The Commissioner for Hindu Religious & Charitable Endowments, Mysore

Vs

Sri Ratnavarma Heggade, (deceased) by his l. Rs.

Civil Appeal No. 111 of 1971

(A. N. Ray, M. H. Beg, P. N. Shinghal JJ)

20.10.1976

JUDGMENT

SHINGHAL, J. (for himself and Ray, C.J.) –

1. This appeal by special leave arises out of the judgment of the High Court of Mysore dated August 30, 1968, upholding the order of District Judge, South Kanara, dated November 9, 1956. By that order the District Judge set aside the decision of the Board of Commissioners for Hindu Religious Endowments, Madras, hereinafter referred to as the Board, that the institution known as Sri Manjunatha temple at Dharamasthal, Puttur taluk, South Kanara district was a 'temple' as defined in clause (12) of Section 9 of the Madras Hindu Religious Endowments Act, 1926, (Madras Act II of 1927), hereinafter referred to as the Act. The Commissioner under the Madras Hindu Religious and Charitable Endowments Act feels aggrieved because the impugned judgment has the effect of taking the temple out of the control provided by the Act. The respondent in this appeal was the "supplemental" petitioner before the District Judge and was brought on record on the death of Manjayya Heggade who was the original petitioner in the petition under sub-section (2) of Section 84 of the Act.

2. The controversy relates to the Manjunatha temple, in Dharmasthal, which is now the name of a village in Belthangady taluk of South Kanara district of Tamil Nadu. The original name of the village was Mallarmadi. The locality in which the temple is situated was called Kukya Kudume, but it came to be known as Dharamasthal after the visit of Sri Vadiraja Swamiar of Sode Mutt, Udipi, in the sixteenth century, to which reference will be made in a while.

3. It is not in dispute that, even according to the Heggade, Dharamasthal has a number of institutions including the following main institutions :

1. Nelleyadi Beedu,

2. Chandranatha Basthi,

3. Manjunatha temple,

4. Ammanvaru temple, and

5. Heggadeship.

These institutions have been shown in exhibit A 59 which is said to be a rough sketch of the Dharmasthal. It is also not in dispute before us that "Daivas" were first established in Nelleyadi

Beedu, by an ancestor of Heggade who was a Jain, and were worshipped there. Heggade began to give charity to persons of all religions, and the institution became well-known and travellers began to visit it in large numbers. It is the common case of the parties that Sri Vadiraja Swamiar of Sode Mutt, Udipi, who was a sanyasi, happened to pass that way and was invited by Heggade to stay there. The Swamiar however refused to accept food there on the ground that it was "Bhuta Kshetra". Heggade felt very sorry as the great sanyasi was starving in his house. It is said that Heggade thereupon arranged to instal the idol of Sri Manjunatha in the "garbagriha". The Swamiar was appeased and performed the first "pooja" in that temple, which thereafter came to be known as Dharmasthal. This is said to have happened in the sixteenth century and is, at any rate, said to be the origin of the Manjunatha temple in the Dharmasthal campus.

4. The Board started proceedings under Section 84(1) of the Act to decide whether Sri Manjunatha temple was a temple as defined in clause (2) of Section 9 of the Act. Heggade urged before the Board, inter alia, that all the institutions in Dharmasthal formed a single unit representing a private institution, that it had been founded by his ancestors on their own private land, that there was no dedication to the Hindus and they could not claim any right of worship, that Dharmasthal was Jain in character, that it was a charitable but not a religious institution, that his status was not akin to that of a mere trustee and that "Heggadeship" was intimately and inseparably connected with the Dharmasthal institution and Manjunatha temple.

5. The Board made an enquiry and reached the conclusion that Manjunatha temple was a separate entity and was the most important institution and that it was not the private property of the Heggade. It also held that it was not a Jain institution, but was a Hindu temple, and that it was a religious and not merely a charitable institution for its charity was connected with the temple. The Board also held that the public had used the temple freely ever since its foundation. It accordingly decided the Manjunatha was a temple as defined in the Act even though its trusteeship vested in Heggade who were Jains.

6. As has been stated, an application was made by Manjayya Hedge to the District Judge, under sub-section (2) of Section 84 of the Act for setting aside the Board's decision. It was specifically pleaded in that application that the entire institution known as Dharmasthal was a "composite" institution and that his ancestors always claimed that the Manjunatha Devaru, its properties and deities belonged to them personally and that its 'patta' stood in their names from time immemorial. On that basis, it was pleaded further that as the properties were outside the scope of the enquiry under Section 84 of the Act, the Act "did not apply and the Board had no jurisdiction to hold an enquiry under Section 84". A counter-affidavit was filed on behalf of the Board in which it was pleaded that Manjunatha temple of Dharmasthal was "an independent entity being a separate temple, owning its own its own property and having separate income". It was pleaded further that there were properties in the name of the deity of the Manjunatha in Mysore State and other places. The District Judge did not frame any issue but formulated some points for determination including the points whether Manjunatha Devaru was only a part of the institution known as Dharmasthal, and not a separate institution in itself, and whether the provisions of the Act did not apply to it ? He recorded the evidence and held that Manjunatha temple was one of the 3 or 4 shrines maintained from the income of the institution known as Dharmasthal, Heggade was a component part of the institution, the temple stood on the private land of Heggade, the Manjunatha shrine was a Hindu institution but it was so mixed up and connected with other Jain institutions that it was practically impossible to separate it, and that Dharmasthal was a happy blending of charity and religion. The District Judge held further that the Manjunatha shrine was the private temple of the Heggade, it had not been dedicated to the Hindu public, and it was not used by the public as of right. The District Judge did

not decide whether the shrine of Ammanvaru and other deities was a Jain institution. He accordingly held that though the Manjunatha shrine may be a Hindu shrine, it was private property of the Heggade and the provisions of the Act were not applicable to it. The District Judge accordingly set aside the order of the Board dated March 9, 1949.

7. The Commissioner filed an appeal to the High Court against that judgment of the District Judge dated November 9, 1956. One of the main questions presented for determination before the High Court was whether "all the institutions" of Dharmasthal formed a single composite institution. It was not in dispute before the High Court that, apart from the question of Manjunatha temple being an adjunct to the composite Dharmasthal institution, the temple was not an institution at all. Even the Heggade did not deny the existence of Manjunatha temple as an institution and took the specific plea in his affidavit dated July 22, 1949 that the Manjunatha deity "is a private institution belonging to the Heggade". The High Court examined the "crucial question" whether Manjunatha was a temple within the definition of the Act and whether it was a "religious endowment" under Section 9(11). It held that the Manjunatha temple was an adjunct to the composite institution of Dharmasthal and according to the customs and usages of the institution that temple could not be separated from the rest of the institution, that Dharmasthal was both a religious and charitable institution, that Manjunatha was a deity worshipped both by the Hindus and the Jains in accordance with their respective faiths and that it was neither an exclusively Hindu deity nor an exclusively Jain deity. The High Court referred to the pleadings and the evidence and held that the institution was founded by a Jain, its administration remained exclusively Jain since its inception, and that as Jains also worshipped along with Hindus, it could not be inferred that there was an implied dedication to the Hindus exclusively. The High Court thus held that the temple was not a temple as defined in the Act, and it was therefore not necessary to examine the question whether it was a private temple of the Heggade. In the result, the High Court took the view that the Act did not apply to the institution and the Board had no jurisdiction over it. It therefore dismissed the appeal with costs.

8. The commissioner has obtained special leave, and this is how the appeal has come up here for consideration.

9. As the controversy in this case relates to the applicability of the Act to the Manjunatha temple, it will be convenient to examine its relevant provisions.

10. The preamble of the Act states, inter alia, that it is meant to provide for the better administration and governance of "certain Hindu religious endowments" described in it. Section 2 makes it clear that the Act applies "to all Hindu public religious endowments". Private religious endowments are therefore outside its scope. Then there is an explanation to the following effect :

> Explanation. - For the purpose of this Act, Hindu public religious endowments do not include Jain religious endowments.
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> The effect of the section therefore is to exclude not only private religious endowments, but also Jain religious endowments and it is around the provisions of Section 2 that the controversy in this case has centred. The exclusion of Jain religious endowments had been emphasised by Section 3(b) which empowers the local Government to remove the exclusion and extend the provisions of the Act, and the rules framed thereunder, to Jain religious endowments, subject to such restrictions and modifications as may be considered proper. As no such extension has been notified, the Act does not cover Jain religious endowments. It is confined to Hindu

religious "endowments" and will not be applicable where there is no such endowment at all.

11. The expression "religious endowment" or "endowment" has been defined in clause (11) of Section 9 as follows :

> (11) 'Religious endowment' or 'Endowment' means all property belonging to, or given or endowed for the support of maths or temples or for the performance of any service or charity connected therewith and includes the premises of maths or temple but does not include gifts of property made as personal gifts or offerings to the head of a math or to the archaka or other employee of a temple.
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> It follows that "all property" belonging to, or given or endowed for the support of a temple or for the performance of any service or charity connected with the temple will constitute its endowment, including the premises of the temple. It would therefore be necessary to examine whether there is evidence to prove any such endowment in respect of SRI Manjunatha temple. In this connection it will be necessary to examine which property, if any, was endowed to the temple, and by whom, and which, if any, could be said to be the premises of the temple to the exclusion of all other temples ?

12. The expression "temple" has been defined by clause (12) of Section 9 in these terms :

> (12) 'Temple' means a place, by whatever designation known, used as a place of public worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship.

The definition thus emphasises that only those temples will fall within the purview of the Act which are places of "public religious worship" and are "dedicated" to, or for the benefit of, or are used "as of right" by the Hindu community.

13. It May be mentioned in this connection that, as has been stated, the District Judge has held that although the Manjunatha temple may be a Hindu temple, it is the private temple of the Heggade and is not a temple expressly dedicated to Hindus or a temple which could be said to have been used or resorted to by the Hindu public as of right. The High Court has, on appeal, held on the other hand, that Manjunatha is neither an exclusively Hindu deity nor an exclusively Jain deity and that it is not therefore a temple as defined in the Act. It has therefore not examined the other question whether it is a public or a private temple. As regards the property of the temple, the High Court has held that it is an "adjunct" to the composite institution consisting of Hindu and Jain gods and daivas worshipped by Hindus and Jains.

14. Counsel for the parties have argued at length on the questions whether Manjunatha temple is an exclusively Hindu temple and whether it is a place of public religious worship dedicated to or used as of right by the Hindu community as a place of religious worship. There is considerable evidence for deciding these questions, but even if it were assumed that the decisive of the controversy, for the other question would still remain whether it is an "endowment" ? It will be recalled that by virtue of Section 2, the Act applies only to Hindu public religious "endowments".

15. The definition of "religious endowment" and "endowment" in clause (11) of Section 9 is common. Accordingly, the questions which arise for consideration in this connection are whether

the temple has property belonging to, or given or endowed for its support or for the performance of any service or charity connected therewith. It has not been disputed before us, and is in fact beyond controversy, that there is considerable movable and immovable property of the Dharmasthal as a whole i.e. the entire complex or campus consisting of Nelleyadi Beedu, Chandranath Basthi, Manjunatha temple, Ammanvaru temple and the Heggadeship. But the question is whether there is any such property exclusively of the Manjunatha temple so as to constitute a Hindu religious endowment for purposes of Section 2 of the Act ?

16. It will be recalled that it is not in dispute here that it were the "daivas" who were first established in Nelleyadi Beedu and were worshipped there by an ancestor of Heggade who was a Jain. The High Court has in fact found that it has been clearly established by the evidence on the record that the institution was founded by a Jain and that ever since its inception its administration has remained in the hands of a Jain, namely, the Heggade. So when Vadiraja Swamiar of Sode Mutt Udipi, came there as mentioned earlier, there was only worship of Jain "daivas" and of "no God". This is to be found in the report (Ex. A 108) of T. Narayan Nambiyar in the matter of the Manjunatha temple, which was taken in evidence and has been relied upon by the High Court. It was at the instance of the Swamiar that the idol of Manjunatha was brought and installed in the "garbagriha" and it was he who performed the first 'pooja'. It was therefore the Swamiar who was responsible for the installation of the Manjunatha idol, which was a 'lingam', in a campus where there were shrines of devas like Nelleyadi Beedu, the Chandranatha Basthi and several other buildings. It could not therefore be said that the mere installation of the idol of Manjunatha brought into existence any such property as could be said to belong to that deity or given or endowed for the support of its temple or for the performance of any service of charity connected therewith.

17. There is, on the other hand, evidence to show that all the buildings and institutions of the Dharmasthal, which was the composite name of the entire campus or complex consisting of the buildings mentioned in plan Ex. A 59, were situated in the land belonging to the Heggade, and of which he held a 'patta'. This is evident from Ex. A 103 which is a certified copy of the statement of Kumara Heggade dated July 31, 1820, which appears to have been read in evidence with the consent of the parties. To the same effect is the statement of U. Seetharamayya dated October 12, 1954 who was acquainted with Dharmasthal since 1908. As it is, the Manjunatha temple does not have even a separate "prakaram". The shrine of Ammanvaru is in close proximity of the Manjunatha temple and within the same "prakaram". It has not been disputed before us that, as has been stated by U. Seetharamayya, PW 2, its important deities are Kalarahu, Kalarhayi, Kumarswami and Kanya Kumari some of which, at any rate, are the same as the Jain deities worshipped in Nelleyadi Beedu and Badinade both of which are admittedly Jain institutions. Moreover, Kanya Kumari in Ammanvaru shrine cannot be said to be Parvati, the consort of Shiva, for M. Govinda Pai RW 12, who claims to have studied Hindu and Jain religions and was examined on behalf of the Board, has stated that Parvati and Kany Kumari are "not identical". The shrine of Annappa Daiva is also situated within the common "prakaram". The existence of the shrines of Ammanvaru and Annappa Daiva in the same "prakaram" as the Manjunatha temple therefore shows that Manjunatha temple cannot even claim to have any exclusive premises of its own so as to constitute an endowment within the meaning of clause (11) of Section 9 of the Act.

18. The High Court has found it as a fact that the shrine of Manjunatha is an "adjunct to the composite institution of Dharmasthal and according to the customs and usages of the said institution, the shrine of Shri Manjunatha cannot be separated from the rest". In arriving at this conclusion the High Court has taken into consideration those facts which have been established by the evidence on the record. It will be sufficient to make a brief reference to the following 14 facts

which have been mentioned by the High Court :

(i) All the shrines in Dharmasthal were founded by the Heggade who was a Jain.

(ii) All the shrines are situated in close proximity on "warg" lands of which the 'patta' is the name of Heggade.

(iii) The rituals of all the shrines are interconnected.

(iv) All places of worship participate in the installation of the Heggade (Exs. A 58 and A 108).

(v) The 'pooja' is reciprocal e.g. whenever there is an important ceremony in Manjunatha shrine, special 'pooja' has to be performed in Chandranatha Basthi which is a Jain institution (Ex. A 108).

(vi) All 'prasadam' is normally given only from Ammanvaru shrine and not from Manjunatha temple, (PWs 3, 4 and 5).

(vii) The festivals, including that relating to "makara shankranti", of all the shrines, are common (PW 2 and exhibits A 69 and A 70).

(viii) All offerings are made and received for the entire institution and not for any particular deity (Exs. A 69, A 70 and A 108), and the public do not make any distinction in making the offerings and whatever is given is for Dharmasthal as a whole (Ex. A 108).

(ix) On Heggade"s death, pooja is stopped in all institutions until purification (Ex. A 108).

(x) "Hoilus" or complaints are made to Dharmasthal as a whole and 'prasadam' is given to the complainants from Ammanvaru shrine (Ex. A 72).

(xi) Chandranatha Basthi, which is Jain institution, is closely interlinked with all the other institutions in Dharmasthal.

(xii) The paraphernalia of "daivas" (who are Jain deities) is kept in Manjunatha and Ammanvaru shrines (Ex A 108).

(xiii) There is extraordinary unity of interest between the Heggade and Dharmasthal (Exs. A 107 and A 103) and no distinction is made between the office of Heggade and the deities (Ex. A 104).

(xiv) The deities which had been installed before the installation of the 'lingam' in the Manjunatha temple continued to enjoy their previous importance (Ex. A 105) and Dharmasthal could not be said to have been dedicated to Manjunatha but to the earlier deities.

19. To the above may be added the following further facts :

(i) The entire income of all the institutions constitutes one common fund from which the expenses of all the shrines and the Heggade are met (Report Ex. B 2 of RW 3).

(ii) The vast charity which is undertaken was in existence even before the installation of the 'lingam' in Manjunatha shrine (RW 3).

(iii) While the "lingam" Was installed in Manjunatha temple by Vadiraja Swamiar of Sode Mutt, Udipi, as an exclusively Hindu God, in its present "garbagriha" which exclusively contains that lingam and has no non-Hindu God, the Jain daivas have continued to be worshipped side by side, in the adjacent Ammanvaru shrine. Even in the presence of the Swamiar, the Heggade was present at the time of worship and offered 'Kanikam' (RW 9). Whosoever went to Dharmasthal, weather a Hindu or a Jain, worshipped Manjunatha and the other deities and daivas alike (Ex. A 108).

(iv) It may be that Brahmins perform 'pooja' in Manjunatha temple, but that is done in the presence of the Heggade (RW 11) who also worships Manjunatha and controls all the institutions as one integral Dharamasthal.

(v) The Jain shrine of Anna Daiva is also within the same 'prakaram'in which the temples of Manjunatha and Ammanvaru are situated.

20. It therefore appears that the High Court was justified in taking the view that Manjunatha temple is part and parcel of the composite institution known as Dharmasthal and is so inseparably connected with it that it is its integral part. It cannot therefore be held that the Manjunatha temple is an "endowment" within the meaning of clause (11) of Section 9 of the Act for it has not been proved that any property belongs to it, or has been given or endowed for its support or for the performance of any service or charity connected therewith, or that it has any such premises of its own as could be said to form its own endowment.

21. It would follow from what has been said above that even if the Manjunatha temple is assumed to be a place used, as of right, for public religious worship by Hindus, it could come under the purview of the Act only if it could be established that it was a 'religious endowment' within the meaning of Section 2, but this has not been proved to be so. On the other hand it appears that the present institution of Dharmasthal was originally a Jain religious and charitable institution to which property was endowed by the ancestors of the present Heggade who was himself a Jain. It was that endowment which spread and gained more and more importance over the years because of the offerings made largely by Hindu and Jain devotees and worshipers. But it has not been established that there is any endowment which could be said to belong exclusively to Manjunatha temple. Even if any such endowment was made by someone in the name of Manjunatha temple (as stated by K. C. Nambayar RW 3), it was taken to be an endowment for the entire institution known as Dharmasthal and was treated as such. The Manjunatha temple cannot therefore be said to be a Hindu religious endowment within the meaning of Section 2. The provisions of the Act are not applicable to it, and the Board clearly erred in holding otherwise.

22. It has been argued by Mr. Chowdhary for the appellant that generally speaking Hindus include Jains. According to him, the underlying assumptions in the Act is that Jains are also Hindus, and that the fact that Jains also worship in a Hindu temple will not detract from the fact that it is a Hindu temple as it is not necessary that a Hindu temple should be a place exclusively for Hindu public religious worship. Reference in this connection has been made to All India Sai Samaj (Registered)

by its President D. Bhima Rao, Mylapore v. Deputy Commissioner for Hindu Religious and Charitable Endowments (Administration) Department, Madras-34, [(1967) 2 MLJ 618 (Mad)]; State of Madras by the Secretary, Revenue Department, Madras v. Urumu Seshachalam Chettiar Charities, Tiruchirapalli, by its Board of Trustees [(1960) 2 MLJ 591 (Mad) and S. Kannan v. All India Sai Samaj (Registered) by its President, D. Bhima Rao, Mylapore [(1974) 1 MLJ 174 (Mad)]. It will be sufficient to say that what Section 9(12) of the Act requires by way of definition of a 'temple' is that for purposes of the Act a 'temple' should be dedicated for public religious worship, as of right, and it would not detract from its character as such if Jains also worship there. The argument of Mr. Chowdhary is, however, futile because, as has been mentioned, the provisions of the Act will not be attracted to the Manjunatha temple in the absence of any evidence to prove the existence of an endowment for it.

23. It has next been argued by Mr. Chowdhary that unless the temple of Manjunatha could be shown to be a Jain endowment, it would come within the definition of 'temple' in the Act. This argument has only to be stated to be rejected because, as has been shown, there is no evidence to show that there is any endowment for the Manjunatha temple as such, and the temple is a part and parcel of Dharmasthal which came to be endowed in the facts and circumstances mentioned above.

24. An ancillary argument has been made that an inference of Hindu endowment for the benefit of the public should be drawn from the facts that the deity belongs to the Hindu Trinity, the architecture of the temple is that of a Hindu temple, the rituals are performed by brahmins according to Hindu form of worship and honey is used for "abhisheka" which is contrary to the Jain form of worship. We have already assumed that the temple possesses the characteristics which make it a Hindu temple, but even so there is no justification for the argument that there is any endowment for it as such.

25. Then it has been argued by Mr. Chowdhary that Manjunatha temple is not an "adjunct" to the composite institution of Dharmasthal for it is the most important temple in the campus. It has been urged that mere common management and control cannot justify the argument that Manjunatha temple is an inseparable part of the Dharmasthal. It is not necessary to examine this argument once again, for we have given our reasons for taking a contrary view.

26. Another argument of Mr. Chowdhary is that formal dedication of the endowment to the temple of Manjunatha was not necessary and that its user by the Hindus as of right would be enough to prove the initial dedication. Reliance for the argument has been placed on B. K. Mukherjea on the Hindu Law of Religious and Charitable Trusts, third edition, page 27, which makes a mention of the rituals to be observed when a donor wants to consecrate a temple and establish a deity in it. It may be that, in a given case, it may be difficult to prove the original dedication because of the lapse of considerable time but, in the present case it would not be possible to conclude that there was any such dedication because there is nothing to show how Vadiraja Swamiar, who installed the 'lingam' in Manjunatha temple, could be said to be a donor when the property did not belong to him.

27. In the view we have taken, we find no force in this appeal and it is hereby dismissed with costs.

BEG J. (concurring) –

I agree with the order proposed by my learned brother Shinghal. But, I would like to indicate my own reasons in this case for reaching this conclusion.

29. The following facts appear from the petition filed on July 22, 1949, by the Heggade or trustee of the Manjunatha temple, and from affidavits and other documents filed either in support or in opposition to it, in the court of the District Judge of South Kannara, in proceedings under Section 84(2) of the Madras Hindu Religious Endowments Act of 1927, (hereinafter referred to as 'the Act') : In 1926, the Manjunatha temple was exempted by a government notification from the operation of the provisions of the Madras Hindu Religious Endowments Act 1923. On June 28, 1945, the Board, which had been set up under Section 10 of the Act of 1927, informed the Heggade that it was examining the position afresh whether the exemption which had been granted in 1926 should be withdrawn. After due enquiry, the Board had moved the Government on October 26, 1945, to cancel the exemption and it was cancelled by the Government on December 10, 1945 under the provisions of Act 2 of 1927. On February 7, 1946, the Heggade had made an application to the Government to review the cancellation. Thereupon, the Government directed the Board to enquire into the whole question, again. That enquiry before the Board took place on July 27, 1946. The Board gave its decision on March 9, 1949, holding that the temple was covered by the provisions of the Act.

30. It was in circumstances stated above that the Heggade had made an application before the District Judge after the coming into force, on May 15, 1946, of the amending Act 10 of 1946. The whole proceeding before the District Judge took place as fresh and original trial in the course of which detailed oral and documentary evidence was produced in support of the respective cases by the two sides to the dispute which were : the Heggade of the Jain Dharmasthal, of which the temple was said to be a part, and the Board of Commissioners under the Act (probably substituted by the Commissioner after the repeal of the Act and its substitution by other enactments on the subject).

31. There was no argument before us on the question whether the proceedings were governed by the provisions of the Act before is amendment in 1946 or its provisions as they stood after the amendment. But, it appears to me that the case proceeded on the footing that the amended Act, which had come into force before the Heggade had petitioned to the District Judge, governed the rights of the parties and the scope of the enquiry. The question whether the institution known as Dharmasthal included the Manjunatha temple or whether Manjunatha temple could be said to have a separate legal entity of its own as an institution seems to me to be covered by the provisions of Section 84 as they stood both before the amendment in 1946 and after it was amended in 1946. An appeal to the High Court, however, lay under the amended provisions only. There was no objection to the appeal to the High Court on the ground that the unamended provisions did not contain such a right. Here, I may, for the purpose of clarifying the exact scope of the enquiry out of which the case now before us by special leave has arisen, reproduce the provisions of Section 84 of the Act both before and after its amendment in 1946.

32. The unamended provisions of Section 84 read as follows :

> 84. (1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the Board.
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> (2) Any person affected by a decision under sub-section (1) may, within one year, apply to the Court to modify or set aside such decision, but, subject to the result of such application, the order of the Board shall be final.

After the amendment by Act X of 1946, Section 84 reads as follows :

84. (1) If any dispute arises as to -

(a) whether an institution is a math or temple as defined in this Act,

(b) whether a trustee is a hereditary trustee as defined in this Act or not, or

(c) whether any property or money endowed is a specific endowment as defined in this Act, or not,

such dispute shall be decided by the Board and no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

(2) Any person affected by a decision under sub-section (1), may within six months apply to the Court to modify or set aside such decision.

(3) From every order of a District Judge, on an application under sub-section (2), an appeal shall lie to the High Court within three months from the date of the order.

(4) Subject to the result of an application under sub-section (2) or of an appeal under sub-section (3), the decision of the Board shall be final. (Substituted by Madras Act X of 1946)

33. The case of the Heggade or the managing trustee was far from consistent. He took up the following positions : firstly, that the temple was "private" and not a public temple and was exempt from the provisions of the Act for that reason; secondly, that the temple was a Jain institution, or, an integral part of it, and, therefore, excluded from the purview of the Act; and, thirdly, that the temple, even if it was to be deemed to be a Hindu temple, as a place at which the Hindu public could worship as of right, was really not separable from the larger Jain institution, so that, irrespective of the character of worship or the beliefs of the worshippers at the temple, it was not an institution which could be viewed separately from the Dharmasthal or be held to be just a Hindu temple as an "institution". The Board considered the Heggade's case to be "that the institution is a unique institution where a Hindu temple was founded and managed by a Jain family". A Subtle distinction was thus made between the temple as a place of worship and a part of a larger Jain institution. Although, I am doubtful of the correctness of this distinction, on facts, yet, for the reasons given below, I do not consider this to be a fit case for interference with the findings of the High Court, accepting the correctness of this distinction, on the particular facts of the case before us.

34. It seems to me that the question whether the Manjunatha temple could be described as a Hindu temple as defined by the Act, could be conclusively answered by a reference to a number of admissions of the Heggade and his witnesses. Indeed, the exemption of the temple from the provisions of the Act by the State Government, in exercise of its powers under Section 3(1) of the Act, could be sought by the Heggade only on the assumption that the temple constituted a Hindu religious endowment which ought to be exempted from the operations of the provisions of the Act. If it was exempt by virtue of a statutory provision from the provisions of the Act, as a Jain institution, there was no need for an order to exempt it. The scope of proceedings which have come up before us seems to go no further than resolution of certain disputes. They may, however, involve making of certain declarations.

35. The origin of the temple was said to be given in a document containing a statement of 1806, by the then Dharmasthal Heggade, produced by the managing Heggade, which runs as follows :

> There was formerly a woman called Amoo Devi Ballalthy placed there by the favour of God to perform the ceremonies. The God's name was Durga Amba Kallarkie, but was subsequently changed to Kannya Kumari. God appeared to the woman in a dream and revealed himself to her telling her he would remain in her house and she should therefore procure a bed and a light for him to perform ceremonies, also that she should build another house near to his to perform ceremonies in and that her children and heirs should accordingly succeed her. Under this arrangement, the temple shall ever flourish. As related before, the God in the shape of a woman revealed himself to Ballalthy and the Ballalthy acted accordingly. In the 1896, Salivahanam, the Peer of Udipi, Wadirajaswamy, arrived at Dharmasthal where the Ballalthy ordered him to prepare his dinner and on the next day to leave the place. The Peer replied : 'This is the residence of Devil. I must establish God in it before I get my dinner.' On this, the Ballalthy consulted her God in her sleep, who appeared and encouraged her, desired her to give the Peer whatever was required and told her he would establish the Kuddera God there saying 'you will tell this to the Peer who on hearing it will eat his dinner'. When I bring the God from Kuddera you will have a place prepared on the left hand side for his residence and a Brahmin appointed to perform ceremonies. On the same evening the Manjunatha (Kudder God) was brought and a house built and he was lodged in it on the next morning, this was all seen. The Ballalthy informed the Peer of this. He accordingly, came and after dining departed. Sometime afterwards, the Ballalthy built a house on the right hand side and made it the residence of the God and Brahmins were appointed to perform ceremonies to both. The old God (viz., that of the Ballalthy) some time afterwards told the Ballalthy he had appointed the devil Kulataya to preside over the offerings, and, therefore, she must build a house for him, to expend all the religious offerings properly, should any dispute arise, proper investigations were to be made. Some delay being made in the collection of the offerings by Kulataya, Annappa, another Devil was fixed, for whom another residence was built and four people were chosen to superintend the charities which the offerings admitted of. . . .

36. As the Board observed, it appeared that Sri Manjunatha idol was installed on the occasion of Vadirajaswamy of Udipi's visit to the Dharmasthal. This was taken to be the introduction of the worship of God as opposed to that of the Devil. Sri Manjunatha was the installed god. It was asserted that this was in accordance with Jain beliefs. It was said that God spoke through the Heggade who acted as the oracle and used to answer questions put to him by devotees at special sessions arranged for this purpose. It was, however, clear that Hindus in general were not prohibited from worshipping at this temple. They had worshipped here long enough freely and publicity to acquire the right to worship as members of the Hindu public in general. This right, I think, could not now be denied to them whatever be its origin.

37. After an elaborate discussion of the nature of the beliefs and workship, the Board had concluded :

> ..... it is clear that Shri Manjunatha Temple, Dharmasthal, Putta taluk, South Kanara district is a 'temple' as defined in Madras Act II of 1927 and we decide accordingly.

38. When the matter went up before the District Judge under Section 84, sub-section (2) of the Act, the District Judge, after discussing the evidence, recorded his conclusion as follows :

> Therefore, it appears to me that taking into consideration all these circumstances the claim of the petitioner that this Shri Manjunatha shrine though it may be a Hindu one is his Private temple seems to be well-founded and it is not a temple which is either expressly dedicated to the Hindu public or which has been used resorted to by the Hindu public as of right.

39. It is difficult for me to understand where the District Court found the law which requires "express" dedication for use by the Hindu public or why he thought that the public had not acquired a right to worship. Its findings, at any rate, carried with them the implication that, although there was a dedication, it was for "private" purposes. I find it difficult to conceive of such a transaction. Dedication to a deity necessarily implies a cessation of individual human ownership.

40. The dispute was then taken to the High Court of Mysore, which reached the conclusion, after a detailed discussion of the whole evidence :

> If, 'Sri Manjunatha' were a Hindu deity exclusively and not a deity worshipped by the Jains as well, it is inconceivable that the name 'Manaya' should be found among 9 Jains also. In our opinion, Sri Manjunatha is a deity worshipped both by the Hindus as well as the Jains in accordance with their respective faiths and it is neither an exclusively Hindu deity nor an exclusively Jain deity.

It then state its views as follows :

> Since the institution is not a 'temple' as defined in the Act, the further question whether it is a private temple of Nelleyadi Beedu family as contended by the Heggade does not arise for determination. The proceedings before the Board and the court below are under the Act. In view of our finding that the institution is not a 'temple' under the Act, the Board has no jurisdiction over the institution. Having held that the Act has no application to the institution and the Board has no jurisdiction over it as contended by the Heggade, the court below should have desisted from giving any finding on the question whether it is a private temple of Nelleyadi Beedu family. We express no opinion on the said issue.

41. The High Court's view seemed to be that there was a "dedication" but for mixed purposes outside the Act. Jain beliefs, as distinct from generally held and accepted Hindu beliefs, the origin and nature of the endowments, the established practices and customs relating to management of the temple, the receipt and disbursement of income of what was held to be a single institution called Dharmasthal, had been taken into account by the High Court in order to decide whether "the institution" is a "temple" as defined in the Act or something more. Its opinion seemed to be that the real question to be decided here was not whether there was a temple, as defined by the Act, but whether the temple, which existed there, was an inseparable part and parcel of a Jain institution which was outside the Act, or, it was an institution, which, taken by itself, was covered by the Act. If the temple was, so to speak, a mere appendage of the larger multipurposed institution, all the parts of which were managed as a single entity, the temple could not, in the opinion of the High Court, be "the institution".

42. Although, I am prepared to accept the High Court's findings on questions of fact, I do not find it possible to agree with the High Court's view that, if a place of worship is open to both Jains and Hindus in general, or, has a mixed character, it is not a temple within the meaning of that term as

defined in Section 9, sub-section (12) of the Act. All that Section 9, sub-section (12) requires is that it should be a place of worship either dedicated for the benefit of or used as of right by the Hindu community or a section thereof as a place of religious worship. The word exclusively is not there at all so as to justify any exclusion of a place of worship from the definition of a temple on the ground that the place of worship is not confined to worship, as a matter of right, to either Hindus as members of the general public or to any section of Hindus.

43. The Act does not define the term "Hindu". This word has had a fairly wide connotation. In origin, it indicated people living in the Indus region. It is only by subsequent usage and extension of meaning that the word acquired a religious, and, therefore, in this sense, a more limited significance. But in some contexts, the term "Hindu", even today, stands for Indians in general. In foreign countries, all Indians are sometimes described as "Hindus". Even as a term used for Indians professing a particular type of beliefs, which are presumed to have an indigenous origin, it is wide enough to include Jains and Sikhs. Hence, this is the meaning given to the term Hindu in the Hindu Succession Act. In a statute dealing with religious endowments, the term, even though not defined, may be presumed to stand for people of this country with certain religious beliefs held or forms of religious worship practiced by people of this country originally. But, this would also embrace a very wide sector of the public. And, in any event, there is nothing whatsoever in the definition of "temple" by the Act to justify the inference that Jains or any other group of person must be excluded from worship before it can be a "temple".

44. For reasons given above, I am unable to read into the definition of the word "temple", given in the Act, the idea of excluding from the benefits of the Act temples open for worship to Hindus of all sects and beliefs. This means that a place of worship where Jains, as a section of Indian citizens, even when distinguished by their special doctrines and practices from the rest of the Hindus, worship together with Hindus of other sects, could not be a temple outside the Act. All that the Act requires is that Hindus in general, or even a section of Hindus, should be able to worship there as of right. This requirement is, in my opinion, satisfied by Shri Manjunatha temple on the findings of the High Court which I accept, not without hesitation, as correct. The view I taken above is, however, not enough, in my opinion, to dispose of an issue under Section 84(1)(a) of the Act. It has to be borne in mind that the issue to be decided under Section 84(1)(a) of the Act is whether an "institution" is a math or temple as defined in the Act. It is not whether a particular place is a temple, in the sense that it is set apart for worship by the Hindu public in general or a section of it. It is whether an "institution" itself is a temple as defined by the Act.

45. The term temple has been defined in Section 9(12) of the Act as follows :

> 9. (12) 'Temple' means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship.

It, therefore, becomes necessary, in order to decide a dispute under Section 84(1)(a) whether a particular place is a temple as contemplated by the Act. But, that is not enough for the decision of the whole issue to be decided under Section 84(1)(a) of the Act. For that purpose, attention has to be also directed towards deciding the question whether the "institution" to be considered is a temple and nothing more. If the temple, as a place of worship, is an integral part of an institution, so that it is not separable as an institution, in itself, the mere fact that there is a 'temple', as defined by the Act, where Hindu members of the public worship as a matter of right, will not do. In such a case, the "institution" is not the temple, although a temple can, by itself, be an institution. The term

"institution" is not defined in the Act of 1927, although, in the more elaborate provisions of Madras Hindu Religious and Charitable Endowments Act XXII of 1959, there is now a definition of the term "religious institution" as well showing that this concept is wider than that of a temple.

46. If, therefore, there is a distinction between the meanings of "temple" merely as a place of worship, as defined in Section 9(12), and a "temple" as an institution, as there seems to me to be, an authority deciding the issue whether it is an "institution", as contemplated by Section 84(1)(a) of the Act, will have to consider whether the history, the beliefs lying at the inception and sought to be propagated, the forms of worship meant to be kept alive, the prevalent customs and practices, the exact nature and process of the endowments connected with the institution, the established rules for its management, the object to be carried out by those in charge of the endowment, taken together, would justify the inference that a particular "temple", as defined by the Act, is also a separate or separable institution by itself or is just an integral and organically inseparable part of an institution or organisation outside the Act. These wider aspects, which may not appear to be relevant at first sight, seem quite necessary to consider when we closely examine the nature of the issue contemplated by Section 84(1)(a) of the Act and decided by the High Court.

47. In the case before us, the findings of the High Court show that the institution, or organisation of which Manjunatha temple is an inseparable part, is predominantly Jain in character. On such a finding, it would be exempt from the operation of the Act by reason of the explanation to Section 2 excluding Jain "religious endowments" from the benefits of the Act. It may be that very good grounds could be given for holding that the temple is a separable or separate entity dedicated, by user, for worship by Hindus in general, without restriction of worship by Jains only as a matter of right. But, as two views seems to be reasonably open on the question - whether it is such a separate or separable institution or entity - I do not consider it fit to be reopened by us under Article 136.

48. A consideration of the property which belongs to or is "endowed for the support of maths or temples or for performance of any service or charity connected therewith and includes the premises of maths or temple" may also become necessary so as to determine the character of an endowment as a part of the "institution" and the process by which it took place. The institution endowed, on the findings of the High Court, being more than or wider than the Manjunatha temple, is not just a Hindu temple although a temple, by itself, could be such an institution if it were a separable entity.

49. The origin and process of dedication is not always found embodied in a document. Where the dedication itself is evidenced by a document, its objects, such as they may be, can be determined by interpreting the document which makes the task of the authorities deciding the question generally easier. There are, however, many cases in which dedication or endowment of property for a particular purpose has to be inferred from immemorial user of a property in a particular manner or from the conduct of a party, such as permission to build a road for use by the public or permission to bury the dead on a piece of land. The last mentioned type of case may also give rise sometimes to an estoppel against the owner of the land.

50. Cases where an inference of "dedication" results from what may be considered immemorial user or a king of permissive user giving rise to an estoppel, because others have spent money or done some act on the strength of a license or permission to use the land for a particular purpose, are not uncommon in our country. They should not, as Lord Macnaghten hinted in Bholanath Nundi v. Midnapore Zemindari Co. Ltd. [31 IA 75], be complicated by resorting to the peculiar English notions of dedication, when he said :

> It appears to their Lordships that on proof of the fact of enjoyment from time immemorial there could be no difficulty in the way of the court finding a legal origin for the right claimed. Unfortunately however (in the lower courts) the question was overlaid, and in some measure obscured, by copious references to English authorities and by the application of principles or doctrines, more or less refined, founded on legal conceptions not altogether is harmony with Eastern notions.

51. After quoting the passage, set out above, Lord Radcliffe, in Lakshmidhar Misra v. Rangalal [AIR 1950 PC 56 : 76 IA 271], pointed out (at p. 58) about such dedications in English law :

> But dedication is only known to English law as something equivalent to an irrevocable licence granted by the owner of soil to the use of the public. Dedication of a piece of land to a limited section of the public, such as the inhabitants of a village, is a claim unknown in law, and evidence limited to such special user would not justify a finding of dedication : see Poole v. Huskinson [(1843) 11 M & W 827 : 63 RR 782] Hildreth v. Adamson [(1860) 8 CB (NS) 587 : 125 RR 794]; Bermondsey v. Brown [(1865) 1 Eq 204 : 147 RR 124].

52. It was explained in Lakshmidhar Misra's case that the doctrine of lost grant originated in English law "as a technical device to enable title to be made by prescription despite the impossibility of proving immemorial user". Prescription, by a convention, was deemed to start in 1189, when Normans conquered England. The real basis of such rights in English law seemed to be prescription. In this very case, differences were pointed out between a dedication and a customary right enjoyed by people of a locality to use a particular piece of land on certain occasions. It was indicated here that a dedication, by presumed lost grant, in English law, unlike customary rights, which may become attached to land, postulates a grantee and the creation of an estate.

53. Although certain essential or basic prerequisites of a valid trust in English law, such as the three reasonable certainties laid down by Lord Eldon in Knight v. Knight [(1840) 3 Beav 148] - that of the obligation to be carried out, that of the subject-matter or of property affected by it, and that of the object to be served or the persons to be benefitted - are required in this country too for valid endowments no less than they are in England, yet, valid dedications can be inferred, under our law, without shewing compliance with at least some of the technical requirements of English law.

54. Dedications in Hindu law do not require acceptance of property dedicated for a religious or a public purpose. In Monohar Ganesh v. Lakhmiram [ILR 12 Bom 247, 263], a rule of Hindu law coming down from ancient times was thus stated :

> A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it, and the ruler will give effect to the bounty or at least protect it so far, at any rate, as is consistent with his own Dharma or conception of morality.

55. Neither a document nor express words are essential for a dedication for a religious or public purpose in our country. Such dedications may be implied from user permitted for public and religious purposes for sufficient length of time. The conduct of those whose property is presumed to be dedicated for a religious of public purpose and other circumstances are taken into account in arriving at the inference of such a dedication. Although religious ceremonies of Sankalpa and Samarpanam are relevant for proving a dedication, yet, they are not indispensable (see : B. K.

Mukherjea on the Hindu Law of Religious and Charitable Trusts - Third Edn., 1970, p. 80).

56. The question of an implied dedication by user by the public is particularly important in cases like the one before us where a claim that a trust is private or sectarian in nature is set up against a wider claim on behalf of the general public. In Deoki Nandan v. Murlidhar [1956 SCR 756 : AIR 1957 SC 133], this Court said :

> The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.

57. In B. K. Mukherjea's Tagore Law Lectures on the Hindus Law of Religious and Charitable Trusts (1970, third edition), we find the following passage at page 143 :

> In cases where no express dedication is proved, the character of the endowment must always be a legal inference from proved facts. As in the case of highways, long user is undoubtedly a material element from which an inference of dedication may arise. If the public have been in the habit of worshipping in the temple in an open and unconcealed manner, for a long period of time, and were never denied any access to it, that would be a strong evidence of dedication. With regard to period of user, no hard and fast rule has been laid down. There is no minimum which must be fulfilled, and there is no maximum which compels the inference'. Each case would depend upon its own circumstances. Besides user by the public conduct of the founder and his descendants is also relevant, and if they in fact held out the temple to be a public temple, a very strong presumption of dedication would arise.

Cases are also cited there where reliance had been placed upon circumstances such as the structure or the location of a temple outside a private residence or dwelling so as to be exposed to public view and worship by members of the general public to infer dedication for the public.

58. In Pujari Lakshmana Goundan v. Subramaniya [29 CWN 112 (PC)], the question for determination was whether a Hindu temple founded between 1841 and 1856 had been dedicated for use by the public its founder who had executed no deed showing this. But, the founder, Lakshmana Goundan, was shown to have installed an idol at his house and allowed Brahmins and Hindus to worship the idol as if it was a public place of worship. The Hindu public was admitted free of charge, though only on certain days in the week, in the greater part of the temple, and, in one part only on payment of a fee, and, in the inner shrine, not at all. It appears that the income from offerings and fees was spent by the pujari founder on the temple and the idol as well as on himself. Nevertheless, their Lordships of the Privy Council held that Lakshmana Goundan, having held out and represented to the Hindu public that the temple was for their benefit, the inference was irresistible that he had dedicated the temple for use by the public. In B. K. Mukherjea's Lectures, the facts of this case have been cited as an example of an application of the principle of estoppel. Out law reports abound with similar cases where dedication by founders or owners is inferred or presumed, irrespective of their own religious persuasions, from the purposes for which a piece of property has been used for long enough. In some cases the elements of an estoppel are present. But, the basis of such dedications seems, in many cases of this type, to be, strictly speaking, nothing more than a presumption from certain facts. Perhaps we could describe it, in most cases of this sort,

as a "deemed dedication" although it must not be confused with a fiction. It is, after all, an inference from facts which must exist and lead to the conclusion deduced.

59. In view of this well established doctrine of implied endowment of property, by its long user for a particular religious or public purpose, based on a presumed consent of the owner, I do not think that the High Court could be held to have reached a wrong conclusion even if it had inferred that, whatever be the origin of the Manjunatha temple, it had become a separate institution with an endowment of its own consisting at least of the land over which the temple had been built, the building and the idol installed with free access to it by the Hindu public in general which made offerings even though Jains also worship there. Nevertheless, in view of the discussion of a good deal of evidence of the peculiar composite character of the institution known as Dharmasthal, and, bearing in mind our general rule of practice that we do not disturb findings of the final court of fact where two view are possible, I do not propose to differ from the conclusion reached by the High Court that the temple was not a separate institution. The Manjunatha temple, on the findings of the High Court, which we are upholding, had become an accretion or growth on the body, if one may so put it, of the institution known as Dharmasthal, even though it could be removed from the body by a surgical operation. It is not for us to say, on the findings before us, whether a situation has arisen in which a surgical operation may be called for. Such an opinion can only be given upon the results of a more thorough investigation into the objects of the institution, its properties, the sources of its income, and the manner in which they are utilised, than we have before us.

60. The question which troubles me, however, is whether a religious institution or even that part of it to which members of the public make contributions, through their offerings and gifts, is to be left entirely uncontrolled by authorities specially appointed by the State in order to see that such income or donations are not misused or are utilised for the purposes for which they are meant. It seems to me that religious beliefs, professions, and practices, which have a powerful hold over the minds and feelings of the people, particularly in our country, should not be permitted to become mere cloaks for exploiting the credulity of the simpleminded and the ignorant and unsophisticated. When a religious institution becomes a means of obtaining money or material benefits, in the form of offerings or donations or gifts, as it generally does, from members of the public, a danger of its misuse can only be effectively averted by appropriate supervision. It seems to me that this is the whole purpose of the Act. The income from the public, through a religious institution, seems to me to bring in that secular aspect which justifies interference by State authorities through adequate supervision. However, these are matters which so far as religious endowments, such as the one before us, held to be predominantly Jain, for the reasons given by the High Court, are concerned, the State Government can take into account in deciding whether it should exercise its powers under Section 3(2) of the Act, to extend the benefits of the Act to them, or, if necessary to amend the Act.

61. The District Court did not specifically frame or try any issue on the question whether any endowment existed at all. It had framed the following points for determination :

> (1) Is the Sri Manjunatha Devaru only a part of the institution known as Dharmasthal and not a separate institution in itself ?
>
> (2) Is the Dharmasthal a charitable institution ?
>
> (3) Is the Dharmasthal and in particular the Manjunatha Devaru not an exclusively Hindu place of worship ? If not, do not the provisions of the Hindu Religious Endowments Act apply ?

(4) Is the Manjunatha Devaru a private place of worship ?

(5) Is the order of the Board dated March 9, 1949 liable to be set aside ?

62. The High Court also did not give the finding that no endowment whatsoever exists. The extent of property covered by any endowment was also not really investigated as no issue was framed on it. At least, the structure of the temple, with the idol installed, and the ground upon which the temple stands must be deemed to be dedicated even though these may not, for purposes of management, form separable units. The High Court took the view that the dispute falling under Section 84(1)(a) could be disposed of by deciding issues or points numbered 1 and 3 only. The District Court had chosen to resolve the principal dispute that arose by deciding issue 4. Other questions were treated as merely subsidiary or even unnecessary to decide.

63. I have tried to indicate above what seemed to me to be the real nature of the proceedings in the course of which a dispute covered by Section 84(1)(a) of the Act arose and also the principles on which such a dispute should, in my opinion, be resolved, although I do not consider it necessary, in exercise of the special powers of this Court under Article 136, to interfere with the High Court's findings of fact, because I think that the powers of the Government, which is not even a party, acting under Section 3 of the Act, are not restricted by decisions given by courts in resolving a dispute covered by Section 84(1) of the Act. All that the Government was bound to do under Section 3 of the Act was to consult the Board. The Madras Hindu Religious and Charitable Endowments Act of 1959, which contains the law governing the subject today, has Section 2 relating to a general power to extend the provisions of the Act to Jain public religious institutions and endowments as a matter of policy, irrespective of the character of management, whether good or bad, and Section 3, for the extension of the provisions of the Act to particular Jain religious and charitable institutions, in cases of mismanagement, after due inquiry. These powers are not, in any way, affected by the dispute which has been brought before us under the provisions of an Act repealed long ago.

64. For the reasons given above, I concur with the order proposed by my learned brother Shinghal that this appeal be dismissed and parties be left to bear their own costs throughout.

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