

(1975) 11 OHC CK 0007
In the Orissa High Court
Case No : M.A. No. 173 of 1973

Bhagirathi Mohapatra and Others

APPELLANT

Vs

The Deity Sukarmala Thakurani and Others

RESPONDENT

Date of Decision : 26-11-1975

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 3, 41, 44(2)

Citation : (1977) 43 CLT 108

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : B. Das, for the Appellant; S.C. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—This is an appeal u/s 44(2) of the Orissa Hindu Religious Endowments Act (hereinafter caned the "Act") dismissing the Appellants' claim to hereditary trusteeship in respect of the institution Gram Debati Sukarmala Thakurani in village Notar.

2. The Appellants claiming themselves as hereditary trustees of the aforesaid institution filed an application u/s 41(c) of the Act to be declared as hereditary trustees of the institution named above. That petition was dismissed by the learned Assistant Commissioner and against the order of dismissal the Appellants carried an appeal before the learned Commissioner who confirmed the decision of the learned Assistant Commissioner. Hence the present appeal.

3. There is no dispute that Sri Grama Debati Sukarmala Thakurani is a public deity and was founded for the benefit of the Hindu public. The Appellants claim that since the time of foundation of the said institution till the date the dispute arose their ancestors were and thereafter they themselves are in management of the institution and that the Appellants are doing the seba-puja of the deity exclusively since the time of their ancestors. The learned Commissioner in the impugned order has found that even though the overall control of the institution

remained with the State meaning the ex-state of Nayagarh in which the institution is located, the Sebaks meaning the Appellants and their ancestors remained in management of the institution since 1902. In spite of this finding, the learned Commissioner did not accept the case of the Appellants, because they could not show that since the institution was founded their ancestors were managing the same. Therefore, relying on the definition of the expression "hereditary trustee" as given in Section 3(vi) of the Act which defines a "hereditary trustee" as meaning a "trustee of a religious institution succession to whose office devolves by hereditary right since the time of the founder", the learned Commissioner has come to the conclusion that the Appellants have not been able to prove their case. A reading of the impugned order further reveals that the learned Commissioner has been very much influenced by the recorded-of-rights of the years 1902 and 1932 in which "Rajsarkar" meaning "ruling authority in the ex-state of Nayagarh" has been recorded as marfatdar and the ancestors of the present Appellants have been recorded as Sebaiats. Mr. B. Das, learned Counsel for the Appellants, contends that once there is a finding in favour of the Appellants that succession to the office of the trusteeship in respect of the institution has devolved by hereditary right in the family of the Appellants at least from the year 1902 as found by the learned Commissioner, there should be a presumption backward that was the system prevalent in the institution since its inception. Reliance is placed upon the decisions in Chintamani Pati Vs. Krishna Chaudra Panda and Others, and Madan Pati and Others Vs. Birabara Das and Others, . These two decisions clearly lay down that in a dispute regarding the right of hereditary trusteeship where it is not possible to have any direct oral evidence or to have any documentary evidence to trace the line of succession to the office of trusteeship from days of the founder, the principle that if a thing or state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forward and backward has to be drawn. The finding of the learned Commissioner being that the management of the institution is continuing in the family of the Appellants since 1902 and there being nothing to show what was the system since the time the institution was founded, a presumption arises in favour of the Appellants that succession to the office of trusteeship is devolving hereditarily in the family of the Appellants since the time of the founder. The next hurdle for the Appellants is the interpretation given by the learned Commissioner to the entries in the settlement records as indicated above. According to the learned Commissioner, Rajsarkar being recorded as marfatdar it must be held that the ruling authority was the marfatdar and the members of the family of the Appellants were mere sebaks. Mr. Das on behalf of the Appellants contends that such an inference from the settlement records is not possible, the institution being admittedly a public institution the sovereign authority of the State which means the ruling authority was to exercise overall control over the institution. Therefore, the record-of-rights showing Rajsarkar as marfatdar would only refer to the right of the ruling authority as such to exercise control over the institution. This contention of Mr. Das also seems to be well founded. In the decision in Raja Bahadur A.N.M.H.

Mohapatra v. Bidyadhar Nayak 36 (1970) C.L.T. 194 (Notes) cxxvii, the word "Rajsarkar" recorded in the settlement records in respect of an institution in the ex-state of Narasinghpur has been interpreted to mean the State Government or the Ruler in his capacity as head of the State and not to the Ruler in his personal or private capacity". Such a construction is also consistent with the powers of the State as the sovereign authority to interfere with the rights of the persons in management of public religious institutions. This being so, the contention of Mr. Das, that the record of "Rajsarkar as marfatdar in the settlement records cannot militate against the Appellants" case of hereditary trusteeship as according to Mr. Das, Rajsarkar finds mention in the settlement records as marfatdar in the capacity of ruling authority exercising control over the institution and not in the capacity of a trustee. This contention of Mr. Das has sufficient force. After hearing the learned Counsel for both parties I have no hesitation in my mind that the Appellants have been able to establish their case that they are the hereditary trustees of the institution in question. The finding of the learned Commissioner that they are mere Jagirdars is not sustainable in view of the clear finding reached by him that the members of the family of the Appellants are managing the institution at least since the year 1902.

4. In the result, therefore, this appeal succeeds. The impugned order of the learned Commissioner confirming the order of the learned Assistant Commissioner is set aside. The petition of the Appellants u/s 41(c) of the Act is allowed and they are declared to be the hereditary trustees of the institution Sri Grama Debati Sukarmal Thakurani. Parties are to bear their own costs throughout.