SUPREME COURT OF INDIA

Subramanian Swamy

Vs.

State of Tamil Nadu & Ors.

C.A.No.10620of 2013

(B.S. Chauhan and S.A.Bobde,JJ.)

06.01.2014

JUDGMENT

B. S. Chauhan,J.

1. All these appeals have been filed against the impugned judgment and order dated 15.9.2009 passed in Writ Appeal No.181 of 2009 by the High Court of Madras affirming the judgment and order dated 2.2.2009 of the learned Single Judge passed in Writ Petition No.18248 of 2006 rejecting the claim of the writ petitioner Podhu Dikshitars to administer the Temple. In Civil Appeal No. 10620/2013, the appellant has raised the issue of violation of the constitutional rights protected under Article 26 of the Constitution of India, 1950 (hereinafter referred to as Constitution) in relation to the claim by Podhu Dikshitars (Smarthi Brahmins) to administer the properties of the Temple in question dedicated to Lord Natraja. The same gains further importance as it also involves the genesis of such pre-existing rights even prior to the commencement of the Constitution and the extent of exercise of State control under the statutory provisions of The Madras Hindu Religious and Charitable Endowments Act 1951 (hereinafter referred to as the Act 1951) as well as the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (hereinafter referred to as the Act 1959).

2. Civil Appeal No. 10621/2013 is on behalf of Podhu Dikshitars claiming the same relief and Civil Appeal No. 10622/2013 has been filed by the appellants supporting the claim of the appellant in Civil Appeal No. 10621/2013.

3. For convenience in addressing the parties and deciding the appeals, we have taken Civil Appeal No. 10620/2013 as the leading appeal. The facts and circumstances giving rise to the appeal are as under:

> "That Sri Sabhanayagar Temple at Chidambaram (hereinafter referred to as the Temple) is in existence since times immemorial and had been administered for a long time by Podhu Dikshitars (all male married members of the families of Smarthi Brahmins who claim to have been called for the establishment of the Temple in the name of Lord Natraja). The State of Madras enacted the Madras Hindu Religious and

Charitable Endowments Act, 1927 (hereinafter referred to as the Act 1927), which

was repealed by the Act 1951. A Notification No.G.O.Ms.894 dated 28.8.1951 notifying the Temple to be subjected to the provisions of Chapter VI of the Act 1951 was issued. The said notification enabled the Government to promulgate a Scheme for the management of the Temple."

4. In pursuance to the same, the Hindu Religious Endowments Board, Madras (hereinafter called the Board) appointed an Executive Officer for the management of the Temple in 1951 vide order dated 28.8.1951 etc.

5. The Dikshitars, i.e. respondent no.6 and/or their predecessors in interest challenged the said orders dated 28.8.1951 and 31.8.1951 by filing Writ Petition nos. 379-380 of 1951 before the Madras High Court which were allowed vide judgment and order dated 13.12.1951 quashing the said orders, holding that the Dikshitars constituted a religious denomination and their position vis-a-vis the Temple was analogous to muttadhipati of a mutt; and the orders impugned therein were violative of the provisions of Article 26 of the Constitution.

6. Aggrieved, the State of Madras filed appeals before this Court, which stood dismissed vide order dated 9.2.1954 as the notification was withdrawn by the State-respondents. After the judgment in the aforesaid case as well as in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (hereinafter referred to as Shirur Mutt Case), the Act 1951 was repealed by the Act 1959. Section 45 thereof empowers the Statutory Authorities to appoint an Executive Officer to administer the religious institutions. However, certain safeguards have been provided under various provisions including Section 107 of the Act 1959.

7. On 31.7.1987, the Commissioner of religious endowment in exercise of his power under the Act 1959 appointed an Executive Officer. Consequent thereto, the Commissioner HR&CE passed an order dated 5.8.1987 defining the duties and powers of the Executive Officer, so appointed for the administration of the Temple.

8. Aggrieved, the respondent no.6 challenged the said order by filing Writ Petition No.7843 of 1987. The High Court of Madras granted stay of operation of the said order dated 5.8.1987. However, the writ petition stood dismissed vide judgment and order dated 17.2.1997.

9. Aggrieved, the respondent no.6 preferred Writ Appeal No.145 of 1997 and the High Court vide its judgment and order dated 1.11.2004 disposed of the said writ appeal giving liberty to respondent no.6 to file a revision petition before the Government under Section 114 of the Act 1959 as the writ petition had been filed without exhausting the statutory

remedies available to the said respondent.

10. The revision petition was preferred, however, the same stood dismissed vide order dated 9.5.2006 rejecting the contention of the respondent no.6 that the order dated 5.8.1987 violated respondents fundamental rights under Article 26 of the Constitution observing that by virtue of the operation of law i.e. statutory provisions of Sections 45 and 107 of the Act 1959, such rights were not available to the respondent no.6. In this order, the entire history of the litigation was discussed and it was also pointed out that the Executive Officer had taken charge of the Temple on 20.3.1997 and had been looking after the management of the Temple since then. The said order also revealed that the respondent no.6 could not furnish proper accounts of movable and immovable properties of the Temple and recorded the following finding of fact:

> "The powers given to the Executive Officer, are the administration of the Temple and its properties and maintain these in a secular manner. Hence, the rights of the petitioners are not at all affected or interfered with, in any manner whatsoever the aim and reason behind the appointment of the Executive Officer is not for removing the petitioners who call themselves as trustees to this Temple". (Emphasis added) . The respondent no.6 preferred Writ Petition No.18248 of 2006 for setting aside the order dated 9.5.2006 which was dismissed by the High Court vide judgment and order dated 2.2.2009 observing that the judgment referred to hereinabove in Writ Petition (C) Nos. 379-380 of 1951 titled Marimuthu Dikshitar v. The State of Madras & Anr., reported in 1952 (1) MLJ 557, wherein it was held that Dikshitars were a religious denomination, would not operate as res judicata. K. Aggrieved, the respondent no.6 filed Writ Appeal No.181 of 2009. The present appellant Dr. Subramanian Swamy was allowed by the High Court to be impleaded as a party. The Writ Appeal has been dismissed vide impugned judgment and order dated 15.9.2009. Hence, these appeals. The appellant-in-person has submitted that Article 26 of the Constitution confers certain fundamental rights upon the citizens and particularly, on a religious denomination which can Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948. neither be taken away nor abridged. In the instant case, the Dikshitars had been declared by this Court, in a lis between Dikshitars and the State and the Religious Endowments Commissioner, that they were an acknowledged 'religious denomination and in that capacity they had a right to administer the properties of the Temple. Though in view of the provisions of Section 45 read with Section 107 of the Act 1959, the State may have a power to regulate the activities of the Temple, but lacks competence to divest the Dikshitars from their right to manage and administer the Temple and its properties. It was strenuously contended that the High Court committed an error by holding that the earlier judgment of the Division Bench in Marimuthu Dikshitar (Supra) would not operate as res judicata. Therefore, the appeal deserves to be allowed."

11. Per contra, Shri Dhruv Mehta and Shri Colin Gonsalves, learned Senior counsel, and Shri

Yogesh Kanna, learned counsel have opposed the appeal contending that no interference is required by this court as the High Court has rightly held that the aforesaid judgment of the Madras High Court or the judgment of this Court in Shirur Mutt case (Supra) would not operate as res judicata even if the earlier dispute had been contested between the same parties and touches similar issues, for the reason that Article 26(d) applies only when the temple/property is owned and established by the religious denomination. In the instant case, the Temple is neither owned by respondent No. 6, nor established by it. Thus, the appeal is liable to be dismissed.

12. Shri Subramonium Prasad, learned Addl. Advocate General appearing for the State and the Statutory authorities has opposed the appeal contending that the Executive Officer has been appointed to assist the Podhu Dikshitars and to work in collaboration with them and the said respondent has not been divested of its powers at all, so far as the religious matters are concerned. Thus, the matter should be examined considering these aspects.

13. We have considered the rival submissions made by learned counsel for the parties and perused the record.

14. Before entering into the merits of the case, it may be relevant to refer to the relevant statutory provisions.

15. Section 27 of the Act 1959 provides that the trustee would be bound to obey all lawful orders issued by the Government or the statutory authorities.

16. Section 45 of the Act 1959 provides for appointment and duties of Executive Officer and relevant part thereof reads:

> "Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution other than a Math or a specific endowment attached to a Math.

17. The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948. Provided that only such powers and duties as appertain to the administration of the properties of the religious institutions referred to in sub-section (1) shall be assigned to the executive officer.

18. On the other hand, Section 107 of the Act 1959 provides that the Act would not affect the rights guaranteed under Article 26 of the Constitution. It reads:

> "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. Section 116 of the Act 1959 reads as under:

"Power to make rules- The Government may, by notification, make rules to carry out the purposes of this Act. Without prejudice to the generality of the foregoing power, such rules may provide for- all matters expressly required or allowed by this Act to be prescribed; xx xx xx (3) All rules made and all notifications issued under this Act shall, as soon as possible after they are made or issued, be placed on the table of the Legislative Assembly and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make either in the same session or in the next session.

19. Article 26 of the Constitution provides for freedom to manage religious affairs and it reads as under:

"Freedom to manage religious affairs - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948 (d) to administer such property in accordance with law. (Emphasis added) The word such has to be understood in the context it has been used. A Constitution Bench of this Court in Central Bank of India v. Ravindra & Ors., AIR 2001 SC 3095 dealt with the word such and held as under:

i. Webster defines "such" as "having the particular quality or character specified; certain, representing the object as already particularised in terms which are not mentioned. In New Webster's Dictionary and Thesaurus, meaning of "such" is given as "of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated". Thus, generally speaking, the use of the word "such" as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before.

ii. This principle has all the more vigorous application when the two places employing the same expression, at earlier place the expression having been defined or characterised and at the latter place having been qualified by use

of the word "such", are situated in close proximity. (See also: Ombalika Das & Anr. v. Hulisa Shaw, AIR 2002 SC 1685).

iii. The aforesaid provisions make it clear that the rights of the denominational religious institutions are to be preserved and protected from any invasion by the State as guaranteed under Article 26 of the Constitution, and as statutorily embodied in Section 107 of the Act 1959.

iv. Undoubtedly, the object and purpose of enacting Article 26 of the Constitution is to protect the rights conferred therein on a 'religious denomination' or a section thereof. However, the rights conferred under Article 26 are subject to public order, morality and health and not subject to any other provision of Part III of the Constitution as the limitation has been prescribed by the law makers by virtue of Article 25 of the Constitution.

v. The term religious denomination means collection of individuals having a system of belief, a common organisation; and designation of a distinct name. The right to administration of property by a religious denomination would stand on a different footing altogether from the right to maintain its own affairs in matters of religion. (Vide: Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj etc.etc. v. The State of Gujarat & Ors., AIR 1974 SC 2098; T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors., AIR 2003 SC 355; and Nallor Marthandam Vellalar & Ors. v. Commissioner, Hindu Religious and Charitable Endowments & Ors., AIR 2003 SC 4225).

vi. The Constitution Bench of this Court in S. Azeez Basha & Anr. v. Union of India, AIR 1968 SC 662, while dealing with the rights of minority to establish educational institutions, also dealt with the provisions of Article 26 of the Constitution and observed that the words establish and maintain contained in Article 26 (a) must be read conjunctively. A religious denomination can only claim to maintain that institution which has been established by it. The right to maintain institutions would necessarily include the right to administer them. The right under Article 26(a) of the Constitution will only arise where the institution is established by a religious denomination and only in that event, it can claim to maintain it. While dealing with the issue of Aligarh Muslim University, this Court rejected the claim of Muslim community of the right to administer on the ground that it had not been established by the Muslim community and, therefore, they did not have a right to maintain the university within the meaning of Article 26(a) of the Constitution.

vii. In Khajamian Wakf Estates etc. v. State of Madras etc., AIR 1971 SC 161, the Constitution Bench of this Court held that the religious denomination can own, acquire properties and administer them in accordance with law. In case they lose the property or alienate the same, the right to administer automatically lapses for the reason that property ceases to be their property. Article 26(d) of the Constitution protects the rights of religious denomination to establish and administer the properties as clauses (c) and (d) guarantee a fundamental right to any religious denomination to own, acquire, establish and maintain such properties.

viii. In Sri Sri Sri Lakshamana Yatendrulu & Ors. v. State of A.P. & Anr., AIR 1996 SC 1414, this Court examined the constitutional validity of some of the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987. The Court also examined the object of the scheme framed under Section 55 of the said Act and held as under:

ix. ..That the power of the Commissioner to frame scheme is not absolute but is conditioned upon reasonable belief on the basis of the report submitted by the Deputy Commissioner and there must be some material on record for entertaining a reasonable belief that the affairs of the Math and its properties are being mismanaged or that funds are misappropriated or that the mathadhipathi grossly neglected in performing his duties. Prior enquiry in that behalf is duly made in accordance with the rules prescribed thereunder. The members of the committee so appointed shall be the persons who are genuinely interested in the proper management of the Math, management of the properties and useful utilization of the funds for the purpose of which the endowment is created. Thus, the paramount consideration is only proper management of the Math and utilisation of the funds for the purpose of the Math as per its customs, usage etc. (Emphasis added) The Court further held:

x. Such a scheme can be only to run day-to-day management of the endowment and the committee would be of supervisory mechanism as overall incharge of the Math. (Emphasis added) As the Act 1987 did not provide the duration for which the scheme would remain in force, the court held that the duration of the scheme thus framed may also be specified either in the original scheme or one upheld with modification, if any, in appeal. The Court held:

xi. The object of Section 55 appears to be to remedy mismanagement of the math or misutilisation of the funds of the math or neglect in its

management. The scheme envisages modification or its cancellation thereof, which would indicate that the scheme is of a temporary nature and duration till the evil, which was recorded by the Commissioner after due enquiry, is remedied or a fit person is nominated as mathadhipathi and is recognised by the Commissioner. The scheme is required to be cancelled as soon as the nominated mathadhipathi assumes office and starts administering the math and manages the properties belonging to, endowed or attached to the math or specific endowment. (Emphasis added) Thus, this Court clarified that there cannot be super-session of administration in perpetuity. It is a temporary measure till the evil gets remedied.

xii. In the aforesaid backdrop, we shall examine the present appeals.

xiii. The learned Single Judge while deciding Writ Petition No. 18248/2006 examined the case raising the following question:

xiv. Observations of the Division Bench in 1952 (1) MLJ 557 that Podhu Dikshitars are a denomination are to be tested in the light of well-settled principles laid down in various decisions of the Supreme Court. The learned Single Judge as well as the Division Bench made it a pivotal point while dealing with the case.

xv. The Constitution Bench of this Court in Shirur Mutt (Supra) categorically held that a law which takes away the right to administer the religious denomination altogether and vests it in any other authority would amount to a violation of right guaranteed in clause.

xvi. of Article 26 of the Constitution. Therefore, the law could not divest the administration of religious institution or endowment. However, the State may have a general right to regulate the right of administration of a religious or charitable institution or endowment and by such a law, State may also choose to impose such restrictions whereof as are felt most acute and provide a remedy therefore. (See also: Ratilal Panachand Gandhi & Ors. v. State of Bombay & Ors., AIR 1954 SC 388; and Pannalal Bansilal Pitti & Ors. v. State of A.P. & Anr., AIR 1996 SC 1023).

xvii. The Shirur Mutt case (Supra) had been heard by the Division Bench of the Madras High Court alongwith Marimuthu Dikshitar (Supra), and against both the judgments appeals were preferred before this court. However, in the case of respondent no.6, the appeal was dismissed as the State of Madras had withdrawn the impugned notification, while in Shirur Mutt case the judgment came to be delivered wherein this Court held as under:

a. “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.”

xviii. 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 the name of the founder --- and has a common faith and common spiritual organization. The followers of Ramanuja, who are known by the 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 Math or the spiritual fraternity represented by it can legitimately come within the purview of this Article.

xix. The other thing that remains to be considered in regard to Art. 26 is, what, is the scope of clause (b) of the Article which speaks of management 'of its own affairs in matters of religion?" The language undoubtedly suggests that there could be other affairs of a religious denomination or a Section thereof which are not matter of religion and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?

xx. Under Art. 26(b), therefore a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. This Court upheld the validity of Section 58 of the Act 1951 which had been struck down by the Division Bench which is

analogous to Section 64 of the Act 1959.

20. In view of the provisions of Sections 44 and 45(2) of the Act 1959, the State Government can regulate the secular activities without interfering with the religious activities.

21. The issues involved herein are as to whether Dikshitars constitute a religious denomination and whether they have a right to participate in the administration of the Temple. In fact, both the issues stood finally determined by the High Court in the earlier judgment of Marimuthu Dikhsitars (Supra) referred to hereinabove and, thus, doctrine of res judicata is applicable in full force. The Division Bench of Madras High Court while deciding the dispute earlier in Marimuthu Dikshitar (Supra), traced the history of Dikshitars and examined their rights, etc. The Court concluded:

> "Looking at it from the point of view, whether the Podu 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 Podu 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 recognized and established for over several centuries."

22. 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 Podu 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 to Mutts and Matathipathis will also be ultra vires the State Legislature in relation to Sri Sabhanayakar Temple, Chidambaram and the Podu 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 Shivalli Brahmins, it can be asserted that the Dikshitars of Chidambaram form a religious denomination within the meaning of Article 26 of the Constitution.

23. We certify under Article 132 of the Constitution that it is a fit case for appeal to the Supreme Court. Notification quashed. (Emphasis added) On the basis of the certificate of fitness, the State of Madras preferred Civil Appeal No.39 of 1953 before this Court against the said judgment and order of the Madras High Court, which was heard by the Constitution Bench of this Court on 9.2.1954. However, the said appeal stood dismissed as the State withdrew the notification impugned therein. Relevant part of the order runs as under :

"The Appeal and the Civil Miscellaneous Petition above mentioned being called on for hearing before this Court on the 9th day of February, 1954 upon hearing the Advocate-General of Madras on behalf of the Appellants and counsel for the respondents and upon the said advocate-General appearing on behalf of the State of Madras agreeing to withdraw the notification G.O. Ms. No.894 Rural Welfare dated 28.8.1951 published in Fort St. George Gazette dated 4.9.1951 in the matter of the Sabhanayagar Temple, Chidambaram, Chidambaram Taluk, South Arcot District/the Temple concerned in this appeal/this Court doth order that the appeal and the civil Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948 miscellaneous petition above mentioned be and the same are hereby dismissed.

24. It is evident from the judgment of the High Court of Madras, which attained finality as the State withdrew the notification, that the Court recognised:

"That Dikshitars, who are Smarthi Brahmins, form and constitute a religious denomination; Dikshitars are entitled to participate in administration of the Temple; and It was their exclusive privilege which had been recognised and established for over several centuries. It is not a case to examine whether in the facts and circumstances of the case, the judgments of this court in various cases are required to be followed or the ratio thereof is binding in view of the provisions of Article 141 of the Constitution. Rather the sole question is whether an issue in a case between the same parties, which had been finally determined could be negated relying upon interpretation of law given subsequently in some other cases, and the answer is in the negative. More so, nobody can claim that the fundamental rights can be waived by the person concerned or can be taken away by the State under the garb of regulating certain activities."

25. The scope of application of doctrine of res judicata is in question. The literal meaning of res is everything that may form an object of rights and includes an object, subject-matter or status and res judicata literally means a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments. Res judicata pro veritate accipitur is the full maxim which has, over the years, shrunk to mere res judicata, which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence interest reipublicae ut sit finis litium (it concerns the State that there be an end to law suits) and partly on the maxim nemo debet bis vexari pro uno et eadem causa (no man should be vexed twice over for the same cause). Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide: Shah Shivraj Gopalji v. ED-, Appakadh Ayiassa Bi & Ors., AIR 1949 PC 302; and Mohanlal Goenka v. Benoy Kishna Mukherjee & Ors., AIR 1953 SC 65).

26. In Smt. Raj Lakshmi Dasi & Ors. v. Banamali Sen & Ors., AIR 1953 SC 33, this Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in Sheoparsan Singh v. Ramnandan Singh, AIR 1916 PC 78 wherein it had been observed as under:

> "The rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time.. Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law, sue again, he should be answered, you were defeated formerly". This is called the plea of former judgment.... And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

27. This Court in Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr., AIR 1960 SC 941 explained the scope of principle of res-judicata observing as under:

> "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation.

28. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct. A similar view has been re-iterated by this court in Daryao & Ors. v. The State of U.P. & Ors., AIR 1961 SC 1457; Greater Cochin Development Authority v. Leelamma Valson & Ors., AIR 2002 SC 952; and Bhanu Kumar Jain v. Archana Kumar & Anr., AIR 2005 SC 626. The Constitution Bench of this Court in Amalgamated Coalfields Ltd. & Anr. v. Janapada Sabha Chhindwara & Ors., AIR 1964 SC 1013, considered the issue of res judicata applicable in writ jurisdiction and held as under:

> "Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the

application of the doctrine of res judicata to the petitions filed under Art. 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law".

29. In Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr., (1999) 5 SCC 590, this Court has explained the scope of finality of the judgment of this Court observing as under:

> "One important consideration of public policy is that the decision pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by the appellate authority and other principle that no one should be made to face the same kind of litigation twice ever because such a procedure should be contrary to consideration of fair play and justice."

3. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. (See also: Burn & Co., Calcutta v. Their Employees, AIR 1957 SC 38; G.K. Dudani & Ors. v. S.D. Sharma & Ors., AIR 1986 SC 1455; and Ashok Kumar Srivastav v. National Insurance Co. Ltd. & Ors., AIR 1998 SC 2046). A three-Judge Bench of this court in The State of Punjab v. Bua Das Kaushal, AIR 1971 SC 1676 considered the issue and came to the conclusion that if necessary facts were present in the mind of the parties and had gone into by the court, in such a fact-situation, absence of specific plea in written statement and framing of specific issue of res judicata by the court is immaterial. A similar view has been re-iterated by this court in Union of India v. Nanak Singh, AIR 1968 SC 1370 observing as under:

> "This Court in Gulabchand Chhotalal v. State of Gujarat, AIR 1965 SC 1153 observed that the provisions of Section 11 of the Code of Civil Procedure are not exhaustive with respect to all earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude, such decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest."

30. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually

decides, and not what logically follows from it. The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. Even otherwise, a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardized and this would create a chaotic situation which may bring instability in the society.

31. The declaration that Dikshitars are religious denomination or section thereof is in fact a declaration of their status and making such declaration is in fact a judgment in rem. In Madan Mohan Pathak & Anr. v. Union of India & Ors., AIR 1978 SC 803, a seven-Judge Bench of this Court dealt with a case wherein the question arose as to whether the order passed by the Calcutta High Court issuing writ of mandamus directing the Life Insurance Corporation of India (hereinafter referred to as L.I.C.) to pay cash bonus for the year 1975-76 to its class 3 and 4 employees in terms of the settlement between the parties was allowed to become final. Immediately after the pronouncement of the judgment, the Parliament enacted the LIC (Modification of Settlement) Act, 1976. The appeal filed against the judgment of Calcutta High Court was not pressed by LIC and the said judgment was allowed to become final. This Court rejected the contention of the LIC that in view of the intervention of legislation, it was not liable to meet the liability under the said judgment. The Court held that there was nothing in the Act which nullifies the effect of the said judgment or which could set at naught the judgment or take away the binding character of the said judgment against LIC. Thus, the LIC was liable to make the payment in accordance with the said judgment and it could not be absolved from the obligation imposed by the said judgment.

32. This Court, while considering the binding effect of the judgment of this Court, in State of Gujarat & Anr. v. Mr. Justice R.A. Mehta (Retd.) & Ors., AIR 2013 SC 693, held:

> "There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding,..It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned". (Vide: Smt. Somavanti & Ors. v. The State of Punjab & Ors., AIR 1963 SC 151; Ballabhdas Mathuradas Lakhani & Ors. v. Municipal Committee, Malkapur, AIR 1970 SC 1002; Ambika Prasad Mishra v. State of U.P. & Ors., AIR 1980 SC 1762; and Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., AIR 2002 SC 1598)."

33. The issue can be examined from another angle. Explanation to Order XLVII, Rule 1 of Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) provides that if the

decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide: Rajendra Kumar & Ors. V Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948. Rambhai & Ors., AIR 2003 SC 2095). In view of the fact that the rights of the respondent no. 6 to administer the Temple had already been finally determined by the High Court in 1951 and attained finality as State of Madras (as it then was) had withdrawn the notification in the appeal before this Court, we are of the considered opinion that the State authorities under the Act 1959 could not pass any order denying those rights. Admittedly, the Act 1959 had been enacted after pronouncement of the said judgment but there is nothing in the Act taking away the rights of the respondent no. 6, declared by the court, in the Temple or in the administration thereof. The fundamental rights as protected under Article 26 of the Constitution are already indicated for observance in Section 107 of the Act 1959 itself. Such rights cannot be treated to have been waived nor its protection denied. Consequently, the power to supersede the functions of a 'religious denomination' is to be read as regulatory for a certain purpose and for a limited duration, and not an authority to virtually abrogate the rights of administration conferred on it.

34. In such a fact-situation, it was not permissible for the authorities to pass any order divesting the said respondent from administration of the Temple and thus, all orders passed in this regard are liable to be held inconsequential and unenforceable. More so, the judgments relied upon by the respondents are distinguishable on facts.

35. Thus, in view of the above, it was not permissible for the High Court to assume that it had jurisdiction to sit in appeal against its earlier judgment of 1951 which had attained finality. Even otherwise, the High Court has committed an error in holding that the said judgment in Marimuthu Dikshitar (Supra) would not operate as res judicata. Even if the Temple was neither established, nor owned by the said respondent, nor such a claim has ever been made by the Dikshitars, once the High Court in earlier judgment has recognised that they constituted 'religious denomination or section thereof and had right to administer the Temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard could not arise.

36. Relevant features of the order passed by the Commissioner are that the Executive Officer shall be incharge of all immovable properties of the institution; the Executive Officer shall be entitled to the custody of all immovables, livestock and grains; the Executive Officer shall be entitled to receive all the income in cash and kind and all offerings; all such income and offerings shall be in his custody; all the office holders and servants shall work under the immediate control and superintendence of the Executive Officer, though subject to the disciplinary control of the Secretary of the respondent no.6., etc.

37. Section 116 of the Act 1959 enables the State Government to frame rules to carry out the purpose of the Act for all matters expressly required or allowed by this Act to be prescribed. Clause 3 thereof requires approval of the rules by the House of State Legislature. The Executive Officer so appointed by the Commissioner has to function as per assigned duties and to the extent the Commissioner directs him to perform.

38. It is submitted by Dr. Swamy that rules have to be framed defining the circumstances under which the powers under Section 45 of the Act 1959 can be exercised. The Act 1959 does not contemplate unguided or unbridled functioning. On the contrary, the prescription of rules to be framed by the State Government under Sections 116 read with Sections 45 and 65, etc. of the Act 1959 indicates that the legislature only intended to regulate and control any incidence of maladministration and not a complete replacement by introducing a Statutory authority to administer the Temple.

39. Section 2(16) CPC defines the term 'prescribed' as prescribed by rules. Further, Section 2(18) CPC defines rules as Rules and forms as contained in the First Schedule or made under Section 122 or Section 125 CPC. Sections 122 and 125 CPC provide for power of the High Court to make rules with respect to its own functioning and procedure. Therefore, it appears that when the legislature uses the term 'prescribed', it only refers to a power that has simultaneously been provided for or is deemed to have been provided and not otherwise. Similarly, Section 2(n) of the Consumer Protection Act, 1986 defines prescribed as prescribed by rules made by the State Government or as the case may be, by the Central Government under the Act.

40. Section 45 of the Act 1959 provides for appointment of an Executive Officer, subject to such conditions as may be prescribed. The term prescribed has not been defined under the Act. Prescribed means prescribed by rules. If the word prescribed has not been defined specifically, the same would mean to be prescribed in accordance with law and not otherwise. Therefore, a particular power can be exercised only if a specific enacting law or statutory rules have been framed for that purpose. (See: Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527; Hindustan Ideal Insurance Co. Ltd. v. Life Insurance Corporation of India, AIR 1963 SC 1083; Maharashtra SRTC v. Babu Goverdhan Regular Motor Service Warora & Ors., AIR 1970 SC 1926; and Bharat Sanchar Nigam Ltd. & Anr. v. BPL Mobile Cellular Ltd. & Ors., (2008) 13 SCC 597).

41. Shri Subramonium Prasad, learned AAG, has brought the judgment in M.E. Subramani & Ors. v. Commissioner, HR&CE & Ors., AIR 1976 Mad 264, to our notice, wherein the Madras High Court while dealing with these provisions held that the Commissioner can appoint an Executive Officer under Section 45 even if no conditions have been prescribed in this regard. It may not be possible to approve this view in view of the judgments of this Court referred to in para 41 supra, thus, an Executive Officer could not have been appointed in the

absence of any rules prescribing conditions subject to which such appointment could have been made.

42. However, Shri Subramonium Prasad, learned AAG, has submitted that so far as the validity of Section 45 of the Act 1959 is concerned, it is under challenge in Writ Petition (C) No. 544 of 2009 and the said petition had earlier been tagged with these appeals, but it has been de-linked and is to be beard after the judgment in these appeals is delivered. Thus, in view of the stand taken by the State before this court, going into the issue of validity of Section 45 of the Act 1959 does not arise and in that respect it has been submitted in written submissions as under:

> "The scheme of administration in Boards Order No.997 dated 8.5.1933 under the Act 1927 contained various provisions inter- alia that active management would rest".

in the committee consisting of nine members who were to be elected from among the Podhu Dikshitars (clause 4); At the time of issuing the order of appointment of Executive Officer, the Podhu Dikshitars were given full opportunity of hearing and the powers and duties of the Executive Officer as defined by the Commissioner would show that the religious affairs have not been touched at all and the trustees and the Executive Officers are jointly managing the temple. The Podhu Dikshitars have not been divested of the properties and it was not the intention of the State Government to remove the trustees altogether, rather the Executive Officers function alongwith the trustees;"

43. In any event, the Podhu Dikshitars are trustees in the temple and they have not been divested of their properties. The Executive Officer is only collaborating with the trustees in administering the properties. Their religious activities have not been touched. Neither the powers of the trustees have been suspended nor the Executive Officers have been vested with their powers and the Executive Officers only assist the trustees in management of the temple. It was not the intention to remove the trustees altogether, nor the order of appointment of the Executive Officer suspends the scheme already framed way back in 1939. Be that as it may, the case is required to be considered in light of the submissions made on behalf of the State of Tamil Nadu and particularly in view of the written submissions filed on behalf of the State.

44. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

45. Super-session of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period. Regulate is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word 'regulate is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very Dr. Subramanian Swamy vs State Of Tamil Nadu & Ors on 6 December, 1948.

46. comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meaning and must take its colour from the context in

which it is used having regard to the purpose and object of the legislation. The word 'regulate is elastic enough to include issuance of directions etc. (Vide: K. Ramanathan v. State of Tamil Nadu & Anr., AIR 1985 SC 660; and Balmer Lawrie & Company Limited & Ors. Partha Sarathi Sen Roy & Ors., (2013) 8 SCC 345) Even otherwise it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous method. In Sant Lal Gupta & Ors. v. Modern Coop. Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, this Court held:

> "It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by shift or contrivance. (See also: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; A.P. Diary Dev. Corporation federation v. B. Narsimha Reddy & Ors. AIR 2011 SC 3298; and State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. AIR 2011 SC 3470)."

47. We would also like to bring on the record that various instances whereby acts of mismanagement/maladministration/ misappropriation alleged to have been committed by Podhu Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the Act 1959 for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/ conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust.

48. Thus, the appeals are allowed. Judgments/orders impugned are set aside. There shall be no order as to costs.