

(2016) 11 OHC CK 0042
In the Orissa High Court
Case No : W.P.(C) No. 17784 of 2014

Bhubana Bihari Bahinipati

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa Hindu Religious Endowments Act, 1951 — Section 19

Citation : (2017) 169 AIC 884 : (2017) 123 CutLT 748 : (2017) 1 OJR 146

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Sidharth Prasad Das-A and Amit Ku. Nath, Advocates, for the Opposite Party No. 2; M/s. Manomoy Basu, S. Debdas, M. Kanungo, Advocates, for the Petitioner; Addl. Govt. Advocate, for the Opposite Party No. 1

Final Decision : Dismissed

Judgement

S.N. Prasad, J. - Prayer made in this writ petition is for quashing the order dated 22.8.2013 as contained in Annexure-4 passed by the Commissioner of Endowments, Odisha, Bhubaneswar and further remit the matter before him to hear the matter afresh.

2. Brief facts of the case, as has been pleaded in the writ petition, is that the deity namely Sri Radhakanta Deb Bije has been installed by the predecessors of the petitioner's family as their family deity since long. The family members of the petitioner have been performing the daily seva puja of the deity and looking after the daily maintenance from the common funds of the family members as there is no role to the local public.

3. Further case is that during last settlement operation some of the agricultural land, belong to the family of the petitioner, has been recorded in the name of the aforesaid deity in Khata No.312 under Mouza-Khurda pertaining to plots No.82 and 121 measuring with an area of Ac.0.755 dec., the name of the father of the petitioner namely Madhusudan Bahinipati has been reflected as Marfatdar of the

deity. The deity Sri Radhakanta Deb bije has been indexed by the Commissioner of Endowment since 1959 and one Scheme has been framed for the welfare of the deity without knowledge of the family members of the present petitioner, but till date no fund has been allotted by the government for the welfare of the aforesaid deity nor any Trustee has been appointed by the Commissioner of Endowment as a result of which the family members of the present petitioner have been managing all expenditures of the deity as Marfatdars. The petitioner along with his two brothers are now performing the daily seva puja of the deity after the death of his father namely Madhusudan Bahinipati. Family members of the petitioner came to know that some of the agricultural land of the deity has been sold away to the stranger to one Sachi Bewa during 1985 in an illegal manner and delivered the possession for which the deity is unable to get any source of income from the said land. The petitioner and his brothers, thereafter, had managed to receive the copy of the sale deed executed by Sachi Bewa and came to know that a portion of agricultural land of the deity pertaining to Khata No.312, Plot No.82 measuring of an area of Ac.0.285 has been sold in favour of one Smt. Renuka Reddy vide Registered Sale Deed dated 13.12.1985.

4. The petitioner, after knowing about this fact, had filed an application before the Commissioner of Endowment, Bhubaneswar being O.A. No.69 of 2011 seeking permission to sell the said land in favour of the aforesaid vendee for the purpose of income of the deity to meet the daily maintenance.

5. The Commissioner of Endowment has directed the concerned Endowment Inspector to submit a report in this regard by conducting an enquiry. The Endowment Inspector has submitted a report by stating that the aforesaid deity is not a private deity and the land in question is not in possession of the petitioners but occupied by one Biswanath Behera. After receiving the report of the Endowment Inspector, the Endowment Commissioner has rejected the petition of the petitioner without giving any reasonable opportunity to adduce any evidence in support of their case while passing the order dated 22.8.2013.

6. The petitioner being aggrieved with the said order has filed this writ petition on the ground that the Commissioner of Endowment has passed the order without considering the material available on record in right perspective, without considering the fact that the deity has got no source of income for its maintenance and even for its daily seva puja and as such the land in question is required to be permitted to be sold out in favour of others in order to get income for maintenance of the deity.

The petitioner has also filed an additional affidavit stating further ground in assailing the order impugned in the writ petition.

7. This Court has issued notice to the opposite parties vide order passed in this regard on 25.9.2014, in terms thereof the learned counsel representing the State as well as the Commissioner of Endowment have appeared and argued out the case at length, have submitted that there is no infirmity in the order passed by

the Commissioner. They have submitted that the Endowment Commissioner has passed the order after providing opportunity of being heard to the parties. The order reflects an order passed in O.A. No.28/58-59 under Section 42 of the Orissa Hindu Religious Endowments Act. The Endowment Commissioner has passed the order taking into consideration the fact that the petitioner had failed to produce any documents relating to their rights over the case land. However, the contention of the petitioner is that it is a private institution but as per the report submitted by the Endowment Inspector the institution is found to be not private.

8. It has further been submitted that the suit land has unlawfully been encroached upon by one Sachi Bewa and she unauthorisedly sold the land to Smt. Renuka Reddy on 13.12.1985 without permission of Commissioner of Endowments under Section 19 of the OHRE Act. The Commissioner of Endowments has come to conclusion from the materials produced before it that the petitioner has filed the application under Section 19 of the OHRE Act to sell the land of the deity which is not in their possession and there are several illegal transactions of the land in the meantime and accordingly rejected the application.

This Court has heard learned counsel for the parties at length.

9. The petitioner claims to be the Marfatdar of a private deity known as Sri Radhakanta Deb bije the Institution indexed by the Commissioner of Endowments being a public religious Institution. The petitioner claims to be rightful owner of the property in question being a property of private deity and thereafter made an application under Section 19 of the O.H.R.E. Act for seeking permission to transfer the land in favour of others in order to get money for maintenance and seva puja of the deity, but the same has been rejected by the Commissioner of Endowments against which this writ petition has been filed.

10. Provision of Section 19 contains a provision conferring power upon the Commissioner of Endowments to grant permission for transfer of the land in favour of others being satisfied with the reason for transfer which is to be in the interest of the deity only.

11. From the order dated 22.8.2013 (impugned) it is evident that the claim of the petitioner that the deity is Private has been negated by the report of the Endowment Inspector and as such the landed property of the public institution has become the subject matter of the O.H.R.E. Act, 1951 which contains a provision for permission to transfer of the land.

12. The Commissioner of Endowments, Odisha after taking into consideration the material placed before it, has come to a definite finding that for mischievous purpose the application has been filed by the petitioner under Section 19 of the O.H.R.E. Act, 1951, the Commissioner of Endowments has come to this finding taking into consideration the fact that the suit land has unlawfully encroached upon by one Sachi Bewa and she sold to one Smt. Renuka Reddy on 13.12.1985 without permission of the Endowment Commissioner under Section 19 of the

O.H.R.E. Act, 1951.

13. The Commissioner of Endowments has also taken note of Xerox copy of the Registered Sale Deed dated 13.12.1985 and in course of enquiry he came to know that one Biswanath Behera who is staying nearer to the suit land claimed that the suit land is in possession since last ten years on rented basis, he is paying Rs.500/- to the petitioner as sebayat.

14. Taking into consideration these documents, the Commissioner of Endowments has come to a firm conclusion that the petitioner has filed an application only for the purpose of transfer of the deity land which is not in his possession and there are several illegal transaction of the land, accordingly rejected the application.

15. We, after perusal of the order passed by the Commissioner of Endowments, have found that he has passed a reasoned order based upon cogent evidence and the documents produced before it, which needs no interference by this Court.

16. Accordingly, the writ petition has got no merit, hence dismissed.