

(1978) 10 OHC CK 0012

In the Orissa High Court

Case No : Original Jur. Case No. 111 of 1978

Raghubar Ramanuja Das

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 28, 28(3), 35, 35(5), 42

Citation : AIR 1979 Ori 115 : (1979) 47 CLT 84

Hon'ble Judges : S.K. Ray, C.J.;J.K. Mohanty, J

Bench : Division Bench

Advocate : R. Ch. Mohanty and J.P. Das, for the Appellant; S. Mohanty, A.S. Naidu, R. Mohanty, B.K. Jena, K. Patnaik and A.C. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Ray, C.J.—The petitioner is the Mahant and hereditary trustee of Biranchi Narayan Math alias Buguda Math at Buguda, District Ganjam. Opposite party No. 1 who is the Commissioner of Endowments initiated a suo motu proceeding u/s 35 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter called the Act) as per Annexure-1 dated 4-10-1977, This proceeding was occasioned in consequence of allegations made by members of general public against the petitioner. By Annexure-1 the Commissioner of Endowments framed three charges and called upon the petitioner to show cause as to why he shall not be disqualified and shall not cease to hold office.

2. During the pendency of this proceeding u/s 35 of the Act the opposite party No. 1 issued the impugned Annexure-2 in purported exercise of his powers u/s 7 of the Act, whereunder the Inspector of Endowments was appointed as an interim trustee of the religious institution in question and its properties until further orders. Opposite party No. 1 in his counter has stated that the expression "interim trustee" in Annexure-2 has been inappropriately used and what was intended by Annexure-2 was to appoint the Inspector of Endowments as a fit person to look after the management of the institution pending finalisation of the

proceeding u/s 35 of the Act. In view of this counter, the expression "a fit person" has to be read in place of "interim trustee" in Annexure-2 while considering the challenge made to its legality and propriety. The religious functions of the institution, however, have been allowed to be retained by the petitioner. This annexure has further directed the Inspector of Endowments to take charge of the institution and its properties from the petitioner and to manage the institution subject to the duties and functions of the petitioner which have been expressly left with him. Consequent to Annexure-2 the Divisional Inspector of Endowments, Berhampur who is the opposite party No. 2 issued Annexure-3 dated 25-12-1977 which is a general notice to the public purporting to be issued u/s 42 (5) of the Act for the purpose of appointing a fit person to discharge any of the functions of the trustee of the institution in question.

3. The petitioner has sought for quashing Annexure-2 and for staying further proceedings thereunder as well as under Annexure-3. As appears from para 8 of the counter of opposite party No. 1, Annexure-3 has been conceded to be invalid and that it should be ignored. The only question which, therefore, remains for consideration is whether Annexure-2 is to be quashed. The sole contention of the petitioner is that Section 7 of the Act does not empower the Commissioner of Endowments to issue the interim order as contained in Annexure-2 in view of other express provisions of the Act specifically empowering the Commissioner to appoint an interim trustee or a fit person, as the case may be to manage the institution.

4. It is, therefore, necessary to analyse the ambit and scope of Section 7 of the Act.

Section 7 reads as follows:--

"7. Powers and duties of Commissioner:-- (1) Subject to the provisions of this Act, the general superintendence of all religious Institutions and endowments shall vest in the Commissioner.

(2) The Commissioner may do all things which are reasonable and necessary to ensure that the religious institutions and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.

Explanation -- The Commissioner shall have power to pass such interim order as he deems necessary for the proper maintenance of a religious institution or the proper administration of a religious endowment including the power to pass such orders if and when necessary for the proper management of any institution when a dispute concerning the same is pending in a Court."

Sub-section (1) vests power of general superintendence of all religious institutions and endowments which is subject to the provisions of the Act. Religious institutions and endowments referred to here include math and all properties belonging to or given or endowed for the support of math or for the

performance of any service or charity connected with the math. This will be clear on reading the definition of "religious endowment" in Section 3 (xii) of the Act. Sub-section (2) is couched in general terms and authorises the Commissioner to do all things for the proper administration of the religious institutions and endowments (which include a math) and for ensuring that their income is duly appropriated for the purposes for which they were founded or exist. The language has not imposed any limitation on this power of the Commissioner, except that he must consider it necessary and reasonable before exercising any such power. The Explanation to this sub-section also confers power on the Commissioner to pass such interim orders as he deems it necessary for the proper maintenance of a religious institution or for proper administration of a religious endowment, including power to pass such orders, if and when necessary, for the proper management of any institution when a dispute concerning the same is pending in a Court. The powers of the Commissioner under this Section are very wide. The only limitations on such powers are indicated in the opening words "Subject to the provisions of this Act" in Sub-section (1) thereof. On a plain reading of this Section it appears to me that the Commissioner is vested with powers to pass orders for the purposes specified in the Section, namely, in effectuating his power of general superintendence of all religious institutions and endowments and in doing all things which, in his opinion, are reasonable and necessary for ensuring proper administration of the religious institutions and endowments and for proper application of the income of such institutions for the purposes for which they have been founded or exist. This power, though wide, is supervisory and regulatory in character and can be unrestrictedly exercised in proper situations, in the absence of any specific provisions of the Act designed to meet such situations. Where there are specific provisions, the Commissioner is to act according to them and cannot fall back upon his general power u/s 7. In cases where a dispute concerning any religious institution or religious endowment is pending in any proceeding in a Court of law, as is permissible u/s 73 of the Act or is pending u/s 78 of the Act, or before any authority under the Act acting judicially, the Commissioner shall have power to pass such interim orders as he deems necessary for the proper management of such religious institutions or for proper administration of such religious endowments which are the subject-matter of that proceeding in the Court. In other words, where a particular field or situation is covered by other provisions of the Act providing for passing of protective orders, the Commissioner cannot invoke his powers u/s 7 in that field or to meet those situations. This is clear from the opening expression of Sub-section (1) of Section 7, namely, "Subject to the provisions of this Act." For instance, Section 28 of the Act deals with the proceeding for suspension, removal or dismissal of trustees. During pendency of such a proceeding the Commissioner is empowered under Sub-section (3) thereof to appoint a fit person to discharge the functions of the trustee in certain circumstances. This is an express provision empowering the Commissioner to appoint a fit person in a situation envisaged In that Section during the pendency of a proceeding thereunder. Thus, where a proceeding under S, 28 is pending,

the Commissioner in order to appoint a fit person must draw his power from Sub-section (3) of Section 28 and cannot invoke his general power u/s 7, which is subject to this specific power. Similarly, where a proceeding for framing of a scheme u/s 42 is pending, the power to appoint a fit person by way of making an interim arrangement to discharge all or any of the functions of the trustee of an institution is conferred on the Commissioner under Sub-section (5) of that Section. This section, therefore, limits the general power of the Commissioner u/s 7 in the matter of appointment of a fit person during the pendency of the proceeding u/s 42 of the Act. Having regard to the scheme of the Act and reading the various other provisions, I have no doubt in my mind that what Section 7 provides is that the Commissioner can do all things which are reasonable and necessary to ensure proper administration of religious institutions and endowments and for proper application of their income for the purposes for which they are founded or exist, unless that power is restricted by some other provisions of the Act which provide for doing of such things for such purposes as aforesaid. It would not be correct to infer from express provisions of the Act, other than Section 7, whereunder power has been conferred either on the Commissioner or on other Authorities under the Act to do certain acts for temporary protection of the religious institutions and endowments and their income in certain eventualities, that such powers cannot be exercised at all u/s 7 of the Act in situations to meet which there is no specific provisions in the Act. To give such a restricted interpretation to Section 7 will amount to doing violence to the clear, unambiguous and grammatical meaning of the language used in various sub-sections of Section 7 of the Act and making it nugatory. The limitations on the general power of the Commissioner u/s 7 have to be found from other express provisions of the Act. Those restrictions in those provisions would be confined to the situations envisaged in them, and not otherwise.

5. In the instant case, the pending proceeding is one u/s 35 of the Act. That Section contains nothing like Sub-section (3) of Section 28 or Sub-section (5) of Section 42 conferring power on the Commissioner to pass an order of the nature of Annexure-2. The power and jurisdiction of the Commissioner u/s 7 of the Act, in the instant case, are not limited by or subjected to anything contained in Section 35 of the Act. Sub-section (5) of Section 35 confers power on the Commissioner to appoint one or more persons to discharge the functions of the trustee of the institution, only after but not before he has declared the trustee as disqualified either temporarily or for the lifetime in an enquiry held under Sub-section (2) of that Section. That stage not having been reached, Sub-section (5), containing an express provision regarding appointment of another person to discharge the functions of the trustee and thereby limiting the general power of superintendence of the Commissioner u/s 7 does not operate. Thus, until the trustee, here the petitioner, is declared disqualified, the Commissioner's power under Sub-section (2) of Section 7 of the Act remains intact and his interim order as per Annexure-2 cannot be held to be invalid for want of power and jurisdiction.

6. Section 7 of the Act is almost a verbatim reproduction of Section 11 of the

Orissa Hindu Religious Endowments Act IV of 1939 (hereinafter called the old Act). On a comparative reading of these two sections it will be seen that the powers of the Commissioner u/s 11 of the old Act have been considerably enlarged. Section 11 of the old Act was considered by the Supreme Court in the case of Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, . This Section was held to be intra vires and it was further held that the powers u/s 11, though seemingly wide, can be exercised only to ensure that maths and temples are properly maintained and the endowments are properly administered. The Explanation attached to the Section only makes it clear that the general power conferred upon the Commissioner extends to passing of interim orders as the Commissioner might think fit.

Section 11 of the old Act also came in for consideration by a Division Bench of this Court in the case of Sarat Kumar Mohanty v. Gourhari Samantaray and Gour Chandra Pas 21 (1955)CLT 93. Opening words of Section 11 "Subject to the provisions of this Act" were construed and it was held that "Section 11 in unambiguous language lays down that the power vested by it should be read subject to the other provisions of the Act and of any scheme settled or deemed to be a scheme settled under it." Their Lordships did not disapprove the view that an interim order involving suspension of rights of the hereditary trustee may be passed by the Commissioner during pendency of an enquiry directed at disqualifying, removing or dismissing the hereditary trustee.

The ambit and scope of power conferred u/s 7 of the Act was directly considered in the case of Nabaghan Naik and Others Vs. Sadananda Das and Another, . It was held that the power which the Commissioner may exercise and the duties which he may perform must be in regard to matters not otherwise provided for in the Act and in areas not otherwise covered. Their Lordships also further clarified that where under any Section of the Act the jurisdiction and power is conferred on the Endowment Commissioner for doing a thing embracing a power to making interim orders, in exercise of which he manifestly acts judicially, no such interim order can be passed by the Endowment Commissioner u/s 7, because the area in which either the judicial order or administrative order u/s 7 is to operate is the same, and thereby has been expressly excluded from the ambit of Section 7.

Section 7 of the Act was again noticed by the Supreme Court in the case of Hindu Religious Endowments and Others Vs. B. Samitra and Others, . In that case the question mooted was whether the Assistant Commissioner of Endowments had jurisdiction to appoint a non-hereditary trustee of a religious institution u/s 27 of the Act without prior determination of the question that the institution is a public one and has no hereditary trustee, u/s 41 of the Act. Their Lordships answered the question in the negative after repelling the Endowment Commissioner's contention which was based on the ground that otherwise it would become difficult to exercise effective control on public and religious institutions as proceedings u/s 41 take a long time. In giving attention to this difficulty in exercising effective control, their Lordships noticed Section 7 of the

Act. They said (at pp. 1065, 1066):--

".....The argument cannot also be countenanced as it overlooks the explanation appended to Section 7 whereunder the Commissioner has been given power to pass such interim orders as he may deem necessary for the proper maintenance, administration and management of religious Institutions and endowments when a dispute concerning the same is pending."

Their Lordships did not give pointed attention to the expression "pending in a Court" in the Explanation to Sub-section (2) of Section 7 of the Act and the general way in which they have interpreted this Explanation would indicate that even though the dispute is pending before any of the specified authorities under the Act, the power to pass interim orders can be exercised by Commissioner and that it is not necessary that the dispute should be pending in a Court of law, that is to say, a civil Court. This opinion was expressed on the hypothesis that the various authorities under the Act exercising judicial functions constitute and function as Courts.

7. In view of the aforesaid decisions, and the interpretation of Section 7, by applying normal rules of construction, the inevitable conclusion is that the Commissioner of Endowments can pass interim orders for ensuring proper administration of the math in question and for proper application of the income of the properties of the math for the purposes for which it has been founded or exists, during the pendency of the proceeding u/s 35 of the Act, specially when there is nothing in that Section or any other Section of the Act vesting any power in any authority constituted under the Act to pass a judicial order with regard to the very matters in respect of which the Commissioner has passed his impugned order (Annexure-2) u/s 7. Annexure-2, therefore, cannot be impeached as invalid or having been passed without jurisdiction.

8. In result, for the aforesaid reasons, Annexure-2 cannot be quashed as it seems to have been passed validly by the Commissioner of Endowments in exercise of his powers u/s 7 of the Act. The writ application, therefore, fails and is dismissed with costs assessed at Rs. 100/- (rupees one hundred).

Writ application is dismissed with costs.

J.K. Mohanty, J.

9. I agree.