

(2023) 10 OHC CK 0001

In the Orissa High Court

Case No : Writ Petition (C) No. 31346 Of 2023

Akshaya Kumar Behera

APPELLANT

Vs

Commissioner Of Endowments, BBSR And Others

RESPONDENT

Date of Decision : 03-10-2023

Acts Referred:

Odisha Hindu Religious Endowments Act, 1951 — Section 25

Citation : (2023) 10 OHC CK 0001

Hon'ble Judges : Arindam Sinha J;S. K. Mishra, J

Bench : Division Bench

Advocate : Manmaya Kumar Dash, A.K. Nath, A.K. Sharma

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. Mr. Dash, learned advocate appears on behalf of petitioner and submits, impugned is judgment dated 11th July, 2023 made by the Commissioner in allowing the application under section 25 in Odisha Hindu Religious Endowments Act, 1951 against his client and directing the Collector to issue requisition for taking necessary steps to recover possession. He demonstrates from the judgment that the Commissioner purported to rely upon his client's admission of being in occupation of the deity's land upon payment of rent till year 2020. He submits, for purpose of adjudication under section 25, it could not be said his client was in unauthorized occupation merely because he was defaulter. His entry into the land was under authority.

2. Without prejudice he submits, the Tahsildar issued notice of eviction dated 1st September, 2023. This is not permissible, as it is only the Collector who is authorized to issue the requisition under section 25.

3. Mr. Nath, learned advocate appears on behalf of the Commissioner and submits, petitioner did not take the box in the proceeding let alone disclosing any document to show his claim of authorized occupation. Impugned judgment is

based on relevant evidence including lack of it on side of petitioner. In the circumstances, there should not be interference. On query from Court regarding whether section 25 allowed for delegation of power by the Collector to the Tahsildar Mr. Nath submits, the requisition ought to have been issued by the Collector.

4. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State. He submits, private opposite party no.4 (petitioner before the Commissioner) be noticed.

5. Impugned judgment mentions scheduled land, list of witnesses examined by opposite party no.4, list of witnesses examined and documents exhibited on behalf of said opposite party. There is also mention that petitioner neither disclosed documents nor examined any witness. In the circumstances, there was no documentary evidence before the Commissioner, produced by petitioner, in support of assertion of authorized occupation by paying rent up to year 2020. There was no rent receipt disclosed.

6. We find petitioner has disclosed deposition of opposite party no.4 before the Commissioner as PW-1. We reproduce below the cross-examination part of it.

"One Chandu Behera is also in occupation of the schedule plot no.662 of this case. Seven to Eight persons are in occupation of the lands of plot no.662 of the case. I cannot say exactly the extent of land under occupation of OP No.1 Akhaya Behera of this case. The OP No.1 Akhaya Behera is in occupation of 0.2 ½ decs. out of the schedule plot no.662. The OP No.1 had never paid rent to the petitioner Math at any point of time. No list of tenants or rent received from different tenants in shape of cash and kind are being maintained in the Math. There is Property Register of the petitioner Math. It is not a fact that the OP No.1 is in possession of the schedule land as a tenant under the petitioner Math and that the OP. No.1 had tried to take away the deity from the temple forcibly and that when protested by the Supervisor he assaulted him. There is electric connection to the schedule land since 15-20 years back."

(emphasis supplied)

Mr. Dash submits, said opposite party (petitioner before the Commissioner) could not say exactly the extent of land under the client's possession. As such, there cannot be a decree when particulars of land under his client's occupation could not be proved. This ground does not appeal to us because the witness in cross-examination had also asserted there is property register of the Math. The Commissioner in impugned judgment clearly found petitioner had admitted to occupying the deity's land. As such there cannot be any ground of vagueness regarding the deity's land, found to be in unauthorized occupation of petitioner, as can be urged in judicial review.

7. In the circumstances, we refuse to interfere with impugned judgment. However, we set aside and quash requisition dated 1st September, 2023 made by

the Tahsildar. We make it clear that pursuant to impugned judgment, requisition is to be duly issued in the prescribed time, by the Collector.

8. The writ petition is disposed of.

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