

(1976) 11 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 1319 of 1974

Mahanta Govinda Chandra Das

APPELLANT

Vs

Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 09-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Hindu Religious Endowments Act, 1951 — Section 39

Citation : (1977) 43 CLT 94

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R. Mohanty, S. Gajendra, N. Panda and R.N. Patra, for the Appellant;
S.C. Mohapatra, D.K. Mahapatra and D. Misra, for the Respondent

Judgement

K.B. Panda, J.—This is an application under Articles 226 and 227 of the Constitution for quashing the order (Annexure 5) of the Commissioner of Endowments, Orissa, Bhubaneswar (opposite party No. 1) (hereinafter referred to as the Commissioner) declaring opposite party No. 2 as the hereditary trustee of the Neuladas Math, in preference to the Petitioner.

2. There is a Math called Neuladas Math belonging to Shree Sampradaya at Puri of which one Ramratan Das was the Mahant. Admittedly he died on 21-2-1972. As is alleged, the late Mahant was in the habit of nominating one Chela after another to succeed him. So that as it may he had executed a registered deed in favour of the Petitioner on 23-12-1967. Subsequent to that he had also executed a registered deed, in favour of opposite party No. 2 on 1-9-1971. According to the Petitioner, besides the registered deed in his favour, there was Gadinashin ceremony for him by the late Mahant in presence of other Mahants of the same cult and intimation of the same had been sent to the Commissioner as required u/s 39 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the Act). He also alleged that Sudhi ceremony of the Mahant was performed by him. According to the Petitioner, opposite party No. 2 is an imposter who

managed to obtain registered deed in his favour from the late Mahant while he was extremely old. That document being during the sickness of the late Mahant and as such not a voluntary act opposite party No. 2 acquires no right thereunder. Besides it is said that opposite party No. 2 is unfit to be the head of the Math according to the custom and usage of the institution in as much as he is a married man.

3. The case of opposite party No. 2 is that he was duly appointed as Chela by the late Mahant by a registered deed dated 1-9-1971 intimation whereof had been given to the Commissioner u/s 39 of the Act. He also stated that he was so selected after he had renounced worldly life and had become a Satsisya of the Mahant whereas the Petitioner was never so. It is also alleged that the late Mahant had cancelled the registered will in favour of the Petitioner as well as the power-of-attorney executed in his favour by notice and paper publication on 26-8-1966. Thus in the counter affidavit it is stated that the Petitioner had no apparent claim to be recognised as the successor of the late Mahant to the said Math.

4. In view of this contest for successorship to the hereditary trusteeship of the institution, a proceeding under- Section 39 of the Act was conducted by the Commissioner before whom besides documents the Petitioner examined nine witnesses and opposite party No. 2 ten. The learned Commissioner, by the impugned order dated 16-9-1974, held that the late Mahant, who was in the habit of selecting Chelas and cancelling the same during his life-time, had in fact cancelled the Chelaship of the Petitioner and the power-of-attorney executed in his favour by proper notice and paper publication dated 26-8-1966. He also held that the legality of this action on the part of the late Mahant Cannot be decided in that summary proceeding u/s 39 of the Act. He further held thus:

In this case, when late Ramaratan Das cancelled the chelaship of the Petitioner by notice published in the daily Samaj dated 26-8-1966 and again nominated the opposite party as his chella-successor vide Ext. A and also sent intimation of nomination vide Ext. D to the Commissioner, the formalities as required u/s 39 having been fulfilled the Commissioner is bound to recognise the opposite party as chella-successor of late Mohant Ramarathan Das, unless he is not satisfied with the genuineness of the intimation.

Accordingly he confined the inquiry to the genuineness of the Intimation sent to him under Ext. D regarding the appointment of opposite party No. 2 as the Chela by the late Mahant. On a detailed discussion, the Commissioner held that the intimation was genuine, and hence accepted the contention of the opposite party No. 2 and recognised him as the successor of the late Mahant.

5. Various contentions were raised on behalf of the Petitioner, namely, (i) that the Petitioner having undergone Gadinasin ceremony he could not be dislodged from his Chelaship; (ii) that opposite party No. 2, being a married person with his wife and children yet alive, is unfit to become the successor, and head of the

institution as the Math is a celibate one; (iii) that the will in favour of opposite party No. 2 has been obtained fraudulently during the sickness and old age of the Mahant; (iv) that the intimation of the fresh nomination not having been given within three months of the nomination is invalid u/s 39 of the Act; (v) that while parties led a lot of evidence, the Commissioner proceeded to reach his conclusion by brushing aside the same; and (vi) that in view of the terms of the registered will in his favour dated 22-12-1967, the late Mahant had no further power under law to execute any other deed appointing or nominating his successor.

6. Petitioner claims that all these points were pressed before the learned Commissioner; yet the matter has been disposed of without due consideration of these aspects. Undoubtedly the proceeding is summary and the result is subject to suit. That, however, does not afford any justification for Commissioner to overlook relevant materials placed in the enquiry. Most of the points reiterated before us relate to factual disputes. Some aspects turn upon customs of the institution being established. Some aspects require interpretation of the appropriate provision of the Act itself.

7. We find that the learned Commissioner of Endowments has omitted to consider material aspects of the case and ignored the evidence on record. Thus his decision suffers from errors apparent on the face of the record and cannot be sustained. Accordingly we quash the impugned order and require him to redispense of the dispute.

There shall be no order for costs.

R.N. Misra, J.

8. I agree.