(1981) 02 OHC CK 0004

In the Orissa High Court

Case No : Original Jurn. Case No. 233 of 1977

Lord Jagannath and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 24-02-1981

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 131(1), 13I, 13K, 2, 3
Orissa General Clauses Act, 1937 — Section 5

Citation : AIR 1981 Ori 106 : (1981) 51 CLT 336

Hon'ble Judges : R.N. Misra, C.J;P.K. Mohanti, J

Bench : Division Bench

Advocate : N.K. Das, for the Appellant; Additional Government Advocate, S. Misra-2, N.K. Acharya, P.C. Misra, J.N. Ray and G. Rath, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Misra, C.J.—Three persons claiming to be sevaks of the celebrated temple of Lord Jagannath at Puri have filed this application under Article 226 of the Constitution for a declaration that certain provisions of the Orissa Estates Abolition Act are ultra vires the Constitution and are not applicable to the properties endowed in the name of the Lord and notifications in exercise of powers vested under the Act abolishing certain estates already declared as ''trust estates'' under the Act and directing their vesting in the State of Orissa are incompetent. Several contentions were raised in the writ application, but Mr. Das for the petitioners has focused his submissions at the hearing for a declaration that the Notification dated 18th March, 1974 (Annexure-1) issued by the State Government in purported exercise of powers conferred u/s 3-A (1) of the Abolition Act is liable to be set aside. The impugned notification reads as hereunder:--

"REVENUE DEPARTMENT

NOTIFICATION

The 18th March. 1974

S. R. O. No. 184/74 -- In exercise of the powers conferred by Sub-section (1) of Section 3-A of the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952), the State Government do hereby declare that

(i) the intermediary interests of all intermediaries whose estates have been declared as trust estates under Chap. II-A of the said Act, and

(ii) those in respect of which claims and references made under the said Chapter were pending on the date of commencement of the Orissa Estates Abolition (Amendment) Act, 1970 (Orissa Act 33 of 1970) and

(iii) the intermediary interests of all intermediaries in respect of all estates other than those which have already vested in the State have passed to and become vested in the State free from all encumbrances.

(No. 13699-EA-I-ND-1/74-R.)

By order of the Governor

S. M. Pattnaik

Commissioner-cum-Secretary to

Government."

The main ground of attack is that the estates of Lord Jagannath had already been declared as ''trust estates'' under Chap. II-A (since repealed) of the Act and had been saved from vesting. The same cannot vest by the impugned notification because the repealing Act 33 of 1970 in terms of Section 7 (2) by way of removal of doubt declared that the State Government shall not be deemed to have been debarred from issuing fresh notification u/s 3 or 3-A vesting any estates in respect of which claims and references were made under Chapter II-A and were pending adjudication on the date of commencement of the repealing Act 33 of 1970, i.e. 7-12-1970 and the said section did not refer to powers of the State Government to issue a fresh notification of vesting in respect of declared trust estates under Chapter II-A which had been saved from vesting. There is no dispute that certain estates in respect of which the intermediary interest vested in Lord Jagannath had already been declared as trust estates in appropriate proceedings taken under Chapter II-A of the Abolition Act. u/s 13-I of Chapter II-A, it had been provided:--

"All estates declared under this Chapter to be trust estates by the Tribunal or the High Court, as the case may be, shall be deemed to have been excluded from the operation of the vesting notification and never to have vested in the State in pursuance thereof."

This provision was a deeming one because under the scheme in Chapter II-A After a vesting notification was made, it was open for a declaration of trust estate to be asked for and notwithstanding the fact that there was an earlier vesting notification. Section 13-1 (1) provided that upon declaration of trust estate, the same would be deemed to have never vested. Section 13-K made provision for removal of doubts and Clause (b) ran thus:--

"Nothing in this Chapter shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification u/s 3."

By Orissa Act 33 of 1970, Chapter II-A was repealed from the principal Act and Section 7 thereof made the following provision :--

"(1) Notwithstanding the repeal of Chapter II-A of the principal Act all estates in respect of which claims and reference made under the said Chapter were pending on the date of coming into force of this Act, shall be deemed to have been excluded from the operation of the vesting notification.

(2) For removal of doubts it is hereby declared that nothing in Sub-section (1) shall be deemed to debar the State Government from vesting any such estate by the issue of a notification u/s 3 or Section 3-A." President''s Act 3 of 1974 brought about a further amendment to the Abolition Act and a definition of ''trust estate'' was added u/s 2 (oo) to mean,

"...... an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual:

Provided that all estates belonging to the Temple of Lord Jagannath at Puri within the meaning of the Shri Jagannath Temple Act, II of 1955 and all estates declared to be trust estates by a competent authority under this Act prior to the date of coming into force of the Orissa Estates Abolition (Amendment) Act. 33 of 1970 shall be deemed to be trust estates. Explanation ......"

Mr. Das for the petitioners seeks support from Section 5 of the Orissa General Clauses Act, 1937, which provides:--

"Where any Orissa Act repeals any enactment hitherto made, or hereafter to be made, then unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture, or punishment as aforesaid.:

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

(underlining is ours).

Petitioners have emphasized on the feature that in Section 7 of Orissa Act 33 of 1970 there has been no reference to declared trust estates and the power has been confined to pending proceedings, It has also been argued that by the declaration as trust estate, a right had been acquired which could not be taken away by a subsequent notification. Section 13-K (b) of the Act which was in Chapter II-A clearly contained a provision authorising the State Government to make a vesting notification in respect of declared trust estates. Admittedly, the paramount intention of the Act was to abolish intermediary interests and in Sections 3 and 3-A thereof the mechanism for such abolition has been provided. Abolition has been made in different stages. Section 13-1 which provided a deeming provision against vesting upon declaration of an intermediary interest as a trust estate, had the effect of saving the estate from vesting and Section 13-K which had been incorporated into the statute for; removal of doubts had clearly indicated that notwithstanding such declaration, Government were still entitled to direct vesting of such estate by issue of a notification u/s 3. Even declared trust estates were, therefore, liable for vesting and, therefore, the consequence of a declaration of a trust estate was not to make it immune from vesting forever. When Chapter II-A was repealed, Sections 13-1 as also 13-K went out of the statute book. A "trust estate" is admittedly an "estate" and if Section13-I previously appearing in Chapter II-A of the Act was not there, the immunity from vesting was also not there. Since a trust estate continued to be an ''estate'' it became and/or remained liable to vest upon exercise of the power provided in the Abolition Act. It is in exercise of such a power that the impugned notification under Annexure-1 has been made.

2. Counsel for both sides had cited several authorities before us in support of their respective contentions mainly with reference to Section 5 of the General Clauses Act and the true meaning of the phrase ''unless a different intention appears.'' It cannot be disputed that the amendment to Section 8 (3) of the Act authorised applications to be made in respect of trust estates and the President''s Act introduced a definition of ''trust estate'' which included the estates of the deity by name. We do not think, there is any force in the contention of the petitioners that once the estates had been declared as trust estates, the State Government had no authority to abolish them. The position is so obvious that reference to authorities is wholly unnecessary.

We would accordingly dismiss the writ application, but without costs,

P.K. Mohanti, J.

3. I agree.