

(2009) 04 OHC CK 0059

In the Orissa High Court

Lokesh Patro and Another

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9

Orissa Hindu Religious Endowments Act, 1951 — Section 19

Citation : (2009) 108 CLT 61 : (2009) 1 OLR 929

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.S. Chauhan, C.J.—This writ appeal has been filed against the judgment and order of the learned Single Judge dated 25.2.2008 dismissing W.P.(C) No. 10378 of 2006 filed by the present appellants observing that sale of the land belonging to the deity made by registered sale deeds was strictly in accordance with the order passed by the Commissioner of Endowments and appellants had no locus standi to the writ petition as they were never inducted as tenants nor they were in possession of the land and therefore, the writ petition could not be entertained.

2. The facts and circumstances giving rise to this appeal are that the land in dispute exclusively belonging to the religious Institution namely, Sri Rama, Laxman, Sita Swamy situate at Lochapada in district Ganjam. The person appointed for management of the said institution filed an application u/s 19 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter called "the Act") seeking permission to alienate Ac.4.225 decimal lands on the ground that major portion of the said land was occupied by tenants who were neither paying any "Bhag" nor contributing anything to the institution. It was further alleged that if immediate steps were not taken, the balance lands may also be forcibly occupied by trespassers.

3. The Commissioner of Endowments under the Act accorded permission to sale the disputed land " Rs. 10,00,000/- (Rupees Ten Lakhs) per acre to the tenants in possession and if they are not willing to have it, put up the said land by action

fixing a offset price at Rs. 10,00,000/-per acre, A suo motu revision was taken by the Law Secretary under the provisions of the Act wherein large number of questions were considered including as to whether the price fixed by the Endowment Commissioner was accurate or could be a sufficient consideration. The present appellants filed an intervention application on 15.4.2006 offering a sum of Rs. 30 lakhs per acre for the said land. They also claimed to intervene as a Hindu public having right to protect the deity. The said revision was ultimately disposed of vide order dated 30.5.2006 with a direction that the land which has not yet been settled, be put to auction, so that it may fetch maximum consideration.

4. Both the orders passed by the Commissioner of Endowments as well as Law Secretary in revision were challenged by the present appellants and in the writ petition they offered a sum of Rs. 25 lakhs per acre. However, learned Single Judge dismissed the said writ petition on the grounds herein above. Hence this appeal.

5. Learned Counsel for the appellant Mr. U.C. Patnaik submitted that the land was worth Rs. 60 lakhs and the Respondent N.4 had purchased the said land for a consideration of Rs. 20.19 lakhs vide registered sale deeds dated 2.8.2005 and 30.8.2005 as the market price was three times more than paid by him and the appellants being Hindu of that area had approached the revisional authority by moving an application of intervention and filed the writ petition, they could not be held to be strangers or having no interest. The appellants are still willing to make a offer of Rs. 25 lakhs per acre. Therefore, the entire lands should be put to auction and in case it does not fetch price over and above Rs. 25 lakhs, the appellants undertake to purchase the same for Rs. 25 lakhs per acre.

6. Sri Routray, learned Counsel appearing for the Respondents has not advanced any submission on the issue of fixation of price, rather contended that appellants had no right to approach the writ court against the order of the Endowment Commissioner and the Law Secretary Revisional Authority and the learned Single Judge has rightly rejected the writ petition and therefore the appeal is liable to dismissed.

7. We have considered the rival submission made by the parties and pursued the record.

8. There can be no dispute to the settled legal proposition that the land belonging to the deity cannot be subjected to alienation in violation of the Statutory requirement. (Vide Temple of Thakurji Vs. State of Rajasthan and Others, ; Mangi Lal v. State RLW 1997 (3) 2017.

9. There can also be no dispute to the settled legal position that the deity is juristic perpetual/minor/and disable person and in respect of the property belonging to the minor and a person incapable to cultivate the holdings by reasons of physical disability or infirmity requires protection. A deity is covered under both the classes. The manager/trustee/pujari and ultimately the state

authorities are under obligation to protect the interest of such a minor or physically disabled person. The Deity cannot be divested of any title or rights of immovable property in violation of the statutory provisions. The object is laudable and based on public policy. In order to protect its interest even a worshipper having no interest in the property may approach the authority or Court. If any person claims to have acquired any kind of right in the property belonging to the deity, the transaction is required to be ignored being illegal and the deity becomes entitled to recover the possession as well as the right title/ interest in the property.

10. In *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, , the Apex Court has observed as under:

When such an alienation has been effected by the shebait acting adversely to the interests of the idol even a worshipper can file the suit, the reason being that the idol is In the position of a minor and when the person representing it leaves it is a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest.

(Emphasis added)

11. In any Court proceeding wherever the property of the deity is involved the deity is a necessary party. Any judgment or order behind its back would not be binding on the deity in view of the provisions contained in the proviso to Order 1, Rule 9, CPC (hereinafter called the "CPC"). More so, it would be violative of the principles of natural justice (Vide *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*,).

12. In view of the fact that the deity is a perpetual/minor/and disable person and the appellants approached the Revisional Authority as Hindu worshipper of that area, it could not be held that they had no locus standi. Therefore, the appeal cannot be rejected on the grounds on which the writ petition has been dismissed.

13. We fail to understand that in case the Endowment Commissioner fixed the upset price " Rs. 10 lakhs and directed the person concerned to dispose of the land in dispute by public auction, what could be the justification for fixing a price " Rs. 10 lakhs per acre for the tenants though there is no evidence on record to show that Respondent No. 4 was a tenant, the Endowment Commissioner did not record any findings under what circumstances he was a tenant and on what date he was introduced to tenancy, whether he had paid any "bhag" or rent for the said land. In case he had not paid any rent or bhag, he could not have put that property for a lesser consideration. More so, once the appellants offered the consideration price of Rs. 30 lakhs per acre, we fail to understand how the Revisional Authority rejected their claims on technical grounds. The deity requires protection from its marfatdar. If they fail to do so, because deity is a perpetual/minor/and disable person, it is the duty of the Court to protect the interest of the deity.

14. In view of the fact that learned Counsel for the Respondents had not advanced any argument on the issue of fixation of consideration for the tenant in the absence of any proof of tenancy rights, we are of the view that the orders passed by the Revisional Court below including of the learned Single Judge are liable to be set aside. The sale deeds executed in favour of the Respondent No. 4 cannot be settled. We are told that there had been further transfer of land in dispute by Respondent No. 4 to other persons. They may be bona fide purchaser during the pendency of the revision, writ etc. they would be entitled only to the extent that they may participate in the auction, proceedings for the whole land or the part purchased and in case they did succeed, they may be asked to pay the balance amount at the rate offered by the highest bidder or to seek refund of the money deposited. That option is also available to the Respondent No. 4 also.

15. Thus, in view of the above, we dispose of the writ petition requesting the Endowment Commissioner to put the whole land to auction by fixing the upset price afresh as on this date and sale the property by auction. Respondent No. 4 or subsequent purchaser may participate. In case they do not succeed and still want to retain the part of the property, already purchased by them, they would be liable to pay the balance amount, considering the rate offered by the highest bidder only in respect of the property purchased by them.

16. In case the highest bid goes less than Rs. 25 lakhs per acre, the appellants shall be responsible to purchase the property " Rs. 25 lakhs per acre and in the event of non-deposit, the District Collector, Ganjam shall recover the said amount as a land revenue from them.

17. Before parting with the case, we feel it is our responsibility to note herein that inspite of various judgments from time to time or* the issue of sale of Endowment property, highest price, available is not being obtained. The issue of claims of existing tenancy of endowment land if at all, needs to be verified and steps must always be taken to ensure that highest price is obtained. This would be in the interest of the deity and the State.