
(2025) 07 OHC CK 1294
In the Orissa High Court
Case No : Writ Petition (C) No.12953 Of 2023

Bansidhar Rana

APPELLANT

Vs

Commissioner of Endowments, Odisha, Bhubaneswar Vs

RESPONDENT

Date of Decision : 15-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Odisha Hindu Religious Endowments Act, 1939 — Section 4, 5, 79(2)(a)
Odisha Hindu Religious Endowments Act, 1951 — Section 29, 30, 42

Citation : (2025) 07 OHC CK 1294

Hon'ble Judges : K.R. Mohapatra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : Manmaya Kumar Dash, Amit Kumar Nath

Final Decision : Disposed Of

Judgement

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 26th February, 2018 (Annexure-4) passed by learned Commissioner of Endowments, Odisha, Bhubaneswar (for brevity 'learned Commissioner') in O.A. No.264 of 2011, rejecting an application under Section 30 of the Odisha Hindu Religious Endowments Act, 1951 (for brevity 'the Act'), refusing to recognize the Petitioner as the Hereditary Trustee (HT) of the religious institution, namely, Sri Sri Tara Tarini Goddess bije, Taratarini Hills in the district of Ganjam (for brevity 'the Deity').
3. Mr. Dash, learned counsel for the Petitioner submits that the ancestor of the Petitioner, namely, Jogi Rana was recognized as HT of the Deity vide judgment dated 25th October, 1935 passed by learned District Judge, Ganjam in Original Petition No.21 of 1935 filed under the provisions of Madras Hindu Religious Endowment Act, 1926. Said Jogi Rana was the grandfather of the Petitioner. Jogi Rana had four sons, namely, Patitapaban, Mrutunjaya, Ananta and Magata. The Petitioner is the one of sons of Patitapaban. Patitapaban did not take any step to

recognize him as HT of the Deity. When the dispute arose with regard to recognition of the Petitioner as the HT of the Deity, he filed an application under Section 30 of the Act (OA No.264 of 2011). Learned Commissioner holding that Patitapaban, the father of the Petitioner being not recognized as the HT, claim of the Petitioner to be recognized as HT could not be entertained.

3.1 The Petitioner also challenges the observation made by learned Commissioner to the effect that when the Hereditary Trusteeship of the forefathers of the present Petitioner could not be established as HT except Jogi Rana, the grandfather, the question of claim of the Petitioner as the HT is forfeited due to lapse of time and change of substitution of the Act in place of Madras Hindu Religious Endowments Act, 1926 under which Jogi Rana was recognized as HT of the Deity.

4. Mr. Dash, learned counsel for the Petitioner draws attention to the provisions under Sections 79 (2)(a) of the Act, which reads as under:

"79. Repeal and affect of repeal of the Odisha Hindu Religious Endowments Act, 1939:- (1) The Odisha Hindu Religious Endowments Act, 1939, (Odisha Act IV of 1939) is hereby repealed.

(2) Notwithstanding the repeal of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939)

(a) all rules made, notification issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the State Government or 1[the Commissioner] under the said Act, shall in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall have effect accordingly;"

4.1 He further draws attention of this Court to Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939, which read as under:

"4. Repeal of enactments:- The Madras Hindu Religious Endowments Act. II of 1926, the Religious Endowments Act XX of 1863, the Bengal Charitable Endowments Public Buildings and Escheats Regulation, 1810 and the the Charitable and the Religious Trusts Act, XIX of 1920 (here-inafter referred to as the said Acts), so far they apply to the religious endowments in Orissa, to which this Act applies, are hereby repealed.

5. Validity of Action taken, notifications and orders issued under the repealed enactments:- (i) All actions taken and all things done, the notifications issued and orders made under and in pursuance of the said Acts, shall be deemed to have been validly taken, done, issued or made.

(ii) All proceedings taken under the said Acts may be continued under this Act, in so far as they are not inconsistent with the provisions of this Act.

(iii) Any remedy by way of application, suit or appeal which is provided by this

Act shall be available in respect of proceedings under the said Acts pending at the time of the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.”

4.2. He, therefore, submits that recognition of Jogi Rana, the grandfather of the Petitioner as HT of the Deity under the provisions of Madras Hindu Religious Act, 1926, has the relevance in recognizing the Petitioner as the HT of the institution. By lapse of time and substitution of the Act, such recognition does not become otiose. He further submits that the Petitioner has never acquired any disqualification under Section 29 of the Act, to be recognized as HT of the Deity. These material aspects were lost sight of by learned Commissioner while adjudicating the matter. Hence, he prays for setting aside the impugned order under Annexure-4 and to remit the matter to learned Commissioner for fresh adjudication of O.A. No.264 of 2011.

5. Mr. Nath, learned counsel appearing for learned Commissioner, vehemently objects to the submission made by Mr. Dash, learned counsel for the Petitioner. It is his submission that a Scheme under Section 42 of the Act has been settled for the case institution. Clause-3 of the Scheme reads as under:

“The said institution with its endowments shall be administered by a Board of Trustees not exceeding five in number, out of whom one shall be the Hereditary Trustee and the rest shall be appointed by the Commissioner of Endowments, as far as practicable, from among the persons to which cult the institution belongs, who shall hold office for such period not exceeding five years, as may be fixed by him.”

He, therefore, submits that as per the provisions under Section 3 of the Scheme, the term of the HT is five years. No step, whatsoever, was taken by Patitapaban, the father of the Petitioner to recognize him as the HT. Thus, question of recognition of the Petitioner, who is next in line as HT, does not arise at all. He, therefore, submits that the writ petition merits no consideration and is liable to be dismissed.

6. Notice on Opposite Party Nos.3 to 9 has been dispensed with vide order dated 28th October, 2024 on the prayer of Mr. Dash, learned counsel for the Petitioner, as no relief is claimed against them.

7. Heard learned counsel for the parties. Perused the provisions of law cited and materials placed by learned counsel for the parties.

8. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the case of the Petitioner squarely falls under the provisions of Section 30 of the Act, which deals filing up vacancies in the office of HT and reads as under:

“30. Filing up of Vacancies in the Office of hereditary Trustee:– When a permanent vacancy occurs in the Office of the hereditary Trustee of such Religious institution the next in the line of succession shall be entitled to succeed

to the Office.

(2) When a temporary vacancy occurs in such an Office by reason of the suspension of the hereditary Trustee under Sub-Section (1) of Section 28 or by reason of his ceasing to hold Office under the provisions of Section 29, the next in the line of succession shall be appointed to discharge the functions of the Trustee until his disability ceases.

(3) When a permanent or temporary vacancy occurs in such an Office and there is a dispute respecting the right of succession to the Office, or when such vacancy cannot be filled up immediately or when a hereditary Trustee is minor and has no legally constituted guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as such guardian, the Commissioner may appoint a fit person to discharge the functions of the Trustee of the institution until the disability of the hereditary Trustee ceases or another hereditary Trustee succeeds to the Office or for such shorter term as the Commissioner may direct. The Commissioner shall have power to remove such interim Trustee for the reasons specified in Section 28."

Thus, when a permanent vacancy occurs in the office the HT of the religious institution, the next line of succession shall be entitled to succeed to the office.

9. The provisions under Clause-3 of the Scheme relates to constitution of Board of the Trustees. The said clause provides that one of the HT shall be nominated to the Trust Board of the Institution, whereas, Section 30 of the Act deals with filling up vacancy in the office of HT of a religious institution. Section 30 of the Act neither is in conflict nor in contradiction with the Scheme and it can never be. The Trust Board should not be confused with the office of HT. More than one HT may be recognized to fill up the vacancy of the office of the HT of a religious institution. In the instant case, only one of them will be in the Trust Board as per Clause-3 of the Scheme

10. Since Jogi Rana was undisputedly recognized as the HT of the institution under the provisions of the Madras Hindu Religious Endowments Act, 1926, such action/recognition is saved by virtue of Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939 and Section 79 (2)(a) of the Act. Hence, recognition of Jogi Rana as HT of the case institution does not become redundant either by lapse of time or by substitution of Act. These material aspects were not taken into consideration by learned Commissioner while adjudicating the petition under Section 30 of the Act.

11. Upon a vacancy in the office of the HT, it is the duty of learned Commissioner to recognize the successor next in line to succeed to the said office, unless he acquires any disqualification. In that view of the matter, the observation made by learned Commissioner to the effect that the claim of the Petitioner has become redundant is not sustainable. The claim of the Petitioner is still alive and should be considered in terms of Section 30 of the Act.

12. Accordingly, the impugned order under Annexure-4 being not sustainable, is set aside and the matter is remitted to learned Commissioner of Endowments, Odisha, Bhubaneswar for fresh adjudication of O.A. No.264 of 2011 filed under Section 30 of the Act providing opportunity of hearing to the parties concerned.

13. Since the petition under Section 30 of the Act was filed in the year, 2011, learned Commissioner of Endowments, Odisha, Bhubaneswar shall do well to adjudicate the same expeditiously.

14. With the aforesaid observation and direction, this writ petition is accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

Urgent certified copy of this judgment be granted on proper application.

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