

(1994) 04 OHC CK 0004
In the Orissa High Court
Case No : Misc. Appeal No. 517 of 1989

Hadibandhu Senapati and Others

APPELLANT

Vs

Mani Biswal and Others

RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 41, 44

Citation : (1994) 78 CLT 285 : (1994) 1 OLR 551

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : B. Brahmachari, S.K. Ray, D. Patra, R. Mohapatra and U.S. Patnaik, for the Appellant; A. Deo, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this appeal u/s 44(2) of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the Act), the judgment and order of the Deputy Commissioner of Endowments, Orissa, declaring lot No. 6 totalling 0.32 decimals of land (relating to khata No. 211, plot No. 963 Ac. 009 decimals and plot No. 970 Ac. 0.23 decimals) to be private property of respondent No. 1 is under challenge.

2. The appellants filed an application u/s 41 of the Act for declaring the deity as a public deity and its lands as per schedule as public religious endowments. Their is that Shri Shri Sidheswar Mahaprabhu, popularly known as Sidha Mahapurusa installed at village Raipur is a public deity and its foundation is lost in antiquity. It is their case that from the beginning of the foundation of the deity, the management was being looked after by the village committee and some villagers had endowed lands in the name of the deity as per the schedule given in the petition. Seba puja of deity is being performed regularly and the expenditure for the performance of Seba puja and daily Nitis of the deity is not from the usufructs of the land of the deity and the Marfatdars of the deity bear all the expenses. Alleging that respondent No. 1 surreptitiously and with ill motive is trying to grab

the properties of the deity, the application was made for necessary declaration. The real contestant to the said application was respondent No. 1 who claimed that lot No. 6 is his ancestral and private property. According to him the land under lot No. 6 was a piece of anabadi land of the zamindar who gave the same to his father who, in turn, converted it into cultivable land and came to possess and cultivate the same and he was giving share (dhulibhag) to the zamindar. In course of time his father kept the said lot in the name of the deity and got himself recorded as the Marfatdar. According to him after the death of his father, he came to possess the said land as successor. He claimed that the deity is a private deity and the lot in question is private land.

3. The Assistant Commissioner of Endowments on the basis of evidence came to hold that the deity in question is a public deity and land covered under lot No. 6 is public religious endowment. On appeal being preferred by respondent No. 1, the Deputy Commissioner of Endowments has reversed the said finding by holding that the said lot is private property of respondent No. 1.

4. Shri Brahmachari, learned counsel for the appellants, assails the finding of the Deputy Commissioner of Endowments that lot No. 6 is private property of respondent No. 1. He submits that the Deputy Commissioner without going into the merits of the claim has decided the matter by taking irrelevant factors into consideration. Shri. Deo, on the other hand, submits that the view taken by the Deputy Commissioner cannot be said to be erroneous or illegal.

5. There is no dispute with regard to the finding that the deity in question is a public deity. The only dispute centres round lot No. 6 as to whether the said lot is a public religious endowment or a private property of respondent No. 1. Proviso to Section 41 of the Act states that the burden of proof in all disputes or matters as to whether an institution is a public religious institution or whether any property or money is of a religious endowment or specific endowment shall lie on the person claiming the institution to be private or the property or money to be other than that of a religious endowment or specific; endowment, as the case may be. In view of this provision, the burden lay on respondent No. 1 to establish that lot No. 6 is his private property.

6. Respondent No. 1 was examined as O.P.W. 2 and stated in his evidence that lot No. 6 was an anabadi piece of land which belonged to the ex-zamindar and his father Baishnab Biswal on being permitted by the ex-zamindar cultivated the land and used to give share (dhulibhag) to him. He further stated in his evidence that the ex- zamindar finally gave the land to his father but he being a religious man gave the land covered under lot No. 6 to the deity and remained as marfatdar. Ext. C is the record-of-right of the year 1929 from which it is evident that 0.32 decimals of land stands recorded in the name of the deity and Baishnab Biswal stands recorded as marfatdar. Respondent No. 1 claims in his evidence that after the death of his father, he is in possession of the land. He has, however, not been recorded as marfatdar. There is no material produced by respondent No. 1 to establish that the land in question originally belonged to the

zamindar who had given it to his father. O. P. W. 3 except stating that respondent No. 1 is in possession of the land in question has not been able to clarify as to how he could come into possession of the same. In view of the entry in the record-of-right Ext. C (the R.O.R. was also produced on behalf of the appellants which was marked as Ext. 6) that the land in question stands recorded in the name of the deity, it is difficult to accept the bare claim made by respondent No. 1 that it is his private property. Shri Deo contends that from Exts. 1 and 4 it would appear that there were different marfatdars in respect of different properties and, as such, the mention of the name of the father of respondent No. 1 as marfatdar in respect of the land in question (lot No. 6) is indicative of the fact that it is private property. I do not find any substance in this submission. On the contrary it establishes that marfatdars are in possession of other lands of the deity, who give sanja in the form of cash or kind to meet the expenses for doing jatra and daily nitis of the deity. The Deputy Commissioner has taken a strange view that the father of respondent No. 1 being poor would not have dedicated the entire land of 0.32 decimals in favour of the deity rendering himself totally landless. Dedication of property to a deity is dependant upon the mental frame of the donor. If the donor has totally dedicated himself at the feet of the deity worldly attachment is of little significance to him. Accordingly the view taken by the Deputy Commissioner that the father of respondent No. 1 being poor could not have dedicated the entire land of 0.32 decimals to the deity is not acceptable.

7. In the result, the finding recorded by the Deputy Commissioner in the impugned judgment that land covered by lot No. 6 is private property of respondent No. 1 cannot be sustained which is hereby set aside. It is hereby declared that the land covered under lot No. 6 is public religious endowment. The appeal is accordingly allowed.

There shall be no order as to costs.