

(1990) 11 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3997 of 1990

Mahant Sri Pranab Kishore Bharati

APPELLANT

Vs

Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 19

Citation : (1991) 71 CLT 450 : (1991) 1 OLR 225

Hon'ble Judges : R.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Devanand Misra, Deepak Misra, R.N. Naik, A. Deo, B.S. Tripathy and P. Panda, P. Kar, D.K. Sahoo, M. Mohanty and B.H. Mohanty, for the Appellant; P.K. Misra, N.C. Pati, A.K. Nanda, S.K. Swain, B. Sahoo, R.N. Dash and R.K. Sahoo, for the Respondent

Judgement

R.C. Patnaik, J.—The law relating to powers, of the Sebait or Mahant to alienate property belonging to the deity or Math is well settled. The powers are akin to those of a manager of an infant heir and were authoritatively stated in Hanooman Persad Pandey's case, 6 MIA 393. The statutory law embodied in Section 19 of the Orissa Hindu Religious Endowments Act, 1951, has added a further safeguard by mandating prior permission of the Commissioner of Endowments in case the alienation is any of the types contemplated by the section. Discharge of function of the Commissioner is administrative in nature and there is no question of res judicata in the sense that any order passed thereunder may be reviewed, modified or altered on cogent grounds if the circumstances justify the same.

2. The ambit and scope of the function of the sebait or mahant is that of a prudent owner. As a prudent owner would not desire his property to be sold at a lesser price if higher price is available for the property to be alienated, so too should not the sebait or mahant or trustee, as the case may be. A fortiori, the Commissioner as the watch-dog should also not desire the property belonging to

a religious institution to be alienated for inadequate consideration, if there is a higher offer. Even if permission has been granted, in the interest of the religious institution and for its benefit, the same should be recalled if the Commissioner is satisfied that the higher offer is real and genuine unless in the meanwhile there is a completed transaction. Where permission has been granted by the appellate authority motion has to be made to the appellate authority for modification,, feci. ion of" the order having regard to the supervening facts and circumstances.

3. Now the facts on hand: Pursuant to permission granted, sale deed was executed by the trustee in respect of a parcel of land. Before he executed the sale deed in respect of the balance, offers at three times the price for which permission had been granted were made to him. Hence; he did not execute the sale deed in regard to the balance land But by the impugned order, the Commissioner directed him by an ex parte order and " without hearing him to execute the sale deed at the price previously fixed failing which he was threatened that steps would be taken for appointment of an interim trustee. How far and in such circumstances an interim trustee could be appointed by the Commissioner has not been thrashed out before us in depth. But nevertheless it is significant to observe that when offers for the land at 3.5 to 4.5 lacs in place of 1.2lac per acre were received by him and he considered the said offers to be genuine and real, we are of the view that it would not have been prudent on his part to alienate the land because it may . so happen in certain circumstances that though permission was granted, the sebaite, mahant or trustee may not choose to alienate in the interest of the institution. After all, the property belongs to the institution and should not be sold at a lesser price and all efforts, should be made to secure for it the maximum value, if the interest of and the benefit to the institution are paramount considerations in the matter of alienation of property belonging to it, it is always open to the trustee, sebaite or mahant to approach the Commissioner for reconsideration and the Commissioner at that stage should also take a decision as a prudent owner would take in regard to his own property. The petitioner alleged that if the subsequent offers were accepted, the institution would receive about 18 lacs more than it would obtain if the alienation was made pursuant to the previous order passed by the Commissioner. The stand was reiterated before us. It was stated that parties were willing to deposit the amount in Court in proof of their " earnestness. Keeping the interest of and benefit to the institution uppermost in our mind; we hold that the situation has changed, circumstances have supervened which necessitate reconsideration of the order for alienation of land at the price already fixed. We, Therefore, direct the Commissioner to rehear the matter and taking into consideration the offers that would be made" before him refix the prices at which the property should be alienated. It is open to all including opposite party No. 2 to make offers. To prevent speculative offers, we require the parties making offers to deposit beforehand with the Commissioner 50 per cent of the amount of their offers. This order, however." would not affect sale which has been completed by execution of sale deed. It is stated by the counsel for opposite

party No. 2 that an agreement has been executed by the petitioner. But that was with reference to the permission already granted. If that is recalled and fresh permission is granted at a price to be fixed, the agreement would not be binding on the petitioner.

4. In the result, the impugned order as per Annexure-2 is set aside and the writ application is disposed of with the aforesaid observations and directions. No costs.

5. Oral motion is made for grant of leave to appeal to Supreme Court. We do not consider this to be a fit case for grant of leave. Hence, leave is refused.

A. Pasayat, J.

I agree.