்டைமானும் திருவையாறுடையானும் மதுராந்தகப் பிரமராயனும் ஆளுடையார் கோயிலுக்குச் சமுதாய திருமாளிகைக் கூறு தில்லையம்பலப் பல்லவர்யனும் சீகாரியஞ் செய்வார்களும் சமுதாயஞ் செய்வார்களும் கோயில் நாயகஞ் செய்வார்களும் திருமாளிகைக் கூறு செய்யத் திருவாய் மொழிந்தருளினபடி (Page 126)."

47. The informations contained in the book and the various informations said to be available in the temple would clearly indicate that the temple was administered by the persons appointed by Kings and Dikshidars were only looking after the pooja services relating to the temple.

48. Assuming that the observations of the Division Bench remains unchallenged, such observation might hold good only for Podhu Dikshidars. Since there is nothing to show that Podhu Dikshidars have established the temple, Sri Sabanayagar temple is (sic) shown to be a 'denominational temple'.

49. Regulations in administration of properties:-

Whether appointment of Executive Officer is an infringement of the Constitutional rights of Podhu Dikshidars?

Without accepting the contention of the Writ Petitioner and assuming for the sake of arguments that the temple is a 'denominational temple', as per Article 26 every 'religious denomination' or section thereof shall have the right to manage its own affairs only in matters of religion.

50. The point falling for consideration is whether appointment of Executive Officer infringes the Constitutional right of the Podhu Dikshidars.

51. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of the management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a 'religious denomination' is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust property

by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination itself which has been given the right to administer its property in accordance with law. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution [Vide AIR 1954 SC 282 *Commissioner Religious Endowments v. Lakshmindra Swaminar* and (1983) 1 SCC 51 *S.P.Mittal v. Union of India*].

52. The distinction between right of 'religious denomination' to manage its affairs in matters of religion and to acquire movable and immovable property and to administer such property in accordance with law has been laid down by the Supreme Court in the celebrated judgment in *Sri Shirur Mutt case* [1954 SCR 1005]. In Para (17) of the judgment, the Supreme Court has held as follows:-

> " 17. It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies. What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case [*Davis v. Benson*, 133 U.S. 333], it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cults of form or worship of a particular sect, but is distinguishable from the latter." We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44 (2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

53. In (1996) 2 SCC 498 [*Pennalal Bansilal Pitti and others v. State of A.P. and another*], Supreme Court had pointed out the distinction between clause (b) and (d) of Article 26 of Constitution thus:-

> " 19. In *Ratilal Panachand Gandhi v. State of Bombay* [1954 SCR 1055 : AIR 1954 SC 388], this Court further had pointed out the distinction between clauses (b) and (d) of Article 26 thus: In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property

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which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination or general body of religion itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution. In that case, the Court found that the exercise of the power by the Charity Commissioner or the Court to divert the trust property or funds for purposes which he or it considered expedient or proper, although the original objects of the founder can still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

20. It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith."

54. The distinction between religious practice and secular activities of religious institution has been succinctly brought out in (1997) 8 SCC 422 [*Shri Jagannath Temple Puri Management Committee, rep. through its Administrator and another v. Chintamani Khuntia and others*]. Para (3) of the judgment reads as under:-

"3. Collection and distribution of money even though given as offerings to the deity cannot be a religious practice. The offerings whether of money, fruits, flowers or any other thing are given to the deity. It has been said in the Gita that "whoever offers leaf, flower, fruit or water to Me with devotion I accept that". The religious practice ends with these offerings. Collection and distribution of these offerings or retention of a portion of the offerings for maintenance and upkeep of the temple are secular activities. These activities belong to the domain of management and administration of the temple. We have to examine this case bearing this basic principle in mind. The offerings made inside the Temple are known as Veta and Pindika. Veta means the offerings that are given to Lord Jagannath at specified places in the Temple. Pindika means offerings that are given on the pedestal of the deities."

55. Regarding maintenance of accounts by Mathadhipathi, matters arose for consideration under Andhra Pradesh HR & CE Act. Observing that provisions of Andhra Pradesh HR & CE Act and administration of Mathadhipathi Rules, 1987 do not regulate propagation or preaching of the tenets of mahant or religious math and that those provision pertain to management, administration and maintenance of math, safeguarding interests which are secular activities, in (1996) 8 SCC 705 [*Sri Sri Sri Lakshamana Yatendrulu and others v. State of A.P. and another*], the Supreme Court held as under:-

" 43. ..... In law, he is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act. It is seen that the report of Justice Challa Kondaiah Commission had collected material that some Mahants had resorted to corrupt practices by diverting the funds of the math as Padakanukas and personal gifts and utilised the same to lead immoral or luxurious life or siphoning the income to the members of natural family to which he belonged or on wine and women. The legislature on consideration thereof felt it expedient to remedy the evil and imposed a duty, which as trustee is enjoined on

him. Fastening an obligation on mathadhipathi to maintain accounts of the receipts of Padakanukas as personal gifts made to the mathadhipathi and to see that the funds are properly utilised for the purposes of the math in accordance with its objects and propagation of Hindu Dharma does not amount to interference with religion. Equally, in respect of gifts of properties or money made to the mathadhipathi as gifts intended for the benefit of the math, he is bound under law as trustee, even without amendment to the Act, to render accounts for the receipts and disbursement and cause the accounts in that behalf produced from time to time before the Commissioner or any authorised person in that behalf, whenever so required is part of administration of properties of the math. Questions relating to administration of properties relating to math or specific endowment are not matters of religion under Article 26 (b). They are secular activities though connected with religion enjoined on the Mahant."

56. Such distinction was also brought out in (1997) 4 SCC 606 [*Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others*]. In the said decision, in Paras (27) and (31), the Supreme Court has held thus:-

" 27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. .....

.....

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [(1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. ..... It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression 'religion' or 'matters of religion' or 'religious beliefs or practice'. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law

that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty." [underlining added]

57. In the light of the well-settled principles if we examine the instant case, Podhu Dikshidars can claim protection under Article 25 of Constitution. It may be that form of worship may be protected under Article 25 and 26 (a) of Constitution. But right to manage the temple or offerings or Kattalais [endowment] are not integral to religion or religious practice and as such are amenable to statutory control. As has been consistently held by the Supreme Court that the secular activities are subject to statutory control. When examined in the light of the well-settled principles, Podhu Dikshidars are not entitled to the protection in particular clauses (b) and (d) of Article 26 of Constitution as 'religious denomination' in the matter of management, administration and governance of the temple under the Act. As such appointment of Executive Officer is not ultra vires the Article 25 and 26 of Constitution of India. The contention that appointment of Executive Officer is violative of Article 25 (b) and (d) of the Constitution is untenable and devoid of substance.

58. Whether appointment of Executive Officer is in accordance with Sec.45 (1) of HR & CE Act:-

By the order dated 20.07.1982, Commissioner has pointed out several irregularities in the administration of the temple and its properties and the proposal to appoint Executive Officer. In W.P.No.5638/1982, by the order dated 08.08.1983, learned single Judge directed that the aforesaid notice would be treated only as a show cause and not as a decision to appoint Executive Officer.

59. After hearing Podhu Dikshidars, Commissioner has passed an order on 31.07.1987 meeting all the legal aspects. By the order dated 31.07.1987, Commissioner has observed "appointment of Executive Officer is only to look after the administration of the temple and for management of the properties and for better administration of the temple and to realise the income due from them so that income may be appropriated for the purpose in which endowments were created. That order was again challenged by Podhu Dikshidars in W.P.No.7843/1987.

60. W.P.No.7843/1987 was dismissed on 17.2.1987. Challenging the dismissal order, W.A.No.145/1997 was filed which was disposed of with a direction to the Writ Petitioner to file Revision under Sec.114 of HR & CE Act. Revision filed by Podhu Dikshidars was rejected by the impugned G.O.(D) No.168 TDC & RE Dept. dated 09.5.2006.

61. Section 45 of the Act could not be taken to confer an unguided or arbitrary power on the Commissioner. The power under the Section has got to be exercised in terms of the policy of the Act, i.e., to provide for administration and governance of the religious and charitable institutions and endowments under the State. Power under Sec.45 of the Act can be and has to be exercised by the Commissioner appropriately in such a case. The power vested in the Commissioner being a drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from the management and administration of the institution. Therefore it is, that natural justice and fair play require that the Commissioner should properly exercise the power under Sec.45 (1) of the Act, after being satisfied that the insti-

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tution is not properly managed and the administration requires to be toned up or improved.

62. On behalf of the Writ Petitioner, Mr. B.Kumar, learned Senior Counsel contended that Executive Officer can be appointed in respect of 'religious denominational temple'. Executive Officer can be appointed only when there is gross mismanagement and no such specific instances have been stated in the show cause notice dated 20.7.1982. Learned Senior Counsel would further submit that in any event, the grounds alleged in the notice dated 20.7.1982 have become stale and no justifiable grounds are made out for appointing the Executive Officer. Placing reliance upon AIR 1996 SC 3567 [*Sri Kanyaka Parameswari Anna Satram Committee and others v. Commissioner, HR & CE Dept. and others*], it was contended that only in cases of gross mismanagement, Executive Officer could be appointed and the impugned order dated 31.7.1987 is not in accordance with Sec.45 of HR & CE Act.

63. In the order dated 31.07.1987 while referring to the appointment of Executive Officer, the Commissioner observed "having regard to such large scale allegations of maladministration which are supported by various materials, there is every justification for the appointment of an Executive Officer in terms of Section 45 of the Act". Pointing out that the instances of maladministration would justify the appointment of Executive Officer, Commissioner, HR & CE referred to the decision AIR 1976 Mad. 264 = (1976) 89 L.W. 195 [*M.E.Subramani and others v. The Commissioner, HR & CE (Admn.), Madras and others*].

64. Learned Senior Counsel for the Writ Petitioner contended that the order of the Commissioner is liable to be set aside as he has relied upon AIR 1976 Mad. 264 = (1976) 89 L.W. 195 which was overruled by the Division Bench in the judgment in 1995-2-LW-213 [*K.Ekambaram, M.Kailasam v. The Commissioner, HR & CE (Admn.), Madras-24 and others*]. It was further submitted that after analysing Sec.45 (1) of HR & CE Act, Division Bench has held that even if the Executive Officer is sought to be appointed for better management of the religious institution, still it could be done only if there are material for coming to the conclusion that there are acts of gross mismanagement or the properties of the institution being mis-managed. Learned Senior Counsel would further submit that the views of the Division Bench in 1995-2-LW-213 was reiterated by another Division Bench in 2007-1-LW 72 [*N.Sivasubramanian v. The Government of Tamil Nadu, rep. by its Secretary, HR & CE Dept. Chennai-9 and others*].

65. In AIR 1976 Mad. 264 = (1976) 89 L.W. 195 [*M.E.Subramani and others v. The Commissioner, HR & CE(Admn.), Madras and others*], Justice Ramanujam has observed as follows:-

> "4. ..... Section 45 cannot be taken to confer an unguided and arbitrary power on the Commissioner and that the power has got to be exercised in terms of the policy of the Act i.e., to provide for the administration and governance of the religious and charitable institutions and endowments under the State of Tamil Nadu. ..... When the Commissioner has specifically stated, in the order appointing the Executive Officer, that the power has been exercised for the better and proper administration of the group of temples, it cannot say that this is, in any way, either irrelevant or extraneous and held that the impugned order passed by the Commissioner is in any way arbitrary."

66. In Subramani's case, the learned single Judge took the view that for better and proper administration of the temples, Executive Officer could be appointed even without

affording an opportunity. In that context, the decision AIR 1976 Mad. 264 = (1976) 89 L.W. 195 was overruled by the Division Bench in 1995 -2 -LW 213. Observing that Sec.45 (1) of the Act gives vast powers to the Commissioner, Division Bench held as follows:-

> " 4. ..... When such a power is conferred, the scope and ambit of such power shall have to be determined with reference to other provisions contained in the Act and also the object which 'the Act intends to achieve and serve. ....."

67. Of course in the order dated 31.7.1987, Commissioner has referred to the decision in AIR 1976 Mad. 264 = (1976) 89 L.W.195. At that time when the order was passed on 31.07.1987, decision AIR 1976 Mad. 264 = (1976) 89 L.W. 195 was not overruled. Decision of Division Bench Judgment in 1995-2-LW 213 came to be passed subsequently. Therefore, there was nothing wrong for the Commissioner in referring to the decision of Justice Ramanujam in AIR 1976 Mad. 264 = (1976) 89 L.W. 195 which was then holding field.

68. Upon over all consideration of the alleged acts of maladministration, Commissioner satisfied himself as to the necessity of appointing Executive Officer which was duly considered by the Government before passing the impugned order. In my considered view, reference to AIR 1976 Mad. 264 = (1976) 89 L.W. 195 would not affect the order of the Commissioner dated 31.07.1987.

69. As pointed out earlier in W.P.No.5638/1982, Court has directed notice in Rc.No.52754/1982/B6 dated 20.07.1982 be treated as show cause notice. Thereafter, Commissioner sent notice to the parties and afforded sufficient opportunity to the parties and then only passed the order on 31.7.1987.

70. Challenging the order of the Commissioner dated 31.07.1987, Mr. B.Kumar, learned Senior Counsel inter alia raised the following contentions:-

Commissioner has not considered the merits of the matter nor discussed the evidence relating to the acts of mismanagement.

In the order dated 31.07.1987, Commissioner has not pointed out any specific allegation nor given a specific instances of allegation of mismanagement.

Without pointing out any specific instance of mismanagement, Commissioner has adopted a new basis for appointment of Executive Officer by saying that for proper administration and better management, appointment of Executive Officer is necessitated.

71. Onbehalf of the Writ Petitioner, it was further argued that the order of the Commissioner dated 31.7.1987 and the confirmation of the same by the Government are liable to be set aside as it is firstly a serious violation of principles of natural justice and secondly such a course is not permissible in view of the order passed by the Court in W.P.No.5638/1982. It was further argued that it is trite law after issuing show cause notice, the impugned order cannot change the basis and passed an order on the basis of certain aspects which was not mentioned in the show cause notice. In support of his contention, learned Senior Counsel for the Petitioner placed reliance upon AIR 2001 SC 661 [*Hindustan Lever Limited v. Director General (Investigation and Registration), New Delhi and another*]; (2003) 11 SCC 693 [*Collector of Central Excise, Bangalore v. Gammon Far Chems Ltd.*] and (2005) 12 SCC 256 [*Raj Kumar Mehrotra v. State of Bihar and others*].

72. Merits of the above contention is to be examined in the light of the object of Sec.45 of HR & CE Act. Ordinarily in the case of a hereditary trustee in charge of an institution he is clothed with plenary powers in

the matter of management as well as the administration of the temple in that he would be entitled to the possession of all the properties of the temple and to secure the income in cash and kind and in the shape of offerings, to make disbursements and to draw up a budget and to exercise control over all the office holders and servants and be in charge of the temple and responsible for the maintenance of the records, accounts and registers. By the appointment of Executive Officer under Sec.45 (1) of the Act coupled with conferment of powers, the position of the trustee would be relegated to the position of non-entity.

73. It is not as if the Commissioner cannot exercise power under Sec.45 (1) of the Act. In a case where institution is under maladministration and mismanagement, Commissioner can exercise the power under Sec. 45 (1) of the Act. In cases of improper management by a temple / religious institution, it would be necessary for the Commissioner to appoint Executive Officer. The exercise of that power depended not on the whims and fancies of the Commissioner, but upon the decisions arrived at on the facts of each case on application of mind by the Commissioner to the question whether Executive Officer is necessary in the interest of the institution.

74. Section 45 of HR & CE Act could not be taken to confer an unguided or arbitrary power on the Commissioner. Only if the Commissioner had exercised the power under Sec. 45 of the Act on extraneous ground or on irrelevant consideration, only then that exercise can be challenged as outside the purview of Sec.45 (1) of the Act.

75. Acts of mismanagement:-

Learned Senior Counsel for the Petitioner submitted that the order of the Commissioner dated 31.7.1987 appointing Executive Officer and the confirmation order of the Government dated 09.05.2006 are based on extraneous or irrelevant considerations. It was mainly argued that by appointment of Executive Officer for better management, Commissioner has deviated from the direction of the High Court in W.P.No.5638/1982 and that there is paradigm shift in the order which would vitiate the impugned order of appointment of Executive Officer.

76. Of course in the order in W.P.No.5638/1982, it was directed to treat the order dated 20.7.1982 as show cause notice with a further direction to afford opportunity to both parties. After affording opportunity to both parties, Commissioner has passed the order dated 31.07.1987 pointing many acts of mismanagement as indicated in the show cause notice dated 20.7.1982. To mention a few:-

No proper maintenance of accounts for offerings to the temple and donations collected.

Missing / loss of number of gold jewels and other valuable items.

Unaccounted jewels / gold ingot kept by Podhu Dikshidars. When called for explanation as to unaccounted jewels, Writ Petitioner claimed that they are not the temple jewels and therefore, there was no necessity to account for those jewels.

Enquiry revealed that many gold jewels were melted and gold ingots were made.

77. As pointed by the learned Addl. Advocate General that the charges contained in the show cause notice definitely attract action under Sec.45 of the Act. The show cause notice indicates several grave irregularities like (i) non-accounting of gold ingots and gold coins worth Rs.2.2 lakhs kept in the Karuvoolam and detected by the Asst. Commissioner, Cuddalore in the presence of RDO, Chidambaram and District Superintendent of Police; (ii) there was also loss of 860 grams of gold in

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melting the old jewels; (iii) non-accounting of gold Kanikkai articles received as Kanikkai to the temple.

78. Referring to various complaints of mismanagement and report of the Asst. Commissioner (dated 20.7.1982), the then Commissioner observed that for proper management of the temple and better administration, it was necessary to appoint an Executive Officer. Based on various allegations of mismanagement and missing of gold jewels, the Commissioner felt it necessary to appoint an Executive Officer.

79. Ofcourse the situation and the alleged acts of mismanagement were entirely different from the one's placed before the Court when the Court passed an order in W.P.Nos.379 and 380/1951. We may usefully refer to certain facts and the alleged acts of mismanagement which impelled the then Commissioner [show cause notice dated 20.7.1982] to propose to appoint Executive Officer which read as follows:-

VERNACULAR (TAMIL) PORTION DELETED

The alleged acts of mismanagement are writ-large on the face of it. The acts of mismanagement are not imaginary one.

80. On the face of it, there are failure to perform the lawful duties as enjoined on them under Sec.28 of HR & CE Act. The instances are:- (i) Petitioners have not maintained the accounts; (ii) Petitioners have not realised the income due to the temple; (iii) Offering to the God by the worshippers have not been accounted for by them as trustees; and (iv) Missing / loss of gold jewels.

81. After hearing the parties and upon examination of the allegation of mismanagement, Commissioner was satisfied to appoint Executive Officer to streamline the administration of the temple. In the order dated 31.7.1987, though Commissioner may not have referred to each and every one of the alleged acts of mis-mangement and maladministration, having regard to the nature of allegations, Commissioner was justified in exercising power under Sec.45 (1) of the Act to appoint Executive Officer for better management and administration of the temple.

82. From the submissions of the learned Addl. Advocate General, it comes to be known that Special Tahsildar was appointed by the Department to investigate the temple properties and to take necessary steps to obtain lease deeds to an extent of 396.37 acres of lands in the name of the temple fixing the annual rent payable to the temple by the tenant. Only on account of neglect of duty on the part of Writ Petitioners in not taking proper and effective action to realise the income due to the temple from the properties of the temple, Special Tahsildar was appointed to manage the immovable properties. It is stated that in fact, electricity charges of the temple are not met by Podhu Dikshidars; but are being actually paid by the Special Tahsildar from the collection of the lease amount.

83. Learned Addl. Advocate General would also submit that Writ Petitioners have not taken action for the enforcement of Kattalais which have not been performed as per the scales of expenditure provided by the Founder of Kattalais. Under Sec.38 (2) of HR & CE Act, in case of specific endowment attached to the temple, the Commissioner is empowered to require the person responsible in law for the enforcement of Kattalais, provided for by the Founder of the Kattalais. On behalf of the Respondents, it was submitted that since Podhu Dikshidars have continuously neglected to perform their duty, it has become necessary to appoint Tahsildar to identify the lands belonging to the temple and several Kattalais attached to the temple and set in motion the action to realise the income due to the temple.

84. Learned Addl. Advocate General has also submitted that Kumbabishekam of the temple was performed on 11.2.1987 by the Renovation Committee. Large scale of renovation works were carried out in the temple through the Renovation Committee approved by HR & CE Board at a cost of Rs.46 lakhs, out of which Government grants were Rs.20 lakhs and diversion of funds from other temples were Rs.6 lakhs and public donations through sale of tickets were about Rs.20 lakhs. It was further submitted that performance of Kumbabishekam of the temple under the guidance of HR & CE Board would clearly indicate the interest evinced by HR & CE in proper administration of the temple.

85. If the worshippers offered contribution either in cash or kind personally, there must be responsible officer having its office premises in the temple to issue official receipt. As consistently held by the Supreme Court that there is clear distinction between performance of poojas and rituals in the temple and proper maintenance of offerings to the deity which is the property of the temple. While the performance of poojas and rituals are protected under Article 26 (a) of Constitution, the matter of administration of the properties are to be in accordance with law and exercising the power under Sec.45 (1) of HR & CE Act, such secular activities could be regulated.

86. As pointed out earlier, the income derived from various stalls in the temple and collection of entrance fee for Dharshan and Aarathanai are issued in a piece of paper without indicating funds value and the income from collections for performance of other Abishekam are said to have been not properly accounted for. Petitioners cannot abdicate their responsibility in maintenance of accounts and administration of the temple.

87. As has been held by the Supreme Court in various judgments that the administration and maintenance of the temple is purely a secular act and so the State can intervene and regulate the administration for proper management and better administration. If the secular activities of the institution have been mis-managed, appointment of Executive Officer to the institutions (even assuming that it is 'religious denomination') would be permissible.

88. Executive Officer was appointed only to streamline the administration of the temple and not to dislocate Podhu Dikshidars from the temple. Pursuant to the order passed in Rc.No.52754/82/L1 dated 31.7.1987, R.Jayachandran, Grade-I Executive Officer was appointed as Executive Officer of Arulmighu Sabanayagar temple. Proceedings in Rc.No.52754/82/L1 dated 05.8.1987 contains Appendix defining the powers and duties to be exercised and performed respectively by the Executive Officer and Secretary of Podhu Dikshidars. By reading of Appendix, it is seen that the Executive Officer was put in custody of all immovable, livestocks, grains and other valuables. Executive Officer shall be responsible for the collection of all income and moneys due to the institution. Executive Officer has to function in coordination with the Secretary of Podhu Dikshidars. In fact, as seen from the Rule 15 Secretary of Podhu Dikshidars shall have power to operate on Bank Accounts, but cheque book and pass book shall remain in the custody of the Executive Officer. Rule 15 to the Appendix reads as follows:-

RULE 15 : The Secretary Podhu Deekshithar shall have power to operate on the Bank Accounts, but the cheque book and the pass book shall remain in the custody of the Executive Officer. The Executive Officer shall have separate account in his name as

provided under Rule 4 (b) of these rules and the same shall be operated upon by him.

89. Apart from the allowable expenditure, the other expenditure by the Executive Officer would be with the approval of Secretary of Podhu Dikshidars. Rule 4 (d), (e) and Rule 5 reads as follows:-

RULE 4(d) : For meeting unforeseen expenditure, the Executive Officer shall have such permanent advances as may be fixed by the Deputy Commissioner. The Executive Officer shall not incur any expenditure which exceeds Rs.10/- without obtaining prior sanction of the trustees. In cases of emergency, he may incur expenditure, but shall without delay, obtained the approval of the Secretary, Podhu Deekshitar.

RULE 4(e) : The accounts of all receipts and expenditure in month shall be placed before the Secretary of Podhu Deekshithar of the monthly meetings being passed by them.

RULE 5 : The Executive Officer shall prepare the budget in sufficient, obtain the approval and submit it for sanction. Similarly supplemental budget and proposals for ratification of expenditure incurred in excess of the budget sanction due to extraordinary circumstances should also be submitted through the Podhu Deekshithar.

90. As seen from Rule 6 (a), all the Office holders and servants shall work under the immediate control and superintendence of Executive Officer subject to the disciplinary control of the Secretary of Podhu Dikshidars under Sec.56 of HR & CE Act. It is not as if by the appointment of Executive Officer, Podhu Dikshidars are displaced from the temple in performance of rituals or administration. Only for better management and administration, it has been stipulated in the Rules that both Executive Officer and Podhu Dikshidars are to function in co-operation with each other. Thus, it is clear that there is clear demarcation of the powers to be exercised by the Executive Officer and Podhu Dikshidars.

91. Regarding various allegations of mismanagement, learned Senior Counsel for the Petitioner submitted that jewel verifications were done every year and that so far, no complaints had been received. Drawing Court's attention to the annual jewel verifications done, learned Senior Counsel submitted that as such there was no complaints. Insofar as, missing or alleged loss of gold jewels, learned Senior Counsel submitted that Dikshidars have explained as they have invested in gold bonds. 92. Exercising judicial review under Article 226 of Constitution, this Court does not sit as a Court of appeal to re-analyse the facts and evidence. Suffice it to note that there are serious allegations of mismanagement regarding the jewels. The annual jewel verification pointed out by the learned Senior Counsel are just only verification. The annual verification report would only state "kw;w tptu';fSf;F mwpf;ifapy; fhz;f@/ Therefore, it cannot be said that in the annual jewel verification, Podhu Dikshidars have given clean chit.

93. The other aspects submitted by the learned Addl. Advocate General, and Mr. R.Gandhi, Senior Counsel [appearing for the impleading Petitioners] are to be noted. Learned Addl. Advocate General would submit that the other temples are showing considerably good income. For instance Kabaleeswarar Koil, Mylapore is said to be having an income around Rs.10 Crores per annum. Whereas Sri Sabanayagar temple, Chidambaram though internationally renowned having world wide devotees have shown only an amount of few thousands (Rs.37,199/-) as the annual income for the year 2007. Out of which, expenditure is shown to be Rs.37,000/- and the balance in hand is shown only Rs.199/-. The very state-

ment of accounts for the year 2007 would prima facie indicate that the income of the temple was not properly accounted for and proper accounts are not maintained.

94. The acts of mismanagement and lack of proper administration is writ-large on the face of it. Having regard to the nature of allegations of mismanagement, by the order dated 31.7.1987, Commissioner has rightly ordered appointment of Executive Officer. Proceedings in Rc.No.52754/82/L1 dated 05.8.1987 contain Rules for exercise of powers and duties both by Executive Officer and Podhu Dikshidars respectively. The order has not infringed the rights of Podhu Dikshidars nor violative of provision of HR & CE Act warranting interference.

95. Yet another aspect is relevant to be noted. Mr. R.Gandhi, learned Senior Counsel for the impleading Petitioner placed reliance upon G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein Government has passed an order permitting any devotee can become a Archaga, irrespective of caste and colour. On the basis of the said G.O., impleading Petitioner made an attempt to recite Devaram and Thiruvasagam at Thiruchitrambala Medai and that Podhu Dikshidars had filed suit in O.S.No.176/2006 against the impleading Petitioner. As pointed out earlier, refusal to allow the Impleading Petitioner Arumugasamy to recite Devaram and Thiruvasagam inside the temple had led to a serious dispute and number of litigations.

96. Government have passed G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein it was stated that devotees can recite Devaram and Thiruvasagam at Thiruchitrambal Medai without paying any cost to Podhu Dikshidars. The fact that inspite of such G.O., impleading Petitioner was not allowed to peacefully recite Devaram and Thiruvasagam at Thiruchitrambala Medai is to be reckoned with.

97. Contending that worshippers' right will always prevail over the individual rights [Podhu Dikshidars], learned Senior Counsel Mr. R.Gandhi placed reliance upon AIR 1954 SC 282 [*The Commr. HR & CE, Madras*]; 1997 (8) SCC 422 [*Shri Jagannath Temple Puri Management Committee, rep. through its Administrattor and another v. Chintamani Khuntia and others*]; 1997 (2) SCC 745 [*Bhuri Nath and others v. State of J & K and others*]; 1996 (2) SCC 498 [*Pannalal Bansilal Pitti and others v. State of A.P. and another*]. As per the said Government Order, reciting Devaram and Thiruvasagam inside the temple is a valuable right of devotees.

98. As rightly submitted by the learned Senior Counsel for the impleading Petitioner, Government is fighting for secular right and the impleading Petitioner is seeking for worshipping right. Impleading Petitioner has fundamental right to worship in the temple as guaranteed by the Constitution and enforce the right as well as to implement the Government Order in G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008. By narration of various dates and events, it is seen that impleading Petitioner has been continuously fighting for upkeep of the traditions in the temple and to protect the worshipping rights. Impleading Petitioner as a worshipper has every right to espouse the cause of other worshippers. To substantiate the same, learned Senior Counsel for the impleading Petitioner would place reliance upon 2008 (8) MLJ 365 [*Bibijan and 49 others v. Anwarsha Idgah & Mosque Avulla Durga, Panruti and 70 others*]. Therefore, the impleading Petitioner is ordered to be impleaded for better adjudication of facts and circumstances of the case.

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99. Before parting with the matter, this Court constrained to point out number of litigations and the delay in implementation of the order. Though the order appointing Executive Officer was passed way back in 1982, it is unfortunate that Podhu Dikshidars have filed Writ Petitions after Writ Petitions challenging the same and thereby delaying process of giving effect to the order. Ultimately, causality is the proper management and administration of the temple. 100. As pointed out earlier, in the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987, there is demarcation of powers of Executive Officer and Podhu Dikshidars and their responsibilities. If both the Executive Officer and Podhu Dikshidars act as per the Rules in the Appendix, it would ensure better management and administration apart from ensuring worshippers' right.

101. This court expresses the hope that at least from now on, the vast properties of Sri Sabanayagar temple, Chidambaram is to be taken into proper management and administration. This Court expresses the hope that Podhu Dikshidars would co-operate with the authorities in proper management and administration of the temple and its properties.

102. M.P.No.2/2006 and M.P.No.1/2008 :- In the result, both the Petitions are allowed and the Petitioners in M.P.No.2/2006 & M.P.No.1/2008 are ordered to be impleaded in the Writ Petition as Respondents 3 and 4 respectively. No costs.

103. W.P.No.18248/2006:-

In the result, the Writ Petition is dismissed. Having regard to the interest of the temple, its management and administration, the following directions are issued:-

2nd Respondent shall issue appropriate directions to the Executive Officer Mr. R.Jayachandran or the present Executive Officer to administer Sri Sabanayagar Temple, Chidambaram in accordance with the provisions of HR & CE Act and the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987 within a period of one week from the date of receipt of copy of this order.

Writ Petitioner Podhu Dikshidars shall render all co-operation to the Executive Officer in the proper administration of the temple in accordance with the Rules stipulated in the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987.

Status quo granted on 17.6.2006 in M.P.No.1/2006 is vacated. No costs.

VCJ/VCS

2009-1-L.W. 856

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

16th October, 2008/ Civil Appeal No. 6124 Of 2008 @ S.L.P. (C) No.6846 of 2006 (From the final Judgment and Order dated 13.2.2006 of the High Court of Judicature at Bombay in Chamber Summons No.1270 of 2005 in Suit No.457 of 2005)

Altamas Kabir, J., and Markandey Katju, J.

Babulal Khandelwal & Ors. ..*Appellant*

Vs.

Balkrishan D. Sanghvi & Ors.

...*Respondents*

Administration suit/Impleadment of Parties, objections for, Considerations,

(Indian) Succession Act,

2009 (4) CTC 801

IN THE HIGH COURT OF MADRAS

K. Raviraja Pandian and T. Raja, JJ.

W.A. Nos.181 to 183 of 2009, M.P. Nos.1 to 4 of 2009 in W.A. No.181 of 2009, M.P. No.1 of 2009 in W.A. No.182 of 2009 and M.P. No.1 of 2009 in W.A. No.183 of 2009

15.9.2009

Sri Sabhanayagar Temple, Chidambaram, represented by its Secretary, Podhu Dheekshadhars, Chidambaram .....*Appellant*

Vs.

1. The State of Tamil Nadu, represented by its Secretary, Department of Tamil Development, Religious and Information Department, Fort St. George, Chennai. 2. The Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam High Road, Chennai-600 034 [Respondents 1 & 2 in all the Appeals] 3. P. Sathiyavel Murugan [Respondent 3 in WA 181 & 183/2009] 4. U. Arumugsamy [Respondent 4 in WA No.181 of 2009 & Respondent 3 in WA No.182 of 2009] 5. Dr. Subramania Swamy [Respondent 5 in WA No.181 of 2009] 6. V.M.S. Chandrapandian [Respondent 6 in WA No.181 of 2009] International Sri Vaishnava Dharma Sasrakshna Society, rep. by its President Swami Govindaramanuja Dasa [Respondent 5 in W.As.182 & 183/09] [Respondents 5 & 6 in WA No.181 of 2009 and Respondent 5 in W.As. Nos.182 & 183 of 2009 are impleaded as per order of this Court dated ...09.2009 in the M.Ps.] .....*Respondents*

HR & CE — *Religious denomination — Test — Podhu Dikshidars, if, religious denomination — Whether observation in Shirur Mutt case will bind respondents as res judicata — Whether appointment of Executive Officer for administration and proper maintenance of properties of Temple would infringe right of appellant u/Art.26 ?*

Constitution of India, Article 26 — Fundamental right guaranteed by Article 26 can be enforced only when Religious Institution is established and maintained by person complaining of infringement of fundamental right — Phrase "establish and maintain" cannot be separated and has to be read conjunctively — Chidambaram Temple was established by Chozha and Pandya Kings and maintained by them and Dikshidars who claim right to manage them admittedly did not establish said Temple — Appointment of Executive Officer for administration and for proper maintenance of properties for Chidambaram Temple would not in any way infringe Article 26.

Facts : Podhu Dikshithars filed Writ Petition challenging the take over of the management and administration of the Chidambaram temple and pleaded that the temple is a religious denomination and the take over constituted infringement of fundamental right guaranteed by Article 26. They also pleaded that the Court had in *Shirur Mutt case* rendered a finding that the Dikshidars constituted a religious denomination and the said finding between the same parties constituted *res judicata* and the Government could not revisit the area. The

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Learned Single Judge rejected the contentions and upheld the order of the Government. The Appeal filed by the Dikshidars was dismissed and it was held that the principle *of res judicata* did not apply to the facts of the case and the interpretation of Article 26 required establishment and management of the religious institution and the Dikshidars on their own showing have admitted that the temple was not established by them.

From the above, it is clear that as regards the affairs of the temple in the matter of religion, the right of management to a religious body is a guaranteed fundamental right, which no legislature can take away. On the other hand, as regards the administration of the properties, which a religious denomination is entitled to own and acquire, it is the right to administer such properties, but only in accordance with law, meaning thereby, the State can regulate the administration of the property of the religious denomination by means of law validly enacted. To put it otherwise, it is the religious denomination, which has been given the right to administer those properties in accordance with law. (Vide *Commissioner, Hindu Religious Endowments v. Shri Laxmindra Theertha Swamiar of Shirur Mutt,* AIR 1954 SC 282). *[Para 51]*

The phrase, 'establish and maintain' cannot be separated. It shall be read conjunctively. Only when a religious denomination or a Section thereof established a religious institution, it gets the right to manage its own affairs in matters of religion with respect to that institution. This principle has been laid down by the Supreme Court in the case of *Azeez Basha v. Union of India,* AIR 1968 SC 662. Therefore, the claim of the appellant that the temple is a denominational temple, can be accepted only if the appellant proves that they established the religious institution and that they are part of a religious denomination and that they are administering the same continuously. *[Para 54]*

This Court need not search for any other evidence to reach the conclusion whether the temple was built or founded by the appellant. In view of the admitted statements made by the appellant as above, it is proved beyond doubt neither the appellant nor their predecessors or forefathers were founders of the temple, and entitled to have the benefit of protection under Article 26 of the Constitution of India. A Three-Judge Bench judgment of the Apex Court in the case of *Adi Visheswara,* cited supra, held that if the temple is built or established or founded by some people and subsequently others started managing the temple cannot be allowed to complain that the temple's property is interfered by action of taking over by the Government for a reason that the action does not offend the right of their livelihood guaranteed under Article 21. In this Judgment, it has also been held that the State can always step into prevent mis-use, mis-management and irreligious acts, actions and conduct, and to regulate proper and efficient management and administration, performance of all religious services, ceremonies and rituals in systematic and organized manner by competent persons on the religious side of performing ceremonies without interruption. Therefore, it is clear that temple is not a denominational temple and therefore, in the event of any mismanagement or financial irregularities, the State can always interfere with the mal-administration, in which event, the member of the appellant cannot complain that their rights guaranteed under Articles 25 and 26 of the Constitution have been infringed by appointment of Executive Officer. It has been held in a number of cases that the practice of religious faith according to tenets of Hindu religion, custom and usage stand protected by the Act. But the secular management of the religious affairs in the temple is secular part. The legislature has power to interfere with and regulate proper and efficient management of the temple and this aspect of the question has been elaborately considered by a Three-Judge Bench of the Apex Court in the case of *Bhurinath v. State of Jammu and Kashmi,* JT 1997 (1) SCC 546 as well as in the case of *Adi Visheswara of Kashi Viswanath Temple,* JT 1997 (4) SC 124. *[Para 55]*

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959) — Religious denomination — Tests regarding — Chidambaram Temple is meant both for Saivites and Vaishnavites — Two religious groups are offering worship and prayer every day and

(37)

they belong to different faiths — Plea that temple is religious denomination belonging to Saivites alone rejected.

Subsequently, a Constitution bench of the Supreme Court in the case of *Dargah Committee v. Syed Hussain Ali,* 1962 (1) SCR 383 : AIR 1961 SC 1402, held that, 'the words 'Religious Denominations' must take their colour from the word religion and this is so the expression 'Religious Denomination' must also satisfy three conditions:

1. Collection of religious faith system of belief which is conducive to the spiritual well being, *i.e.,* common faith,

2. Common organization,

3. a designation by a distinctive name.

The Supreme Court has given a 'litmus test' consisting of three conditions to be satisfied for calling any sect as a religious denomination, and any temple as a denomination. *[Para 39]*

It has been further admitted by the Podhu Dikshidars themselves that this temple is meant for both Saivites and the Vaishnavites. In Sri Sabhanayagar Temple two main deities namely Sri Natarajar and Vishnu by name Sri Govindaraja Perumal are installed. Both the temples have separate sanctum sanctorium, separate bali Peedam, separate Gopuram, separate Dwajasthambham (Kodi Maram). When both the sacred temples are situated within one campus having distinct and separate religious rituals and practice of religious functions and both the places of worship are open to public, the temple is a public temple. An another historical fact to be born in mind is, out of 108 holy places of Vaishnavite namely 'Dhivyadesam', Sri Sabhanayagar temple at Chidambaram where Lord Govindaraja Perumal is installed, is one among the 108 Divyadesam. Historical records also reveal that in praise of Lord Govindaraja Perumal, two great saints namely Kulasekara Azhwar and Thirumangai Azhwar have visited these ancient temple and also sung several religious songs and they are all seen in Nalayira Divyaprabandam. *[Para 42]*

Vaishnavam and Saivam are considered by Hindus as two eyes of Hindu Religion. Therefore, when two temples of two faiths are situated in one single campus and when two religious groups are coming every day to offer prayer to these two deities Lord Vishnu and Lord Shiva, it cannot be held that this temple is meant for only one sect of people, and therefore, the arguments of the appellant/Podhu Dikshidars claiming that the temple is a religious denomination belonging to Saivites alone cannot be accepted for the simple reason that if such an argument is accepted, it is like harming one eye while protecting another eye and further such an approach will seriously work against the sentiments of Vaishnavite. *[Para 43]*

Principle of *res judicata* — Whether or not Podhu Dikshidars of Chidamabram constitute religious denomination — *Res judicata* is based on principle that Court shall not try any Suit or issue in which matter directly and substantially in issue in former Suit between same party when former Suit has been heard and finally decided by Court — Observation of Court in *Shirur Mutt case* that Podhu Dikshidars are religious denomination would not constitute *res judicata* as said issue did not come up for consideration *Shirur Mutt case* — Doctrine of *res judicata* falls in domain of procedure and cannot be raised to status of legislative direction between parties.

Held : The principle of *res judicata* has been incorporated stating that no Court shall try any Suit or issue in which the matter directly and substantially in issue in the former Suit between the same party when the former Suit has been heard and finally decided by the Court. *[Para 34]*

(38)

The primary issue under consideration in the *Shirur Mutt's case* was as to the validity of the notification in G.O.Ms. No.894, Rural Welfare dated 28.08.1951 notifying the temple under Chapter VI of the Madras Hindu Religious Endowments Act, 1926. While dealing with the said question, the Division Bench has referred to the history of the temple as well as the appellant as a group of persons, who have been serving in the temple as archakas. *[Para 35]*

In the judgment, the Division Bench proceeded to observe as follows:

> 'Looking at from the point of view, whether the Podhu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26 it seems to us that it is a clear case, in which it can safely be said that the Podhu Dikshitars who are Smartha Brahmins, form and constitute a religious denomination or in any event, a section thereof.'

This observation, by itself, cannot be regarded as a finding recorded on the issue as to whether the temple is a denomination temple. That issue was not directly and substantially in issue in the *Shirur Mutt's case*. In the same judgment, it was observed that though the position of Dikshidars is analogous to that of Madathipathi, they would not have the same dominion over the income of the properties of the temple which the Madathipathi enjoys in relation to the income from the mutt and its properties. *[Para 37]*

Hence, the said judgment in *Shirur Mutt's case* even though between the same parties, being primarily on a different question, would not bar the adjudication of the character of the Podhu Dikshidars as a sect or the nature and the character of the temple and thus the principles of *res judicata* would clearly not apply to the facts of the present case. *[Para 45]*

The principle of *res judicata* and its applicability have been considered by the Supreme Court in catena of decisions, the conspectus of which could be summarized as follows : The doctrine of *res judicata* belongs to the domain of procedure : it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata*. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law. Where the law is altered since the earlier decision, the earlier decision will not operate as *res judicata* between the same parties: *Tarini Charan Bhattacharjee case*, ILR 56 Cal 723. It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of *res judicata* a party affected by the decision will not be precluded from challenging the validity of that order under the rule of *res judicata*, for a rule of procedure cannot supersede the law of the land. Vide Three Judge Bench's decision of the Apex Court in the case of *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, 1970 (1) SCC 613. *[Para 47]*

In view of the above enunciation of law, we are of the considered view that the points as to the binding nature of the *Shirur Mutt's case* and *res judicata* put forth by the appellant fail. Thus points 1 and 2 are answered against the appellant. *[Para 48]*

CASES REFERRED

Azeez Basha v. Union of India, AIR 1968 SC 662 —[Relied on] *54*
Bhurinath v. State of Jammu and Kashmi, JT 1997 (1) SCC 546 —[Relied on] *55*
Commissioner, Hindu Religious Endowments v. Shri Laxmindra Theertha Swamiar of Shirur Mutt, AIR 1954 SC 282 —[Relied on] *51*
Dargah Committee v. Syed Hussain Ali, 1962 (1) SCR 383 : AIR 1961 SC 1402 —[Relied on] *39, 44*
Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. Commissioner of H.R. & C.E. Board, Madras, 1952 (1) MLJ 557 ..... *28, 33, 35, 37, 44, 45, 48*
Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, 1970 (1) SCC 613 —[Relied on] *47*
Ponnuman Dikshitar v. The Board of Commissioners for the Hindu Religious Endowments, Madras, 1939 (2) MLJ 11 —[Relied on] *6, 38, 40, 66*
Sri Adi Visheshwara of Kashi Viswanath Temple, Varanasi v. State of U.P., 1997 (4) SCC 606 —[Relied on] *41, 44, 55, 56*
Sri Jaganath Temple Puri Management Committee v. Chinthamani Kuntis, 1997 (8) SCC 422 —[Relied on] *44*
Sri Sri Sri Laxmana v. State of Andhra Pradesh, 1996 (8) SCC 705 —[Relied on] *65*
Tarini Charan Bhattacharjee case, ILR 56 Cal 723 —[Relied on] *47*

Mr. G. Rajagopalan, Senior Counsel for M/s. K. Bhavatharini, Advocates for Appellant.

Mr. S. Ramasamy, Additional Advocate General II, assisted by Mr. T. Chandrasekaran, Special Government Pleader (H.R. & C.E.) and Mrs. N. Kavitha, Government Advocate for Respondent Nos.1 & 2 in WAs. Nos.181 to 183/2009; Mr. S. Senthilnathan, Advocate for Respondent No.3 in WAs. Nos.181 & 183 of 2009; Mr. R. Gandhi, Senior Counsel, for Mr. R. Sagadevan, Advocate for Respondent No.4 in WA No.181/2009 & for Respondent No.3 in WA.No.182/09.

Dr. Subramania Swamy, Petitioner in MP No.2 of 2009 in WA No.181/2009; Mr. R. Sankara Subbu, Advocate for Petitioner in MP No.4 of 2009 in WA No.181/2009 ; Swami Govindaramanuja Dasa, Party in person, Petitioner in MPs 1/09 in WA.182/09 &2/09 in WA 183/09.

W.As. AND M.Ps. DISMISSED — NO COSTS

Prayer : Writ Appeals filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 02.02.2009 made in Writ Petition No.18248 of 2006, M.P. No.2/2006, and M.P. No.1/2008.

JUDGMENT

T. Raja, J.

1. Writ Appeal No.181 of 2009 is filed against the order of the learned Single Judge dated 02.02.2009 made in Writ Petition No.18248 of 2006. The other two Appeals in Writ Appeals Nos.182 and 183 of 2009 are filed against the orders of the learned Single Judge impleading respondents 3 and 4 in the Writ Petition by order dated 02.02.2009 made in M.P. No.2 of 2006 and M.P. No.1 of 2008 in Writ Petition No.18248 of 2006.

2. 'Iswara' as Lord Siva is generally worshipped in a particular form known as 'Linga'. The Word 'Linga' in Sanskrit means a symbol. If all

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forms in the creation were put together that would form an indefinable form which is symbolised by 'Linga'.

3. The vedas reduce all forms to five constituent elements called the 'pancha mahabutas', *viz.,* five great elements. they are 'Akasa-Space; Vayu-Air; Agni-Fire; Apah-Water and prithivi-Earth'. There are five temples in India where Lord Siva is invoked in each of the five elements. At Chidambaram Temple, Lord Siva is worshipped as the element of space. At Kalahasdi Temple, in Andhra Pradesh, Sivalingam as well as a lamp with a constant flame implying the presence of air is worshipped as element of air. At Tiruvannamalai Arunachaleeswara Temple, Lord Siva is worshipped as Agni, fire. At Jambukeswara Temple located at Tiruvannaikaval, at Tiruchirappalli, Lord Siva is worshipped as the element of water. At 'Kancheepuram', Sivalingam is made of earth and is worshipped as the element of earth.

4. The Chidambaram Temple contains an altar which has no idol. In fact, no Lingam exists but a Curtain is hung before a wall, when people go to worship, the curtain is withdrawn to see the 'Lingam'. But the ardent devotee will feel the divinely wonder that Lord Siva is formless *i.e.,* space which is known as 'Akasa Lingam'. Offerings are made before the curtain. This form of worshipping space is called the 'Chidambara rahasyam', *i.e.,* the secret of Chidambaram. The Chidambaram Temple is also famous for its deity, Lord Nataraja, the 'dancing Siva'. This temple was built with Granites in an area of about 40 acres. It has massive high walls with four towers (Rajagopurams) in all four directions. There is a pond called 'Sivaganga Theertham' having measured about 175 x 100 feet. There are 108 Bharathanatya models (dance postures) from Natya Sasthra fixed in the Rajagopurams.

5. Of the five temples of Siva, when all four ancient sacred Siva Temples are under proper care and efficient administration of the Board, the Podhu Dikshidars at Chidambaram Sabhanayagar Temple alone are fighting with no end against the Board since 1885, and thereby reducing the great ancient Sri Sabhanayagar temple financially crunched and the temple's unique & architectural structures left unattended due to this endless Court proceedings.

6. As early as in 1885, a Suit was filed by the Dikshidars of Sri Sabhanayagar Temple at Chidambaram (hereinafter referred to as 'temple' for short) raising a question as to whether the temple at Chidambaram is a public institution or private temple. The first native Judge of British India Hon'ble Mr. Justice Muthuswani Ayer sitting with Hon'ble Mr. Justice Shephard, in the judgment dated 17.03.1890 in A.S. No.108 and 159 of 1888 declared the temple as a place of public worship from time immemorial in the presidency and accordingly held that the Board has got jurisdiction to frame scheme under Section 63 of the Madras Hindu Religious Endowment Act of 1923 (Act I of 1925). This is seen in an old judgment reported in

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Ponnuman Dikshitar v. The Board of Commissioners for the Hindu Religious Endowments, Madras, 1939 (2) MLJ 11.

7. The second controversial question which arose for consideration by the Division Bench of this Court under Section 62 of the Madras Hindu Religious Endowment Act (11 of 1927), was also answered therein by precisely holding even in the year 1939, more than 160 years back, that once the Board takes action *suo moto* under section 62, even though, it may ultimately find that there was no mismanagement, nevertheless, it can frame a scheme, if it is necessary for the proper administration of the temple.

8. In the year 1927, when the Hindu Religious Endowment Act of 1923 (Act I of 1925) came into force, on behalf of the Dikshidars of the temple, a memorial was submitted to His Excellency the Governor in Council, Fort St. George, in which they referred to the history of the temple, its endowments and the usages obtaining therein. On that basis, the Podhu Dikshidars requested the Government to grant exemption to the temple from the operation of the Act by virtue of the power under Section 2 of the said Act. This request of the appellant was granted by the Government in G.O. No.3750 (L. and M.) dated 28th August 1926, exempting the temple, from the operation of provision of Madras Hindu Religious Endowments Act (Act I of 1925) except Sections 38, 57, 58, 59, 64, 65, 66, 69 and 70. Section 38 deals with hereditary trustees; Section 57 deals with submission of budgets and annual accounts; Sections 58 and 59 related to schemes; Sections 64, 65 and 66 to finance and contribution and Sections 69 and 70 to the removal of a trustee and costs.

9. In the year 1931 some of the worshippers of the temple moved the Board to frame a scheme and the Board started a proceedings to frame a scheme in O.A. No.644 of 1931, but owing to some technical defects, the proceedings were dropped. However, in view of frequent Complaints, the Board took up the matter *suo motu* in O.A. No.73/1932 and settled a scheme on 08.05.1933.

10. The scheme directed the establishment of Hundials for collections of offerings and the introduction of the chit system for Archana. The Podhu Dikshidars immediately instituted a Suit in O.S. No.16 of 1933 in the District Court, South Arcot, questioning the scheme.

11. The learned District Judge in the year 1936 itself confirmed the correctness of the scheme with a slight modification by a decree dated 09.09.1936. In the said scheme, the trusteeship was vested in the Podhu Dikshidars. The Managing Committee was enjoined to appoint a Manager subject to the approval of the Board on salary basis, and to establish hundials for the deposit of voluntary and compulsory offerings and also to fix the rates for the performance of archana and special worship. Their duties were defined under the scheme. They were required to lease out temple properties invariably by public auction. They are bound to maintain accounts and the

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Board was authorised to appoint one or more of the worshippers as Honarary Trustees who shall attend to the inspection of the accounts, ascertain whether the Kattalais are being performed regularly and bring to the notice of the Managing Committee, any irregularities in such matters. The committee was required to prepare a list of jewels and submit a copy of the same to the Board.

12. During the pendency of the Suit and before the judgment was pronounced by the District Court, the exemption granted in 1926 was annulled and the Board attempted to notify the temple by proceedings dated 01.05.1936, under the Act. A Division Bench of this Court, having seen that a scheme was framed in 1933 and proceedings relating to this notification were pending in District Court, directed the Board to drop the proceedings to notify the temple and accordingly, the said proceedings were dropped.

13. In the year 1951, since mounting pressures came from various worshippers and public to notify this temple, the Board once again, after hearing objections from the Podhu Dikshidars by order dated 21.03.1951, decided to notify the temple as they were satisfied that a case for such a step was made out. Again, an Appeal was preferred before the Full Board and it was disposed of by an order of the Full Board dated 11.7.1951.

14. This was immediately followed by notification dated 31.08.1951 and the Government also approved the proposed action of the Board for appointment of Executive Officer and issued a notification dated 28.08.1951. Under the new Act, the Government published the notification declaring the institution to be subject to the provision of Chapter VI of the Act.

15. The order of the Board in the first instance deciding to notify the temple proceeded on the following grounds :

(i) that though there was a scheme already framed by the Board and finalised by the Court in 1933, it came into force on 1st June 1939, the register of the jewels was not maintained and was not made available for the inspection of the officers of the Board;

(ii) that the temple was in a bad state of repair;

(iii) that the Dikshitars did not take steps to enforce the Podhu Kattalais;

(iv) that no steps were taken to recover the possession of the Tiruvilakku manyam lands;

(v) that chit system for archanas was not introduced;

(vi) that the vacant sites of the temple were not leased out properly;

(vii) that the electrical lighting arrangements in the temple were insufficient;

(viii) that the drains around the temple and inside the shrines were not kept in a sanitary condition;

(ix) that the D.C.B. was not maintained and so on which are enumerated seriatum in the annexure to the Board's Order dated 21.3.1951.

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16. These objections were not at all answered by the Dikshidars in their reply. Therefore, the Full Board and the Board which considered the matter in the first instance, agreed in concluding that there were acts of mis-management established which necessitated notification of the temple.

17. In the second round of litigation. in view of mal-administration and mis-management of the funds, and also the movable and immovable properties of about several hundred acres of land, of course, on the Complaints made by some of the Podhu Dikshidars, the Government of Tamil Nadu passed G.O.Ms. No.894, Rural Welfare Department, dated 28.08.1951 declaring the temple as Public Temple. In order to enforce the provisions of the Act, the temple was notified under Chapter VI(A) under Section 65 of the Act. Once again, the said G.O. was challenged in Writ Petitions Nos.379 and 380 of 1951 by some of the Dikshidars and the notification was quashed by the judgment dated 13.12.1951.

18. After three decades, once again the problem of mis-management was brought to the notice of the Government by several worshippers. The mismanagement pointed out were - non-accounting of gold articles received as 'kaanikkai' to the temple; that non-accounting of gold ingots coins worth Rs.2.2 lakhs kept in the Karuvoolam (Treasury) and detected by the Assistant Commissioner in the presence of the Revenue Divisional Officer, Chidambaram and Deputy Superintendent; that there was also loss of 860 grams of Gold in melting the gold jewels; that the donations and contributions given in the name of temple were not properly utilised for the purpose for which it was donated; and that there were misappropriation of huge Hundial moneys donated by lakhs of worshippers visiting the temple everyday.

19. In view of several complaints touching upon the mis-management and mis-handling of temple properties-both movable and immovable, the Government issued notice in R.C. No.52754/1982/B6 dated 20.07.1982 to the secretary of the Podhu Dikshidars pointing out the above irregularities in the administration of the temple and its properties and the proposal to appoint Executive Officer. As usual, the Podhu Dikshidars again challenged the said notice by way of filing W.P. No.5638 of 1982 before the High Court, Madras. The learned Single Judge of this Court having seen that no show cause notice was given, directed the parties concerned to treat the notice dated 20.07.1982 as show cause notice and not as a decision and accordingly ordered the Writ Petition directing the Podhu Dikshidars to give proper explanations to the said show cause notice.

20. Pursuant to the said direction, the Secretary of Podhu Dikshidars have filed their bald reply on 09.01.1984, without answering any of the specific allegations made therein. Thereafter, an enquiry was conducted by the Commissioner. One of the contentions raised by the Podhu Dikshidars was that the appointment of Executive Officer would be interfering with

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their Constitutional rights guaranteed under Article 26 of the Constitution of India. However, the Commissioner after affording full opportunity to both parties and after taking note of the serious lapses on the part of the Podhu Dikshidars in not properly accounting of the revenue of the temple, movable and immovable properties, has passed the order dated 31.07.1987 appointing Executive Officer. It is pointed out that the appointment of Executive Officer is only to look after the administration of the temple and the management of the properties alone and that will not mean interference with the rights of Dikshidars relating to religious practices in the temple. The Executive Officer assumed the charge of the temple on 10.08.1987. Aggrieved by that order dated 31.07.1987, W.P. No.7843 of 1987 was filed before this Court. When the matter came up for consideration, though this Court declined to grant stay of the appointment of Executive Officer, but granted stay of Rule 3 which gives powers and duties of the Executive Officer.

21. The Writ Petition filed in the year 1987 challenging the appointment of Executive Officer was taken up in 1997, after 10 years, and during this interregnum period, in view of the stay granted, the Podhu Dikshidars were in full enjoyment of the temple management and administration. When the learned Single Judge indicated to the Writ Petitioner/appellant to challenge the correctness of the order appointing the Executive Officer by way of Revision under Section 114 of Hindu Religious and Charitable Endowments Act, the same was opposed by the petitioner/appellant herein by objecting that more than 10 years had been lapsed, and therefore, going back before the Revisional Authority would not serve their purpose. Therefore, the learned Single Judge after considering the matter afresh came to the conclusions that the writ petitioner/appellant herein are in possession of several hundred acres of land belonging to the temple, collected rents from the tenants, but they have not accounted all the lease amounts either to the Executive Officer or to the Court, as directed, which means that the offerings made by devotees were swallowed by them and the gold articles and jewels belonging to the deity were not properly accounted; that the donations received from the worshippers have not been properly accounted, that the direction of the Court that every three months end or quarterly end, they have to account for the money, offerings and gold jewellery of the temple, submit a regular account to the Executive Officer, has not been complied with by the appellant and dismissed the Writ Petition. The learned Single Judge further held that it could be detrimental to the devotees and Public in interfering with the order of appointing the Executive Officer, who was appointed for better management and effective administration of the temple. Aggrieved by that order, the Podhu Dikshidars/appellant herein filed W.A. No.145 of 1997. When the Writ Appeal was finally taken up on 01.11.2004, nearly seven years from the date of disposal of the Writ Petition, smartly a peculiar prayer, diametrically opposed to what was argued before the learned Single Judge, was placed before the Division Bench praying that the Writ Petitioner/appellant herein wanted to file a Revision Petition before the

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Government under Section 114 of the HR & CE Act. It is to be noted that the Podhu Dikshidars were enjoying the benefit of interim order granted during the pendency of the Writ Petition as well as in the Writ Appeal.

22. The Division Bench had allowed the prayer of writ petitioner/appellant herein to go back before the Revisional Authority by setting aside the order of the learned Single Judge passed on merits, however the Division Bench directed the Podhu Dikshidars to submit periodical accounts to the Executive Officer.

23. When the Revision Petition was taken up by the Revisional Authority on 09.05.2006 by noting that the Podhu Dikshidars from the date of the appointment of Executive Officer did not care to cooperate with the Executive Officer and further noting that the Podhu Dikshidars miserably failed even to comply with the order of the Division Bench directing them to submit periodical accounts to the Executive Officer, dismissed the Revision Petition on merits. Aggrieved by the order of the Revisional Authority, the Podhu Dikshidars again initiated another round of proceedings by filing Writ Petition No.18248 of 2006 under Article 226 Constitution of India, challenging the order passed by the Government of Tamil Nadu in G.O. Ms. No.168 dated 09.05.2006. During the pendency of the Writ Petition, respondents 3 and 4 got themselves impleaded in the Writ Petition. The Writ Court, after hearing the parties and after examination of various allegations of mis-management, dismissed the Writ Petition by reason of the order impugned in Writ Appeal No.181 of 2009. The order of impleadment of respondents 3 and 4 is challenged in Writ Appeal Nos.182 and 183 of 2009.

24. The learned Single Judge after extensively discussing various aspects, allowed the Impleading Applications filed by respondents 3 and 4 *viz.*, Mr. P. Sathiyavel Murugan and Mr. U. Arumugasamy. Since the learned Single Judge has exercised the discretionary power in allowing the Impleading Application filed by respondents 3 and 4, this Court declines to interfere with the well exercised discretionary power of the Writ Court.

25. Before us, three petitioners have filed four Petitions for impleadment. M.P. No.2 of 2009 is filed by Dr. Subramania Swamy and M.P. No.4 of 2009 is filed by V.M.S. Chandrapandian for impleading them as party respondents in W.A. No.181 of 2009. M.Ps. Nos.1 in W.A. No.182 of 2009 and M.P. No.2 of 2009 in W.A. No.183 of 2009 are filed for impleading International Sri Vaishnava Dharma Sasrakshna Society, represented by its President Swami Govindaramanuja Dasa, as party respondent in Writ Appeals Nos.182 and 183 of 2009.

26. The petitioner in M.P. No.2 of 2009 Dr. Subramania Swamy claims that as the respondents 3 and 4 have already been impleaded by the learned Single Judge, there would be no impediment for impleading him also as a party, he being a champion of public cause. The petitioner in M.P. No.4 of 2009 V.M.S. Chandrapandian is a former Chairman of Chidambaram

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Municipality and was also a Member of the Temple Trust and well aware of the activities of the appellant. The petitioner in M.P. No.1 in W.A. No.182 of 2009 and M.P. No.2 of 2009 in W.A. No.183 of 2009 International Sri Vaishnava Dharma Sasrakshna Society, represented by its President Swami Govindaramanuja Dasa claims that as Lord Govindaraja Perumal Sannadhi is also in the temple, they are interested in the *lis* and they want themselves to be impleaded as party respondents.

27. Having heard the learned counsel appearing for the impleading parties and the other counsel in respect of impleadment, and having regard to the fact that respondents 3 and 4 have been impleaded in the Writ Petition itself, and also having regard to the nature of the lis, which is touching upon the religious sentiments of devotees of Lord Nataraja and Lord Govindaraja Perumal, we are of the view that strict or rigid rule of *locus standi* of the proposed respondents need not be put against them and they may be allowed to put forth their case which would, in a way, throw some light on the controversy. That would further the cause of justice. Hence, the petitioners in all the four Petitions can be impleaded as party respondents and the Miscellaneous Petitions are ordered accordingly.

28. Dr. Subramania Swamy, in his submission, after stating as to how he is interested in the *lis*, has averred about the history and administration of the temple and also the earlier judgment of this Court in ***Shirur Mutt's case***. The averments are materially the replica of the averments and arguments made by the appellant. On that ground he prayed for allowing the Appeal.

29. The other impleaded parties, apart from stating about their association with the temple for a long number of years, averred about the mis-management alleged to have been committed by the appellant and prayed for sustaining the order impugned.

30. The learned Senior Counsel Mr. Rajagopalan appearing for the writ petitioner/Appellant herein submitted the following arguments :

(a) The Judgment in W.P. Nos.379 and 380 of 1951 dated 13.12.1951 is binding on the State Government and therefore the appointment of Executive Officer for the temple by order dated 31.07.1987 is illegal.

(b) The judgment of this Court dated 13.12.1951 quashing the proceedings of the Government holding the order appointing Executive Officer is violative of right of Podhu Dikshidars will bind the respondents as *res judicata*. The same is not considered by the learned Writ Court. Therefore, the order of the learned Single Judge should be reversed.

(c) That the proceedings of the Government appointing the Executive Officer to the temple is against Articles 25 and 26 of the Constitution of India, since the appointment of Executive Officer is directly interfering the right of administration of Podhu Dikshidars and the temple, and

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(d) That the order dated 31.07.1987 appointing Executive Officer and confirmed by the Government by G.O.Ms. No.168, dated 09.05.2006 is without jurisdiction and hence the Writ Appeal should be allowed.

31. *Per contra,* the learned Additional Advocate General, Mr. Ramasamy submitted the following points:

The Principles of *res judicata* under Section 11 of the Code of Civil Procedure will not apply to this case. He further contended that the question as to whether the Podhu Dikshidars can be termed as 'denomination' was not the issue in the earlier case decided by this Court. The appellant herein neither pleaded nor admitted anywhere earlier in the proceedings that the Podhu Dikshidars is religious denomination or the temple is a denominational one. Therefore, the Principle of *res judicata* will not apply in the present Writ jurisdiction. He further argued for sustaining the order of the learned Single Judge in respect of the other two issues for the reasons stated in the judgment impugned.

32. Heard Mr. G. Rajagopalan, learned Senior Counsel, for the appellant, Mr. S. Ramasamy, Additional Advocate General appearing for respondents 1 and 2 in the Appeals, and other counsel, and perused the materials available on record.

33. Now let us proceed to consider the points in issue, as raised by the learned counsel for the appellant, in Writ Appeal No.181 of 2009. First, let us consider the issues in respect of the appellant's contention that the Judgment in Writ Petitions Nos.379 and 380 of 1951 dated 13.12.1951, ***Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. Commissioner of H.R. & C.E. Board, Madras,*** 1952 (1) MLJ 557, is binding on the State Government and therefore the appointment of Executive Officer is illegal and the contention that the said judgment of this Court dated 13.12.1951 will bind the respondents as *res judicata*.

34. The Principle of *res judicata* has been incorporated stating that no Court shall try any Suit or issue in which the matter directly and substantially in issue in the former Suit between the same party when the former Suit has been heard and finally decided by the Court.

35. The primary issue under consideration in the ***Shirur Mutt's case*** was as to the validity of the notification in G.O. Ms. No.894, Rural Welfare, dated 28.08.1951 notifying the temple under Chapter VI of the Madras Hindu Religious Endowments Act, 1926. While dealing with the said question, the Division Bench has referred to the history of the temple as well as the appellant as a group of persons, who have been serving in the temple as Archakas.

36. The question as to whether the Podhu Dikshidars are denomination or not, had not strictly fallen for consideration of the Court in that case. The judgment discusses the nature and character of the sect of Podhu Dikshidars.

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Since the character was not directly or substantially in issue in that case, the Principle of *res judicata* would not operate.

37. In the judgment, the Division Bench proceeded to observe as follows:

> 'Looking at from the point of view, whether the Podhu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26 it seems to us that it is a clear case, in which it can safely be said that the Podhu Dikshitars who are Smartha Brahmins, form and constitute a religious denomination or in any event, a section thereof.'

This observation, by itself, cannot be regarded as a finding recorded on the issue as to whether the temple is a denomination temple. That issue was not directly and substantially in issue in the ***Shirur Mutt's case***. In the same judgment, it was observed that though the position of Dikshidars is analogous to that of Madathipathi, they would not have the same dominion over the income of the properties of the temple which the Madathipathi enjoys in relation to the income from the Mutt and its properties.

38. In the earlier judgment of this Court in the case of ***Ponnuman Dikshidar,*** 1939 (2) MLJ 11, it has been held that the temple was not a private temple, but a public temple. There was a specific finding in that judgment, which read as follows :

> 'So early as 1885, when the question was raised in a Suit by the Dikshidars, Muthuswamy Aiyar and Shephard, JJ., in their judgment dated 17th March, 1890, in A.S. No.108 and 159 of 1888 observed that it was not denied that the institution was being used as a place of public worship from time immemorial and that there was no particle of evidence in support of the assertion that this ancient temple of Sri Nataraja was the private property of the Dikshidars. Even now it is not denied that this temple is held to be very sacred by all the Saivites in their presidency and is reported to as a place of public worship.

39. Subsequently, a Constitution Bench of the Supreme Court in the case of ***Dargah Committee v. Syed Hussain Ali,*** 1962 (1) SCR 383 : AIR 1961 SC 1402, held that, 'the words 'Religious Denominations' must take their colour from the word religion and this is so the expression 'Religious Denomination' must also satisfy three conditions:

1. Collection of religious faith system of belief which is conducive to the spiritual well being, *i.e.*, common faith:
2. Common organisation.
3. a designation by a distinctive name.

The Supreme Court has given a 'litmus test' consisting of three conditions to be satisfied for calling any sect as a religious denomination, and any temple as a denomination.

40. The issue raised in the present Writ Appeal has been tested by several judgments in various proceedings emanating from 1932 onwards. In the year

1933 a Suit was filed in Suit No.16 of 1933 by some of the Podhu Dikshidars on the file of the District Court South Arcot, Challenging the boards order No.997, dated 08.05.1933 under Tamil Nadu Act II of 1927 on the ground that the temple is an absolute private property of Podhu Dikshidars and outside the scope of Madras Hindu Religious Endowment Act, 1927. The District Judge rejected the claim that the temple being a private temple and passed a scheme and the same was settled in O.A. No.73 of 1932. On Appeal filed by the Dikshidars in A.S. No.306 of 1936 this High Court, while confirming the scheme with some modification has affirmed the findings of the fact that the temple is a public temple and the same was reported in ***Ponnuman Dikshitar and another v. The Board of Commissioners for the Hindu Religious Endowments, Madras and others,*** 1939 (2) MLJ 11.

41. The learned Single Judge, in the present impugned order, has dealt with the issue by referring various judgments of the Apex Court. One such case is ***Sri Adi Visheshwara of Kashi Viswanath Temple, Varanasi v. State of U.P.,*** 1997 (4) SCC 606 wherein it was held by the Supreme Court, believers of Shiva form of worship are not a denominational sect or section of Hindu, but they are Hindus as such.

42. It has been further admitted by the Podhu Dikshidars themselves that this temple is meant for both Saivites and the Vaishnavites. In Sri Sabhanayagar Temple two main deities namely Sri Natarajar and Vishnu by name Sri Govindaraja Perumal are installed. Both the temples have separate sanctum sanctorium, separate bali Peedam, separate Gopuram, separate Dwajasthambham (Kodi Maram). When both the sacred temples are situated within one campus having distinct and separate religious rituals and practice of religious functions and both the places of worship are open to public, the temple is a public temple. An another historical fact to be born in mind is, out of 108 holy places of Vaishnavite namely 'Dhivyadesam', Sri Sabhanayagar temple at Chidambaram where Lord Govindaraja Perumal is installed, is one among the 108 Divyadesam. Historical records also reveal that in praise of Lord Govindaraja Perumal, two great saints namely Kulasekara Azhwar and Thirumangai Azhwar have visited these ancient temple and also sung several religious songs and they are all seen in Nalayira Divyaprabandam.

43. Vaishnavam and Saivam are considered by Hindus as two eyes of Hindu Religion. Therefore, when two temples of two faiths are situated in one single campus and when two religious groups are coming every day to offer prayer to these two deities Lord Vishnu and Lord Shiva, it cannot be held that this temple is meant for only one sect of people, and therefore, the arguments of the appellant/Podhu Dikshidars claiming that the temple is a religious denomination belonging to Saivites alone cannot be accepted for the simple reason that if such an argument is accepted, it is like harming one

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eye while protecting another eye and further such an approach will seriously work against the sentiments of Vaishnavite.

44. The observation of the earlier Division Bench in ***Shirur Mutt's case***, are not in consonance with the three tests enunciated by the Supreme Court in various judgments mentioned above, the learned Single Judge rightly said that the observation of Division Bench in ***Shirur Mutt's case*** may not have any significance to a century old dispute and has rightly held on the basis of the judgment of the Apex Court that the observation of Division Bench in ***Shirur Mutt's case*** has no relevance to the present legal status of this case. Particularly, the observation of the Division Bench will not hold good in the light of the decision of the Supreme Court in ***Dargah Committee's case,*** AIR 1961 SC 1402; ***Adi Visheshwara of Kasi Vishwanath temple,*** 1997 (4) SCC 606; and ***Sri Jaganath Temple Puri Management Committee v. Chinthamani Kuntis,*** 1997 (8) SCC 422.

45. Hence, the said judgment in ***Shirur Mutt's case*** even though between the same parties, being primarily on a different question, would not bar the adjudication of the character of the Podhu Dikshidars as a sect or the nature and the character of the temple and thus the principles of *res judicata* would clearly not apply to the facts of the present case.

46. Further, the judgment could be binding between the parties so long as there is no change of law effected by Parliament or State Legislature or as long as there is no intervention by a judicial order. The power conferred on various authorities under the H.R. & C.E. Act, 1959 cannot be a bar by the judgment rendered in the year 1952, where the matter directly and substantially in issue was of a fundamentally different character.

47. The Principle of *res judicata* and its applicability have been considered by the Supreme Court in catena of decisions, the conspectus of which could be summarized as follows : The Doctrine of *res judicata* belongs to the domain of procedure : it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata*. A previous

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decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law. Where the law is altered since the earlier decision, the earlier decision will not operate as *res judicata* between the same parties: ***Tarini Charan Bhattacharjee case,*** ILR 56 Cal 723. It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the Rule of *res judicata* a party affected by the decision will not be precluded from challenging the validity of that order under the Rule of *res judicata*, for a rule of procedure cannot supersede the law of the land. Vide Three Judge Bench's decision of the Apex Court in the case of ***Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy,*** 1970 (1) SCC 613.

48. In view of the above enunciation of law, we are of the considered view that the points as to the binding nature of the ***Shirur Mutt's case*** and *res judicata* put forth by the appellant fail. Thus points 1 and 2 are answered against the appellant.

49. The second question is as to whether the order of appointment of Executive Officer for the administration and for proper maintenance of the properties of the temple would infringe the right of the appellant under Article 26 of the Constitution of India.

50. It is necessary to take a glance of Article 26 of the Constitution of India:

> 'Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—
>
> *(a)* to establish and maintain institutions for religious and charitable purposes;
>
> *(b)* to manage its own affairs in matters of religion;
>
> *(c)* to own and acquire movable and immovable property; and
>
> *(d)* to administer such property in accordance with law.

51. From the above, it is clear that as regards the affairs of the temple in the matter of religion, the right of management to a religious body is a guaranteed fundamental right, which no legislature can take away. On the other hand, as regards the administration of the properties, which a religious denomination is entitled to own and acquire, it is the right to administer such

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properties, but only in accordance with law, meaning thereby, the State can regulate the administration of the property of the religious denomination by means of law validly enacted. To put it otherwise, it is the religious denomination, which has been given the right to administer those properties in accordance with law. (Vide ***Commissioner, Hindu Religious Endowments v. Shri Laxmindra Theertha Swamiar of Shirur Mutt,*** AIR 1954 SC 282).

52. Regarding the evidence with regard to establishment and maintenance of the temple, there are sufficient clinching evidences to show that the temple was not established by the appellant. The appellant Podhu Dikshidars themselves have admitted in the application filed before the Government, that the temple structures, as they exist now, were built from 10th - 13th century mainly by the Chozha Kings and by Pandya Kings, who were ardent devotees of Lord Nataraja and thrown open for public worship. Several stone inscriptions will stand testimony to that fact. All these features will clearly establish the fact that it is not established by the appellant. The second interesting part of their admission is also very important. In the very same Revision Petition, in Paragraph 5 again they admitted as follows:

> 'It is also historical fact that Vaishnavite deity Sri Thillai Govindaraja was worshipped as a 'Parivara Deity' installed in a small Sannadhi on the sides around the main shrine of Lord Nataraja and poojas were done to it by the Dikshidars themselves, known as Thillai Moovayiravar or Thillai Vazh Anthanar. Some of the songs recited by Thirumangai Azhwar and Kulasekara Azhwar will prove this facts. It is also history that due to certain conflicts between the Saivites and Vaishnavites the idol of Thillai Govindaraja was removed in or about 13th century and later during the rule of Vijayanagara kings one of their chieftains again reconstructed the Sri Thillai Govindaraja Sannadhi, after which (17th century) the small Sannidhi in its present form has come to stay and poojas are being performed by a separate sect of Vaishnavite priests.'

53. These two important historical records indisputably prove the fact that this temple was established by King Chozha and King Pandyas and the ruler of Vijayanagaram between 10th and 13th century further the historical records reveal that not only saivite but also vaishnavite are worshippers of their respective Gods, in one temple which further prove another vital fact that this temple at Chidambaram is not exclusively meant for saivite alone, but also worshipped by Vaishavites. Therefore, it is beyond doubt that the protection under Article 26 cannot be availed in as such, as it was not exclusively established and maintained by one group of people.

54. The phrase, 'establish and maintain' cannot be separated. It shall be read conjunctively. Only when a religious denomination or a Section thereof established a religious institution, it gets the right to manage its own affairs in matters of religion with respect to that institution. This principle has been laid down by the Supreme Court in the case of ***Azeez Basha v. Union of India,*** AIR 1968 SC 662. Therefore, the claim of the appellant that the

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temple is a denominational temple, can be accepted only if the appellant proves that they established the religious institution and that they are part of a religious denomination and that they are administering the same continuously.

55. This Court need not search for any other evidence to reach the conclusion whether the temple was built or founded by the appellant. In view of the admitted statements made by the appellant as above, it is proved beyond doubt neither the appellant nor their predecessors or forefathers were founders of the temple, and entitled to have the benefit of protection under Article 26 of the Constitution of India. A Three-Judge Bench judgment of the Apex Court in the case of ***Adi Visheswara,*** cited supra, held that if the temple is built or established or founded by some people and subsequently others started managing the temple cannot be allowed to complain that the temple's property is interfered by action of taking over by the Government for a reason that the action does not offend the right of their livelihood guaranteed under Article 21. In this Judgment, it has also been held that the State can always step into prevent mis-use, mis-management and irreligious acts, actions and conduct, and to regulate proper and efficient management and administration, performance of all religious services, ceremonies and rituals in systematic and organized manner by competent persons on the religious side of performing ceremonies without interruption. Therefore, it is clear that temple is not a denominational temple and therefore, in the event of any mismanagement or financial irregularities, the State can always interfere with the mal-administration, in which event, the member of the appellant cannot complain that their rights guaranteed under Articles 25 and 26 of the Constitution have been infringed by appointment of Executive Officer. It has been held in a number of cases that the practice of religious faith according to tenets of Hindu religion, custom and usage stand protected by the Act. But the secular management of the religious affairs in the temple is secular part. The legislature has power to interfere with and regulate proper and efficient management of the temple and this aspect of the question has been elaborately considered by a Three-Judge Bench of the Apex Court in the case of ***Bhurinath v. State of Jammu and Kashmi,*** JT 1997 (1) SCC 546 as well as in the case of ***Adi Visheswara of Kashi Viswanath Temple,*** 1997 (4) SCC 606 : JT 1997 (4) SC 124.

56. In ***Adi Visheswara case,*** it has been held that, —

> 'Article 26 requires to be carefully scrutinized to extend protection and it must be confined to such religious practices as are an essential and integral part of it and no other. The management of the properties was in the hands of the officers. Article 26 does not create rights in any denomination or a section which it never had. It merely safeguards and guarantees the continuance of a right which such denomination or the section had. If the denomination never had the right to manage property in favour of a denominational institution as per reasonable terms on which the endowment was created, it cannot be had to have it. It had not acquired the said right as a result of Article 26 and that the practice and the

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custom prevailing in that behalf which obviously is consistent with the terms of the endowment should not be ignored.'

57. In the light of the above line of decisions, the only conclusion that could be reached is the appellant are not entitled to the protection under Article 26 of the Constitution of India. Thus, the third point is also answered against the appellant.

58. In respect of mis-management, the Government has justified the appointment of Executive Officer by citing the following reasons:

(i) The Podhu Dikshidars miserably failed to maintain and manage a huge extent of about 400 acres of cultivable lands donated by various devotees in the name of Sri Sabhanayagar Temple, Chidambaram.

(ii) Non-accounting of gold ingots and gold coins worth of Rs.2.2 lakhs kept in the Karuvolum deducted by Assistant Commissioner, Cuddalore in the presence of Revenue Divisional Officer, Chidambaram and District Superintendent of Police.

(iii) There was also loss of 860 grams of Gold in melting the old jewels.

(iv) Non-accounting of gold article received as donation by the temple.

59. On a Complaint at the instance of one Mr. K. Nataraja Kunchita Deekshidar on 11.05.1981 alleging many financial, gold plates, gold coins, gold jewels, irregularities in the temple, when the Assistant Commissioner of H.R. & C.E. asked the Dikshidars to show the gold jewels, gold coins, etc., for which the Podhu Dikshidars refused to show by asking a week's time for production of the same. However, after such refusal, the Assistant Commissioner searched the relevant place like Almirahs in the temple, surprisingly, several gold items were recovered. However, the Podhu Dikshidars claiming that the seized gold items are properties belonged to their family and refused to part with the same. At the same time, they were not able to prove from whom these jewels were accepted as gift and no receipts therefor were shown to the Assistant Commissioner. The Assistant Commissioner, after seizure of the above said gold items has found that 4717 gms of gold were melted and kept in their custody without any permission from any officers. Still the Assistant Commissioner, found unaccounted gold items and hundreds of silver lamp items like (Kuthu Villaku) from the temple Almirahs.

60. By referring to various other complaints of mis-management and report of Assistant Commissioner (dated 20.07.1982), the then Commissioner thought it fit to appoint the Executive Officer for proper, better and efficient management of the temple.

61. Therefore, a show cause notice was given asking the Podhu Dikshidars to give an explanation as to why an Executive Officer should not be appointed. After receiving the show cause notice, a comprehensive inquiry was conducted by the Commissioner on 15.07.1985, 23.09.1985,

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04.11.1985, 09.12.1985, 27.01.1986, 31.03.1986, 04.08.1986, 07.10.1986, 22.12.1986, 23.02.1987, 31.03.1987, 06.07.1987 and 22.07.1987. The Podhu Dikshidars without giving any plausible explanation on the alleged mis-management and irregularities, submitted an unacceptable explanations by citing Articles 25 and 26 of the Constitution of India, and also certain decisions given by the Supreme Court of India, in support of their objections to not to appoint Executive Officer.

62. In the enquiry conducted by the Commissioner, the following startling revelations surfaced by surprising all eyes waiting on this issues :

(i) The appellant never maintained any accounts either in respect of 400 acres of lands or in respect of Gold offerings, silver offerings, Hundial Offerings, donation of cash, lands and other movable and immovable for ages.

(ii) The appellant never maintained at any point of time any account fixing the rent and collecting rent payable to the temple from the tenants of the lands.

(iii) The appellant had not realised the income due to the temple.

(iv) Even huge offerings made to the God by the worshippers have not been accounted for by them.

(v) Missing of gold jewels were alarming. Income derived from various stalls in the temple and collection of entrance fees and Dharshan and Aaradhanai fees were seen issued in a piece of paper without indicating the value of fees. The collection for performance of Abishekam and archana have been richly swindled among all the Podhu Dikshidars.

63. It may not be out of place to mention here that the learned Additional Advocate General demonstrated that three sale deeds dated 15.05.1985, 04.02.1988 and 10.02.1988 have been executed by some of the Podhu Diskhidars alienating some of the properties, as if they are their ancestral properties, but the adangal extract still stands in the name of the temple.

64. In view of these above startling revelations, the Commissioner came to the conclusion that since the Podhu Dikshidars have continuously neglected to perform their duty, it has become necessary to appoint Executive Officer to identify the lands belonging to temple and several kattalais and set in motion the action to realise income due to the temple.

65. A similar question came up for consideration before the Supreme Court whether the Mathathipathi are legally bound to manage the accounts and all the personal gift made to the Mathathipathi so as to see those are properly utilized for the purpose of the math in accordance with its objects and propagation of Hindu Dharma. The Apex Court in paragraph 43 of the judgment reported in ***Sri Sri Sri Laxmana v. State of Andhra Pradesh,*** 1996 (8) SCC 705, has ruled that any action taken by the state fastening an obligation on Mathadhipathi to maintain accounts of the receipts as personal

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gifts made to him, does not amount to interference with religion. Equally, in respect of gifts of properties or money made to the mathadhipathi as gifts intended for the benefit of the math, he is bound under law as trustee, to render accounts for the receipts and disbursement and cause the accounts in that behalf produced from time to time before the Commissioner or any authorised person in that behalf, whenever so required is part of administration of properties of the math and also held that the questions relating to administration of properties relating to math or specific endowment are not matters of religion under Article 26(b). They are secular activities though connected with religion enjoined on the Mahant. The intervention of the legislature in that behalf is in the interest of the math itself. He is, therefore, enjoined to maintain accounts in the regular course of the administration and maintenance of the math. Therefore, the Apex Court has held that introduction or making any amendment in H.R. and C.E. Act, is therefore, permissible statutory intervention under Articles 25(2)(a) and 26(b) and (d) of the Constitution.

66. This Court in ***Ponnumani Dikshidar's case,*** 1939 (2) MLJ 11, had come to a conclusion on similar occasion that the Board can always take action if it has reason to believe that the temple is being mismanaged.

67. On a cursory perusal of the materials on record, one can, safely infer that this great ancient temple founded between 10th and 13th century by Chozha and Pandya Kings have received by way of donations innumerable gifts in the form of lands, gold pieces, gems, silver, cash, grains, etc., would indicate that this temple would be one of the richest temples in the country, had there been a proper and efficient administration either by the Board or by the Podhu Dikshidars, atleast from the year 1939, because the record shows that this temple even now owns more than 400 acres of fertile lands. Had there been a proper administration and management of these vast lands with revenue collections from Hundials this temple would have become another richest temple like, Tirumala Tirupathi Devasthanam in Andhra Pradesh and Palani Murugan Temple in Tamil Nadu. Since there has been heavy opposition from the Podhu Dikshidars from the year 1885, one reason or the other for taking over the temple administration for serious maladministration, the administration of the temple could not be toned up, though there was a scheme in the year 1939. Again it is not known, why the Board has given up the administration. Be that as it may, the fact remains, it has been held by this Court in the year 1939 that if there is mis-management, the Board can always take action.

68. The Executive Officer so appointed has submitted a list of donation received for four days from 05.02.2009 to 08.02.2009 as follows :

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Sl. No.	*Date*	*Receipt No.*	*Name of the Donor*	*Amount in Rs.*
1	05.02.2009	36	B. Jayaraman	50/-
2	05.02.2009	37	R. Kaviya	200/-
3	05.02.2009	38	Dr. Vadivukkarasi	300/-
4	05.02.2009	39	T. Jayaseela	200/-
5	05.02.2009	40	A. Ramkumar	51/-
6	05.02.2009	41	M. Sanjai	500/-
7	05.02.2009	42	S. Mohan	250/-
8	05.02.2009	43	S. Ramesh Gupta	250/-
9	05.02.2009	44	K. Ravi	250/-
10	05.02.2009	45	Rajarajan	251/-
11	05.02.2009	46	Diviyavani	251/-
12	05.02.2009	47	Rajendiran	251/-
13	05.02.2009	48	Sundaresan	250/-
14	05.02.2009	49	R. Sivakumar	250/-
15	05.02.2009	50	K. Rathakrishnan	500/-
16	05.02.2009	1	B. Jayakumar	500/-
17	05.02.2009	2	Loganathan	500/-
18	05.02.2009	3	J. Prabhakaran	100/-
19	05.02.2009	4	C. Shanmugam	100/-
20	05.02.2009	5	J. Archana	1000/-
21	05.02.2009	6	M. Arthi	1000/-
22	05.02.2009	7	C. Arun Agoram	1000/-
23	05.02.2009	8	M. Ajet Agoram	1000/-

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24	05.02.2009	9	C. Arjun Agoram	1000/-
25	06.02.2009	10	Vijayakumar	100/-
26	06.02.2009	11	B. Mani	500/-
27	06.02.2009	12	V. Muthu Ganapathy	500/-
28	06.02.2009	13	S. Saratha	500/-
29	06.02.2009	14	Gnanasekaran	500/-
30	06.02.2009	15	Kasinathan	500/-
31	06.02.2009	16	Jothilingam	500/-
32	06.02.2009	17	G. Devaraj Naidu	500/-
33	06.02.2009	18	S. Srinivasa Kumar	250/-
34	06.02.2009	19	S. Balathandayutham	100/-
35	06.02.2009	20	R. Prahakaran	1001/-
36	06.02.2009	20	Srinivasan	50/-
37	06.02.2009	20	R. Eniyan	50/-
38	07.02.2009	21	K.G. Jayakumar	100/-
39	07.02.2009	22	G. Sriram Thiyagarajan	100/-
40	07.02.2009	23	G. Rashina	100/-
41	07.02.2009	24	V. Sathiyanathan	100/-
42	07.02.2009	25	S.R. Soundarajan	250/-
43	07.02.2009	26	K. Govindaraj Babu	500/-
44	07.02.2009	27	P. Selvarangam	1000/-
45	07.02.2009	28	G. Padmavathi	1000/-
46	07.02.2009	29	G. Sriram	500/-
47	07.02.2009	30	G. Pavithra	500/-
48	07.02.2009	31	S. Kaveri	500/-

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49	07.02.2009	32	S. Arunkumar	500/-
50	07.02.2009	33	P.R. Rajagopal	51/-
51	08.02.2009	34	Santhi	1000/-
52	08.02.2009	35	Vengaiammal	300/-
53	08.02.2009	36	Saravanan	500/-
54	08.02.2009	37	M. Saraswathi	500/-
55	08.02.2009	38	D. Kumar	500/-
56	08.02.2009	39	Jayanthi	1000/-
57	08.02.2009	40	K. Lakshmi	500/-
58	08.02.2009	41	Arun Prasad	500/-
59	08.02.2009	42	D. Pachayappan	100/-
60	08.02.2009	43	S. Dilak Gandhi	100/-
61	08.02.2009	44	Dr. K.M. Ravichandran	3000/-
62	08.02.2009	45	Siva Muruga	100/-
			Total	**28356/-**

69. Again he has submitted another list showing the receipt of donation received from 09.02.2009 to 12.02.2009 as follows:

Sl. No.	*Date*	*Receipt No.*	*Name of the Donor*	*Amount in Rs.*
1	09.02.2009	46	S. Jayaraj	50/-
2	09.02.2009	47	S. Saraswathi Chandrasekar	101/-
3	09.02.2009	48	S. Subramanian	1000/-
4	09.02.2009	49	S. Selvaraju	20/-
5	09.02.2009	50	S. Subramanian	20/-
6	09.02.2009	51	S. Rajadurai	20/-

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7	09.02.2009	52	R. Tamilselvan	500/-
8	09.02.2009	53	D. Kalpana	500/-
9	09.02.2009	54	D. Dinesh	500/-
10	09.02.2009	55	D. Mukesh	500/-
11	09.02.2009	56	V. Saroja	500/-
12	09.02.2009	57	M. Venugopal	250/-
13	09.02.2009	58	S. Jagan	250/-
14	09.02.2009	59	M. Dhanalakshmi	250/-
15	09.02.2009	60	D. Venkatesan	250/-
16	09.02.2009	61	P.T. Muthu	500/-
17	09.02.2009	62	M. Selvi	500/-
18	10.02.2009	63	S. Babu	50/-
19	10.02.2009	64	V. Ravichandran	500/-
20	10.02.2009	65	K. Perumal	500/-
21	10.02.2009	66	C. Murugan	250/-
22	10.02.2009	67	D. Selvi	250/-
23	10.02.2009	68	V. Paranthamakkannan	250/-
24	10.02.2009	69	R. Ramani	250/-
25	10.02.2009	70	K. Diwakar	250/-
26	10.02.2009	71	S. Parameswara Kurukkal	250/-
27	10.02.2009	72	M. Manokaran	500/-
28	11.02.2009	73	Gomathy Govindan	10/-
29	11.02.2009	74	N. Manimaran	500/-
30	11.02.2009	75	P. Shanthi	500/-

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31	11.02.2009	76	G. Nallammal	500/-
32	11.02.2009	77	D. Rajini	1000/-
33	11.02.2009	78	D. Arunachalam	100/-
34	12.02.2009	79	M. Gomathy	10/-
35	12.02.2009	80	Enterprising enterprises	200/-
36	12.02.2009	81	S. Ulaganathan	100/-
37	12.02.2009	82	K. Mangavu	100/-
38	12.02.2009	83	S. Balasubramanian	100/-
39	12.02.2009	84	S. Murugan	500/-
40	12.02.2009	85	D. Venkateswaran	1000/-
41	12.02.2009	86	N. Srilakshmi	1000/-
42	12.02.2009	87	Narayanamoorthy	500/-
43	12.02.2009	88	Arulmozhi	100/-
			Total	**15881/-**

70. That apart, the Executive Officer having seen the importance of renovating the old beauty of antiquity, architectural and historical value of the temple, in consultation with the Joint Commissioner, H.R & C.E., Department has submitted a proposal for grant of Rs.50,00,00,000.00/- (Rupees fifty crores) from the 13th Finance Commission to carry out repairs, renovation of East side entrance, Ornamental work of Thousand Pillar Hall, renovation of third Prakaram, reconstruction of Hundred Pillar Mandapam, reconstruction of Subramaniyaswamy Sannathi, construction of bathroom and toilets, provision for drainage management etc., Further it is seen that Kumbabishekam of the temple was performed on 11.2.1987 by the Renovation Committee. Large scale of renovation works were carried out in the temple through the Renovation Committee approved by H.R. & C.E. Department at a cost of RS.46 lakhs, out of which Government grants were Rs.20 lakhs and diversion of funds from other temples were Rs.6 lakhs and public donations through sale of tickets were about Rs.20 lakhs. The performance of Kumbabishekam of the temple under the guidance of H.R. & C.E. Department would clearly indicate the interest evinced by the department in proper administration of the temple.

71. The order of appointing the Executive Officer by proceedings RC. No.52574/82/L1 dated 05.08.1987 contains Appendix defining powers and duties to be exercised and performed respectively by the Executive Officer and the Secretary of Podhu Dikshidars. By a bare reading of Appendix, it is

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seen that the Executive Officer was put in custody of all immovable, livestocks, grains and other valuables. The Executive Officer shall be responsible for the collection of all income and money due to the institution. The Executive Officer has to function in coordination with the Secretary of Podhu Dikshidars. In fact, as seen from Rule 15, the Secretary of Podhu Dikshidars shall operate the Bank Accounts. But cheque book and pass book shall remain in the custody of the Executive Officer. The Executive Officer shall have separate account in his name as provided under Rule 4(b) of these Rules and the same shall be operated upon by him.

72. Rule 6(A) also makes this clear that the office holders and servants shall work under the immediate control over the Superintendence of Executive Officer, subject to the disciplinary control of the Secretary of Podhu Dikshidars under Section 56 of the H.R. & C.E. Act. Thus, it is not as if by the appointment of Executive Officer, the Podhu Dikshidars are displaced from the temple in performance of rituals or administration. Only for better management and, for efficient administration of a great ancient temple, it has been stipulated in the rule both the Executive Officer and Podhu Dikshidars are to function in co-ordination with each other. Therefore, it is very clear that there is a clear demarcation of the powers to be exercised by the Executive Officer and Podhu Dikshidars, which could only for better and efficient administration of the temple.

73. Even after the findings of the commissioner of proving that there has been a large scale mis-appropriation of the temple fund, and when the status of immovable properties of 400 acres of temple land, are continuously in darkness for more than centuries, and the improvements made by the Executive Officer after his appointment and the further steps taken by him, as stated supra, still if this Court interferes with the appointment of Executive Officer, this Court would be failing in its duty to safeguard and preserve the ancient and historical values and importance of the temple, with the result, the grand old ancient temple standing as a testimony of Hindu Culture and Civilization to the world, would be reduced down to the ground. Consequently, the Podhu Dikshidars whose livelihood are made out from the temple income would also be lost. Point No.4 is also answered against the appellant.

74. In view of the reasons in the foregoing paragraphs and in the light of the decisions referred to above, we are of the view that there is no merit in the Writ Appeal No.181 of 2009 and it is accordingly dismissed as devoid of merits. In view of the reasons stated for impleadment of parties in paragraphs 24 to 29, the Writ Appeals Nos.182 and 183 of 2009 are also dismissed. No costs. The connected Miscellaneous Petitions are dismissed.

RSN

(2014) 5 Supreme Court Cases 75

(BEFORE DR B.S. CHAUHAN AND S.A. BOBDE, JJ.)

Civil Appeal No. 10620 of 2013†

DR SUBRAMANIAN SWAMY .. Appellant;

Versus

STATE OF TAMIL NADU AND OTHERS .. Respondents.

With

Civil Appeal No. 10621 of 2013

SABAYANAGAR TEMPLE .. Appellant;

Versus

STATE OF TAMIL NADU AND OTHERS .. Respondents.

With

Civil Appeal No. 10622 of 2013

T. SIVARAMAN AND OTHERS .. Appellants;

Versus

STATE OF TAMIL NADU AND OTHERS .. Respondents.

Civil Appeals No. 10620 of 2013 with Nos. 10621-22 of 2013, decided on January 6, 2014

A. **Constitution of India — Art. 26 — Object and purpose**

B. **Constitution of India — Art. 26(d) — Religious denomination — Meaning**

C. **Constitution of India — Art. 26(d) — Religious denomination — Right "to administer such property" — Meaning of "such" in context — Words and Phrases — "Such"**

D. **Constitution of India — Arts. 26(d) and 226 — Religious denomination — Judgment in rem — Res judicata — Podu Dikshitars (Smarthi Brahmins) constitute a religious denomination and have exclusive privilege and right to participate in administration of properties of Temple concerned dedicated to Lord Natraja — High Court's decision dt. 13-12-1951 to that effect in *Marimuthu Dikshithar*, (1952) 1 MLJ 557, has attained finality — This decision, making declaration of status of Dikshitars, is a judgment in rem — It would operate as res judicata against any subsequent decision on that issue — Hence subsequent re-examination of that issue by the High Court by assuming as if it had jurisdiction to sit in appeal against its earlier decision of 1951 which had attained finality and taking view that earlier decision would not operate as res judicata, impermissible — Civil Procedure Code, 1908 — S. 11 — Evidence Act, 1872, S. 41**

† From the Judgment and Order dated 15-9-2009 of the High Court of Judicature of Madras in WA (C) No. 181 of 2009

E. **Civil Procedure Code, 1908 — S. 11 — Res judicata — Doctrine explained — Decision of court on question of law which attained finality would operate as res judicata even if the same is erroneous — Res judicata is accepted for truth — Doctrines and Maxims — *Res judicata pro veritate accipitur* (res judicata is accepted for truth) — Words and Phrases — "Res", "res judicata"**

F. **Civil Procedure Code, 1908 — Or. 47 R. 1 Expln. — Review — Ground for — Order sought to be reviewed must suffer from error apparent on face of order — In absence of such error apparent, even an erroneous judgment/order cannot be a ground for review and finality of judgment order cannot be disturbed**

G. **Practice and Procedure — Judgment/Decree/Order — Judgment in rem — On question of law — Ruling on question of law concerned having attained finality — Different view on interpretation of law can be taken in subsequent decisions, provided same should not have effect of unsettling transactions already entered into — Evidence Act, 1872 — S. 41 — Civil Procedure Code, 1908, S. 11**

H. **Precedents — Ratio decidendi — What court actually decides, not what follows from it, would be binding — Ratio of a decision should be understood in background of facts of the case and can be relied on considering how fact situation of case fits in case to be relied on**

Allowing the appeals, the Supreme Court

Held :

The object and purpose of enacting Article 26 of the Constitution is to protect the rights conferred therein on a "religious denomination" or a section thereof. However, the rights conferred under Article 26 are subject to public order, morality and health and not subject to any other provision of Part III of the Constitution as the limitation has been prescribed by the lawmakers by virtue of Article 25 of the Constitution. The term "religious denomination" means collection of individuals having a system of belief, a common organisation; and designation of a distinct name. The right to administration of property by a "religious denomination" would stand on a different footing altogether from the right to maintain its own affairs in matters of religion. The word "such" in Article 26(*d*) has to be understood in the context it has been used. It represents the object as already particularised previously. (Paras 24 and 22)

Commr., Hindu Religious Endowments v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282; *Central Bank of India* v. *Ravindra*, (2002) 1 SCC 367; *Ombalika Das* v. *Hulisa Shaw*, (2002) 4 SCC 539; *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj* v. *State of Gujarat*, (1975) 1 SCC 11; *T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481; *Nallor Marthandam Vellalar* v. *Commr., Hindu Religious and Charitable Endowments*, (2003) 10 SCC 712, *relied on*

S. Azeez Basha v. *Union of India*, AIR 1968 SC 662, *considered*

The issues involved herein are as to whether Dikshitars constitute a "religious denomination" and whether they have a right to participate in the administration of the Sri Sabanayagar Temple at Chidambaram (The Temple). Both the issues stood finally determined by the High Court in the earlier judgment of *Marimuthu Dikshithar*, (1952) 1 MLJ 557 in favour of Dikshitars and therefore, the doctrine of res judicata is applicable. (Para 34)

Marimuthu Dikshithar v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*, *approved*

a The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". *Res judicata pro veritate accipitur* is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of b conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence *interest reipublicae ut sit finis litium* (it concerns the State that there be an end to law suits) and partly on the maxim *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice over for the same cause). (Para 39)

Even an erroneous decision on a question of law attracts the doctrine of res c judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Para 40)

Sha Shivraj Gopalji v. *Edappakath Ayissa Bi*, (1949) 62 LW 770 : AIR 1949 PC 302; *Mohanlal Goenka* v. *Benoy Kishna Mukherjee*, AIR 1953 SC 65; *Raj Lakshmi Dasi* v. *Banamali Sen*, AIR 1953 SC 33; *Satyadhyan Ghosal* v. *Deorajin Debi*, AIR 1960 SC 941; *Daryao* v. *State of U.P.*, AIR 1961 SC 1457; *Greater Cochin Development Authority* v. d *Leelamma Valson*, (2002) 2 SCC 573; *Bhanu Kumar Jain* v. *Archana Kumar*, (2005) 1 SCC 787; *Amalgamated Coalfields Ltd.* v. *Janapada Sabha Chhindwara*, AIR 1964 SC 1013; *Hope Plantations Ltd.* v. *Taluk Land Board, Peermade*, (1999) 5 SCC 590; *Burn & Co.* v. *Employees*, AIR 1957 SC 38; *G.K. Dudani* v. *S.D. Sharma*, 1986 Supp SCC 239 : 1986 SCC (L&S) 622 : (1986) 1 ATC 241; *Ashok Kumar Srivastav* v. *National Insurance Co. Ltd.*, (1998) 4 SCC 361 : 1998 SCC (L&S) 1137; *State of Punjab* v. *Bua Das Kaushal*, (1970) 3 SCC 656; *Union of India* v. *Nanak Singh*, AIR 1968 SC 1370; e *Gulabchand Chhotalal Parikh* v. *State of Gujarat*, AIR 1965 SC 1153; *Madan Mohan Pathak* v. *Union of India*, (1978) 2 SCC 50 : 1978 SCC (L&S) 103, *followed*

Sheoparsan Singh v. *Ramnandan Prasad Singh*, (1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78; *State of Gujarat* v. *R.A. Mehta*, (2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490, *relied on*

Gulabchand Chhotalal Parikh v. *State of Gujarat*, AIR 1965 SC 1153; *Somawanti* v. *State of Punjab*, AIR 1963 SC 151; *Ballabhadas Mathurdas Lakhani* v. *Municipal Committee, Malkapur*, (1970) 2 SCC 267; *Ambika Prasad Mishra* v. *State of U.P.*, (1980) 3 SCC 719; f *Director of Settlements* v. *M.R. Apparao*, (2002) 4 SCC 638, *cited*

In view of the Explanation to Rule 1 of Order 47 CPC also, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the g order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Para 52)

Rajender Kumar v. *Rambhai*, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584, *relied on*

The ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions h without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed." (Para 47)

In this case the sole question is whether an issue in a case between the same parties, which had been finally determined could be negated relying upon interpretation of law given subsequently in some other cases, and the answer is in the negative. More so, nobody can claim that fundamental rights can be waived by the person concerned or can be taken away by the State under the garb of regulating certain activities. Although a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardised and this would create a chaotic situation which may bring instability in the society. (Paras 38 and 48)

The declaration that "Dikshitars are religious denomination or section thereof" is in fact a declaration of their status and making such declaration is in fact a judgment in rem. In view of the fact that the rights of Respondent 6 to administer the Temple had already been finally determined by the High Court in 1951 and attained finality as the State of Madras (as it then was) had withdrawn the notification in the appeal before the Supreme Court, the State authorities under the 1959 Act could not pass any order denying those rights. Admittedly, the 1959 Act had been enacted after pronouncement of the said judgment but there is nothing in the Act taking away the rights of Respondent 6, declared by the Court, in the Temple or in the administration thereof. (Paras 49 and 53)

It was not permissible for the High Court to assume that it had jurisdiction to sit in appeal against its earlier judgment of 1951 which had attained finality. Even otherwise, the High Court has committed an error in holding that the said judgment in *Marimuthu Dikshithar case* would not operate as res judicata. Even if the Temple was neither established, nor owned by the said respondent, nor such a claim has ever been made by the Dikshitars, once the High Court in earlier judgment has recognised that they constituted "religious denomination" or section thereof and had the right to administer the Temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard could not arise. (Para 56)

I. Constitution of India — Art. 26(d) — Religious denomination — Right to administer property — Scope of regulation permissible — Management of property — Supersession and vesting of right in authority under statute on ground of maladministration — Must be a temporary regulatory measure till evil gets remedied — Perpetual supersession would be violative of Art. 26(d) — Words and Phrases — "Regulate"

J. Trusts and Trustees — Religious and charitable endowments — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959) — Ss. 44, 45 and 107 — Right guaranteed under Art. 26 of the Constitution embodied in S. 107 for observance — State authorities functioning under Act cannot pass orders so as to divest right of religious denomination to administer property — Constitution of India — Art. 26(d) and Pt. III — Waiver of fundamental rights — Possibility

The Constitution Bench of the Supreme Court in *Shirur Mutt*, AIR 1954 SC 282 has categorically held that a law which takes away the right to administer the religious denomination altogether and vests it in any other authority would

amount to a violation of right guaranteed in Article 26(*d*) of the Constitution. Therefore, the law could not divest the administration of religious institution or endowment. However, the State may have a general right to *regulate* the right of administration of a religious or charitable institution or endowment and by such a law, the State may also choose to impose such restrictions whereof as are felt most acute and provide a remedy therefor. (Para 31)

Commr., Hindu Religious Endowments v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282; *Ratilal Panachand Gandhi* v. *State of Bombay*, AIR 1954 SC 388; *Pannalal Bansilal Pitti* v. *State of A.P.*, (1996) 2 SCC 498, *followed*

The power to supersede the functions of a "religious denomination" is to be read as regulatory for a certain purpose and for a limited duration, and not an authority to virtually abrogate the rights of administration conferred on it. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. It is a temporary measure till the evil gets remedied. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stamp out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period. (Paras 54, 28 and 66)

Khajamian Wakf Estates v. *State of Madras*, (1970) 3 SCC 894; *Sri Sri Sri Lakshamana Yatendrulu* v. *State of A.P.*, (1996) 8 SCC 705, *relied on*

"Regulate" is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meanings and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word "regulate" is elastic enough to include issuance of directions, etc. (Para 67)

K. Ramanathan v. *State of T.N.*, (1985) 2 SCC 116 : 1985 SCC (Cri) 162; *Balmer Lawrie & Co. Ltd.* v. *Partha Sarathi Sen Roy*, (2013) 8 SCC 345 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114, *relied on*

The provisions of the 1959 Act make it clear that the rights of the "denominational religious institutions" are to be preserved and protected from any invasion by the State as guaranteed under Article 26 of the Constitution, and as statutorily embodied in Section 107 of the 1959 Act. The fundamental rights as protected under Article 26 of the Constitution are already indicated for observance in Section 107 of the 1959 Act itself. Such rights cannot be treated to have been waived nor its protection denied. In view of the provisions of Sections 44 and 45(2) of the 1959 Act, the State Government can regulate the secular activities without interfering with the religious activities. (Paras 23, 54 and 33)

Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the

management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. Even otherwise it is not permissible for the State/statutory authorities to supersede the administration by adopting any oblique/circuitous method. Thus it was not permissible for the authorities to pass any order divesting the said respondent from administration of the Temple and thus, all orders passed in this regard are liable to be held inconsequential and unenforceable.

(Paras 65, 68 and 55)

Sant Lal Gupta v. *Modern Coop. Group Housing Society Ltd.*, (2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904; *Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560 : 1979 SCC (Cri) 348; *A.P. Dairy Development Corpn. Federation* v. *B. Narasimha Reddy*, (2011) 9 SCC 286; *State of T.N.* v. *K. Shyam Sunder*, (2011) 8 SCC 737, *relied on*

K. Trusts and Trustees — Religious and charitable endowments — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959) — Ss. 45 and 116 — Matters which may be prescribed — "Prescribed" — Means prescribed by rules — Executive Officer cannot be appointed in absence of any rules prescribing conditions subject to which appointment can be made — Order of appointment must disclose reasons for and circumstances under which appointment of Executive Officer was necessitated — Further, order without stating period of its operation would be arbitrary and unsustainable — Words and Phrases — "Prescribed"

(Paras 58 to 62 and 69)

Manohar Lal Chopra v. *Seth Hiralal*, AIR 1962 SC 527; *Hindustan Ideal Insurance Co. Ltd.* v. *LIC*, AIR 1963 SC 1083; *Maharashtra SRTC* v. *Babu Goverdhan Regular Motor Service*, (1969) 2 SCC 746; *BSNL* v. *BPL Mobile Cellular Ltd.*, (2008) 13 SCC 597, *relied on*

M.E. Subramani v. *Commr., HR & CE (Admn.)*, AIR 1976 Mad 264, *overruled*

Sri Sabanayagar Temple v. *State of T.N.*, (2009) 4 LW 705 : (2009) 8 MLJ 1503; *Sri Sabanayagar Temple* v. *State of T.N.*, (2009) 1 LW 826 : (2009) 2 MLJ 600, *reversed*

R-D/52713/CV

Advocates who appeared in this case :

Subramonium Prasad, Additional Advocate General, R. Venkataramani, C.S. Vaidyanathan, Dhruv Mehta and Colin Gonsalves, Senior Advocates [Dr Subramanian Swamy (Petitioner-in-Person), Dr Roxna S. Swamy, Ishkaran Singh Bhandari, Ms Supriya Manan, Ms V. Vijaylakshmi, Ms Bindu K. Nair, Ms Chandra Shekhar, Ms Neelam Singh, Shodhan Babu, Ms Pavni Poddar (for K.R. Sasiprabhu), K. Parameshwar, S.R. Setia, P.R. Kovilan Poongkuntran, Ms Geetha Kovilan, S. Raju, Melton, R. Sagadevan, R.V. Kameshwaran, M. Yogesh Kanna, A. Santha Kumaran, Ms Vanita C. Giri, B. Balaji, Govindaramanuja Dasu (Respondent-in-Person in CA No. 10621 of 2013), Abhisth Kumar, Naresh Kumar and S.K. Verma, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2013) 8 SCC 345 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114, *Balmer Lawrie & Co. Ltd.* v. *Partha Sarathi Sen Roy* 100*e-f*
2. (2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490, *State of Gujarat* v. *R.A. Mehta* 96*d-e*

38. AIR 1962 SC 527, *Manohar Lal Chopra* v. *Seth Hiralal* 98*g*
39. AIR 1961 SC 1457, *Daryao* v. *State of U.P.* 94*b-c*
40. AIR 1960 SC 941, *Satyadhyan Ghosal* v. *Deorajin Debi* 93*f-g*
41. AIR 1957 SC 38, *Burn & Co.* v. *Employees* 95*a*
42. AIR 1954 SC 388, *Ratilal Panachand Gandhi* v. *State of Bombay* 89*f-g*
43. AIR 1954 SC 282, *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 83*e*, 85*b*, 89*e*, 90*a*, 90*a-b*
44. AIR 1953 SC 65, *Mohanlal Goenka* v. *Benoy Kishna Mukherjee* 93*c-d*
45. AIR 1953 SC 33, *Raj Lakshmi Dasi* v. *Banamali Sen* 93*c-d*, 93*d*
46. (1952) 1 MLJ 557, *Marimuthu Dikshithar* v. *State of Madras* sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board* 83*c-d*, 84*e*, 85*a*, 89*d*, 90*a*, 91*c-d*, 91*d*, 97*f*
47. (1949) 62 LW 770 : AIR 1949 PC 302, *Sha Shivraj Gopalji* v. *Edappakath Ayissa Bi* 93*c-d*
48. (1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78, *Sheoparsan Singh* v. *Ramnandan Prasad Singh* 93*d*, 93*f*

The Judgment of the Court was delivered by

DR B.S. CHAUHAN, J.— All these appeals have been filed against the impugned judgment and order dated 15-9-2009 passed in *Sri Sabanayagar Temple* v. *State of T.N.*[1] by the High Court of Madras affirming the judgment and order dated 2-2-2009 of the learned Single Judge passed in *Sri Sabanayagar Temple* v. *State of T.N.*[2] rejecting the claim of the writ petitioner, Podhu Dikshitars to administer the Temple.

2. In Civil Appeal No. 10620 of 2013, the appellant has raised the issue of violation of the constitutional rights protected under Article 26 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") in relation to the claim by Podhu Dikshitars' (Smarthi Brahmins) to administer the properties of the Temple in question dedicated to Lord Natraja. The same gains further importance as it also involves the genesis of such pre-existing rights even prior to the commencement of the Constitution and the extent of exercise of State control under the statutory provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as "the 1951 Act") as well as the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the 1959 Act").

3. Civil Appeal No. 10621 of 2013 is on behalf of Podhu Dikshitars claiming the same relief and Civil Appeal No. 10622 of 2013 has been filed by the appellants supporting the claim of the appellant in Civil Appeal No. 10621 of 2013.

4. For convenience in addressing the parties and deciding the appeals, we have taken Civil Appeal No. 10620 of 2013 as the leading appeal. The facts and circumstances giving rise to the appeal are as under: that Sri Sabanayagar Temple at Chidambaram (hereinafter referred to as "the Temple") is in existence since times immemorial and had been administered for a long time

1 (2009) 4 LW 705 : (2009) 8 MLJ 1503
2 (2009) 1 LW 826 : (2009) 2 MLJ 600

by Podhu Dikshitars (all male married members of the families of Smarthi Brahmins who claim to have been called for the establishment of the Temple in the name of Lord Natraja).

5. The State of Madras enacted the Madras Hindu Religious and Charitable Endowments Act, 1927 (hereinafter referred to as "the 1927 Act"), which was repealed by the 1951 Act. Notification No. GOMs 894 dated 28-8-1951 notifying the Temple to be subjected to the provisions of Chapter VI of the 1951 Act was issued. The said notification enabled the Government to promulgate a scheme for the management of the Temple. In pursuance to the same, the Hindu Religious Endowments Board, Madras (hereinafter called "the Board") appointed an Executive Officer for the management of the Temple in 1951 vide order dated 28-8-1951, etc.

6. The Dikshitars i.e. Respondent 6 and/or their predecessors-in-interest challenged the said orders dated 28-8-1951 and 31-8-1951 by filing Writ Petitions Nos. 379-80 of 1951 before the Madras High Court which were allowed vide judgment and order dated 13-12-1951[3] quashing the said orders, holding that the Dikshitars constituted a "*religious denomination*" and their position vis-à-vis the Temple was analogous to muttadhipati of a mutt; and the orders impugned therein were violative of the provisions of Article 26 of the Constitution.

7. Aggrieved, the State of Madras filed appeals before this Court, which stood dismissed vide order dated 9-2-1954 as the notification was withdrawn by the State respondents. After the judgment in the aforesaid case as well as in *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[4] (hereinafter referred to as "*Shirur Mutt case*"), the 1951 Act was repealed by the 1959 Act. Section 45 thereof empowers the statutory authorities to appoint an Executive Officer to administer the religious institutions. However, certain safeguards have been provided under various provisions including Section 107 of the 1959 Act.

8. On 31-7-1987, the Commissioner of Religious Endowments in exercise of his power under the 1959 Act appointed an Executive Officer. Consequent thereto, the Commissioner, HR&CE passed an order dated 5-8-1987 defining the duties and powers of the Executive Officer, so appointed for the administration of the Temple. Aggrieved, Respondent 6 challenged the said order by filing Writ Petition No. 7843 of 1987. The High Court of Madras granted stay of operation of the said order dated 5-8-1987. However, the writ petition stood dismissed vide judgment and order dated 17-2-1997. Aggrieved, Respondent 6 preferred Writ Appeal No. 145 of 1997 and the High Court vide its judgment and order dated 1-11-2004 disposed of the said writ appeal giving liberty to Respondent 6 to file a revision petition before the Government under Section 114 of the 1959 Act as the writ petition

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

4 AIR 1954 SC 282

had been filed without exhausting the statutory remedies available to the said respondent.

9. The revision petition was preferred, however, the same stood dismissed vide order dated 9-5-2006 rejecting the contention of Respondent 6 that the order dated 5-8-1987 violated the respondent's fundamental rights under Article 26 of the Constitution observing that by virtue of the operation of law i.e. the statutory provisions of Sections 45 and 107 of the 1959 Act, such rights were not available to Respondent 6. In this order, the entire history of the litigation was discussed and it was also pointed out that the Executive Officer had taken charge of the Temple on 20-3-1997 and had been looking after the management of the Temple since then. The said order also revealed that Respondent 6 could not furnish proper accounts of movable and immovable properties of the Temple and recorded the following finding of fact:

> "The powers given to the Executive Officer, are the *administration of the Temple* and its properties and maintain these in a secular manner. Hence, the rights of the petitioners are not at all affected or interfered with, in any manner whatsoever the aim and reason behind the appointment of the Executive Officer is not for removing the petitioners who call themselves as trustees to this Temple." (emphasis supplied)

10. Respondent 6 preferred Writ Petition No. 18248 of 2006 for setting aside the order dated 9-5-2006 which was dismissed by the High Court vide judgment and order dated 2-2-2009[2] observing that the judgment referred to hereinabove in *Marimuthu Dikshithar* v. *State of Madras*[3], wherein it was held that Dikshitars were a "religious denomination", would not operate as res judicata.

11. Aggrieved, Respondent 6 filed Writ Appeal No. 181 of 2009. The present appellant Dr Subramanian Swamy was allowed by the High Court to be impleaded as a party. The writ appeal has been dismissed vide impugned judgment and order dated 15-9-2009[1]. Hence, these appeals.

12. The appellant-in-person has submitted that Article 26 of the Constitution confers certain fundamental rights upon the citizens and particularly, on a "religious denomination" which can neither be taken away nor abridged. In the instant case, the Dikshitars had been declared by this Court, in a lis between Dikshitars and the State and the Religious Endowments Commissioner, that they were an acknowledged "religious denomination" and in that capacity they had a right to administer the properties of the Temple. Though in view of the provisions of Section 45 read with Section 107 of the 1959 Act, the State may have a power to regulate the activities of the Temple, but lacks competence to divest the Dikshitars from their right to manage and administer the Temple and its properties. It was

2 *Sri Sabanayagar Temple* v. *State of T.N.*, (2009) 1 LW 826 : (2009) 2 MLJ 600

3 (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

1 *Sri Sabanayagar Temple* v. *State of T.N.*, (2009) 4 LW 705 : (2009) 8 MLJ 1503

strenuously contended that the High Court committed an error by holding that the earlier judgment of the Division Bench in *Marimuthu Dikshithar*[3] would not operate as res judicata. Therefore, the appeal deserves to be allowed.

13. Per contra, Shri Dhruv Mehta and Shri Colin Gonsalves, learned Senior Counsel, and Shri Yogesh Kanna, learned counsel have opposed the appeal contending that no interference is required by this Court as the High Court has rightly held that the aforesaid judgment of the Madras High Court or the judgment of this Court in *Shirur Mutt case*[4] would not operate as res judicata even if the earlier dispute had been contested between the same parties and touches similar issues, for the reason that Article 26(*d*) applies only when the temple/property is owned and established by the "religious denomination". In the instant case, the Temple is neither owned by Respondent 6, nor established by it. Thus, the appeal is liable to be dismissed.

14. Shri Subramonium Prasad, learned Additional Advocate General appearing for the State and the statutory authorities has opposed the appeal contending that the Executive Officer has been appointed to assist the Podhu Dikshitars and to work in collaboration with them and the said respondent has not been divested of its powers at all, so far as the religious matters are concerned. Thus, the matter should be examined considering these aspects.

15. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

16. Before entering into the merits of the case, it may be relevant to refer to the relevant statutory provisions.

17. Section 27 of the 1959 Act provides that the trustee would be bound to obey all lawful orders issued by the Government or the statutory authorities.

18. Section 45 of the 1959 Act provides for appointment and duties of the Executive Officer and relevant part thereof reads:

> "**45.** ***Appointment and duties of Executive Officers.***—(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution other than a math or a specific endowment attached to a math.
>
> (2) The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:
>
> Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred to in sub-section (1) shall be assigned to the Executive Officer."

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

4 *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

19. On the other hand, Section 107 of the 1959 Act provides that the Act would not affect the rights guaranteed under Article 26 of the Constitution. It reads:

"**107.** ***Act not to affect rights under Article 26 of the Constitution.***— Nothing contained in this Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution."

20. Section 116 of the 1959 Act reads as under:

"**116.** ***Power to make rules.***—(1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*i*) all matters expressly required or allowed by this Act to be prescribed;

* * *

(3) All rules made and all notifications issued, under this Act, shall, as soon as possible after they are made or issued, be placed on the table of both Houses of the Legislative Assembly and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make either in the same session or in the next session."

21. Article 26 of the Constitution provides for freedom to manage religious affairs and it reads as under:

"**26.** ***Freedom to manage religious affairs.***—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to own and acquire movable and immovable property; and

(*d*) to administer *such* property in accordance with law."

(emphasis supplied)

22. The word "such" in Article 26(*d*) has to be understood in the context it has been used. A Constitution Bench of this Court in *Central Bank of India* v. *Ravindra*[5] dealt with the word "such" and held as under: (SCC p. 397, para 43)

"*43. Webster* defines 'such' as 'having the particular quality or character specified; certain; *representing the object as already particularised* in terms which are not mentioned'. In *New Webster's Dictionary and Thesaurus*, meaning of 'such' is given as 'of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as

5 (2002) 1 SCC 367 : AIR 2001 SC 3095

something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated'. Thus, generally speaking, the use of the word 'such' as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before. This principle has all the more vigorous application when the two places employing the same expression, at the earlier place the expression having been defined or characterised and at the latter place having been qualified by use of the word 'such', are situated in close proximity." (emphasis in original)

(See also *Ombalika Das* v. *Hulisa Shaw*[6].)

23. The aforesaid provisions make it clear that the rights of the "denominational religious institutions" are to be preserved and protected from any invasion by the State as guaranteed under Article 26 of the Constitution, and as statutorily embodied in Section 107 of the 1959 Act.

24. Undoubtedly, the object and purpose of enacting Article 26 of the Constitution is to protect the rights conferred therein on a "religious denomination" or a section thereof. However, the rights conferred under Article 26 are subject to public order, morality and health and not subject to any other provision of Part III of the Constitution as the limitation has been prescribed by the lawmakers by virtue of Article 25 of the Constitution. The term "religious denomination" means collection of individuals having a system of belief, a common organisation; and designation of a distinct name. The right to administration of property by a "religious denomination" would stand on a different footing altogether from the right to maintain its own affairs in matters of religion. (Vide *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj* v. *State of Gujarat*[7], *T.M.A. Pai Foundation* v. *State of Karnataka*[8] and *Nallor Marthandam Vellalar* v. *Commr., Hindu Religious and Charitable Endowments*[9].)

25. The Constitution Bench of this Court in *S. Azeez Basha* v. *Union of India*[10], while dealing with the rights of minority to establish educational institutions, also dealt with the provisions of Article 26 of the Constitution and observed that the words "establish and maintain" contained in Article 26(*a*) must be read conjunctively. A "religious denomination" can only claim to maintain that institution which has been established by it. The right to maintain institutions would necessarily include the right to administer them. The right under Article 26(*a*) of the Constitution will ***only*** arise where the institution is established by a "religious denomination" and ***only*** in that event, it can claim to maintain it. While dealing with the issue of

6 (2002) 4 SCC 539 : AIR 2002 SC 1685
7 (1975) 1 SCC 11 : AIR 1974 SC 2098
8 (2002) 8 SCC 481
9 (2003) 10 SCC 712 : AIR 2003 SC 4225
10 AIR 1968 SC 662

Aligarh Muslim University, this Court rejected the claim of Muslim community of the right to administer on the ground that it had not been established by the Muslim community and, therefore, they did not have a right to maintain the University within the meaning of Article 26(*a*) of the Constitution.

26. In *Khajamian Wakf Estates* v. *State of Madras*[11], the Constitution Bench of this Court held that the religious denomination can own, acquire properties and administer them in accordance with law. In case they lose the property or alienate the same, the right to administer automatically lapses for the reason that the property ceases to be their property. Article 26(*d*) of the Constitution protects the rights of "religious denomination" to establish and administer the properties as clauses (*c*) and (*d*) guarantee a fundamental right to any religious denomination to own, acquire, establish and maintain such properties.

27. In *Sri Sri Sri Lakshamana Yatendrulu* v. *State of A.P.*[12], this Court examined the constitutional validity of some of the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. The Court also examined the object of the scheme framed under Section 55 of the said Act and held as under: (SCC pp. 730-31, para 33)

> That the *power of the Commissioner to frame scheme is not absolute but is conditioned* upon reasonable belief on the basis of the report submitted by the Deputy Commissioner and there must be some material on record for entertaining a *reasonable belief that the affairs of the math and its properties are being mismanaged or that funds are misappropriated* or that the mathadhipathi grossly neglected in performing his duties. Prior enquiry in that behalf is duly made in accordance with the rules prescribed thereunder. The members of the committee so appointed shall be the persons who are genuinely interested in the proper management of the math, management of the properties and useful utilisation of the funds for the purpose of which the endowment is created. Thus, *the paramount consideration is only proper management of the math* and utilisation of the funds for the purpose of the math as per its customs, usage, etc. (emphasis supplied)

The Court further held: (*Sri Sri Sri Lakshamana Yatendrulu case*[12], SCC p. 731, para 34)

> Such a scheme can be *only to run day-to-day management* of the endowment and the committee would be of supervisory mechanism as overall in charge of the math. (emphasis supplied)

28. As the 1987 Act did not provide the duration for which the scheme would remain in force, the Court held that "the duration of the scheme thus framed may also be specified either in the original scheme or one upheld

11 (1970) 3 SCC 894 : AIR 1971 SC 161
12 (1996) 8 SCC 705 : AIR 1996 SC 1418

with modification, if any, in appeal." The Court held: (*Sri Sri Sri Lakshmana Yatendrulu case*[12], SCC p. 731, para 36)

> "*36.* The object of Section 55 *appears to be to remedy mismanagement of the math or misutilisation of the funds of the math or neglect in its management.* The scheme envisages modification or its cancellation thereof, which would indicate that *the scheme is of a temporary nature and duration till the evil*, which was recorded by the Commissioner after due enquiry, *is remedied* or a fit person is nominated as mathadhipathi and is recognised by the Commissioner. The scheme is required to be cancelled as soon as the nominated mathadhipathi assumes office and starts administering the math and manages the properties belonging to, endowed or attached to the math or specific endowment." (emphasis supplied)

Thus, this Court clarified that there cannot be supersession of administration in perpetuity. It is a temporary measure till the evil gets remedied.

29. In the aforesaid backdrop, we shall examine the present appeals.

30. The learned Single Judge while deciding Writ Petition No. 18248 of 2006 examined the case raising the following question:

> "Observations of the Division Bench in *Marimuthu Dikshithar* v. *State of Madras*[3] that Podhu Dikshitars are a 'denomination' are to be tested in the light of well-settled principles laid down in various decisions of the Supreme Court."

The learned Single Judge as well as the Division Bench made it a pivotal point while dealing with the case.

31. The Constitution Bench of this Court in *Shirur Mutt*[4] categorically held that a law which takes away the right to administer the religious denomination altogether and vests it in any other authority would amount to a violation of right guaranteed in clause (*d*) of Article 26 of the Constitution. Therefore, the law could not divest the administration of religious institution or endowment. However, the State may have a general right to *regulate* the right of administration of a religious or charitable institution or endowment and by such a law, the State may also choose to impose such restrictions whereof as are felt most acutely and provide a remedy therefor. (See also *Ratilal Panachand Gandhi* v. *State of Bombay*[13] and *Pannalal Bansilal Pitti* v. *State of A.P.*[14])

12 *Sri Sri Sri Lakshamana Yatendrulu* v. *State of A.P.*, (1996) 8 SCC 705

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

4 *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

13 AIR 1954 SC 388

14 (1996) 2 SCC 498 : AIR 1996 SC 1023

32. The *Shirur Mutt case*[4] had been heard by the Division Bench of the Madras High Court along with *Marimuthu Dikshithar*[3], and against both the judgments, appeals were preferred before this Court. However, in the case of Respondent 6, the appeal was dismissed as the State of Madras had withdrawn the impugned notification, while in *Shirur Mutt case*[4] the judgment came to be delivered wherein this Court held as under: (*Shirur Mutt case*[4], AIR pp. 289 & 291, paras 15 & 22)

> "*15.* As regards Article 26 the first question is, what is the precise meaning or connotation of the expression 'religious denomination' and whether a math could come within this expression. The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name'. It is well known that the practice of setting up maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.
>
> Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name—in many cases it is the name of the founder—and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these maths profess to be followers of that teacher. The High Court has found that the math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Article 26 contemplates not merely a religious denomination but also a section thereof, the math or the spiritual fraternity represented by it can legitimately come within the purview of this article.
>
> *16.* The other thing that remains to be considered in regard to Article 26 is, what is the scope of clause (*b*) of the article which speaks of management 'of its own affairs in matters of religion?' The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?
>
> * * *

4 *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

> *22.* ... Under Article 26(*b*), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."

This Court upheld the validity of Section 58 of the 1951 Act which had been struck down by the Division Bench which is analogous to Section 64 of the 1959 Act.

33. In view of the provisions of Sections 44 and 45(2) of the 1959 Act, the State Government can regulate the secular activities without interfering with the religious activities.

34. The issues involved herein are as to whether Dikshitars constitute a "religious denomination" and whether they have a right to participate in the administration of the Temple. In fact, both the issues stood finally determined by the High Court in the earlier judgment of *Marimuthu Dikshithar*[3] referred to hereinabove and, thus, doctrine of res judicata is applicable in full force.

35. The Division Bench of Madras High Court while deciding the dispute earlier in *Marimuthu Dikshithar*[3], traced the history of Dikshitars and examined their rights, etc. The Court concluded: (MLJ pp. 601 & 606)

> "Looking at it from the point of view, whether the Podu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26, it seems to us that it is a clear case, in which it can safely be said that the *Podu Dikshitars* who are Smartha Brahmins, form and *constitute a religious denomination* or in any event, a *section thereof*. They are even a closed body, because no other Smartha Brahmin who is not a *Dikshitar is entitled to participate in the administration* or in the worship or in the services to God. *It is their exclusive and sole privilege which has been recognised and established for over several centuries.* ...
>
> * * *
>
> ... In the case of Sri Sabanayagar Temple at Chidambaram with which we are concerned in this petition, it should be clear from what we have stated earlier in this judgment, that the position of the Dikshitars, labelled trustees of this temple, is virtually analogous to that of a *Matathipathi of a Mutt*, except that the Podu Dikshitars of this Temple, functioning as trustees, will not have the same dominion over the income of the properties of the temple which the Matathipathi enjoys in relation to the income from the Mutt and its properties. *Therefore, the sections which we held ultra vires in relation to Mutts and Matathipathies will also be ultra vires the State Legislature in relation to Sri Sabanayagar Temple, Chidambaram and the Podu Dikshitars who have the right to*

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

administer the affairs and the properties of the Temple. As we have already pointed out, even more than the case of the Srivalli Brahmins, it can be asserted that the Dikshitars of Chidambaram form a religious denomination within the meaning of Article 26 of the Constitution.

* * *

We certify under Article 132 of the Constitution that it is a fit case for appeal to the Supreme Court. Notification quashed."

(emphasis supplied)

36. On the basis of the certificate of fitness, the State of Madras preferred Civil Appeal No. 39 of 1953 before this Court against the said judgment and order of the Madras High Court, which was heard by the Constitution Bench of this Court on 9-2-1954. However, the said appeal stood dismissed as the State withdrew the notification impugned therein. The relevant part of the order runs as under:

"The appeal and the civil miscellaneous petition abovementioned being called on for hearing before this Court on the 9th day of February, 1954 upon hearing the Advocate General of Madras on behalf of the appellants and the counsel for the respondents and upon the said Advocate General appearing on behalf of the State of Madras agreeing to withdraw the notification GO Ms No. 894 Rural Welfare dated 28-8-1951 published in Fort St George Gazette dated 4-9-1951 in the matter of the Sabanayagar Temple, Chidambaram, Chidambaram Taluk, South Arcot District/the Temple concerned in this appeal/this Court doth order that the appeal and the civil miscellaneous petition abovementioned be and the same are hereby dismissed."

37. It is evident from the judgment of the High Court of Madras, which attained finality as the State withdrew the notification, that the Court recognised:

37.1. (*a*) That Dikshitars, who are Smarthi Brahmins, form and constitute a "religious denomination";

37.2. (*b*) Dikshitars are entitled to participate in administration of the Temple; and

37.3. (*c*) It was their exclusive privilege which had been recognised and established for over several centuries.

38. It is not a case to examine whether in the facts and circumstances of the case, the judgments of this Court in various cases are required to be followed or the ratio thereof is binding in view of the provisions of Article 141 of the Constitution. Rather the sole question is whether an issue in a case between the same parties, which had been finally determined could be negated relying upon interpretation of law given subsequently in some other cases, and the answer is in the negative. More so, nobody can claim that the fundamental rights can be waived by the person concerned or can be taken away by the State under the garb of regulating certain activities.

39. The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". *Res judicata pro veritate accipitur* is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence *interest reipublicae ut sit finis litium* (it concerns the State that there be an end to law suits) and partly on the maxim *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice over for the same cause).

40. Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide *Sha Shivraj Gopalji* v. *Edappakath Ayissa Bi*[15] and *Mohanlal Goenka* v. *Benoy Kishna Mukherjee*[16].)

41. In *Raj Lakshmi Dasi* v. *Banamali Sen*[17], this Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in *Sheoparsan Singh* v. *Ramnandan Prasad Singh*[18], wherein it had been observed as under: (*Raj Lakshmi Dasi case*[17], AIR p. 38, para 15)

> "*15.* ... '... the rule of res judicata, while founded on ancient precedent, is dictated by a wisdom which is for all time. ... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: "If a person, though defeated at law, sue again, he should be answered, 'you were defeated formerly'. This is called the plea of former judgment." ... And so the application of the rule by the courts in India should be influenced by *no technical considerations of form, but by matter of substance within the limits allowed by law*.' (*Sheoparsan Singh case*[18], IA pp. 98-99)"
>
> (emphasis in original)

42. This Court in *Satyadhyan Ghosal* v. *Deorajin Debi*[19] explained the scope of principle of res judicata observing as under: (AIR p. 943, para 7)

> "*7.* The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of

15 (1949) 62 LW 770 : AIR 1949 PC 302

16 AIR 1953 SC 65

17 AIR 1953 SC 33

18 (1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78

19 AIR 1960 SC 941

fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

A similar view has been reiterated by this Court in *Daryao* v. *State of U.P.*[20], *Greater Cochin Development Authority* v. *Leelamma Valson*[21] and *Bhanu Kumar Jain* v. *Archana Kumar*[22].

43. The Constitution Bench of this Court in *Amalgamated Coalfields Ltd.* v. *Janapada Sabha Chhindwara*[23], considered the issue of res judicata applicable in writ jurisdiction and held as under: (AIR p. 1018, para 17)

"*17.* ... Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."

44. In *Hope Plantations Ltd.* v. *Taluk Land Board, Peermade*[24], this Court has explained the scope of finality of the judgment of this Court observing as under: (SCC pp. 604 & 607, paras 17 & 26)

"*17.* ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice ever, because such a process would be contrary to considerations of fair play and justice.

* * *

26. ... Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it."

20 AIR 1961 SC 1457
21 (2002) 2 SCC 573 : AIR 2002 SC 952
22 (2005) 1 SCC 787
23 AIR 1964 SC 1013
24 (1999) 5 SCC 590

(See also *Burn & Co.* v. *Employees*[25], *G.K. Dudani* v. *S.D. Sharma*[26] and *Ashok Kumar Srivastav* v. *National Insurance Co. Ltd.*[27])

45. A three-Judge Bench of this Court in *State of Punjab* v. *Bua Das Kaushal*[28] considered the issue and came to the conclusion that if necessary facts were present in the mind of the parties and had gone into by the Court, in such a fact situation, absence of specific plea in written statement and framing of specific issue of res judicata by the court is immaterial.

46. A similar view has been reiterated by this Court in *Union of India* v. *Nanak Singh*[29] observing as under: (AIR p. 1372, para 5)

> "5. This Court in *Gulabchand Chhotalal Parikh* v. *State of Gujarat*[30], observed that the provisions of Section 11 of the Code of Civil Procedure are not exhaustive with respect to all earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest."

47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."

48. Even otherwise, a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardised and this would create a chaotic situation which may bring instability in the society.

25 AIR 1957 SC 38
26 1986 Supp SCC 239 : 1986 SCC (L&S) 622 : (1986) 1 ATC 241 : AIR 1986 SC 1455
27 (1998) 4 SCC 361 : 1998 SCC (L&S) 1137
28 (1970) 3 SCC 656 : AIR 1971 SC 1676
29 AIR 1968 SC 1370
30 AIR 1965 SC 1153

49. The declaration that "Dikshitars are religious denomination or section thereof" is in fact a declaration of their status and making such declaration is in fact a judgment in rem.

50. In *Madan Mohan Pathak* v. *Union of India*[31], a seven-Judge Bench of this Court dealt with a case wherein the question arose as to whether the order passed by the Calcutta High Court issuing writ of mandamus directing Life Insurance Corporation of India (hereinafter referred to as "LIC") to pay cash bonus for the year 1975-1976 to its Class 3 and 4 employees in terms of the settlement between the parties was allowed to become final. Immediately after the pronouncement of the judgment, Parliament enacted the LIC (Modification of Settlement) Act, 1976. The appeal filed against the judgment of the Calcutta High Court was not pressed by LIC and the said judgment was allowed to become final. This Court rejected the contention of LIC that in view of the intervention of legislation, it was not liable to meet the liability under the said judgment. The Court held that there was nothing in the Act which nullifies the effect of the said judgment or which could set at naught the judgment or take away the binding character of the said judgment against LIC. Thus, LIC was liable to make the payment in accordance with the said judgment and it could not be absolved from the obligation imposed by the said judgment.

51. This Court, while considering the binding effect of the judgment of this Court, in *State of Gujarat* v. *R.A. Mehta*[32], held: (SCC p. 38, para 61)

> "*61.* There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding.... It is also correct to state that even if a particular issue has not been agitated earlier or a particular argument was advanced but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not lose its authority 'merely because it was badly argued, inadequately considered or fallaciously reasoned'. ... (Vide *Somawanti* v. *State of Punjab*[33], *Ballabhadas Mathurdas Lakhani* v. *Municipal Committee, Malkapur*[34], *Ambika Prasad Mishra* v. *State of U.P.*[35], SCC p. 723, para 6 and *Director of Settlements* v. *M.R. Apparao*[36].)"

52. The issue can be examined from another angle. The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the

31 (1978) 2 SCC 50 : 1978 SCC (L&S) 103 : AIR 1978 SC 803
32 (2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490 : AIR 2013 SC 693
33 AIR 1963 SC 151
34 (1970) 2 SCC 267
35 (1980) 3 SCC 719
36 (2002) 4 SCC 638

review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Vide *Rajender Kumar* v. *Rambhai*[37].)

53. In view of the fact that the rights of Respondent 6 to administer the Temple had already been finally determined by the High Court in 1951 and attained finality as the State of Madras (as it then was) had withdrawn the notification in the appeal before this Court, we are of the considered opinion that the State authorities under the 1959 Act could not pass any order denying those rights. Admittedly, the 1959 Act had been enacted after pronouncement of the said judgment but there is nothing in the Act taking away the rights of Respondent 6, declared by the Court, in the Temple or in the administration thereof.

54. The fundamental rights as protected under Article 26 of the Constitution are already indicated for observance in Section 107 of the 1959 Act itself. Such rights cannot be treated to have been waived nor its protection denied. Consequently, the power to supersede the functions of a "religious denomination" is to be read as regulatory for a certain purpose and for a limited duration, and not an authority to virtually abrogate the rights of administration conferred on it.

55. In such a fact situation, it was not permissible for the authorities to pass any order divesting the said respondent from administration of the Temple and thus, all orders passed in this regard are liable to be held inconsequential and unenforceable. More so, the judgments relied upon by the respondents are distinguishable on facts.

56. Thus, in view of the above, it was not permissible for the High Court to assume that it had jurisdiction to sit in appeal against its earlier judgment of 1951 which had attained finality. Even otherwise, the High Court has committed an error in holding that the said judgment in *Marimuthu Dikshithar*[3] would not operate as res judicata. Even if the Temple was neither established, nor owned by the said respondent, nor such a claim has ever been made by the Dikshitars, once the High Court in earlier judgment has recognised that they constituted "religious denomination" or section thereof and had right to administer the Temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard could not arise.

57. The relevant features of the order passed by the Commissioner are that the Executive Officer shall be in charge of all immovable properties of the institution; the Executive Officer shall be entitled to the custody of all immovables, livestock and grains; the Executive Officer shall be entitled to

37 (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584 : AIR 2003 SC 2095

3 *Marimuthu Dikshithar* v. *State of Madras*, (1952) 1 MLJ 557 sub nom *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt* v. *Commr., Hindu Religious Endowments Board*

receive all the income in cash and kind and all offerings; all such income and offerings shall be in his custody; all the office-holders and servants shall work under the immediate control and superintendence of the Executive Officer, though subject to the disciplinary control of the Secretary of Respondent 6, etc.

58. Section 116 of the 1959 Act enables the State Government to frame rules to carry out the purpose of the Act for "all matters expressly required or allowed by this Act to be *prescribed*". Clause 3 thereof requires approval of the rules by the House of State Legislature. The Executive Officer so appointed by the Commissioner has to function as per assigned duties and to the extent the Commissioner directs him to perform.

59. It is submitted by Dr Swamy that rules have to be framed defining the circumstances under which the powers under Section 45 of the 1959 Act can be exercised. The 1959 Act does not contemplate unguided or unbridled functioning. On the contrary, the prescription of rules to be framed by the State Government under Section 116 read with Sections 45 and 65, etc. of the 1959 Act indicates that the legislature only intended to regulate and control any incidence of maladministration and not a complete replacement by introducing a statutory authority to administer the Temple.

60. Section 2(16) CPC defines the term "*prescribed*" as prescribed by rules. Further, Section 2(18) CPC defines rules as rules and forms as contained in the First Schedule or made under Section 122 or Section 125 CPC. Sections 122 and 125 CPC provide for power of the High Court to make rules with respect to its own functioning and procedure. Therefore, it appears that when the legislature uses the term "prescribed", it only refers to a power that has simultaneously been provided for or is deemed to have been provided and not otherwise. Similarly, Section 2(*n*) of the Consumer Protection Act, 1986 defines "prescribed" as "prescribed by rules made by the State Government or as the case may be, by the Central Government under the Act".

61. Section 45 of the 1959 Act provides for appointment of an Executive Officer, subject to such conditions as may be *prescribed*. The term "prescribed" has not been defined under the Act. Prescribed means prescribed by rules. If the word "prescribed" has not been defined specifically, the same would mean to be prescribed in accordance with law and not otherwise. Therefore, a particular power can be exercised only if a specific enacting law or statutory rules have been framed for that purpose. (See *Manohar Lal Chopra* v. *Seth Hiralal*[38], *Hindustan Ideal Insurance Co. Ltd.* v. *LIC*[39], *Maharashtra SRTC* v. *Babu Goverdhan Regular Motor Service*[40] and *BSNL* v. *BPL Mobile Cellular Ltd.*[41])

38 AIR 1962 SC 527
39 AIR 1963 SC 1083
40 (1969) 2 SCC 746 : AIR 1970 SC 1926
41 (2008) 13 SCC 597

62. Shri Subramonium Prasad, learned Additional Advocate General, has brought the judgment in *M.E. Subramani* v. *Commr., HR & CE (Admn.)*[42], to our notice, wherein the Madras High Court while dealing with these provisions held that the Commissioner can appoint an Executive Officer under Section 45 even if no conditions have been prescribed in this regard. It may not be possible to approve this view in view of the judgments of this Court referred to in para 61 supra, thus, an Executive Officer could not have been appointed in the absence of any rules prescribing the conditions subject to which such appointment could have been made.

63. However, Shri Subramonium Prasad, learned AAG, has submitted that so far as the validity of Section 45 of the 1959 Act is concerned, it is under challenge in Writ Petition (C) No. 544 of 2009 and the said petition had earlier been tagged with these appeals, but it has been delinked and is to be heard after the judgment in these appeals is delivered. Thus, in view of the stand taken by the State before this Court, going into the issue of validity of Section 45 of the 1959 Act does not arise and in that respect it has been submitted in the written submissions as under:

63.1. The scheme of administration in Board's Order No. 997 dated 8-5-1933 under the 1927 Act contained various provisions inter alia that *active management* would rest in the committee consisting of nine members who were to be elected from among the Podhu Dikshitars (Clause 4);

63.2. At the time of issuing the order of appointment of Executive Officers, the Podhu Dikshitars were given full opportunity of hearing and the powers and duties of the Executive Officer as defined by the Commissioner would show that the religious affairs have not been touched at all and the trustees and the Executive Officers are jointly managing the Temple. The Podhu Dikshitars *have not been divested of the properties* and it was not the intention of the State Government to remove the trustees altogether, rather that the Executive Officers function along with the trustees;

63.3. In any event, the Podhu Dikshitars are trustees of the Temple and *they have not been divested of their properties*. The Executive Officers are only collaborating with the trustees in administering the properties. Their religious activities have not been touched. Neither the powers of the trustees have been suspended nor the Executive Officers have been vested with their powers and the Executive Officers *only assist the trustees in management of the Temple*. It was not the intention to remove the trustees altogether, nor the order of appointment of the Executive Officers suspends the scheme already framed way back in 1939.

64. Be that as it may, the case is required to be considered in light of the submissions made on behalf of the State of Tamil Nadu and particularly in view of the written submissions filed on behalf of the State.

42 AIR 1976 Mad 264

65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such an expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order[1] is liable to be set aside for failure to prescribe the duration for which it will be in force.

66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

67. "Regulate" is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meanings and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word "regulate" is elastic enough to include issuance of directions, etc. (Vide *K. Ramanathan* v. *State of T.N.*[43] and *Balmer Lawrie & Co. Ltd.* v. *Partha Sarathi Sen Roy*[44].)

68. Even otherwise it is not permissible for the State/statutory authorities to supersede the administration by adopting any oblique/circuitous method. In *Sant Lal Gupta* v. *Modern Coop. Group Housing Society Ltd.*[45], this Court held: (SCC p. 344, para 21)

> "*21.* It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*. An authority cannot be permitted to evade a law by 'shift or contrivance'."

1 *Sri Sabanayagar Temple* v. *State of T.N.*, (2009) 4 LW 705 : (2009) 8 MLJ 1503
43 (1985) 2 SCC 116 : 1985 SCC (Cri) 162 : AIR 1985 SC 660
44 (2013) 8 SCC 345 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114
45 (2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904

(See also *Jagir Singh* v. *Ranbir Singh*[46], *A.P. Dairy Development Corpn. Federation* v. *B. Narasimha Reddy*[47] and *State of T.N.* v. *K. Shyam Sunder*[48].)

69. We would also like to bring on record that various instances whereby acts of mismanagement/maladministration/misappropriation alleged to have been committed by Podhu Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the 1959 Act for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust.

70. Thus, the appeals are allowed. The judgments/orders impugned are set aside. There shall be no order as to costs.

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(BEFORE H.L. GOKHALE AND KURIAN JOSEPH, JJ.)

PANCHRAJ TIWARI .. Appellant;

Versus

MADHYA PRADESH STATE ELECTRICITY BOARD AND OTHERS .. Respondents.

Civil Appeal No. 4371 of 2008†, decided on March 4, 2014

Service Law — Promotion — Entitlement to promotion — Complete merger of cadres and absorption into service — Absorbed cadre employees — Fixation of seniority and entitlement to be promoted, in merged cadre on a par with compeers in the parent service, held, are part of the fundamental right to equality under Arts. 14 and 16 of Constitution

— Held, complete denial of promotion forever cannot be comprehended under Arts. 14 and 16 of Constitution — Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service — That is the plain meaning of "absorption" — Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Arts. 14 and 16 of the Constitution — No employee has a right to particular position in the seniority list but all employees have a right to seniority since the same forms the basis of promotion — Constitution of India, Arts. 16 and 14

46 (1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381

47 (2011) 9 SCC 286 : AIR 2011 SC 3298

48 (2011) 8 SCC 737 : AIR 2011 SC 3470

† From the Judgment and Order dated 27-7-2007 of the Division Bench of the Madhya Pradesh at Jabalpur in WA No. 1361 of 2006