
(1999) 08 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 8330 of 1996

Harihara Chatuari and Others

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 41, 42, 68, 8(2)

Citation : (1999) 88 CLT 549

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

Bench : Division Bench

Advocate : M.N. Das, M.M. Das, B.D. Pradhan and P.K. Singh, for the Appellant; A.S. Naidu, for O.P. 1, A.R. Dash, Adl. Stg. Counsel for O.Ps. 2 and 3, A.K. Bose, P.K. Giri, B.N. Swain and P.K. Das for O.P. 4, G.C. Das, for O.P. 5 and D.P. Sarangi, for O.P. 6, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—By order No. 3 dated 28-5-1996 (Annexure-4).. the Additional Assistant Commissioner of Endowments, Sambalpur on an application filed by Sunil Kumar Kapardar (opposite party No. 4) u/s 8(2) of the Orissa Hindu Religions Endowments Act, 1951 (hereinafter referred to as "the Act") directed auction of the disputed lands. The Petitioners being felt aggrieved by the aforesaid order have filed this writ application for quashing of the aforesaid order.

2. The Petitioners case is that the disputed lands belong to them which are their private stitiban rayati property. The said property does not form part and parcel of the property of Sri Gopaljew Mahapravu Bije at Bania Sahi. Deogarh Town (hereinafter referred to as "the deity"). The deity is a religious institution and its hereditary trustee was opposite party No. 5 Saja Sri Pradipta Ganga Deb (since dead and in his place his L. Rs. have been substituted). The opposite party No. 5 was smoothly managing the religious institution without any hindrance or obstacle. Opposite party No. 4 claiming himself to be the President of the Advisory Committee filed an application" u/s 68 of the. Act for eviction of the

Petitioners from the disputed lands which was registered as. C.A. No. 10 of 1996 on the file of the Additional Assistant Commissioner of Endowments, Sambalpur. On 28-5-1996 the Additional Assistant Commissioner of Endowments admitted the application and directed issue of notice to the concerned parties to show cause as to why order u/s 68 of the Act shall not be passed fixing 16-6-1996 for service return. On the same day (28-5-1996) by order No. 3 the Additional Assistant Commissioner of Endowments passed the impugned order behind the back of the Petitioners.

3. Counter affidavit has been filed by opposite party No. 5. His case is that his father filed O.A. No. 11/19 of 1978 u/s 41 of the Act before the then Additional Assistant Commissioner of Endowments, Sambalpur who by order dated 28-4-1979 held the deity to be a public institution and appointed the applicant as the hereditary trustee. Opposite party No. 4, however, succeeded in persuading the Additional Assistant Commissioner, Sambalpur to write a letter on 11-1-1982 to the Deputy Endowment Commissioner, Bhubaneswar for framing a scheme u/s 42 of the Act for the institution. The said recommendation by the Additional Assistant Commissioner of Endowments was unauthorised inasmuch as he was very much aware of the fact that the deity is a public deity with a hereditary trustee. The opposite party No. 4 misled the Commissioner of Endowments who by order dated 27-2-1996 appointed an Advisory Board consisting of 12 persons with opposite party No. 4 to look after the management of the deity. Appointment of Advisory Board is not contemplated under the Act when a hereditary trustee is continuing in office. Opposite party No. 5 further pleaded in his counter affidavit that he was not made party in the present proceeding and opposite party No. 4 by abusing the process of Court moved the " Additional Assistant Commissioner of Endowments and obtained an illegal order.

Opposite party No. 6 has also filed a separate counter affidavit in the line of opposite party No. 5. The contesting opposite party No. 4 has filed counter affidavit.

4. Shri M.N. Das, learned Counsel for the Petitioners, by referring to the Khatians and sale deeds (Annexure-3 series) submitted that Harihar Chatuari (petitioner No. 1), Gadadhar Dehury (petitioner No. 2), Charubala Sahu (petitioner No. 3), Balaram Sahu (petitioner No. 4), Prafulla Biswal (petitioner No. 5) and Sridhar Sahu (petitioner No. 6) ate raiyats in respect of the disputed lands and have interest in them and without giving an opportunity of hearing to them the Additional Assistant Commissioner of Endowments could not have passed the impugned order by directing action of the disputed lands.

5. Upon hearing the counsel for parties and on perusal of the relevant documents, we are of the opinion that the Petitioners have interest in the disputed lands and the Additional Assistant Commissioner of the Endowments should not have passed the impugned order arbitrarily without giving an opportunity of hearing. The impugned order No. 3 dated 28-5-1996 is extracted hereunder:

A petition u/s 8(2) of the O.H. R.E. Act has been presented by the Petitioner with a prayer for an interim order in respect of the suit lands vis-a-vis the management of the institution.

Heard.

The usufruct/rent of deity's properties being the only source to maintain the daily nities of the temple and management of the institution being of paramount importance to us, it is ordered as follows for proper management of the suit institution:

The suit land be put to auction for coming agricultural season and the lease amount to be deposited with the present Advisory Board to maintain the daily nities of the deity.

The D.I. E., Sambalpur to take immediate action and report compliance within 15 days.

The Collector/Sub-Collector/S.P./Tahsildar, Deogarh for necessary police aid, if essential.

Sd. R.K. Banerjee.

6. A perusal of the aforesaid order would indicate that I the Additional Assistant Commissioner of Endowments passed it arbitrarily without hearing the Petitioners who have interest in the disputed land. The impugned order having been passed without following the basic requirement of natural justice, it cannot be sustained in law.

7. For the reasons aforesaid, the impugned order No. 3, dated 28-5-1996 (Annexure-4) is hereby quashed.

8. The writ application is allowed. No costs.

P.K. Patra, J.

9. I agree.

Writ" application allowed.