

(2026) 01 OHC CK 1772

In the Orissa High Court

Case No : Writ Petition (C) No. 1639 Of 2025

Biswajit Swain And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 16-01-2026

Acts Referred:

Odisha Hindu Religious Endowments Act, 1951 — Section 7, 8B, 9, 27, 27(1), 27(2), 41

Citation : (2026) 01 OHC CK 1772

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

Bench : Division Bench

Advocate : Amiya Kumar Mishra, Soubhagya Kumar Rath, Swayambhu Mishra, Subir Palit, Pravakar Behera

Final Decision : Allowed

Judgement

K.R.Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Being aggrieved by the order dated 12th September, 2024 (Annexure-17) passed by learned Commissioner of Endowments, Odisha, Bhubaneswar (for brevity 'learned Commissioner'), this Writ Petition has been filed. The said proceeding was initiated on the basis of a representation dated 13th August, 2024 filed by Opposite Party Nos.6 to 20 pursuant to the order dated 2nd August, 2024 (Annexure-13) passed by this Court in W.P.(C) No.17592 of 2024.
3. Short narration of facts necessary for adjudication of the case are as under:-
 - A) The villagers of Gatroutpatana submitted a grievance petition to learned Additional Assistant Commissioner, Endowments, Cuttack (for brevity 'learned Assistant Commissioner') with a prayer to make arrangements for smooth management of the Endowments, Nitikanti as well as festivals of Maa Hastibahini Thakurani, Bije at Gatroutpatana in the district of /Cuttack (for brevity 'the Deity'). The Deity is public in nature being worshiped by the villagers. It has

Ac.3.50 acres of immovable properties. The Sevayats are possessing the immovable properties of the Deity and performing the Nitikanti.

B) Recently, the Sebayats started construction of permanent structures over the immovable properties of the Deity without taking permission of the learned Commissioner. Thus, the villagers submitted the aforesaid grievance petition. Receiving such grievance petition, the learned Assistant Commissioner, vide his Order No.865 dated 7th July, 2022 (Annexure-2), directed the Inspector of Endowments, Jagatsinghpur to visit the spot and submit a detailed report to take further action in the matter.

C) In obedience to such direction, the Inspector of Endowments visited the spot and made enquiry. He submitted his report vide letter No.192/IEC dated 2nd September, 2023 (Annexure- 3) intimating that though the nature of the Deity has not been decided judicially but the people of the locality and the villagers are visiting the temple and worshiping the Deity regularly. It was also stated that the Deity was not indexed and learned Commissioner was intimated to take steps in that regard. He further reported that some houses are being constructed over the immovable properties of the Deity. On being asked, the public present during the enquiry stated that the Marfatdars are trying to demolish the temple without prior permission of the learned Commission. Hence, the Inspector of Endowments requested the learned Assistant Commissioner to take necessary steps in that regard.

D) Subsequently, the Deity was indexed vide Index No.81-HC by learned Commissioner and it was treated as a religious institution without any hereditary trustee. Accordingly, learned Assistant Commissioner directed the Inspector of Endowments, Jagatsinghpur to make an enquiry and suggest names for appointment of a Non-Hereditary Trust Board (for brevity 'NHT Board'). In obedience to such direction, the Inspector of Endowments, vide his Notice No.233 dated 9th October, 2023 (Annexure-4) intimated the public to convene a meeting in the premises of the temple of the Deity on 12th October, 2023 to take steps for appointment of NHT Board.

E) After enquiry, the Inspector of Endowments suggested nine names for NHT Board vide his letter No.243 dated 16th October, 2023 (Annexure-5 series). Thereafter, the learned Assistant Commissioner directed the Inspector of Endowments to publish notice inviting objection in accordance with Section 27(2) of the Odisha Hindu Religious Endowments Act, 1951 (for brevity 'OHRE Act'). As such, the notice under Annexure-6 series was published inviting objection and the said notice was also promulgated by beat of drum in the locality.

F) Observing the formalities, the learned Assistant Commissioner, vide his letter No.7 dated 1st January, 2024 (Annexure-7 series), submitted a proposal to the Government recommending the names of the Petitioners to be members of the NHT Board. The Government in Law Department approved the proposal of the learned Assistant Commissioner vide Letter No.4017/L dated 16th March, 2024.

Thus, NHT Board of the Deity was appointed by the learned Assistant Commissioner vide Order No.1342 (12) dated 18th June, 2024 (Annexure-8). Assailing the said order of appointment, the Opposite Party Nos.6 to 20 preferred W.P.(C) No.17592 of 2024 before this Court., which was disposed of vide order dated 2nd August, 2024 with the following direction.

"4. Keeping in view the submissions made, at this stage, we feel inclined to dispose of this writ petition with the observation that in the event, the Petitioners would file an application with all supporting materials for redressal of their grievance as against the constitution of Non-Hereditary Trust Board of the concerned Religious Institution within 10 days hence, the learned Commissioner of Endowment would do well to consider the same in its proper perspective and take a decision afresh independently without being influenced by the earlier order, in accordance with law, within four weeks from the date of filing of the application and accordingly proceed further in the matter as per law."

G) In terms of the direction of this Court as above, the Opposite Party Nos.6 to 20 filed a representation on 13th August, 2024 before the learned Commissioner. Considering the said representation, the impugned order under Annexure-17 has been passed. Hence, being aggrieved, the Petitioners who are the members of the NHT Board have filed this Writ Petition.

4. Mr. Mishra, learned counsel for the Petitioners precisely argued that in the representation filed pursuant to order of this Court in W.P.(C) No.17592 of 2024, the Opposite Party Nos.6 to 20 sought for the following reliefs.

"It is therefore, most humbly and most respectfully prayed that this learned Court be pleased to inquire into the matter and after hearing the parties be pleased to:

(A) To set-aside the order dated 18.06.2024 as at Annexure-I6 passed by the learned Additional Assistant Commissioner of Endowments, Cuttack and order dated 16.03.2024 as at Annexure-17; and

(B) To declare the applicants as the hereditary trustee of the case institution Sri Hastibahini Thakurani Bijee At- Dihasahi, Gatroutpatna, Cuttack, 754100;

(C) To set-aside the subsequent actions taken by the nonhereditary Trust Board in forming the Trust Board of the Deity Sri Hastibahini Thakurani in purported exercise of power under Section-27 of the OHRE Act, 1951; and

(D) To grant any other relief / reliefs as deemed fit and proper;

And for this act of kindness the applicants shall as in duty bound ever pray."

5. The representation/application, reveals that Opposite Party Nos.6 to 20 sought for a relief purportedly under Section 9 of the OHRE Act. Section 9 of the OHRE Act confers a revisional power on the learned Commissioner. It provides that the learned Commissioner may call for and examine the record of any proceeding under the OHRE Act before the Deputy Commissioner or the Assistant

Commissioner except under Sub-section (1) of Section 27 to satisfy himself as to the regularity of the proceeding or correctness, legality or propriety of any decision taken or any order passed thereon. It was thus submitted by Mr. Mishra, learned counsel for the Petitioners that the learned Commissioner lacked jurisdiction to sit over the order passed under Section 27 (1) of the OHRE Act, which is specifically excluded from purview of revisional jurisdiction of the learned Commissioner. He further submitted that observation of the learned Commissioner in the impugned order under Annexure-17 revealed that the Deity had no hereditary trustee and it was being looked after by the villagers. It was thus submitted that the learned Assistant Commissioner had committed no error in appointing a NHT Board after obtaining approval of the State Government following due procedure of law as envisaged under Section 27 (2) of the OHRE Act. It was further submitted that in the case of Khetramohan Rout Vs. Sri Sri Nageswar Mahadev and others; 1992 OnLine Ori 202, a Full Bench of this Court clarified that the enquiry under the OHRE Act for appointment of NHT Board would be summery in nature. The learned Assistant Commissioner, while exercising power under Section 27 of the OHRE Act, does not perform any quasi-judicial function. Appointment of NHT Board of a religious institution is an administrative action of the learned Assistant Commissioner. The same view has been reiterated in a subsequent Full Bench decision of this Court in the case of Dhadi Parida (and after him) Sundari Parida and others Vs. Commissioner, Consolidation, Odisha and others; 1995 SCC OnLine Ori 288.

5.1 It was thus submitted that by interfering with the order of appointment of the NHT Board, learned Commissioner acted without jurisdiction. He being an authority under the Government of Odisha could not have interfered with the order of appointment of NHT Board, which was approved by the State Government. It was also submitted by Mr. Mishra, learned counsel for the Petitioners that though an objection questioning the maintainability of the proceeding before the learned Commissioner was raised, but the learned Commissioner, without providing any opportunity of hearing to the Petitioners on the objection on the maintainability of the proceeding, passed the impugned order under Annexure-17.

6. It was further argued that in Chiranjilal Shrilal Goenka (deceased) through LRs Vs. Jasjit Singh and others; (1993) 2 SCC 507, the Hon'ble Supreme Court held that when a statue does not permit, no Court can confer jurisdiction on any authority, Court or Tribunal, even on the consent of the parties. In the instant case, though it was argued by learned counsel for the private Opposite Parties that learned Commissioner had jurisdiction in view of the direction of this Court, the same is not sustainable in the eye of law. He further submitted that the order passed by the learned Assistant Commissioner appointing NHT Board was challenged before this Court in W.P.(C) No.17592 of 2024. But this Court did not set aside the said order. On the other hand, it disposed of the Writ Petition with an observation that the Opposite Party Nos.6 to 20 (who were Petitioners therein) may file an application before the learned Commissioner for redressal of

their grievances. It was further submitted that after appointment of NHT Board, the Opposite Party Nos.6 to 20 filed an application under Section 41 of the OHRE Act. Thus, the arrangement made by the learned Commissioner under Section 7 of the OHRE Act by appointing an interim trustee till disposal of the proceeding under Section 41 of the OHRE Act is misconceived. The case law relied upon by Opposite Party Nos.6 to 20 in Rabindra Mohapatra and others Vs. State of Odisha and others; 2024 (II) ILR-CUT 858 has no application to the instant case as the issue involved therein was completely different and the case law does not deal with the issue of jurisdiction of the learned Commissioner to interfere with an order of the State Government under Section 27 of the OHRE Act. He, therefore, prayed for setting aside of the impugned order under Annexure-17 and to permit the NHT Board to discharge its duties in accordance with law.

7. Per contra, Mr. Palit, learned Senior Advocate appearing for the Opposite Party Nos.6 to 20 submitted that the impugned order was passed in exercise of power under Section 7 of the OHRE Act and not under Section 9 of the OHRE Act as alleged by the Petitioners. It was his submission that by virtue of the order passed by this Court in W.P.(C) No.17592 of 2024, the order dated 18th June, 2024 passed by the learned Assistant Commissioner under Section 27 of the OHRE Act was impliedly set aside. He also read out paragraph-4 of the order passed by this Court as quoted supra and submitted that this Court being conscious of limitation under Section 9 of the OHRE Act granted liberty to the Opposite Party Nos.6 to 20 to file an application with supporting materials before the learned Commissioner for redressal of their grievances against constitution of NHT Board. It was further submitted that the learned Assistant Commissioner, while exercising power under Section 27 (1) of the OHRE Act, did not comply with the mandatory requirement for appointment of NHT Board. Thus, the learned Commissioner had committed no error in passing the impugned order dated 12th September, 2024 (Annexure-17) by appointing a neutral person like the Tahasildar, Cuttack as the sole interim trustee to look after the management and affairs of the Deity till finalization of the proceeding under Section 41 of the OHRE Act filed by the present Opposite Party Nos.6 to 20. It was his submission that the learned Commissioner being the guardian of all the religious institutions of the State cannot close his eyes to the illegality committed by the learned Assistant Commissioner in appointing the NHT Board. Setting aside the order passed by the learned Commissioner would result in reviving an invalid order passed by the learned Assistant Commissioner. In support of his case, he relied upon the ratio in the case of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and others; (1999) 8 SCC 16 and submitted that mentioning a wrong provision in the representation or in the impugned order would not invalidate the said order. In support of his case, Mr. Palit, learned Senior Advocate also relied upon the case of P.K.Palanisamy Vs. N. Arumugham and another; (2009) 9 SCC 173 and M/s Titagarh Paper Mills Ltd. Vs. Orissa State Electricity Board and another; (1975) 2 SCC 436. He further relied upon the case of N. Mani Vs. Sangeetha Theatre and others; (2004) 12 SCC 278 which reaffirms the principle

of law that if an authority has the power under law, then merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself would not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. He, therefore, submitted that the learned Commissioner having ample power under Section 7 of the OHRE Act to appoint an Interim Trustee for smooth management of the Deity till a decision is taken under Section 41 of the OHRE Act no exception can be taken to the appointment of Tahasildar, Cuttack as the interim trustee of the Deity. From the tenor of the order under Annexure-17, it is clear that in obedience to the direction of this Court in W.P.(C) No.17592 of 2024, the learned Commissioner had only decided the representation and nothing more. Since the order of the learned Assistant Commissioner in appointing NHT Board was palpably illegal for non-compliance of the mandatory procedure, the learned Commissioner was compelled to interfere with the same to safeguard the interest of a perpetual minor, namely, the Deity.

7.1 Mr. Palit, learned Senior advocate also relied upon the case of Dhadi Parida (supra) and Rabindra Mohapatra (supra) in support of his submission. He, therefore, submitted that the Writ Petition being devoid of any merit is liable to be dismissed.

8. Mr. Nath, learned counsel representing the learned Commissioner of Endowments submitted that no fault can be attributed to the learned Commissioner for passing the impugned order. He, in exercise of power under Section 7 of the OHRE Act only made an interim arrangement till the proceeding under Section 41 of the OHRE Act is finalized. Such an exigency arose because of the fact that the appointment of NHT Board of the Deity was apparently illegal for non-compliance of the mandatory procedure enumerated under Section 27 of the OHRE Act. It was his submission that while inviting objection for appointment of the NHT Board the learned Assistant Commissioner should have recorded a finding that there was no hereditary trustee of the religious institution. Although no detailed enquiry is necessary, but the learned Assistant Commissioner was required to record a finding in the proposal with reasons that there was no hereditary trustee of the Deity. In the instant case, such a finding is conspicuously absent. Thus, in order to prevent an invalid order to operate the learned Commissioner was constrained to exercise power under Section 7 of the OHRE Act. As such, there is no illegality in the impugned order under Annexure-17.

9. Heard learned counsel for the parties. Perused the materials on record as well as the case laws cited by learned counsel for the parties. On the basis of the submissions advanced by the learned counsel for the parties, the following issues crop up for adjudication.

The four issues are as under:-

"i) Whether the order under Annexure-17 passed by learned Commissioner was

under Section 9 or Section 7 of the Act?

ii) Whether the learned Commissioner has jurisdiction to interfere with the order of appointment of the NHT Board in view of specific bar under Section 9 of the Act?

iii) Whether the learned Commissioner being an authority under the State Government can interfere with an order of appointment of NHT Board, which is approved by the State Government?

iv) Whether the direction of this Court vide order dated 18th June, 2024 passed in W.P.(C) No.17592 of 2024 conferred jurisdiction on the learned Commissioner to interfere with the order of appointment of the NHT board and whether it impliedly set aside the order of appointment of the NHT Board by the learned Assistant Commissioner under Section 27 (1) of the Act?"

Issue No. (I)

10. In order to answer the issue No.(i), it would be profitable to refer to the relevant provisions of the OHRE Act, which are reproduced hereunder.

"7. POWERS AND DUTIES OF COMMISSIONER. —

(1) Subject to the provisions of this Act, the general superintendence of all religious institutions and endowments shall vest in the Commissioner.

[* * *] [Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.]

(2)[] [Re-numbered vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.]
The Commissioner may do all things which are reasonable and necessary to ensure that the religious institutions and endowments are properly administered and that their income is duly appropriated for the purposes which they were founded or exist.

Explanation - The Commissioner shall have power to pass such interim orders as he deems necessary for the proper maintenance of a religious institution, or the proper administration of a religious endowment including the power to pass such orders if and when necessary for the proper management of any institution when a dispute concerning the same is pending in a Court."

"9. Power of Commissioner to call for records and pass orders.

(1) The Commissioner may call for and examine [the record of any proceeding under this Act before the Deputy Commissioner] [Substituted vide O.A. No.29 of 1978.] [or before an Assistant Commissioner except under Sub-section (1) of Section 27] [Substituted vide O.A. No. 13 of 2003 (O.G.E. No. 825 dated 31.5.2003).] to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed thereon; and if in any case it appears to the Commissioner that any such decision or order shall be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly : Provided that the Commissioner shall not pass any order

prejudicial to any party without hearing him or giving him a reasonable opportunity of being heard :

[Provided further that in cases where an appeal lies under this Act, no proceedings by way of revision shall be entertained by the Commissioner at the instance of a person who could have appealed:] [Inserted vide O.A. No.29 of 1978.] Provided also that nothing in this sub-section shall apply to the proceedings in an appeal transferred by the Commissioner to the Deputy Commissioner for hearing and disposal.

(2) The Commissioner may stay the execution of any such decision or order, pending the exercise of his power under Sub-section (1) in respect thereof."

27. Non-hereditary trustees, their number and appointment.

(1) The Assistant Commissioner shall, in cases where there is no hereditary trustee, [with the prior approval of the State Government] [Inserted vide O.A. No. 4 of 1992.] appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

Provided that the Assistant Commissioner shall, before sending any proposal to the State Government for such prior approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication, and forward to the State Government the suggestions and objections, if any, received, along with such proposal.

(1-a) On receipt of a proposal made under Sub-section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the religious denomination for whose benefit, the concerned religious institution is chiefly maintained.] [Inserted vide O.A. No. 13 of 2003 (O.G.E. No. 825 dated 31.5.2003).]

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In the instant case, in order to submit a proposal for appointment of the NHT Board of the Deity, notice was published seeking objection/suggestion from the general public of the locality.

Intimation to the general public was also given by beat of drum inviting suggestions and objections on the proposal from all persons affected.

10.1 The question that has to be answered as to whether learned Commissioner had any jurisdiction under law to interfere with the order of appointment of NHT Board either under Section 7 or 9 of the OHRE Act.

11. Perusal of the provision under Section 7 of the Act makes it clear that the same is an administrative action of the learned Commissioner for smooth management of the religious institution. The provision does not whisper a single word with regard to testing of the veracity of any order passed by the learned Assistant Commissioner under Section 27(1) of the OHRE Act. It only speaks that when the learned Commissioner thinks it expedient to make arrangement for smooth management of the religious institution, it may exercise such power.

11.1 However, the power under Section 9 of the OHRE Act, on the other hand, confers an adjudicatory power of the learned Commissioner to call for and examine the correctness, legality or regularity of a proceeding or order passed by either the Deputy Commissioner or the Assistant Commissioner of Endowments. However, Section 9 specifically excludes the power of the learned Commissioner to interfere with an order under Section 27 of the OHRE Act. Thus, an order passed under Section 27 of the Act cannot be interfered with by the learned Commissioner in exercise of power under Section 9 of the Act.

12. On a close reading of the impugned order, it does not appear that there was any necessity to pass an order under Section 7 of the OHRE Act, i.e., appointment of interim trustee when an NHT Board duly appointed after approval of the State Government is in management of the religious institution. No allegation with regard to mismanagement of the Deity by the NHT Board has been made or questioned before the learned Commissioner. On perusal of the record, it appears that on appointment of the NHT Board, the members elected, namely, Sri Biswajit Swain as the Managing Trustee and it has been approved by the learned Assistant Commissioner, vide order No.1397/81-HC(M) dated 28th June, 2024 (Annexure-10). Thereafter, the NHT Board wrote to the learned Assistant Commissioner to make arrangement for opening of an account for management of the funds of the Deity. Accordingly, vide letter No.1544 dated 9th July, 2024 (Annexure-12), the learned Assistant Commissioner wrote to the Branch Manager, Union Bank of India, Nayabazar Branch to open an account in the name of the Deity to be operated by Sri Biswajit Swain, the Managing Trustee and Mr. Mana Ranjan Pradhan, Trustee. There being no finding with regard to the mismanagement of the religious institution by the NHT Board, the question of exercising power under Section 7 of the OHRE Act is ruled out. Further, there was no scope of interference with the order of appointment of NHT Board by the learned Commissioner in exercise of power under Section 7 of the OHRE Act, as the order of appointment of NHT Board becomes final which has received the approval of the State Government.

13. On close scrutiny of the impugned order under Annexure-17, it appears that the learned Commissioner felt it necessary to make an interim arrangement under Section 7 of the OHRE Act for smooth management of the Deity, as a

consequence of interfering with the order of appointment of the NHT Board. Thus, it is apparent that appointment of the NHT Board was not interfered with under Section 7 of the OHRE Act. Since it has already been held that the learned Commissioner has no power to interfere with the order of appointment of NHT Board under Section 27 (1) of the OHRE Act, the question of exercising power under Section 7 of the OHRE Act does not arise in the instant case. Hence, the issue is answered in favour of the Petitioners to the extent that the learned Commissioner has no jurisdiction to interfere with the order of appointment of NHT Board either under Section 7 or Section 9 of the OHRE Act.

Issue No. (II)

14. Section 7 and Section 8-B of the OHRE Act confer certain power on learned Commissioner to make arrangement for smooth management of a religious institution apart from other provisions of the said Act. As discussed earlier, Section 7 of the OHRE Act provides that subject to other provisions of the OHRE Act, the learned Commissioner has general superintendence over all religious institutions and endowments of the State. Sub-Section (2) of the said provision indicates that the learned Commissioner may do all things which are reasonable and necessary to ensure that the religious institutions and endowments are properly administered and that their income is duly appropriated for the purposes which they were founded or exist. Explanation to Section 7(2) of the OHRE Act provides that the learned Commissioner shall have power to pass such interim orders as he deems necessary for the proper maintenance of a religious institution, or for the proper administration of a religious endowment including the power to pass such orders if and when necessary for the proper management of any institution when a dispute concerning the said institution is pending in a Court.

14.1 Thus, plain reading of Section 7 of the OHRE Act makes it clear that the power and duties of the learned Commissioner is subject to other provisions of the OHRE Act. However, the learned Commissioner has the power to do all things which are reasonable and necessary for proper management and maintenance of religious institutions and their endowments. Subject to other provisions of the OHRE Act, learned Commissioner has also power to pass such interim orders, as he deems necessary for the proper maintenance and management of a religious institutions and for proper administration of religious endowments during pendency of a proceeding in Court.

15. In the instant case, by the time the impugned order under Annexure-17 was passed, a proceeding under Section 41 of the OHRE Act was pending. Thus, there is no doubt that the learned Commissioner had jurisdiction to pass an interim order if the facts and circumstances of the case so warranted. Whether the same extends to interference with appointment of the NHT Board, is a matter to be considered in this case. Section 9 of the OHRE Act bars interference with an order under Section 27(1) of the OHRE Act by the learned Commissioner. Since exercise of power under Section 7 of the OHRE Act is subject to other provisions

of the Act including the restriction, as aforesaid, under Section 9 of the OHRE Act, the learned Commissioner had no power to interfere with an order of appointment of NHT Board under Section 27(1) of the OHRE Act in exercise of power under Section 7 of the OHRE Act.

16. The next question that arises for consideration, as to whether learned Commissioner had jurisdiction under Section 8-B of the OHRE Act to interfere with an order under Section 27(1) of the said Act. Section 8-B of the OHRE Act reads as under:-

"8-B. Power of authorities to act without initiating proceedings under Section 41 :- (1) Notwithstanding anything contained in any other provision of this Act the Commissioner, the Deputy Commissioner and the Assistant Commissioners shall have power to take action under any of the provisions of this Act in respect of any institution, if on information received or otherwise, they are satisfied that such institution is a Religious institution within the meaning of this Act.

(2) For the removal of doubts, it is hereby declared that where any person disputes such action on the ground that the institution is not a Religious institution within the meaning of this Act, he may raise a dispute as provided in Section 41."

17. Though no such argument was advanced by any of the parties, this Court feels it necessary to deal with the scope of Section 8-B of the OHRE Act for proper adjudication of the issue involved in the instant case.

17.1 Section 8-B of the OHRE Act starts with a non-obstante clause. It empowers the learned Commissioner, the Deputy Commissioner and the Assistant Commissioners to take action under any of the provisions of the OHRE Act in respect of any religious institution. Section 8-B of the OHRE Act was inserted in the statute book vide Gazette Notification No.29 of 1978. On a plain reading, it is apparent that the provision does not leave any scope either to the learned Commissioner or the Deputy Commissioner or the Assistant Commissioners to interfere with an order of sub-ordinate Authority/Court. Before proceeding further, it must be kept in mind that an order under Section 27 (1) of the OHRE Act is an order passed by the learned Assistant Commissioner in his administrative capacity and not in exercise of quasi-judicial power. Section 8-B of the OHRE Act has been inserted to the statute book to deal with a situation for an instant action, if the Authorities, as named above, are satisfied that such institution is a religious institution within the meaning of the OHRE Act. There cannot be any doubt that the power under Section 8-B of the OHRE Act is not unbridled. It has its own limitation to the extent that learned Commissioner, the Deputy Commissioner or the Assistant Commissioners shall act within the power conferred on them under the provisions of the OHRE Act. Since Section 9 of the OHRE Act does not empower the learned Commissioner to interfere with an order under Section 27(1) of the OHRE Act, the power under Section 8-B cannot be exercised to interfere with an order of appointment of NHT Board by learned

Assistant Commissioner. Thus, the learned Commissioner lacks jurisdiction to interfere with an order of appointment of a NHT Board under any of the provisions of the OHRE Act.

Issue No. (III)

18. Learned Commissioner is an authority, created under the OHRE Act, being appointed by the State Government. Although the learned Commissioner is an Officer of the Odisha Superior Judicial Service, but when he acts under the provisions of the OHRE Act, he is an authority under the State Government.

18.1 An order under Section 27(1) of the OHRE Act is passed by the learned Assistant Commissioner after it is approved by the State Government. Thus, being an authority under the State Government the learned Commissioner had no jurisdiction to interfere with an order of appointment of NHT Board.

Issue No. (IV)

19. An argument was advanced by Mr. Palit, learned Senior Advocate appearing for Opposite Party Nos.6 to 20 that this Court, in W.P.(C) No.17592 of 2024, directed that in the event an application is filed by Opposite Party Nos.6 to 20 (Petitioners therein) before the learned Commissioner for redressal of their grievances as against constitution of NHT Board of the concerned religious institution, then the learned Commissioner would do well to consider the same in its proper perspective and take a decision afresh independently without being influenced by earlier order, in accordance with law. Pursuant to the liberty granted by this Court, Opposite Party Nos.6 to 20 filed an application before the learned Commissioner for redressal of their grievances against appointment of NHT Board of the Deity. In terms of the direction made, the learned Commissioner entertained such application and providing opportunity to the present Petitioners passed the impugned order under Annexure-17. It was thus, submitted by Mr. Palit, learned Senior Advocate that the learned Commissioner did not initiate any proceeding suo motu to interfere with the order of appointment of NHT Board. It is only pursuant to the direction of this Court, learned Commissioner adjudicated the application filed by Opposite Party Nos.6 to 20. He further submitted that the learned Commissioner having the power of general superintendence of all the religious institutions and endowments within the State of Odisha and is responsible for proper management and maintenance of the religious institution and its endowments he entertained the application and passed the impugned order under Annexure-17. He also relied upon the case of *Maharaja Chintamani Saran Nath Shahdeo -v- State of Bihar and others: (1999) 8 SCC OnLine SC 1026*, which lays down as under:

“38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing the action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant.”

19.1 Mr. Palit, learned Senior Advocate, therefore, submitted that if the impugned order under Annexure-17 is set aside by this Court, it would result in revival of an invalid order of appointment of NHT Board. He emphatically submitted that the learned Assistant Commissioner, while sending the proposal for appointment of NHT Board to the Government, did not comply with the mandatory provisions of Section 27(1) of the OHRE Act. He further submitted that in the case of Dhadi Parida (and after him) Sundari Parida and others (supra), the Full Bench of this Court categorically held that though no detailed enquiry by the learned Assistant Commissioner is necessary to record a finding that a religious institution in question did not have a Hereditary Trustee, but the learned Assistant Commissioner must record the reason in brief the source of his satisfaction to record the finding to the effect that the religious institution had no Hereditary Trustee.

20. Mr. Nath, learned counsel appearing for the learned Commissioner of Endowments also supported such submission of Mr. Palit, learned Senior Advocate appearing for Opposite Party Nos.6 to 20.

21. We are not in a position to accept the submissions of Mr. Palit, learned Senior Advocate and Mr. Nath, learned counsel for the Commissioner of Endowments for the reason that in the instant case, learned Commissioner while indexing the Deity (religious institution), had opined that the religious institution did not have any hereditary trustee. Further, while passing the impugned order under Annexure-17, the learned Commissioner also observed that the religious institution was being managed by the villagers. Thus, it is apparent that the Deity had no hereditary trustee. In the instant case, it is not in dispute that the Deity is a public Deity. Be that as it may, the objection with regard to non-compliance of Section 27 of the OHRE Act was also raised by the Opposite Party Nos.6 to 20 in the earlier W.P.(C) No.17592 of 2024 (Petitioners therein). But, this Court, without interfering with the order of appointment of NHT Board, disposed of the Writ Petition observing that in the event, the Opposite Party Nos.6 to 20 (Petitioners therein) file an application before the learned Commissioner of Endowments within ten days of the said order, he would take a decision on the same without being influenced by the order passed earlier. Thus, it is apparent that the order of appointment of NHT Board was not interfered with by this Court in W.P.(C) No.17592 of 2024. As such, the argument of Mr. Palit, learned Senior Advocate and Mr. Nath, learned counsel that the order under Section 27 of the Act was impliedly set aside by this Hon'ble Court in the earlier Writ Petition is not sustainable.

21.1 In addition to the above, the Petitioners in the instant case do not challenge the veracity of the order of appointment of NHT Board. As discussed earlier, the learned Commissioner did not have any power/jurisdiction to interfere with appointment of NHT Board. In view of the issue involved in this case and discussions made above, the ratio in the case of Maharaja Chintamani Saran Nath Shahdeo (supra) is of no assistance to the Opposite Party Nos. 6 to 20. As

such, we are not in a position to accept the submissions of Mr. Palit, learned Senior Advocate appearing for Opposite Party Nos.6 to 20 and Mr. Nath, learned counsel appearing for learned Commissioner of Endowments.

22. The submission of Mr. Palit, learned Senior Advocate to the extent that this Court while granting liberty to the Opposite Party Nos.6 to 20 to move learned Commissioner, had impliedly set aside the order of appointment of NHT Board is also not correct. Learned Commissioner while entertaining the representation of Opposite Party Nos.6 to 20, clearly observed that the Deity was managed by the villagers. Further, while indexing the Deity, the learned Commissioner categorically opined that the Deity is a public religious institution having no Hereditary Trustee. The said order of indexing the Deity (religious institution) was never challenged and attained its finality. Thus, the learned Commissioner interfered with the order of appointment of the NHT Board. Had it been set aside by this Court, as submitted by Mr. Palit, learned Senior Advocate, then there would not have any occasion for the learned Commissioner to interfere with the order of appointment of NHT Board.

23. The next question that is required to be answered is whether this Court while disposing of W.P.(C) No.17592 of 2024 conferred jurisdiction on the learned Commissioner to interfere with an order of appointment of NHT Board.

24. Mr. Mishra, learned counsel for the Petitioners relied upon the case law of Chiranjilal Shrilal Goenka (deceased) through LRs (supra), in which it is held as under:

"17. We agree with Mr. Chidambaram that the applicant had consented to refer the dispute for arbitration of dispute in the pending probate proceedings, but consent cannot confer jurisdiction nor an estoppel against statute. The other legatees in the will were not parties to it. In A.R. Antulay VI R.S. Naik, [1988] 2 SCC 602 when a Constitution Bench directed the High Court Judge to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he 'questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed meaning of the word 'jurisdiction', Mukerjee, J. as he then was, speaking per himself, Oza and Natarajan, JJ. held that the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament alone can do it, by law and no Court, whether superior or interior or both combined, can enlarge the jurisdiction of a Court and divest a person of his rights of appeal or revision. Ranganath Misra, J. as he then was, held that jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the Legislature. Jurisdiction is thus the authority or power of the Court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that the jurisdiction to try a case could only be conferred by law enacted by the

legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was to lay down that the expression jurisdiction or prior determination is a "verbal coat of many colours". In the case of a Tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a 'legal shelter' and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that the jurisdiction could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal. In that case this Court held that Constitution Bench has no power to give direction contrary to Criminal Law Amendment Act, 1952. The direction per majority was held to be void."

25. Thus, a jurisdiction, if not conferred on any Court in law, the same cannot be conferred by a Court even on consent of learned counsel for the parties. Further, this Court, while parting with the order dated 2nd August, 2024 (Annexure-13), had made it clear that the learned Commissioner should decide the matter in accordance with law. This Court in W.P.(C) No.17592 of 2024 never mandated the learned Commissioner to interfere with the order of appointment of NHT Board of the Deity.

26. In view of the above, the Issue No. (IV) is answered in favour of the Petitioners and against the Opposite Parties.

27. We, thus set aside the order dated 12th September, 2024 (Annexure-17) passed by the learned Commissioner of Endowments and direct that the Petitioners-NHT Board be allowed to manage the religious institution in terms of their order of appointment by the learned Assistant Commissioner. This would of course be subject to the outcome in the proceeding under Section 41 of the OHRE Act.

28. The Writ Petition is accordingly allowed to the aforesaid extent. In the fact and circumstances of the case, there shall be no order as to costs.