

(1973) 02 MAD CK 0046
In the Madras High Court

S. Kannan and Others

APPELLANT

Vs

The All India Sai Satnaj (Registered)

RESPONDENT

Date of Decision : 28-02-1973

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(20)

Citation : (1973) ILR (Mad) 507 : (1978) 87 LW 81 : (1974) 1 MLJ 174

Hon'ble Judges : Raghavan, J

Bench : Division Bench

Judgement

Raghavan, J.—The respondents in the Writ petition are the appellants. The appeal arises out of an order of Kailasam, J, in W.P. No. 4047 of 1965 quashing the order of the Deputy Commissioner for Hindu Religious and Charitable Endowments (Administration) Department, Madras-34, holding that "Sri Sai Mandir situate at Mylapore is a "temple" as defined in Section 6 (20) of the Hindu Religious and Charitable Endowments Act, 1959, on the ground that there is no material before the Deputy Commissioner to come to the conclusion that " Sai Mandir " is a Hindu " Religious Institution " and that the order of the Deputy Commissioner is vitiated by material errors apparent on the face of the record. The present appeal is against the order of Kailasam, J.

2. The petitioner in the writ petition is the President of the All India Sai Samaj, which was founded in 1941 and was registered in 1956 under the Societies Registration Act, 1865. The objects of the Samaj are the propagation of faith in God with special reference to Sai Baba of Shirdi and his life, teachings, and mission , the diffusion of knowledge regarding Sai Baba, the arrangement of lectures, the carrying on of Bajanas and Harathis for Sai Baba and the construction of buildings for carrying out the aforesaid objects. The Memorandum of Association of the Samaj shows that the Samaj is a voluntary association of persons, membership to which is open to adults belonging to all religions who believe in the worship of Sai Baba of Shirdi. In the Sai Mandir there is no image but worship is carried on to the Sai Baba's picture. Rule 20 of the Memorandum

of Association prohibits the admission of any image for Sri Sai Baba or of any one else into the Mandir. The membership of the Samaj is open as already stated to Hindus, Christians, Parsis and Muslims, who are Sai devotees. The Samaj owes its origin to the propagation of "Sri Sai Bakthi" undertaken by one Sri Narasimhaswami who came to Madras in 1940 and who founded the All India Sai Samaj in 1941. A site in Mylapore, Madras was purchased in the name of the Samaj and the present sanctum sanctorum was constructed in 1952. In addition to this Sai Mandir, separate buildings for the free dispensary, reading room and library, book depot and the room where the printing press of the Samaj is situated, were also constructed and the Sai Mandir was consecrated according to the respondents in 1953. In the sanctum sanctorum is kept a picture of Sri Sai Baba of Shirdi and underneath the picture are embedded two stone feet ("Padas"), of Sri Sai Baba. Daily Pooja, Archana and Harathi are performed with the recital of Sri Sai Ashtothara Namavalies composed in praise of Sri Sai Baba. Sai Devotees drawn from all religions, castes, creed and communities visit and worship in the Sai Mandir. The affairs of the Samaj, as already stated, are vested in the Executive Committee of the Samaj. The temple and its properties were made over to the Sai Samaj by Sri Narasimhaswamiji prior to his death in 1956 and the Samaj has been administering the affairs ever since.

3. In August, 1964, respondents 2 to 6, who were members of the Samaj filed an application O.A. No. 86 of 1964 before the first respondent u/s 64 of the Hindu Religious and Charitable Endowments Act (Madras Act XXII of 1959) for framing a scheme for the management of "Sai Baba temple situated in Alamelumangapuram Street, Mylapore, Madras-4", alleging various acts of mismanagement and other acts of omission and commission on the part of the management. The All India Sai Samaj by its President, D. Bhima Rao, was impleaded as the respondent in that application.

4. The respondent filed a counter contending that the All India Sai Samaj is not an institution coming within the scope of Madras Act XXII of 1959 and further denied the allegations of mismanagement and acts of omission and commission on the part of the management. The All India Sai Samaj also filed O.A. No. 30 of 1965 before the Deputy Commissioner praying that the applicability of the provisions of the Madras Hindu Religious and Charitable Endowments Act to the All India Sai Samaj may be enquired into as a preliminary issue in O.A. No. 86 of 1964 u/s 63 (a) of the Act. The Deputy Commissioner took up for consideration the preliminary issue viz., whether the Sai Mandir situated in Mylapore is a religious institution as defined in the Act. Before the Deputy Commissioner Exhibits A-1 to A-10 on behalf of the petitioner and Exhibits R.1 to R. 5 on behalf of the respondent were filed and P.Ws. 1 to 3 and R.Ws. 1 to 3 were examined. The Deputy Commissioner ultimately came to the conclusion that the "Sai Mandir" is a religious institution falling within Section 6 (18) of the Act. The present writ petition out of which this appeal has arisen was filed seeking to quash the order of the Deputy Commissioner.

5. In the affidavit filed in support of the Writ petition the history of the institution is traced and we shall briefly set out the history. The founder of the Sai Mandir was Narasimha Swamiji, who came to Madras in 1940 and began to propagate " Sai Bhakthi" going about with a big photograph of Sri Sai Baba of Shirdi requesting people to arrange for discourses in schools and public places on the life and teachings of Sai Baba. He appealed for funds for building a Sai Mandir at Mylapore for Sai devotees. He founded the Sai Samaj in 1941, acquired the present site in Alamelumangapuram, Mylapore in the name of the All India Sai Samaj, constructed the present sanctum sanctorum with a main front hall and later put up buildings for a free dispensary, printing press, book depot, office, library etc. The All India Sai Samaj was registered on 29th October, 1956 and the Swamiji prior to his death in 1956 made over the Sai Mandir and its properties to the All India Sai Samaj which has been managing the same ever since. The said samaj is a voluntary association, membership to which is open to all adults belonging to all religions, who believe in the worship of Sai Baba of Shirdi and his teachings and mission and to carry on the worship to Sai Baba by means of prayer, bhajan, discourses, harathi, puja etc. The membership in the Samaj included Hindus, Christians, Mohammedans and Parsis and Sai Mandir has been visited by all the devotees irrespective of the religion to which they belonged. In the Executive Committee there was a Muslim and two Muslims acted as Vice-Presidents. Worship in the temple is being done only to the picture of Sai Baba and members belonging to other faiths come to the temple and worship in their own way. The contention, therefore, is that the Sai Temple is not a religious institution dedicated to " Hindus", exclusively and as such the Act is inapplicable thereto.

6. On the other hand, the complaint of the appellants, who were the respondents in the writ petition is that the affairs of the Samaj are mismanaged and a scheme is necessary for its proper administration, that Sai Mandir is a Hindu Religious Institution, falling under the provisions of the Hindu Religious and Charitable Endowments Act, 1959, that, the temple constructed was dedicated to the Hindu public, that Kumbabishekam and the other ceremonies relating to installation were performed as per the Agama Sastras, that worship in the temple is carried on by the Hindu Brahmin priests as is done in all the Hindu temples, that the daily archanas, Ashtotrams, Sahasranamams etc., in the name of Sri Sai Baba are conducted in the Hindu way, that no other forms of worship, of other communities, such as, Mohammedans or Christians or Parsis is conducted in the temple, that the worshippers bring flowers, cocoanuts etc., for archanas, their names and gotrams are asked for by the priests and archanas are performed in the name of the devotee, that prasadam, such as vibhuthi, kumkum, theertham, akshadai flowers etc., are offered to the devotees, that Sadari is placed on their heads, that all these forms of worship, which are usually observed in the Hindu temples, are observed in this institution and none of the observances in a mosque or a church are followed in this temple, that festivals that are being celebrated are only Hindu festivals and none of the> non-Hindu

festivals, such as Bakrid, Moharram, Ramzan, Christmas or Good Friday are observed, that Jayanthi is celebrated on Rama Navami day and all those factors establish the dedication of Sai Mandir to the Hindu Public alone and that the mere fact that the Samaj consists of members of all religions is immaterial, that the circumstance that some of the office bearers or members of the Executive Committee are non-Hindus do not alter the character of the Sai Temple, which is a "Hindu" temple.

7. On behalf of the Samaj, a reply statement was filed wherein it was stated that the only worship in the temple is the worship of Sai Baba, that no daily puja such as is done in a Hindu temple, is done in this temple, that the temple priests at the instance of devotees performed archanas, sahasranamams etc., that devotees are free to worship in their own way and that no other form of worship is conducted in the temple.

8. The Deputy Commissioner in his order emphasised the fact that the worship in the Mandir is conducted in the Hindu way, that Tiruvadi of Sri Sai Baba, is carved in marble stone, that the mere fact, that one or two Muslims visit the temple occasionally or that membership of the Samaj is open to all communities or that in the management non-Hindus are associated, does not render the Sai Temple a temple outside the purview of the Act. In the result, the Deputy Commissioner held on the preliminary issue that the Sai Mandir is a place of Hindu worship to which the provisions of the Act will apply. The respondent filed the above writ petitions against which this appeal is filed, to quash the above order of the Deputy Commissioner.

9 Kailasam, J. after over-ruling the preliminary objection that the interlocutory order passed in a main petition cannot be challenged in a writ petition held the question raised goes to the root of the matter and involves the application of the Act to the institution in question. The learned Judge in considering the question of the applicability of the Act to the institution in question referred to the following salient features established which run as follows :--

It is common ground that Hindus, Parsis, Muslims, and Christians are members of the Samaj. It is also not in dispute that in the Executive Committee, there was a Muslim and two Muslims acted as Vice-Presidents of the Samaj for a number of years. The membership is open to all adults belonging to all faiths. According to the Rules of the All India Sai Samaj, the only worship that could be carried in the Sai Mandir shall be that of Sai Baba's picture and no image of Sai Baba or of anyone else shall be admitted into the Mandir. Pictures of other saints. Avatars or anyone else can only be kept in other parts of the Samaj, if the Executive Committee so decides. It is also found by the first respondent that at the time of the dedication of the temple, several rites which are performed in the consecration of a Hindu temple were performed. Brahmin priests perform the worship and Sahasranamam, Ashtothram and Harathi are performed.

Kailasam, J., after referring to the preamble of the Act and the definition of

Religious institution u/s 6 (18) and of a temple u/s 6 (20) of the Act and the two Bench decisions of this Court viz., *The State of Madras and Another Vs. The Urumu Seshachalam Chettiar Charities and Others*, . and *Ramanasramam by its secretary G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras*, . held that the definition of the word " temple" as construed by the above decisions makes it clear that the place of worship should be dedicated exclusively for the benefit of the Hindu community and that it should be exclusively a place of Hindu public religious worship in order to attract the Act. The learned Judge held that the above two tests are not satisfied in the case of the Sai Mandir at Mylapore. The learned Judge in the concluding paragraph observed as follows :

While accepting the facts, the Deputy Commissioner has come to the conclusion that Sai Mandir is a Hindu Religious institution mainly on the ground that the Mandir was dedicated to the public and that there was no evidence that Narasirnha Swamiji who is a promoter of the All India Sai Samaj intended not to throw open the suit-Mandir to the Hindu public. The Deputy Commissioner proceeds to discuss the evidence and concludes that the rituals conducted were in accordance with the Hindu Sastras and therefore it should be concluded that the dedication of the Mandir is to the Hindu public. The conclusion arrived at by the Deputy Commissioner is erroneous on the face of the record. The Deputy Commissioner is in error in stating that the founder of the suit-Mandir is Narasimha Swamiji and not the All India Sai Samaj. The records show that the properties were purchased by the All India Sai Samaj and that the Sai Samaj constructed the Mandir and that the property continues to be in the name of the Sai Samaj. The Deputy Commissioner has failed to take note of the fact that the All India Sai Samaj was a cosmopolitan institution having in its roll members belonging to all religions. From the mere fact that when the Sai Mandir was consecrated, certain rituals which are usually performed in Hindu temples were performed would not in any way establish that the Mandir is a Hindu temple. It has to be noted that there is no Prathishta as there is no idol. The worship is only of that of Sai Baba's picture and the mere fact that certain homams were performed would not prove that the Mandir was dedicated exclusively to the Hindu public. It may be noted that the Deputy Commissioner has observed that " there is no evidence that the intention of Narasimha Swamiji then was not to throw open the suit-Mandir to the Hindu public". But in the end, he finds that it had been proved that the dedication of the Sai Mandir is to the Hindu public. This conclusion is not borne out by the record and is contrary to the facts established in this case and has to be rejected. The Deputy Commissioner also relied on the fact that the worship in the Mandir is conducted according to Hindu form by Brahmin priests. This would not in any way satisfy the requirements that the place should be one of worship exclusively by the Hindu public. Persons professing other religions also as of right worship in the shrine though the Hindu form of worship is conducted by Brahmin priests. On the records, there is no material for the Deputy Commissioner to come to the conclusion that the Sai

Mandir is a Hindu Religious institution. The order is vitiated by material error apparent on the face of the record.

The present appeal is filed against the said order.

10. Sri N. Panchapakesa Iyer, the learned Counsel for the appellant contends :

(1) The order of the Deputy Commissioner u/s 63 (a) of the Hindu Religious and Charitable Endowments Act is appealable to the Commissioner and as a right of suit is provided u/s 70 (1) of the Act, the interference by this Court against the order of the Deputy Commissioner is not called for ;

(2) The determination u/s 63 (a) is a factual determination on materials placed and therefore in a properly framed suit all the necessary evidence will be adduced and the matter ought to have been referred to a suit in a civil Court;

(3) The Kumbabhishekam and other homams having been done, according to Agama Sastras the Sai Mandir is a place of public religious worship dedicated to or used as of right by the Hindu community and therefore is a temple within the meaning of Section 6 (20) of the Act.

(4) Non-Hindus who are allowed to worship in the Mandir do not Worship in their own way and occasional worship by them does not take the temple away from the application of the Madras Hindu Religious and Charitable Endowments Act (XXII of 1959).

11. At one stage we considered that it would be proper to refer the controversy in question to a civil Court where disputed questions of fact could be gone into and a final decision arrived at and we asked the learned Counsel for the appellants whether there was any other clinching material other than what has been filed before the Deputy Commissioner already but the learned Counsel was unable to say that there is any fresh material, but generally contended that this is a fit matter for adjudication by a civil Court. The entire material that was filed before the Deputy Commissioner was produced before Kailasam, J. The learned Counsel for the appellants stated that he had no copy of the depositions or documents and we called upon the learned Counsel for the respondents to furnish copies of the entire material to the learned Counsel for the appellants and adjourned the matter for a few days to enable him to study the the records. We were taken through the entire material at the adjourned hearing.

12. We have, therefore, to consider whether the Sai Mandir is a Hindu Religious institution dedicated to the Hindu public. We shall recapitulate the facts established. The Sai Baba of Shirdi was a Brahmin by birth, but was brought up by a Mohammedan and lived in Moharuimedan environment. He preached universal religion based on love, equality and justice and the gospel that he preached attracted a large number of followers pursuing different faiths. In 1941 the late B.V. Narasimha Iyer otherwise known as Sath Guru Narasimha Swamiji having caught the fire of Sai Bakthi founded in Mylapore the Samaj known as All India Sai Samaj. The said Samaj was functioning at several places in Mylapore

and the need for an exclusive and spacious place of worship was felt and the Swamiji strove hard to collect funds to acquire a piece of land and construct a Mandir for Sai Baba. Out of donations received and collections made the present site at Alamelumangapuram was acquired and a Mandir was put up in the main front hall. Later on he put up buildings for a free dispensary, printing press, book depot, office library etc. The All India Sai Samaj was registered under the Societies Registration Act in 1956. The objects of the Samaj are (1) to spread and deepen faith in God more especially with reference to Sri Sai Baba of Shirdi, (2) to diffuse useful knowledge to the above purpose through publication of books, pamphlets, journals etc. regarding Sai Baba, (3) to arrange Lectures and Harathi for Sri Sai Baba etc. The Executive Committee of the Samaj was composed of Hindus and also a Muslim. Under the Rules of the All India Sai Samaj membership was open to all adults. A perusal of the list of members shows inclusion of persons of different faiths, Mohammedans, Christians Parsis, some of them having served on the Executive Committee of the management and one of them as the Vice-President of the Samaj. The construction of the Mandir was completed in or about 1953 and the Swamiji, who passed away in October, 1956, took care to see that the Samaj was made a registered body with an Executive Committee to carry on the administration and the temple and other properties of the Samaj were made over to the registered body.

13. The question for consideration is whether the Sai Mandir, Mylapore, is a temple within the meaning of Section 6 (20) of the Madras Hindu Religious and Charitable Endowments Act, 1959 which we shall hereafter refer to as "the Act. In considering this question it is necessary to consider the scope and the effect of the the Act. The preamble of the Act is to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments. u/s 1 (3) of the Act the application of the Act is to all Hindu public religious institutions and endowments. Section 3 of the Act confers power on the Government to extend the Act to any Hindu or Jain public charitable endowment if mismanaged. Religious Institutions may either be Hindu Religious Institutions or Christian Religious Institutions or Muslim Religious Institutions. But the Act is intended to apply only to Hindu Religious institutions. The question then will be whether the institutions which are composite in character viz., partly Hindu and partly Mohammedan or Christian would fall under the provisions of the Act. We may in this connection refer to other provisions of the Act particularly to Section 10 which provides that a Commissioner, Deputy Commissioner, Assistant Commissioner and every other officer or servant appointed to carry out the purposes of this Act, shall be a person professing the Hindu religion and shall cease to hold office as such when he ceases to profess that religion. Section 26, which deals with qualifications of trustees of any religious institution, states that a person shall be disqualified from being appointed as a trustee of any religious institution, if he does not profess the Hindu Religion. These provisions are clear indications that the Act applies, to religious institutions and endowments which are exclusively Hindu in character.

14. In *The Urumu Seshachalam Chettiar Charities, Tiruchirapalli by its Board of Trustees v. The State of Madras and Ors.* W.P.No. 1034 of 1957 (unreported). Balakrishna Ayyar, J., had occasion to consider the validity of the order of the Government in extending section 3 of the Act, (XIX of 1951) (previous Act) to Urumu Seshachalam Chettiar Charities. The learned Judge was of opinion that the Act is intended to apply only to religious institutions and endowments which are exclusively Hindu in character although the word "exclusively" is not added, to the words "Hindu Public Religious Institutions and Endowments" or in the definition of the word "temple" in Section 6 (20) of the Act. The following passage in the judgment of Balakrishna Ayyar, J., may be usefully extracted in this connection :--

I would draw attention to the words "Hindu Religious and Charitable Institutions and Endowments" occurring in both the long title and the preamble. The Act is intended to apply to (1) Hindu religious institutions and endowments, and, (2) Hindu charitable institutions and endowments. It seems to me to be manifest that the word "Hindu" is not used in one sense in relation to religious institutions and endowments and in another sense in relation to charitable institutions and endowments. The word "Hindu" must be given the same connotation whether it is read in connection with religious institutions and endowments or whether it is read in connection with charitable institutions and endowments. Now, we can have a Hindu religious institution or a Christian religious institution or a Muslim religious institution. But, I do not see how we can have a religious institution which is at one and the same time partly Hindu and partly Christian or partly Muslim. I am not aware that any religious institution exists in the State which bears such a composite character. There can be no doubt whatever that so far as religious institutions are concerned the Act is intended to apply only to religious institutions and endowments which are exclusively Hindu in character. The omission of the word "exclusively", on which Mr. Srinivasan laid stress, is of no consequence. In fact, the introduction of such a qualifying word was entirely unnecessary and would only have led to confusion and controversy in other places in the Act. The expression "Hindu temple" is plain enough. By saying "exclusively Hindu temple" we are not making the meaning plainer, we are only introducing a degree of annoyance.

The learned Judge further observed as follows :

Section 9 of the Act enjoins that the Commissioner, every Deputy Commissioner, every Assistant Commissioner and every other officer or servant appointed to carry out the purposes of the Act, by whomsoever appointed, shall be a Hindu. The section also enacts that should a person so appointed cease to be a Hindu he shall also cease to hold office. Likewise, Section 22, requires that no person, shall be appointed to be a trustee of a religious institution.-" . . unless he is a Hindu. Provisions of this kind would be appropriate only in respect of institutions which are exclusively Hindu. The Legislature could hardly have intended that provisions of this kind should apply to what may be called mixed or composite

institutions, that is to say, institutions which are only partly Hindu and partly non-Hindu. That would amount to discrimination based on religion. It would also probably be correct to say...that the Act would apply to institutions which are exclusively Hindu in character.

Construing the deed of trust in that case the learned Judge came to the conclusion that the institution or endowment setup by the deed of trust is not exclusively, Hindu in character and consequently section 3 of the Act is not attracted.

15. In *Sri Ramanasramam by its Secretary, G. Sambasiva Rao and Ors. v. The Commissioner for Hindu Religious and Charitable Endowments, Madras* (1960) M.L.J. 121 : ILR (1960) Mad. 922. Ramaswami, J., and Anantanarayanan, J., as he then was, had to consider the question whether Mathrubootheswarar temple a component part of Ramanasramam at Thiruvannamalai is a temple as contemplated by Section 6 (17) of the 1951 Act. Ramaswami, J., who delivered the leading judgment after referring to three authoritative works on Hindu Religious Endowments namely (1) Pandit Pran Nath Saraswathi's *Hindu Law of Endowments*, (2) P. R. Ganapathi Ayyar's *Hindu and Mohammadan Endowments* and (3) B.K. Mukherjee's *Hindu Law of Religious and Charitable Trust* and some of the decisions including the one of Balakrishna Ayyar, J., referred to above, came to the conclusion that

The evidence in the instant case showed that this institution, is a composite institution and is in accordance with Sri Ramana Maharishi's universal outlook making his Asramam open to devotees of all religions--The contributions came also largely from non-Hindus--It stands to commonsense also that no exclusively Hindu shrine would be an appendage of a cosmopolitan Asramam, and which would have been totally inconsistent with Sri Ramana Maharishi's teachings and life.

After dealing with the evidence the learned Judge held that the institution called Mathrubootheswaraswami is only a Samadhi and not a temple and that it cannot be said that there has been a dedication exclusively to the Hindu public or a section thereof. Anantanarayanan, J., in a separate judgment agreeing with the view of Ramaswami, J., expressed as follows:--

The probabilities are overwhelming that, as far as the founder's message, intentions and outlook are concerned the Mathrubutheswar shrine was not founded as a Hindu temple, but essentially as a public religious shrine or institution of a universal character. The evidence on record clearly establishes further that it is not a place of Hindu public religious worship though the forms of puja or archana might be similar to those adopted in Hindu temples but that it is a shrine in which all who are drawn to the Maharishi's teachings, whether Hindu, Christian, Parsi or Muslim, have equal rights of access and to the acquisition of spiritual benefit by prayer or meditation.

16. In the State of Madras by the Secretary, Revenue Department, Madras and

Anr. v. The Urumu Seshachalam Chettiar Charities, Timckirapalli, by its Board of Trustees and Ors. (1960) M.L.J. 591 : (1960) L.W. 794. Rajagopalan and Srinivasan, JJ., affirmed the view of Balakrishna Ayyar, J. in the writ petition referred to above. Rajagopalan, j., who delivered the judgment on behalf of the Bench at page 594 dealing with charitable endowments observed as follows:

If we split up Section 6 (4) into some of its component parts the resultant position is: (1) charitable endowment means all property given or endowed for the benefit of the Hindu community or any section thereof; (2) charitable endowment means all property given or endowed for the support or maintenance of objects of the utility to the Hindu community or any section thereof; (3) charitable endowment means all property used as of right by the Hindu community or any section thereof. The institutions themselves in each of these cases are included in the statutory expression "charitable endowment". Of course, the word "exclusively" is not to be found in the definition. If that word can be read with this clause, that has to be read with reference to each of the three clauses who have mentioned above, that is, the endowment should be for the exclusive benefit of the Hindu community, or it should be used as of right exclusively by the Hindu community, or it should be for the support or maintenance of the objects of utility exclusively to the Hindu community. The use of the prefix "Hindu" should have the same significance with reference to charitable and religious endowments for the purposes of the Act. We have already pointed out that a temple is a religious endowment. Temple has been defined in Section 6 (17) of the Act:

"temple" means a place by whatever, designation known, used as a place of public religious worship and dedication to, or for the benefit of or used as of right by, the Hindu community or any section thereof as a place of public religious worship.

It seems clear to us that the very definition of temple in Section 6 (17) of the Act postulates the test of exclusiveness. It will not be a temple at all as defined in Section 6 (17) of the Act, if it is not dedicated for the benefit exclusively of the Hindu community or if it is not used as of right exclusively by the Hindu community. A place of public worship used as of right by members of all communities including the Hindus cannot be a temple as defined by Section 6 (17) much less can it be viewed as a Hindu temple or a Hindu religious endowment. The expressions "for the benefit of and "used as of right by the Hindu community" should, in our opinion have the same significance in relation to charitable endowments as they have in relation to temples which are religious endowments. They should have the same meaning in construing either Section 6 (4) or Section 6 (17). In our opinion, even apart from the prefix "Hindu" in relation to public charitable, endowments in section 3, the very definition of charitable endowments in Section 6 (4) postulates the test of exclusiveness. Unless, for example, the benefit of the endowment is confined wholly to Hindus it would not be a charitable endowment as defined by Section 6 (4). The prefix "

Hindu " to the expression " public charitable endowment" in section 3 tends, if anything, to emphasise that feature. When the benefit of the endowments is made such a decisive feature of the statutory concept of a charitable endowment by the definition in Section 6 (4) of the Act we can see no scope for accepting the contention of the learned Advocate-General, that who the beneficiaries of the trust are is not determinative of the question what constitutes a Hindu public charitable endowment for purposes of section 3 of the Act.

The learned Advocate-General submitted that anomalous results might follow if the test of exclusiveness were adopted in determining what constitutes a Hindu public charitable endowment within the scope of section 3 of the Act. The learned Advocate-General pointed out that normally no Hindu would contemplate exclusion of members of other communities from the benefit of the public charity familiarly known as a water pandal, if he were founding such a public charity. That was given only as an example. Establishment of a water pandal charity may be establishment of a public charitable endowment. But it is not every public charitable endowment that is brought within the scope of Act XIX of 1951. Every public charitable endowment founded by a Hindu does not become a Hindu charitable endowment. The mere fact that the founder was a Hindu is not enough even to make a trust or endowment a charitable endowment as defined by Section 6 (4) of the Act. Certainly it is not enough to make it a Hindu public charitable endowment. To bring a public charitable endowment within the scope of section 3 of the Act it is necessary to establish first that it is a Hindu charitable endowment. It will not be a Hindu charitable endowment, if the benefit of the endowment can be shared as of right by members of the public other than Hindus.

Though the above decision related to a charitable endowment we are of opinion that the same principle" will apply to a religious institution as well.

17. In Shanmugha Perayyar Vs. State of Madras, to which one of us was a party, the above decisions were referred to and followed and at page 417, it is observed as follows :

Taking it for granted that the founder of the charity was an ancestor of the petitioner and he was a Hindu, it does not follow necessarily from that fact alone that his intention was to confine the charity to the Hindu wayfarers exclusively. The water pandal charity may be incidental to feeding all wayfarers. But inasmuch as feeding wayferers does not appear to have been confined exclusively to the Hindus, the result follows that it will not be governed by the provisions of Madras Act XIX of 1951.

18. The contention of Sri Panchapakesa Iyer is that this Act will apply to this institution as Prathista, according to Agama Sastras, has been conducted under the guidance of Narasimhaswami. "Temple" is defined in Section 6 (20) of the Act as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community. The essential features of a temple have

been referred to by Viswanatha Sastri, J., in T.R.K. Ramaswami Servai and Another Vs. The Board of Commissioners of the Hindu Religious Endowments, which arose out of the difference of opinion of Satyanarayana Rao, J., and Govinda Menon, J., At page 516, Viswanatha Sastri, J., observed as follows:

In the case of a temple it becomes a place of public religious worship when the idol was installed and consecrated and the pranaprathishta or vivification ceremony was performed. Until then, it is elementary knowledge that the image does not become an object of worship. The deity does not begin to reside in the idol (the visible image) until the consecration or the appropriate ceremony is completed...Unless and until these ceremonies are gone through, the place where the idol is installed, and the idol itself does not become a fit object of religious worship.

The procedure relating to purification of the image and the vivification ceremony and all the details relating thereto are referred to in Pandit Prannath Saraswathi's Hindu Law of Endowments (Tagore Law Lectures, 1892) at page 106. In the present case no idol of Sai Baba has been installed and in fact rule 20 of the memorandum of the Samaj shows that no image of Sai Baba should be brought into the Mandir and in the absence of the establishment of an idol and consecration of the same and the performance of pranaprathishta, the deity does not begin to reside in the idol so as to make it a proper object of religious worship.

19. Mr. Panchapakesa Iyer, next contended that even though there is no idol of Sai Baba, the padukas of Sri Sai Baba are embedded below the portrait of Sai Baba and consequently there is an indicia of an image and therefore the Mandir falls within the meaning of a temple as defined in the Act. We are unable to accept the said contention. In this connection our attention was drawn to the evidence adduced on behalf of the respondent. The substance of evidence adduced on behalf of the respondents is that Sai Baba was worshipped in the Vaidikiway and that the temple was erected for Sai Baba with yantra stapanam and kumbhabhishekam performed. Srividya Homam for three days, Mahasudrasana japam for a day, Modha Dakshinamurthy mantra japa and homams for a day were conducted by four or five priests prior to the construction of Gopuram and after Gopuram was constructed Sri Ghakra Yantram was installed in the middle of the Garbha Griha, that after the installation ceremony Abhishekam and Archanais were performed, cocoanuts, flowers, dhoopam, deepam and Naivedyam were offered to Sai Baba picture. Theertham, Akhathai, Kunkumam were distributed to the devotees after puja is over and that sadari is placed on the devotee's head. Notwithstanding all this, in the absence of an idol, the Mandir cannot be said to be a proper object of religious worship.

20. The further evidence adduced was that Muslims and Christians do not come to the Mandir. The other materials adduced on behalf of the respondents clearly establish that non-Hindus also visit the Mandir although they do not worship Sai Baba in their own way. There is abundance of evidence that the respondent-

Society consists of Hindus and non-Hindus, some of the non-Hindus have been members of the Executive Committee and also have acted as Vice-President for long periods. The materials produced amply demonstrate that the Sai Mandir is not a place of public religious worship dedicated solely to the members of the Hindu community. The Deputy Commissioner came to the conclusion that the majority of the worshippers were only Hindus and the mere fact that one or two Muslims visit the suit Mandir occasionally will not alter the general character of a Hindu temple. This proposition runs counter to the decisions referred to above and we are of opinion that Sai temple is not exclusively dsdicated to or used as of right by the Hindu community exclusively. The Deputy Commissioner further observed that the character of the temple can be determined only by the form of worship and not by the circumstance that a few-non-Hindus visit the temple, but such non-Hindus do not worship in their own way. We are of opinion that there is no warrant for the above conclusion of the, Deputy Commissioner. Kailasam, J., rightly interfered with the order of the Deputy Commissioner. There is no substance in any of the contentions put forward by the learned Counsel for the appellants.

21. The appeal, therefore, fails and is dismissed with costs of the respondents which we fix at Rs. 250.

22. Appellants 1 to 5 will pay the costs of the Respondent.