
(1978) 12 OHC CK 0006

In the Orissa High Court

Case No : Miscellaneous Appeal No. 239 of 1977

Digambar Padhy and Others

APPELLANT

Vs

Jagannatha Mohanty and Others

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

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

Citation : (1979) 47 CLT 544

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; R. Mohanty, S. Mohanty and A.S. Naidu, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—This is an appeal u/s 44(2) of the Orissa Hindu Religious Endowments Act, 1951 brought against the confirming judgment of the learned Commissioner of Endowments.

2. The Respondents filed a petition u/s 41 of the Act for a declaration that the institution of Shri Budheswar Deb and the minor deities installed at village Josuapur under Pipili Police Station in the district of Puri is a public religious institution with no hereditary trustees. Their contention was that the Raja of Puri had installed the deities Shri Budheswar Deb and Shri Gopinath Deb in the temple and subsequently an ex-landlord of the locality installed the other deities. The properties standing in the names of the deities were endowed by the Raja and the ex-landlord and subsequently by the villagers for the support of the institution. It was also alleged that the founders managed the affairs of the deities with the active cooperation of the village public and after abolition of the estates the management was taken up by the villagers. The villagers constructed two temples and installed Shri Narayan Deb and Shri Laxmi Narayani Thakurani therein. They also constructed a Mandap and a Dola bedi for the deities. They perform all the festivals of the deities and meet the expenditure by raising

subscriptions. Respondents are mere sevaks though recorded as marfatdars in the settlement record of rights and they work under the direct control and supervision of a Village Committee.

3. The Appellants claimed the institution as a private temple. Their contention was that the institution was established by one Jagannath Padhi and since then the affairs of the institution have been managed by the members of the Padhi family and others.

4. Both parties led oral and documentary evidence in support of their respective contentions and the learned Asst. Commissioner of Endowments on a consideration of the same declared that the institution is a public religious institution with no hereditary trustees. On appeal the decision was confirmed by the learned Commissioner of Endowments.

5 The crucial question for consideration is whether the temple is a public temple as claimed by the Respondents or it is a private temple as asserted by the Appellants.

6. The considerations for distinguishing a public temple from a private one have been indicated by B. K. Mukherjee in "the Hindu Law of Religious and Charitable Trust. "Firstly, if the public have been in the habit of worshipping in the temple in an open and unconcealed manner for a long period of time and were never denied any access to it, that would be a strong evidence of dedication. The second consideration is the conduct of the founder and his descendants. If they in fact held it to be a public temple, a very strong presumption of dedication would arise. The third consideration is that if repairs and additions to the temple building are made with public subscriptions and if festivals in the temple are also performed with the aid of public funds, then these facts would certainly fortify the inference of the temple being a public one. Proof that the members of the public had contributed for the construction of the temple or for the extension of its building is another indication for showing that it is a public temple. The C fourth consideration is the association of strangers in the management. Even the location of the temple and its structure are yet other important indications. The remission of land revenue in respect of the land on which the temple stands or grant by the rulers towards expenses of the temple would be almost decisive for showing that the temple is a public one.

7. Now turning to the evidence adduced in the case, it appears from the settlement record of rights (Exts. 5 and B series) that persons of different communities have been jointly recorded as marfatdars along with the members of the Padhi family. The Khewat - Ext B/2 shows that the lands recorded in then name of Khetrapala Thakurani, a minor deity are Lakhraj bahel. Exts. 1 and I/a are the account books for the years 1972 to 1974 showing expenditure incurred by the village committee for managing the affairs of the deity. Ext. 2/b is a Resolution dated 27-2-1971 of the Village Committee allotting duties to different persons of the village for the performance of the Dola Jatra of the deity. Ext.2/f is

a Resolution dated 8.3-1968 showing that the Appellant No. 3 Satyabadi Padhi was held guilty by the Village Committee for his negligence of duty to the deities. It bears the signature of Appellant No. 2 Kelu Charan Padhi. The Resolution dated 24-4-1968 shows that Appellant No. 3 Satyabadi Padhi, P.W. 1 Brajaraj Padhi, Appellant No. 2 Kelu Charan Padhi were engaged by the Village Committee for Sevapuja of the deity. Kelu Charan Padhi, the Appellant No. 2, has signed this Resolution vide Ext. 2/g. The documentary evidence referred to above lends ample corroboration to the oral evidence on the record that the affairs of the deity are managed by the Village Committee. The Appellants did not adduce any cogent evidence to show that Jagannath Padhi had installed the deities and that the members of the Padhi family have been managing the affairs of the deity. They did not produce a single scrap of paper to show that the affairs of the institution were ever managed by the members of the Padhi family. The evidence of p. ws. 1 to 5 examined on the side of the Respondents clearly shows that the deities Budheswar Deb and Balunkeswar Deb were installed by Raja of Puri and the properties of the deities were endowed by him. Their evidence also shows that the ex-landlords installed the other deities and endowed properties in their favour. The members of the public visit the temple for Darsan of the deity and offer Bhog, as of right. After abolition of the estates, the villagers have been managing the affairs of the deity through the Village Committee. The villagers constructed a temple for the deities Narayan and Laxmi Narayani. They also constructed a Dola Bedi for the deity and have been performing the festivals such as Dola Jatra, Mahastami and Sitalsasti. The deities are carried in bimens during Dola festival and chacheri bhog is offered to them by the villagers. P. w. 2 Baman Naik who is a Sevak of the main deity Budheswar Dev stated that the members of the public have free Darsan of the deity without taking permission of the Padhi family and that the villagers manage the festivals of the deity and under take repairs of the temple building. He also stated that the villagers supervise the work of the Sevaks and meet the expenses of the festivals. His evidence remained unshaken by cross-examination. P. ws. 1, 3, 4 and 5 also deposed to the same effect. O P.W. 2 Kelu Charan Padhi who is Appellant No. 2 in this appeal himself admitted that the deities are carried in Bimens during Dola and Basanta Panchami festivals and chacheri bhog is offered to them by the villagers. He denied the existence of a village committee though it appears that he has signed some of the Resolutions of the village Committee in which decisions were taken regarding affairs of the deity. O. P.W. 3 Suman Majhi also admitted as follows:

The doors of Budheswar. Khetrapala, Narayani and Narayan Dev are open and one can go to poly Darsan. Gapinath Deb and Dola Gobinda go outside to take chacheri bhog from the villagers.

The evidence of P.W. 4 Purna Chandra Padhi also shows that the members of the public have free Darsan of the deities.

8. Both the Asst. Commissioner and the Commissioner of Endowments, on a

careful analysis of the entire evidence on the record came to the concurrent findings that the institution is a public religious institution, that its affairs are managed by the Village Committee and that there are no hereditary trustees. A review of the evidence leads to the irresistible conclusion that for long the members of the public have been going to the temple freely for Darsan and they have been making offerings to the deities and they also join the festivals and bear the expenses thereof. There is no credible evidence on the record to show that the deities were installed by Jagannath Padhi, a remote ancestor of the Padhi family and that the Appellants ever managed the affairs of the deities. There is, therefore, no manner of doubt that the institution is a public religious institution with no hereditary trustees.

9. The appeal fails and is dismissed, but without any order as to costs.

10. Appeal dismissed.