

(1981) 01 OHC CK 0003
In the Orissa High Court
Case No : Original Jurn. Case No. 373 of 1977

Narayana Padhi

APPELLANT

Vs

Executive Officer, Uttarparswa Muth and Others

RESPONDENT

Date of Decision : 12-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Hindu Religious Endowments Act, 1951 — Section 25

Citation : AIR 1983 Ori 6

Hon'ble Judges : R.N. Misra, Acting C.J.; B.N. Misra, J

Bench : Division Bench

Advocate : R.C. Patnaik, P.K. Misra and M. Mohanty, for the Appellant; S. Mohanty, A.S. Naidu, P.N. Mohapatra, S.K. Patnaik and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, Ag. C.J.

1. The petitioner's predecessor-in-interest and certain others were transferees of endowment property belonging to the Uttar-parswa Muth at Puri. Its Executive Officer initiated a proceeding u/s 25 of the Orissa Hindu Religious Endowments Act, 1951 against the alienees. That proceeding ultimately terminated in the hands of the Commissioner of Endowments against the alienations. Some of the alienees carried a writ application to this Court, being O. J. C. No. 124 of 1970. This Court by order dated 27th April. 1972 quashed the order of the Commissioner as a result of which the proceeding u/s 25 of the Act revived. The petitioner's father died during the pendency of the proceeding but there was no substitution. Without bringing the petitioner on record, under orders covered by Annexures 2 and 3 the proceeding was again disposed of against the dead man and the alienation was vacated so far as original opposite party No. 10 is concerned. The petitioner as heir of opposite party No. 10 in the original proceeding has applied to this Court for quashing of Annexures 2 and 3 so far as

the interest of opposite party No. 16 which was inherited by the petitioner is concerned.

2. The Executive Officer has taken the stand that the writ application had been filed by some of the alienees. Opposite party No. 10 had not joined. Therefore, even if this Court had quashed the order of the Commissioner u/s 25 of the Act no benefit is available to the petitioner or his predecessor-in-interest. So far as opposite party No. 10 is concerned, the order of the Commissioner remained and no grievance ran, therefore, be made at this stage against the final order on the ground that there was no substitution and the petitioner had not been brought on record and afforded an opportunity of being heard before the final order was made. In support of this proposition reliance is placed on the observations of the Supreme Court in the case of Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others, .

3. It may not be irrelevant to mention here that during the pendency of the earlier writ application before this Court, aggrieved by the order of eviction u/s 25 of the Act, the petitioner's father had filed a suit and had lost. While the appeal was pending, the decision of this Court in the earlier writ application came. He, therefore, moved the appellate court for leave to withdraw the appeal as also the suit. Annexure 8 shows that such leave had been granted. Therefore, the decision of the Civil Court is no more there standing in the way of the petitioner in the matter of claiming relief.

4. Mr. Mohanty for the Commissioner of Endowments has fairly stated that the net effect of the decision of this Court in O. J. C. No. 124 of 1970 is that the order of the Commissioner as a whole was vacated and on that footing the proceeding u/s 25 of the Act was conducted by the Commissioner after remand. All the opposite parties were given a hearing and the final order under Annexure 2 related to all. The facts of the case before the Supreme Court were peculiar, and, in fact, the consequence of such an order has been clearly indicated in subsequent decisions of the Supreme Court. We are inclined to think that where a superior court intervenes, may be at the instance of one of the parties, and the net result is that the entire order is vacated without confining it to one or more of the parties, the existence of the entire order goes and it cannot be sustained for some and be treated as having been vacated for others. In that view of the matter, the Commissioner was correct in dealing with the proceeding as against all after remand, pursuant to the decision of this Court in O. J. C. No. 124 of 1970. The Executive Officer's stand that it had become final for some including opposite party No. 10 cannot, therefore, be sustained.

5. Admittedly, opposite party No. 10 was dead before the final orders were passed and there has been no substitution. Since it was a leasehold right which was in issue and the petitioner succeeded to the properties of his father, unless he was heard, the final order would not bind him. We would, therefore, accept the writ application and vacate the operation of Annexures 2 and 3 to the extent they relate to the interest of opposite party No. 10. It is expressly made clear

that the final order under Annexures 2 and 3 so far as it relates to others would not be touched by our decision. The Commissioner of Endowments is directed to proceed with the case so far as the interest of the petitioner is concerned, if he is moved, in accordance with law.

6. No costs.

B.N. Misra, J.

I agree.