

(1987) 01 OHC CK 0002
In the Orissa High Court
Case No : Misc. Appeal No. 220 of 1982

Kunja Bihari Parida

APPELLANT

Vs

Sri Narayani Thakurani and Others

RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 3(15), 41, 44(2)

Citation : (1987) 63 CLT 223

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : S.P. Mishra, D. Das, S.K. Choudhury, P.K. Routray and Mira Ghose, for the Appellant; S. Mishra, B. Das and K. Kar for Respondents 1 to 6 and 9, for the Respondent

Judgement

S.C. Mohapatra, J.—Non-applicant in an application u/s 41 of the Orissa Hindu Religious Endowments Act, 1951 (In short "the Act") is the Appellant in this appeal u/s 44(2) of the Act.

2. The Respondent claimed the institution to be a public religious institution having no hereditary trustee. The Appellant challenged the application claiming that it is the family institution where he is the hereditary trustee. The Assistant Commissioner of Endowments held that it is a public religious institution without any hereditary trustee, which was confirmed in appeal by the Deputy Commissioner. In M.A. No. 39 of 1979, the order of the appellate court was set aside by this Court and the matter was remitted back for consideration by the first appellate court on the points indicated therein. This appeal has been filed by the non-applicant assailing the appellate order after remand.

3. Unless it is admitted, the duty of the statutory authorities under the Act would be first to consider the character of the institution. A religious institution may either be a math or a temple. The considerations that would weigh with the authorities would, therefore, depend upon the character of the institution. After the character of the institution is determined, the question of its being public or

private would arise. Once it is public, the question of the trusteeship being hereditary would have to be decided.

4. It is not the case of either party that the institution is a math. Therefore, the question for decision would be whether the institution shall be a temple. "Temple" has been defined u/s 3(15) of the Act which reads as follows:

xv "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to or for the benefit of, or used as of right by, the Hindu community, or any class or section thereof, as a place of public religious worship and also includes any cultural institution or mandap or library connected with such a place of public religious worship.

The definition makes it clear that the ordinary meaning of temple in common parlance is not attracted. In order to be a temple, it is not enough that a deity is installed in a building or the place would be the abode of the deity. The definition requires that it shall be a place of religious worship dedicated to the public or dedicated for the public or used as of right by the public. Clear finding is necessary in this regard by the statutory authorities. Where an institution is a math or temple is to be decided on a dispute u/s 41(b) of the Act. When there is a dispute whether it is a math or temple, normally burden under the Evidence Act would be on the person who would lose if the fact is not proved. The statutory burden under the proviso to Section 41 would not be attracted.

5. Section 41 proviso puts the burden on the person claiming the institution to be private in a dispute under Clause (a). Where there is no admission that the institution is a temple, the authorities are to first decide that question since the definition of temple leaves no scope for disputing the character of a temple to be private. Once it is decided that the institution is a temple on the finding that it is either dedicated to the public or dedicated for the public or the public use it as of right, it automatically becomes public.

6. In this case, until it is proved that the institution is a temple, the other question cannot be gone into by the statutory authorities. Therefore, it was essential for the authorities to give specific finding on this issue. There cannot be any institution coming within the definition of temple which can be private. Accordingly, once it is not the case of either party that the institution is a math, the statutory authorities were required to examine whether it is a temple.

7. Although the matter was remitted back to the appellate court, once this aspect was not highlighted. If there would have been material on record, I would have decided that question myself. Since attention was not devoted to the matter in the line indicated by me and materials were not brought to record specifically on this question, interest of justice demands that the parties get full opportunity to adduce evidence in the matter.

8. In the result, the orders of the Asst. Commissioner and the Deputy Commissioner of Endowments are set aside and the matter is remitted back to

the Assistant Commissioner to give opportunity to the parties to adduce fresh evidence in the light of the discussions made above. The parties are to bear their own costs till this stage.