REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6460 OF 2008

VIJENDRA KUMAR & ORS. ...APPELLANTS

VERSUS

THE COMMISSIONER, A.P. CHARITABLE & RELIGIOUS INSTITUTIONS & ENDOWMENT DEPARTMENT & ANR. ...RESPONDENTS

J U D G M E N T

AMITAVA ROY, J.

1. The appellants in their relentless pursuit for a declaration that the temple, which is the subject matter of the *lis* is their private place of worship and not a public shrine, has put to challenge the determination to the contrary made by the High Court vide impugned judgment and order dated 10.07.2007 rendered in Letters Patent Appeal No. 393 of 1992. Thereby the verdict of the Single Judge in the writ petition filed by the appellants had been affirmed.

2. We have heard Mr. V.V.S. Rao, learned senior counsel for the appellants and Mr. P. Venkat Reddy, learned counsel for the respondents.

3. The background facts in short need be outlined at the threshold for the desired comprehension of the issue seeking resolution. The flow of events demonstrate that the grandfather of the respondents, Ram Harak Tiwari (since deceased) had acquired the premises in question from one Kondaiah by sale deed dated 18.12.1302 Fasli corresponding to 18.12.1893 (as per English Calendar) and as claimed by them had installed the family idol of Shri Hanuman Ji made of silver which was movable and not attached to the earth exclusively for the worship by the family members. The suit temple, as is asserted by the respondents, came to be registered in the Books of Endowment (Muntakab of Registry of Endowment) recording the name of Gokarnath Tiwari, the father of the appellants as the endower of Wakf (that is the temple) on 16th Aban 1345 Fasli (corresponding to the

year 1936 as per the English Calendar). The extract from the Registry of Endowment discloses that the entry had been made as per the order of the Minister, Ecclesiastical Department as contained in File No.60/1 of 1945 Fasli (corresponding to the year 1933) of the Directorate of Endowment. This document also indicated that it had been published in the contemporary Official Gazette. According to the appellants, the initial structure was temporary in nature being a tin shed and was later on converted into a permanent one with RCC roof by obtaining due sanction from the concerned municipal authority.

4. As the matter stood at that, in the year 1965 the appellants received a letter from the Endowment Department requiring them to submit an account/budget of the temple on the ground that the same had been endowed by their father for public purpose. The appellants filed their counter in case No.28 of 1968 before the Deputy Commissioner, Andhra Pradesh Charitable Hindu Religious

Institutions and Endowments, Government of Andhra Pradesh, Hyderabad, instituted by one Mr. Laxmanrao and another, where they denied that the temple had ever been dedicated or endowed to the public by their father. They claimed as well that all the investments made in the structure/premises were with the funds of the family and with the due sanction of the municipal authorities.

5. After the death of their father, Gokarnath Tiwari on 21.06.1969, the appellants continued to manage the affairs of the temple and conduct the worship therein as an exclusive family affair.

6. The appellants thereafter in the year 1975 filed an application under Section 77 of the Andhra Pradesh Hindu Charitable and Religious Institutions and Endowment Act of 1966 (hereafter to be referred to as "the Act") with the same contention.

7. This proceeding, later on, under Section 92 of the Act, was transferred to the Deputy Commissioner (Endowment) at Guntur for disposal and was

numbered as OA 66 of 1975. By order dated 28.2.1977, this application of the appellants was dismissed with the observation that the suit temple was a public temple.

8. Situated thus, the appellants instituted the suit being OS 58 of 1977 in the Court of Chief Judge, City Civil Court, Hyderabad under Section 78 of the Act praying for an affirmation that the suit temple was a private property and claimed for a decree, inter alia for a declaration:

> a) That the order dated 28.2.1977 of the Deputy Commission, Endowment, Guntur proclaiming the temple to be a public temple was null and void and inoperative in law;
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> b) That the entry in the Register of Endowments dated 11.11.1342 Fasli on the basis of which the respondents claim that the suit temple has been endowed by their father was null and void and not binding on them.

9. In the plaint, the appellants while restating the above facts and reaffirming their claim that the temple was

their private property, elaborated that they had been paying the taxes for the property along with the electricity charges and that they did not receive/collect any donation or accept any offerings from the public for the maintenance of the suit temple and that the same had never been dedicated to the public. They thus, reiterated that the temple was their exclusive private property from the time of their grand-father.

10. In their written statement, the respondents contended that the grand-father and the father of the appellants were only the Pujari (Worshipper/Priest) of the suit temple and that the same was public in nature, where large number of devotees daily visited and worshiped the deity by making variety of offerings. They asserted that the temple had been endowed by the father of the appellants for charitable purposes for the benefit of the public and that such endowment had been registered in the Book of Endowment in the year 1342 Fasli (corresponding to 1933) pursuant to which "Muntaqab" had been issued and have been duly

published in the Hyderabad Gazette. They also pleaded that the suit was beyond time. According to them, the temple being registered as Public Endowment, the appellants were obligated in law to submit the budget of income and expenditure thereof to the Endowment Department.

11. In the suit, both sides adduced oral and documentary evidence in support of their rival stands, elaboration whereof is inessential. It is, however, significant to refer to the document Exh.B6, the extract of the entry in the Register of Endowment as sought to be introduced by DW5, an erstwhile staff of the Directorate of Endowment. The said document, the Gazette publication whereof is not in dispute, prima facie appears to be one on the basis of an extract from File No. 60/2 of the Endowment Department of the year 1342 Fasli (correspondingly year 1933) and has been made on the order of the Minister, Ecclesiastical Department conveyed through letter of the Secretary, Judicial and Police etc. dated 11 Mehar 1345 Fasli

(corresponding to year 1936). The above endorsement seems to be subscribed by the then Superintendent, Endowments. This document, amongst others, records the name of P. Gokarnath Tiwari, the father of the appellants to be the endower of the premises identified to be the suit temple with the object of "Wakf". The father of the appellants has been described therein to be the (Pujari/Priest) of the temple. A copy of the extract also appears to have been forwarded to the father of the appellants describing him to be the endower apart from the other public authorities, as mentioned therein. An endorsement by the Superintendent Endowments to this effect also is available on the document.

12. Suffice it to state that this document appears to be in a prescribed form with the necessary columns to register the particulars of a public endowment, if made, to be entered in the Register of Endowment, maintained by the Director of Endowments, Govt. of Hyderabad (as it was then). As a corollary, if this

document is admissible in law with all its probative worth, it would determinatively clinch the issue in favour of the respondents.

13. The Trial Court, however, by the judgment and order dated 20.7.1981 decreed the suit of the appellants whereupon the respondents have filed an appeal under Section 96 of the Civil Procedure Code before the High Court. The Trial Court qua Exh.B6 was of the view that though it contained an entry in the Book of Endowments indicating that the father of the appellants had endowed the property in the *lis* for Wakf, as the Ecclesiastical Department did not take steps for exercising its supervision for over four decades and therefore the appellants and their predecessors had continued to treat the same as their private property, the validity of the entry was doubtful. It however noted that the entry had remained unchallenged within one year, it could not be expunged as well. Eventually, however the Trial Court held the entry as null and void for the sole reason that

till 1965, the Department did not bother to supervise the suit temple and the appellants continued to treat the same as their private property by paying municipal tax, remodeling the structures with two permissions from the Municipality etc.

14. The learned Single Judge, on an assessment of the materials on record, reversed the findings of the Trial Court and held that the temple was a public temple, both in view of the proved fact that it was being visited by the members of the public in profuse numbers daily with offerings in cash and kind, but also in view of the entry in the Register of Endowment, Exh.B6, which even otherwise in view of Section 114(e) of the Indian Evidence Act, 1872 permitted a presumption of validity of official acts pertaining thereto. The learned Single Judge, on this consideration, negated the plea of the appellants that neither such an endowment had been made by their father nor any notice had been received by them with regard thereto at any point of time. Mentionably, the

appellants in the suit had contended that their father did not apply to the Ecclesiastical Department for the endowment, as alleged and it could have been the mischief of some of their neighbours to make such an application under the forged signatures of their father. According to them, the temple was their family place of worship, which of course in view of its location, used to be visited by the members of the public for which, however, the same did not get transformed into a public temple.

15. The appellants preferred Letters Patent Appeal before the Division Bench of the High Court, which rendered the judgment impugned. As the text thereof would demonstrate, the High Court dwelt upon the decisions cited at the Bar, amongst others on the characteristics and determinants to ascertain the true nature of a temple, private or public and eventually affirmed that the temple involved as held by the learned Single Judge was indeed public in nature. In arriving at this conclusion, the High Court, inter alia

recorded that the evidence established, that the members of the public do visit the temple as a matter of right with no restriction to their access at any point of time and that there was no material to prove that the endower had left extensive properties belonging to him or the family for the purpose of maintenance of the temple for their exclusive purposes and instead it was being run and maintained by public offerings. Apart from taking note of the entry in the Register of Endowments, published in the Official Gazette, the High Court also minuted that there was nothing on record to authenticate that there was any prohibition to the acceptance of public subscriptions or offerings for the temple. The presumption of validity of official acts in terms of Section 114(e) of the Indian Evidence Act, 1872 as drawn by the learned Single Judge, was affirmed as well qua Exh.B6 . The temple was thus proclaimed to be a public temple.

16. Mr. Rao, learned senior counsel for the appellants has strenuously argued that the temple property had

been and is the exclusive asset of the appellants and their family as is amply established by the materials on record and thus, the finding to the contrary being against the weight thereof, is palpably illegal and unsustainable in law and on facts. According to the learned senior counsel, the private temple is a place of worship of the appellants and their family members and by virtue of its present location due to the alteration in the topographical orientations from time to time, it is situated by the public thoroughfare for which the members of the public, while passing by the way, do worship and offer their services without any further involvement. The learned senior counsel has insisted that such association of the members of the public solely due to religious sentiments per se would not convert the temple, which is otherwise an exclusive family property of the appellants, into a public institution. Mr. Rao in categorical terms denied that the temple had ever been endowed by the father of the appellants as it sought to be represented by the

entry in the Register of Endowment, Exh.B6 and urged that no notice ever had been served on the appellants or their father at any point of time which therefore, renders this instrument non est in law and of no probative worth. According to him, mere publication of this document in the Official Gazette is not of any decisive significance whatsoever. Mr. Rao has urged that the overall finding that the temple is a public temple is patently erroneous and is liable to be set-aside.

17. The learned counsel for the respondents, to the contrary has asserted that not only the appellants have failed to demonstrate by adducing cogent and convincing evidence that the temple and the premises thereof had not been endowed to the public, the contemporaneous entry in the Register of Endowments maintained in the official course of business and published in the Official Gazette leaves no manner of doubt that the temple is a public temple. The concurrent findings to this effect being based on

credible evidence on record, no interference is called for, he maintained.

18. We have extended our thoughtful consideration to the rival assertions. Noticeably, though the appellants had throughout contended that the temple and its premises are their private property, they admit that they had received a notice/letter from the Endowment Department in the year 1965 asking them to submit the account/budget of the expenditure thereof. Though, they did file their counter in Case No. 28 of 1968 instituted by one Mr. Laxman Rao and another in the office of the Deputy Commissioner, Andhra Pradesh Charitable Hindu Religious Institution and Endowments, Govt. of Andhra Pradesh contending that the temple had never been dedicated or endowed to the public at any point of time, they chose to file the application under Section 77 of the Act before the Deputy Commissioner, Hyderabad only in the year 1975. This is more so inspite of the fact that their stand was not accepted by the Endowment

Department in the earlier proceeding.

19. Be that as it may, the Deputy Commissioner, Guntur on the proceedings registered on their application under Section 77 of the Act, having declared the temple to be a public temple, they instituted the suit for setting-aside the said determination, which has eventually culminated in the order impugned in the present appeal.

On an analysis of the evidence adduced by the parties, the attention to which had been drawn in course of the arguments it is obvious that the document Exh.B6 has the potential of being of definitive significance to decide the issue as to whether the temple is a private temple or a public one. The oral evidence adduced by the parties are more or less evenly balanced and therefore does not demand any dilation. Apropos Exh.B6, to reiterate, it is per se in a prescribed form and is an extract from File No. 60/2 of the Endowment Department available in 1342 Fasli (year 1933). The entry is of the year 1345 Fasli (year 1936) and has been made as per the order of the Minister,

Ecclesiastical Department in the Register of Endowment, maintained by the Director of Endowment, Govt. of Hyderabad. This document discloses that P. Gokarnath Tiwari, the father of the appellants had endowed the suit temple for "Wakf", i.e. public/charitable purpose, he being shown as the Pujari (Priest) thereof. It is not disputed that this document had been published in the Official Gazette, a copy thereof, as the document endorses, had also been forwarded to the father of the appellants referring to him as the endower of the property. On an overall consideration of the features of this document, it would prima facie appear, if all legal essentialities of procedure in connection therewith had been adhered to, that an endowment had indeed been made by the father of the appellants. Added to this as well, is the rebuttable presumption of validity of official acts which can be permissibly drawn in terms of Section 114(e) of the Indian Evidence Act, 1872.

20. This notwithstanding, we, in course of the hearing, had enquired from the Assistant Commissioner, Endowments, who was present in

court as to the legally prescribed procedure prevalent at the relevant point of time for registration of the endowment of the kind as involved. This is more so in view of the insistent stand of the appellants that such endowment had never been made by their father and that no notice with regard thereto had ever been received by him or them. They also indicated that this could be the handiwork of some mischievous neighbours of theirs. It is a matter of record that in between the proceedings with regard to the status of the temple, there was also a suit filed by the neighbors of the appellants for a right of passage which did end in a compromise and as claimed by them (appellants), the ownership of the temple premises had been established.

21. The officer concerned accordingly laid before us a copy of the Endowment Regulations, sanctioned by the Nizam of Hyderabad in 1349 Fasli (1940 AD), which amongst others laid down the procedure for compilation of the Book of Endowments, as per

Regulations 3 to 8. In substance these provisions stipulated that the Book of Endowments would be prepared in the office of the Endowment Department and would contain all endowments which are in force or which would be brought into force in future under the relevant rules. It made it to be the duty for every trustee or endower of an endowment to inform in writing with regard to an endowment, in case it was an immoveable property which had not been entered in the "Book of the Endowments", to the Director of the Endowments concerned. As per Regulation 5, every person had the right to inform the Director of Endowment Department of the Taluq with regard to an endowment which had not been entered in the Book of Endowments and to the Director of Endowments in case the property was situated in Hyderabad. Regulation 6 predicated that on the receipt of every such intimation or any other reliable information in some other way, the Director of Endowment of the Taluq if satisfied prima facie about any property to

have been endowed but not entered in the Book of Endowments, would publish a notification in the Tehsil Office and if the property was immovable, to publish it in any prominent place and also at the place where the endower resided, in addition to other places where he thought fit and also have the same published in the Gazette. As per Regulation 7, if no person raised objection within the period mentioned in the notification and if the property was found to be legally endowed, the same would then be registered. In case, however any objection was made within the period specified by any person, who was interested or was concerned with the endowed property in any capacity, the Director of Endowments of the Taluq was required to hold an enquiry as to whether the property had been legally endowed or not and if proved to have been endowed legally, to enter the same in the Book of Endowments, together with intimation to be given to the Director of Endowment Department, Hyderabad Govt. Remedies to the person aggrieved have also

been provided. Incidentally, however, these Endowments Regulations are of 1940 AD, i.e. subsequent to the year of entry contained in Exh.B6. On being queried by us, the Assistant Commissioner, Endowment apprised the Court that the same procedure prevailed under the earlier regulations which are in Urdu language and are being presently in the process of getting translated. This position has not been disputed on behalf of the appellants. The exercise as prescribed for registering any endowment, under the aforementioned Regulations clearly accords with the procedure, contemplated in law having regard to the consequence of endowment of a private property for public/charitable purposes. For obvious reasons, we refrain from elaborating further in absence of better particulars.

22. In view of the above Regulations however, and noticing the persistent stand of the appellants that their father had not endowed the suit premises to render the temple a public temple and that neither he

nor they had ever received any notice in connection therewith, we are of the considered opinion, in the backdrop of the series of litigation including the suit filed by the neighbours of the temple premises, that it would be in fitness of things that an opportunity be granted to the parties to adduce all evidence, oral and documentary, at their disposal available to them to finally and conclusively determine as to whether the temple and its premises had been endowed by the father of the appellants, as otherwise evidenced by Exh.B6 or otherwise in accordance with the law and the procedure prescribed therefor for further consequential action, as warranted. We are inclined to adopt this course, to reiterate, in view of the equally balanced oral evidence on record and the formidable significance of Exh.B6, the entry in the Register of Endowments, which if has been prepared by following the procedure, as prescribed by law then prevalent, would seal the issue in favour of the respondents.

23. It is worthwhile to mention that DW5, who

exhibited this document, however, expressed his ignorance as to the manner in which the same had been prepared. There is no indication as well that this document had been proved by him with reference to the original records. In cross-examination, this witness has conceded as well that he had no personal knowledge about the application made for registering the suit temple in the Book of Endowments and that he was not aware as to when the "Muntaqab" had been issued. In this view of the matter, the assertion on behalf of the appellants that the Gazette Notification of this document per se in absence of the proof of the procedure of making of this entry as required in law, would not be decisive, cannot be lightly brushed aside. As it is, the presumption of validity of official acts, is essentially rebuttable and can be dislodged by convincing evidence to the contrary.

24. In the wake of the above and on a consideration of the totality of the facts and circumstances of the case, this appeal is disposed of with a direction to the

appellants to file an appropriate representation before the concerned authority under the Act in support of their claim that the temple and its premises are the exclusive private property of theirs and their family and had not been endowed for wakf or charitable/public purposes. This should be done within a period of four weeks herefrom. Needless to say, the authority concerned would issue notice to the Department to file their response and thereafter afford adequate opportunity to both the sides to adduce evidence and decide the issue as to whether the temple and the premises involved are private or public in nature by recording reasons., It is too trite to mention that in undertaking this exercise, the adjudicating authority would take note of all relevant facts and the law applicable. The exercise, as ordered, should be completed within a period of six months from the date of filing of the representation by the appellants. In the attendant facts and circumstances, we direct that the status quo of the property involved, as on date shall be

maintained till the adjudication, as directed, is over. The parties are hereby directed to co-operate so as to enable the authority to meet the deadline of time fixed by this Court.

25. The impugned judgment and order is set-aside. We make it clear that we have not offered any final comments on the merits of the case and the authority would adjudicate the issue without being influenced by any observation made hereinabove.

26. The appeal is thus, allowed in these terms. No costs.

.....J.
[N.V. RAMANA]

.....J.
[AMITAVA ROY]

NEW DELHI;
DECEMBER 15, 2017.