

(1972) 02 OHC CK 0017

In the Orissa High Court

Case No : Original Jur. Case No. 933 of 1970

Abhoya Charan Sahu

APPELLANT

Vs

The Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 18-02-1972

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 28

Citation : AIR 1972 Ori 259

Hon'ble Judges : R.N. Misra, J;B.C. Das, J

Bench : Division Bench

Advocate : S. Misra, No. 2, S.K. Mohanty and B. Das, for the Appellant; S. Mohanty, B. Mohapatra and P.C. Misra, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—This application under Articles 226 and 227 of the Constitution of India asks for a writ of certiorari to quash the orders of the Commissioner of Endowments (opposite Party No. 1) dated 3-9-1970 and 12-9-1970 disposing of a proceeding u/s 28 of the Orissa Hindu Religious Endowments Act (II of 1952).

2. The short facts necessary for the disposal of this petition may now be stated. There are two public deities Gopinath Dev and Radhakanta Dev located within the Pipili police station of the District of Puri. The Commissioner of Endowments settled a scheme u/s 42 of the Act on 9-6-1965 in O. P. No. 255 of 1958-59. The management of the affairs of the deities vested in a board of trustees consisting of three members. The petitioner, opposite party No, 3 and one Sri Ramesh Chandra Tripathy were appointed as the first members of the said board. Ramesh Chandra Tripathy resigned and the petitioner made an application u/s 28 of the Act before the Assistant Commissioner of Endowments for his removal for allegations of misdemeanour and misfeasance were made against him. O. P. No. 98 of 1969 was registered on the basis of such application and a set of charges were framed by the Assistant Commissioner against opposite party No. 3 and he showed cause in due course. On 3-9-1970 the Assistant Commissioner posted

the proceeding to 12-9-1970 for hearing.

It was alleged in the writ petition and has not been denied that on 3-9-1970 the Commissioner passed the following order:

"It was brought to mv notice that the O. P. No, 98 of 1969 u/s 28 of the Orissa Hindu Religious Endowment Act is against the hereditary trustee; as such it was to be dealt with by me. The record be called for to my file and registered. A suo motu proceeding be started fixing 12-9-1970 for disposal".

Order dated 7-9-1970 in O. P. No. 98 of 1969 passed by the Assistant Commissioner is to the following effect.

"In view of the order of the E. C. dated 3-9-1970, the case is transferred to the Court of Commissioner of Endowments".

On 12-9-1970 the petitioner was ready with witnesses and claims that he wanted evidence to be recorded in support of the various charges. The Commissioner of Endowments did not record any evidence and disposed of the proceeding. In paragraph 9 of the impugned order he said:

"So it is necessary to modify the scheme so as to make provisions for appointment of an executive Officer. In the meantime, the new trust board will be functioning with the other trustees. With this observation, title proceeding is dropped".

3. The petitioner has been aggrieved on account of evidence having not been taken from his side in support of the charges. In paragraphs 2 to 8 the Commissioner dealt with some of the allegations against the opposite party No. 3, but those were on the basis of no evidence. When regular charges had been framed and the person making the allegations was ready with evidence to support such charges, we are not in a position to see how the purpose of the enquiry was served by shutting out evidence.

4. It was next contended before us that since the proceeding was pending before the Assistant Commissioner who had also jurisdiction to enquire into the matter, it was not competent for the Commissioner to have the proceedings transferred to his own file. There is no provision for transfer of such a proceeding under the statute or the Rules made thereunder. We have indeed not been shown any such power to vest in the Commissioner.

5. Mr. Mohanty for the Commissioner, however, contended that the Commissioner was right in his view that a proceeding u/s 28 against the hereditary trustee lay only before the Commissioner and as such, such a proceeding before the Assistant Commissioner was not cognizable. Having examined the provisions of the Act we are not inclined to accept the contention of learned counsel for the Commissioner. It is true that non-hereditary trustees are to be appointed by the Assistant Commissioner as provided u/s 27. The legislature has, however, maintained no clear distinction between trustees -- hereditary and/or non-

hereditary in Section 28. Sub-section (1) provides--

"The Commissioner or the Assistant Commissioner as the case may be, may suspend, remove or dismiss the trustee, whether hereditary or non-hereditary, of such a religious institution."

In Clauses (a) to (c) various grounds have been provided for exercise of such power. Sub-section (2) provides for framing of charge and giving of a reasonable opportunity to the delinquent trustee. Subsection (3) authorises suspension pending disposal of the charges- Sub-section (4) provides right of appeal for the trustee who is suspended, removed or dismissed by the Assistant Commissioner and such appeal lies to the Commissioner. Sub-section (5) provides right of appeal to this Court when a hereditary trustee is aggrieved by an order passed under Subsection (1) or under subsection (4). It is on the basis of the provisions of this sub-section and the use of the words "as the case may be" in Sub-section (1) that the contention of Mr. Mohanty is built up. It is true that when orders are passed by the Assistant Commissioner right of appeal is given at two stages and when such order is by the Commissioner it is only a single right to this Court. There is some amount of ambiguity on account of the terms in which Sub-section (5) has been worded; but merely for such ambiguity we are not in a position to accept the contention of Mr. Mohanty. That matter, however, need not be finally disposed of for the present as for the effective disposal of this writ petition a final decision on such question is not material.

6. We are satisfied that the Commissioner disposed of the proceeding without giving a reasonable opportunity to the petitioner of being heard in support of the allegations raised by him and as such the proceeding was not properly disposed of. We are also satisfied that the Commissioner had no jurisdiction to obtain transfer of the proceeding from the Assistant Commissioner. Again, if the Commissioner wanted a suo motu proceeding to be taken as directed by him on 3-9-1970 it should have been a fresh proceeding and the earlier proceeding could not have terminated the way it was made to by order dated 12-9-1970.

7. We would accordingly issue a writ of certiorari quashing the order dated 12-9-1970 and direct that the Commissioner before whom the proceeding has come and who is not a forum without jurisdiction would dispose of the same after giving reasonable opportunity to both parties of being heard. The Commissioner would see that the proceeding does not pend long. We make no order as to costs.

Das, J.

8. I agree.