

(1957) 04 OHC CK 0004

In the Orissa High Court

Case No : Supreme Court Appeal No. 114 of 1956

Chintamoni Pratihari and Others

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 22-04-1957

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 226, 26
Orissa Estates Abolition Act, 1951 — Section 2

Citation : (1957) 23 CLT 245

Hon'ble Judges : Narasimham, C.J.; Das, J

Bench : Division Bench

Advocate : A. Das, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition under Article 133 of the Constitution for grant of leave to appeal to the Supreme Court against the decision of this Court in O.J.C 295 of 1955. That O.J.C. was filed by the petitioners under Article 226 of the Constitution for the issue of an appropriate writ cancelling Notification No. 158 dated the 15th July, 1955, of the Government of Orissa issued u/s 3 of the Orissa Estates Abolition Act vesting in the State Government village Golanda, No. 29 in Berhampur Taluk. The petitioners alleged that the said village was a Devadayam inam belonging to Shri Jagannath Mahaprabhu under the merfatdari of the petitioners and that it was not an "estate" within the meaning of the Madras Estates Land Act and consequently not an "estate" within the meaning of the Orissa Estates Abolition Act also. (2) In the Orissa Estates Abolition Act as it stood in 1952, prior to its amendment by Orissa Act XVII of 1954, the expression "estate" (see Section 2, (g)) included an inam estate, and it was further stated that all expressions in that Act have the same meanings as were given to those expressions in the Madras Estates Land Act or the Orissa Tenancy Act, as the case may be. In Section 3 (2) (d) of the Madras Estates Land Act the expression "estate" was defined as meaning whole inam village of which the grant has been

confirmed or recognised by the British Government even though subsequent to the grant the village might have been partitioned amongst the grantees. Hence an inam will be an "estate" under the Orissa Estates Abolition Act, prior to its amendment in 1954, if being a pre-settlement inam (1) it was either recognised or confirmed by the British Government; and (2) it was the grant of a whole village.

Doubtless by Orissa Act XVII of 1954, the definition of the expression "estate" in Section 2 (g) of the Orissa Estates Abolition Act was widened so as to include pre-settlement minor inams also. The validity of this amendment was challenged in a separate writ application by some of the pre-settlement minor inamdars and this Court disposed of the same in *Sankarsan v. State of Orissa* O.J.Q No 213 of 1956 reported in *Sankarsana Ramanuja Das Vs. State of Orissa and Another*, . The petitioner's application under Article 226 of the Constitution was taken up for consideration by a Bench of this Court on the 13th November, 1956. On that day the petitioners' Advocate, on their behalf, admitted the following facts :

(i) The inam village was a pre-settlement inam village which was subsequently confirmed by the British Government in Title Deed 2906; and

(ii) The original grant was of the entire village. In view of these two admissions on facts this Court held that the inam village would be an "estate" as defined in Section 3 (2) (d) of the Madras Estates Land Act and was therefore liable to be acquired under the provisions of the Orissa Estates Abolition Act. The question of discussing the validity of the amending Act (Orissa Act XVII of 1954) did not arise in this case inasmuch as even under the unamended definition the village in question would be an "estate". Hence the petition under Article 226 was rejected without costs.

3. When the application for grant of leave to appeal, under Article 133, was filed an enquiry on the question of valuation was made from the Subordinate Judge and his report dated the 8th February, 1957 shows that the valuation of the disputed village is Rs. 46.393-8-0.

4. Mr. A. Das on behalf of the petitioners urged that in view of a Division Bench decision of this Court in *Jagannath Agarwalla Vs. State of Orissa and Another*, , it is now settled (so far as this Court is concerned) that an application for the issue of an appropriate writ under Article 226 in a case of the present type, would be in the nature of a "Civil proceeding" and that consequently the order of this Court dated the 13th November, 1956 in O.J.C. 295 of 1955 dismissing the application would be a "final order" within the meaning of Article 133(1) of the Constitution. As the valuation is undoubtedly beyond Rs. 20,000/- Mr. Das urged that the petitioners were entitled to the leave asked for.

5. The Advocate-General, on behalf of the State, however, contended that on the facts admitted by the petitioners the order of this Court dated the 13th November, 1956 would, for all practical purposes, be a consent order and consequently leave should not be granted even though the petitioners may

satisfy the requirements regarding valuation for the purpose of Article 133. In support of this argument he relied on *Lachehmi Narain v. Balamukund* AIR 1920 Pat 721 (C), AIR 1931 107 (Privy Council) and AIR 1932 251 (Privy Council) .

Doubtless those decisions were given under Sections 109 and 110 of the Civil P. C. read with Section 99(3) of that Code which expressly bars an appeal against a decree passed by consent of parties. Mr. Das however tried to distinguish these decisions by saying that they arose out of civil suits governed by the provisions of Sections 96(3) and 110 C. P. C. and that they have no application to the present case which is based entire in Article 133 of the Constitution which contains no limitations whatsoever with regard to consent decrees or orders.

6. I am however unable to accept the extreme contention of Mr. Das that so long as the requirement of valuation under Article 133 is satisfied a certificate should be given under that Article, for leave to appeal against an order of this Court passed on application under Article 226 even though that order follows as a necessary result of facts admitted by both parties. In O.J.C. 295 of 1955 there were two important questions of fact on the ascertainment of which the success of the application depended namely (1) whether the pre-settlement inam was of a whole village or of a portion of a village and (2) whether it was recognised or confirmed by the British Government.

When the petitioners admitted these two facts at the time of the hearing of the application there was no doubt that the inam village was an "estate" within the meaning of the Orissa Estates Abolition Act even prior to its amendment in 1954. Consequently the validity of the Notification u/s 3 of that Act vesting the estate in the State Government was beyond challenge. The order is, therefore, for all practical Purposes, a consent order, and to grant leave to appeal against such a consent order merely because Article 133 of the Constitution does not expressly refer to such an order, would, we think, be merely wasting the time of the Supreme Court.

7. Mr. Das then contended that there was an important question regarding the interpretation of the Constitution arising out of the original application and that leave should be granted under Article 132. He urged that as admittedly the petitioners' inam was a Devadayam inam, that is to say, a village granted for the maintenance of the deity Shri Jagannath Mahaprabhu and the petitioners' position was merely that of trustees, the acquisition of the village under the provisions of the Estates Abolition Act would interfere with the fundamental rights guaranteed under Article 26 of the Constitution. This point was taken in the previous application under Article 226, but was given up at the time of the hearing.

Though it has been raised by way of an argument at the time of granting leave, I think it is now concluded by the decision of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, ; *Vishweshar Rao v. State of M. P.*, Petition No. 166 of 1951 (G); and *Raja Suryapalsingh and Others Vs. The U.P. Govt.*, , while

dealing with, the appeal against the decision of the Allahabad High Court Raja Suryapalsingh and Others Vs. The U.P. Govt., . There also one of the points taken was that the acquisition of the property of a religious endowment would adversely affect the maintenance of that religious institution &, as such would contravene Article 26 of the Constitution.

The Allahabad High Court rejected this plea and on appeal their Lordships of the Supreme Court upheld the view of the Allahabad High Court (Vide Paragraph 214 of the judgment of Mahajan J. and paragraph 233 of the Judgment of Das J., as he then was).

It was pointed out that if the property of a religious endowment is acquired under the provisions of the Zamindari Estate Abolition Act, there is only a change in the form of the property, namely from immovable property into money, and that the fundamental rights guaranteed under Article 26 of the Constitution are not in any way affected. Mr. Das, however, relied on The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , but that decision has absolutely no application to a case where the property of a religious endowment is acquired under the provisions of, an otherwise valid law.

8. In my opinion, therefore.

(i) a certificate cannot be granted under Article 133 because the order of this Court dated the 13th November 1956 in O. J. C. 295 of 1955 is, for all practical purposes, a consent order and is based on admission of the necessary facts from which the order followed as an inevitable result; and

(ii) a certificate cannot be granted under Article 132 also because the so called constitutional question was not pressed at the time of the hearing of the O. J. C. and moreover it is concluded by the decision of the Supreme Court in AIR 1952 SC 252 (F). The petition is therefore rejected but without costs.

Das J.

9. I agree.