

His Holiness Sri Vishwothama Thirtha ... vs The State Of Mysore on 18 December, 1961

Equivalent citations: AIR 1966 SUPREME COURT 1882, 1962 2 SCJ 131

PETITIONER:

HIS HOLINESS SRI VISHWOTHAMA THIRTHA SWAMIAR OFSODE MUTT

Vs.

RESPONDENT:

THE STATE OF MYSORE

DATE OF JUDGMENT:

18/12/1961

BENCH:

ACT:

Temple-Large number of pilgrims visiting and worshipping-If private or public-Madras Temple Entry Authorisation Act, 1947(Mad. V. of 1947), s. 2(1).

HEADNOTE:

The shrine in suit which was originally founded by Shri Madhavacharya, a Hindu saint was managed for a long time in rotation by the heads of eight Mutts which were also founded by the said saint for eight of his disciples. Large number of pilgrims from all over the country visited this shrine without any restraint, took part in the worship there, made offerings to the deity and received the prasad. The institution was managed with the monetary aid received from the State and contributions raised by the said heads of the eight Mutts from devotees resident in different parts of the country. The question arising for decision was whether the shrine in question was a "temple" within the meaning of s. 2(1) of the Madras Temple Entry Authorization Act, 1947.

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Held, that in the absence of good evidence that a temple was a private one, the mere fact that it was visited by a large number of persons among the Hindu Public without any restraint for a number of years, was good evidence of the fact that the temple had been dedicated to the Hindu

Public and was for its benefit.

Vibhudapriya v. Lakshmindra, (1927) L. R. 54 I. A. 228, referred to.

Babu Bhagwan Din v. Gir Har Saroop, (1939) L. R. 67 I. A. 1, and Sri Venkataramana Devarau v. State of Mysore, [1958] S.C.R. 895, followed.

In the instant case the finding that the Hindu Public had a right to worship in the temple was sufficient to make the institution a "temple" within the definition of that term in the Act even if the temple be appurtenant to a Mutt.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 84 of 1959.

Appeal from the judgment and decree dated August 17, 1954, of the Madras High Court in A. S. No. 304 of 1951, A. V. Viswanatha Sastri and R. Gopalakrishnan, for the appellants.

B. R. L. Iyengar and T. M. Sen, for respondent No. 1, 1961. December 18. The Judgment of the Court was delivered by RAGHUBAR DAYAL, J.-The only question for determination in this appeal on a certificate granted by the Madras High Court is whether what has been described in the plaint as Shri Krishna Mutt in Shivalli Village, in South Kanara District, is a temple as defined in s. 2(1) of the Madras Temple Entry Authorization Act, 1947 (Madras Act V of 1947), hereinafter called the Act. Sub-section (1) of s. 2 of the Act reads :

"`temple' means a place, by whatever name known, which is 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 worship, and includes subsidiary shrines and mantapams attached to such place ;"

The Government of Madras, in exercise of the powers conferred on them under s. 6 of the Act, decided on June 3, 1948, that Shri Krishna Mutt was a temple. The plaintiffs, who represent the heads of six of the eight mutts established at Udipi by Shri Madvacharya, instituted the suit for declaration that the Shri Krishna Mutt (not one of the eight mutts) was not such a temple and for the setting aside of the order of the Government of Madras. The heads of the other two mutts were impleaded as defendants Nos. 2 and 3. The State of Madras is defendant No. 1.

The State of Madras alone contested the suit and stated that the Shri Krishna Mutt was a temple as defined in the Act. The Trial Court and the High court held in favour of the defendant's contention with the result that the plaintiff's suit stood dismissed. The plaintiffs have therefore come up in appeal.

The case of the plaintiffs-appellants as disclosed in the plaint may first be stated. The great Saint and Savant Shri Madvacharya established the Mutt at Udipi in South Kanara District, for the

propagation of the Dwaita system of thought. He himself resided there. He initiated eight disciples and thus originated the 'Astha Mutts' (eight mutts) of Udipi. These disciples had to reside, in the mutts and engage themselves in the study and propagation of learning.

The way in which the image of Shri Krishna was installed in the Mutt is described thus :

"That the 'Shri Madva Vijaya', the life history of the great teacher has it, that the Shri Krishna's image was acquired from a heap of Gopi Chandan from Dwarka brought by the sailors of a native craft which got stranded near Malpe where the teacher used to go every morning for his ablutions and tapas. Tradition has it that the image is the same that had been worshipped by Rukmini at Dwaraka in pre-historic days. The image was consecrated and installed by the great teacher in his mutt at Udipi and he began to worship it. This according to history and tradition is the origin of what came to be called popularly the Shri Krishna Mutt at Udipi."

Shri Madvacharya, who installed the consecrated idol in a shrine of his Mutt, worshipped it during his life-time and ordained that the worship be continued by one or other of his eight disciples. In order to regularise the worship of Shri Krishna and to give equal opportunities to the eight disciples it was arranged that the worship be conducted by each of the disciples by rotation (pariyayam). Worship has continued according to this system for the several centuries that the Shrine has been in existence. The head of each of the eight mutts conducts the worship for a period of two years. During this period he occupies the Gadi or the seat of Shri Madvacharya and is called the Pariyayam Swami.

The other seven heads of the mutts, when free from the duty of worshipping the image of Sri Krishna, began to take their abode in the vicinity of the Mutt and thus came into existence the eight independent mutts, though the main Mutt started by Shri Madvacharya, who consecrated and installed the Shri Krishna image, continued as the Shri Krishna Mutt of Udipi.

The Pariyayam Swami meets the expenses of the worship and other incidental expenses from the income of his own mutt and the income of the Shri Krishna Mutt. He conducts the worship himself.

Shri Krishna Mutt is a shrine attached to the ancient Mutt started by Shri Madvacharya and is not a place of public worship. It has no individual existence apart from the Mutt. The shrine is not a place dedicated to, or for the benefit of, or used as of right by, the Hindu community in general, as a place of public religious Worship, but is intended for the Worship of the eight disciples only. It is however stated, in the Words of the plaint that 'worship by others could be offered only through Pariyayam Swami, with his consent and as a part of his ordinary worship.' Defendants Nos. 2 and 3, the heads of the two other mutts excluding the mutts of the plaintiffs, accepted the plaintiffs' case to be correct. The contesting defendant, the State of Madras, denied that the Shri Krishna Shrine is just a temple attached to the ancient must started by Shri Madvacharya. It is stated that it is one of the most important temples in India, that it attracts a large body of worshippers from throughout the country, that the Hindu public worship there as of right and that considerable offerings are made to the temple. It is denied that the temple is intended only for the worship of the eight swamiyars.

The learned Judges of the High Court delivered separate Judgments, but, in the main, agreed in the finding that the shrine in suit was a temple within the meaning of s. 2(1) of the Act, in view of the following considerations: (1) This institution had been referred to, by authoritative authors and in judicial pronouncements as Krishna temple. (2) The plaintiffs themselves stated in sub-paragraph (7) of paragraph 3 of the plaint that the Pariyayam Swami had the incontestable right to exclude anybody, including even the other Swamiyars of the eight mutts from the Shri Krishna Dev Temple during the period of his pariyayam. (3) The various documents by which certain properties had been endowed to this institution, refer to it as the temple. (4) The statements of the witnesses for the plaintiffs make it clear that Hindus in general, without any restriction, worship the deity, that different individuals had endowed permanent sevas, that the pilgrims include persons other than the followers of Shri Madvacharya and that during certain utsavs, thousands of Madvas and non-Madvas, Brahmins and non-Brahmins, attend the festival and the pilgrims put their money offerings in a box in front of the deity, (5) The inscriptions within the temple and the buildings near about show that this was not a private shrine appurtenant to the Mutt, but was a public institution under the general supervision of the Hindu sovereigns of that area. (6) The pamphlet issued for the help of the pilgrims, Exhibit B-10 states that all the pilgrims are invited to participate in the worship of the deity, which is done as many as nine times a day, and to make offerings. It gives details of the various kinds of sevas which could be offered by the devotees and the fees for each are to be determined by the Pariyayam Swami. It also states that the Pariyaya Mutt would arrange for homas, Udyapana, Thulabhara, Brahmopadesa, Annaprāsana and Namakarana ceremonies for the benefit of the devotees on payment of the perscribed amounts and that the devotees could endow sums of money for burning Nanda Deepa and Deepa Sthamba throughout the year, (7) The predominant feature of the institution has been held to be the service or worship of Shri Krishna and not the propagation of religious knowledge of the system of philosophy propounded by Shri Madvacharya, The learned Judges were of opinion that the facts that the system of worship in this temple, is different from the system in other temples that persons visiting the Pariyayam festival are fed and religious discourses are given on the occasion and that the swamiyars of the eight mutts had been interred in the compound near the temple, did not adversely affect the conclusion from the other circumstances that the Shrine is a temple to which the Hindus in general could go for worship as a matter of right.

On one point regarding Shri Madvacharya having a Mutt of his own, the learned Judges of the High Court appear to have had different views. Govinda Menon J., said :

"It is seen that the present institution is far famed throughout the length and breadth of India and the large concourse of people resort to this place for worship and there is nothing to show that the Swamiars have treated this institution as their private property or anything of the kind. The admissions of P.W, 2 as well as the other witnesses point to the fact that the temple is one intended for the benefit of the public and that public resort to it for religious worship and that though the image of Sri Krishna was installed by Madhwacharya in his own residence or lodging subsequent course of conduct during the centuries have made this abode of Sri Krishna a public temple."

He also stated, at another place in his judgment, "As I have stated already, originally there was a mutt and subsequent to the installation of the image of Lord Krishna there by Sri Madhwacharya it has grown up by centuries of public worship into a public institution."

Ramaswami J., has expressed himself differently on the question that Sri Madhvacharya had a mutt and installed the deity in it. He states, when considering the statement in Chapter 9 of the Madhwa Vijaya to the effect that Sri Madhvacharya sportively brought the image to the Mutt, "The Math referred to in the 42nd stanza must obviously mean the Kshetra of Anantheswara which is referred to as Roopya in Sampradaya Paddhati of Hrishikesha Thirtha. The reason is, as well pointed out by the learned Subordinate Judge, that as Achyuta Preksha had taken his abode in that Kshetra and was engaged in teaching to his disciples therein, this Kshetra must have been referred to as the Math as by that time it is nowhere established that Madhwacharya had established a Math of his own and the teaching should have all been done in the temple of Anantheswara itself, Therefore, the Math referred to must be the temple of Anantheswara. This receives corroboration in two ways. In the end of Madhwa Vijayam, it is stated that while expounding Aittariyopanishat to his Sishyas in the temple of Anantheswara, the Acharya is stated to have disappeared from mundane existence. In fact even today the seat which is said to have been used by Sri Madhwacharya is shown to the pilgrims. Secondly, that the Anantheswara temple was the seat of teaching by Madhwacharya receives corroboration and therefore separate Krishna Math could not have existed is seen from the importance attaching to Anantheswara even today. Anantheswara is considered to be the holder of the Muli right and Sri Krishna is treated as his tenant."

Learned counsel for the appellants submitted that the reference to the institution as a temple by the authoritative authors and in judicial pronouncements was really in a general sence, the institution being a temple in the usual sence of the terms as it is a shrine in which the idol of Sri Krishna is installed and is worshipped. His contention is that it is not a temple as defined in the Act, as the Hindus in general, or any section of the Hindus, had no right to worship there and that the fact that a number of pilgrims ordinarily visit the temple for worship is not inconsistent with the temple being a private one and not dedicated to the Hindus in general or a section of them. He pointed out that Ramaswami J., was wrong in stating:

".....P.W.1, the Matadhipathi of the Bhandrikere Mutt, had to admit in cross-examination the public participation as of right in the worship of the temple without the permission of the Paryaya Swami, thereby giving they go-by to the plaint allegations to make out that this is a private chaple."

This is correct, but does not materially affect the decision as such a conclusion from the statement could be arrived at.

We agree with the view of the learned Judges of the High Court that the shrine in suit is a temple as defined in s. 2 (1) of the Act.

The evidence on record is fully consistent with the findings of the Courts below that this temple is a place dedicated to the Hindu public and is used by them as a place of public religious worship. It is

not disputed that a large number of pilgrims from all over the country visit this place, take part in the worship there, make offerings to the deity and receive the prasada. The institution also receives monetary aid from the State.

In *Vibhudapriya v. Lakshmindra* (1) is quoted at page 232, an extract from the South Kanara Manual published under the authority of Government. The extract reads :

"The temple of Krishna, at Udipi, is said to have been founded by Madhavacharya him-self who set up in it the image of Krishna originally made by Arjuna and miraculously obtained from a vessel wrecked on the coast of Tuluva.....Besides the temple at Udipi he established eight 'Mathas' or sacred houses, each presided over by a Sanyasi or Swami. These exist to this day and each Swami in turn presides over the temple of Krishna for a period of two years and spends the intervening fourteen years touring throughout Kanara and the adjacent parts of Mysore levying contributions from the faithful for the expenses of his next two years of office, which are very heavy as he has to defray not only the expenses of the public worship and of the temple and Matha establishments, but must also feed every Brahman who comes to the place."

It is clear from this extract that the various Swamis tour about the country realising contributions from the devotees for the expenses which each of them has to incur during the period of his *pariyayam*, that the expenses which he has to incur during the period are heavy. The expenses are met out of the income during the two years of his *pariyayam* from the State aid and the offerings of pilgrims and income of his own *mutt*. The fact of raising contributions from the devotees resident in different parts of the country is clear proof of the fact that such devotees have a right to visit the temple and to worship there. If they have no such right, it is improbable that they would be visited by the Swamis for contributions.

The fact that no instance of any pilgrim being refused permission to worship during the course of the centuries since the installation of the deity goes a long way in establishing and supporting the finding of the Court below that the institution has been held out as one for the benefit of the Hindus and that the Hindus in general have gone to it for worship in exercise of their right of worship and not on account of the permission, express or implied, of the *Pariyayam* Swami.

It is true that the fact that a number of pilgrims visit the temple for worship regularly need not, in all cases, lead to the conclusion that the temple is a public one; but such a conclusion will not be arrived at only when there is good evidence about the temple being a private one. This is really what was held in *Babu Bhagwan Din v. Gir Har Saroop* (1) to which reference has been made by the learned counsel. The Privy Council, in that case, after coming to the conclusion that the general effect of the evidence was that the family had treated the temple as family property, dividing the various forms of profit, whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home and erecting *samadhs* to the honour of its, dead, said at page 9:

"In these circumstances, it is not enough in their Lordships' opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away, or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family."

It follows, therefore, that in the absence of goon evidence that a temple is a private one, the mere fact that it is visited by a large number of persons among the Hindu public without any restraint for a number of years, will be good evidence of the fact that the temple had been dedicated to the Hindu public and was for its benefit.

Reference may usefully be made to the case reported as *Sri Venkataramana Devaru, v. The State of Mysore*. (1) In this case, a temple was founded for the benefit of Gowda Saraswath Brahmins, who managed it throughout. They were the followers of the Kashi Mutt. The head of that Mutt performed various religious ceremonies in the temple. It was alleged that persons who were not Gowda Saraswath Brahmins could not enter without the permission of the trustees. However, there was no instance in which such permission was refused. There was evidence that all communities had been freely admitted into the temple. It was contended that the free admission of all communities and there being no instance of any refusal of permission, led to the conclusion that the Hindu public generally had a right to worship in the temple. In considering this contention, it was said at page 907 :

"The law on the subject is well settled. When there is a question as to the nature and extent of a dedication of a temple, that has to be determined on the terms of the deed of endowment if that is available, and where it is not, on other materials legally admissible; and proof of long and uninterrupted user would be cogent evidence of the terms thereof. Where, therefore, the original deed of endowment is not available and it is found that all persons are freely worshipping in the temple without let or hindrance, it would be a proper inference to make that they do so as a matter of right, and that the original foundation was for their benefit as well. But where it is proved by production of the deed of endowment or otherwise that the original dedication was for the benefit of a particular community, the fact that members of other communities were allowed freely to worship cannot lead to the inference that the dedication was for their benefit as well. For, as observed in *Babu Bhagwan Din v. Gir Har Saroop* (67 I.A.

1), 'it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away'."

There is no documentary evidence in this case for supporting the contention of the appellants that the temple was originally founded for the private use of Shri Madvacharya and his disciples. In the absence of such evidence, the long user of the temple by the Hindus in general, together with there being no instance of anybody having been refused permission, must lead to the conclusion and support the finding that the temple had been dedicated to the Hindus in general, and was for their benefit.

Further, there is no evidence on record, oral or documentary, of course oral was not possible, of the fact that Shri Madvacharya had a Mutt of his own prior to his obtaining the idol of Sri Krishna which he installed in this temple. He is said to have set up eight different Mutts, each for one of his eight disciples. All these eight Mutts have particular names. No Mutt is named after Sri Madvacharya. Ramaswami J., has given good reasons for the view that Sri Madavcharya had no Mutt of his own. A primary Mutt associated with the founder himself must have and independent permanent head. There is no such Matathipathi or head of this so-called Mutt. One of the eight swamis, the heads of the Asth Mutts, acts as head or manager of this institution for a period of two years. The absence of a head and this system of a head or manager being appointed by rotation, very clearly point to the conclusion that the institution in suit is neither a Mutt nor a temple appurtenant to a Mutt.

In 1937, the Board of Commissioners for the Hindu Religious Endowments, Madras, passed an order under s. 84 of the Madras Hindu Religious Endowments Act, 1926 (Act II of 1927), that this institution was not a temple as defined in that Act, but was a place of worship appurtenant to Sri Krishna Devaru Math, Shivalli, Udipi Taluk, South Kanara, District. It has been urged for the appellant that this order bars any further enquiry and a different conclusion under the Act with respect to the nature of this institution. The Courts below have held against this contention and, we think, rightly. The finding of the Board was, in their own words:

"Our decision that the institution is appurtenant to a math and forms part of it can in no wise affect the rights of the deity to the properties owned by it and the rights of the Hindu public to worship direct, subject to the regulations prescribed by the Paryayam Swamiar for the time being. We hold that it is not a temple as defined in the Act, but it is a place of worship appurtenant to the Math."

The finding that the Hindu public had a right to worship in this temple is sufficient to make the institution a temple within the definition of that term in the Act (Madras Act V of 1947), even if the temple be appurtenant to a Mutt. The Board's order, therefore, cannot affect the consideration of the question of the institution being a temple within the meaning of the definition in the Act.

We are therefore of opinion that the Courts below have come to the correct conclusion that the institution in suit is a temple within the meaning of the word "temple" in the Act and that the appeal should fail. We accordingly dismiss the appeal with costs.

Appeal dismissed.