COMMISSIONER OF HINDU RELIGIOUS AND CHARITABLE ENDOWMENT (ADMN.), MADRAS AND ANR. A

v.

VEDANTHA STHAPNA SABHA

MAY 7, 2004 B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959:

C

Section 6(11)—Hereditary trustee—Claim to be appointed as—Held: Fulfilment of any of the three modes of succession envisaged in S. 6(11) only enables a person to legitimately make a claim for appointment as hereditary trustee—Whether the office of the trustee is hereditary or non-hereditary depends upon the manner or method by which the incumbent concerned occupies the office. D

Section 63(a)—Public temple—Declaration of—Statutory authorities declared a certain temple as public temple for all the worshipping Hindu public—No application was made under S. 63(a) for a declaration regarding nature of the temple—Held: Under such circumstances, the temple in question could not be declared as a public temple based on certain assertions which were besides the statutory provisions. E

Words & Phrases:

F

"Hereditary trustee" and "usage"—Meaning of—In the context of S. 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

The respondent-Sabha filed an application under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 before the Deputy Commissioner-appellant No. 2 for a declaration that the respondent was the hereditary trustee of the suit temple. The Deputy Commissioner dismissed the application. The respondent, therefore, filed a statutory suit before the Subordinate Judge. G H

A The trial court rejected the claim of the respondent. A Single Judge of the High Court dismissed the appeal filed by the respondent. However, the Division Bench allowed the Letters Patent Appeal filed by the respondent. Hence the appeal.

B On behalf of the appellant, it was contended that the suit temple was a public temple constructed out of the collections including collections from the members of the respondent-Sabha and the grant of funds from the Government; that the suit temple was not for the benefit of the respondent-Sabha members only but for the benefit of the Hindu public at large; and thus the suit temple was not covered C under Section 6(20) of the Act; that the common feature in hereditary trusteeship was succession by hereditary right or where the succession was regulated by usage or was specifically provided for by the founder; and that no such provisions existed and, therefore, the respondent-Sabha was not entitled to be declared as a hereditary trustee under D Section 6(11) of the Act.

On behalf of the respondent, it was contended that the length of management commensurate from the time of the suit temple's construction was itself suggestive of long usage.

E

Allowing the appeal, the Court

HELD: 1. A bare reading of Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which defines F "hereditary trustee" brings into focus three important aspects; i.e., first, a trustee of a religious institution the succession to which is devolved by hereditary right; the second category is that succession can be regulated by usage; and the third category is where succession relating to the office of trustee is specifically provided for by the founder and that too so long as the scheme of such succession is in G force. In contrast to the criteria engrafted in Section 6(22) of the Act, the definition in section 6(11) lays special and specific emphasis on the succession to the office of trustee of a religious institution devolving by anyone of the three methods or manner envisaged therein. The statutory authorities specially constituted under the Act have held the H temple to be for all the worshipping Hindu public and not confined to

the members of the Sabha only having regard to the manner in which funds were collected and the manner in which the day-to-day administration of the temple is being carried on from inception. Though there has been an application for declaration of the office of trustee of the religious institution to be a hereditary one, no application under Section 63(a) of the Act for a declaration as to whether the temple in question is a religious institution 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 section thereof was filed. Even after specific findings by the statutory authorities as to the character of the institution conspicuous omission in this regard disentitled the respondent-Sabha to incidentally or vaguely project that it is for the members of the Sabha only. Once it is a religious institution within the meaning of the Act, the provisions of the Act have full force and effect and the claim of the nature, unless substantiated as provided for under the statute, cannot be countenanced on certain assertions made which was besides such statutory provisions. [560-C-H; 561-A]

D. Srinivasan v. *Commissioner,* [2000] 3 SCC 548, relied on.

2. The office of the trustee, hereditary or non-hereditary though may have an incumbent who occupies or holds the office of trusteeship at a particular point of time or for a period of duration it is only the manner or method by which the incumbent concerned comes to occupy it that it is decisive of the nature and character of it as to whether it is hereditary or non-hereditary. [561-F]

3. As long as there is no provision by any founder for devolution of the office of the trusteeship by succession hereditarily, in or by anyone of the mode or method envisaged, it is futile to claim that the temple has hereditary trustee or that the management or administration of the affairs of the temple is carried on by a hereditary trustee or that the respondent is entitled for a declaration that it is the hereditary trustee of the temple in question. In this case no such provision has been shown or found to exist. [568-D-E]

Sambudamurthi Mudaliar v. *State of Madras,* AIR (1971) SC 2363, relied on.

A *State of Madras* v. *Ramakrishna Naidu,* **AIR (1957) Mad. 758, approved.**

A.N. Ramaswamy Iyer v. *Commissioner, H.R. & C.E.,* **(1975) 2 MLJ 178, overruled.**

B

Angurbala Mullick v. *Debabrata Mullick,* **[1951] SCR 1125 and** *Sital Das* v. *Sant Ram,* **AIR (1954) SC 606, referred to.**

In Re: Women's Right to Property Act, **1937 AIR (1941) FC 72,** *Ganesh Chunder Dhur* v. *Lal Behari,* **AIR (1936) PC 318,** *Bhabatatini* v.
C *Ashalata,* **AIR (1943) PC 89 and** *Sri Mahant Paramananda Das Goswami* v. *Radha Krishna Das,* **AIR (1926) Mad 1012, cited.**

4. The authority to nominate or appoint or specify periodically for a specified period even by a body which had authority to do so
D **would not make such office a hereditary one so as to call such trustees 'hereditary trustees' as defined under the Madras Hindu Religious and Charitable Endowments Act, 1951 or the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is the definite rules of succession and devolution by any one of the three modes of succession**
E **envisaged in Section 6(11) that could alone enable a claim of hereditary trustee to be legitimately made. [569-F-G]**

D. Srinivasan v. *Commissioner,* **[2000] 3 SCC 548, relied on.**

F **5. The submissions made on the basis of the finding recorded that the Sabha was the founder of the temple in question or that as founder it had every right to provide for the administration of the affairs and management of the temple and its property, if any, and for future management as well, pale into insignificance and really do not call for this Court's decision to determine the question as to whether the Sabha**
G **could get itself declared as "Hereditary Trustee" under the provisions of the Act. Similarly, the question as to whether a body could be a trustee or constitute a Board of Trustees also is beside the point. Even, as a body - whether it could claim to be a trustee or not, so far as in the case on hand is concerned, it cannot, claim to be a hereditary**
H **trustee. [569-G-H; 570-A-B]**

6. No doubt, normally every donor contributing at the time of foundation of a Trust cannot claim to become a founder of the Trust, except in cases where all the contributors of the Trust Fund become the founders of the Trust itself inasmuch as a decision on the question as to whether a person can be a joint founder, cannot be made to rest merely upon the factum of contribution alone unless the surrounding and attendant circumstances proved in the case and subsequent conduct of parties warrant such a finding. [570-C-D]

7. The Sabha itself came into existence a few years before the declaration was sought for by filing a suit by the present respondent. The concept of long continuance and passage of time is inbuilt in the expression "usage" and the factual position also in the present case does not enable the Sabha to establish application of the usage concept. [570-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5093 of 1998.

From the Judgment and Order dated 12.4.97 of the Madras High Court in L.P.A. No. 275 of 1995.

K. Ramamoorthy, R. Ayyam Perumal, S. Vallinayagam and Sriram J. Thalapathy for the Appellants.

R. Sundaravaradan, Ramesh N. Keswani and Ram Lal Roy for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : A Division Bench of the Madras High Court by the impugned judgment held that the respondent was entitled to hold office of trusteeship in Sri Lakshmi Hayavadhana Perumal Temple in Nanganallur, Saidaret Taluk as hereditary trustee. The Commissioner of Hindu Religious and Charitable Endowment and the Deputy Commissioner, the appellants herein question correctness of the judgment.

Background facts giving rise to the present appeal need to be noted in some detail.

A Respondent-Sabha filed an application under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (in short 'Act'), before the Deputy Commissioner (appellant no. 2 in the present appeal) for declaration that the Sabha is hereditary trustee of the religious institution. The application was dismissed by the Deputy B Commissioner. Since the dismissal was upheld by the Commissioner (the appellant no. 1 herein) against the rejection of the application, the respondent as plaintiff filed a statutory suit OS No. 257/1981 before Subordinate Judge, Chengleput. Present appellants as defendants took the stand that the suit temple is a public temple constructed out of the collections including collections from the members of the Sabha and the C grant of funds from the Government, that it is not for the benefit of Sabha members only but for the benefit of the Hindu public at large, and thus the temple is one covered under Section 6(20) of the Act. The Trial Court rejected the claim of the plaintiff by holding that it is not entitled to be declared as hereditary trustee of the suit temple. At the same time since D the Sabha had initiated and taken all efforts to construct the temple and manage it in the interest of general worshipping public, it would be appropriate to have one or more of the representatives of the Sabha, in the Board of Trustees as the authorities may deem fit. Aggrieved by that the plaintiff preferred an appeal (AS No. 240/84) which was also dismissed E by a learned Single Judge of the Madras High Court. The learned Judge also highlighted the difference inherently inbuilt in the definition of 'hereditary trustee' in Section 6(11) and 'trustee' in Section 6(22) of the Act. Letters Patent Appeal was filed by the Sabha in L.P.A. No. 275/1995 which was allowed and the judgment therein is the subject matter of F challenge in the present appeal. The Division Bench in the High Court was of the view that the founder being the Sabha, the entire administration of the temple is vested in the Sabha only consisting of its office bearers and they alone are entitled to administer the temple and its properties.

G Case of the plaintiff in a nutshell is as follows:

The Sabha itself was formulated for the purpose of constructing a new temple for the benefit of the members of the said Sabha and the Sabha was registered under the Tamil Nadu Societies Registration Act, 1975 (in short the 'Societies Act'). The objects of the Sabha are to promote spiritual H pursuits of Vashistadvaitha philosophy as propounded by Sri Bhagavath

Ramanuja and Sri Vedantha Desika, to conduct discourses and arrange for lectures, to conduct classes in Vadas, Upanishads, Divyaprabandas and Stothrapathas relating to Vashishtadvaitha faith and philosophy, to work for cordial relationship and understanding among persons having different religions and also among persons practising different religions to make representations to Government and other leading religious institutions in connection with any religious issue of public importance, to secure representations on committees appointed by Government and other bodies relating to the objects of the Sabha, to construct own and maintain temples and other places of worship, Mantapams and the like to publish magazines, journals and other literatures; to establish and maintain libraries and reading rooms and to organise seminars, group discussions and conferences and raise charities, fund for the purpose of giving charities, etc. The objects of the Sabha consist of both religious and secular, its main object was to construct a temple for the exclusive worship by its members. The land where the institution in question is situated, was donated by one P.S. Srinivasan of St. Thomas Mount. Its total extent is 1-3/4 grounds. The said P.S. Srinivasan is also an active member of the Sabha. The members of the Sabha collected nearly Rs. 2 lakhs and constructed the institution in question. The Sabha has also received a sum of Rs. 25,000 from the appellants as Government grant. The construction was commenced in the year 1968 and completed in the year 1972. Kumbabishegam was performed during 1972 from and out of the collection made amongst the members of the Sabha. The institution in question has no property of its own. The day-to-day affairs of the institution are being looked after by the Secretary of the Sabha, who is being elected by its members from time to time. The members of the Sabha used to donate liberally for the maintenance of the institution. The institution has not received any contribution from outsiders either for its construction or for its day-to-day maintenance. It is the personal property of the Sabha consisting of over 120 members. Since the institution is the personal property of the Sabha, the Sabha has every right to manage and maintain the affairs of the institution as its founder-cum-hereditary trustee. The Sabha is represented by its Secretary. A petition was filed under Section 63(b) of the Act before the 2nd appellant for a declaration that the respondent is the hereditary trustee of the institution. That application was dismissed by the 2nd appellant, in O.A. No. 69 of 1977. The evidence let in and the materials placed before the 2nd appellant have been analysed and considered elaborately to arrive at the finding that

A the temple has been constructed and is maintained thereafter also from funds mobilised from public and, therefore, it is meant for Hindu worshipping public as well. As against such dismissal, the respondent filed A.P. No. 174 of 1978 before the 1st appellant under Section 69(1) of the Act, which was also dismissed by the 1st appellant. The reasonings contained in those B orders which are adopted by the appellants for coming to the conclusion that the respondent cannot be the hereditary trustee are said to be baseless. The Secretary of the Sabha elected periodically, it is asserted, is entitled to hold the office of trusteeship in respect of the temple in question. The trusteeship accordingly is claimed to be only a hereditary one. Hence the C suit.

The suit was resisted by the appellants as defendants. According to them, the suit temple is a public temple constructed out of public collections including from the members of the respondent Sabha who are members of the public. The institution is for the purpose of Hindu public D at large. It is not relevant to consider the objects of the Sabha. The suit temple is not for the exclusive worship of the members of the respondent only. It is a temple as defined in Section 6(20) of the Act. In any event, the suit temple has been dedicated to public for the benefit of the public. The public used this temple as of right. The site has also been taken on E lease. Government grant of Rs. 25,000 was also sanctioned for the construction of the temple. All expenses for the construction of the temple and for Kumbabishegam and the day-to-day expenses thereafter are met out of public contributions as well as receipts from Hundial installed in the temple.

F According to the appellants, the allegation of the respondent that the temple does not own any property is not correct. Public at large, other than the members of the respondent Sabha, have contributed liberally for the construction and for day-to-day expenses after the Kumbahishegam. It is not the personal property of the members of the Sabha. The respondent has G no right to be declared as the hereditary trustee. There is a Hundial in the suit temple and the public contributes liberally in it. The petition filed by the respondent under Section 63(b) of the Act has been duly considered by the 2nd appellant and was rightly dismissed by him, which was confirmed on appeal by the 1st appellant. The reasonings in both the orders H are not liable to be set aside. The respondent Sabha was never the

hereditary trustee of the temple in question and it cannot hold the hereditary trusteeship. The temple is a public temple and not owned exclusively by the respondent. The Secretary of the respondent Sabha has no right to be appointed as its hereditary trustee and the office of trusteeship cannot be claimed to be an hereditary one. There is no cause of action to file the suit and the cause of action claimed is false. There is a provision in the bye-laws of the respondent Sabha that they can wind up the Sabha, which clause in the bye-laws will clearly show that the trusteeship is not at all hereditary. "Hereditary trustee" has been defined under Section 6(11) of the Act as trustee of the religious institution, succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder so long as such scheme of succession is in force. None of the requirements of this provision is satisfied in the present case and hence the suit was liable to be dismissed with costs.

The Trial Court framed the following issues:

"1. Whether the order of the Ist defendant is liable to be set aside?

2. To what relief?"

It dismissed the suit observing that taking into consideration the efforts taken by the members of the Sabha in constructing the temple by contributing and also by collecting donations from the public at 'east one of the members of the plaintiff-Sabha can be appointed as trustee of the said temple. It is for the defendants to decide as to which one or more of the members of the Sabha can be appointed as trustee of the said temple.

Aggrieved by the judgment and decree of the trial Court, plaintiff (respondent No. 1 herein) preferred an appeal before the High Court and learned Single Judge dismissed the appeal holding that though the institution was founded by the appellant-Sabha which is a body of persons, it was from collections and contributions from public also and that the same is meant for all Hindu worshipping public, and that there was no acceptable ground for declaring it as hereditary trustee. The Division Bench of the High Court by the impugned judgment held in view of the admitted position that Sabha was founder of the Temple, the only other question

A which needed to be answered was whether a body of persons/society or office bearers of the Sabha can be recognised as hereditary trustee or a trustee of the temple. The aforesaid question was answered in the affirmative with reference to the fact that the entire administration of the temple *vis-à-vis* of the Sabha which consists of office bearers and members
B of the Sabha/society alone are entitled to administer the temple and properties which are also vested with them either jointly as trustees or co-trustees. Setting aside the judgment of the present appellant No. 2 as confirmed of the present appellant No. 1, it was declared that the respondent-plaintiff was entitled to hold office of trusteeship as its
C hereditary trustee.

In support of the appeal, Mr. K. Ramamoorthy, learned senior counsel submitted that the principles governing the appointment of hereditary trustee were not kept in view. Office of the hereditary trustee is in the nature of property and where by efflux of time vacancy arose there can
D be no succession and that the principle of heredity will not arise. The common feature in hereditary trusteeship is succession by hereditary right or where the succession is regulated by usage or is specifically provided for by the founder, as long as such provision of scheme is in force. Undisputed position is that members of the public also contributed for
E construction of the temple besides Government grant and there being no details as to how much was contributed by the founder and how much by the public it was not permissible to hold that there was scope for the Sabha being the hereditary trustee. The finding recorded that money was collected for construction of the temple and that it was a public temple was not
F disturbed. Whether a corporate body or a group of persons can be appointed as hereditary trustee is really of no consequence in the factual background of the present case, and that, therefore, the Division Bench was not right in allowing the claim of the respondent, as prayed for.

Clause (11) of Section 6 of the Act defining "hereditary trustee" has
G three limbs. Sections 41 and 42 of the Societies Act have great relevance on the question of hereditary trusteeship. Bye-law (23) also throws considerable light on the controversy. There is no question of any usage being pressed into service, when the temple is constructed first. The society itself was formed in 1967 and therefore the question of any long usage
H being in existence does not arise.

In response, learned counsel for the respondent submitted that merely because contributions had been received from the public, that does not make contributors co-founders. Unnecessary stress was laid by learned Single Judge on the consequences of winding up of the Sabha. The founder is known as a Sabha and the management is with the Sabha's members themselves. There is no dispute about this aspect. There was also no hindrance or interference by the public in the management and administration of the temple. The length of management commensurate from the time of its construction is itself suggestive of long usage. Trusteeship is linked with management and there being no legal bar on a body becoming a trustee the Division Bench was correct in holding that the Sabha was a hereditary trustee. If one looks at Clause (22) of Section 6, the Sabha as a whole is a trustee and with reference to Clause (11) of Section 6 it can be said that the Sabha is a hereditary trustee. The founders automatically were vested with trusteeship. It is nobody's case that it was an elected body, and therefore, the contributors and the Government cannot be said to have status as its founders. Sabha is not a corporate body but is a compendium of names. It is not the case of the respondent that any particular member was a trustee. It was the compendium which was the trustee acting through its Secretary and, therefore, rightly the Division Bench held that present respondent No.1 was a hereditary trustee.

Section 6 of the Act which is the pivotal provision so far as relevant reads as follows:

> "Section 6(11)- 'hereditary trustee' means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.
>
> 6(20)-'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 of any section thereof, as a place of public religious worship.
>
> 6(22) 'Trustee' means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested, and includes any person or body who or

A which is liable as if such person or body were a trustee."

On consideration of the rival submissions, we feel that the approach of the Division Bench of the High Court was on erroneous premises and the conclusions appear to have been arrived at overlooking certain vital and B basic underlying factors, the character of the temple as well as operation and impact of the provisions of the Act on the temple and the claims made in relation thereto. The basic question that arose was not whether a body of persons or society or office bearers of a Sabha can be recognised as hereditary trustee or a trustee of the temple. What was needed to be adjudicated was whether on the facts as also the prevailing and governing C position of law, particularly the Act in question, the claim for 'hereditary trustee' was established or could be sustained.

A bare reading of definition of "hereditary trustee" brings into focus three important aspects; i.e. first, a trustee of a religious institution the D succession to which is devolved by hereditary right; the second category is that succession can be regulated by usage and the third category is where succession relating to the office of trustee is specifically provided for by the founder and that too so long as the scheme of such succession is in force. In contrast to the criteria engrafted in Section 6(22), the definition E in Section 6(11) lays special and specific emphasis on the succession to the office of trustee of a religious institution devolving by anyone of the three methods or manner envisaged therein. So far as the case on hand is concerned, the statutory authorities specially constituted under the Act have held the temple to be for all the worshipping Hindu public and not F confined to the members of the Sabha only having regard to the manner in which funds were collected and the manner in which the public invitations and declarations have been made and day-to-day administration of the temple is being carried on from inception. Though there has been an application for declaration of the office of trustee of the religious institution to be an hereditary one, no application under Section 63(a) for G a declaration as to whether the temple in question is a religious institution 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 section thereof was filed. Even after, specific findings by the statutory authorities as to the character of the institution conspicuous omission in this regard disentitled H the respondent-Sabha to incidentally or vaguely project that it is for the

members of the Sabha only. Once it is a religious institution within the meaning of the Act, the provisions of the Act have full force and effect and the claim of the nature, unless substantiated as provided for under the statute cannot be countenanced on certain assertions made which was besides such statutory provisions. This Court highlighted this aspect of the matter in the decision reported in *D. Srinivasan* v. *Commissioner and Ors.*, [2000] 3 SCC 548.

The Act applies to all Hindu Public Religious Institutions and Endowments. 'Religious Institution', as defined at the relevant point of time meant a math, temple or specific endowment and 'temple' meant 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 of any section thereof, as a place of public religious worship. 'Trustee' meant any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee. In respect of a religious institution, which has no hereditary trustee, the competent authority concerned depending upon the class of temple has been empowered under the provisions of the Act to constitute also a Board of Trustees. 'Hereditary trustee' has been defined to mean, the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long such schemes of succession is in force. 'Non-hereditary trustee' has also been defined to mean a trustee who is not a hereditary trustee. Consequently, the office of trustee, hereditary or non-hereditary though may have an incumbent who occupies or holds the office of trusteeship at a particular point of time or for a period of duration it is only the manner or method by which the incumbent concerned comes to occupy it that it is decisive of the nature and character of it as to whether it is hereditary or non-hereditary.

Prior to the 1959 Act, The Madras Hindu Religious and Charitable Endowments Act 1951, occupied the field from 1.10.1951 and came to be replaced by the 1959 Act. The scope of meaning of the terminology 'hereditary trustee' under the 1951 Act came up for consideration of the Madras High Court as well as this Court. In ILR 1957 Mad. 1084=AIR 1957 Mad. 758 *State of Madras* v. *Ramakrishna Naidu,* a Division Bench

A of the Madras High Court had an occasion to exhaustively deal with the position in the context of an ancient temple known as Sri Parthasarathy Swami Temple, in Triplicame in Madras city. The administration of the temple at the relevant point of time was in accordance with a scheme framed by the Madras High Court, which *inter alia* provided that the B management and affairs of the temple shall be carried on by a body of dharmakartas under the supervision and control of a Board of Supervision. The dharmakartas were to be three in number, of whom one shall be a Brahmin, one an Arya Vysia (Komatti) and one a non-brahmin not Arya Vysia and the dharmakartas shall hold office for a period of five years from the date of his appointment, the retiring dharmakartas being also eligible C for re-appointment, otherwise if so qualified. The said dharmakartas shall be elected by person whose names are included on the date of election in the list of voters maintained at the temple, in terms of the qualifications prescribed for being so enrolled as voters and elaborate rules for the conduct of elections have been also laid down in the scheme. When the D period of office of one of the dharmakartas by name *Rao Bahadur* v. *Ranganathan Chetty* expired by efflux of time after the commencement of the 1951 Act, though the vacancy had to be under the scheme, filled up by election, the Commissioner, Hindu Religious And Charitable Endowments, passed an order in exercise of his powers under Section 39(i) E of the 1951 Act, appointing one C. Subramaniam Chetty as Trustee in the vacancy caused by the expiry of the term of trustee of Sri V. Ranganathan Chetty. This order came to be challenged in the High Court and a learned Single Judge sustained the claim of challenge on the ground that Sections 39 and 42 had no application, as the trustees of the temple were hereditary F trustees. Those who challenged the appointment were not either the outgoing trustee- V. Ranaganathan Chetty or his heirs or successors but two thengalai worshippers interested in the said temple. If the trustees of the temple are hereditary trustees, Sections 39 and 42 had no application and it is in that context the question that was adverted to for consideration was whether it is an institution, which has a hereditary trustee or hereditary G trustees. After adverting to the definition of 'hereditary trustee' in Section 6(9) of the 1951 Act, which defined the same to mean the trustee of a religious institution, succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force. The Division Bench H specifically noticed the fact that the claim of those who challenged the

order of Commissioner was on the ground that the office of dharmakartas was a 'hereditary' one and it was not on the basis that their office devolved by succession or because succession to their office has been specifically provided for by the founder, but that the succession to the office "is regulated by usage', which found favour of acceptance with the learned Single Judge. The stand taken for the State before the Division Bench was that, the phrase 'regulated by usage' must be read with the expression, "succession to whose office" and when so read that part of the definition would only apply where the ordinary rules of succession under the Hindu Law are modified by usage and succession has to be determined in accordance with the modified rules. It was observed that though several schemes framed took notice of the usage and embodied it in the scheme framed with such modifications as the court deemed fit, it cannot be said that the succession continued to be governed by usage when as a matter of fact it was governed by the provisions of the scheme and not by usage any longer.

Proceeding further, the Division Bench construed the scope and purport of the definition 'hereditary trustee', placing strong reliance upon the decision of this Court reported in 1951 SCR 1125 (*Angurbala Mullick* v. *Debabrata Mullick*) and AIR 1954 SC 606 (*Sital Das* v. *Sant Ram*), and held therein as follows:

> "In the case of mutts whose heads are often celibates and sometimes sanyasins, special rules of succession obtain by custom and usage. In *Sital Das* v. *Sant Ram*, the law is taken as well-settled that succession to mahantship of a mutt or religious institution is regulated by custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In that case the custom in matters of succession to mahantship was that the assembly of bairagis and worshippers of the temple appointed the successor; but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any one of his spiritual kindred. Such a succession was described as not hereditary in the sense that on the death of an existing mahant, his chela succeeds to the office as a matter of course, because the successor acquires a right only by appointment and the authority

A to appoint is vested in the assembly of the bairagis and the worshippers. In Sri Mahant Paramananda Das Goswami vs Radhakrishna Das a Division Bench took the view that where succession to the mahantship is by nomination by the holder in office, it is not a hereditary succession. Venkatasubba Rao, J., as

B said:

> "If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title, I am inclined to the view that the office cannot be said to be

C hereditary."

Krishnan, J., the other learned Judge, came to the same conclusion on the following reasoning:

D

> "Where succession is by nomination by the holder in office of his successor it seems to me impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to

E some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual".

F

The present definition in Section 6, clause (9), would, however, comprise even such cases.

> It appears to us to be singularly inappropriate to say that there is a succession of A's office to another when on the efflux

G of the period for which A was appointed there is a vacancy and B is elected to that vacancy."

In AIR (1971) SC 2363 = [1970] 1 SCC 4 (*Sambudamurthi Mudaliar* v. *The State of Madras and Another*), this Court had an occasion to construe

H Section 6 (9) and the scope of the terminology 'hereditary trustee' and held

as follows: A

"3. The question to be considered in this appeal is whether the appellant is a hereditary trustee within the meaning of the section. The definition includes the three types of cases: (1) succession to the office of trusteeship devolving by hereditary right; (2) B succession to such office being regulated by usage; and (3) succession being specifically provided for by the founder on condition that the scheme of such succession is still in force. It is not the case of the appellant that the trustees of the temple of the Kumaran Koil are hereditary trustees because their office devolves by hereditary right or because succession to that office C is specifically provided for by the founder. The contention on behalf of the appellant is that the succession is "regulated by usage". It was said that according to the usage of the temple the trustees were elected for a period of one year each at a meeting of the members of the Sengunatha Mudaliar Community and so D the appellant must be held to be a trustee within the meaning of Section 6(9) of the Act 19 of 1951. In our opinion, there is no warrant for this argument. The phrase "regulated by usage" in Section 6 (9) of the Act must be construed along with the phrase "succession to this office" and when so construed that part of the E definition would only apply where the ordinary rules of succession under the Hindu Law are modified by usage and succession has to be determined in accordance with the modified rules. The word "succession" in relation to property and rights and interests in property generally implies "Passing of an interest from one person F to another" (vide in Re. Hindu Women's Right to Property Act, 1937, (1941) FCR 12 = AIR (1941) FC 72. It is now well established that the office of a hereditary trustee is in the nature of property. This is so whether the trustee has a beneficial interest of some sort or not. (see *Ganesh Chander Dhur* v. *Lal Behari,* 63 Ind App 448 = AIR (1936) PC 318) and *Bhabatatini* v. *Ashalata,* G 70 Ind App 57 = AIR (1943) PC 89. Ordinarily a shebaitship or the office of dharamakarta is vested in the heirs of the founder unless the founder has laid down a special scheme of succession or except when usage or custom to the contrary is proved to exist. Mukherjea J., in *Angurbala Mullick* v *Debabrata Mullick*, [1951] H

A SCR 1125 = AIR (1951) SC 293, delivering the judgment of this Court observed:

> "Unless, therefore the founder has disposed of the shebaitship in any particular manner and this right of disposition is inherent in the founder or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder."

In the case of mutts, whose heads are often celibates and sometimes sanyasins, special rules of succession obtain by custom and usage. In *Sital Das* v. *Sant Ram,* AIR 1954 SC 606 the law was taken as well settled that succession to mahantship of a mutt or religious institution is regulated by custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In that case the custom in matters of succession to mahantship was that the assembly of bairagis and worshippers of the temple appointed the successor; but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any one of his spiritual kindred. Such a succession was described as not hereditary in the sense that on the death of an existing mahant, his chela does not succeed to the office as a matter of course, because the successor acquires a right only by appointment and the authority to appoint is vested in the assembly of the bairagis and the worshippers. In *Sri Mahant Paramananda Das Goswami* v. *Radha Krishna Das,* 51 MLJ 258 = (AIR 1926 Mad 1012), the Madras High Court took the view that where succession to the Mahantship is by nomination by the holder in office, it is not a hereditary succession. In that case Venkatasubba Rao, J., said:

> "If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title, I am inclined to the view that the office cannot be said to be hereditary."

Krishnan, J., stated as follows: A

> "Where succession is by nomination by the holder in office of his successor it seems to be impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the B office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual." C

It is true that the artificial definition of hereditary trustee in Section 6(9) of the Act would include even such cases.

4. But the election to the office of trustee in the present case is D for a fixed period of one year and not for life. It is, therefore, difficult to hold that the office of the appellant is hereditary within the meaning of Section 6(9) of the Act. It is not possible to say that there is a succession of A's office to another when on the efflux of the period for which A was appointed, there is a vacancy and B is elected to that vacancy. It is quite possible that for that E vacancy A himself might be re-elected because a retiring trustee is eligible for re-election. The possibility of A being the successor of A himself is not merely an anomaly, it is an impossible legal position. No man can succeed to his own office. In Black's Law Dictionary the word 'succession' is defined as follows: F

> "The devolution of title to property under the law of descent and distribution.
>
> The right by which one set of men may, by succeeding G another set, acquire a property in all the goods, movables, and other chattels of a corporation.
>
> The fact of the transmission of the rights, estates, obligations, and charges of a deceased person to his heir or heirs." H

A The view we have taken is borne out by the reasoning of the Madras High Court in *State of Madras* v. *Ramakrishna,* ILR (1957) Mad 1084 = (AIR 1957 Mad 758)."

Thus, it could be seen that even in *S. Mudaliar's* case (supra), the B challenge was by a person who was appointed only for one year and not for life and that his claim before the Court, which fell for consideration is not that he himself was a hereditary trustee but that the trusteeship of the temple was 'hereditary' in nature. This Court also approved the ratio of the decision of the Division Bench of the Madras High Court in *Ramakrishna Naidu's* case (supra). Consequently, the distinction sought to C be made of the decision of this Court by a Division Bench of the Madras High Court which decided the case in (1975) 2 M.L.J. 178 - *A.N. Ramaswamy Iyer and Ors.* v. *The Commissioner H.R. & C.E. and Another,* particularly para 11 is without any substance or really any difference to so distinguish. The said decision cannot be considered to lay down a correct D proposition of law, in the teeth of the specific declaration of the legal position made by this Court in *S. Mudaliar's* case (supra). As long as there is no provision by any founder for devolution of the office of trusteeship by succession hereditarily, in or by anyone of the mode or method envisaged it is futile to claim that the temple has hereditary trustee or that E the management or administration of the affairs of the temple is carried on by a hereditary trustee or that the respondent is entitled for a declaration that it is the hereditary trustee of the temple in question. In this case no such provision has shown or found to exist, and as a matter of fact the learned Single Judge in the High Court found such provision to be F conspicuously absent.

In *Dr. Srinivasan's* case (supra), this court adverted to the definition of 'hereditary trustee' under Section 9(6) of the Madras Hindu Religious Endowments Act, 1926 (Act 2 of 1927) as also Section 6(9) of the 1951 Act and Section 6(11) of the 1959 Act and taking note of the change G brought about by the 1951 and 1959 Acts respectively, it was held that, after the commencement of the 1951 Act itself the definition of 'hereditary trustee' contained in Section 6(9) therein did not recognize a person who was nominated by other trustees as hereditary trustees and that the same position prevails under Section 6(11) of the 1959 Act, which also does not H describe a person nominated by the existing board to be called a hereditary

trustee. It is useful to refer to the observation made therein, as hereunder: A

> "24. We, therefore, hold that if any trustee has been nominated subsequent to the commencement of the 1951 Act by the Board of Trustees who were in office prior to the 1951 Act or by their nominees then such persons could not be called *"hereditary trustees"* within the meaning of sub-section (6) of Section 9 of the 1951 Act. Similarly, if the persons who were themselves not hereditary trustees after the 1951 Act, either by themselves or along with other hereditary trustees after 1951, nominated trustees, then such trustees would not be hereditary trustees. The position is no different after the 1959 Act. B C
>
> 26. This does not, however, mean that the right conferred on the Board of Trustees, whenever a vacancy occurs in the five places created by Venkatarangaiah, is done away with altogether by the 1951 Act or by the post-1951 Acts. It will be open to the nominated five trustees in office, from time to time to nominate fresh trustees whenever there is any vacancy in these five offices of trustees. Such persons can be trustees but cannot be called "hereditary trustees". They will have to be described as "non-hereditary trustees". What their rights are will necessarily have to be governed by the provisions of the statute. We need not go into the question as to their rights. Suffice to say that they are not "hereditary trustees"." D E

The authority to nominate or appoint or specify periodically for a specified period even by a body which had authority to do so would not make such office a hereditary one so as to call such trustees 'hereditary trustees' as defined under the 1951 or 1959 Acts. It is the definite rules of succession and devolution by any one of the three modes of succession envisaged in Section 6(11) that could alone enable a claim of hereditary trustee to be legitimately made. F G

Having regard to the conclusions arrived at supra, the submissions made on the basis of the finding recorded that the Sabha was the founder of the temple in question or that as founder it had every right to provide for the administration of the affairs and management of the temple and its H

property, if any, and for future management as well, pales into insignificance and really does not call for our decision to determine the question as to whether the Sabha could get itself declared as 'Hereditary Trustee' under the provisions of the Act. Similarly, the question as to whether a body could be a Trustee or constitute Board of Trustees also is beside the point. Even, as a body - whether it could claim to be a trustee or not, so far as in the case on hand is concerned, it cannot, as held by us, claim to be hereditary trustee.

No doubt, normally every donor contributing at the time of foundation of a Trust cannot claim to become a founder of the Trust, except in cases where all the contributors of the Trust Fund become the founders of the Trust itself inasmuch as a decision on the question as to whether a person can be a joint founder, cannot be made to rest merely upon the factum of contribution alone unless the surrounding and attendant circumstances proved in the case and subsequent conduct of parties warrant such a finding. All these issues also seem to be beside the real issue as to the hereditary nature of the office claimed - which by no means could be countenanced in law, in favour of the respondent-Sabha.

The analysis undertaken by learned Single Judge seems to be correct. As noted above, Sabha itself came into existence a few years before the declaration was sought for by filing a suit by the present respondent. The concept of long continuance and passage of time is inbuilt in the expression 'usage' and the factual position also in the present case does not enable the Sabha to establish application of the usage concept. That being so, the judgment of Division Bench of the High Court is set aside and that of the learned Single Judge is restored. The appeal is allowed with no order as to costs.

V.S.S. Appeal allowed.