
(2014) 08 AP CK 0067
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 715 of 1993

J.R. Mritunjaya Singh

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 23(b)
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 15(2), 15(2)(b), 226

Citation : (2015) 1 ALD 740 : (2015) 5 ALT 46

Hon'ble Judges : M. Satyanarayana Murthy, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy and Venkateswara Rao Gudapati, Advocate for the Appellant

Judgement

M. Satyanarayana Murthy, J.—The unsuccessful plaintiff in Original Suit No. 1 of 1987, on the file of Additional District Judge, Vizianagaram (For short, "the trial Court"), preferred this Appeal against the decree and judgment dated 08.02.1993.

2. For convenience of reference, the ranks given to the parties in O.S. No. 1 of 1987 will be adopted throughout this judgment.

3. The plaintiff, J.R. Mritunjaya Singh, represented by his Power of Attorney Holder Sri K. Suryarao, filed suit before the trial Court under Section 78 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966) to set-aside the order dated 02.01.1986, passed in O.A. No. 350 of 1973 by the Deputy Commissioner, Endowments Department, Kakinada, where under the temple known as Sri Ammagari Venkateswaraswami Vari Temple, Kotha Agraharam, Vizianagaram was declared as public temple.

4. During pendency of Appeal, Sri Kavalipati Suryarao died and Sri Gangaraju Ramaraju is brought on record as Power of Attorney Holder of Sri Gangaraju

Ramaraju, as per Orders of this Court in C.M.P. No. 2247 of 1998 dated 02.03.1998.

5. Aggrieved by the order dated 02.01.1986 passed in O.A. No. 350 of 1973 by the Deputy Commissioner, Endowments, Kakinada, plaintiff filed the suit before the trial Court, which ended in dismissal confirming the order dated 02.01.1986, passed in O.A. No. 350 of 1973 by the Deputy Commissioner, Endowments, Kakinada.

6. Late Sri Jayapal Kumarika Amma Saheba, Rajamatha, natural mother of Vizianagaram Zamindar, Sri Vijayarama Gajapathi Raju, with an intention to construct Vaishnava temple with her self-acquisitions, installed idol of Lord Sri Venkateswara Swamy Varu to perform daily poojas in her name, executed trust-cum-settlement deed dated 26.01.1938 in favour of her grand-son, Dr. Sir Pusapati Vijayananda Gajapathi Raju, Maharaja Kumar of Vizianagaram, appointed him as hereditary trustee of the temple while providing cash for construction of the temple. The property settled in favour of the trust was only "streedhana" property of Late Sri Jayapal Kumarika Amma Saheba, Rajamatha; she created trust for the benefit of the members of Vizianagaram Royal House exclusively, executing the trust deed dated 26.01.1938 stipulating a condition that poojas to the deity should be performed in her gothra nama and the trustee should be hereditary.

7. In view of the settlement deed, keeping in mind, the intention of the donor, her daughter-in-law Smt. Lalita Kumari Devi Varu, Maharani Saheba of Vizianagaram, applied and got site of Ac.1.25 cents in T.S. Nos. 139, 140 and 143 of Santhapeta Southward, Kotha Agraharam, Vizianagaram, granted by the Court of Wards, Madras in C.M.P. No. 315, dated 23.03.1938, as by that time, Vizianagaram Estate was under the management of Court of Wards, Madras. Thus, the temple known as Sri Ammagari Venkateswara Swamy Vari Temple was constructed with the self acquisitions of donor and it is in private site. The 1st hereditary trustee of the temple Dr. Sir Vijayananda Gajapathi Raju filed an application in O.A. No. 24 of 1956 before the Deputy Commissioner, Endowments, Mausilipatnam, under Section 57-A of the Act, seeking declaration that the temple is a private temple. After conducting necessary inquiry, the Deputy Commissioner, Endowments, Mausilipatnam, vide his order in O.A. No. 24 of 1956 dated 24.07.1956 declared the temple as a private temple. After death of 1st hereditary trustee, Dr. Sir Vijayananda Gajapathi Raju, his eldest son, the plaintiff herein, became hereditary trustee of the temple in pursuance of the trust deed and managing the temple.

8. While managing the property, the plaintiff at the instance of Inspector of Endowments, Vizianagaram, and due to threat and coercion submitted a petition dated 30.07.1968 to the Deputy Commissioner, Endowments, Kakinada to declare him as hereditary trustee of the temple. on an erroneous impression. The Deputy Commissioner, Endowments, Kakinada vide his letter in R.C. No. 7625/68 Judl.A-2, dated 15.08.1968 expressed a doubt about maintainability of the said

application, in view of the earlier order of Deputy Commissioner, Endowments, Mausilipatnam that the temple is a private temple, posted the matter for enquiry on 30.08.1968. The plaintiff, after obtaining the legal opinion, realized the mistake of filing an application under Section 77 of the Act, filed another application seeking permission to withdraw the earlier application. Accordingly, the Deputy Commissioner, Endowments, Kakinada, vide order No. 64 of 1969, dated 18.07.1969, permitted the plaintiff to withdraw his application and consequently the application of the plaintiff was dismissed as withdrawn. On the instructions of the Assistant Commissioner, Endowments, Vizianagaram vide R.C. No. 2513/68 A-2, dated 29.05.1968, the hereditary trustee filed an application under Section 38 of the Act to register the temple; the Department also made a demand for payment of contribution for faslies 1374 - 1376 i.e., for the periods from 1967 - 69, to a tune of Rs. 3,521-70 Ps., Due to pressure exerted on him by the Department, the then agent of the trustee paid amount "under protest" and obtained receipt No. 16530, dated 04.03.1969.

9. The 2nd defendant took-up inquiry into the matter and passed the order in O.A. No. 350 of 1973, on 02.01.1986, holding the temple known as Sri Ammagari Venkateswara Swamy Vari Temple as public temple on erroneous view, recording evidence of 10 witnesses of Vizianagaram on 16.05.1983 at Vizianagaram, but their evidence is not based on any documentary proof. Thus, the order in O.A. No. 350 of 1973 is not based on any material to establish conversion of private temple into public temple. The witnesses examined on behalf of the Endowments Department are only interested witnesses and due to ignorance or otherwise, they deposed against the plaintiff. On the other hand, the witnesses examined by the plaintiff testified in his favour, more particularly, about performance of poojas with the permission of hereditary trustee etc., The excess land of the temple was surrendered to the Government treating it as a private temple, since public temples are exempted from land ceiling law. There is no gopuram to construe the temple as public temple. However, due to mistake, the directions given by the Endowments Department were complied, which acts do not constitute estoppel.

10. While the matter stood thus, on the written instructions of the Assistant Commissioner, Endowments, Anakapalli, vide his letter in Dis. No. A1/3408/69, dated 11.06.1969, Manager of the temple, without knowledge and consent of the hereditary trustee, opened a Hundi in the temple and as such agent of the trustee paid contribution to the Department for 3 years, but this cannot operate as estoppel against the status of the temple. If the work of the Manager is considered as one by the trustee himself, the Manager was properly punished for his misdeeds and unauthorized acts, by issuing proceedings in Rc. No. 1/69 dated 26.07.1969, which was marked as Ex. R-17 and, later, the hundi was removed, which was installed unauthorizedly, and the Manager was also removed from service, but on sympathetic grounds without taking any further action.

11. The plaintiff further contended that there is no gopuram and it is only a Pooja

Mandir of Royal house. Further, one hand of the idol intended to be installed in the temple known as Sri Ammagari Venkateswara Swamy Varu, Kotha Agraharam, Vizianagaram was broken during transit. Therefore, it could not be installed in the temple, sentimentally. At the request of late Dr. Ramayyanger, the then royal family physician, late Sri Lalitha Kumari Devi Varu, Dowager, Maharani Saheba of Vizianagaram, got the idol replaced on the northern tank bund of Ayyakoneru, which is the personal property of Dr. Sir Pusapati Vijayananda Gajapathi Raj, opposite to the house of Dr. Ramayyanger, and provided a small protection to it, but no pooja or archana are being done to the mutilated idol and, by reason of sentiment, idol is not opened to the public. The door of the Mandir is being opened for switching on the electric light on Ekadasi days by the cook of the Kotha Agraharam temple for performing Tirumanjani Seva. There is a misnomer to call the small protection provided for the mutilated idol under the small protection which is locally known as Sri Veedhi Perumalla Varu on the north bund of Ayyakoneru, Vizianagaram to be a temple, much less a public temple. It is ancillary to the temple at Kotha Agraharam. As the matter stood thus, the Assistant Commissioner, Endowments, Anakapalli vide his letter in Rc. No. A-1/714/77, dated 28.01.1977 formed a trust board and appointed one Boddu Gurudas, as trustee of the temple and when the Mandir was not handed over by the hereditary trustee, the so called trustee of the temple, illegally appointed by the Assistant Commissioner, Endowments, Anakapalli, filed an application in MP. No. 919 of 1978 under Section 93 of the Endowments Act before the Additional District Munsif, Vizianagaram. Thereafter, the hereditary trustee of the Mandir filed Writ Petition No. 5003 of 1978, which was allowed by this Court on 20.01.1984. Thus, the temple in question is a private temple in view of the order dated 24.07.1956, passed in O.A. No. 24 of 1956 by the Deputy Commissioner, Endowments, Mausilipatnam, which attained finality. At best the inquiry ought to have been confined only to the question whether the private temple as on 24.07.1956, has been converted into a public temple, but the Deputy Commissioner, Endowments, Kakinada, without any satisfactory evidence held that the temple in question is a public temple. Moreover, the Deputy Commissioner, Kakinada observed that if it is for private purpose, it would have been constructed in the palace itself. This observation is germane to the inquiry. Further, the Deputy Commissioner, Kakinada did not consider Ex. R-15, inspection notes of the Assistant Commissioner, Anakapalli, vide his letter in Dis. No. A1/3498/69, dated 11.06.1969 containing instructions to open a Hundi in the temple and got poojas done to the deity on ticket system and observed that the trustee's agent himself opened a Hundi with the trustees knowledge. As a matter of fact, those acts were done only under the threat or coercion of Assistant Commissioner, Anakapalli, without the knowledge of hereditary trustee. Finally, the Deputy Commissioner, Kakinada observed that sending an application, by the hereditary trustee, for registration of the temple under Section 38 of the Endowments Act is another circumstance to conclude that the temple is public temple, but overlooked withdrawal of the application by the hereditary trustee and dismissal of the same as withdrawn. Therefore, the

inquiry should be confined only to find out whether the private temple is converted into public temple subsequent to 24.07.1956, in view of the order passed by the Deputy Commissioner, Mausilipatnam in O.A. No. 24 of 1956. Thus, the Deputy Commissioner,/Kakinada acted beyond the scope of inquiry and passed an erroneous order; thereby prayed to set-aside the order passed by the Deputy Commissioner, Kakinada in O.A. No. 350 of 1973, dated 02.01.1986.

12. The 3rd defendant filed written statement denying material allegations of the plaint, while admitting that the temple in question has been declared as private temple under Section 67(a) of the Act 19 of 1951 by the Deputy Commissioner, Mausilipatnam, vide order in O.A. No. 24 of 1956, dated 24.07.1956. But, due to changed circumstances and also due to change in treatment of temple by the plaintiff and his agent, an inquiry was made, wherein it was found that an application under Section 38 of the Act 17 of 1966 was filed by the hereditary trustee and also filed a petition under Section 77(1)(c) for declaring him as hereditary trustee, paid contribution to the Endowments Department, allowed accounts to be audited by the local fund officers and obtained budget sanctions, introduced ticket system for performing poojas and allowed the public for performing poojas and that the temple was also published under Section 6(C)(ii) of the Act 17 of 1966. Therefore, suo moto enquiry was started under Section 77(1)(c) by the Deputy Commissioner, Kakinada in O.A. No. 350 of 1973 and after issuing notice to the hereditary trustee, the plaintiff filed Writ Petition No. 6516 of 1973, challenging the notice issued by the Deputy Commissioner and sought for a direction restraining the Deputy Commissioner from proceeding with the inquiry pursuant to the notice, but this Court by its order in W.P. No. 6516 of 1973 dated 28.08.1975 directed that the question to be inquired by the Deputy Commissioner in the matter is, "Whether the temple which must be deemed to be a private temple on 24.07.1956, has since been converted into public temple and whether it was then a public temple". In pursuance of the order of this Court, the Deputy Commissioner, Endowments, Kakinada, continued inquiry in O.A. No. 350 of 1973, after affording opportunity to hereditary trustee, Endowments Department adduced evidence. Basing on the evidence and acts of the agent and Manager of the temple, Deputy Commissioner, Endowments, Kakinada, passed the order declaring that the temple in question as 1 "public temple".

13. It is further contended that there is a Dwajam, Mukha Mandapam, Kalyana Mandapam, Archakas and Cooks to prepare prasadam. For performance of various ceremonies settling Ac.128.00 cents in the name of deity etc., shows that the dedication is in favour of the deity i.e., for public purpose and existence of Dwajam etc., is a positive proof that it is a public temple. Though, the temple was declared as private temple, by passage of time, it becomes a public temple and the temple was registered under Section 38 of the Act 17 of 1966, on the application of hereditary trustee and he also filed an application under Section 77(1)(c) declaring that he is the hereditary trustee. Thus, the temple is now possessed with all the requirements of a public temple like Mulavirat, Utsava

Vigraham, Dwajam, Mandapam, Kratu Stambam, Prakar Gopuram, Nagara Bell etc., The archakas performing daily Doopa Deepa Naivedyam and Aradhana are posted with vast land as endowed by its founder. The accounts of the temple were also audited by the auditors. The hereditary trustee also used to pay the contribution to the Endowments Department. These are the two additional factors to treat the temple as public temple. Public are also allowed to visit the temple, perform poojas, prasadam is being distributed, installation of Hundi for collection of contribution from the public and collecting donations etc., also indicate that the temple is converted into public temple and does not continue as a private temple.

14. The trustee entrusted the management to its agent, who used to sign on all the papers sent to the Department and getting approved the acts of the trustee. Hundies were opened in the temple for public contribution and ticket system was also introduced for the benefit of the public. If really, it is a private temple, the question of collection of donations from the public and performance of poojas on tickets purchased by the public would not arise. If really, it is purely a private temple, the question of hereditary trustee without order of the Assistant Commissioner in managing the temple, opening Hundi and filing an application under Section 38 of the Act, would not arise. Therefore, all these acts indicate that the temple was treated as a public temple.

15. As seen from the contents of the trust deed, the intention of the founder is to construct a temple, but not a temple for the family, but she expressed her cherished desire for construction of Sri Venkateswara Swamy Vari temple and endowed the property for its management by appointing a hereditary trustee. The document, with regard to installation of the idol of Sri Venkateswara Swamy is silent that it is installed only for the benefit of the royal family. Therefore, dedication under the trust deed is only for public not for the private individuals. The temple was registered and a publication was made under Section 6(c) clause (ii) of the Act as public temple and no objection was raised by the hereditary trustee for such publication and the allegation that the excess land was surrendered to the Government proves that the temple is a public temple. The land reforms proceedings are purely between the State and the temple and the Endowments Department is not a party to the proceedings. Therefore, the Land Reforms Proceedings are not binding. Thus, the order under challenge cannot be set-aside, since the temple satisfies the requirements to declare the temple under question as a public temple. It is further contended that the order passed by the Deputy Commissioner, Kakinada is totally in accordance with the law and there is no error, therefore, prayed to dismiss the Suit.

16. Defendants 1 and 2 filed a memo adopting the written statement filed by 3rd defendant.

17. 4th defendant filed written statement, while adopting the written statement filed by 3rd defendant, contended that filing of an application under Section 38 of the Act by mistake and withdrawing the same, payment of contribution for faslies

1374 - 1376 was due to pressure of the Endowments Department and no documentary evidence was produced to prove that the temple in question is a private temple, The plaintiff nowhere in the plaint stated that the pooja Mandir is only meant for their royal family and there is no restriction to general public for performing any poojas or marriages in the temple. The trustee who filed an application under Section 38 of the Act cannot go back and say that it was made by mistake, which operates as estoppel against the conduct of the trustee. The contention of the plaintiff that the Manager of the temple without his knowledge of hereditary trustee opened Hundi in the temple and thereafter agent of the trustee paid contribution to the Department; subsequently, the Manager was punished vide proceedings of the hereditary trustee dated 26.07.1969, do not support the case of the plaintiff and the same is false. He specifically stated that existence of Dwajastambham, Mandapam, Prakaram, Gopuram, Hundi, immovable and movable property, allowing general public to perform poojas in their names and marriages, conducting Harikathalu on the festive occasions and appointment of trustees are conclusive proof that the temple in question is a public temple. Finally, It is contended that the order passed by the Deputy Commissioner, Endowments, Kakinada is totally in accordance with the law and there is no error and prayed to dismiss the Suit.

18. On the basis of the above pleadings, the trial Court framed the following issues:

- "1. Whether the private temple was converted into a public temple?
2. Whether the order of the Deputy Commissioner is liable to be set-aside?
3. Whether the plaintiff is entitled to the declaration?
4. To what relief the plaintiff is entitled?"

19. During course of trial, on behalf of the plaintiff, P.W.1 was examined and Exs. A-1 to A-68 were marked. On behalf of the defendants, DWs.1 to 6 were examined and Exs. B-1 to B-4 were marked.

20. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court dismissed the suit, confirming the order of Deputy Commissioner, Kakinada in O.A. No. 350 of 1973, dated 02.01.1986, holding that the temple in question is a public temple and as such the plaintiff is not entitled for any declaration.

21. Aggrieved by the impugned decree and judgment of the trial Court, the unsuccessful plaintiff preferred this Appeal on various grounds mainly contending that the trial Court went back to the facts prior to order in Writ Petition No. 6516 of 1973, dated 28.08.1975 and so also the order of Deputy Commissioner, dated 24.07.1956 declared the temple as private temple and erroneously concluded that the temple in question is a public temple. The trial Court went wrong in concluding that the settlement deed dated 26.01.1938 is the dedication for the idol and declared the temple as public temple. The trial Court also did not believe

the trust deed though the Deputy Commissioner, Mausilipatnam, in the earliest order dated 24.07.1956 believed the genuineness of the trust deed and declared the temple as private temple.

22. The trial Court also failed to consider effect of the order in L.C.C. No. 1426 of 1975, but the temple did not claim any exemption from surrendering excess land and claimed only a standard holding for the temple as a private temple. Therefore, the finding of the trial Court on this ground is prima-facie erroneous.

23. Failure to visit the temple by Dr. Sir Pusapati Vijayananda Gajapathi Raju, would not change the nature of the temple from private to public and it is not a ground to conclude that the private temple is converted into public temple. Failure to examine the original hereditary trustee by itself is not a ground for the reason that PW.1 is the person who is posted with the facts. Therefore, on the ground of non examination of the hereditary trustee, dismissal of the suit is erroneous. The trial Court mainly concentrated on the installation of Hundi, ticket system etc., they were done only on account of written directions given by the Assistant Commissioner, Anakapalli but not otherwise. As such it is not a ground to conclude that the temple is a public temple.

24. The applications filed under Sections 38 and 77 of the Act, 1966 are only due to coercion, threat by the Assistant Commissioner, Anakapalli, without knowing the consequences of such application. However, it was withdrawn by the trustee himself and the Deputy Commissioner permitted to withdraw it by dismissing the application. Hence, such withdrawal had no consequences regarding nature of the temple, the trial Court's conclusion basing on the applications filed under Sections 38 and 77 is ex-facie erroneous. The trial Court also failed to consider the validity of Ex. A-29, in permitting any person to enter into the temple and perform poojas with permission does not amount to changing the nature of temple from private to public. Therefore, the orders of the trial Court and Deputy Commissioner are erroneous.

25. Though a specific plea of Res-judicata was raised in the pleadings the trial Court did not frame any issue and did not advert to the specific contentions of the plaintiff regarding bar of the proceedings by res-judicata. Thus, committed an error in dismissing this suit.

26. During course of argument, learned counsel for the plaintiff -appellant reiterated the grounds urged in the grounds of appeal, pointing out the evidentiary admissions and documents, placed reliance on the judgments of Apex Court and this Court reported in Radhakanta Deb and another v. The Commissioner of Hindu Religious endowments, Orissa AIR 1981 SC 798 and Bommu Raghurami Reddy and Others Vs. Special Deputy Collector (Land Acquisition) and Another, respectively.

27. Whereas, learned counsel for the respondents - defendants argued totally in respect of the findings of the trial Court and pointed out certain admissions in evidence in the cross-examination of witnesses, examined on behalf of the

plaintiff, relied on the judgments of Apex Court in Deoki Nandan Vs. Murlidhar, and prayed to dismiss the Appeal confirming the decree and judgment of the trial Court and order passed by the Deputy Commissioner, Endowments Department, Kakinada.

28. Considering rival contentions, perusing the impugned decree and judgment of the trial Court, including oral and documentary evidence on record, the points that arise for consideration in this Appeal are as follows:

"1) Whether the temple which was declared as private temple as per the orders of Deputy Commissioner, Mausilipatnam, dated 24.07.1956 is converted into public temple due to subsequent changed circumstances?

2) Whether the impugned order dated 02.01.1986 passed in O.A. No. 350 of 1973 by the Deputy Commissioner, Kakinada is hit by principles of Res-judicata?

3) Whether the order passed by the Deputy Commissioner, Kakinada, is sustainable?"

29. POINT Nos. 1 and 3: Since both these points are inter connected, I feel that it is expedient to decide these points by way of common discussion. Admittedly, the temple in question was initially declared as a private temple, as per the order in O.A. No. 24 of 1956, dated 24.07.1956, by the Deputy Commissioner, Endowments, Mausilipatnam, which is marked as Ex. A-1, considering the settlement deed, and other attending circumstances and the order has become final, since it was not challenged in any Court of law as per the procedure contemplated under the Act. Thus, undisputed fact is that the temple was initially a private temple and declared as such in view of the order passed in the original of Ex. A-1. The main contention of the defendants before the trial Court is that the private temple became public temple due to changed circumstances. Following are the changed circumstances pointed out by learned counsel for the defendants:

"1) Installation of Hundi and introduction of ticket system for performing poojas;

2) Permitting public to enter into the temple to perform poojas and marriages in the mandapam;

3) Construction of Mukha Mandapam, installation of Dwajastambham;

4) Applying for declaring the hereditary trustee under Sections 38 and 77 of Act 1966; notifying the temple under Section 6(C) of the Act and failure to raise any objection regarding notification of the temple under Section 6 of the Act."

30. Taking advantage of the alleged changed circumstances, the defendants contended that the private temple became a public temple as per the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions Endowments Act. During enquiry, several witnesses were examined on behalf of the Department before the Deputy Commissioner and documents were marked. Similarly, on behalf of the plaintiff -appellant also number witnesses were

examined and marked necessary documents, but the Deputy Commissioner, Endowments Kakinada, 2nd defendant herein passed the impugned order under challenge in the suit declaring the temple in question as public temple assigning his own reasons. Hence, the order passed by the Deputy Commissioner, Kakinada was challenged before the trial Court, but the trial Court affirmed the order passed by the Deputy Commissioner assigning its own reasons.

31. The learned counsel for the plaintiff - appellant mainly differentiated the private temples and public temples and unless the changed circumstances show the dedication is in favour of the trust not deity and intention of the donor was not looked into by the trial Court, if the dedication is for the public and the temple was constructed for the benefit of public, the temple can be termed as public temple. There is no sanctum sanatorium (Gopuram) for the temple and it is constructed in the land belonging to the royal family Sri Jayapal Kumarika Amma Saheba, Rajamatha, natural mother of Vizianagaram Zamindar, Sri Vijayaram Gajapathi Raju and taking into consideration the dedication of the property under trust cum settlement deed dated 26.01.1938, marked as Ex. A-15, the Deputy Commissioner, Endowments, Mausilipatnam passed an order dated 24.07.1956 in O.A. No. 24 of 1956. In view of the order passed by the Deputy Commissioner, Mausilipatnam in O.A. No. 24 of 1956, the original dedication by donor, Sri Jayapal Kumarika Amma Saheba, cannot be revisited by the 2nd defendant or by the trial Court to find out whether the dedication is for the public or Royal Family of Vizianagaram Zamindar, since the finding of the Deputy Commissioner, Mausilipatnam, became final. At best the relevant considerations are the changed circumstances like installation of Hundi, introduction of ticket system for performing poojas by the public, installation of Dwajam and permitting the public to perform poojas and marriages; so also conduct of the hereditary trustee in submitting an application to the 2nd defendant to declare him as hereditary trustee under Sections 38 and 77 and its withdrawal are only relevant for deciding the core issue.

32. Before advertng to the oral and documentary evidence to decide the nature of the temple, I feel that it is better to advert to the legal position laid down by various High Courts and Apex Court distinguishing the private and public temples.

33. Learned counsel for the plaintiff - appellant placed reliance on the judgment of the Apex Court in Radhakanta (supra) wherein the Full Bench of the Apex Court drawn distinction between private religious trust and public religious trusts and held as follows:

"It is well settled that under the Hindu law it is not only permissible but also very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to install a family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founder and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a

public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by the beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment. The question as to whether the religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application.

The following tests may provide sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

"(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

34. This Court also laid down certain tests to determine the nature of Trusts. In a Division Bench decision of this Court in *Bommu Raghurami Reddy (supra)*, it was held as follows:

"Merely because public in general for their own reasons, had developed some faith and were conducting certain rituals and poojas, no inference can be drawn that site belongs to public temple; more so, when no notification issued by endowment department at any point of time notifying Mutt as a religious endowment or as a public temple."

35. From the principles laid down in the decision cited *supra*, mere developing faith by the public and performing the rituals and poojas in the temple alone is not sufficient to treat the temple as public; even otherwise, in view of the test laid down by the Apex Court, it is for the defendants to establish the changed

circumstances subsequent to passing of order by the Deputy Commissioner, Endowments, Mausilipatnam to treat the temple as public temple.

36. In *Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State*, the Apex Court is of the view that if the temple is meant for public religious worship and dedicated to the community at large or any section as place of public religious worship, indicates that the temple was treated as a public temple. Gift of land in the name of deity i.e., dedication of property to deity and corroboration of the same by entries in revenue records indicates that it is a public temple.

37. From the principle laid down in the decision cited supra, the dedication to the deity is an important feature of the public temple and permitting the public to worship as of right is another feature to treat the temple as public temple.

38. In *The Bihar State Board of Religious Trusts Vs. Bhubneshwar Prasad Choudhary and Another*, the Apex Court held that though the management is vested in the family, the public taking part in worship and nature of participation is primary importance of judging the question and when there exists essential public participation in the matters of temple is sufficient to held that the temple is a public temple.

39. In *Gurpur Guni Venkataraya Narashima Prabhu and Others Vs. B.G. Achia, Assistant Commissioner, Hindu Religious and Charitable Endowment, Mangalore and Another*, the Supreme Court held that temple was a place of religious worship dedicated to and used as of right by general Hindu community and dedicated to general Hindu community for their benefit. In the absence of such feature, the temple cannot be held to be a public temple.

40. In the facts of *Gurpur Guni* (supra), the temple in question was constructed about 400 years ago. In a proceeding under Section 56 of Madras Hindu Religious Charitable Endowments Act, 1951, the Deputy Commissioner held that the temple was a public temple and the finding was affirmed by the Commissioner of Endowments, later a suit was instituted by the trustees of the temple before the Subordinate Judge, South Kanara for declaration that the temple was a private temple and not a temple as defined under Section 6(17) of the Act, and alternatively for a declaration that it was a denominational or sectional temple belonging to the Goud Saraswat Brahmin Community of Gurpur. The subordinate Judge held that it is a temple for Goud Saraswat Brahmin Community of Gurpur, which is denominational sect of Gurpur and not a private temple; but in Appeal, the High Court held that the temple is a public temple and allowed the Appeal dismissing the Cross-objections filed by the hereditary trustees. Thereupon, the matter reached the Apex Court, wherein the Supreme Court relying on its earlier judgment in *Bihar State Board* (supra) concluded that the law is now well settled that "the mere fact of the public having freely admitted to the temple cannot mean the Court should readily infer there from dedication to the public, the value of such public usage, as evidence of dedication

depending the circumstances which give strength to the inference that the usage was "as of right".

41. In *T.D. Gopalan Vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras*, the question whether a temple was public or private in nature came up before for consideration, and the Apex Court held as follows:

"If votive offerings were made by the public and expenses were being made by the public contribution, it can be safe to presume that the temple was public. Gopuram or Dwajastambha nor Nagara bell nor Hundi are installed in the temple and thereby the temple had some physical characteristics and features which were generally found in public temple. That apart, the persons belonging to Thoguluva family used to visit and worship at the temple making some offerings, the temple also possessed gold jewellery and other articles."

Further, in Para 15 of the judgment, it was held as follows:

"15. It is significant that the High Court did not attach sufficient importance to three matters which, in the present case, were material consequence. The first was that the origin of the Mandapam had been proved to be private. The second was that its management had remained throughout in the members of the Thoguluva family. The third was the absence of any endowed property. There was no Gopuram or Dwajasthamba nor a Nagara bell nor Hundial in the suit temple, though the temple has characteristics and features which are generally to be found in public temple"

42. Thus, the Apex Court restored the judgment of the trial Court while setting-aside the judgment of the High Court. From the principles laid down in the decisions cited *supra*, and in *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, existence of Gopuram, Dwajam, Nagara Bell and Hundi and running of temple with public contribution etc., are the relevant factors to decide nature of the temple.

43. In the oldest judgment of the Apex Court in *Deoki Nandan (supra)*, similar question came up for consideration before the Apex Court, wherein the Apex Court laid down the following guidelines to determine the nature of the temple:

"If the dedication of property is to the idol and the beneficiaries must be the worshippers and that the purpose of endowment is the maintenance of that worship for the benefit of worshippers, the cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, of the general public or any specified portion thereof. Thus, where property is dedicated for the worship of a family idol, it is a private and not a public endowment as then persons who are entitled to worship at the shrine of the deity can only be the members of the family, and this is an ascertained group of individuals. But, where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

44. In the facts of *Deoki Nandan (supra)*, the dispute was whether Thakurdwara is a public temple or a private temple. Since the facts of the case satisfied that the dedication is for the benefit of the worshippers, the Apex Court held that it is a public temple. In the same judgment, the Apex Court further referring to Sankalpa texts bearing on the question observed that the ceremonies relating to dedication are Sankalpa, Uthsarga Prathista. Sankalpa means determination, and is really a formal declaration by the settler of his intention to dedicate the property. Uthsarga is the formal renunciation by the founder of his ownership in the property, the result whereof is that it becomes impressed with the trust for which he dedicates it.

45. In *Pagidala Nandamma v. Nandyal Bhajana Mandiram, Represented by its Executive Officer, D. Balaveera Reddy* LAWS (APH)-1975-9-2, similar question came up for consideration before this Court and this Court referring to several decisions of the Apex Court and other High Courts, particularly a decision of the Apex Court in *The Poohari Fakir Sadavarthy of Bondilipuram Vs. The Commissioner, Hindu Religious and Charitable Endowments*, , held that the institution in a suit will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by the Hindu community, or any section thereof, as a place of religious worship. In *Poohari Fakir (supra)*, the Apex Court after appraisal of entire evidence held that temple is a private temple.

46. The law laid down by Madras High Court in *V. Mahadeva Gurukkal Vs. The Commissioner for the Board of Hindu Religious Endowments*, , is important which deals with the present situation where originally the temple was a private temple but it was converted into a public temple in the course of time, the Madras High Court specifically held that a temple can be used as of right by the public cannot be determined by the nature of the building and the opulence with which the same has been furnished.

47. In the facts of the above judgment, the temple is in a small extent and surrounded by a bakery, shop and a godown but the trial Court held that the temple is public temple and other parts of the premises and bakery, room etc., are the private property relying on several judgments of various High Courts and the Apex Court. After considering the principles laid down by various High Courts and the Apex Court in *Mahadeva Gurukkal (supra)*, the relevant considerations to treat the temple as public or a private temple or conversion of private temple into public temple are summed up as follows:

- "a) Dedication of the property in favour of the trust or idol for the benefit of the public;
- b) Allowing public to perform poojas as of right;
- c) Construction of Gopuram, Dwajasthambam to identify the premises as a temple by the public;

- d) Installation of Hundi for collection of contributions from the public; and
- e) Performing poojas on ticket system by the general public in the temple."

48. Keeping in mind the principle of law laid down by various High Courts, now I shall advert to the evidence on record to determine whether the private temple in question is converted into a public temple, during course of time. According to the material available on record, the temple was initially declared as a private temple by the Deputy Commissioner, Mausilipatnam, vide his order dated 24.07.1956. The said order marked as Ex. A-1 is not challenged by any person.

49. The plaintiff filed Writ Petition No. 5003 of 1978 when the Assistant Commissioner, Anakapalli appointed hereditary trustee and the Writ Petition was allowed. Again, a notice was issued to the hereditary trustee under Section 77(1) (c) of the Act of 1966 in O.A. No. 350 of 1973 and the same was challenged by the trustee by filing Writ Petition No. 6516 of 1973, this Court disposed of the Writ Petition on 28.08.1975, permitting the Deputy Commissioner, Endowments, Kakinada to continue enquiry and determine the nature of the temple with the following observation:

"In view of the fact that the petitioner has voluntarily applied for registration of the temple as public temple under Section 38 of the Act and also filed an application under Section 77 of the Act, I do not think it appropriate to exercise the power of this Court under Article 226 of the Constitution of India and also in view of several circumstances and reasons mentioned by me above to issue a Writ of Prohibition as prayed for."

50. Therefore, this Court permitted the Deputy Commissioner, Endowments, Kakinada only to inquire into the conversion of private temple into public temple basing on the subsequent events. The Deputy Commissioner, Kakinada proceeded to conduct inquiry, recorded evidence and passed the impugned order which was sought to be set-aside before the trial Court, but the trial Court dismissed the Suit.

51. As seen from the trust deed, marked as Ex. A-15, the dedication of property by donor in favour of trustees is only to construct temple of Sri Venkateswara Swamy Varu and to perform necessary rituals like pooja in her gothra nama and created a trust directing the Trust Board to utilize the income from the property donated to the trust only for construction of temple, performing rituals and poojas in the name of donor regularly. If any excess amount is received from the trust property even after attending necessary rituals etc., that can be utilized for feeding the persons described in Clause-IV under the original of Ex. A-15. The donor clearly expressing her intention directed the trustees to perform necessary rituals cited supra, and if any amount is available after meeting expenses for the rituals, that amount shall be utilized to feed poor people and sadhoos. Thus, the intention of the donor is two fold as per the original of Ex. A-15; one is to construct temple, install idol of Sri Venkateswara Swamy Varu, perform rituals like poojas in the name of donor by name Sri Jayapal Kumarika Amma Saheba,

and the surplus amount, if any, after meeting the expenses for rituals referred supra, shall be utilized for the purpose of feeding poor people and Sadhoos. But, the dispute herein is not relating to trust. In fact, the Deputy Commissioner, Endowments, Mausilipatnam, considering the terms and conditions of Ex. A-15, concluded that the temple is a private temple, passed the order under the original of Ex. A-1. Therefore, the nature of dedication basing on the original of Ex. A-15 cannot be revisited to determine the original intention of the donor again by conducting necessary inquiry. If that is done, it amounts to reopening the original of Ex. A-1. Therefore, this Court directed the Deputy Commissioner, Endowments, Kakinada to restrict the inquiry regarding conversion of private temple into public temple. Therefore, the duty of the 2nd defendant is only to make an inquiry as to the changed circumstances after passing the original of Ex. A-1.

52. I shall now advert to the evidence on record to find out the changed circumstances which allegedly converted the private temple into public temple. The Deputy Commissioner, Mausilipatnam passed the order on 24.03.1956 and whether those changes satisfy the requirements of a public temple. In the earlier order marked under the original of Ex. A-1, the Deputy Commissioner, Endowments, Mausilipatnam considered the intention of the donor in execution of the trust deed dated 26.01.1938 under the original of Ex. A-15, construction of temple in the premises belonging to the donor and the application dated 04.03.1952, made by Kandala Sathagopalacharyulu, marked as Ex. A-14, considered the intention of the donor in creation of trust and donating the property in favour of the trust for maintenance of the temple and other circumstances declared that the temple as private temple. Therefore, the intention of the donor is totally irrelevant at this stage and the 2nd defendant, trial Court or this Court cannot invent different meaning to the intention of the donor under the original of Ex. A-1 to conclude that the dedication is in favour of deity for the public purpose. However, 2nd defendant and the trial Court cannot revisit the intention of donor under the original of Ex. A-1 and interpret the contents in a different manner, conclude that the intention of the donor is only to dedicate the property to the deity for the public purpose, but it is not based on any material. On the other hand, it is clear from the original of Ex. A-1, the intention of creating trust is only for performing poojas in the gothra nama of the donor by name Sri Jayapal Kumarika Amma Saheba. The order under the original of Ex. A-1 attained finality and it cannot be reopened to convert the temple as public temple, after passing Ex. A-1. The finding of the 2nd defendant and the trial Court about intention of the donor under the original of Ex. A-1 is unwarranted in view of the order passed by this Court in Writ Petition No. 6516 of 1973, dated 28.08.1975; since this Court directed the 2nd defendant only to find out the changed circumstances for conversion of private temple into public temple. Therefore, the 2nd defendant and the trial Court traveled beyond the direction issued by this Court. Hence, on this ground, it is difficult to hold that private temple is converted into public temple.

53. The temple was constructed in the private premises of the royal family of Vizianagaram Zamindar Dr. Sir, Vijayananda Gajapathi Raju. Admittedly, the site on which temple was constructed is the property of the donor, since the matter was pending before the Court of Wards in Madras, permission was obtained for donating the site for construction of the temple and it is not a public place or the site belonging to the Government or any other private individual. Hence, construction of temple after obtaining permission from the Court of Wards in C.M.P. No. 315, dated 23.03.1938 does not amount to construction of temple in the public place, but the trial Court held that construction of temple other than the premises exclusively belonging to the royal family of Vizianagaram Zamindar is a ground to treat the temple is public temple; moreover, this fact need not be gone into for the reason that the temple was constructed long prior to passing of the order under the original of Ex. A-1, which attained finality. The Deputy Commissioner of Endowments, Mausilipatnam considered this aspect while passing the order under the original of Ex. A-1 and it is not a changed circumstance after passing the order under the original of Ex. A-1. Therefore, the conclusions arrived by the trial Court and 2nd defendant regarding place of construction of the temple is not a ground to hold that private temple is converted into public temple.

54. The other circumstances leading to the conclusion that the private temple was converted into public temple by the trial Court is that construction of Mukha Mandapam, Gopuram, Dwajastambam and Kalyana Mandapam, Hundi, performing poojas on ticket system. At this stage, I would like to advert to the pleadings and oral evidence adduced by both parties in this suit. In the plaint, there is a specific pleading that there is no Gopuram and Dwajastambam.

55. At the same time, in the examination-in-chief of DW.1 he asserted that there is a Gopuram and Prakaram (compound wall) and that there is a room for preserving the valuables of the deity "Jai gantalu" (bells) and Utsava Vighram (procession idol) and that there is a room for cooking and the priests performing poojas in the temple and that the public also performing poojas. Strangely, in the cross-examination, DW.1 admitted that he has no knowledge about the agamasastra and further admitted that "gali gopuram" will be in front of the temple, "sikharam" is on the top of the temple. The temple had no "gali gopuram". Therefore, the alleged existence of "gali gopuram" or "gopuram" is not proved by examining DW.1. He further admitted in the last 6 lines of his cross-examination that, he does not know the affairs of the temple personally prior to 20th January 1992 and he entered into the temple as an ordinary devotee and at the same time, he was examined on 25.02.1992. Thus, the evidentiary admission of DW.1 clearly indicates that he had no knowledge about the affairs of the temple.

56. Similarly, DW.2 in his examination-in-chief testified that, there is a utsava vighram i.e., idol of procession in the compound wall of the temple and large number of devotees would attend the suit temple on every Saturday and that

"Rama krathuvu stupam" was installed by Zeer Swamy varu under the management of Gundala Badrinarayana Murthy, an advocate, and that water tap, gates, painting and lighting was arranged by private donors to the deity and that the public used to perform kunkuma poojas in the temple on every Friday. In the cross-examination, he admitted that there are houses in the temple premises for archakas and agent of the trustee. In the 2nd Para of his cross-examination, a suggestion was put to him that trustee himself constructed "Rama krathuvu stupam" and the same is denied by him. However, the said Badrinarayana Murthy, an advocate, who is alive by then, is the competent witness to prove construction of "Rama krathuvu stupam" in the temple premises. Obviously for different reasons, the said Badrinarayana Murthy, in whose presence the "Rama krathuvu stupam" was installed, was not examined to establish the same. Therefore, the alleged establishment of "Rama krathuvu stupam" by Zeer Swamy varu is not proved. He further admitted that no documentary evidence is available to prove that tap, gates, painting and lighting was done by the public devotees other than the trustees. Therefore, his evidence is not useful to prove participation of public in management of the temple and the temple received donations from the private individuals.

57. Admittedly, the temple is maintaining accounts; if for any reason, the temple received such donations from the public, there used to be entries in the accounts maintained by the temple. Except ipse-dixit of DW.2, there is absolutely no iota of evidence to establish receipt of public donations for maintenance of the temple etc., Hence, basing on the testimony of DW.2, it is difficult to hold that the private temple is converted into public temple subsequent to original of Ex. A-1.

58. One Piratla Appayya was examined as DW.3 to prove erection of Dwajastambham, construction of Sikharam on the top of the temple and gali gopuram. In the cross-examination, he admitted that no documentary evidence is available to prove existence of Gali gopuram, Sikharam etc., In the 1st sentence of his cross-examination, he admitted that the temple was constructed by paternal grand mother of Dr. Sir Pusapati Vijayananda Gajapathi Raju and that the temple own and possessed Ac. 120.00 cents of land and that there were no receipts for donating money to the temple. He further admitted that there is no written proof with him that anybody donated money for installation of tap and electricity supply etc., The tap is in the temple premises itself and that the temple would be closed by 10.30 p.m. Strangely, DW.3 himself applied for permission to perform pooja in the temple and it is marked as Ex. A-29. In the examination-in-chief, he denied obtaining permission to perform poojas by the public in the temple. However, in 3rd Para of his cross-examination at page No. 3, he admitted that the contents of Ex. A-29 are true and it is a letter dated 21.09.1983, where under DW.3 requested the hereditary trustee to accord permission to perform pooja. This itself is an indication to conclude that the public are not allowed to perform poojas without the prior permission of the hereditary trustee or the management of the temple. Hence, the evidence of DW.3 is totally supporting the case of plaintiff and it destroyed the case of the

defendants. Thus, in the private temple the public are not allowed to perform poojas without prior permission.

59. The defendants also examined DWs.4 to 6 to establish that the public are performing poojas in the temple. DW.4 is only alleged tenant of the land belonging to the temple and cultivation of the land of the temple is not relevant for deciding the issue, though he testified about cultivation, but in the last sentence of his examination-in-chief, he testified that public used to enter into the temple to perform poojas.

60. Similarly, DW.5, a practicing Advocate and Municipal Vice-Chairman of Municipality of Vizianagaram, testified about visiting of temple by himself and his ancestors, and performance of pooja in the gothra nama of the devotees etc., But in the cross-examination, he admitted that he did not take any ticket for performing poojas and that there is no proof to show that anybody contributed amount for performing Brahmotsavams and finally at Page No. 3 stated, that he does not know whether the suit temple is a private temple of Raja of Benaras.

61. At best, the evidence of DW.5 is sufficient to prove that he used to visit the temple and perform pooja. Thus, the oral evidence on record shows that the public used to enter into the temple and perform poojas. The plaintiff produced voluminous documentary evidence before the trial Court and before the Deputy Commissioner to prove that unless prior permission was obtained to perform poojas in the name of public, poojas cannot be performed. Exs. A-2 to A-14, A-29 and A-30 are such letters addressed to hereditary trustee, by the public devotees seeking permission to perform poojas, but the trial Court concluded that there is a possibility of creating such documents. Even if those letters are ignored, clear admission of DW.3 about the contents of Ex. A-29 is sufficient that there is a practice of obtaining prior permission to perform poojas. Similarly, the letters do go to establish that marriages are performed in the temple with the permission of the management or trustees of the temple. Therefore, mere entering into the temple and offering poojas by the public itself would not sufficient to treat the temple as public temple converting the same from private after the original of Ex. A-1. If performance of pooja by public is as of right that means by exercising fundamental right guaranteed under Article 15(2) of Constitution of India, it can be said to be a public temple. Article 15(2)(b) guarantees a right to use wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. If the temple in question is dedicated to the public use, the general public can perform the pooja as of right, but in the instant case, as per Ex. A-15, the dedication is not in favour of general public and the temple was not constructed with the contribution of general public and not being maintained with their contribution. Therefore, mere performing pooja in the temple not as of right is not sufficient to treat the temple as public temple.

62. The trial Court concluded that the temples in South India are presumed to be public temples placing reliance on a judgment of Madras High Court in

Chidambareswara Sivagami Ambigai Temple, Represented by their Managing Trustee, S.V.R.A. Nallakaruppan Chettiar v. Commissioner, Hindu Religious and Charitable Endowments, Madras AIR 1966 Madras 99, wherein the Madras High Court held that the temples in South India excluding temples in Malabar and Kerala are presumed to be public temples and the onus is on the party, who asserts their private nature, to prove it.

63. The principle laid down by the Madras High Court in the decision cited supra, cannot be applied to the present facts of the case for the simple reason that the temple in question was already declared as private temple under the original of Ex. A-1 and the Endowments Department asserting that it is a public temple. Therefore, the burden is upon the defendants - Endowments Department to establish that the private temple is converted into public temple and the presumption that the temples in South India are public temples is not based on any legal presumption. Even otherwise, the same cannot be applied to the present facts of the case. Hence, the observation of the trial Court that the burden is upon the plaintiff to prove that it is a private temple is without any basis and the principle laid down by the Madras High Court cannot be applied.

64. One of the circumstances taken into consideration by the trial Court and 2nd defendant to treat the temple as public temple, is, claiming exemption under Section 23(b) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 treating the temple as public temple, Plaintiff produced the certified copy of notice to surrender, which is marked as Ex. A-21 and order of the High Court in Civil Revision Petition Nos. 7219 to 7221 of 1978, dated 21.08.1979, which is marked as Ex. A-22. These 2 documents are relevant to decide the legality of the conclusions arrived by the trial Court. Ex. A-21 is the proceedings issued by the Revenue Divisional Officer, Vizianagaram to Tahsildar, Vizianagaram for taking possession of the surplus land basing on the declarations filed by J.R. Mritunjaya Singh, the hereditary trustee of the temple and ordered to take possession of Ac.1.71 cents and also Ac.154.54 cents of H-Class dry land from Smt. Bhagirathi Devi, W/o. late Dr. Vijayananda Dhanraj Kumar Pani of Vizianagaram Bhavan, Bhelpure, Varanasi; so also an extent of Ac.54.67 cents of G-Class dry land from Sri Gondraju Satyanarayana Raju, S/o. Rama Raju. Curiously, in Ex. A-22, the contention of the hereditary trustee of the temple J.R. Mritunjaya Singh was that there is no need to surrender the land as the declarant is temple, was rejected by this Court. In the last Para of page No. 3 of the order, it is observed as under:

"It is also claimed by the petitioners that the lands owned by the Temple are exempted from the provisions of the Act, as provided under Section 23(b) of the Act. Admittedly, as stated in the affidavit filed in C.M.P. No. 9308/1979, which was disposed of today, the temple was declared originally as a private temple. There is no evidence to show that subsequently it was converted into a public temple. Section 23(b) of the Act lays down that the lands held by religious, charitable or educational institutions, including Wakf, of a public nature are exempted from the provisions of the Act. The point is whether a temple is a

religious institution of a public nature. So far as things stand today, the temple is considered to be a private temple. Therefore, I do not think the petitioners are entitled to invoke the exemption given under Section 23(b) of the Act."

65. The order marked as Ex. A-22 is dated 21.08.1979. In the said Revision, the hereditary trustee of the temple did not claim exemption from surrendering the land on the ground that it was a public temple but claimed exemption as temple, since the temple is a private temple. This Court did not accept his contention and directed to surrender the land. Thus, by 21.08.1979, the temple was treated as a private temple and not as a public temple. This is another strong circumstance to conclude that till 21.08.1979 the temple in question is a private temple, but the trial Court and the 2nd defendant concluded that the plaintiff claimed exemption under Section 23(b) of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and this finding is ex-facie erroneous. Therefore, the conclusions of the trial Court and 2nd defendant are baseless; on the other hand, it is contrary to the documents produced before the trial Court.

66. Installing Hundi and introduction of ticket system for performing pooja is another circumstance relied on by the trial Court and Deputy Commissioner, Kakinada to treat the temple as public temple. No doubt, Hundi was installed in the temple and ticket system was introduced for performing poojas by the public. This contention was repelled by the counsel for the plaintiff - appellant on the ground that only due to direction of the Assistant Commissioner, Endowments, Anakapalli, a Hundi was installed, ticket system was introduced by the management of the temple. Ex. A-18 is the inspection notes of the temple in the presence of Manager of the temple dated 01.03.1969. Ex. A-20 is the proceedings dated 26.07.1969 addressed to Vizianagaram Bhavan, K. Surya Rao, Manager of the temple marking a copy to the Head Clerk of the temple with a request to hand over keys of the Hundi contending that the action of the Manager of the temple is unwarranted. According to Ex. A-18, the Assistant Commissioner issued instructions to comply the following 10 directions:

"1. Budget for 1969-70 i.e. from 01.04.1969 to 31.03.1970 with estimated receipts and charges should be sent immediately, since the budget should be sent 3 months in advance of the closing year.

2. All the bushes and rubbish must be cleared off from the temple compound and a beautiful garden with Tulasi and flower plants must be grown. A mali must be fully put on this work.

3. Two permanent hundials must be installed at appropriate place and the keys of the hundials must be in the joint custody of the Manager and Inspector Endowments Department, Vizianagaram.

4. Ticket system for special poojas must be introduced and proposals fixing up fees for each type of ticket with reasonable share to archakas may be sent.

5. All the photos that are exhibited in the temple must be removed, since the

attention of the worshippers should not be diverted from the main deity.

6. Since the archakas are provided with quarters, the dwelling portions should be separated from the temple premises and proper drainages etc., constructed to avoid stagnation of water.

7. The ownership and the management aspect of the adjoining temple Sri Ramuluvaru should be ascertained and a report separately sent.

8. All the accounts must be maintained according to the H.R.E. Manual of accounts and the funds deposited in a scheduled bank in the name of the temple.

9. A register under Section 38 of the Act must be prepared and sent at an early date.

10. Dittam under Section 44 of the Act must be got approved."

67. Therefore, establishment of hundies, ticket system for performing poojas etc., by the public and other directions are only at the instance of the Assistant Commissioner, Anakapalli. Prior to that, there was no Hundi, ticket system to perform pooja by public, contribution etc., hence establishment of Hundi, introduction of ticket system etc., are not sufficient to conclude that the temple is a public temple. Hence, it is not a ground to treat the temple as a public temple converting from private temple after passing order under the original of Ex. A-1. It is also contended by defendants that contribution was made under Section 44 of the Act, accounts were audited by local fund audit Department; so, the temple is a public temple. No doubt the audit and contribution are free but contribution was paid as per instructions in Ex. A-18 under protest, audit was only as per directions. Hence, the above circumstances are not sufficient to hold the temple as public temple.

68. None of the witnesses did state anything about collection of any amount from the public by installing Hundi, subsequent to passing of Ex. A-1 or introduction of ticket system for performing poojas by the public, but the public used to visit the deity in the temple and performing poojas but not "as of right". If performance of poojas by the public is "as of right", then it is a good ground to declare the temple as public temple. In the present case, there is absolutely no material to establish that the general public are entitled to perform poojas in the temple "as of right, but their performing poojas sometimes with or without obtaining permission, the same cannot be said to be performance of poojas "as of right.

69. The other circumstances relied on by the 2nd defendant and the trial Court to declare the private temple as public temple are application of the hereditary trustee for registration of the temple under Section 38, and to declare him as hereditary trustee under the Act 77 of 1966 and failure to raise any objection when the temple is notified under Section 6 of the Act as public temple. According to the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, the Department shall prepare, separately, and publish list of charitable and Hindu religious institutions and endowments on the basis of

income, but the publication made under Section 6 of the Act is only classifying the institutions basing on the income but not as a public or private. Therefore, failure to raise any objection for notification issued under Section 6 of the Act is not a ground to declare the temple as public temple. The purpose of notification is to appoint trustees for the temples on the basis of income of the institution not for treating the temple as public temple. In fact, the provisions of the Act are applicable only to public charitable and Hindu religious Institutions, but in one of the judgments of this Court in Subash Neemkar and Others Vs. Regional Joint Commissioner of Endowments and Others, , this Court held as under:

"Since only public charitable or religious institutions are published under Section 6 of the Act, there is a presumption under Section 87(6) that the subject institution or endowment is public and the burden of proof, in all cases, lies on the person claiming the institution or endowment to be private."

70. From the principles laid down in the decision cited supra, it is evident that only public religious and Hindu charitable institutions will be published under Section 6 of the Act, basing on the income of the institution and there is a strong presumption in favour of the nature of institution as public and the burden lies on the party who asserted that it is a private institution. By applying the principles laid down in the above judgment, the burden is on the plaintiff to prove that it is a private temple to dispel the presumption under Section 87(6) of the Act. Strangely, the defendants did not produce the notification issued under Section 6 of the Act, to substantiate their contention that the temple in question was treated as a public temple and published in the Gazette classifying the temple, basing on the income. In the absence of any proof of publication of the temple under Section 6 of the Act, it is only for the 2nd defendant, who made an enquiry to find out whether the temple is public or private to establish that it is a public temple. Therefore, the presumption under Section 87(6) of the Act would not apply to the present case for the simple reason that no piece of paper evidencing publication under Section 6 of the Act is brought on record by the 2nd defendant, except an assertion in the written statement. Hence, basing on the assertion in the written statement, it is difficult to hold that the temple is a public temple in view of the alleged publication of the temple under Section 6 of the Act.

71. The other ground is that application by the hereditary trustee for registration under Section 38 and for declaring him as hereditary trustee under Section 77 of the Act, but as seen from the material available on record, the application was signed by the hereditary trustee on wrong impression or otherwise, but he has withdrawn the application vide order dated 18.07.1969, which is marked as Ex. A-17. Ex. A-17 is the order where under the 2nd defendant permitted the applicants Sri J.R. Mritunjaya Singh and Sri P. Alakh Narayan Venkateswara Singh, petition filed under Section 77(1) of the Act 17 of 1966. Hence, application for declaring the hereditary trustee as trustee of the temple under Section 77 is not a ground and it cannot be treated as an admission that the temple is a public temple.

72. The trial Court on appreciation of evidence of PW.1, more particularly, the admissions with regard to receiving contributions, donations etc., concluded that the temple is being maintained with the contributions made by the public. A bare look at the admissions made in the cross-examination of PW.1, there are stray admissions which destroys the plea of the plaintiff regarding maintenance of the temple etc., Some of the admissions are regarding public participation in the Bhajanas with the permission of the hereditary trustees or management and, replacing the bell by a businessman of the Vizianagaram in the place of old bell and performance of several rituals and celebration of festivals like Dhanurmasam Utsavam, Krishnasthami, Bhajaan on every Wednesday, Brahmotsavam, Adhyanatsovam, Panchanga Sravanam, Tirunakshatram and installation of Sikharam on the top of the temple as per Agamasastra and installation of Dwajastambam opposite to the principal deity Lord Sri Venkateswara Swamy, existence of Kalyana Mandapam and installation of Rama Krathuvu Stupam. All these admissions would go to show that several rituals are being performed and festivals are being celebrated in the temple. Performance of all rituals in the temple is as per the Sastras and it is at the pleasure of the trustees of the temple, but installation of Dwajastambam, Rama Krathuvu Stupam and Sikharam are one of the considerations to treat the temple as public temple. Even if the admission of PW.1 is taken into consideration about existence of Sikharam on the top of the temple was installed only as per Agamasastra and that by itself would not change the private temple as public temple, so also, Dwajastambam and Rama Krathuvu Stupam. If the Sikharam, Dwajastambam and Rama Krathuvu Stupam are in existence even prior to 1956, the existence of Sikharam, Dwajastambam and Rama Krathuvu Stupam, after passing original of Ex. A-1 order, would not change the nature of the private temple. Therefore, it is for the 2nd defendant to establish that the Sikharam, Dwajastambam and Rama Krathuvu Stupam are installed subsequent to passing of order under the original of Ex. A-1, but strangely no piece of evidence is brought on record about installation of Sikharam, Dwajastambam and Rama Krathuvu Stupam subsequent to passing of order under the original of Ex. A-1. When once the temple is declared as private temple, the subsequent changed circumstances shall alone be taken into consideration to decide the nature of the temple, strictly adhering to the direction given by this Court in Writ Petition No. 6516 of 1973. Hence, in the absence of proof of installation of Sikharam, Dwajastambam and Rama Krathuvu Stupam subsequent to passing of original of Ex. A-1, it is difficult to hold that the private temple is converted into a public temple.

73. Yet, there are certain admissions about receiving donations from the public, who visits the temple and at the same time, he admitted that all these collections can be entered into books of accounts maintained by the temple. He specified certain instances of collection of amount, but it is not supported by any material. However, account books of the temple are produced before the trial Court, marked as Exs.A-38 to A-68 (cash book and ledger) and acquittance register. None of the books produced before the trial Court disclose about receipt

of any donations from the public. Therefore, the stray oral admission regarding receipt of donations from the public to meet the maintenance of the temple is of no use and it is not a conclusive proof and not a strong circumstance to conclude that the private temple is converted into public temple.

74. One of the reasons assigned by the trial Court for dismissal of the Suit is that the hereditary trustees are the residents of Banaras and they never visited the temple and Ammaji Sarkar who is the member of the royal family donated some amount for the temple and that whenever she visits Vizianagaram, she used to visit the temple, Ammaji Sarkar is no other than a member of royal family of Dr. Sir Vijayananda Gajapathi Raju, Zamindar of Vizianagaram. Therefore, receiving any amount from Ammaji Sarkar, who is a member of the royal family, would not change the nature of the temple. On the other hand, failure to visit the temple, at any time, by any of the members of royal family or trustees and stay in the temple is not at all a consideration to treat the private temple as public temple, in view of the principles laid down in the judgments referred supra. There is a clear admission at page No. 12 of the cross-examination of PW.1 about fixing plates near Rama Krathuvu Stupam inscribing the names of the donors and similarly there are about 100 plates in the temple inscribing the names of the donors. This is one of the circumstances to treat the temple as a public temple, if the donations were received subsequent to order marked under the original of Ex. A-1, but no evidence is brought on record whether those donations were received subsequent to passing of the order under the original of Ex. A-1. In the absence of any specific evidence about receiving donations after the original of Ex. A-1, it cannot be said to be a changed circumstance after the original of Ex. A-1 and, consequently, basing on such evidence, it is difficult to hold that private temple is converted into public temple.

75. On over all consideration of oral and documentary evidence on record, the public are entering into the temple and performing poojas sometimes with or without permission of the hereditary trustee and Dwajastambam, Sikharam, Rama Krathuvu Stupam are installed, constructed Kalyana Mandapam besides rooms for cooking and preserving articles of deity in the temple premises. The temple is surrounded by Prakaram, besides installing Utsavam Vighram, but there is no evidence on record that those arrangements were made subsequent to passing the order under the original of Ex. A-1 or not. If for any reason, Dwajastambam, Sikharam, Rama Krathuvu Stupam were installed subsequent to original of Ex. A-1, certainly it is a ground to treat the temple in question as public temple by conversion from private temple. If they are in existence even prior to passing of the order under the original of Ex. A-1, they are not at all relevant to decide the real controversy between the parties, so also, the alleged donations in installing Rama Krathuvu Stupam also. Even as per the observations made by this Court in the order dated 21.08.1979 passed in Civil Revision Petition Nos. 7219 to 7221 of 1978, the temple was treated as a private temple by this Court. Therefore, even on the date of Ex. A-22, the temple was treated as private temple and no exemption was granted under Section 23(b) of A.P. Land

Ceiling Act. This is a strong circumstance to conclude that the temple remained as private temple even by 21.08.1979 as held by this Court. Later, there must be some changed circumstances, but no evidence is brought on record to prove the changed circumstances after 1979 to convert the private temple into public temple and, strangely, the learned counsel for the defendants -Endowments Department also did not elicit anything that the installations referred supra were taken subsequent to original of Ex. A-1 or subsequent to Ex. A-22. Therefore, declaration of the private temple as public temple by the trial Court and 2nd defendant is erroneous for the simple reason that there is no evidence on record to show that the changes allegedly taken place satisfied the requirements of a public temple after passing the original of Ex. A-1. On the other hand, the material on record, more particularly Exs. A-21 and A-22 and voluminous documentary evidence, particularly the accounts marked as Exs. A-38 to A-68 established that the temple is continuing to be a private temple and not converted into a public temple. The trial Court virtually reopened the finding of the Deputy Commissioner, Endowments, Mausilipatnam under the original of Ex. A-1 and interpreted the intention of the donor in a different manner, exceeding the power of the Court in view of the specific direction of this court in Writ Petition No. 6516 of 1973. Thus, the trial Court exceeded its jurisdiction in holding the temple as public temple ignoring the direction given by this Court in Writ Petition No. 6516 of 1973. Therefore, such exercise of jurisdiction, totally ignoring the direction of this Court in the Writ Petition, is nothing but an illegal exercise of jurisdiction. Therefore the findings of the trial Court and the 2nd defendant about conversion of private temple into public temple are unsustainable under law. Hence, findings of the trial Court and 2nd defendant are hereby set-aside holding the temple as private temple as there are no changed circumstances to satisfy the requirements of public temple, subsequent to passing of the order under the original of Ex. A-1. Therefore, the order of the trial Court is hereby set-aside holding these two points in favour of plaintiff and against the defendants.

76. POINT No. 2: One of the contentions of the plaintiff is that the claim of the 2nd defendant is barred by the principles of res-judicata under Section 11 of C.P.C. This contention of the plaintiff cannot be sustained for the reason that this Court in Writ Petition No. 6516 of 1975 permitted to inquire into the subsequent changes to decide the conversion of private temple into public temple. Undoubtedly, the dispute between the plaintiff and defendants was decided by passing an order under the original of Ex. A-1 and declared the temple as private temple and it attained finality. However, due to change of circumstances, there is possibility of conversion of private temple into public temple. If the private temple is converted into public temple due to changed circumstances, the bar under Section 11 of C.P.C. would not come in the way of the 2nd defendant to inquire into the matter. Hence, I find that it is not open to the plaintiff to contend that the claim of the defendant is barred by the principles of res-judicata. Hence, the point is held against the plaintiff and in favour of the defendants.

In the result, the Appeal Suit is allowed setting-aside the impugned decree and judgment dated 08.02.1993, passed in Original Suit No. 1 of 1987, by the learned Additional District Judge, Vizianagaram.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand disposed of. No order as to costs.