
(1980) 11 OHC CK 0013
In the Orissa High Court
Case No : Misc. Appeal No. 43 of 1977

Dinabandhu Panda and Others	Vs	APPELLANT
Kulamani Das and Others		RESPONDENT

Date of Decision : 12-11-1980

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 41

Citation : AIR 1981 Ori 158 : (1980) 50 CLT 586

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : K.C. Mohanty, S. Mishra, P.K. Mohanty, Santosh Mohanty and G.C. Nayak, for the Appellant; R. Mohanty and G.B. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

N.K. Das, J.—The opposite parties in a proceeding u/s 41 of the Orissa Hindu Religious Endowments Act, 1951 are in appeal against a concurrent decision. Their case is for declaration that Billoma Thakurani, Mangomea Thakurani and Sri Nilakantheswar Mahadeb of village Samagol are public deities, as envisaged under the Act and the properties described in the schedule consist of religious endowment of the said deities. The Sandhu Raja family of Kujans installed the deities and endowed the schedule lands for the Seva Puja and maintenance of the deities. The Raja of Burdwan took over the Kujang estate in a public auction and he was recorded as the Marfatdar of the deities. When the Zamindari was abolished in 1951, the Raja of Burdwan no longer looked after the Seva Puja of the deities and since then the Hindu public are managing the Seva Puja. Opposite Party No. 2 was a Sevak of the deities on salary basis and he was performing the Seva Puja and managing the affairs of the deities on behalf of the public and he was possessing the lands in question for performing the aforesaid Seva Puja. He fraudulently got a document executed from the Raja of Burdwan (Ext. B) in his favour as well as in favour of his friends and relations. It is contended that the temples of the deities are public temples. The members of

the public pav Darshan, offer Bhog and participate in the festivals by paying contribution.

Opposite party No. 1, the Raja of Burdwan, did not contest the proceeding and remained ex parte. Opposite Party Nos. 2 to 8 only contested and their case is that the deities as well as their properties are the private properties of the Raja of Burdwan. For proper Seva Puja of the deities, the Raja of Burdwan transferred the deities and also the properties by a deed of gift dated 3-11-1964 under Ext B to these opposite parties for management of the affairs of the deities as well as the properties. Since that time, these opposite parties by their own right are treating the deities as well as the properties as their private. They have claimed to be the hereditary trustees of the deities, in case the deities are declared to be public deities.

2. The learned Assistant Endowment Commissioner as well as the Commissioner of Endowments have concurrently held that the deities are public deities and the properties belonging to the deities were never the private properties of the Raja of Burdwan and are public endowments. The deities and the properties belonging to the deities were never the private properties of the Raja of Burdwan and the claim of the opposite parties 2 to 8 that the deities as well as the properties are their private has been negated.

3. Undisputedly, the burden of proof lies on the person claiming the institution to be private according to the Proviso to Section 41 of the Orissa Hindu Religious Endowments Act. The opposite parties, who, according to the members of the public were the Sevaks, but claimed to be the owners and possessors of the deities and their properties, have to establish that the deities and the properties were the private of Raja of Burdwan, opposite party No. 1, and by virtue of Ext, B opposite party Nos. 2 to 8 have acquired the right to the deities and are treating the properties of the deities as their own.

Opposite party No. 1, the Raja of Burdwan, does not contest the claim of the petitioners. Therefore, the case of the opposite parties 2 to 8 is based on Ext. B, a document of the year 1964 -- admittedly after vesting of the estate, Undisputedly also, the Raja of Burdwan was the owner of the estate by virtue of purchase in an auction and there is no dispute that the estate has already vested in the year 1951 and the properties vested in the State Government. By the time Ext. B came into existence (in the year 1964), the properties were never the properties belonging to the ex-landlord. Therefore, unless and until opposite parties Nos. 2 to 8 establish that the deities and the properties were the private properties of the Raja of Burdwan and the Raja transferred all his interests absolutely to opposite parties Nos. 2 to 8, to enjoy the same full and exclusively, they cannot claim that these endowments are their private properties. The contents of Ext. B also do not show that the endowment properties have been exclusively given to opposite parties 2 to 8 without attaching any rider or condition. The Commissioner of Endowment has declared the institution and the properties as public on the ground that the temples are situated in the fields,

away from the village. The Raja of Burdwan was an absentee and was not performing the Seva Puja of the deities and he had no right to transfer the deities and the properties in the year 1964, The Raja of Burdwan also does not dispute the claim of the petitioners.

4. It is contended on behalf of the appellants that the learned Commissioner of Endowments has not decided the dispute on settled principles laid down since a long time for declaration of an endowment either public or private.

5. In *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, , it has been laid down as follows (at p. 2031) :--

"In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as -

(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right?

(3) Are the temple expenses met from the contributions made by the public ?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples ?

(5) Have the management as well as the devotees been treating that temple as a public temple?"

Also this Court in *Bhagaban Sahu v. Prasanna Kumar* (1973) 1 CWR 137, has held that the mere fact that the deity is possessed of Bahel lands cannot lead to the conclusion that the deity must have been a public one. Merely from the fact that free Darshan has been allowed without any sort of hindrance cannot also be taken as a feature to determine the character of the institution. There should be evidence that the members of the public participate in the management or administration of the endowment or that they had contributed to the endowment fund at any time.

6. The aforesaid decisions have clearly laid down the scope of enquiry to be made in a case u/s 41 of the Orissa Hindu Religious Endowments Act. No discussion has been made by the learned Assistant Endowment Commissioner or the Endowment Commissioner on the principles laid down above. It appears that they have been carried away only by the situation of the temples in the fields and it is not believable that the Raja of Burdwan was performing the Seva Puja of the deities and that he had no right to transfer the same in favour of opposite party Nos. 2 to 8. It is, therefore, necessary that the case is to be judged on the settled principles, as discussed above. In the interest of justice, it is necessary that the case should be remanded to the Commissioner of Endowments for fresh disposal.

7. It is contended on behalf of the appellants that as the properties have already vested in the State Government and Ext. B came into existence in the year 1964, after vesting of the estate the case is not maintainable, the State Government being not made a party and for that reason the petition should have been dismissed. As I am remanding the case, this point can be decided by the Endowment Commissioner.

8. In the result, the appeal is allowed. The decision of the Endowment Commissioner is set aside and the case is remanded to the Commissioner for fresh disposal according to law on the materials available on record, keeping in view the observations made above.

In the circumstances of the case, there will be no order for costs.