IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02 .02.2009

CORAM:

THE HONOURABLE Mrs.JUSTICE R.BANUMATHI

W.P.No. 18248 of 2006

and

M.P.Nos.2/2006 and 1/2008

W.P.No. 18248 of 2006:

Sri Sabanayagar Temple,
Chidambaram
rep. by its Secretary of
Podhu Dikshidar,
Chidambaram. ... Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by Secretary,
   Department of Tamil Development,
   Religious Endowments & Information
   Department,
   Fort St. George, Chennai-9.

2. The Commissioner,
   Hindu Religious Endowments,
   Nungambakkam High Road,
   Chennai-34.

3. M.P.Sathiyavel Murugan,
   Founder/Director,
   Tamil Vazhipattu Payirchi Maiyam,
   Adambakkam, Chennai-88.

4. U.Arumugasamy. ... Respondents

[3rd Respondent and 4th Respondent
are ordered to be impleaded as
Respondents in the Writ Petition
as per the Orders in M.P.No.2/2006
and M.P.No.1/2008 dt. 02.02.2009.

M.P.No.2/2006 :

M.P.Sathiyavel Murugan,
Founder/Director,
Tamil Vazhipattu Payirchi Maiyam,
Adambakkam, Chennai-88. ... Petitioner/
Proposed Respondent.

Vs.

1. Sri Sabanayagar Temple,
Chidambaram,
rep. by its Secretary to
Podhu Dikshidars, Chidambaram.

2. The State of Tamil Nadu
rep. by Secretary,
Department of Tamil Development,
Religious Endowments & Information
Department,
Fort St. George, Chennai-9.

3. The Commissioner,
Hindu Religious Endowments,
Nungambakkam High Road,
Chennai-34. ... Respondents

M.P.No.1/2008 :

U.Arumugasamy. ... Petitioner/
Proposed Respondent.

Vs.

1. Sri Sabanayagar Temple,
Chidambaram,
rep. by its Secretary to
Podhu Dikshidars, Chidambaram.

2. The State of Tamil Nadu
rep. by Secretary,
Department of Tamil Development,
Religious Endowments & Information
Department,
Fort St. George, Chennai-9.

3. The Commissioner,
Hindu Religious Endowments,
Nungambakkam High Road,
Chennai-34. ... Respondents

W.P.No.18248/2006 : Writ Petition filed under Art. 226 of the Constitution of India to issue Writ of Certiorari calling for the records of the 1st Respondent made in G.O.Ms. (D) No.168 dated 09.5.2006 and quash the same.

M.P.No.2/2006 and M.P.No.1/2008 : Petitions are filed to implead the Petitioners as Respondent in W.P.No.18248/2006.

For Petitioner in W.P.No.18248/2006 and 1st Respondent in : Mr. B.Kumar Senior Counsel for

M.P.2/2006 & 1/2008 Mr.K.Chandrasekaran

For Petitioner in M.P.No.2/2006 and M.P.1/2008 : Mr.R.Gandhi. Senior Counsel for for Ms.Hemalatha and Mr.R.Sagadevan

For Respondents in W.P.No.18248/2006 and 2nd and 3rd Respondents in M.P.2/06 & 1/08. : Mr. R.Ramasamy Addl. Advocate General for Mr.R.T.Chandrasekaran, Spl.GP [HR & CE]

COMMON ORDER

Writ Petitioner Secretary of Podhu Dikshidar challenges the final order passed by the Government dismissing the Revision Petition filed by the Petitioner under Sec.114 of HR & CE Act. The impugned order of the Government confirms the order of the Commissioner, HR & CE dated 31.7.1987 appointing Executive Officer for Sri Sabanayagar Temple, Chidambaram under Sec.45 (1) of HR & CE Act.

2. Administration of Sri Sabanayagar Temple, Chidambaram has been the subject matter of litigation for about a century. Dispute relating to administration of temple has had chequered career. For the understanding of contentious points raised, it is necessary to briefly refer to the earlier litigations and the background.

3. Scheme of Administration & O.S.No.16/1933

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(1939) II MLJ 11

(i) Arulmigu Sabanayagar Temple (Natarajar) at Chidambaram, Cuddalore District is a Public Hindu Religious Institution, within the meaning of Sec.6 (18) read with Sec.6 (20) of HR & CE Act and all the provisions of the said Act are applicable to the above said temple. The erstwhile Hindu Religious Endowment Board settled a "Scheme of Administration" in Board's Order No.997 dated 08.5.1933 under Tamil Nadu Act II of 1927.

(ii) Some of the Podhu Dikshidars have filed suit in O.S.No.16/1933 on the file of District Court, South Arcot to set aside the Board's Order on the ground that temple is an absolute private property of Podhu Dikshidars and out side the scope of the Madras Hindu Religious Endowment Act, 1927.

(iii) District Court, Cuddalore rejected the Dikshidar's claim of the temple being private and passed a decree modifying the scheme settled by HR & CE Board in O.A.No.73/1932. On appeal filed by Dikshidars in A.S.No.306/1936, High Court confirmed the scheme with some modifications which has been reported in (1939) II MLJ 11.

(iv) G.O.Ms.No.894, Rural Welfare Dept. dated 28.8.1951

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G.O.Ms.No.1278, Revenue Dept. dated 21.5.1954

Though the temple had been declared as a public temple, provisions of the Act could not be enforced. Hence, in order to enforce the provisions of the Act, temple was notified under Chapter VI (A) u/s.65 of the Act in G.O.Ms.No.894, Rural Welfare Dept. dated 28.8.1951. The said Government Order was challenged in W.P.Nos.379 and 380/1951 by Dikshidars and the notification was quashed by the Judgment dated 13.12.1951. Challenging the Order in W.P. Nos. 379 and 380/1951, Government have filed C.A.No.39/1953 before the Supreme Court. Meanwhile, by G.O.Ms.No.1278, Revenue Dept. dated 21.5.1954, State Government cancelled the above notification and the Civil Appeal was therefore withdrawn.

(v) W.P.No.5638/1982:-

Stating that Podhu Dikshidars have failed to carryout the lawful orders issued by the Department and the Management of the temple was unsatisfactory, notice in Rc.No.52754/1982/B6 dated 20.7.1982 was issued to the Secretary of Podhu Dikshidars pointing out several irregularities in the administration of the temple and its properties and the proposal to appoint an Executive Officer. That order was challenged by the Secretary of Podhu Dikshidars in W.P.No.5638/1982 before the High Court, Madras. By the Judgment dated 09.8.1983, High Court directed that the aforesaid notice would be treated only as show cause notice and not as a decision and that it was open to the Dikshidars to putforth their objections that were available to them including the vires of Sec.45 of HR & CE Act.

(vi) Pursuant to the direction of the Court, Secretary of Podhu Dikshidars have filed reply on 09.01.1984. Thereafter, enquiry was conducted by the Commissioner. Main contention of Dikshidars was that appointment of Executive Officer would be interfering with their rights guaranteed under Art. 26 of Constitution of India. Commissioner has passed an order on 31.7.1987 observing that appointment of Executive Officer is only to look after the administration of the temple and the management of the properties. Commissioner observed that appointment of Executive Officer will not mean interference with the rights of Dikshidars relating to religious practices in the temple.

(vii) W.P.Nos.7843/1987 & W.A.No.145/1997:-

As against the order of appointment of Executive Officer, again Podhu Dikshidars have filed W.P.No.7843/1987 before the High Court. Executive Officer has assumed charge of the temple on 10.8.1987. High Court has not stayed the appointment of Executive Officer, but stayed only Rule 3 i.e. powers and duties of the Executive Officer. W.P.No.7843/1987 was dismissed on 11.2.1997 which was challenged by Podhu Dikshidars in W.A.No.145/1997. In the Writ Appeal, Court has directed Podhu Dikshidars to file a Revision u/s.114 of HR & CE Act before the Respondents. Further, the Court has ordered stay of Clause-III to continue till the disposal of the Revision.

(viii) Consequently, Podhu Dikshidars have filed Revision Petition before the Government under Sec.114 of the Act. Revision was rejected by the Government in G.O.Ms.No.168 TDC & RE Dept. dated 09.5.2006 which is now challenged in this Writ Petition.

4. Opposing the Writ Petition, Respondents have filed counter stating that the appointment of Executive Officer was only to streamline the administration of the temple and not to displace the Podhu Dikshidars from the temple. Stand of the Government is that Petitioner has failed to perform the lawful duties enjoined on them u/s.28 of the Act. It is averred that Podhu Dikshidars have not maintained the accounts and that the

offerings to the temple by worshipers have not been accounted for by them and that for effective supervision, better management and administration, appointment of Executive Officer is very much essential.

5. Onbehalf of the Writ Petitioner, Mr.B.Kumar, learned Senior Counsel has made an elaborate submissions inter alia contending that the direction of the Court in W.P.No.5638/1982 to issue fresh show cause notice was not kept in view. Learned Senior Counsel inter alia made the following submissions:-

Once the Court directed the Government to consider the matter on merits, the Authority should have elaborately enquired into merits of the matter. Neither the Commissioner nor the Government had gone into question of mismanagement.

Before appointment of Executive Officer, Sec.45 does require issuance of show cause notice. Unless there is enquiry and finding, the administration of the temple by Podhu Dikshidars cannot be interfered with.

As per the decision in 1952 I MLJ 557, the temple is a denominational temple and the Writ Petitioner derived its right from its constitution and Petitioner is entitled to the protection under Art.26 of Constitution of India.

In view of Sec.107 of HR & CE Act, provisions of the Act are not to affect the rights of the religious denomination.

Appointment of Executive Officer is an interference with the religious affairs and the same is violative of Art.226 of Constitution of India.

6. Contending that right to administer the property does not mean maladministration of the property, Mr. R.Ramasamy, learned Addl. Advocate General inter alia made the following submissions:-

Sri Sabanayagar temple is a public temple.

Podhu Dikshidars do not have separate faith or religious tenets other than that of Hindu faith and therefore, Podhu Dikshidars are not 'religious denomination'.

Expression used by the Commissioner 'for better and efficient management' cannot be construed that the Commissioner has shifted the basis.

There had been number of omissions and commissions to mismanagement and mismanagement continues. Executive Officer was appointed to set right the mismanagement, better and efficient management of the temple.

In 1952 (1) MLJ 557 nowhere it was held that Chidambaram temple is a 'denominational temple.

After appointment of Executive Officer, his powers and duties are demarcated and Podhu Dikshidars are not completely obliterated from the administration of the temple.

7. Impleading Petitioner Arumugasamy is 79 years old Sanyasi and claim to be a devotee of Lord Shiva, a Sivanadiar living at Kumudimoolai village, Bhuvanagiri Taluk, Chidambaram. I have also heard at length Mr. R.Gandhi, the learned Senior Counsel for the Impleading Petitioner.

(i) Grievance of the said impleading Petitioner is that he was not permitted to sing Devaram at Chidambaram Natarajar temple and that impleading Petitioner was beaten and chased away by Dikshidars. In this regard, on 04.07.2000, criminal case was registered by the Chidambaram Town Police in Cr.No.318/2000. In Crl.M.P.No.851/2001, the Addl. District Judge/Chief Judicial Magistrate, Cuddalore passed an order on 05.10.2001 dismissing the complaint. Challenging that order, Petitioner filed Crl. R.C.No.528/2002 which was dismissed by the High Court. Challenging that order, Petitioner has filed SLP No.909/2004 and the same is said to have been admitted by the Supreme Court.

(ii) Grievance of the said Impleading Petitioner is that he was not permitted to recite Devaram and Thiruvasagam at Thiruchitrambala Medai of Chidambaram temple. Earlier, Petitioner has filed W.P.No.2261/2004 wherein the Court has permitted the Petitioner to go inside the temple and recite Devaram and Thiruvasagam. Jt. Commissioner of HR & CE, Mayavaram rejected the Petitioner's request (12.12.2004). Petitioner filed Revision before the Commissioner, HR & CE in R.P.No.67/2007 wherein the Commissioner set aside the order of Jt. Commissioner and permitted the impleading Petitioner Arumugasamy to recite Devaram and Thiruvasagam at Thiruchitrambala Medai in the Natarajar temple. The order of the Commissioner was challenged by Podhu Dikshidars by filing W.P.No.18424/2007 wherein the impleading Petitioner is arrayed as 3rd Respondent. Writ Petition filed by Podhu Dikshidars [W.P.No.18424/2007] was dismissed on 22.5.2007. Against which Writ Appeal [W.A.No.776/2007] was preferred which was also dismissed on 06.12.2007.

(iii) From the submissions of the learned Senior Counsel appearing for the impleading Petitioner, it comes to be known that impleading Petitioner Arumugasamy is a Sivanadiar and is a interested person in the proper administration of the temple. Stating that impleading Petitioner is unable to recite Devaram and Thiruvasagam in the temple in a fear and that he apprehends danger from Dikshidars, Petitioner had filed impleading Petition in M.P.No.1/2008 seeking to implead himself in the present Writ Petition.

(iv) According to the impleading Petitioner, he came to know about the Writ Petition filed by Podhu Dikshidars after the Executive Officer had taken charge and management of the temple. Petitioner averred that since Stay was granted, Executive Officer is unable to perform any acts and Petitioner had filed the impleading Petition.

(v) Drawing Court's attention to various dates and events, learned Senior Counsel for the impleading Petitioner submitted that the impleading Petitioner was assaulted by Dikshidars inside the temple on various occasions and that Petitioner is a necessary party to be impleaded so as to protect the ancient temple. Learned Senior Counsel also drawn Court's attention to number of criminal cases filed against Dikshidars either at the instance of the Petitioner or at the instance of other devotees.

(vi) Mr. R.Gandhi, learned Senior Counsel for the impleading Petitioner placed reliance upon G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein Government has passed an order permitting any devotee can become a Archaga, irrespective of caste and colour. On the basis of the said G.O., impleading Petitioner made an attempt to recite Devaram and Thiruvasagam at Thiruchitrambala Medai and that Podhu Dikshidars had filed suit in O.S.No.176/2006 against the impleading Petitioner.

(vii) Learned Senior Counsel for the impleading Petitioner would submit that to implement the said G.O. and to sing Devaram and Thiruvasagam and also for peaceful worship, appointment of Executive Officer was justified. Learned Senior Counsel would further submit that impleading Petitioner is necessary party as he is interested in fighting the worshipping right.

(viii) In M.P.No.2/2006, Impleading Petitioner Sathiyavel Murugan is the Founder/Director of Tamil Vazhipattu Payirchi Maiyam functioning at No.12/F1, 11th street, New Colony, Adambakkam, Chennai-88.

(ix) According to the Impleading Petitioner Sathiyavel Murugan he is interested in promoting Tamil Mantrams as per Agamas in various places including Foreign countries with religious affairs and Impleading Petitioner is interested in the subject matter and as such he has to be impleaded as Respondent in the Writ Petition.

(x) Onbehalf of Podhu Dikshidars, Mr. B.Kumar, learned Senior Counsel submitted that if at all the impleading Petitioner Arumugasamy had any grievance, he has to approach the HR & CE Board and as such Petitioner cannot be impleaded as Respondent in the Writ Petition. Learned Senior Counsel would further submit that the impleading Petitioner has been instigated to cause disturbance to the worship in the temple and that he is not a necessary party to the Writ Petition.

8. Having regard to the submissions, the following points arose for consideration:-

1) Whether Chidambaram Sabanayagar temple is a denominational temple?

2) Whether Podhu Dikshidars are right in contending that the temple is the denominational temple and that there can be no interference with the administration of its property?

3) Whether Petitioner is right in contending that the alleged mismanagement was in as early as in 1980 and there has been no fresh material to show that the mismanagement continues?

4) When the original show cause notice was based on one set of alleged mismanagement, can Commissioner/Government change the basis of mismanagement?

5) Whether the impugned order is vitiated due to alleged paradigm shift in the enquiry as contended by the Petitioner.

6) Whether the appointment of Executive Officer is an interference with the religious affairs and whether the same is violative of Art.26 of Constitution of India.

9. About the temple :-

Sri Sabanayagar Temple, Chidambaram is a public temple of Hindu Religious Institution within the meaning of Sec.6 (18) read with Sec.6 (20) of Tamil Nadu HR & CE Act. Chidambaram Temple is a famous Hindu temple dedicated to Lord Shiva located in the heart of the temple town of Chidambaram. Chidambaram Temple dedicated to Lord Shiva (Siva) in His form of the Cosmic Dancer, Nataraja (eluhrh;) is a temple complex spread over 40 acres in the heart of the city. Lord Natarajar is the symbolic representation of the supreme bliss or aananda natanam. Saivaites believe that a visit to Chidambaram leads to liberation.

10. Dikshidar, the priests of the temple are also called "Thillaivaazh Andhanar" [jpy;iythH; me;jzh;]. 'Dikshidar', meaning the priests who reside in Thillai and perform poojas/religious rites. Dikshidars are considered the foremost amongst the devotees of Lord Shiva.

11. Settlement / Scheme of Administration:-

The erstwhile Hindu Religious Endowment Board settled a "Scheme of

Administration" in Board's Order No.997 dated 08.5.1933 under the Tamil Nadu Act II of 1927. The salient features of the above Scheme as per Board's Order are:-

(i) All the properties, movable and immovable, which have been dedicated and which will be dedicated to the deity, shall vest with the deity (Clause 3).

(ii) The active management should vest in the Committee, consists of 9 members who were to be elected from among the Podhu Dikshidars (Clause 4).

(iii) To manage the affairs of the temple and to assist the Committee, the Board shall appoint a Manager, on payment of salary (Clause 5).

(iv) The Managing Committee should establish hundials for the deposit of voluntary and compulsory offerings and also to fix a rate for the performance of Archana etc. (Clause 8 (a) and (b).

(v) The Manager shall maintain the accounts of the temple and registers as per the directions of the superiors (Clause 8 (a) and (b).

(vi) He [Manager] shall look after the Court matters.

(vii) The Manager shall exercise control over the servants, paricharakams, archakas, and office holders of the temple (Clause 8 (f).

(viii) The Managing Committee shall be responsible to put up sheds to let out (for rent) during festival occasions (Clause 10)".

12. In O.S.No.16/1933:-

Claiming that the temple is an absolute private property of Podhu Dikshdars and outside the scope of HR & CE Act. Podhu Dikshidars have filed suit in O.S.No.16/1933. District Court, Cuddalore rejected Podhu Dikshidars claim that the temple being private property and passed the decree modifying the scheme settled by HR & CE Board in O.A.No.73/1932. On appeal filed by the Podhu Dikshidars in High Court in A.S.No.306/1936, High Court confirmed the scheme with some modifications. The judgment of the High Court has been reported in 1939 II MLJ 11 [Ponnuman Dikshitar and another v. The Board of Commissioners for the Hindu Religious Endowments, Madras and others].

13. In the said decision, High Court has recorded a finding that it cannot be doubted that the suit temple is a public institution within the meaning of the Act and not a private temple as contended by Podhu Dikshidars. The observations of the High Court in the said decision read as follows:-

" ..... So far as the question of jurisdiction based on the non-applicability of the Act is concerned, the learned counsel, we think, wisely refrained from pressing it because it cannot be seriously doubted that the suit temple is a public institution within the meaning of the Act and not a private temple as contended for. We agree that some of the grounds on which the learned District Judge purported to hold against the plaintiffs may not be valid, but having regard to the character of the temple it seems to us that it would be too much to contend that this is a private temple. So early as 1885 when the question was raised in a suit by the Dikshitars, Muthuswami Aiyar and Shephard, JJ., in their judgment dated 17th March, 1890, in A.S.Nos.108 and 159 of 1888 observed that it was not denied that the institution was being used as a place of public worship from time immemorial and that there was no particle of evidence in support of the assertion that this ancient temple of Sri Nataraja was the private property of the Dikshitars. Even now it is not denied that this temple is held to be very sacred by all the Saivites in this Presidency and is resorted to as a place of public worship. ......"[underlining added]

14. Whether the temple is denominational temple:-

Before we go into merits of the matter, it is necessary to consider the contention of Podhu Dikshidars that Petitioners are religious denomination within the the meaning of Article 26 of Constitution of India and therefore, the temple is protected under Article 26 of Constitution of India. In the light of the contentions, important question arises whether Sabanayagar temple is a 'religious denominational temple' within the meaning of Article 26 of Constitution of India.

15. Onbehalf of the Petitioners, learned Senior Counsel Mr. B.Kumar, has contended that Petitioners Podhu Dikshidars are a 'denomination' entitled to the protection under Article 26 of Constitution of India. Placing reliance upon AIR 1999 SC 3567 [Sri Kanyaka Parameswari Anna Satram Committee and others v. Commr. HR & CE Dept. and others] and AIR 1996 SC 1334 [Pavani Sridhara Rao v. Govt. of A.P. and others] and other decisions, learned Senior Counsel has submitted that in view of the decisions of the Supreme Court Petitioners are to be construed as 'religious denomination' enjoining a special status under Article 26 of Constitution of India and therefore, the order appointing Executive Officer is not sustainable.

16. Learned Senior Counsel for the Petitioner further submitted that right of administration to denomination itself subject to such restrictions and regulations as may be provided by law. It was further argued that appointment of Executive Officer would take away the right of administration from the hands of Podhu Dikshidars all together and vest in other authority which would be violative of Article 26 (d) of Constitution of India.

17. Learned Senior Counsel for the Petitioner would submit that Podhu Dikshidars being a religious denomination enjoins a special status under Article 26 of Constitution of India. It was further argued that as religious denomination, the temple and Podhu Dikshidars are enjoined with the complete autonomy in the matter of deciding rights and ceremonies and administration of the property. It was further argued that the impugned G.O. seeking to appoint Executive Officer deprives Podhu Dikshidars and their right to manage Sri Sabanayagar temple at Chidambaram and violative of fundamental rights under Article 26 of Constitution of India.

18. Laying emphasis upon Sec.107 of HR & CE Act, learned counsel for the Writ Petitioner submitted that the provisions of HR & CE Act is not to affect the rights of denomination or any section thereof protected under Article 26 of Constitution of India.

19. Sec.107 of T.N. Hindu Religious & Charitable Endowments Act, 1959 reads as under:-
107. Act not to affect rights under Article 26 of the Constitution :- Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution.

20. In support of the contention that Podhu Dikshidars are denomination and are entitled to protection under Article 26 of Constitution of India, reliance was mainly placed upon 1952 (I) MLJ 557 [Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. The Commissioner, Hindu Religious Endowments Board, Madras]. In the said case, Dikshidars contended that the temple income is their only source of livelihood and that they are 'religious denomination'. In the said decision, Podhu Dikshidars' contention was that appointment of Executive Officer would amount to interference with the religious affairs and the same is violative of Art.26 of Constitution of India. In 1952 (1) MLJ 557, Division Bench held that Podhu Dikshidars are 'religious denomination'. On behalf of the Petitioners, it was contended that Division Bench of this Court has held that Petitioners are entitled to protection under Article 26 of Constitution of India and the finding that Petitioners are a 'denomination' rendered by the Division Bench was under the Constitution of India. It was mainly argued that the above decision was not based on any interpretation of HR & CE Act, but based on the interpretation of Constitution of what 'denomination' means. In Sri Shirur Mutt case [1952 (1) MLJ 557], Division Bench had observed that both Sri Shirur Mutt and Podhu Dikshidars of Sri Sabanayagar temple are

'denomination' and are entitled to protection under Article 26 of Constitution of India.

21. It was further argued that since Government has not challenged the findings in the judgment in 1952 (1) MLJ 557. Podhu Dikshidars are 'religious denomination', the decision in 1952 (1) MLJ 557 has become final as against Podhu Dikshidars and the said decision would operate as res-judicata.

22. Placing reliance upon AIR 1965 SC 1153 [Gulabchand Chhotalal Parikh v. State of Gujarat], the learned Senior Counsel for the Petitioner contended that when the question was decided in Writ Petition under Article 226 of Constitution, any subsequent suit between the same parties with respect to the same matter, it would operate as res-judicata because principles of res-judicata is based on public policy.

23. Contending that Podhu Dikshidars are 'religious denomination' much emphasis was laid upon the decision is 1952 (1) MLJ 557 [Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. The Commissioner, Hindu Religious Endowments Board, Madras]. In the said decision, Sri Shirur Mutt and Podhu Dikshidars of Sabanayagar temple, Chidambaram challenged certain provisions of Madras Hindu Religious and Charitable Endowments Act (XIX of 1951). While considering the grounds of challenge, Division Bench of this Court gone into the nature and character of Dikshidars and whether the order of the Board appointing Executive Officer would affect the right of Dikshidars in the administration of temple and its properties. Observing that services to God is the only source of livelihood and examining the nature of 'Kattalais', Division Bench held as follows:-
"The Dikshidars have no other emoluments and they combine in themselves the functions of a trustee as well as an archaka. They have no inams and they have to devote their time exclusively to look after the affairs of the temple and carry on the worship in it by an internal arrangement made by them over a century ago as evidenced by the rules which have been framed by them and which are in vogue even at the present day. They are prohibited from taking up any other avocation and therefore they must necessarily depend for their livelihood consisting of as many as 250 families of 1,500 members on what they receive at the temple either as Dakshina or as offerings of food known as pavadai and other offerings made to the deity. They are bound up with the temple and service of God is the only source of their livelihood. These in brief are the usages of the temple obtaining for several centuries. .... "

24. Considering the question whether Podhu Dikshidars are a denomination and whether right as denomination is infringed within the meaning of Art. 26 of Constitution, Division Bench proceeded to observe as follows:-

"Looking at from the point of view, whether the Podhu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26 it seems to us that it is a clear case, in which it can safely be said that the Podhu Dikshitars who are Smartha Brahmins, form and constitute a religious denomination or in any event, a section thereof. They are even a closed body, because no other Smartha Brahmin who is not a Dikshitar is entitled to participate in the administration or in the worship or in the services to God. It is their exclusive and sole privilege which has been recognised and established for over several centuries. The notification seriously interferes with their rights to manage the affairs in matters of religion to own and acquire movable and immovable property, and even to administer such property in accordance with law. A law which substantially deprives the religious denomination of its right to administer the property of the denomination leaving only a scintilla of the right in the denomination cannot be justified and upheld as an exercise of the power to regulate the administration of the institution. Nor is it a reasonable restriction within the meaning of the Article 19 (5) of the Constitution."

25. The Division Bench further held that provisions of HR & CE Act to the extent that they restrict the power to exercise right to a property are not reasonable restrictions within the meaning of Article 19 (5) and must consequently held to be invalid. Division bench further held that institution has right guaranteed under Article 25 of Constitution to practice and propagate the freely religion of which he and his followers to be adherence.

26. In the said decision, Podhu Dikshidars were equated and held to be analogous to Matathipathi, Division Bench has further held as under:-

" ..... In the case of Sri Sabhanayakar Temple at Chidambaram with which we are concerned in this petition, it should be clear from what we have stated earlier in this judgment, that the position of the Dikshitars, labelled trustees of this temple, is virtually analogous to that of a Matathipathi of a Mutt, except that the Podhu Dikshitars of this temple, functioning as trustees, will not have the same dominion over the income of the properties of the temple which the Matathipathi enjoys in relation to the income from the Mutt and its properties. Therefore the sections which we held ultra vires in relation Mutts and Matathipathis will also be ultra vires the State Legislature in relation to Sri Sabhanayagar Temple, Chidambaram, and the Podhu Dikshitars who have the right to administer the affairs and the properties of the temple. As we have already pointed out, even more than the case of the Srivalli Brahmins, it can be asserted that the Dikshitars of Chidambaram form a religious denomination within the meaning of Article 26 of Constitution."

27. In the context of the provisions of HR & CE Act and in the light of the submissions, it has to be seen whether Petitioner Podhu Dikshidars is a 'denomination' and whether Sri Sabanayagar temple, Chidambaram is a 'denominational institution'.

28. Article 26 of Constitution of India to which reference has been made reads as follows:–

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage it own affairs in matters of religion

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

29. Subject to public order, morality and health, every religious denomination or any section thereof has the right to administer its property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The later is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose.

30. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of the management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust property by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination itself which has been given to the right to administer its property in accordance with law. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution [Vide AIR 1954 SC 282 Commissioner Religious Endowments v. Lakshmindra Swaminar & (1983) 1 SCC 51 S.P.Mittal

v. Union of India].

31. Referring to Oxford Dictionary the word 'denomination' and considering the scope of meaning of 'religious denomination', in AIR 1954 SC 282 : (1954) 1 SCR 1005 [The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt], the Supreme Court has held as follows:-

"As regards Art. 26, the first question is, what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name". It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, - in many cases it is the name of the founder - and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Art.26 contemplates not merely a religious denomination but also a section thereof, the Maths or the spiritual fraternity represented by it can legitimately come with the purview of this Article."

32. In AIR 1984 SC 51 Acharya Jagadishwaranand Avadhuta v. Police Commissioner, Calcutta], the question came up for consideration whether Ananda Marga was a 'religious denomination. Pointing out nature of living of Ananda Marga, the Hon'ble Supreme Court observed that Ananda Marga satisfied all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; they have a common organisation and the collection of these individuals has a distinctive name and Ananda Marga, therefore can be appropriately treated as a religious denomination, with the Hindu religion.

33. Question whether the followers of Shri Ramakrishna are a 'religious denomination' came up for consideration before the Supreme Court in AIR 1995 SC 2089 [Bramchari Sidheswar Shai v. State of West Bengal]. The Supreme Court observed that the followers of Shri Ramakrishna have a common faith and that they have a common organisation and they are designated by a distinct name. It was therefore held that the persons belonging to or owing their allegiance to Ramakrishna Mission or Ramakrishna Math belong to a religious denomination within the Hindu religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India. As a necessary concomitant thereof, they have a fundamental right of establishing and maintaining institutions for a charitable purpose under Article 26 (a) of the Constitution of India, subject to course, to public order, morality and health envisaged in that very Article.

34. Observations of the Division Bench in 1952 (1) MLJ 557 that Podhu Dikshidars are a 'denomination' are to be tested in the light of well-settled principles laid down in various decisions of the Supreme Court.

35. In (1962) 1 SCR 383 : AIR 1961 SC 1402 [Durgah Committee v. Syed Hussain Ali] another Constitution Bench considering the ratio laid down in Shirur Mutt case explained Sri Venkataramana Devaru case [AIR 1958 SC 255] and had laid down that the words "religious denomination" under Art.26 of Constitution must take their colour from the word religion and if this be so the expression 'religious denomination' must also specify three conditions, namely, it must be (1) a collection of religious faith, a system of belief which is conducive to the spritual well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name.

36. In (1997) 4 SCC 606 [Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others], the Supreme Court held that "believers of Shiva form of worship are not a denominational sect or section of Hindus, but they are Hindus as such."

37. In view of the consistent view taken by the Supreme Court, the observations of the Division Bench can hardly have any binding effect. In fact, in W.P.No.7843/1987, learned single Judge has also taken the view that in view of the judgment of the Supreme Court, the observations of the Division Bench in 1952 (1) MLJ 557 (supra) may not have significance. Whatever be the observation of the Division Bench in 1952 (1) MLJ 557, the observations of the Division Bench ought to be read in the light of the decision of the

Supreme Court in Sri Shirur Mutt case. Observation of the Division Bench in 1952 (1) MLJ 557 that appointment of Commissioner by notification procedure would deprive the right of Podhu Dikshidars to manage their property and vesting it Executive Officer would be a serious inroad upon the rights of Dikshidars can no longer have binding effect.

38. Referring to various decisions on 'religious denomination' in 100 Law Weekly 240 [The Asst. Commr. HR & CE, Salem and others etc., v. Nattamai K.S.Ellappa Mudaliar and others], Justice Srinivasan (as his Lordship then was) observing that Senguntha Mudaliar cannot claim to be a 'religious denomination' held as follows:-

26. The Supreme Court had occasion to reiterate its view on the interpretation of the words "religious denomination" in Acharya Jagdishwaranand Avadhuts etc., v. Commr. of Police, Calcutta and another, AIR 1984 SC 51. The question which arose for consideration in that case was whether Ananda Marga could be accepted as a religious denomination. While answering the question in the affirmative, the Court made a reference to the test laid down by Mukherjea, J. In the Shirur Mutt case, AIR 1954 SC 282 referred to earlier and observed as follows:-

"This test has been folowed in the Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383 : AIR 1961 SC 1402. In the majority judgment in S.P.Mittal v. Union of India, (1983) 1 SCR 729 at p. 774 : AIR 1983 SC 1 at pp. 20-21 reference to this aspect has also been made and it has been stated:-

"The words 'religious denomination' in Art. 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'Religious denomination' must also satisfy three conditions:

1. It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
2. Common organisation; and
3. Designation by a distinctive name."

....

30. As seen from the decision of the Supreme Court, the words 'religious denomination' must take their colour from the word 'Religion'. It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic cord which connects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen that Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. There is absolutely no evidence on record to prove that the members of the community have common religious tenets peculiar to themselves other than those

which are common to the entire Hindu community. .... "

39. Establishment and maintenance of Sri Sabanayagar temple:-

For the purpose of invoking Art. 26 of the Constitution, Podhu Dikshidars have to prove two facts:-

1) That they established the temple.
2) They maintained the temple.

40. In AIR 1968 SC 662, the Supreme Court held that the words "Establish and Maintain" in Art. 26 (a) of Constitution must be read conjunctively and it is only those institutions which a religious denomination establishes, which it can claim to maintain and that right under Clause (a) of Art. 26 will only arise where the institution is being established by the said denomination. Hence, as held by the Supreme Court that the burden of proof lies on the Podhu Dikshidars to prove that the temple was established and maintained by the said Podhu Dikshidars. There is no piece of evidence produced by Podhu Dikshidars to show that they have established the temple.

41. Special features of Chidambaram Sabanayagar temple:-

One of the special features of Chidambaram temple is the bejeweled image of Nataraja. It depicts the Lord Shiva as the Lord of the dance Bharatanatyam. The Lord wearing a gentle smile, steps on the demon's back, immobilizes him and performs the Ananda thaandava (the dance of eternal bliss) and discloses his true form. The Ananda Tandava posture of Lord Shiva is one of the famous postures recognised around the world by many. This celestial dancing posture is said to have attracted world wide devotees. Chidambaram temple is an ancient and historic temple dedicated to Lord Shiva Nataraja and Lord Govindaraja Perumal, one of the few temples where both the Shaivite and Vaishnavite deities are enshrined in one place. Apart from 'Nataraja' idol 'Perumal' is also in the temple and apart from Saivites, Vaishnavites also attend the temple for worshipping.

42. Nextly, we may consider whether Sri Sabanayagar temple, Chidambaram has been proved to have been established and maintained by Podhu Dikshidars. By a reading of the book titled "Thillai Perunkovil Varalaru" by Vidwan K.Vellaivaranan (first published in 1987), it is seen that the temple was established by 'Chola Kingdom'. Drawing Court's attention to certain passages in the book, learned Addl. Advocate General submitted that

the temple was under the administration of 'Kings' and the same is evident from the facts and the information available in the temple.

43. The following works/renovation works are said to have been done during the reign of 'Chola Kings'.

"King Aditya Chola I who ruled Chola Empire between 871 AD and 907 AD decorated the Vimanam of Chidambaram temple with gold plates. This information is available in Thiruthondar Thiruvanthathi (jpUj;bjhz;lh; jpUte;jhjp?65) written by Nambiandaar Nambi (11th Century AD)."

"The temple was under the administrative control of the Kings and it is evident from the facts that the first prakaram of the Chidambaram temple was known as Vicrama Chola Thirumaligai, second prakaram as Kulothunga Chola Thirumaligai and third prakaram as Thambiran Thiruveethi. Western Gopuram (tower) was known as Kulothunga Chola Thirumaligai Puravayil (Fnyhj;J';f jpUkhspif nrhHd; g[wthapy;) (South Inaidna Epicraphy No.22)."

"During the period of Kulothunga Chola II (1133 AD to 1150 AD) several renovation works took place in Chidambaram Temple which include gold plating the vjph; mk;gsk;. cl;nfhg[uk; and jpUr;Rw;W khspif. construction of seven tier gopuram, expanding the Sivakami Ambal Sannathi, construction of temple Chariots and the construction of mandapam in the Sivaganga Tank within the temple."

44. Major repairs and renovation works are said to have been carried out only by three Kings. Referring to Chola Kings, Pandia Kings, Pallava Kings and Vijayanagara Kings and the works done by them in the temple, there is said to have been donation of gold and jewels by various Kings and patrons to the temple.

45. Dikshidars were entitled to do pooja services in Sri Sabanayagar temple. Over all administration of the temple was vested with Kings. In this regard, learned Addl. Advocate General has drawn Court's attention to the following passage in the Book :-

;@Tj;jbgUkhDf;F chpikj; bjhHpy; g{z;LthGk; ,t;te;jzh;fs; jpy;iyj; jpUf;nfhapypDs;ns ,iwtd; g{ridf;Fhpa mfj; bjhz;Lfis bra;J thGgth;fs;(Page 66)."

46. It was submitted that the temple administration was directly under the control of

Kings and as such 'Thillai' was called (;jdpa{h; bgUk;gw;w g[ypa{h;). It was submitted that one or two officials deputed by Kings used to stay at 'Thillai' and supervised the temple administration. The temple staff, people of Thillai and the dignitaries used to consult these officials and undertake various responsibilities. This is said to be evident from the rock inscriptions of King Koperunsingan I period.
@bjhz;ilkhDk; jpUitahWilahDk; kJuhe;jfg; gpukuhaDk; MSilahh; nfhapYf;Fr; rKjha jpUkhspiff; TW jpy;iyak;gyg; gy;ytuhaDk; rPfhhpa"; bra;thh;fSk; rKjha"; bra;thh;fSk; nfhapy; ehaf"; bra;thh;fSk; jpUkhspiff; TW bra;aj; jpUtha; bkhHpe;jUspdgo (Page 126)."

47. The informations contained in the book and the various informations said to be available in the temple would clearly indicate that the temple was administered by the persons appointed by Kings and Dikshidars were only looking after the pooja services relating to the temple.

48. Assuming that the observations of the Division Bench remains unchallenged, such observation might hold good only for Podhu Dikshidars. Since there is nothing to show that Podhu Dikshidars have established the temple, Sri Sabanayagar temple is shown to be a 'denominational temple'.

49. Regulations in administration of properties:-

Whether appointment of Executive Officer is an infringement of the Constitutional rights of Podhu Dikshidars?

Without accepting the contention of the Writ Petitioner and assuming for the sake of arguments that the temple is a 'denominational temple', as per Article 26 every 'religious denomination' or section thereof shall have the right to manage its own affairs only in matters of religion.

50. The point falling for consideration is whether appointment of Executive Officer infringes the Constitutional right of the Podhu Dikshidars.

51. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of the management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a 'religious denomination' is entitled to own and acquire, it has undoubtedly the right to

administer such property but only in accordance with law. This means that the State can regulate the administration of trust property by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination itself which has been given the right to administer its property in accordance with law. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution [Vide AIR 1954 SC 282 Commissioner Religious Endowments v. Lakshmindra Swaminar & (1983) 1 SCC 51 S.P.Mittal v. Union of India].

52. The distinction between right of 'religious denomination' to manage its affairs in matters of religion and to acquire movable and immovable property and to administer such property in accordance with law has been laid down by the Supreme Court in the celebrated judgment in Sri Shirur Mutt case [1954 SCR 1005]. In Para (17) of the judgment, the Supreme Court has held as follows:-

" 17. It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies. What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition.

In an American case [Davis v. Benson, 133 U.S. 333], it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cults of form or worship of a particular sect, but is distinguishable from the latter." We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44 (2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

53. In (1996) 2 SCC 498 [Pennalal Bansilal Pitti and others v. State of A.P. and another], Supreme Court had pointed out the distinction between clause (b) and (d) of Article 26 of Constitution thus:–

" 19. In Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055 : AIR 1954 SC 388], this Court further had pointed out the distinction between clauses (b) and (d) of Article 26 thus: In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26 (d), it is the religious denomination or general body of religion itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26 (d) of the Constitution. In that case, the Court found that the exercise of the power by the Charity Commissioner or the Court to divert the trust property or funds for purposes which he or it considered expedient or proper, although the original objects of the founder can still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

20. It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not

of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith."

54. The distinction between religious practice and secular activities of religious institution has been succinctly brought out in (1997) 8 SCC 422 [Shri Jagannath Temple Puri Management Committee, rep. through its Administrator and another v. Chintamani Khuntia and others]. Para (3) of the judgment reads as under:-

"3. Collection and distribution of money even though given as offerings to the deity cannot be a religious practice. The offerings whether of money, fruits, flowers or any other thing are given to the deity. It has been said in the Gita that "whoever offers leaf, flower, fruit or water to Me with devotion I accept that". The religious practice ends with these offerings. Collection and distribution of these offerings or retention of a portion of the offerings for maintenance and upkeep of the temple are secular activities. These activities belong to the domain of management and administration of the temple. We have to examine this case bearing this basic principle in mind. The offerings made inside the Temple are known as Veta and Pindika. Veta means the offerings that are given to Lord Jagannath at specified places in the Temple. Pindika means offerings that are given on the pedestal of the deities."

55. Regarding maintenance of accounts by Mathadhipathi, matters arose for consideration under Andhra Pradesh HR & CE Act. Observing that provisions of Andhra Pradesh HR & CE Act and administration of Mathadhipathi Rules, 1987 do not regulate propagation or preaching of the tenets of mahant or religious math and that those provision pertain to management, administration and maintenance of math, safeguarding interests which are secular activities, in (1996) 8 SCC 705 [Sri Sri Sri Lakshamana Yatendrulu and others v. State of A.P. and another], the Supreme Court held as under:-

" 43. ..... In law, he is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act. It is seen that the report of Justice Challa Kondaiah Commission had collected material that some Mahants had resorted to corrupt practices by diverting the funds of the math as Padakanukas and personal gifts and utilised the same to lead immoral or luxurious life or siphoning the income to the members of natural family to which he belonged or on wine and women. The legislature on consideration thereof felt it expedient to remedy the evil and imposed a duty, which as trustee is enjoined on him. Fastening an obligation on mathadhipathi to maintain accounts of the receipts of Padakanukas as personal gifts made to the mathadhipathi and to see that the funds are properly utilised for the purposes of the math in accordance with its objects and propagation of Hindu Dharma does not amount to interference with religion. Equally, in respect of gifts of properties or money made to the mathadhipathi as gifts intended for the benefit of the math, he is bound under law as trustee, even without amendment to the Act, to render accounts for the receipts and disbursement and cause the accounts in that behalf produced from time to time before the Commissioner or any authorised person in that behalf, whenever so required is part of administration of properties of the math. Questions relating to administration of properties relating to math or specific endowment are not matters of religion under Article 26 (b). They are secular activities though connected with religion enjoined on the Mahant."

56. Such distinction was also brought out in (1997) 4 SCC 606 [Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others]. In the said decision, in Paras (27) and (31), the Supreme Court has held thus:-

" 27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. ....

....

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [(1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. .... It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be

protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression 'religion' or 'matters of religion' or 'religious beliefs or practice'. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty." [underlining added]

57. In the light of the well-settled principles if we examine the instant case, Podhu Dikshidars can claim protection under Article 25 of Constitution. It may be that form of worship may be protected under Article 25 and 26 (a) of Constitution. But right to manage the temple or offerings or Kattalais [endowment] are not integral to religion or religious practice and as such are amenable to statutory control. As has been consistently held by the Supreme Court that the secular activities are subject to statutory control. When examined in the light of the well-settled principles, Podhu Dikshidars are not entitled to the protection in particular clauses (b) and (d) of Article 26 of Constitution as 'religious denomination' in the matter of management, administration and governance of the temple under the Act. As such appointment of Executive Officer is not ultra vires the Article 25 and 26 of Constitution of India. The contention that appointment of Executive Officer is violative of Article 25 (b) and (d) of the Constitution is untenable and devoid of substance.

58. Whether appointment of Executive Officer is in accordance with Sec.45 (1) of HR & CE Act:-

By the order dated 20.07.1982, Commissioner has pointed out several irregularities in the administration of the temple and its properties and the proposal to appoint Executive Officer. In W.P.No.5638/1982, by the order dated 08.08.1983, learned single Judge directed that the aforesaid notice would be treated only as a show cause and not as a decision to appoint Executive Officer.

59. After hearing Podhu Dikshidars, Commissioner has passed an order on 31.07.1987 meeting all the legal aspects. By the order dated 31.07.1987, Commissioner has observed "appointment of Executive Officer is only to look after the administration of the temple and for management of the properties and for better administration of the temple and to realise the income due from them so that income may be appropriated for the purpose in which endowments were created. That order was again challenged by Podhu Dikshidars in W.P.No.7843/1987.

60. W.P.No.7843/1987 was dismissed on 17.2.1987. Challenging the dismissal order, W.A.No.145/1997 was filed which was disposed of with a direction to the Writ Petitioner to file Revision under Sec.114 of HR & CE Act. Revision filed by Podhu Dikshidars was rejected by the impugned G.O.(D) No.168 TDC & RE Dept. dated 09.5.2006.

61. Section 45 of the Act could not be taken to confer an unguided or arbitrary power on the Commissioner. The power under the Section has got to be exercised in terms of the policy of the Act, i.e., to provide for administration and governance of the religious and charitable institutions and endowments under the State. Power under Sec.45 of the Act can be and has to be exercised by the Commissioner appropriately in such a case. The power vested in the Commissioner being a drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from the management and administration of the institution. Therefore it is, that natural justice and fair play require that the Commissioner should properly exercise the power under Sec.45 (1) of the Act, after being satisfied that the institution is not properly managed and the administration requires to be toned up or improved.

62. On behalf of the Writ Petitioner, Mr. B.Kumar, learned Senior Counsel contended that Executive Officer can be appointed in respect of 'religious denominational temple'. Executive Officer can be appointed only when there is gross mismanagement and no such specific instances have been stated in the show cause notice dated 20.7.1982. Learned Senior Counsel would further submit that in any event, the grounds alleged in the notice dated 20.7.1982 have become stale and no justifiable grounds are made out for appointing the Executive Officer. Placing reliance upon AIR 1996 SC 3567 [Sri Kanyaka Parameswari Anna Satram Committee and others v. Commissioner, HR & CE Dept. and others], it was

contended that only in cases of gross mismanagement, Executive Officer could be appointed and the impugned order dated 31.7.1987 is not in accordance with Sec.45 of HR & CE Act.

63. In the order dated 31.07.1987 while referring to the appointment of Executive Officer, the Commissioner observed "having regard to such large scale allegations of maladministration which are supported by various materials, there is every justification for the appointment of an Executive Officer in terms of Section 45 of the Act". Pointing out that the instances of maladministration would justify the appointment of Executive Officer, Commissioner, HR & CE referred to the decision AIR 1976 Mad. 264 [M.E.Subramani and others v. The Commissioner, HR & CE (Admn.), Madras and others].

64. Learned Senior Counsel for the Writ Petitioner contended that the order of the Commissioner is liable to be set aside as he has relied upon AIR 1976 Mad. 264 which was overruled by the Division Bench in the judgment in 1995-2-LW-213 [K.Ekambaram, M.Kailasam v. The Commissioner, HR & CE (Admn.), Madras-24 and others]. It was further submitted that after analysing Sec.45 (1) of HR & CE Act, Division Bench has held that even if the Executive Officer is sought to be appointed for better management of the religious institution, still it could be done only if there are material for coming to the conclusion that there are acts of gross mismanagement or the properties of the institution being mis-managed. Learned Senior Counsel would further submit that the views of the Division Bench in 1995-2-LW-213 was reiterated by another Division Bench in 2007-1-LW 72 [N.Sivasubramanian v. The Government of Tamil Nadu, rep. by its Secretary, HR & CE Dept. Chennai-9 and others].

65. In AIR 1976 Mad. 264 [M.E.Subramani and others v. The Commissioner, HR & CE(Admn.), Madras and others], Justice Ramanujam has observed as follows:-

"4. ..... Section 45 cannot be taken to confer an unguided and arbitrary power on the Commissioner and that the power has got to be exercised in terms of the policy of the Act i.e., to provide for the administration and governance of the religious and charitable institutions and endowments under the State of Tamil Nadu. ...... When the Commissioner has specifically stated, in the order appointing the Executive Officer, that the power has been exercised for the better and proper administration of the group of temples, it cannot say that this is, in any way, either irrelevant or extraneous and held that the impugned order passed by the Commissioner is in any way arbitrary."

66. In Subramani's case, the learned single Judge took the view that for better and proper administration of the temples, Executive Officer could be appointed even without affording an opportunity. In that context, the decision AIR 1976 Mad. 264 was overruled by the Division Bench in 1995 -2 -LW 213. Observing that Sec.45 (1) of the Act gives vast powers to the Commissioner, Division Bench held as follows:-

" 4. ..... When such a power is conferred, the scope and ambit of such power shall have to be determined with reference to other provisions contained in the Act and also the object which the Act intends to achieve and serve. ....."

67. Of course in the order dated 31.7.1987, Commissioner has referred to the decision in AIR 1976 Mad. 264. At that time when the order was passed on 31.07.1987, decision AIR 1976 Mad. 264 was not overruled. Decision of Division Bench Judgment in 1995-2-LW 213 came to be passed subsequently. Therefore, there was nothing wrong for the Commissioner in referring to the decision of Justice Ramanujam in AIR 1976 Mad. 264 which was then holding field.

68. Upon over all consideration of the alleged acts of maladministration, Commissioner satisfied himself as to the necessity of appointing Executive Officer which was duly considered by the Government before passing the impugned order. In my considered view, reference to AIR 1976 Mad. 264 would not affect the order of the Commissioner dated 31.07.1987.

69. As pointed out earlier in W.P.No.5638/1982, Court has directed notice in Rc.No.52754/1982/B6 dated 20.07.1982 be treated as show cause notice. Thereafter, Commissioner sent notice to the parties and afforded sufficient opportunity to the parties and then only passed the order on 31.7.1987.

70. Challenging the order of the Commissioner dated 31.07.1987, Mr. B.Kumar, learned Senior Counsel inter alia raised the following contentions:-

Commissioner has not considered the merits of the matter nor discussed the evidence relating to the acts of mismanagement.

In the order dated 31.07.1987, Commissioner has not pointed out any specific allegation nor given a specific instances of allegation of mismanagement.

Without pointing out any specific instance of mismanagement, Commissioner has adopted a new basis for appointment of Executive Officer by saying that for proper administration and better management, appointment of Executive Officer is necessitated.

71. Onbehalf of the Writ Petitioner, it was further argued that the order of the Commissioner dated 31.7.1987 and the confirmation of the same by the Government are liable to be set aside as it is firstly a serious violation of principles of natural justice and secondly such a course is not permissible in view of the order passed by the Court in W.P.No.5638/1982. It was further argued that it is trite law after issuing show cause notice, the impugned order cannot change the basis and passed an order on the basis of certain aspects which was not mentioned in the show cause notice. In support of his contention, learned Senior Counsel for the Petitioner placed reliance upon AIR 2001 SC 661 [Hindustan Lever Limited v. Director General (Investigation and Registration), New Delhi and another]; (2003) 11 SCC 693 [Collector of Central Excise, Bangalore v. Gammon Far Chems Ltd.] and (2005) 12 SCC 256 [Raj Kumar Mehrotra v. State of Bihar and others].

72. Merits of the above contention is to be examined in the light of the object of Sec.45 of HR & CE Act. Ordinarily in the case of a hereditary trustee in charge of an institution he is clothed with plenary powers in the matter of management as well as the administration of the temple in that he would be entitled to the possession of all the properties of the temple and to secure the income in cash and kind and in the shape of offerings, to make disbursements and to draw up a budget and to exercise control over all the office holders and servants and be in charge of the temple and responsible for the maintenance of the records, accounts and registers. By the appointment of Executive Officer under Sec.45 (1) of the Act coupled with conferment of powers, the position of the trustee would be relegated to the position of non-entity.

73. It is not as if the Commissioner cannot exercise power under Sec.45 (1) of the Act. In a case where institution is under maladministration and mismanagement, Commissioner can exercise the power under Sec. 45 (1) of the Act. In cases of improper management by a temple / religious institution, it would be necessary for the Commissioner to appoint Executive Officer. The exercise of that power depended not on the whims and fancies of the Commissioner, but upon the decisions arrived at on the facts of each case on application of mind by the Commissioner to the question whether Executive Officer is necessary in the interest of the institution.

74. Section 45 of HR & CE Act could not be taken to confer an unguided or arbitrary

power on the Commissioner. Only if the Commissioner had exercised the power under Sec. 45 of the Act on extraneous ground or on irrelevant consideration, only then that exercise can be challenged as outside the purview of Sec.45 (1) of the Act.

75. Acts of mismanagement:-

Learned Senior Counsel for the Petitioner submitted that the order of the Commissioner dated 31.7.1987 appointing Executive Officer and the confirmation order of the Government dated 09.05.2006 are based on extraneous or irrelevant considerations. It was mainly argued that by appointment of Executive Officer for better management, Commissioner has deviated from the direction of the High Court in W.P.No.5638/1982 and that there is paradigm shift in the order which would vitiate the impugned order of appointment of Executive Officer.

76. Of course in the order in W.P.No.5638/1982, it was directed to treat the order dated 20.7.1982 as show cause notice with a further direction to afford opportunity to both parties. After affording opportunity to both parties, Commissioner has passed the order dated 31.07.1987 pointing many acts of mismanagement as indicated in the show cause notice dated 20.7.1982. To mention a few:-

No proper maintenance of accounts for offerings to the temple and donations collected.
Missing / loss of number of gold jewels and other valuable items.
Unaccounted jewels / gold ingot kept by Podhu Dikshidars. When called for explanation as to unaccounted jewels, Writ Petitioner claimed that they are not the temple jewels and therefore, there was no necessity to account for those jewels.
Enquiry revealed that many gold jewels were melted and gold ingots were made.

77. As pointed by the learned Addl. Advocate General that the charges contained in the show cause notice definitely attract action under Sec.45 of the Act. The show cause notice indicates several grave irregularities like (i) non-accounting of gold ingots and gold coins worth Rs.2.2 lakhs kept in the Karuvoolam and detected by the Asst. Commissioner, Cuddalore in the presence of RDO, Chidambaram and District Superintendent of Police; (ii) there was also loss of 860 grams of gold in melting the old jewels; (iii) non-accounting of gold Kanikkai articles received as Kanikkai to the temple.

78. Referring to various complaints of mismanagement and report of the Asst. Commissioner (dated 20.7.1982), the then Commissioner observed that for proper management of the temple and better administration, it was necessary to appoint an

Executive Officer. Based on various allegations of mismanagement and missing of gold jewels, the Commissioner felt it necessary to appoint an Executive Officer.

79. Ofcourse the situation and the alleged acts of mismanagement were entirely different from the one's placed before the Court when the Court passed an order in W.P.Nos.379 and 380/1951. We may usefully refer to certain facts and the alleged acts of mismanagement which impelled the then Commissioner [show cause notice dated 20.7.1982] to propose to appoint Executive Officer which read as follows:-

VERNACULAR (TAMIL) PORTION DELETED

The alleged acts of mismanagement are writ-large on the face of it. The acts of mismanagement are not imaginary one.

80. On the face of it, there are failure to perform the lawful duties as enjoined on them under Sec.28 of HR & CE Act. The instances are:- (i) Petitioners have not maintained the accounts; (ii) Petitioners have not realised the income due to the temple; (iii) Offering to the God by the worshippers have not been accounted for by them as trustees; and (iv) Missing / loss of gold jewels.

81. After hearing the parties and upon examination of the allegation of mismanagement, Commissioner was satisfied to appoint Executive Officer to streamline the administration of the temple. In the order dated 31.7.1987, though Commissioner may not have referred to each and every one of the alleged acts of mis-mangement and maladministration, having regard to the nature of allegations, Commissioner was justified in exercising power under Sec.45 (1) of the Act to appoint Executive Officer for better management and administration of the temple.

82. From the submissions of the learned Addl. Advocate General, it comes to be known that Special Tahsildar was appointed by the Department to investigate the temple properties and to take necessary steps to obtain lease deeds to an extent of 396.37 acres of lands in the name of the temple fixing the annual rent payable to the temple by the tenant. Only on account of neglect of duty on the part of Writ Petitioners in not taking proper and effective action to realise the income due to the temple from the properties of the temple, Special Tahsildar was appointed to manage the immovable properties. It is stated that in fact, electricity charges of the temple are not met by Podhu Dikshidars, but are being actually paid by the Special Tahsildar from the collection of the lease amount.

83. Learned Addl. Advocate General would also submit that Writ Petitioners have not taken action for the enforcement of Kattalais which have not been performed as per the scales of expenditure provided by the Founder of Kattalais. Under Sec.38 (2) of HR & CE Act, in case of specific endowment attached to the temple, the Commissioner is empowered to require the person responsible in law for the enforcement of Kattalais, provided for by the Founder of the Kattalais. On behalf of the Respondents, it was submitted that since Podhu Dikshidars have continuously neglected to perform their duty, it has become necessary to appoint Tahsildar to identify the lands belonging to the temple and several Kattalais attached to the temple and set in motion the action to realise the income due to the temple.

84. Learned Addl. Advocate General has also submitted that Kumbabishekam of the temple was performed on 11.2.1987 by the Renovation Committee. Large scale of renovation works were carried out in the temple through the Renovation Committee approved by HR & CE Board at a cost of Rs.46 lakhs, out of which Government grants were Rs.20 lakhs and diversion of funds from other temples were Rs.6 lakhs and public donations through sale of tickets were about Rs.20 lakhs. It was further submitted that performance of Kumbabishekam of the temple under the guidance of HR & CE Board would clearly indicate the interest evinced by HR & CE in proper administration of the temple.

85. If the worshippers offered contribution either in cash or kind personally, there must be responsible officer having its office premises in the temple to issue official receipt. As consistently held by the Supreme Court that there is clear distinction between performance of poojas and rituals in the temple and proper maintenance of offerings to the deity which is the property of the temple. While the performance of poojas and rituals are protected under Article 26 (a) of Constitution, the matter of administration of the properties are to be

in accordance with law and exercising the power under Sec.45 (1) of HR & CE Act, such secular activities could be regulated.

86. As pointed out earlier, the income derived from various stalls in the temple and collection of entrance fee for Dharshan and Aarathanai are issued in a piece of paper without indicating funds value and the income from collections for performance of other Abishekam are said to have been not properly accounted for. Petitioners cannot abdicate their responsibility in maintenance of accounts and administration of the temple.

87. As has been held by the Supreme Court in various judgments that the administration and maintenance of the temple is purely a secular act and so the State can intervene and regulate the administration for proper management and better administration. If the secular activities of the institution have been mis-managed, appointment of Executive Officer to the institutions (even assuming that it is 'religious denomination') would be permissible.

88. Executive Officer was appointed only to streamline the administration of the temple and not to dislocate Podhu Dikshidars from the temple. Pursuant to the order passed in Rc.No.52754/82/L1 dated 31.7.1987, R.Jayachandran, Grade-I Executive Officer was appointed as Executive Officer of Arulmighu Sabanayagar temple. Proceedings in Rc.No.52754/82/L1 dated 05.8.1987 contains Appendix defining the powers and duties to be exercised and performed respectively by the Executive Officer and Secretary of Podhu Dikshidars. By reading of Appendix, it is seen that the Executive Officer was put in custody of all immovable, livestocks, grains and other valuables. Executive Officer shall be responsible for the collection of all income and moneys due to the institution. Executive Officer has to function in coordination with the Secretary of Podhu Dikshidars. In fact, as seen from the Rule 15 Secretary of Podhu Dikshidars shall have power to operate on Bank Accounts, but cheque book and pass book shall remain in the custody of the Executive Officer. Rule 15 to the Appendix reads as follows:-

RULE 15 : The Secretary Podhu Deekshithar shall have power to operate on the Bank Accounts, but the cheque book and the pass book shall remain in the custody of the Executive Officer. The Executive Officer shall have separate account in his name as provided under Rule 4 (b) of these rules and the same shall be operated upon by him.

89. Apart from the allowable expenditure, the other expenditure by the Executive Officer would be with the approval of Secretary of Podhu Dikshidars. Rule 4 (d), (e) and Rule 5 reads as follows:-

RULE 4(d) : For meeting unforeseen expenditure, the Executive Officer shall have such permanent advances as may be fixed by the Deputy Commissioner. The Executive Officer shall not incur any expenditure which exceeds Rs.10/- without obtaining prior sanction of the trustees. In cases of emergency, he may incur expenditure, but shall without delay, obtained the approval of the Secretary, Podhu Deekshitar.

RULE 4(e) : The accounts of all receipts and expenditure in month shall be placed before the Secretary of Podhu Deekshithar of the monthly meetings being passed by them.

RULE 5 : The Executive Officer shall prepare the budget in sufficient, obtain the approval and submit it for sanction. Similarly supplemental budget and proposals for ratification of expenditure incurred in excess of the budget sanction due to extraordinary circumstances should also be submitted through the Podhu Deekshithar.

90. As seen from Rule 6 (a), all the Office holders and servants shall work under the immediate control and superintendence of Executive Officer subject to the disciplinary control of the Secretary of Podhu Dikshidars under Sec.56 of HR & CE Act. It is not as if by the appointment of Executive Officer, Podhu Dikshidars are displaced from the temple in performance of rituals or administration. Only for better management and administration, it has been stipulated in the Rules that both Executive Officer and Podhu Dikshidars are to function in co-operation with each other. Thus, it is clear that there is clear demarcation of the powers to be exercised by the Executive Officer and Podhu Dikshidars.

91. Regarding various allegations of mismanagement, learned Senior Counsel for the Petitioner submitted that jewel verifications were done every year and that so far, no complaints had been received. Drawing Court's attention to the annual jewel verifications done, learned Senior Counsel submitted that as such there was no complaints. Insofar as, missing or alleged loss of gold jewels, learned Senior Counsel submitted that Dikshidars have explained as they have invested in gold bonds.

92. Exercising judicial review under Article 226 of Constitution, this Court does not sit as a Court of appeal to re-analyse the facts and evidence. Suffice it to note that there are serious allegations of mismanagement regarding the jewels. The annual jewel verification pointed out by the learned Senior Counsel are just only verification. The annual verification report would only state "kw;w tptu';fSf;F mwpf;ifapy; fhz;f@/ Therefore, it cannot be said that in the annual jewel verification, Podhu Dikshidars have given clean chit.

93. The other aspects submitted by the learned Addl. Advocate General, and Mr. R.Gandhi, Senior Counsel [appearing for the impleading Petitioners] are to be noted. Learned Addl. Advocate General would submit that the other temples are showing considerably good income. For instance Kabaleeswarar Koil, Mylapore is said to be having an income around Rs.10 Crores per annum. Whereas Sri Sabanayagar temple, Chidambaram though internationally renowned having world wide devotees have shown only an amount of few thousands (Rs.37,199/-) as the annual income for the year 2007. Out of which, expenditure is shown to be Rs.37,000/- and the balance in hand is shown only Rs.199/-. The very statement of accounts for the year 2007 would prima facie indicate that the income of the temple was not properly accounted for and proper accounts are not maintained.

94. The acts of mismanagement and lack of proper administration is writ-large on the face of it. Having regard to the nature of allegations of mismanagement, by the order dated 31.7.1987, Commissioner has rightly ordered appointment of Executive Officer. Proceedings in Rc.No.52754/82/L1 dated 05.8.1987 contain Rules for exercise of powers and duties both by Executive Officer and Podhu Dikshidars respectively. The order has not infringed the rights of Podhu Dikshidars nor violative of provision of HR & CE Act warranting interference.

95. Yet another aspect is relevant to be noted. Mr. R.Gandhi, learned Senior Counsel for the impleading Petitioner placed reliance upon G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein Government has passed an order permitting any devotee can become a Archaga, irrespective of caste and colour. On the basis of the said G.O., impleading Petitioner made an attempt to recite Devaram and Thiruvasagam at Thiruchitrambala Medai and that Podhu Dikshidars had filed suit in O.S.No.176/2006 against the impleading Petitioner. As pointed out earlier, refusal to allow the Impleading Petitioner Arumugasamy to recite Devaram and Thiruvasagam inside the temple had led to a serious dispute and number of litigations.

96. Government have passed G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008 wherein it was stated that devotees can recite Devaram and Thiruvasagam at Thiruchitrambal Medai without paying any cost to Podhu Dikshidars. The fact that inspite of such G.O., impleading Petitioner was not allowed to peacefully recite Devaram and Thiruvasagam at Thiruchitrambala Medai is to be

reckoned with.

97. Contending that worshippers' right will always prevail over the individual rights [Podhu Dikshidars], learned Senior Counsel Mr. R.Gandhi placed reliance upon AIR 1954 SC 282 [The Commr. HR & CE, Madras]; 1997 (8) SCC 422 [Shri Jagannath Temple Puri Management Committee, rep. through its Administrattor and another v. Chintamani Khuntia and others]; 1997 (2) SCC 745 [Bhuri Nath and others v. State of J & K and others]; 1996 (2) SCC 498 [Pannalal Bansilal Pitti and others v. State of A.P. and another]. As per the said Government Order, reciting Devaram and Thiruvasagam inside the temple is a valuable right of devotees.

98. As rightly submitted by the learned Senior Counsel for the impleading Petitioner, Government is fighting for secular right and the impleading Petitioner is seeking for worshipping right. Impleading Petitioner has fundamental right to worship in the temple as guaranteed by the Constitution and enforce the right as well as to implement the Government Order in G.O.Ms.No.53 Tamil Development Religious Charitable Endowments and Information Dept. dated 29.2.2008. By narration of various dates and events, it is seen that impleading Petitioner has been continuously fighting for upkeep of the traditions in the temple and to protect the worshipping rights. Impleading Petitioner as a worshipper has every right to espouse the cause of other worshippers. To substantiate the same, learned Senior Counsel for the impleading Petitioner would place reliance upon 2008 (8) MLJ 365 [Bibijan and 49 others v. Anwarsha Idgah & Mosque Avuila Durga, Panruti and 70 others]. Therefore, the impleading Petitioner is ordered to be impleaded for better adjudication of facts and circumstances of the case.

99. Before parting with the matter, this Court constrained to point out number of litigations and the delay in implementation of the order. Though the order appointing Executive Officer was passed way back in 1982, it is unfortunate that Podhu Dikshidars have filed Writ Petitions after Writ Petitions challenging the same and thereby delaying process of giving effect to the order. Ultimately, causality is the proper management and administration of the temple.

100. As pointed out earlier, in the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987, there is demarcation of powers of Executive Officer and Podhu Dikshidars and their responsibilities. If both the Executive Officer and Podhu Dikshidars act as per the Rules in the Appendix, it would ensure better management and administration apart

from ensuring worshippers' right.

101. This court expresses the hope that at least from now on, the vast properties of Sri Sabanayagar temple, Chidambaram is to be taken into proper management and administration. This Court expresses the hope that Podhu Dikshidars would co-operate with the authorities in proper management and administration of the temple and its properties.

102. M.P.No.2/2006 and M.P.No.1/2008 :-

In the result, both the Petitions are allowed and the Petitioners in M.P.No.2/2006 & M.P.No.1/2008 are ordered to be impleaded in the Writ Petition as Respondents 3 and 4 respectively. No costs.

103. W.P.No.18248/2006:-

In the result, the Writ Petition is dismissed. Having regard to the interest of the temple, its management and administration, the following directions are issued:-

2nd Respondent shall issue appropriate directions to the Executive Officer Mr. R.Jayachandran or the present Executive Officer to administer Sri Sabanayagar Temple, Chidambaram in accordance with the provisions of HR & CE Act and the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987 within a period of one week from the date of receipt of copy of this order.

Writ Petitioner Podhu Dikshidars shall render all co-operation to the Executive Officer in the proper administration of the temple in accordance with the Rules stipulated in the Appendix to the Office Proceedings No.52754/82/L1 dated 05.8.1987.

Status quo granted on 17.6.2006 in M.P.No.1/2006 is vacated.

No costs.

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To

1. The State of Tamil Nadu
   rep. by Secretary,
   Department of Tamil Development,
   Religious Endowments & Information
   Department,
   Fort St. George, Chennai-9.

2. The Commissioner,
   Hindu Religious Endowments,
   Nungambakkam High Road,
   Chennai 34