

**(1973) 03 OHC CK 0011**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 491 of 1972**

Gayaram Patel

APPELLANT

Vs

Sri Samaleswari Devi and Another

RESPONDENT

**Date of Decision : 06-03-1973**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Orissa Estates Abolition Act, 1951 — Section 7, 8A  
Orissa Hindu Religious Endowments Act, 1951 — Section 16, 68

**Citation : (1973) 39 CLT 424**

**Hon'ble Judges : G.K. Misra, C.J; S. Acharya, J**

**Bench : Division Bench**

**Advocate : B.R. Rao and B.L.N. Swamy, for the Appellant; S. Mohanty, K.N. Sinha, S. Misra and S.K. Mohanty, for the Respondent**

## **Judgement**

G.K. Misra, C.J.—The Petitioner's case is that the ancestors of Sri Anup Singh Deo, ex-Zamindar of Khariar, dedicated their intermediary interest in village Konabira in favour of opposite party No. 1, Sri Samaleswari Devi. On 10-5-1949 Shri Anup Singh Deo on behalf of the deity, opposite party No. 1, leased out the Thikadari rights of this village for ten years i.e. from 1-6-1950 to 31-5-1960 and gave possession of Sir and Khudkast lands of that village to the Petitioner as per Annexure-I, the original of which is said to be a registered document. On 28-3-1951, by Annexure-2. the Petitioner's name was mutated by an order of the Tahasildar, Nawapara. On 1-6-1959 the Estate vested in the State of Orissa under the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the Act). Shri Kailash Chandra Panigrahi, the managing trustee of the deity opposite party No. 1. filed an application u/s 8-A of the Act for settlement of the disputed agricultural lands on the deity u/s 7 of the Act. The Petitioner filed his objection on 27-1-1960. On 30-6-1962 the Estates Abolition Collector settled the disputed lands on the Petitioner for and on behalf of Sri Samaleswari Devi off Komna as an occupancy raiyat. (Order: Annexure-3). On 20-10-1963 opposite party No. 1 filed a petition (Annexure-4) u/s 16 of the Orissa Hindu Religious Endowments Act,

1951 for evicting the Petitioner from the disputed lands. The application was allowed by the Assistant Commissioner of Endowments by his order (Annexure-7) dated 12-1-1970. The Commissioner rejected the revision by his order (Annexure-8) dated 3-5-1970. On 30-10-1970 the Assistant Commissioner of Endowments passed an order directing delivery of possession. The writ application has been filed under Articles 226 and 227 of the Constitution for quashing Annexures 7 and 8 and for issue of an injunction against the opposite parties not to execute those orders.

2. Mr. Rao for the Petitioner raised two contentions:

(1) The disputed lands have been settled on the Petitioner u/s 7 of the Act on raiyati basis, and the deity, opposite party No. 1, has no occupancy right in those lands; and (2) Even assuming that the disputed lands were settled with the deity, the Petitioner cannot be evicted u/s 68 of the Orissa Hindu Religious Endowments Act as he claims the lands in good faith.

3. The first contention is wholly without substance. Annexure-3, the judgment of the Estates Abolition Collector passed on 30-6-62, shows in unequivocal terms that 20.14 acres of land in village Konabira bearing plot No. 5 were settled on occupancy right with the Petitioner for and on behalf of Sri Samaleswari Devi of Komna. Even in the body of the judgment the same view has been throughout taken. It is not necessary to go into the antecedent history of the Petitioner's claim prior to the passing of Annexure-3. Doubtless, in the context he had set up a claim that he was in possession of the lands on the date of vesting in his own right, title and interest. But that defence was not accepted by the collector who settled the lands on the deity u/s 7. The order of the collector was not challenged in appeal and finally settled the rights of the parties. It is no longer open to the Petitioner to contend that the disputed lands do not constitute the raiyati lands of the deity. Mr. Rao's argument that the order of the Collector means that the Petitioner had occupancy right under the deity is wholly untenable in face of the clear order. The first contention fails.

4. The second contention is that the Petitioner claims the disputed lands in good - faith as a trustee. There can be no dispute that by virtue of the order of the Estates Abolition Collector the Petitioner remained in possession of the disputed lands on behalf of the deity as a defector trustee. Sri Kailash Chandra Panigrahi was the managing trustee of opposite party No. 1 appointed by the Endowment Commissioner. Though the Petitioner was a de facto trustee and though the order of the collector was clear and unequivocal that the lands were settled with the deity, yet the Petitioner now, claims the lands to be his and not of the deity. By his present conduct and action the Petitioner is acting in derogation of the right, title and interest of the deity, and has thus committed an act of breach of faith against the interest of the deity.

The question for consideration is whether a trustee who acts in breach of faith would come within the ambit of the expression 'trustee, office holder or servant

of the religious institution who is otherwise not entitled to be in possession in Section 68. We are satisfied that a de facto trustee would come within the ambit of this expression if he acted in bad faith and claimed title or possession contrary to the interest of the deity. The contention of Mr. Rao that the Petitioner is a person claiming to be in possession - in good faith is not acceptable. Section 68 of the Orissa Hindu Religious Endowments Act, therefore, applies in terms.

The same view was taken in *Laxmidhar Mohapatra v. Raghunath Das* and Ors. 1971 (1) C.W.R. 401 in case of a Sebak who claimed to be in possession of the disputed land, though in fact he was not in possession, Mr. Rao" placed reliance on another Bench decision of this Court reported in *Ram Chandra Swain v. Commissioner of Orissa Hindu Religious Endowments* and Ors. 1972 (1) C.W.R. 278. The facts of this case are wholly different, the properties of religious institution had been put to sale for arrears of rent and had been purchased by persons who were completely strangers to the institution. These very properties were attempted to be recovered u/s 68 of the Orissa Hindu Religious Endowments Act. Rightly it was held that Section 68 has no application to such a case.

5. Both the contentions fail. The writ application is dismissed, but in the circumstances without costs.

S. Acharya, J.

6. I agree.