A GURPUR GUNI VENKATARAYA NARASHIMA PRABHU & ORS.

v.

B. G. ACHIA, ASSISTANT COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENT MANGALORE AND ANR.

B

April 15, 1977

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

Madras Hindu Religious and Charitable Endowments Act, 1951—*S.* 6(17) *'Public Temple'. An inference of dedication to the public from the fact of admission into the temple and uses by the public is not correct.*

C

S. 6(17) of the Madras Hindu Religious and Charitable Endowments Act, 1951 defines a temple as "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.

The Deputy Commisioner, in a proceeding u/s 57 of Madras Hindu Religious and Charitable Endowments Act, 1951 and the Commissioner on appeal D held that an ancient temple founded about 400 years ago known as Varadaraj Venkataraman Temple at Gurpur in Mangalore Taluk in Karnataka as a 'Public Temple'. But in the suit No. DS. 106/1961 instituted by the appellant trustees of the temple for a declaration that the temple was a private temple and not a temple as defined in s. 6(17) or in the alternative that it was a denominational or sectional temple belonging to the Goud Saraswat Brahmin Community of Gurpur, the Subordinate Judge South Kanara, held on the evidence that this was a denominational or sectional temple belonging to the Goud Saras- E wat Community and allowed the alternative declaration. The High Court on appeal found that this was a temple as defined in s. 6(17) of the Act and taking a different view of the evidence held that the temple was a place of religious worship dedicated to and used as of right by the general Hindu Community and was thus a public temple.

On appeal by certificate the Court,

HELD : (1) It is now well settled that "the mere fact of the public having F been freely admitted to the temple cannot mean that Courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right." [635 B-C]

Bihar State Board Religious Trust, Patna v. *Mahant Sri Biseshwar Das,* [1971] 3 S.C.R. 680 (689) referred to.

(2) In the instant case the circumstances disclosed in evidence do not support the inference that Hindus generally used the temple as a place of worship G as of right. The evidence is to the effect (i) that the temple was founded by 37 Goud Saraswat Brahmin families of Gurpur, (ii) that the trustee managing the temple belonged always to the members of said community, (iii) that the lended properties owned by the temple had all been endowed by members of the Community, (iv) that none of the witnesses claimed a right of ownership in the temple and the small sevas were voluntary, (v) that it was the members of the Goud Saraswat Brahmin Community who were allowed to participate in the more important ceremonies. [634 B-D; 635D]

H (3) The High Court's finding that "numerous endowment" have been made by Hindus not belonging to Goud Saraswat Brahmin Community, is not supported by the evidence in the case. In the context of the Award (Ext. A-13) the term general body mentioned therein could only refer to the members

of the Goud Saraswat Brahmin Community and not to the Hindu Community generally, because the proceeding concluded by the decree was confined to the members of the Community. [635 A-B] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2176 of 1968.

Appeal from the Judgment and Decree dated the 18-8-1965 of the Mysore High Court in M.F.A. No. 341 of 1964. B

S. T. Desai, K. N. Bhat and *R. B. Datar* for the Appellants.

Narayan Nettar for Respondent.

The Judgment of the Court was delivered by

GUPTA, J. The only question disputed in this appeal is whether a temple, known as Varadaraj Venkataramana Temple at Gurpur in Mangalore Taluk, in Karnataka, is a public temple or a temple belonging to Goud Saraswat Brahmin Community of Gurpur. C

This is an ancient temple founded about 400 years ago. In a proceeding under section 57 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the Act), the Deputy Commissioner by his order dated January 17, 1961 held that the temple was a public temple and the Commissioner on appeal affirmed the order of the Deputy Commissioner on June 12, 1961. Thereafter the appellants who are the trustees of the temple instituted a suit, O.S. No. 106 of 1961, in the court of the Subordinate Judge, South Kanara, for a declaration that the temple was a private temple and not a temple as defined in section 6(17) of the Act or, in the alternative, for a declaration that it was a denominational or sectional temple belonging to the Goud Saraswat Brahmin community of Gurpur. There was also a prayer for cancellation or modification of the order of Commissioner dated June 12, 1961 affirming that of the Deputy Commissioner that this was a public temple. The Subordinate Judge held on the evidence that this was a denominational or sectional temple belonging to the Goud Saraswat Brahmin community of Gurpur and not a private temple. He further held that there was no evidence before the Deputy Commissioner justifying his order which was affirmed by the Commissioner that it was a public temple. He observed that "it is incorrect to draw an inference of dedication to the public merely from the fact of user by the public". Accordingly, he allowed the alternative declaration asked for by the plaintiffs and modified the order of June 12, 1961 made by the Commissioner affirming the order of the Deputy Commissioner dated January 17, 1961. From the decision of the trial court, the respondents preferred an appeal to the High Court. The appellants before us also filed a cross objection contending that the Subordinate Judge should have held that the temple was a private temple and not a denominational or sectional temple. The High Court found that this was a temple as defined in section 6(17) of the Act. On the evidence also the High Court took a different view from the trial court and held that the temple was a place of religious worship dedicated to and used as of right by the general Hindu community and was thus a public temple. On this D E F G H

A view the High Court allowed the appeal and dismissed the cross-objection. The appeal before us is by the plaintiffs on certificate granted by the Karnataka High Court.

The Subordinate Judge held on the evidence that the temple was founded by 37 Goud Saraswat Brahmin families of Gurpur, that the trustees managing the temple belonged always to the members of the B said community, that the landed properties owned by the temple had all been endowed by members of this community, and that there was no reliable evidence of endowment of any immovable property by any person outside the community. The Subordinate Judge on considering the evidence of defendants' witness Nos. 2 to 4, on whom the defendants relied to prove that the temple was dedicated to the general Hindu community, found that none of them claimed a right of worship in the C temple and the 'sevas' offered by them were voluntary and the income from such sevas was also small. He further found that it was only the members of the Goud Saraswat Brahmin community who were allowed to participate in the more important ceremonies. It was observed that the fact that Hindus other than those belonging to the Goud Saraswat Brahmin community were not prevented from worshipping in the temple did not "deprive the temple of its sectional character", that it was "in- D correct to draw an inference of dedication to the public merely from the fact of the user by the public". Thus the decision of the Subordinate Judge was that the temple was not a public temple because it was not dedicated to the general Hindu community but for the benefit of Goud Saraswat Brahmin community of Gurpur.

E The High Court held that the definition of temple in section 6(17) of the Act covers the temple in question. The definition is as follows :

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

Even on the findings recorded by the Subordinate Judge, this would be a temple dedicated to or for the benefit of a section of the Hindu community and as such covered by the definition. The High Court reversed the decision of the Subordinate Judge and held that "facts of the present case lend support to the conclusion that the temple must G have been dedicated for the benefit of and used by the Hindu community and is being used by them, as of right, as a place of public religious worship". The facts that weighed with the High Court were that Hindus generally came to worship in the temple and were not turned away and that when the deity is taken out in procession, members of the Hindu community other than Goud Saraswat Brahmins also offer "araties". The claim made by some of the witnesses for the defendants that they H used to consult the oracle in the temple also seemed to the High Court a significant circumstance. But the High Court appears to have overlooked that these witnesses admitted that "before consulting the oracle,

the manager must be told of it and it is he, who could consult on their behalf". The High Court has recorded a finding that "numerous endowments" have been made by Hindus not belonging to Goud Saraswat Brahmin community. This is not however supported by the evidence in the case. Another circumstance which impressed the High Court was the recital in an award (Ext. A-13) which was made part of the decree (Ext. A-3) in a previous proceeding between the members of Goud Saraswat Brahmin community themselves, that the trustees of the temple should place the accounts of income and expenditure before the "general body". This "general body" according to the High Court implied the Hindu community generally. In the context of the award (Ext. A-13) it is however clear that the 'general body' mentioned therein could only refer to the members of the Goud Saraswat Brahmin community because the proceeding concluded by the decree was confined to the members of the community. The law is now well settled that "the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right". (see *Bihar State Board Religious Trust, Patna* v. *Mahani Sri Biseshwar Das*[1]). We find that the circumstances disclosed in evidence in this case do not support the inference that Hindus generally used the temple as a place of worship as of right.

The appeal is accordingly allowed. The Judgment of the High Court is set aside and that of the trial court restored. In the circumstances of the case we make no order as to costs.

S.R. *Appeal allowed.*