
(2006) 11 OHC CK 0038
In the Orissa High Court

K. Iswar Rao

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

ORISSA HINDU RELIGIOUS ENDOWMENTS ACT, 1951 — Section 19

Citation : (2007) 103 CLT 392 : (2007) 1 OLR 6

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ petition has been filed challenging the order dated 19.10.2004 passed by the Secretary to Government of Orissa, Law Department, Bhubaneswar in Appeal No. 6 of 2004 u/s 19 of the Orissa Hindu Religious Endowments Act, 1951 which had been filed against the order dated 17.02.2004 of the Commissioner of Endowments, Bhubaneswar.

2. Opposite Party No. 3, namely, Sri Sankleswar Mahadevbije at Bhabinipur in the district of Ganjam, is a public religious institution which is managed by the Non-Hereditary Trust Board appointed by the Addl. Asst. Commissioner of Endowments, Berhampur from time to time. One Mohini Raul, who was appointed as the Managing Trustee of the institution and was looking after the management of the same, applied for permission for sale of lands described under the schedule to the petition filed by him before the Commissioner of Endowments. The lands mentioned in the schedule are recorded in the name of the deity and situated at a distance of 5 kilometres away from the institution. Sufficient income is not derived from the lands as the Bhag tenants are not regular in paying the Bhag dues to the deity. The institution is in a dilapidated condition and huge money is required for repairing. Since there was no income of the institution, said Raul applied for permission to sell the lands through its Managing Trustee as per schedule u/s 19 of the O.H.R.E. Act, 1951 which was registered as O.A. Case No. 82 of 2002.

3. Objections were invited through publication of notice, but no objection was received by the Commissioner of Endowments. The Commissioner of Endowments determined two points vide impugned order passed by him; (1) Whether the sale of the land is essential and would be beneficial to the institution and (2) What would be the upset price of the lands in question.

4. In respect of first point, the Commissioner of Endowments held that the petitioner had filed affidavit and the Record of Rights before him and the report of the Inspector of Endowments supported the case of the petitioner that the lands stand recorded in the name of the deity and that there is no alternative but to sell the lands in the interest of the deity.

5. In respect of the second point, i.e., the rate of the lands, the Commissioner held that in the year 1997 the upset price was fixed at Rs. 4,50,000/- per acre and in the appeal which was disposed of in the same year the rate was confirmed. But in the present case the application was filed in 2002 and the Inspector of Endowments submitted his report in 2003 mentioning therein that the rate may be fixed at Rs. 4,70,000/- per acre. As the rate is always rising, the Commissioner held that upset price can be fixed at Rs. 5,50,000/- per acre. Accordingly, he allowed the application and granted permission to sell the lands as per schedule on public auction fixing the upset price at Rs. 5,50,000/- per acre and the highest bidder would be given preference. He has further directed that the auction shall be conducted in presence of the Inspector of Endowments, Berhampur-I. The auction sale shall be advertised by beat of drums in the locality and by publication in the notice board of the institution and in the village where the case lands situate, at least fifteen days prior to the date of public auction. The sale proceeds shall be kept in fixed deposit on long term basis in the name of the deity in any Nationalised Bank and shall be pledged in favour of the Commissioner of Endowments, Orissa, Bhubaneswar. The sale shall be effected within six months after the expiry of the period of appeal or revision.

6. Thereafter an appeal was filed by the instant petitioner before the State Government which was heard and disposed of by the Secretary to Government of Orissa, Law Department, Bhubaneswar vide impugned order dated 19.10.2004. The appellate authority held that the price fixed by the Commissioner of Endowments was too low and he fixed the upset price of the lands at Rs. 20.00 lakhs with the condition that priority shall be given to the persons in possession of the lands in question and if such persons are not willing to purchase the lands in the aforesaid price, that will be put to public auction with the upset price at Rs. 20.00 lakhs per acre.

7. Being aggrieved, the instant writ petition has been filed by the petitioner.

8. We have perused the record, which shows that the appellate authority without considering any material on record fixed the upset price at Rs. 20.00 lakhs. There is no material on record on the basis of which he has fixed such a high price. He has also not made any observation as to on which basis such upset

price has been fixed by him.

9. In view of the above, we are of the opinion that the impugned order dated 19.10.2004 passed in Appeal No. 6 of 2004 by the Secretary to Government of Orissa, Law Department, Bhubaneswar is liable to be quashed and the matter is liable to be remanded to the appellate authority to be decided afresh in accordance with law.

10. In the result, the writ petition is allowed. The impugned order dated 19.10.2004 passed in Appeal No. 6 of 2004 by the Secretary to Government of Orissa, Law Department, Bhubaneswar is quashed and the matter is remanded to the appellate authority for hearing and disposal afresh in the light of the observations made above and in accordance with law.

The Lower Court Record shall be sent back to the appellate authority without farther delay.

Pradip Mohanty, J.

11. I agree.