
(2012) 07 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3508 of 2011

Suresh Chandra and Another

APPELLANT

Vs

Sanatan Dharm Satsang Bhawan Adhyatmic Vidyalaya

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 2(1), 2(1)(bb), 2(1)(f), 3(r)

Citation : (2012) 10 ADJ 214

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : P.N. Saxena, Shailendra Kumar Pandey, Amit Saxena and P.C. Saxena, for the Appellant; Y.S. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri P.N. Saxena, Senior Advocate assisted by Sri Shailendra Kumar Pandey, learned counsel for the petitioner and Sri Y.S. Saxena, learned counsel for the respondents. The pleadings are complete hence as requested and agreed by learned counsel for the parties I proceed to decide the matter finally at this stage under the Rules of the Court.

2. The writ petition is directed against judgment and order dated 7.12.2009 passed by Judge, Small Causes Court, Bareilly decreeing S.C.C. Suit No. 1 of 2006 of plaintiff-landlord vide judgment dated 7.12.2009 for ejectment of tenant i.e. present petitioners and for payment of rent and mesne profit from premises in question and the revisional order dated 16.11.2010 passed by Special Judge, S.C./S.T. Act, Bareilly dismissing petitioner's Revision No. 52 of 2009.

3. Sri P.N. Saxena, learned Senior Counsel has assailed the impugned judgment only on the ground that preliminary issue i.e. issue regarding applicability of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as "Act, 1972") was raised by petitioners but both the Courts below in a wholly illegal manner have

held that the said Act is not applicable to the proceedings in question in respect to the accommodation in tenancy of petitioners and having said so, passed decree of ejectment from premises in question holding that petitioners' tenancy has validly been terminated by landlord in accordance with law.

4. It is not in dispute that issue No. 2 was framed by Trial Court as under:

Whether shop in question is governed by provisions of Act, 1972.

5. The pleadings of respondent-landlord in respect to applicability of Act, 1972 was in para 1 of the plaint wherein it had stated that plaintiff-landlord Sanatan Dharm Satsang Bhawan Adhyatmic Vidyalaya, Faridpur District Bareilly is a Society registered under Society Registration Act, 1860 (hereinafter referred to as "Act 1860") having its objective social, spiritual and religious and it spent its entire income for the aforesaid purposes namely social, spiritual and religious. It is with this pleading made in para 1 of the plaint; in para 7 thereof, the plaintiff-landlord had pleaded that Act 13 of 1972 is not applicable to the premises in question which is a shop situated at Sabzi Mandi, Alenganj, Faridpur, District Bareilly.

6. The petitioner-tenant denied contents of para 1 of the plaint in para 7 of his written statement. Again denying contents of para 7 of plaint, pleaded that Rent Control Act is applicable over the shop in question. In para 21 of the written statement it is further pleaded by petitioner tenant that plaintiff-landlord being a Society registered under the Act, 1860 for this reason also Act, 1972 is applicable on the shop under tenancy of the petitioner-tenant.

7. The Trial Court has simply observed that landlord institution is a "registered Society" having "social, spiritual and religious" objective and spending its entire income for the said purpose, hence, is beyond the purview of the Act, 1972 in view of Section 2(1)(bb) thereof. The tenant's further reliance on Section 2(1)(f) of Act, 1972 has been rejected on the ground that unless it is proved that property in question was constructed by the Society or it is in possession thereof, 2(1)(f) cannot be applied. Further to reject the contention of petitioner-tenant, Trial Court says that mere denial by tenant is not sufficient but it was incumbent upon him (them) to plead further and place evidence that basic objective of Society is not social, religious and spiritual. The very title of Society shows that its basic objective is religious and spiritual and therefore Act, 1972 is not applicable.

8. The Revisional Court has also completely reiterated what has been said by Trial Court to hold that Act, 1972 is not applicable.

9. Sri P.N. Saxena, Senior Advocate vehemently contended that Courts below have completely misread Section 2(1)(bb) of Act, 1972 and have committed grave error in appreciating its true intent and meaning.

10. Sri Y.S. Saxena, learned counsel appearing for the respondent-landlord defended the impugned orders and the findings on issue No. 2 reiterating the

reasons stated by the Courts below in the impugned judgment.

11. The short question up for consideration "whether the Courts are right in holding that Act, 1972 is not applicable to the shop in question in the light of Section 2(1)(bb) of Act, 1972".

12. Section 2, in fact, provides exemptions from operation of Act 1972 and says that nothing in this Act shall apply to the buildings covered by those as referred to in Clause (a) to (h), with which we are concerned in the present matter, and it is not necessary to refer sub-section 2 of Section 2 of Act, 1972. Section 2(1) reads as under:

Exemptions from operation of Act.-- (1) Nothing in this Act shall apply to the following, namely :

(a) any building of which the Government or a local authority or a public sector corporation or a Cantonment Board is the landlord; or

(b) any building belonging to or vested in a recognised educational institution, or

(bb) any building belonging to or vested in a public charitable or public religious institution;

(bbb) any building belonging to or vested in a waqf including a waqf-alal-aulad;

(c) any building used or intended to be used as a factory within the meaning of the Factories Act, 1948 (Act No. LXIII of 1948) where the plant of such factory is leased out alongwith the building; or

(d) any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of manufacture, preservation or processing of any goods) or as a cinema or theatre, where the plant and apparatus installed for such purpose in the building is leased out alongwith the building:

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts of the cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the cinema or theatre; or

(e) any building used or intended to be used as a place of public entertainment or amusement (including any sports stadium, but not including a cinema or theatre), or any building appurtenant thereto; or

(f) any building built and held by a society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) or by a co-operative society, company or firm and intended solely for its own occupation or for the occupation of any of its officers or servants, whether on rent or free of rent or as a guest house, by whatever name called, for the occupation of persons having dealing with it in the ordinary course of business;

(g) any building, whose monthly rent exceeds two thousand rupees;

(h) any building of which a Mission of a foreign country or any international agency is the tenant.

13. The words relevant in Section 2(1)(bb) are "public charitable" or "public religious institution". A building which belongs to or vests in a public charitable or public religious institution is exempted from operation of the Act.

14. Before this Court Sri P.N. Saxena, learned counsel for the petitioner has not disputed that shop in question belong to landlord Society and therefore, so far as question of belonging or vesting of building in question, this aspect is not in dispute. The only question up for consideration is "whether respondent Society can be said to be a "public charitable institution" or "public religious institution"."

15. Ex facie, there is no use of the word "spiritual" or "social" in the entire sub-section. Section 2(1)(bb) has been inserted by U.P. Act 5 of 1995 w.e.f. 26th September, 1994 which replaced U.P. Ordinance No. 19 of 1994 which came into force on 26th September, 1994. This Court has held in Punjab National Bank, Ghaziabad v. Dr. Rajendra Nath Azad, 1996 (1) ARC 348 and Ram Dularey v. IVth A.D.J. Varanasi, 1996(2) ARC 459, that amendment Act 5 of 1995 is not retrospective.

16. The term "charitable institution" and "religious institution" both have been defined in Section 3(r) and (s) of Act, 1972 as under:

(r) "Charitable institution" means any establishment, undertaking; organisation or association formed for a charitable purpose and includes a specific endowment;

Explanation.--For the purposes of this clause, the words "charitable purpose" includes relief of poverty, education, medical relief and advancement of any other object of utility or welfare to the general public or any section thereof, not being an object of an exclusively religious nature;

(s) "Religious institution" means a temple, math, mosque, church, gurudwara or any other place of public worship.

(emphasis added)

17. In order to constitute a "religious institution" it must be a temple, math, mosque, church, gurudwara or any other place of public worship.

18. Learned counsel appearing for the respondents landlord could not dispute that term "temple", "mosque", "church", "gurudwara" would not apply in the present case. He, however, contended that respondent Society either can be constituted as a "Math" or it would come within the words "any other place of public worship". In the alternative, he contended that income earned by the Society is being spent for religious, spiritual and social purposes therefore it would be covered by the term "charitable institution".

19. In order to become a "charitable institution", formation of body must be for a charitable purposes which includes a specific endowment. The term "charitable

purposes" has been explained by explanation to Section 3(r) providing that it shall include relief of poverty, education, medical relief and advancement of any other object of utility or welfare to the general public or any section thereof, not being an object of an exclusively religious nature. Which part of these definition of "charitable institution" would apply would depend on the specific pleadings and evidence placed before the Court by the plaintiff or the party concerned who wants to exclude applicability of Act, 1972 which is otherwise applicable to the shop in question.

20. Sri P.N. Saxena, learned counsel for the petitioner drew attention of this Court to the bye laws of the Society and its memo of incorporation.

21. The objective of incorporation of Society is mentioned in para 3 at page 58, which shows that basic objective is to provide spiritual guidance so as to cause cleanliness in thoughts and functions, to regulate life in old traditional, spiritual manner for general peace etc. and in furtherance thereof to perform all religious functions. It does not show that objective of Society is charitable strictly in terms, as defined in Section 3(r) of Act, 1972.

22. Learned counsel for the respondent submits that word "education" would cover charitable objective of the Society which is mentioned in para 3(b) of By laws of Society but, to my mind, the kind of education referred to in Explanation to Section 3(r) should not be exclusively of a religious nature.

23. So far as submission of learned counsel for the respondent-landlord that Society in question can be treated to be a "Math" or "any other place of public worship" so as to include it within the term "religious institution", here also this Court has its reservation for treating the Society in question within the ambit of either of the two terms.

24. The term "Math" has been considered time and again and has been discussed in detail by a Special Bench of this Court in *Sunni Central Board of Waqfs v. Sri Gopal Singh Visharad and others*, 2010 ADJ 1 (SFB) (LB) (in the judgment delivered by myself). Para 674 and onwards deals with the term "Math" and its meaning as to what it would construe. The relevant paragraphs 674 to 694 read as under:

674. A "Math" is an important type of Hindu religious endowment. It spell differently at places, namely, Math, Mutt or Muttum. In ordinary language, it signifies an abode or residence of ascetics. In legal parlance, it connotes a monastic institution presided over by a Superior and established for the use and benefit of ascetics belong to a particular order, who generally are disciples or co-disciples of the superior.

675. The detailed history and other characteristics of religious institution, i.e., "Math" has been discussed in the learned work of Dr. B.K. Mukherjea, "The Hindu Law of Religious and Charitable Trusts" (Tagore Law Lectures) (hereinafter referred to as "Mukherjea's Hindu Law"), which was first published in 1952 and

we are referring the relevant extract from its 4th edition, edited by P.B. Gajendragadkar and P.M. Bakshi. It is stated in para 7.5 at page 332 that Hindu Maths were established for the first time by Adi Shankaracharya. He himself founded four Maths at the four corners of India and made them centres of his Vedantik teaching. Bhagavardha Math at Puri (in east), Jyotir Math at Badrinath (in north), Sharda Math at Dwarka (in west) and Sringeri Math at Tungabhadra (in south) are the four Maths. Each of these Maths was placed in the charge of one of his four principal disciples, who were, Padmapad, Hastamalak, Sureswar and Trotaka. These four disciples had their own disciples also. In the course of time ten orders or classes of monks were formed, into which the monks of the Shankar School stood divided. These ten orders popularly known as Dasnamis bear the appellants Tirtha, Asrama, Vana, Aranya, Giri, Parvat, Sagar, Saraswati, Bharati and Puri. The disciples of Trotaka at Jyotir Mutt at Badrinath were Giri, Parvat and Sagar, while the Sringeri Math claimed as its adherents Saraswati, Bharati and Puri. In addition to the Sannyasis who belong to the fourth stage of life, there were "Naishtik Brahmacharis" or perpetual students attached to all the Maths. This practice started by Adi Shankaracharya was followed by almost all the religious teachers since then.

676. First in order of time was Sri Ramanujacharya, who propounded the theory "qualified monism" in opposition to the "pure monism" of Adi Shankaracharya. Shankar's theory was based upon rigorous logic, recognised the Supreme Brahman as the only one and absolute reality. It regarded everything else as phenomenal or illusory. Ramanuj and other Vaishnava teachers who followed him were all philosophical theists. They tried to reconcile their metaphysical doctrines with the yearnings of the human heart which always requires a personal God as the supreme cause of all that exists and an eternal soul which yearns for "an approach to an union with that Being". The followers of Ramanuj are known as "Sri Vaishnavas". The object of their adoration is "Supreme" being in the form of "Vishnu" who is always associated with "Shri" or "Lakshmi". On the model of Dashnami Maths of Shankaracharya, Ramanuj founded a large number of Maths for the purpose of strengthening the doctrine propounded by him.

677. Then came Sri Ramanand (born in 1299 A.D.), disciple of Ramanuj. He founded a sect of Vaishnavas known as "Ramats". Ramanand himself is said to have built a Math, for the "ascetics" of his sect, in Benares. The "Ramats" worship one God in the form of Ram.

678. The meaning of the word "ascetic" in Oxford English-English-Hindi Dictionary (2008) on page 64 is as under:

ascetic not allowing yourself physical pleasures, especially for religious reasons

679. In New Lexicon Webster's Dictionary of the English Language, Deluxe Encyclopedic Edition, at page 53, the word "ascetic" has been described as under:

as.cet.ic 1. adj. practicing self-discipline with a view to spiritual improvement, esp. by learning to do without things good in themselves (e.g. warmth, comfort)

frugal, austere (of personal appearance) giving the impression of self-denial, gaunt, spare 2. n. a person who practices asceticism, a person who lives an austere life.

680. Thus ordinarily, an ascetic is one who renounces the world and devotes himself to religion, owns no property, no fixed place of residence and accept such food and lodgings as are provided by pious householders. But if a pious ascetic gathers around him a number of disciples whom he initiates into the mysteries or tenets of his order and such of his disciples intend to become ascetics, renounce all connection with their family including family wealth and completely affiliate themselves with the said spiritual teacher, a spiritual fraternity would eventually grow up. If pious, generous persons endow such a fraternity with property, it naturally vests in the preceptor for the time being and a home is created for the brotherhood, i.e., a Math and that would lead to the constitution and building of a Math. Once the "Math" is established, succession to headship takes place within spiritual family according to the usages that grow up in a particular institution.

681. The term "Math" has been described in the Law Lexicon.--The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) at page 1205 as under :

Math. Although there are some differences between debuttar property and property dedicated to a math, where the math is an idol installed in it, property appertaining to a math, whether dedicated to the idol or not, is not the personal property of the head of the math; and when the holder or Mahant is not only a sanyasi but also a celibate, the property is utterly incapable of passing to natural heirs. The fact that the holder executes a hibanama in which he describes the math as his math carries little weight; the math with the idol cannot be has personal property. The presumption in the case of a mahant who is a sanyasi and a celibate, having no family of his own, and who is free from all worldly attachments, is that the property held or acquired by him is so held or acquired on behalf of the math to which his life is entirely devoted. A presumption of the same kind would arise in respect of the property subsequently acquired by such celibate Susil Chandra Sen and Another Vs. Gobind Chandra Das and Another, .

The term "Math" is used in the sense either of an institution or of a building. Maths are in the nature of monastic institutions and the term may also be used for the building in which such an institution is housed. Where originally there was a banking or money-lending business which passed from each of its proprietors to his chosen successor, chosen for his business capacity and not for his learning or piety, and there was no religious object behind the business but they called themselves sanyasis and their residence Math it was held that the property acquired by the proprietors could not be claimed to be "Math" properties as there was no "Math" in the legal sense of the word. Mayanand Gir v. Parshottamanand Gir, 1943 ALJ 400 : 1943 OWN (HC) 250.

An institution comes within the definition of "math" if it satisfies three conditions; i) that the institution be for the promotion of the Hindu Religion; ii)

that it be presided over by a person whose duty is to engage himself in-spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and iii) that the office of such person devolves in accordance with the directions of the founder of the institution or is regulated?, by usage, Mahant Shri Srinivasa Ramanuj Das Vs. Surajnarayan Dass and Another, , [Orissa Hindu Religious Endowments Act (4 of 1939), Sec. 6(7)]

682. In Sammantha Pandara v. Sellappa Chetti, ILR 2 (1878-B1) Mad 175 Madras High Court discusses the origin of "Math" as under:

The origin of mattams is ordinarily as follows : A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order, and instructs in its religious tenets. Such of these disciples as intend to become religious teachers, renounce their connection with their family and all claims to the family wealth, and, as it were, affiliate themselves to the spiritual teacher whose, school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being, and a home for the school is erected and a mattam constituted. The property of the mattam does not descend to the disciples or elders in common; the preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent, and in his own life-time installs the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor. The property is in fact attached to the office and passes by inheritance to no one who does not fill the office. It is in a certain sense trust property; it is devoted to the maintenance of the establishment, but the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution. Acting for the whole institution he may contract debts for purposes connected with his mattam, and debts so contracted might be recovered from the mattam property and would devolve as a liability on his successor to the extent of the assets received by him.

We do not of course mean to lay it down that there are not mattams which may have been established for purposes other than those we have described, nor that the property may not in some cases be held on different conditions and subject to different incidents. We have, described the nature of the generality of such institutions and the incidents of the property which is devoted to their maintenance.

683. Again considering as to what is meant by a "Math", a Division Bench of Madras High Court in Giyana Sambandha Pandora Sannadhi v. Kandasami Tambiran, 1887 ILR 10 Mad 375 held as under:

The origin of these associations, their constitution and development, form part of

the history of the establishment and spread of the Brahminical system of religious doctrine among the Sudra communities in Southern India. Originally, the ascetic, who renounced the world and devoted himself to religion, confined his attention to the study of theology, to imparting religious instruction to his disciples, and to complying with the ordinances prescribed for the guidance of his order. He then owned no property, except his cloths, sandals, religious books and the idol he kept for his personal worship and a few other articles of trifling value which were absolutely necessary (Mitakshara, Chapter II, Section 8, para. 8). He had no fixed residence and moved from village to village, accepting such lodgings and food as were provided for him by pious laymen, who were in their turn enjoined by the Shastras to honour and support him. This is the mode in which Brahman Sanniyasis live even at the present time. In several villages pious laymen erected buildings for the residence of hermits when they visited their villages, and these were called Mutts. In its original and narrow sense, then, the term "Mutt" signified the residence of an ascetic or Sanniyasi or Paradesi.

But when the Buddhists assailed the Brahminical religion and when Sankarachariyar, the founder of the Advaita or non-dualistic school of philosophy, ultimately prevailed against them, he established some Mutts in order to maintain and strengthen the doctrine and the system of religious philosophy he taught, Sanniyasis being placed at the head of those institutions. After Sankarachariyar, the founders of the Vaishnava, Madhva and other schools of religious philosophy in this Presidency established Mutts for a similar purpose. In former times these institutions exercised considerable influence over the laymen in their neighbourhood; they became centres of classical and religious learning and materially aided in promoting religious knowledge and in encouraging religious and other charities. The ascetics who presided over them were held, owing to their position as religious preceptors, and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen, who from time to time made large presents to them and endowed the Mutts under their control with grants of land. Thus, a class of endowed Mutts came into existence in the nature of monastic institutions, presided over by ascetics or Sanniyasis who had renounced the world. Thus, the ascetic who originally owned little or no property, came to own the Matam under his charge and its endowment, in trust for the maintenance of the Mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it, according to usage.

684. In Vidyapurna Tirtha Swami v. Vidyaniidhi Tirtha Swami, 1904 ILR (27) Mad 435, the Madras High Court following its earlier decision in Sammantha Pandora v. Sellappa Chetti (supra) observed with respect to original growth of "Math" in this country as under:

The origin and growth of mutts in this country is thus described in the two judgments of this Court already referred to : "A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular

mysteries of the order and instructs in its religious tenets. Such of these disciples as intend to become religious teachers renounce their connection with the family and all claims to the family wealth and, as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being and a home for the school is erected and mattam constituted" (Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran, I.L.R., 10 Mad., 375). "The ascetics who presided over them were held, owing to their position as religious preceptors and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen who, from time to time, made large presents to them and endowed the mutts under their control with grants of land. Thus a class of endowed mutts came into existence, in the nature of monastic institutions, presided over by ascetics or sanniyasis who had renounced the world." The object of these mutts is generally the promotion of religious knowledge, the imparting of spiritual instruction to be disciples and followers of the mutt and "the maintenance and strengthening of the doctrines and tenets of particular schools of philosophy.

685. What has been said in *Giyana Sambandha Pandara Sannadhi* (supra) has been followed in *Kailasam Pillai v. Nataraja Thambiran and others*, 1910 ILR 33 Mad 265 267.

686. The Privy Council in *Ram Parkash Das v. Anand Das and others*, AIR 1916 PC 256 had also occasion to consider about "Math" and observed:

An asthal, commonly known in Northern India as a muth, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes celibate and non-celibate. In the asthal now being dealt with, the religious brethren were the bairagi or celibate chelas; the lay brethren were girhast or householder chelas. The mahant must, by the custom of the muth, be a bairagi or religious chela.

687. Again in *Sri Vidya Varuthi Thirth Swamigal v. Baluswami Ayyar and others*, AIR 1922 PC 123, the Privy Council expressed its views on page 126 about "Maths" in the following words:

In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of Mutt were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage.

688. All the aforesaid decisions were considered by the Apex Court in *Shri Krishna Singh Vs. Mathura Ahir and Others*, . In para 19, the Apex Court

concluded as under:

19...Math means a place for the residence of ascetics and their pupils, and the like. Since the time of Sankaracharya, who established Hindu maths, these maths developed into institution devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were held in great reverence as religious preceptors, and princes and noblemen endowed these institutions with large grants of property.

689. In Krishna Singh (supra) the Court also observed that a Math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the Math. It also held that the principles noticed in the above cases would make it sufficiently clear that "a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the math."

690. Concept of Mutt, private and public, has been considered in The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, and in para 17 the Court observed :

A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the latter, it is to a superior or a mahant.... A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, in which case it would be a public institution. Mutts have generally sadavrats, i.e. arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access.

691. A "Math" is not a Temple inasmuch it is a place for rendering charitable and religious services in general. Merely there are idols in the Math, it cannot be treated as a Temple. Similarly, an institution which is in its origin a Math, cannot be treated as a temple because idols are also worshipped in the Math. The Math cannot be treated as a place of public religious worship mere by reason of the worship of idols. The primary purpose of a Math is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order of which they profess to be adherents. The deity or an idol may be an essential element in a Math if the worship of a personal God in a certain form is an essential feature of the religious doctrine of a certain order. The worship of God in that form would be a part of their religious teaching which it would be the duty of any Math of that order to foster and encourage, otherwise it may not be necessary. This has been pointed

out in Mukherjea's Hindu Law (supra), 4th Edn. at page 331-332 as under :

...there are religious orders like those of the Shankara School which believe in monastic doctrines of the Vedanta and to not regard the worship of a personal God as a necessary or essential part of the religious teachings. Even in Shankar Mutt, there may exist a shrine for a particular idol but it cannot be said that the presiding element in a Mutt must be a deity or that there cannot be a Mutt without an idol. A shrine or a temple may ordinarily be seen as an adjunct to a Mutt, but it is not a necessary one and even when it exists, it is not the chief or the indispensable part of the institution. It is only ancillary to the main purpose for which the Mutt is endowed and the presiding element in a Mutt is always the Mohunt or the spiritual preceptor.

692. A place of worship is not a necessary part of a Math, though it is often found in such institution and although primarily intended for the use of inmates, the public may also be admitted to such places of religious worship. (See *Thamba v. Arundel*, ILR 6 Mad. 287).

693. The presiding element in a Math is an ascetic or a religious teacher, who together with his disciples and co-disciples form spiritual family. It owe its existence to benefactions or grants of property made by pious benefactors. The object of the benefaction is the creation of an institution for the benefit of a fraternity of religious men at the head of which stands the superior or Mahant (also termed as "Mohunt"), who represents the entire institution. (vide *Satya Charan Sarkar and Others Vs. Mohanta Rudrananda Giri and Others*,).

694. In *Shri Krishna Singh v. Mathura Ahir* (supra), the Apex Court also quoted the relevant extracts from Mukherjea's Hindu Law (supra) as to what a "Math" would signify. It further held that the property belong to a Math is in fact attached to the office of Mahant, and passed by inheritance to no one who does not fill the office. The head of a Math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the "burden of maintaining the institution". He is bound to spend a large part of income derived from the offerings of his followers on charitable or religious objects.

25. Further where ever there is a "Math", concept as known in the Hindu jurisprudence, must be maintained by a human agency known as "Mahant". This has also been considered in *Sunni Central Board of Waqfs* (supra) and in paras 696 to 701 the Court has said as under:

696. According to Hindu jurisprudence, religious institutions such as a "Math" is treated a "juristic entity" with a legal personality capable of holding and acquiring property. The ownership of property vest in the institution. From the very nature of Math, it can act and assert its rights only through a human agency known as "Mahant", Shebait or Dharmakarta or sometimes known as trustee. The Apex Court in *Shri Krishna Singh* (supra) quoted the following observation of the

Bombay High Court (Jenkins, C.J. in *Babajirao v. Laxmandas*, 1904 ILR 28 Bom. 215 at 223) with approval which defines the true notion of a "Math" in the following terms :

A math, like an idol, is in Hindu law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency.

697. In *H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others*, , Hon"ble P.N. Shinghal, J., in a separate judgment, though concurring with the conclusion of majority view of the Constitution Bench, in para 47 observed "A Mutt is a monastic institution for the use and benefit of ascetics belonging to a particular order presided over by a superior who is its religious teacher. The Mutt property, though originally given by a donor, belongs to that spiritual family represented by the superior or Mahant. It does not, however, vest in him, as he is some sort of a "shebait", and vests in the Mutt as a juristic person."

698. The term "Mahant" has been descried in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) on page 1161 as under:

Mahant (H.) The head of a religious establishment of the medicant orders of the Hindus. (Wil. Gloss. 317.)

A Mahant or the head of a Math is not a "trustee" in the sense in which that term is understood in English law. The only law as to a Mahant and his office, functions and duties, is to be found in custom and practice, which is to be proved by testimony. But though a Mahant is not a trustee, in the English sense, he is, in view of the obligations and duties resting on him, answerable, as a trustee in the general sense, for the proper administration of the institution of which he is the head. The existence of a very wide discretion in the Mahant as to the application of the income of the Math or asthal is by no means inconsistent with a fiduciary obligation so to manage the property of the Math that the objects for which the Math exists shall be effectively serve. (*Kesho Das v. Amar Dasji and others*, 14 Pat 379 : 156 IC 1093 : 8 RP 62 : 16 Pat LT 35 : AIR 1935 Pat 111)

699. The position of a "Mahant" of a "Math" is like that of a "Head of the institution". He is neither a corporation nor a life tenant in respect to the Math property. He is also not a trustee in the sense in which the term is understood in English law. Call by whatever name, he is the manager or custodian of the institution. The property which he holds does not vest in him; it vests in the institution and is held by him as a Manager of the same. [See *Vidyavaryathi v. Baluswami* (Supra)].

700. In *Krishna Singh* (supra) regarding the succession of Mahantship of a Math or religious institution the Apex Court said:

30. The law is well-settled that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution, except

where a rule of succession is laid down by the founder himself who created the endowment. See: Genda Puri v. Chatar Puri, (1886) 13 Ind App 100 (PC); Sital Das Vs. Sant Ram and Others, and Sri Mahalinga Thambiran Swamigal Vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal, .

701. According to usage, wide discretion in the application of funds of the institution is possessed by the "Mahant" but it is always subject to certain obligations and duties equally prescribed by customs and usages.

26. Since definition of "religious institution" is not inclusive but it says "means", meaning thereby it is exhaustive and therefore connotation of the word "religious" in general I would not like to discuss hereat but suffice it to mention that in order to claim that a particular body or institution is within the ambit of a particular term, all its necessary ingredients have to be satisfied by necessary pleadings and by placing relevant material on record, since it involves an investigation into facts, which cannot be possible unless there is a proper pleadings and evidence in support thereof.

27. Similarly in case plaintiff-landlord intend to bring the Society within the term "any other place of public worship" necessary pleadings were required which have not been shown to have been made in the present case. In fact learned counsel for the respondent-landlord himself after going through the definition of "charitable institution" and "religious institution" find it difficult to place his hands on the particular kind of institution under which petitioner Society would fall. It is really surprising that both the Courts below have decided non-applicability of Act, 1972 by simply referring to Section 2(1)(bb) of Act, 1972 but without considering at all definition of the terms "charitable institution" and "religious institution" contained in Section 3(r) and (s) of Act, 1972.

28. Having said so, in my view, since relevant aspects have not been considered by the Courts below in the present case and the issue involves investigation into facts, the matter needs remand.

29. However, I make it clear that my observation, made above, are only for the purpose of showing as to how an important issue of applicability of Act ought not have been decided in a casual and cryptic manner without considering relevant aspects of the matter since various terms have different shades and meaning and required to be considered in the light of specific pleadings and material and evidence. My observations, made above, shall not construe as a final expression of opinion on the issue concerned.

30. In my view, Issue No. 2, as formulated in the Trial Court's judgment regarding applicability of Act 13 of 1972, need be decided afresh.

31. Both the impugned orders dated 7.12.2009 and 16.11.2010 (Annexures 14 and 17 to the writ petition), therefore, in so far as they have recorded findings against defendant-tenant in respect to issue No. 2 as formulated in Trial Court's judgment dated 7.12.2009 are hereby set aside. The case is remanded to the

Trial Court to reconsider and decide the aforesaid issue No. 2 afresh.

32. In case, in redeciding the issue No. 2 the Courts below come to the conclusion that Act, 1972 is not applicable to the Society in question, findings on other issue shall stand as such and the decree of ejectment shall stand. The Writ petition is allowed in the above terms. The Trial Court is directed to decide the issue, as directed above, expeditiously preferably within six months from the date of production of a certified copy of this order subject to other business of the Court.