
(2023) 05 OHC CK 0279
In the Orissa High Court
Case No : Writ Petition (C) No.12681 Of 2023

Jagadish Mardaraj

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 19-05-2023

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 31, 41

Citation : (2023) 05 OHC CK 0279

Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J

Bench : Division Bench

Advocate : S. P. Mishra, Gautam Siddique, A. K. Sharma, P. Naidu, R. N. Acharya, Manmaya Kumar Dash

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition was moved and heard on 16th May, 2023. Mr. Mishra, learned senior advocate had appeared on behalf of petitioner and had submitted, duty of sweeping the Rath is an ancestral obligation. He referred to memo dated 22nd June, 2011 of Additional Assistant Commissioner to demonstrate that his client had been performing the chore since long.
2. Unfortunately, there was misunderstanding between his client and his brother. As a result, there was interruption. The dispute has since been resolved. His client by representation dated 3rd February, 2023 approached the Executive Officer to allow him to perform the chore.
3. Drawing attention to our earlier order dated 3rd May, 2023 he had submitted, his client exercised liberty granted thereby to communicate said order and copy of the writ petition to his brother (opposite party no.5). Mr. Acharya, learned advocate had appeared on behalf of said opposite party and submitted, there is no dispute between the brothers regarding performance of the chore by Mr. Mishra's client.

4. Mr. Sharma, learned advocate, Additional Government advocate had appeared on behalf of State and had drawn attention to order dated 28th June, 2014 made by the Commissioner. Relied upon paragraph in said order is reproduced below.

"Thus, considering the submissions of both parties, and materials available in management file, I may say that declaration of hereditary right relating to Chhera Pahanara can only be adjudicated in a regular proceeding U/S.41 of the O.H.R.E. Act, 1951 but not through this interim application. Hence, at this stage, without giving any final opinion on the matter as to who is legally competent to perform "Chhera Pahanara", for smooth management of the Car festival of this year, it is hereby ordered that O.P. No.2 (Tahasildar-cum-Executive Officer, Damapada Debottar) is free to do Chhera Pahanara by the Raj Purohit or any other suitable person on the day of Ratha Yatra and Bahuda Yatra for the year, 2014."

He submitted, thereafter, the Raj Purohit has been performing the chore. He submitted further, petitioner had admittedly performed the chore till Ratha Yatra in year, 2010. Subsequent thereto and for successive Rath Yatras the Raj Purohit, Biswambar Kar, legal heir of Sri Ananta Kara has been performing the chore. Disclosed in the counter, is the Damapada history and genealogy of Biswambar Kar.

5. Mr. Nath, learned advocate had appeared on behalf of the Commissioner and submitted, the brothers having dispute requires reference to the Additional Assistant Commissioner under section 41. However, there is no dispute as both the brothers are represented and have said so.

6. Mr. Mishra in reply had submitted, his client has obtained information on query made under Right to Information Act, 2005. He referred answers to query nos.3 and 7. The queries and answers thereto are extracted and reproduced below.

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3

Who is performing the Chherapahanara of the Lord during Rath Yatra and is he the Raj Purohit or related to Raj Purohit ?

Name of the person who performing chherapanhara

2007

Sri Jagadish Mardaraj

2008

Sri Jagadish Mardaraj

2009

Sri Jagadish Mardaraj

2010

Sri Jagadish Mardaraj

2011

Sri Biswamohan Kar

2012

Sri Biswamohan Kar

2013

Sri Biswamohan Kar

2014

Sri Biswamohan Kar

2015

Sri Biswamohan Kar

2016

Sri Biswamohan Kar

Regarding Raj Purohit no information is available

7

What was the name of the Raj Purohit of Damapada Estate. And the name of the person who has been performing the Chherapanhara. Is he the Successor/LR of the Sri Purna Chandra Mishra?

No information is available with this office.

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7. On query from Court on existence of provision in Hindu Religious Endowments Act, 1951 imposing a bar on performance of chore by reason of absence, no such provision could be appointed out.

8. We on 16th May, 2023 had added a party. Paragraph 8 from order made that day is reproduced below.

“Mr. Biswambar Kar is added as party to the writ petition. Tahsildar Damapada is directed to communicate this order and copy of the writ petition to opposite party no.6 and added opposite party. The communication must be made forthwith.”

Today Mr. Sharma submits, the direction was carried out. Opposite party no.6 did not accept the notice but added opposite party did. Mr. Dash, learned advocate appears on behalf of added opposite party.

9. Mr. Dash submits, his client has claimed to be allowed to do the chore. Mr.

Mishra submits, the Tahsildar had appointed added opposite party to do the chore in the meantime. That does not give rise to a customary right or honour. However, he submits, the Tahsildar be directed to appoint fit person to discharge the function under section 31. On query from Court submission by learned advocates for appearing parties submit, the Tahsildar is trustee and is empowered under section 31 to appoint.

10. Petitioner and appearing parties are referred to the Tahsildar to act in the situation in accordance with provision in section 31. Parties are at liberty to approach the Tahsildar, being the Executive Officer and produce website copy of this order.

11. The writ petition is disposed of.

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