(1954) 07 MAD CK 0039

In the Madras High Court

Case No : O.P. No. 148 of 1950

C.K. Elumalai Chetty APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable Endowments, Madras RESPONDENT

Date of Decision : 05-07-1954

Acts Referred:
Limitation Act, 1908 — Section 10

Citation : (1954) 07 MAD CK 0039

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : K.E. Rajagopalachari, for the Appellant; T.A. Ramaswami Reddy for the Board, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is an Original Petition filed to set aside the order passed by the H. R. E. Board in B. O. No. 886 dated 20th February 1950 and to declare that Sri Venkatesaperumal Temple situated in Nos. 21 and 22. Nainiappan Street, G. T. Madras, is not a temple as defined in the Madras Hindu Religious Endowments Act and that the same is a private temple of the Petitioner and to restrain the respondent from interfering with the Petitioner''s possession and management in any manner or levy contribution till the disposal of this petition. The background from which this application arises will be evident from the trust deed executed by the applicant and his deceased adoptive father Chingleput Kandasami Chettiar on 16th September 1935 in honour of Sri Venkatesaperumal installed as Sannadhi at Nos. 21 and 22 Nainiappan Street and it runs as follows :

Whereas Kandasami Chettiar of us had no ancestral properties and had acquired immovable and movable properties as self acquisition out of the money in his betelnut business and as he had no sons had taken in adoption C. K. Elumalai Chetty and executed a deed of adoption on 27th June 1932 and on the same date had by registered documents gave one house to his wife Ammayee Ammal, one house to his brother''s wife Thayi Amma, one house to his daughter Danakoti Ammal and house and lands in North Arcot District to his brother''s daughter Danammal and after demolishing the houses at Nos. 21 and 22 Nainiappan Street, dug foundations and with the self acquired money of Kandasami Chetty and without contribution of anybody else had constructed temple and had installed in it Sri Venkatesaperumal till then installed at the godown in No. 55 Nainiappan Street, belonging to the said Kandasami Chettiar and performed Samprokshanam and festivals and for the purpose of conducting on a good scale and permanently Tiruvaradhanam, Nithya Neivedyam etc., ceremonies and Panchaparvam etc., festivals we have this day declared in and by this document and in the presence of witnesses the house properties in Madras belonging to Kandasami Chettiar and let to tenants at Madras and the Rice machine vagary trade and buildings at Handwash, North Arcot District, and the above said Sannadhi buildings and the Vigrahams and other samans in the said Sannadhi and have appointed ourselves by this document as joint trustees for the time being for taking charge and for conducting all the Devasthanam charities properly and have by this document and in the presence of the witnesses have transferred the properties set out in the schedule and all movables in the Devasthanam belonging to Kandasami Chetty of us to Sri Venkatesa Perumal and took charge of the same as joint trustees.

We will have full rights from now with the said properties and other properties that may be vested in future in the said Devasthanam and without any rights, huq or Swatandiram in the same in others, to conduct the Dharmakainkaryams, and after us our sons and grandsons and our lineal descendants (Vamsaparamparai) will have full rights to collect the income from the house set apart for the Devasthanam to pay up the taxes due on the properties and effecting the repairs etc., and keep account for the income and expenditure and to conduct all matters concerning the Devasthanam without any deficiency. If after us our heirs spend the income improperly and as a result of it commit any deficiency in the temple affairs, in that case the worshippers of the temple or our relatives through the Perudanakars of our people have power to take steps either by a Panchayat or through Court and take charge of the Devasthanam and its properties and have rights to provide for a proper scheme to arrange for the temple Kainkaryams to be performed permanently. Ourselves and our heirs have power to appoint and remove any member of our caste or any other Hindu Vaishnavite either as honorary or paid servant to look after the temple property. Ourselves or our heirs after us or anybody else have no power to sell, mortgage or alienate in any manner or on whatsoever ground the immovable and movable properties of the Devasthanam. The Devasthanam and the houses shall always be kept in proper repairs.

2. This applicant filed an application before the H. R. E. Board under S. 84 of the H. R. E. Act on 10th May 1948 in the fallowing terms :

The Sri Venkatesa Perumal Temple above mentioned was founded, established and consecrated by the said late C. Kandaswami Chettiar and the petitioner at their own expense and out of their own family assets and without the aid, assistance or contribution from any outside source and for the proper conduct and maintenance of the said Devasthanam the petitioner''s father and the petitioner have voluntarily and freely out of their own accord and willingness set apart and constituted as a trust immovable properties situated in Madras to the value of about Rs. 20,000 and yielding an approximate income of about Rs. 125 per month.

4. A deed of trust has been executed and duly registered in this behalf by the said late C. Kandaswami Chettiar and the petitioner whereby they have duly made a declaration of the trust above mentioned constituting themselves hereditary trustees for the said Devasthanam and providing for the future proper and efficient management of the above Devasthanam. The said C. Kandaswami Chettiar died sometime after the execution of the trust deed (dated 16th September 1935) and after his death (which occurred on 29th March 1986) the petitioner has been managing the temple and the properties efficiently and properly as will be borne out by the statements and returns being submitted from time to time as per Board''s orders and by the inspection notes of the Board''s supervisors.

5. The petitioner submits that under the circumstances above stated he should be declared hereditary (founder) trustee of the said temple and necessary consequential directions and orders should be passed by the Board recognizing the said rights of the petitioner.

6. Thereupon the Board by its order dated 27th December 1948 in O. A. No. 175 of 1948 declared the applicant to be hereditary rusted as defined in the Act. The applicant subsequently when the Board took steps to ensure about the good management of the temple, filed an application before the Board contending that this was a private temple and that the Board had no jurisdiction over the same. This contention was repelled by the Board and hence this petition.

7. In support of this contention the petitioner submits that the properties endowed continue in the name of the founders and treated as belonging to a private trust, that the stone inscriptions are intended to confirm the above as a private temple, that no member of the public had endowed any property or performed any ceremonial festivals or Ubayams at any time up to date, that the poojas and other worship are in accordance with the notions of private worship and the whole expenses are met by the petitioner, that the structure and other features of the temple are not like those of a public temple, that there is no Gopuram or Prakaram and no big festivals are conducted, that the institution is in a line with the street houses and in the form of a separate block or structure, that the public do not worship in the temple as of right and a few who may attend are those who are connected with the petitioner, that there is a school in the premises of the institution and another Valibarn Sangam, which will show that the founder did not intend the premises to be used as a place of public

worship and therefore finally concludes that the institution is not a temple as defined in the Act.

8. On the other hand, the contention of the respondent is that this is not a private temple for the following reasons. The trust deed which has been reproduced above clearly shows that Kandaswami Chetty built the present temple from out of his family funds and installed the deity and performed the Samprokshanam and other ceremonies. He and the present applicant have executed a trust deed on 16th September 1935 under which not only properties have been endowed for the maintenance and upkeep of the temple but it has also provided for devolution and management. It has been specifically provided for in the trust deed that it there was any mismanagement of either the temple or the properties thereof by the heirs of the donor, then any worshipper can institute a suit in Court to get a scheme settled for the administration of the temple. The deed even goes to the extent of suggesting the appointment of a honorary or paid persons to carry out the administration of the temple. There is no provision for the founder or all members of the family to divert the income of the endowed property to their own private use or to any other purpose other than that expressed in the deed of endowment. Then there are stone inscriptions both in English and in Tamil indicating that there was a clear dedication of trust open to the public worship without any restriction. The pooja in the temple is done by a paid Bhattacharya. It is not disputed that all the rituals and services which will take place in any public temple are being performed in this temple by the Battacharya. There is no difference in the rituals or conduct of services. It is also undisputed that there is a Moolavar and an Usavar, Alankara Mandapam, annexed Madap palli, Thotti Sapram and facility for perambulating the deity. The deity is taken out on auspicious days in public procession in Thotti Sapram accompanied by music, Bajaana party, and Hara this are performed in the streets by those desirous of having them performed by the Bhattachari who accompanies the Thotti Sapram. These worshippers, it is also not disputed, make small cash presents to the Battachari. There is also distribution of Prasadhams like Sundal inside the temple on auspicious days, which is spoken to by the P. Ws. themselves. The worshippers who come to the temple, it is also agreed, are distributed Theertham and Thulasi after Deeparadhana and Archanas are over. The temple is kept open in the mornings and in the evenings. The accounts of this temple have not been filed and therefore the statement in the Annexure to the Board''s order that as a matter of fact this applicant was keeping separate accounts for the temple till 15th March 1949 and that only subsequently he has mixed up his private transactions in this account so as to make out a case that the institution is not a temple as defined in he Act, stands uncontradicted. Finally, the Board points out that this petitioner till he filed his petition has always been holding out that this was a public temple and it was only on that footing that he got himself declared as the hereditary trustee and having invited the jurisdiction of the Board and obtained an order in his favour, it is not open to him now to deny the jurisdiction of the Board and to contend that the institution

is not a temple at all. The petitioner is clearly estopped from raising this contention and is barred by the rule of constructive res judicata.

6. To understand and decide the controversy aright (a) a brief historical account of the origin and development of South Indian temples and (b) the evolution of the case-law on the subject are indicated.

7. A temple, in the original sense of the latin word templum, meant a rectangular place marked out by the auger for the purpose of his observations, which were taken within a rectangular tent. An extended sense gave it the meaning of a consecrated place or building, of rectangular shape, ''inaugurated'' by an auger. In this sense it was applied to the house of a God, though, strictly-speaking, this meaning belonged to the aedes. In its primitive sense templum corresponds to the Gr. reuevos, a place marked off as sacred to a God, in which a vacs, or house of the God, might be erected. As we shall see, an enclosed consecrated space often precedes an actual temple in our sense of the word, viz., the house of a God, a structure containing his image, and sometimes an altar, though not infrequently the altar stands outside the God''s house (as in Greece) but within the sacred place, in the open air, as it did before any house for the God was erected. As images became more decorative and costly, it was natural to provide a house for them, though this might be done for a quite primitive image or even a fetish. Less often, however, the chamber of house of the God contained no image: it was merely a place where he might invisibly dwell or which he might visit from lime to time. Where a God has his image in such a place, those of other divinises may also stand there or in subsidiary chambers connected with it. In the popular sense of the word, ''temple'' while it is connected with the worship, is not usually a place within which the people worship. The priests alone enter it; the laity may worship only within the precincts, if even there. Temples vary from the simplest and smallest buildings, as they mostly were at first, to the most elaborate and vast structures.

8. In studying the origin of temples, no single source for all can be found, as this differs in different regions. Nomads could have no temples, though they might have tribal sacred places, or sacred tents carried in their wanderings. With the advent of a more fixed mode of life and permanent dwellings, a similar dwelling for the deity became necessary. A variety of primitive temples is known, and it could have been only in the course of a long period of time that the more elaborate buildings came into existence, while, generally speaking, the intermediate stages are not always discoverable.

9. The different origins of temples are:

(a) Sacred places. Among savages, and probably also among most groups of primitive men, most of the rites of worship are car-red on in the open air, sometimes because no images of divinities exist, or, where they do, they are not always enclosed within walls, and sometimes because spirits are regarded as connected with natural objects. Sacrifices are simply laid on sacred stones, or cast into the waters, or into the fire, or hung upon trees. The Gods of south India had no temple at the beginning. Almost all of them were worshipped in the form of trees e. g., margosa, asvatta, bilva (N. Venkatramanayya-An Essay on the origin of the South Indian Temple Ch. II. The Sacred Tree, Pages 4-5). (Madras, Methodist Publishing House 1930).

(b) Shrines at graves : The grave as a sacred place may be another point of departure for the temple, when it is associated with a structure, where a cult is carried on. For an account of the stone ring or magic circle see Venkarramanayya (Ibid) Ch. IV pages 8 to 15. The Toda Azarams, the link connecting the simple circle of stones with the Circus and Cromlechs of the Kurumbas and Irulas are instances in point. Sometimes an altar is placed over a grave, sometimes a series of memorial stones is erected or large chambered tombs are constructed. The connection with the graves is seen not only in the case of the temples of the village deities but in that of temples of certain Gods like Siva-Smasaneswara. Shrines over and near the burial grounds called Palli-padai are recorded in the inscription of the 9th century A. D. at Solapuram in N. Arcot District recording that the Chola King Rasaditya caused a Siva temple to be built on the spot where his father had been buried. Similar inscriptions relate to Tondamanad in Chittoor District and Choleswara temple in Melpadi (Ibid p. 2)

(c) Caves and Temples: Caves occasionally served as scenes of a cult and by their shape and enclosed space may have suggested the structural temple. Caves may also be the depositories of sacred or cult objects or of images of Gods, and thus serve a purpose to which temples are also put. Cave temples are to be found in almost every part of south India e. g., Rock Fort Trichy. These cave temples should not be mixed up with the caves used as their monsoon retreats by ascetics during their Chatur-mas-yasas which in the case of Buddist monks were spent in elaborately carving out their caves e. g., Ajanta.

(d) The village house, men''s house, etc., as temple : In many regions where separate temples are unknown, the men''s house, council-house, or village-house to some extent serves the purpose of a temple among its many other uses.

(e) The house-shrine as temple : Still another aspect of primitive temple, sometimes suggesting a point of departure for more exclusive temple structures, is the hut or house a corner of which is set apart as a place or shrine for an image or sacred objects. But whereas in Bengal and Malabar they have since developed into private temples, in the south either in course of time they have been installed in public temples or remained as house-hold Gods-the lares and the Penates and nothing more.

10. Actual temples in the lower culture range from a place of praying or a mere clearing under the tree in the village Court-yard, thatched huts with carved doorposts and enclosures open to the sky, and temple-dairies among the Today, to highly elaborated shrines where ceremonies are performed, sacrifices offered and images set up. The miniature temples standing in the village or outside and

offerings made at it also constitute another feature of actual temples in the lower culture.

11. Temples in the higher culture usually occupy a prominent place in religious life, and is architecturally of great importance. In India during the Vedic period there were no temples on account of the domestic character of Vedic worship (Saraswati, Tagore Law Lectures, p. 34). No trace of temples built in the pre Buddhist period is known. But the Ramayana and Mahabharata mention Chaityas in several places. Originally Chaitya seems to have been a tree planted on the grave. Tree planted on the chiti became Chaitya. Later shrines probably of wood were erected. It is even possible that they had upper storeys. For the Ramayana in one place (Book1) compares the upper parts of the palaces in Ayodhya to the Vimanas of the Siddhas, a species of Gods. Although the Arthasastra of Kautilya does not describe anywhere a temple it mentions Chaityas and gives in Book 2, 3 a description of the temple of Kumari the goddess of war. Kautilya agrees with Megasthanes that the temples were under the control of Government and there was a special department to govern religious institutions and its head was known as the Superintendent of Religious Institutions. The use of stone in architecture was certainly widely in use in Asoka''s reign, possibly as a result of contact with the West. Religious edifices are certainly known for the first time in Buddhism. Hindu temples doubtless owe much in their inception to Buddhism and proliferated into a great variety in structure, size, and ornamentation. The extent of the Buddhist indebtedness cannot be disputed though it is possibly exaggerated by Western scholars (See Ch. VIII to X of Venkatarramanayya (Ibid) pages 33 to 54). Temple building reached fresh heights in the Gupta period.

12. So far as Southern India is concerned, in course of time by 7th Century A. D. substantial temples in stone came to be constructed. The earliest well-known Hindu temples in South India are those of Mahabalipuram in the Chingleput District. The inscriptions show that they were hewn out of the living rock by the Pallavas in 7th Century A. D. There has subsequently been a ceaseless building of temples by the warring Kings and noblemen and men and women of piety of all castes and at all levels in every nook and corner of South India covering it with a net work of temples large and small which were not only places of worship but also in the language of Sri K. A. Nilakanta Sastrigal the centre of Social life of the country :

As landholder, employer and consumer of goods and services as bank, school and museum as hospital and theatre; in short as a nucleus which gathered round itself all that was best in the arts of civilised existence and regulated them with the humanenes born of the spirit of Dharma, the medieval South India temple has few parallels in the annals of mankind.

[Madras University Historical Series-The Colas Vol. II Part I, page 504].

13. We can end this short historical account with an extract from the Studies in the History of the Third Dynasty of Vijayanagaram by Sri N. Venkataramanayya.

The building of temples, their careful arrangement and their prosperity reached their zenith under the Vijayanagar Kings. The temple continued to be the centre of social and religious activities and the dharmasana usually met there and settled caste disputes. The caste elders took upon themselves the fostering care of these institutions, (Part III Chapter I, S. 3 p. 328 and following).

14. But there are two principal groups, one in Southern India of the so-called Dravidian style and one in Northern India, each of which shows great uniformity in general plan. In South India the structure consists of the temple proper or vimana, the vehicle of the Gods'' a square building with a pyramidal roof which may have one or several storeys. In this is the square cell containing the chief image of God. and lit only from the doorway. Pillared porches or halls called Mantapams precede the entrance, and are usually larger than the Vimana. Vimana and MantaPam stand in a walled enclosure with gate-pyramids or gopurams. Within the enclosure stand a pillared hall, madapallis, tanks and other structures.

15. The Northern temples (Fergus-son''s Indo-Aryan style), e.g., in Orissa are characterized by a pyramidal curvilinear tower on a polygonal base in which is the central shrine, often quite small. The interior plan is square, and in the Orissan examples there are no pillars, or these are found only in modern additions. In front is a square porch with pyramidal roof, and sometimes in front of this again additional porches. The enclosing wall is always insignificant, if it is present at all, and has no gopurams. Other shrines are always subordinate to the towering temple proper with its porch,

16. In conclusion, a general survey of temples shows that the essential part is the cellar, or chamber, for the image of the God and whatever additions are made by way of increasing the splendour of the temple or as adjuncts to it, this remains constant, and is indeed its most important feature or indispensable feature.

Then in regard to worship of God through the medium of images this was done in the household in the Devapuja form and in temples. In regard to the latter so far as South India is concerned excepting in Malabar it can be stated without contradiction from the mass of epigraphical, literary, and historical sources, that the private temple was unknown and that all temples were public, the only exception being the temples maintained by Royalities within their own precincts and for their own exclusive worship dictated by reasons of statecraft. I have the high authority of Sri K. A. Nilakanta Sastrigal for making this categorical statement.

17. This historical account showing the development of temples as the centres of cultural, social and economic life and South India becoming the land of Temples resulted from the impetus given by our religious literature striking a most responsible chord in the hearts of our people and temple building and endowing being the most non-communal manifestly pleasing expressions of public charity

assured of protection and perpetuation at the hands of Kings and commoners alike.

18. From very ancient times the sacred writings of the Hindus divide works productive of religious merit into two divisions, namely, Ishta and Purtta, a classification which has come down to our own times. Purtta consisted of Vedic sacrifices etc., and Ishta consisted of the construction of temples, wells, and similar religious and charitable foundations. While the former was restricted only to Brahmins by the nature of the Dharma to be performed, the latter was commended to all Varnas and both sexes. In the case of worship of God through the medium of images there was again a two-fold classification,that is to say, done in one''s own house and in a public temple. The latter, according to many works, is the best and the completes since it allows the celebration of festivals and the performance of varied items of modes of worship Upacara. Private worship of idols in one''s house was in the form of Devapuja.

19. The establishment of images in temples is again of two kinds, viz., Calarca where the image can be lifted up and moved to another place and Stirarka where the image is fixed on a pedestal or is not meant to be lifted up or moved.

20. This installation of an image in a public temple has always been an elaborate affair consisting of the Prathishta consecration ceremonies in the case of new temples and re consecration of images in temples or Punaprathishta and rehabilitating old and dilapidated temples or Jeeranodharanam. Those interested may usefully consult Pandit Saraswathi''s T. L.L. The Hindu Law of Endowments and Sri P. V. Kane''s History of the Dharmasastras, Vol. II Chap. XXVI.

21. Therefore, it is not surprising that a sharp distinction has always been drawn between Devapuja in the house and a duly installed image worship in a public temple.

22. The religious merit acquired by the construction of a temple and its dedication to the worship of particular divinities is extolled in numerous sacred texts.

Vishnu Rahasya: Those who in the sports of childhood create out of dust a temple of Vasudeva, even they sojourn to the regions sacred to that divinity.

(1) Agni Purana: Of those persons who are ever contemplating the construction of a temple for Hari, the sins of a previous hundred births are destroyed.

(2) Narasimha Purana: Whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated ; what then shall be said of finishing the structure according to rule. Beyond description is the wealth of religious merit acquired by the person who makes an abode of Vishnu of eight bricks. The merits accruing from extensive buildings can be presumed in proportion. He who dies after making the first brick (for the construction of a temple) obtains the religious merit of a completed Yajna.

(3) Vishnu : A man attains the regions presided over by that deity whose temple he erects.

(4) Yama: By erecting temples for the Gods, by consecrating their images and by adorning them with various paintings, the dedicator obtains the regions dedicated to those deities

Vamana Purana: He who causes the construction of a temple for Madhava, conquers the eternal abodes of purity.........

The establisher of a temple for Vishnu procures the salvation of himself and of eight generations above his grandfather. Thus a pong by the ancestors (says): ''May seme one be born, in our race a worshipper of Vishnu, the performer of pious acts, who may establish a temple for Hari.''

(5) Agni Purana : "The man who causes a temple to be built for Hari, carries to the mansion of Vishnu ten thousand past and future generations. Whether a temple is built for Hari by the expenditure of a lakh or a thousand or a hundred or a fifty, the merit is the same here for the rich and the poor, respectively."

(6) Bhavishya Purana : "The religious merit accruing from (the expenditure of) a small or great amount of wealth (in the construction of a temple) is the same for the poor and rich (according to their means)."

(7) Skanda Purana : "On beginning the construction of a temple for Krishna, the sins committed in seven births are annihilated, and the ancestors rescued from hell. For each particle of dust resting at the foot of Krishna''s temple, the endower dwells a thousand years in the mansions of Vishnu, He who causes paintings in the temple of Krishna, dwells in the mansions of Vishnu as long as the oceans last."

(8) Bhavishya Purana : "The merit of constructing a temple of wood is ten million times that of an earthen one. The merit in a brick house is a hundred billion of times. The wise know the merit in a structure of stone to be two hundred thousand billions. The merit for rich and poor is the same in stone and earthen structures."

(9)

23. So throughout India for many centuries there have been well-endowed temples and mathas. How, the rulers or the Ancient and medieval Courts of justice regulated the administration of these institutions or their funds or how they prevented or stopped maladministration or misappropriation is not dealt with exhaustively anywhere excepting in the monumental and peerless work of that profound scholar and selfless worker Mr. P. V. Kane namely the History of the Dharma Sastras (Govt. Oriental Series prepared under the supervision of the Bhandarkar Oriental Research Institute, Poona) Vol. II Part II Ch. XXVI pages 890-916.

24. Sri P. V. Kane writes: In Girujanund Datta Jha v. Sailajanund Datta Jha 28

Cal. 645 it is observed as follows (at p. 653):

notwithstanding the existence of numerous richly endowed Hindu shrines all over India from the earliest times, the Hindu Law strictly so called is, as Sir T. Strange complains (see his Hindu Law Ed., of 1889, Vol. 1, p. 32) meagre in its provisions relating to religious endowments, a fact which may perhaps be accounted for on the supposition that the high reputation for piety and purity of character justly enjoyed for the most part by the priestly classes of ancient India who had the management of the shrines was deemed a sufficient safe guard against breach of duty, so as to render detailed rules of law to regulate their conduct unnecessary.

In the following some of the meagre material that can be gathered from Dharmasastra works and analogous writings is set out. Manu (Xl, 26) first appeals to the religious sentiments of people by declaring that the wicked man who from greed seizes the property of Gods or of brahmanas feeds in another world on the leavings of the food of vultures. Sahara remarks (on Jaimini that when it is said that a village or field belongs to a God, that is not a literal expression but used only in a secondary sense. That is said to be owned by a person which one can use as one likes; a field or a village cannot be used by a deity; but the attendants on the God (or temple) are maintained out of what is donated to a temple or God.

From this it follows that all those rules that apply to a gift to a human being do not apply to a property dedicated to an idol. Medhatithi (on Manu XI, 26 and 11, 189) points out that images cannot be said to be owners in the literal sense, but only in a secondary or ideal sense, since the idol in a shrine cannot use the property at its will nor can it safeguard it and ownership consists in being able to use the thing owned as one desires and in being able to preserve it. In modern times Courts in India have laid down that an idol is a juridical person capable of holding property, though from the very nature of the case the possession and management of the property rests with a manager or a trustee. A math a is in the same position as an idol. The rights of the idol or of the matha can be safeguarded and vindicated in a Court of law only by the manager or trustee of the temple or by the head (called mohunt) of the matha [Vide Proswnno Kumari v. Golab Chand L.R. 2 I. A. 145, 152. Pramatha Nath v. Pradyumna L.R. 52 I. A. 245, 251-52-52 Cat. 809=22 L.W. 492; Vide Bhupati Nath v. Ram Lal 37 Cal. 128 (F. B.), 145-153., where Mr. Justice Mukerji examines at length passages of Sahara, Madhatithi, the Dayabhaga and its commentators to explain what is meant by a gift to an idol according to the notions of the Hindu writers. Manu and other smritikaras lay down that it is part of the King''s duty to prosecute and fine persons interfering with or destroying the property of temples. Yaj. II, 228 prescribes a fine of 40, 80 or 160 panas respectively for cutting off the twigs, principal branches of trees or the entire trees themselves that grow on built up platforms or in cemeteries or on boundaries or in holy places or near temples- Yaj, (11-240 and 295) prescribes the highest amercement for fabricating a false edict or for tampering with royal edicts by inserting more or less than what is intended to be granted by the King. The Mit. on Yaj. 11-186 says that the King should sedulously safeguard all rules made about the pastures for cows (in a village) or about the preservation of tanks and temples. Manu IX, 280 requires the King to pronounce the death sentence on those who break into a royal storehouse or an armoury or a temple and prescribes that the breaker of an image shall repair the whole damage and also pay a fine of five hundred panas. Kaut. III, 9 prescribes punishment for encroachment on temples From the Kautilya (2106 Kautilya (II, 1) makes it the duty of the elders of the village to take care of and increase the properties minors and of temples, Kautilya adds temple property to the list of properties constituting exceptions to the rule of loss by long possession. Temple property is not lost even after hundreds of years when it is enjoyed without title But in calamities he permits the King to take away the wealth even of temples. There were bad Kings of course who plundered temples etc., Maurayas wanting in only Bet up images according to Patanjali. The Rajah tarangam (V-166, 177) describes the exactions of Sankara. Varman plundered 64 temples under the pretext of supervision. In the XI century King Harsha plundered most of the Kashmir temples.

We know that Kings appointed an officer called ''devatadhyaksa'' (Superintendent of Temples) and that when the King''s treasury became empty it was part of the duty of that officer to bring together all the wealth of the temples in the forts and other parts of the country and the King could in an emergency use that wealth (and probably used to return it later from financial stringency ceased). Among matters called prakirmaka (miscellaneous) of which the King was to take cognisance suo motu without anybody''s complaint, Narada includes (in verse 3) ''abstraction of gifts and ''gifts of villages and towns to brahmanas'' (verse 2). According to the Sm. C among the topics called Chalas (2107 were two viz., the destruction of a reservoir of drinking water and of a temple. Katyayana stales that mere wrongful possession for any length of time of women, of state property and of temple property would not confer ownership on anybody. These texts indicated that the Government of the day protected temple properties, tanks, wells and the like that were dedicated to the public and exercised powers of superintendence and correction in matters affecting them. Yaj. II 191 says that those who look after the business of guilds etc., in which many are interested should be students of the Veda, men of rectitude and free from greed. They are styled Karyacintaka by him. Brahaspati (2108 quoted by Apararka says (p. 796) that these Karyacintakas (committee) should consist of two, three or five persons and that if there be disagreement between the larger bodies and the committee the King should decide that dispute and should bring round to the proper path whoever might be in the wrong. It appears that from very ancient times (3rd or 2nd century B. C.) the committee in charge of religious foundations was called gosihi and the members gosthika (2109) Vide E. I, Vol.11 p. 87 (votive inscription from Sauchi) at p. 92 where mention is made of Bodhagosthi (Bauddha gosthi) E. I Vol. I p. 184 at p. 188 (for gosthika) E.I, VIII p. 219 Abu inscription No. 2 dated (1230 A. D.) which gives the names of the Committee of management who and whose descendants were to manage the foundation.

In some inscriptions the superintendent of a temple is called sthanapati (Vide Srirangam plates of Devaraya II dated sake 1356 in E.I. Vol. 18, p. 138). In the Sirpur Stone Inscription of Mahasiva Gupta about 8th or 9th Century, A. D.) of Mahakosala provision is made for a portion of the property granted being heritable by the sons and grandsons of the donees only if they were worthy, kept up agnihotra, studied the six angas and had clean mouths and did not engage in service and further that if the heir did not possess there qualities or died without leaving a son etc., then another person, a relative with the requisite qualifications, could be made the recipient of that share, and he was to be elderly and learned and was to be chosen by mutual agreement and the King''s express order was not to be necessary for his selection (2110 Vide E. I Vol. XI p. 190 Verses 30-32. Paithinasi quoted by Aparарka p. 746 ordains that the King should not deprive temples and corporations of their properties.

25. A record from Malabar of the 11th century A.D. gives the details of temple administration in Kerala, that was in the hands of Yogam (corporation) wielding independent power (E. I. Vol. 18 p. 340).

26. The Peshwa''s Government at Poona often interfered when disputes arose about properties dedicated to shrines and tombs of saints between the managers of the temples or among the heirs of the saint to whom lands had been originally donated. For example, the Peshwa made an award in 1744 A.D. about the principal religious and charitable institution in the Deccan, viz, the Chinchvad Samas than, whereby he set apart one half of all properties bestowed on the shrine at that place for purely religious and charitable purposes and distributed the other half between the manager and his kinsmen who were ail descendants of the original founder, Shri Moraya Gosavi [vide Chintaman v. Dhondo 15 Bom. 612, 615.]. A similar award was made by the Peshwa in 1777-78 A.D. about the Brahmanal Samsthan in the Satara District [vide Annaji v. Norayana 31 Bom. 535.], This privilege of ancient rulers to redress grievances and correct abuses in the management of religious and charitable endowments devolved upon the British Government as laid down by the Privy Council in Rajah Muthu Rama linga v. Perianayagam Pillai L.R. I. IndAp 209, 232.

27. It is evident that the British Government, by virtue of its sovereign power, asserted as the former rulers of the country had done, the right to visit endowments of this kind and to prevent and redress abuses in their management. The Indian Central and Provincial Legislatures have placed on the Statute book many Acts regulating religious and charitable endowments. A list of the most important of these enactments is given below [The Religious Endowments Act (XX of 1863) as amended by Act XXI of 1925; The Charitable Endowments Act (VI of 1890); Religious Societies Act (1 of 1880); Indian Civil Procedure Code, Ss. 92-93 (Act V of 1908): Indian Limitation Act, S. 10 (Act IX of 1908); Charitable and Religious Trusts Act (Act XIV of 1920); Madras Hindu Religious Endowments Act (Madras Act II of 1927, applying to temples and

maths also); Tirupati and Tirumalai Devesthanams Act (Madras Act XIX of 1953); The Bombay Public Trusts Registration Act (Bombay Act XXV of 1935)1.

28. Property dedicated to a God is called ''devottara'' (the word being written as debutter in the Law Reports, particularly from Bengal). V de Sham Char an Nandi v. Abhiram Goswami 83 Cat. 511, 583. A good deal of litigation comes up to the Courts about the rights and liabilities of the trustees and the sevakas (called Shobait in Bengal), about their ismanagement of the temple properties and their removal and so forth.

29. Among impartible things Manu (IX-219) included Yogakeema. The Mil. on Yaj, II. 118-119 shows that several meanings were attached to that expression by various writers, but that relying upon a verse of Laugaksi it prefers the meaning of ista and purtta. Therefore the Mil. (2112) declares that gifts dedicated by a person to the public by expending ancestral wealth such as tanks, gardens and temples could not be partitioned by the sons and grandsons. In modern times also the same is the rule. Besides properties dedicated to temples and other religious and charitable purposes are generally inalienable, according to legislative enactments and judicial decisions [vide for example Bombay Act II of 1863, Summary Settlement Act, S. 8]. Vide Prosonno Kumari v. Golab Chand L.R. 2 IndAp 245. except w.here an alienation is absolutely necessary for the up keep of the religious worship or for the benefit and preservation of the institution.

30. A question arises whether, when a work of public utility is dedicated the founder possesses any control over the thing dedicated and if so to what extent. The Viramitrodaya on Vyavahara 2114 edited by G. S. Sarkar Chapter I, S. 50 and Jiv. ed. p. 544. furnishes an answer to this question, The following is the gist of its argument keeping as close to the original as possible. When a man throws an oblation into fire, his ownership over the oblation comes to an end; but oblation belongs to nobody. No human being has accepted it. Yet the sacrifice can prevent any one who wants to desecrate the offering by bringing it into contact with something impure from doing so and can see to it that the offering is reduced to ashes in the fire undisturbed. Similarly when a tank or a garden is dedicated to the public, the ownership of the founder in the thing is gone, but there is no other individual owner and no new ownership arises in any single person; yet the founder can prevent a third person making him self owner of the thing dedicated to the public and it cannot be argued that the founder cannot interfere for protecting the thing and that there is no blame if he does not safeguard the assumption of ownership by a third person. The practice of respectable people viz., the exercise of the right of preservation in the case of both (i.e., in the case of what is offered into the fire and what is dedicated to the public) is based on this consideration. The gastric injunction about utsarga does not merely contemplate the divesting of one''s ownership and dedication to the public, but also that the thing dedicated be enjoyed by the public without interference or encroachment just as in home also one does not merely desire to throw an oblation into fire (and rest content with that) but one desires to see

that the oblation is reduced to ashes and is not rendered impure. This shows that the founder of a temple or the builder of a tank or garden would always retain a power to preserve the thing dedicated.

31. The test for deciding whether in the given circumstances of the case an institution should be held to be a public or private temple has been the subject-matter of a long line of decisions in this Court. I shall now briefly examine them.

32. In Sitaramanuja Chari v. Vallamma 1915 M. W. N. 842=2 L.W. 858 Wallis, C. J., and Srinivasa Aiyangar. J, held as follows :

Where a temple was built by the paternal uncle of the defendant''s husband who installed the idol and appointed the various office-holders and it appears there was no difference so far as the performance of puja and other services are concerned between this temple and other public temples and the public were freely allowed to worship therein without the permission of the Dharmakartha and the temple lands were also enfranchised in the name of the idol, Held: that the temple is one dedicated to public worship and the trustee must keep an account of the income of the temple and its endowments. The fact that the food cooked in the temple and offered to the idol was used by the defendant alone, that the temple servants rendered services to the trustee also, that a will by the last trustee contained elaborate provisions regarding the management of the temple, and that no accounts bad been maintained by the defendant or her predecessors in title of the management of the temple properties, did not in any way derogate from the public character of the temple and were quite insufficient to prove that it was the private property of the defendant.

33. In the Full Bench decision of Subramania Aiyar v. Pujari Lakshmana Goundan 1918 M. W. N. 899 (F.B.) the facts were One Lakshmana Goundan, a pious and religious man, built a temple on land belonging to him and installed a deity in it. The public from all parts were worshipping in the temple for a century, contributed towards the building of the temple, established kattalais for Utsavams and purchased land for the conduct of charities in the temple. An Utsava Vigraham is taken in procession on specified occasions, cars built, a car street laid out and; many devotees take the vow of performing the tonsure ceremony in it. The founder himself built a choultry for the accommodation of travellers, kept accounts of the fundi collections and the jewels of the idol and the deity is entered in the village registers in respect of some lands as pattadar and there were certain statements in the revenue records showing that the founder was only a trustee. On the other hand, the sole management continued in the members of the founder''s family who were the pujaris of the temple and who disposed of the fundi and other collections. There was the tomb of the founder and his wife inside the temple, to whom some pujas were performed and it is found that some restrictions were imposed by the founder against promiscuous entrance of the public. The founder''s descendants allowed themselves to be assessed to the income tax in respect of the income derived from the temple. It was held that the temple was dedicated to the public during

the lifetime of the founder Lakshmana Goundan. the universally held principle in Southern India that there can be no private temples but that all the temples are public. See the interesting discussions in The Dakor Temple case ILR 12 Bom. 247 and Gopala Muppanar v. Subramania Aiyar 21 M.L.J. 258.decided by Sadasiva Aiyar and Tyabji, JJ.

35. In Bhavanam Nagireddi and Others Vs. The Board of Commissioner for Hindu Religious Endowments, Varadachariar, J., (as he then was) decided as follows:

Reference to public in S. 9 (2) of the Hindu Religious Endowments Act signifies only such public as is available in the locality. Where a trust deed in regard to a temple contemplates kainkaryams in the temple being undertaken by outsiders and provides for the performance of Paksha Utsavam, Masa Utsavam etc., and the fact that the deity is taken in public procession at least once a year, are all consistent with the temple being a public one instead of a private one. So long as there is no intention to exclude the right of worship, the restriction of the right of outsiders to interfere in the management of the temple is not a determining fact in deciding whether it is a temple as defined in the Act.

36. In the same volume there is another decision of Varadachariar, J., (as he then was) and King, J., in Venkata Sundara VenugoPalaswamy v. President of the Chinta Venkata Sundara Venugopalaswamy Vs. The President of the Board of Commissioners for the Hindu Religious Endowments, which may be referred to. In that case it was held as follows :

The lower Court in giving a finding on the facts as to the nature of the temple being public or otherwise ought to have come to a conclusion on the question whether originally also the temple was a private temple or not. The question whether a dedication was to a public trust or not must be determined independently of the factum of the dedication of the property.

37. Their Lordships of the Privy Council in the well-known case of Koman Nair v. Achuthan Nair 58 Mad. 91:40 L.W. 428 (P. C) pointed out at page 95 as follows :

In the greater part of the Madras Presidency, where private temples are practically unknown, the presumption is that temples and their endowments form public charitable trusts, This was laid down by Seshagiri Ayyar, J., on an elaborate consideration of the whole subject in Subramania Ayyar v. Lakshmana Goundan 1919 M.W.N, 890, which was affirmed by the Board in Pujari Lakshmana Goundan v. Subramania Ayyar (1929) 29 C.W.N. 112-19 L.W. 253 (P.C.). In that case, which related to a temple in the Salem district founded by a religious devotee in 1814, Seshagiri Ayyar, J., specially excepted temples in the Malabar district from the scope of this ruling, and in the later case of a Nair temple in Malabar, Kelu Achan v. Sivarama Patter Karikat (1927) 118 I.C. 685., it was held by the High Court that there was no such presumption in Malabar.

38. In Narayanan v. H. R. E. Board AIR 1938 Mad. 209. Varadachariar, J. (as he then was) and Burn, J. held :

According to the definition of ''temple'' in S. 9 (12), the user by the public for the purpose of religious worship has to be proved as a fact. The question of intention to dedicate the place for the use of the public or of the user by the public being as of right, is necessarily a matter for inference from the nature of the institution, the nature of the user and the way the institution has been administered. Once a long course of user by the public for the purpose of worship is established and the fact of a separate endowment in trust for the deity is also proved, it is fair to infer that the institution must have been dedicated for use by the public (unless the contrary is established)-particularly when the character of the temple, its construction, the arrangement of the various parts of the temple, and the nature of the deities installed there are similar to what obtains in admittedly public temples, Similarly, when user by the public generally to the extent to which there is a worshipping public in the locality is established, it is not unreasonable to presume that the user by the public was as of right, unless there are circumstances clearly suggesting that the user must have been permissive or that the authorities in charge of the temple have exercised such arbitrary power of exclusion that it can only be ascribed to the private character of the institution.

39. In Babu Bhagwan Din v. Gir Ear Saroop (1940) 1 M.L.J. 1 : 51 L.W. 4 (P.C.) their Lordships of the Privy Council made observations on the principles of evidence to be applied in determining whether a temple had been dedicated to the public or not and distinguished Pujari Lakshmana Goundan v. Subramania Ayyar 29 C.W.N, 112 :19 L.W. 253 (P. C.) and stated :

It is enough, in their Lordships opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. Thus in Mundancheri Koman v. Achutham Nair 58 Mad. 91: 40 L.W. 428 (P. C.) the Board expressed itself as being slow to act on the mere fact of the public having been freely admitted to a temple. The value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right, Their Lordships do not consider that the case before them is in general outline the same as the case of the Madras temple, Pujari Lakshman Goundan v. Subramania Aiyar 29 C.W.N, 112 :19 L.W. 253 (P. C.), in which it was held that the founder who had enlarged the house in which the idol had been installed by him, constructed circular roads for processions, built a rest house in the village for worshippers, and so forth, had held out and represented to the Hindu public that it was a public temple,

40. In Ramaswami v. The Board of Commissioners, H. R. E. Madras ILR 1960 Mad. 799. Satyanarayana Rao, J. has exhaustively dealt with the definition of a temple which under S. 9 (12) is stated to mean a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by the Hindu community or any section thereof as a place of religious worship. The essence of the matter is the existence of a place of public religious worship. In the case of a temple it becomes a place of public religious worship when the idol is installed and consecrated and the pranaprathishta or vilification ceremony is preformed. This aspect of the definition was clearly emphasised by the decision in H. B. E. Board, Madras v. Rugmini 55 Mad. 636 : 35 L W. 586. where at page 638, Beasley C. J. observed as follows :

The definition of a temple in the Act requires it to be a place which is used.

Satyanarayana Rao, J. then referred to the dictionary meanings of the word "temple". In the Concise Oxford Dictionary, at page 1261 the meaning of the word "temple" is given as follows :

Edifice dedicated to service of God; or place in which God resides

In the New English Dictionary, Vol. IX, Part II, the meaning for the word ''''temple" is given thus:

An edifice or place regarded primarily as the dwelling place or ''house'' of a deity; hence an edifice devoted to divine worship. Historically, the word is applied to sacred buildings of Egyptians, Greeks, Romans etc., but now to those of Hinduism, Buddhism, Confucianism, Taoism, Shin Taoism, etc.

Therefore the definition of a "temple in the Act requires two, things viz, the installation of a deity by pranaprathishta and Samprokshanam ceremonies and its present use or capability of being used as a temple.

41. Viswanatha Sastri, J. to whom this case was referred on a difference of opinion between Satyanarayana Rao J, arid Govinda Menon J. has pointed out how this definition of "temple" is difficult of application in this Presidency on account of these being many institutions of a mixed character whose exact place among religious and charitable foundations is likely to be a matter of doubt or dispute. He further observed as follows:

There are some samad his or tombs and sepulchres of holy men, where an image of Siva is usually installed and worship, regular or occasional, is offered. Some of them have come to be considered as public temples by reason of the sanctity of the persons interred. There are private mausoleums where idols are installed and pooja offered, but which are not temples or temples as defined in the Act, because the public either do not care or are not allowed to worship at such places; [Draivisundaram v. Subramania ILR 1945 Mad. 854. 58 L.W. 160., Veluswami Goundan Vs. Dandapani by next friend and mother Govindammal and Others, . There have been cases where memorials erected originally in honour. heros or martyrs have developed into places of public worship and have been declared to be public temples; The Board of Commissioner for the Hindu Religious Endowments Vs. Pidugu Narasimham and Others, There are institutions like bhajana matams, where pictures or idols of Gods of the Hindu pantheon are kept, the public congregate daily or on stated occasions, sing the praise of God and receive prasadams. There are institutions loosely called mutts which, however are private buildings in which householders, belonging to particular sects or following particular tenets, live with their families. A so-called mutt may merely be the residence of a sauyasi or paradesi. There are also endowed mutts which are public institutions established for propagating particular systems of religious philosophy, presided over by an ascetic head. There are choultries resorted to by the public, where images of Gods are installed and daily worship offered. There are also endowments of immovable property and cash for institutions of the foregoing types. There are foundations of which it is difficult to say whether they are temples or mutts at all and whether they are temples or mutts as defined in the Act. If with reference to institutions of this kind, a dispute arises as to whether they are temples or mutts as defined in the Act, the Board is empowered, and indeed the duty is cast on the Board by S. 84, to enquire into and decide this dispute. If on enquiry the Board decides that the institution in question is not a temple or a mutt, its decision will be final, subject to the result of an application and an appeal under S. 84 (2) and (3) of the Act " C. F. Encyclopaedia Brittanica v. R. 21 (1951) Edn.) P. 926. Temple a word signifying loosely any enclosed space or structure erected for purposes of worship or to protect a cult image or cult objects. In a figurative sense the word is used for any (1) shrine (2) any building built JD a style similar to that of a classic temple (3) for the meeting houses of certain non conformist denominations (4) for synagogues (5) for the meeting place of certain fraternal orders.

42. In Commr. H. R. and C. E., Board v. Gangamma (1958) 2 M.L.J, 62 = 66 L.W. 454 Raghava Rao, J. held that if on evidence oral and documentary, the user as of right of the shrines as places of worship is established, there is a presumption, unless rebutted by strong evidence on record, that they are temples within the meaning of S. 9 (12) of the Madras Hindu Religious Endowments Act.

43. In the same volume there is another decision of the learned C. J., and Venkatarama Ayyar, j, in Madras Hindu Religious Endowments Board v. Deivdnai Ammal (1958) 2 M.L.J. 688=66 L.W. 1020 to the following effect :

In order to constitute an institution a public temple it is essential that it should be clearly proved that the institution was dedicated to the public. In the case of an old temple, such dedication might be presumed from long user by the public as of right. The fact that there is an utsava idol and there are processions are generally indicative of the fact that it is a public temple. But where no property has been dedicated for the upkeep of the temple and the expenses are met from out of some private funds, it is difficult to hold that the temple has been dedicated to the public. The mere fact that members of the public were allowed to worship in the temple is no ground to hold it a public temple as it is not in consonance with the Hindu sentiment to exclude worshippers from a temple even when it is private.

44. These principles are well set out in the law relating to Hindu and Mahomedan Endowments by Sri P.R. Ganapathi Iyer, 2nd Edn,, page 165 and following. The principal case in India which attempts to deal with the principles bearing upon the subject is that of Thackersey Dewraj v. Hurbhum Nursery (1884) ILR 8 Bom. 432. decided by Scott, J. The following are the tests to be gathered from his judgment : (1} the nature of the objects and purposes of the funds; (2) the nature of the dedication i.e., whether it is open to the public or a class of the community generally; (3) the authority, if any, of the donors to divert the fund and to condone maladministration; and (4) the existence or otherwise of any present or reversionary right of the donor individually or any body of donors collectively in the endowed funds.

45. The case of Chintaman v. Dhondo I. L. R. 15 Bom. 612. familiarly known as Chinchavad Devasthan case lays down:

The long established practice of treating the entire income of the endowments as constituting one fund for the support of the several shrines, the use which the public generally have made of the shrine for the purposes of worship and devotion, differing in no important particular from what obtains in other temples admittedly public, and lastly the active part taken by individuals outside the Dev (founder''s) family in the festivals of the deity and the votive offerings from the same class of persons are all irreconcilable with any other conclusion than that it was not only the intention of the governing power (in 744 when a grant was made by the Peshwa) that thenceforth the devasthan consisting of the above shrines would be a public devasthan but that it has always, as a fact, been regarded as such by the managing members of the Dev family and the public generally for more than a century and a half.

46. The question has come before Courts more recently and Courts have therefore laid down the tests of a public temple or institution. Besides those already referred to, Courts have regard to the character of the worship in a temple as showing the character of the temple itself. Indeed performance of the worship in accordance with the rites of the sect for whose benefit it was held would be good evidence of dedication. Where Archakas or priests have been appointed to make the puja or worship and other servants such as reciters of Vedas, of Tamil Prabandhams (in the case of Vishnu temples), or Tamil Tevarams

(in the case of Siva Temples) are also employed, that is evidence to show that the temple is public : Sitaratnanuja Charri v. Vellamma 1915 M.W.N. 842 = 2 L.W. 858. A fortiori, where there are hereditary offices attached to the temple, it is public : Subramania Aiyar v. Venkatachala Vadhyar (1916) 4 L.W. 444.(450). So also the fact that the general public are worshipping in the temple and do so without any permission or leave or licence will show that the dedication is a public one: Muthiah Chetti v. Periannan Chetti (1916) 4 L.W. 228 (232). No doubt even in the case of private temples the public may worship but where the public have as a matter of fact been in the habit of worshipping and have never been denied any access it may be a legitimate ground for inferring a dedication to the public. User as of right by the public, open and unconcealed or in such a manner that the owner, whoever he was, must have been aware that the temple had been dedicated is strong evidence from which a dedication may be presumed. The length of user in such cases is important although there is no fixed minimum period required by law for an in'' reference of dedication to arise. This presumption may be rebutted by the special circumstances of the case, and a simple act of interruption by the owner unexplained is of more weight than many acts of enjoyment by the public. Thus, in the cases we are considering, if the temple is closed to the public for any particular day in a year or members of the public are not allowed ingress, the presumption arising from user by the public will be rebutted. But exclusion of a Hindu on the ground that he was excommunicated from caste would not amount to any interruption as to rebut the presumption. So also exclusion of a person on the ground of misbehaviour does not rebut the presumption. Good conduct is a condition imposed on all votaries in every place of public worship: Thachersey Dewraj v. Hurbhum Nursery 8 Bom. 432.; Kalidas Jivram v. Gorparjaram Hirji 15 Bom. 309. The fact that people of all classes make offerings to the God in a temple and such offerings are never refused is strong evidence that the temple is a public one. The fact that the temple is bailor constructed outside the dwelling-house or residence of the owner or trustee is a strong circumstance in favour of the temple being public. As observed by Srinivasa Ayyangar. J. in Sitaratmanuja Charri v. Vellamma 1915 M.W.N. 842 : 2 L.W. 858,

it is very unusual (or a Hindu in Southern India to construct a temple outside his dwelling-house for private worship.

There are many other cases in which it has been held that the trusts in question were public trusts, charitable or religious or both.

47. Sri Bijan Kumar Mukherjea, Judge, Supreme Court of India in the Tagore Law Lectures (1936) on the Hindu Law of Religious and Charitable Trust, published by the Eastern Law House Ltd., Calcutta (1952) points out:

A de butter like any other endowment may be public or private. In English law, as I have explained in an earlier lecture, a distinction is recognised between private and public trusts, but charitable trust in English law are synonymous with public trusts, and a charity in the strict sense of the English language can never be private. By public trusts it must be understood such as are constituted for the benefit either of the public at large, or of some considerable portion of it, answering a particular description, while private trusts concern only individuals or families. A private trust providing for the material or spiritual benefit of individuals and families could not rank as a charitable trust in English law which must be public in its character In Hindu law however, it is competent for a donor to create a religious trust, the benefit of which is confined to the members of a particular family or the disciples of a particular religious preceptor. So far as De-butter endowment is concerned the essential test to distinguish a private from a public place of worship is, whether the right of worshiping the idol is limited to the members of a particular family or group or extends to all persons professing the Hindu religion. Rules can certainly be framed by those in charge of a public temple to ensure good order and decency of worship and to prevent overcrowding at the temple, but subject to these rules the right of entrance into a public temple for purposes of worship is a free right which cannot be prohibited or sold. See Kalidas Jiran v. Goru Parijaram 15 Bom. 309. As Scott, J. pointed out in Thakersey Dewraj v. Hurbhum Nurssy ILR 8 Bom. 432., ''the good conduct condition is imposed on all votaries in every place of worship but it does not make the temple a private one''. The distinction between public and private De-butter involves, as we shall see presently, important legal consequences. The question frequently comes up before our Courts of law, and several circumstances have been held by Judges to be material for the purpose of determining the question. When the donor has expressed his intention of dedicating the temple to the public by a document or otherwise, no difficulty arises. In cases where no express dedication is proved, the character of the endowment must always be a legal inference from proved facts. Long user is undoubtedly a material element from which an inference of dedication may arise. If the public have been in the habit of worshipping in the temples in an open and unconcealed manner, for a long period of time; and were never denied any access to it, that would be a strong evidence of dedication (Ibid). With regard to period of user, no hard and fast rule has been laid down. " There is no minimum which must be fulfilled, and there is no maximum which compos the inference. " Each case would depend upon its own circumstances. Besides user by the public, conduct of the founder and his descendants is also relevant, and if they in fact held out the temple to be a public temple, a very strong presumption of dedication would arise. It is found in many cases that repairs and additions to the temple building are made with public subscriptions and that festivals in the temple are also performed with the aid of public funds. These facts certainly fortify the inference of the temple being a public one. Hari Kishen v. Raghubai Dayat AIR 1926 Oudh 579., There may be nothing peculiar in the mode of worship by which one may distinguish a private from a public temple. When however the question arises as to whether or not a temple has been dedicated to a particular sect, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held might be treated as evidence of dedication : Mohan Lalji v. Gordhan Lalji 40 I.A. 97-35 All. 283. The appointment of Archakas or other functionaries as the reciters of Vedas and Tamil Prabandhas, which are the usual features of a public temple in the Madras Presidency is also relevant to indicate the public character of the endowment''.

48. Sri A. Ghosh, the Law of Endowments (Hindu and Muhammadan) Second Edn. (1938) p. 140 gives the following information:

There is a strong line of distinction between endowments which amount to trusts created for the benefit of the members of a family subject to certain charges for defraying the services of an idol and absolute endowments made for religious objects and for the benefit of the public: Madhab Chandra Bera v. Srimati Rani Surat Kumari Debt 45 C.W.N. 126 at 131. Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it; but in the ease of a family idol the concensus of the whole family might give the estate another direction : Honwar Doorganath Roy v. Bam Chundbr Sen 4 I.A. 52. One of the tests to determine whether an endowment is a private family endowment or a public endowment is to consider whether the founder or all the members of the family could divert the income of the endowed property to their own private use or to any purpose other than that expressed in the deed of endowment : Ram Prasad v. Bam Kishun 11 Pat. 504. In Thakersey Dewraj v. Hurbhum Nursey 8 Bom. 482, 458, Scott J. observed :

When gifts are devoted absolutely to religious and charitable purposes, or for specific purposes of a public general character, they are treated by law as public charities; Governors of Charity v. Sutton 21 Bea v. 651. Lord Hardwicke put the matter very clearly many years ago, and his dictum is still quoted with approval. ''The Charter of the Crown'' said his Lordship, ''cannot make a charity more or less public, but only more permanent. It is the extensiveness which will constitute it a public one. Where testators have not any particular person in their contemplation, but leave it to the direction of the trustee to choose out the object, though such person is private, and such particular object may be said to be private, yet in the extensiveness of the benefit they may very properly be called public charities'' Attorney General v. Pearce 2 Atk. 88.

Provision for the feeding of the poor and of students, if the income of the property endowed for the puja of a deity, increases, is incidental to the main purpose of endowments and such a trust is wholly of a private nature Prasaddas Pal Vs. Jagannath Pal and Others, . Where a temple and its endowments were originally private trusts, it is difficult to hold that admission of the public in later times, possibly owing to altered circumstances, would affect their private character: Mundancheri Koman v. Thachatigat Puthan Vittil Achuthan Nair AIR 1934 P. C. 280 : 40 L.W. 428. The determination of the question whether a temple is private or public is generally not free from difficulty. It is not possible to lay down any hard and fast rule, or any conclusive tests for the purpose. There is no peculiarity in the architecture of the building or in the ritual of the worship and there are no other insignia to distinguish a public from a private temple. The main characteristic of a public temple is that it is intended for the use of the public at large, or at any rate an indeterminate, though restricted class of the Hindu community generally. On the other hand, private temples are intended for the worship of the family or other God by members of the family of the donor exclusively. A private temple is like a private chapel in England in which the public have no interest. Though the public can be allowed access even to a private temple in such a way as to exclude any idea of its being a public institution, such access is only by sufferance. But in the case of public temple, the public is entitled to the privilege of worship therein as a matter of right. The question therefore is generally one of inference to be drawn from the circumstances of each case : Mt. Premo v. Sheo Nath 8 Luck 266:A.I.R. 1938 Oudh 22.,

49. Applying these principles to the facts of the present case, there are ten circumstances showing that the temple in question is a public temple and not a private temple. First of all. in this case we have the deed of dedication which has been substantially reproduced above. It clearly shows both from some of the terms contained therein and alluded to above6 and the use of the word Devasthanam that the petitioner and his father represented to Hindu public that the temple was a public temple at which all Hindus may worship. The inference is that they dedicated the temple to the public. Secondly, inscriptions have been set up in the temple clearly showing that this was not a private temple put a public temple where the Hindu public might come and worship. The owner having held out to the public that the temple was a public one and allowed them to exercise their rights of worship on that footing, will be estopped from asserting that it was a private or proprietary temple. Thirdly, the dedication was by performing pranaprathishta and Samprokshanam ceremonies which clearly show that this could not have been a private temple or proprietary temple- Fourthly, the appurtenances of this temple consisting of a Mulavar, Utsavar, Alankara Mandapam, Prakaram, Madappalli, Vahanams and Garudalwar in front are all indecia of a public temple. The mere fact that there are no Gopuram and Dwajasthambam do not negative the factum of this temple being a public one because they are indecia connected with rich temples and in fact in South India temple architecture they are even later innovations more or display than indispensable concomitants of a public temple. Fifthly, this temple is constructed outside the dwelling house and is in a separate building of its own and in South India this is almost an indisputable mark of the institution being a public temple. The fact that it is in a line with other houses due to the local circumstance brought about by the house-site being purchased for the building of the temple, connotes nothing special. Sixthly, there is nothing peculiar in the mode of worship in this temple to distinguish it from a public temple though in order to get over this implication it was stated in one of the papers by this petitioner that the nature of the worship was Athmartha pooja and family worship. There is no evidence regarding the same. On the other hand, the evidence of the P. Ws. is that the same kind of worship as in other public temples was being carried on and that after the performance of Archana, Sadari, distribution of Theertham and

Tulasi take place among the people who had all assembled there. Then on auspicious days accompanied by Melam and Bhajana party the Utsava Vigraham is being taken in Thotti Sapram and perambulates the streets and the Sevarthis do Sevas and pay the Bhattachari who accompanies the deity small cash presents. The use of portions of the temple as school and Valibar Sangham are only revivals of the old uses to which temples were put to in Southern India and constitute an intelligent anticipation of what the modern public wants the temple trustees to do. Seventhly, the evidence of all the P. Ws. clearly shows that the Hindu public do congregate there on auspicious occasions. On account of its being a small and unimportant temple, naturally people do not go there every day. But there is no evidence whatsoever worth mentioning that the worshippers come there only by invitation or that the hereditary trustee excludes them at his will and pleasure. On the other hand the P. Ws. who impressed me as persons unworthy of credence and who gave evidence merely to oblige this hereditary trustee, had to admit that their visits were occasional there and that they do not know what happened at other times. On account of its insignificance naturally Ubhayams are not being undertaken by strangers, it is unnecessary to multiply these details to show that the people who attend this temple on such occasions as they desire, do so as of right and not by leave and licence. Eighthly, there is evidence to show that till 1949 separate accounts were kept for this temple and it was only thereafter that this trustee has started mixing up his private accounts with the temple accounts in order to create evidence, of this being a private temple. The accounts hare not been filed in this Court and in fact even if they are filed they cannot be genuine and must have been cooked up to meet the Board''s comment. Ninthly, there is no evidence to show that Corporation Tax is being paid for the premises of this temple and if it were so the receipts would have been forthcoming. Tenthly. it is a well settled principle (Bigelow on Estoppel 6th Edn. 783, 788 etc. Casperz Estoppel 565) that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold and approbate and reprobate to the detriment of his opponent; this is a wholesome doctrine not only applicable to the successive stages of the same suit or proceeding but also to a suit or proceeding other than the one in which the position was taken up provided the second suit or proceeding grows out of the judgment in the first suit or proceeding: Mahadev Singh v. Pudai Singh 124 I. C. 671, Manindra Chandra Nandi v. S. of S. 34 Cal. 527., Hemanta Kumar Debi v. Prasanna Kumar Dutt 1980 Cal. 32, Desai v. Mahalingappa 1984 Bom. 829, Narain Rai v. De 1924 Cal. 600., Girish Chandra v. Bipiri Behari 44 I.C.159., Govindsa v. Ismail A. I, R. 1950 Nag. 22. It is equally well-settled that an P. of this nature filed in this Court is only a continuation of the application decided by the Hindu Religious Endowment Board, and the materials before the Board form part of the record of enquiry before the Court; 46 L-W. 388=1937 M. W. N. 1145 Bhavanam Nagireddi and Others Vs. The Board of Commissioner for Hindu Religious Endowments, = Bhavanam Nagireddi and Others Vs. The Board of Commissioner for Hindu Religious Endowments, A. I. R. 1932 Mad 593= 63 M. L. J. 254=36 L.W. 673. Parties however have the right to adduce such evidence as they desire before the Court (40 L. W. 680; A. I. R. 1932 Mad. 593-63 M. L. J. 254-36 L. W. 673) and Courts cannot direct a remand and rehearing by the Board: 61 M. L. J. 862=34 L. W. 848=1931 M.W.N. 764=55 Mad. 201. This petitioner moved the Board to recognise him as a hereditary trustee on the foot that this is a public temple and having got himself recognised as such and obtaining all the advantages incidental thereto, he is now turning round and asking that the temple be declared to be a private one and in which case the Board will have no jurisdiction whatsoever and no question of recognising this petitioner as hereditary trustee or otherwise would arise. The petitioner on the principles of equitable estoppel cannot be allowed to do so. In the result, I find that the petitioner is not entitled to the relief''s asked for. This petition is dismissed with costs. Advocates fee, Rs. 200.