

1980 KHC 908

Supreme Court

**V. R. Krishna Iyer; R. S. Pathak; O. Chinnappa Reddy, JJ.*

T. V. Mahalinga Iyer v. State of Madras

C. A. No. 1397 of 1972

06 August, 1980

Hindu Religious and Charitable Endowments Act, 1959, S.6(2) - Religious and charitable endowments -- Public temple -- Presumption that it is public temple -- Burden is on the party who claims that it is a private temple, to establish that fact affirmatively -- This initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple as of right -- On facts held that it was a public temple. (Para 2)

JUDGMENT

V. R. Krishna Iyer, J.

1 This appeal by certificate turns on the character of a temple in the city of Madras as to whether it is a private temple or a public temple, that is, a temple within the meaning of S.6 (20) of the Madras Hindu Religious and Charitable Endowments Act, 1959. The Trial Court held in favour of the plaintiff who claimed that the temple was private and brought a suit to set aside the other passed by the Commissioner, Hindu Religious and Charitable Endowments, but the High Court reversed the judgment and decree of the Trial Court and held that the temple was public in character and the authorities constituted under the Act had jurisdiction to manage the temple on that footing.

2 Shri Balkrishnan, appearing for the appellant, has taken us through the details of the evidence to impress upon us that High Court had grievously erred in that the temple was a public one. It is undisputed law that so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one, it being up to the party who claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple as of right. Ordinarily, there may not be direct evidence regarding the exercise of such right and inference has to be drawn from a wealth of circumstances. In the present case, the High Court has gone into great detail and taken up circumstance after circumstance to uphold its conclusion that the institution is a public temple. The dedication to the public need not be by a deed may be spelt out of the circumstances present. The right of the public to worship again is a matter of inference. In the present case, the founder is no more and he died issueless with the result that his family is extinct. A will had been executed by him and the trustees under the will are now claiming the institution as a private temple. The various features referred to by the appellate Court and discussed at some length do not call for reiteration and we desist from doing so. It may be noted that the temple itself is situated on government property, that processions with the deity are taken out and that offerings are made, that the structure especially of Gopuram and Mandapam also indicates the public nature of the temple. Many other facts have been accumulated by the High Court and the evidence (Ex. B1) in the case also supports the conclusion that there had been contributions made by the public and the temple was not a private one. We are not inclined to reappraise the evidence in this Court as we are thoroughly satisfied that no serious error of law or perspective or mis appreciation of evidence has been

pointed out in the judgment of the High Court. We are, therefore, constrained to reject the case of the plaintiff appellant that the institution is private or that the deity is a family idol. We accordingly dismiss the appeal.

3 In the peculiar circumstances of the case, we direct that the parties will bear their costs throughout.
