
(1955) 01 OHC CK 0004
In the Orissa High Court
Case No : S.A. No. 512 of 1950

Adhikari Narottam Das

APPELLANT

Vs

B.C. Patnaik, Sri B.K. Patro and Others

RESPONDENT

Date of Decision : 12-01-1955

Acts Referred:

Orissa Hindu Religious Endowments Act, 1939 — Section 49, 6(7), 64(2)

Citation : (1955) 21 CLT 271

Hon'ble Judges : Panigrahi, C.J.; Misra, J

Bench : Division Bench

Advocate : B.K. Pal, for the Appellant; S. Misra and S. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C.J.—This is an appeal filed by the Plaintiff in a suit u/s 64(2) of the Orissa Hindu Religious Endowments Act (Act IV of 1939) for a declaration that the Deity Sri Radha Mohan Jieu installed in Mouza Bankipal and the properties dedicated to the said Deity are the private properties of the Plaintiff Adhikari Narottam Das. The admitted facts are that the Plaintiff is known as the Mahant or Adhikari of Bankipal Math in Tisania where the Deity is installed. The Plaintiff describes himself as the Sebayat or Marfatdar of the Deity. He, however, claims that the institution is not a Math as defined in the Orissa Hindu Religious Endowments Act though it is popularly known by that name and that, as such, he is not bound to make any contribution to the Endowments Commissioner as required u/s 49 of the Act. Both the Courts below have found that the presiding deity, Radhamohan Jieu was installed at least about two centuries ago and that it is a public deity. They have also found that the Asthan is a Math as defined in the Act, that all the properties mentioned in the plaint constituting the endowment were made for the support of the Math and for service and charities connected therewith, and that the Plaintiff is only a trustee for the Deity and its properties. They have accordingly non-suited the Plaintiff.

2. The sole point urged before us by learned Counsel for the Appellant is whether the institution falls within the definition of a "Math" as defined in Section 6(7) of the Orissa Hindu Religious Endowments Act. According to the definition a "Math" means-

(1) an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage

(2) and includes places of religious worship other than a temple and

(3) also places of instruction, or

(4) places for the maintenance of Vidyarthi, or

(5) places for rendering charitable or religious services in general which are or may not be appurtenant to such institution.

It will be seen from the above definition that there is no reference to a deity or a presiding deity or idol in the definition of the term "Math". It is essentially a foundation or an institution presided over by a Preceptor exercising spiritual headship over a body of disciples. It also includes a place of religious worship other than a temple. Therefore, it does not appear to be essential that there should be a Mahant or spiritual head in a place where instruction is given or Vidyarthi are maintained. A temple, on the other hand, is a place of public religious worship and dedicated to or for the benefit of the Hindu community or any section thereof. The primary distinction between the two institutions is that the central part of the temple is the idol while in a Math the presiding element is not the Deity, but the ascetic or religious teacher who, with his disciples, form a spiritual brotherhood. In the case of a temple the idol is the grantee of the endowment and is the owner in an ideal sense. In the case of a Math, the ownership is vested in the entire institution represented by the Mahant or the religious head who presides over the institution. The home of the brotherhood is the Math and the spiritual family residing in it is represented by a preceptor known as the Mahant. The deity of a temple is a juristic person. Similarly, Hindu law recognizes not only corporate bodies with rights or property vested in them but also juridical persons or subjects called foundations. Maths, Choultries and similar institutions are a class of foundations raised to the status of a juristic person and can become, in law, the bearer of rights and duties. The Privy Council has expressly held in *Vidyavaruthi v. Baluswami* 48 I.A. 302 (P.C.) that religious institutions known under different names are regarded as possessing the same juristic capacity and gifts are made to them *eo nomine*. It is therefore apparent that the endowed property vests in the Math itself as a juristic person and not in the Mahant who is only a trustee for the institution. As was observed by the Privy Council in *Ram Prakash Das v. Ananda* 43 I.A. 73 (P.C.) "the Mahant is the head of the institution, he manages the property of the institution, he administers its

affairs and the whole assets are vested in him as the owner thereof in trust for the institution itself," He is the manager or custodian of the institution and the property which he holds is not vested in him, but in the institution and is held by him as manager of the same (vide 43 Indian Appeals 302), This being the legal position of the Mahant it is necessary to refer to the facts of this case, as found by the Courts below.

3. The origin of the institution is not known but it is clear that grants had been made to the institution by the public from time to time. Ext. 1 is a Sanad of the year 1783 whereby the Choudhuries and Kanungos of Tisania granted some lands to Shri Mohan Das Babaji for the offerings of Shri Radha Mohan jieu. The grant further recites that the income is to be utilised for the service of the Thakur and the Vaishnabs. Ext. 2 is the Robjari of the year 140 which shows that the deity was installed in a mud house and that the income from the lands was being spent for the sevapuja of Shri Thakur. The Sanad also recites that the Mahant is to bless the donor daily. Mr. Pal contended that this recital in the Sanad indicated that the grant was made to Mohan Das in his individual capacity for rendering personal service to the donor. In view of the admission of the Mahant that the income was being utilised for the service of the deity and that the endowment belonged to the deity as recited in Ext. 2, this contention is wholly untenable. The other facts found by the Courts below are (1) that succession to headship of the Math is accompanied by a ceremony known as Siropa when a turban is tied on the head of the Chela selected to succeed to the previous incumbent and that this ceremony is performed only in the presence of the Mahants of the neighbourhood belonging to the same cult and in the presence of the public of the locality and with their permission and consent (2) that it was admitted by the Appellant in an earlier suit that the zamindars also attended the Siropa ceremony to give such permission and that without such ceremony no one could claim to be the Adhikari of the Math (3) that one of the witnesses for the Plaintiff described the institution as an Ashram or resting place of Baishnab (4) that it was admitted that the Asthan was devoted to spiritual service and to the propagation of the Vaishnavite cult (5) that Bhagawat is recited at the Math daily and religious discussions are held in the Math (6) that about four to five hundred disciples have been initiated by the Mahant in Bankipal (7) that travellers and guests, Babajis and Baishnabs are entertained in the Math and accommodation is provided for them within the precincts of the Math-this is in consonance with the recital in Ext. 1 (8) that one Keshab Das is recorded as the Marfatdar of the deity in respect of some lands for rendering some particular service to the deity. This is in the nature of a subordinate endowment known in South India as Kattalai and (9) that it is admitted that the members of the public have free access to the precincts of the Math and to the worship of the Deity and to take part in the festivals and daily Kirtans held in the Math. Having regard to these proved facts there can be no doubt that it is a place of religious worship not being a temple and is also a place of instruction. It is also clear that it is presided over by a spiritual head whose office devolves by the usage of the institution. Thus all the

requirements of a "Math" as defined in the Act are satisfied.

4. There can be no question of the institution being the private property of the Adhikari as the institution itself is intended for religious service, for the benefit of the public. In fact the institution was already in existence when Mahant Mohan Das received the grant from the Chowdhurys and Kanungos under Ext. 1. There is no evidence as to when, and by whom, the deity was installed. It is clear, however, that grants have been made from time to time by different persons for the benefit of the institution.

5. It was also contended that the subsequent acquisitions by the Adhikaris cannot be a part of the endowment and, as such, no contribution is leviable in respect of these properties, but as has been pointed out by the Courts below, there was no such claim made in the plaint itself and all the properties now in the possession of the Adhikari were claimed to be the property of the endowment.

6. We would, therefore, affirm the judgments of the Courts below and dismiss this appeal with costs.

Misra, J.

7. I agree.