

(1986) 12 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 685 and 686 of 1977

Madan Mohan Puja Panda Samant

APPELLANT

Vs

T. Ramakrushna Mohapatra and Others

RESPONDENT

Date of Decision : 15-12-1986

Acts Referred:

General Clauses Act, 1897 — Section 3(35)

Limitation Act, 1963 — Section 3, 5

Sri Jagannath Temple (Administration) Act, 1952 — Rule 12A

Citation : (1987) 64 CLT 225

Hon'ble Judges : H.L. Agrawal, C.J; S.C. Mohapatra, J

Bench : Division Bench

Advocate : K.C.J. Ray, in O.J.C. No. 686/77, R.K. Mohapatra, for the Appellant; S. Mishra-2, for Opp. Party No. 15, S.C. Samantray, for R.C. Mishra, for Opp. Party No. 13, Government Advocate for Opp. Party No. 16, K.C.J. Ray, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—These two writ applications were heard one after another and are being disposed of by this judgment O.J.C. No. 685/77

2. By this writ application, the Petitioner challenges the order dated 27-11-1976 (Annexure-4) of the District Judge, Puri, rejecting the objections filed under Rule 12-A of the Puri Shri Jagannath Temple (Administration) Rules. 1952 to the entries made in the record prepared u/s 3 of the Puri Shri Jagannath Temple (Administration) Act, 1952 read with the Rules, inter alia on the ground that the same were barred by limitation of four days.

3. The facts may be briefly noticed:

Under the scheme of the Act, a record in the prescribed form consolidating the rights and duties of the different Sevaks, Pujaris etc. connected with the Seva-Puja and management of the temple and its endowments has to be prepared by the Special Officer appointed by the State Government. A procedure for

preparation of the said record is also indicated in Section 4 of the Act as well as in the Rules. The record or any part thereof so prepared from time to time by the Special Officer has to be published in the prescribed manner and after its publication, it shall be final. Any person aggrieved by any entry in the record or any part thereof has been given the right to file objections within the prescribed period before the District Judge, Puri.

Under Rule 18-A which was substituted by the notification dated 10-6-1954, a period of one month from the date of publication of such record was prescribed for filing of objection, if any, to any of the entries made in the record so published.

4. In the counter affidavit/filed on behalf of opposite party No. 14, it has been stated that the record-of-rights in question was published in the Orissa Gazette (Extraordinary) dated 12-6-1956 and the objections were filed on 16-7-1956. i.e., 4 days beyond the prescribed period of limitation of one month.

5. From the lower Court records it appears that a note of limitation was made by the office of the District Judge and notice in the limitation matter was also issued to the Petitioner, but no application for condoning the delay was filed. This fact is admitted in paragraph 12 of the writ application itself. It was stated by the Petitioner that:

The ground of limitation was neither raised in the written statement nor pointed out in the Stamp Report, but the Petitioner came to know of such ground of limitation only from the order of the District Judge in Annexure-4 and for such reason no steps were taken to file a petition for condonation of delay.

On this statement, it has been contended on behalf of the Petitioner that a mistake of law was committed by the learned District Judge is not affording any opportunity of hearing to the Petitioner on the question of limitation while dismissing the objections inter alia on the ground of limitation.

6. In reply to this submission, it was contended on behalf of the opposite parties that Section 5 of the Limitation Act as it stood at the relevant time being not made applicable to Rule 12-A of the Rules, the District Judge had no right to condone the delay had an application been made. But in any view of the matter, in the absence of any application for condoning the delay not having been admittedly made in view of Section 3 of the Limitation Act, the District Judge was duty bound to dismiss the objection on the simple ground of limitation and that the assertion of want of knowledge on the part of the Petitioner or any note of limitation having not been made, which are obviously errors of fact the Petitioners has got no case on the question of limitation and the writ application must fail on this ground alone.

7. To wriggle out of this difficult situation, Mr. Mohapatra advanced an argument that the expression "one month" in Rule 12-A. prescribing the period of limitation for filing of objection must be construed as one full English calendar month

following the month in which the impugned publication of the record-of-rights was made. He referred to the definition of "month" in Section 3 (35) of the General Clauses Act and also the decision In Re: V.S. Metha and Others, . The definition of "month" is given in Section 3 (35) reads as follows:

month shall mean a month reckoned according to the British calendar.

Neither the definition of the expression "month" nor the decision lends any support to the contention of Mr. Mohapatra. All that is meant by the discussion in the judgment and the annotation is as to how a calendar month is to be counted from the date which is not the first of the month, and the well settled proposition that follows from the discussion is that the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts save that if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month. It is therefore not possible to accept the above submission of the learned Counsel.

8. From the facts stated above, it is evident that a period of limitation has been prescribed for filing of objection, and undisputedly, the objections were filed beyond that period. It is also seen that the office of the District Judge had given a note of limitation and a notice in the limitation matter was also issued to the Petitioner. It does not therefore lie in the mouth of the Petitioner that he became aware of the defect of limitation only from the impugned order contained in Annexure 4. As Section 3 of the Limitation Act in unequivocal terms enjoins upon the Court to dismiss all objections which are barred by limitation, the dismissal of the objections by the learned District Judge on the ground of limitation is fully justified.

9. The writ application therefore must fail and is hereby dismissed. In the circumstances, however, I shall make no order as to costs.

O.J.C. No. 686 of 1977:

10. This writ application has been filed against the same order which is challenged in O.J.C. No. 685 of 1977, but for some what different relief, i.e. correction of Part III of the impugned record-of-rights.

11. It was submitted by Mr. Mohapatra that under Rule 13 of the Rules, the District Judge after receiving an objection under Rule 12-A has to call for the record maintained under Rule 8 (2) relevant to the particular entry or omission complained against, and after perusing the same and hearing the parties or their pleaders has to dispose of the objection. It has been alleged by the Petitioner that though the District Judge had called for the record, the entire records were not forwarded to him and the objections "were rejected without verifying the relevant materials on record.

The stand of Mr. Misra appearing for opposite party No. 15 (Administrator, Jagannath Temple) in this regard, however, was that it has not been alleged,

much less shown by the Petitioner that on account of non-production of the records before the District Judge, any prejudice was caused to him and therefore it cannot be said that the result of the objections of the Petitioner would have been different had the records been produced.

I do not find any merit in this stand of Mr. Misra. Obviously, the record-of-rights was prepared on the basis of various materials and reports, and without perusal and verification of the same, its correctness and authenticity could not be established. The grievance raised on behalf of the Petitioner in this regard has however got substance. Particularly when no other remedy is available to the petitioner and the decision of the District Judge becomes final, great care has to be taken, in looking to the materials on record to decide the objection.

I would accordingly allow this writ application and remit the matter back to the District Judge. Puri for reconsideration of the objection of the Petitioner with regard to the entries in Part III of the record-of-rights in the light of the observations made above. Since the matter has been sufficiently delayed, I hope, the District Judge will try to dispose of the matter as expeditiously as possible. In order to avoid further delay the parties are directed to appear before him on 12th of January, 1987 so that he may fix a date for hearing of the case according to his convenience and the question of issuing fresh notice may be avoided.

No costs.

S.C. Mohapatra, J.

12. I agree.