

**(1968) 06 OHC CK 0020**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 34 of 1964**

Hari Charan Das

APPELLANT

Vs

Nityananda Swain and Others

RESPONDENT

**Date of Decision :** 18-06-1968

**Acts Referred:**

Orissa Hindu Religious Endowments Act, 1939 — Section 64

Orissa Hindu Religious Endowments Act, 1951 — Section 3(15), 41, 79(2)

**Citation :** (1968) 34 CLT 981

**Hon'ble Judges :** Patra, J;G.K. Misra, J

**Bench :** Division Bench

**Advocate :** R. Mohanty, P.K. Patnaik and K.M. Panda, for the Appellant; S. Mohanty, P.K. Dhal and S.C. Jena, for the Respondent

**Final Decision :** Dismissed

## Judgement

Patra, J.—This appeal is directed against an appellate order of the Commissioner of Hindu Religious Endowments upholding an order of the Assistant Commissioner of Endowments declaring u/s 41 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the Act) that the institution of Sri Ananta Sesadeb of Nuasasan is a public temple as defined in Section 3(15) of the Act without any hereditary trustee. The proceeding giving rise to this appeal was instituted before the Endowment Commissioner u/s 64 of the Orissa Endowments Act, 1939 by the Appellant Hari Charan Das for a declaration that Sri Ananta Sesadeb is a private family deity of one Krishna Charan Das and is not governed by the provisions of the Endowment Act, 1939. Shortly afterwards the new Act of 1951 came into force and by virtue of Section 79(2) thereof the proceedings were continued u/s 41 before the Assistant Commissioner of Endowments. The case of the Appellant is that Sri Ananta Sesadeb installed at mouza Nuasasan is the family deity belonging to Krishna Charan Das of that village, that some of the family properties of said Krishna Charan Das and some of his own acquisitions were recorded in the name of the deity in respect of some of which Krishna Charan himself and in respect of others his wife Chandanbati

Dei were recorded as marfatdars, that these properties were nominal Debottar and that the usufruct there from was being enjoyed by Krishna Charan and members of his family who were performing the Sebapuja of the deity. To discharge the dues which Krishna Charan owed to the Petitioner's father he executed in his favour a Kantakabala on 21-1-1935 in respect of 9 items of the properties standing in the name of the deity. As there was no repayment of the dues the Appellant obtained a decree for foreclosure on the basis of the Kantakabala and in due course obtained delivery of possession of the properties through Court on 15-7-1942. The decree being an ex parte one Krishna's son Sadhu Charan applied for setting aside the decree but failed. Thereafter the grand sons of Krishna filed a pauper suit for declaring that the Kantakabala, was invalid, but failed in their attempt. The Petitioner then got himself mutated in respect of revenue free properties which formed part of the subject matter of the foreclosure suit and inspite of objection raised by some of the members of Krishna Charan's family, his name was registered. Thus having failed in all their attempts to dislodge the Petitioner from possession of the aforesaid properties, Laxmidhar one of the agnates of Krishna Charan moved the Endowment Commissioner for appointment of trustees for the deity on the representation that it is a public deity. It is in these circumstances that the Petitioner filed the application before the Endowment Commissioner for declaration that the deity is a private family deity.

2. The Hindu Public of the locality opposed the application. Their contention is that the deity is a public deity installed more than 200 years ago. It is not the family deity of Krishna Charan Das, who was only its marfatdar. It is asserted that public take part in all the festivals of the deity as of right. Two other members of the public namely Nityananda Swain and Dibakar Misra filed objections stating inter alia that the deity was established by a Sanyasi who was managing the affairs thereof with public help and when he left the village the sebapuja of the deity was entrusted by the villagers to an ancestor of Krishna Charan Das who was then the Makodam of the village. The Zamindar granted lands to the deity free of rent which was subsequently confirmed by the British Government.

3. On the aforesaid averments the learned Assistant Commissioner formulated the following points for decision:

1. Was Ananta Sesadeb a public deity since the beginning or before the Civil Court delivery and subsequent land registration proceedings?

2. Have the properties which have been sold become secular and have lost their religious character?

3. Is the application by Hari Charan Das maintainable for a declaration that Ananta Sesadeb is nominal debottar of Krishna Charan Das and his descendants?

4. Is Ananta Sesadeb at present entitled to the status of a public deity?

4. The learned Assistant Commissioner held on a consideration of the

documentary and oral evidence that whatever might have been the origin of the deity of which there is no reliable evidence, the members of the public worship the deity as of right and that this and other incidents established in this case indicate that it is a public deity. He also held that some of the properties of the deity have become secular. This however is an aspect which is not very material for the decision of the main controversy raised in this litigation. It is conceded by both sides that the main point for consideration in this appeal is whether the deity is private or public. In fact, these other points do not also appear to have been pressed before the learned Endowment Commissioner, who in appeal upheld the findings of the Assistant Commissioner that the deity is a public one.

5. Regarding installation of the deity in village Nuasasan there is absolutely no documentary evidence. Such oral evidence as has been let in on this point appears to be neither definite nor reliable. P.w. 1 has deposed that Krishna Charan Das has himself installed the deity in his house and endowed the lands. According to p.w. 5 Krishna's ancestor founded and installed the deity inside the Khanja of his house. On the other side O.P.W. 1 says that he had heard from his father that a Baishnab had given the deity to Nityananda who is the great grand father of Krishna Charan Das. The only other witness who has spoken on this point is O.P.W. 14, a member of Krishna Charan's family. He says that a western Babaji by name Jogi Das had established the deity originally and that Nityananda Padhan subsequently became the marfatdar thereof. That this deity was in existence in 1825 is evident from the Robkari (Ex. D) which is a proceeding relating to certain properties owned by Sri Ananta Basudeb Thakur represented by Sebayat Sudarsan Panda. It is argued on behalf of the Appellant that there is nothing to indicate that the deity referred to in Ex. 4 is the same as the disputed deity. But no evidence at all was let in to show that besides the disputed deity, there is another deity bearing the same name in mouza Nuasasan. In the absence of any such evidence we see no reason to think that Ex. D does not relate to the disputed deity. It being thus established that it is an ancient deity existing as long ago as in 1825, there is nothing surprising in the fact that reliable evidence as to the origin is not forthcoming at this distance of time. The origin of the installation of the deity must therefore be held to have been lost in obscurity. We are therefore to look to the other circumstances of the case to determine the question in controversy. The 14 witnesses who have been examined on the side of the Respondents have deposed about the public character of the deity. O.P.W. 1 who is one of the tenants of the deity states that the public are never restricted in having darsan of or offering bhog to the deity, that the deity goes out to the Panchadolo melon which is held in the village when the public offer bhog to the deity and that on that occasion other deities of the neighbouring villages also attend the melon. O.P.W. 2 says that the Hindu public worship this deity and visit it as of right, that this deity is taken during Dola to the melon padia where the deities of other neighbouring villages are also brought and that the public offer chachari bhog to all the deities on that occasion. He further says that even on ordinary occasions the villagers of the neighbouring

villages go to have darsan of the deity According to him the disputed deity is the Gadiswaro or Thanapathi of the melon which is held in Ghodadhando which is hamlet of Nuasasan village. To the same effect is the evidence given by O.P.Ws. 3,4,5,6,7,8,9,10,12,13 and 14. We got it from some of these witnesses that this deity was originally installed in a house situated very near the house of Krishna Charan and separated from it by a road and that when some time back that house collapsed, the deity was shifted and is now installed in a house near the house of Laxmidhar one of the agnates of Krishna. It is clear from their evidence that this deity was never kept inside the Khonja of any body but had been kept in a house separate from the private residential house. There is also evidence show that on several occasions members of the public have also raised subscriptions to carry on the festivals of the deity. Nothing has been elicited in the cross-examination of the o.p.ws. to show that the evidence given by them is not worthy of any credit. As against the evidence given by the O.P.Ws. the Petitioner had examined 6 witnesses who had generally deposed that members of the public never visit the temple and that the deity is never taken to the melon padia. P.w. 1 however admits that a melon is held in Ghodadanda village where the disputed deity is installed and that this melon is called the Padhan family melon and that it is held during Dolo time. But none-the-less he had stated that the disputed deity is never taken to the melon. P.w. 2 who is the Tahasildar of the Petitioner however admits that there is no restriction for the public to have darsan of the disputed deity. A similar admission was also made by p.w. 3, although he had stated earlier that this deity is installed inside the Khonja of Krishna Das. P.w. 4 has said nothing material on this point. P.ws. 5 and 6 have asserted that it is a private deity belonging to Krishna Charan's family. P.w. 5 has gone to the extent of saying that there is no melon by name Ghodadanda melon in Nuasasan which is contrary to the evidence given by p.ws. 1 and 2 that such a melon is held. P.w. 6 is interested in establishing the private character of the deity because it is admitted by him that his father had purchased some of the properties belonging to the deity, from a member of Krishna Charan's family. If the deity is declared to be public there is chance of the aforesaid alienation being declared invalid. On a consideration of the oral evidence given by the parties we feel that the Courts below were justified in accepting the evidence of O.P.Ws. in preference to the evidence given by the Petitioner's witnesses. We are satisfied on a perusal of the evidence on record that the deity Ananta Sesa Deb was installed in a house separate from the house of Krishna Charan and that the members of the public used to have free access to the temple to have darsan of and to offer bhog to the deity and that during Dola Jatra the deity was being taken to the melon padia where the deities of neighbouring villages were being brought and that the public used to offer bhog to all the deities at that time. These are not features which are consistent with the deity being a private deity of Krishna Charan's family.

6. A reference must now be made to the robakari Ex. D of the year 1825 which show that the deity was holding some rent free lands from the time of the

Marahats and that after enquiry the rent free tenure was confirmed by the British Government. This again is a feature which is not consistent with the deity being a private one.

7. It is in evidence that the Petitioner Hari Charan Das had in 1935 taken a Kantakabala in respect of some of the properties standing in the name of the deity from the then marfatdar Krishna Charan and subsequently obtained a decree for foreclosure and took possession of the properties through Court and also got his name mutated in respect of one of the items of the properties which was revenue free. It is also in evidence that this was known to some of the members of the public, who now contend that the deity is a public one. Mr. R. Mohanty, the learned Advocate for the Appellant contends that if in fact the deity is a public one, the members of the public would have immediately challenged the legality of these alienations and the very fact that they have not done so is a pointer to the conclusion that the deity is a private one. No trustee can by his own acts of mismanagement or repeated alienations contrary to the interest of the trust convert what is otherwise a public endowment into a family endowment. Nor the fact that no member of the public took any interest in the management or upkeep of the temple or to safeguard the interest of the deity, would indicate that the temple is not a public one. We have already indicated the circumstances which in this case point definitely to the conclusions that the deity in question is a public one and the same would not be in any way affected merely, because for some reason or other the members of the public did not take exception to the alienations of the Debottar properties and did not take steps at that time to set aside the alienations.

8. On a review of the evidence and circumstances of the case we are satisfied that the Courts below have come to the correct conclusion that the disputed deity is a public deity and that the institution of Ananta Sesa Deb is a public temple. The appeal is therefore dismissed with costs.

G.K. Misra, J.

9. I agree.