

(1974) 06 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 270 of 1973

Ramachandra Palo

APPELLANT

Vs

The Commissioner, Orissa Hindu Religious Endowments and
Another

RESPONDENT

Date of Decision : 10-06-1974

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 12, 12(2), 28, 28(3), 68

Citation : (1974) 40 CLT 836

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

Bench : Division Bench

Advocate : R. Mohanty and P.V. Ramdas, for the Appellant; S. Mohanty and K.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—The Commissioner of Hindu Religious Endowments (opp. party No. 1) on being satisfied that there was mismanagement of the religious Institution in question by the Petitioner, initiated a proceeding u/s 28 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the 'Act') and suspended the Petitioner with immediate effect by his order dated 9-2-1973 as per Annexure-2 and by the same order appointed Kalu Palo, opposite party No. 2 as a fit person to discharge the functions of a trustee as specifically defined in that order. After the passing of the said order the Petitioner filed O.J.C. No. 151 of 1973 to quash the said order, but later, on 16-3-1973, he withdrew the said writ application. As the Petitioner defaulted in making over charge to opposite party No. 2 as specifically directed in Annexure-2, the opposite party No. 1 in exercise of his powers u/s 12 of the Act, by his order dated 13-3-1973 (Annexure-3) authorised the Inspector of Endowments, Berhampur to enter into the premises of the religious institution in question and put the opposite party No. 2 in possession of the properties specifically mentioned in Annexure-2.

2. The Petitioner in his long writ petition has narrated the history of the various disputes which arose in connection with the trustee-ship of the institution in question. Opposite party No. 2 in his counter has also stated various facts refuting some of the allegations of the Petitioner and stating certain other facts relating to the said institution. In this matter we are not concerned with the past history of the religious institution and/or its management in the past, as at present Mr. Mohanty, the learned Counsel for the Petitioner, questions only the legal jurisdiction of the opposite party No. 1 to pass the aforesaid order in Annexure-3.

3. The impugned order Annexure-3 runs as follows:

Orissa Hindu Religious Endowments Office, Bhubaneswar

Present: Sri K.S. Misra; M.A., LL.B., Commissioner of Endowments, Orissa, Bhubaneswar.

In the matter of Sri Radhakanta Swami at Bhabinipur, P.O. Nimakhandi, Via Berhampur, District Ganjam.

Order No. 222/826-G (M) Dated 13-3-1973.

Whereas Sri Rama Chandra Palo, the Managing, Hereditary Trustee under suspension has defaulted to make over charge of all the records and documents relating to the properties of the aforesaid institution (schedule to be managed by the Hereditary Trustee on relation to Sri Kalu Palo. Interim Hereditary Trustee appointed by this Court, the Commissioner of Endowments in exercise of his powers u/s 12 of the Act authorises the Inspector of Endowments, Berhampur, to enter into the premises of the above religious institution and put Sri Kalu Palo the Interim Hereditary Trustee in possession of the aforesaid properties by breaking open the locks if necessary.

The Inspector of Endowments is also authorised u/s 12(2) of the Act to take necessary police aid for the said purpose and is directed to make an inventory of the property in presence of the respectable persons of the locality and submit his report forth with.

Sd. K.S. Misra, Commissioner of Endowments.

To

1. The Inspector of Endowments, Berhampur for information and necessary action and to publish the contents at the spot by beat of to inform after making over charge.

2. Officer-in-charge, Taluk Police Station, Berhampur, for information and necessary action.

3. S.P. Ganjam, Chatrapur

4. Kalu Palo, 1. T. at above address

5. Rama Chandra Palo -do

6. B.C. to E.C. for information in O.R. 1/73 u/s 28.

7. D.I.E., Berhampur.

4. The Petitioner prays for the quashing of the aforesaid order only on the ground that an order passed u/s 28(3) of the Act appointing a fit person to discharge the duties of a trustee is not available to be put under execution u/s 12 of the Act under which section the order in Annexure-3 has been passed. According to Mr. R. Mohanty, the learned Counsel for the Petitioner, an order u/s 28(3) can only be executed u/s 68 of the Act, and the Endowments Commissioner has no jurisdiction to execute the said order under any other provision of the Act. We are unable to accept the above contention put forward on behalf of the Petitioner.

It is not disputed that the order in Annexure-2 dated 9-2-1973 has been passed by opposite party No. 1 in due exercise of his powers u/s 28(3) of the Act. The legality of the said order is not questioned by Mr. Mohanty. On the submissions made by him the only question which arises for decision in this case is whether the said order can be put under execution only under the provisions of Section 68 of the Act, or the same can also be given effect to by the Commissioner of Endowments (opp. party No. 1) in exercising his powers under Sections 12 and 7 of the Act. The powers u/s 68 of the Act, as per the wordings in which that S.Is couched, can be exercised only when any of the appointed persons of the category mentioned in Clauses (a), (b) or (c) of the said section, is resisted in or prevented from obtaining possession of the religious institution or of the records, accounts and properties thereof, by a trustee, office holder or servant of the religious institution who has been dismissed or suspended from his office or is otherwise not entitled to be in possession, or by any person claiming or deriving title from such trustee, office holder or servant, as specifically provided in Section 68(1) of the Act. It is also provided in the said sub-section that the Assistant Commissioner can pass an order contemplated under the said section only when an application is made by any of the above mentioned persons so appointed. So the powers u/s 68 can be invoked only on the existence of the aforesaid conditions as specifically laid down in the said section. Accordingly, so long the person appointed u/s 28(3) of the Act is not resisted and he does not make an application to the Assistant Commissioner, the statutory authorities who have the power to look after the proper maintenance and administration: of the religious institutions and endowments cannot suo motu take action u/s 68 of the Act. On the other hand, Section 12 of the Act empowers the Commissioner and the, Assistant Commissioner and such other officers professing Hindu religion, as may be authorised by the Commissioner in this behalf, to enter (subject to the local practice customs or usages) into the premises of the religious institution, or any" place of worship at any reasonable hour for the purpose of exercising any) power conferred or for discharging any duty imposed by or under this Act. u/s 7 of the Act the Commissioner has the general power of superintendence over all religious institutions and endowments and he can 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 are formed or they exist. The Explanation to Section 7 makes it clear that the Commissioner shall have power to pass such interim orders as he deems necessary for the proper maintenance of a religious institution or the proper administration, of religious endowment including the Powers to pass such orders, if and when necessary for the proper management of the institution, when a dispute concerning the same is pending in a Court. The vesting of the powers enumerated under Sections 12 and 7, creates an obligation on the Commissioner nay casts a duty on him, to see that the religious institutions and endowments are, properly managed, looked after and, administered and their income is duly appropriated for the purpose for which, they were founded or they exist. The powers enumerated under Sections 12 and 7 of the Act are therefore very whole some and salutary and are provided for the immediate intervention f the officers mentioned there in to prevent any thing going wrong in the institutions mentioned in the said section. As the said powers enable the officers to act in the best interest of the institutions as and when situation demands, the same should not be limited, and in fact are not limited under any provisions of the Act. Any fetter or restriction on the powers provided under the said two sections, except those specifically mentioned therein, would render nugatory the express provisions con tined therein; and there is no sanction in the Act for any such restriction or limitation. Of course the Endowments Commissioner and the other persons mentioned in the said two sections must in all cases exercise their powers under these two sections only in the best interest of the institutions and in a befitting manner justifying the confidence on which the legislator has vested such wide power on the persons mentioned therein. Any rash, arbitrary, capricious or unconscionable exercise of the power, if complained of will be deprecated and struck down at the proper forum.

5. On the above considerations we are of the view that if after the appointment of a fit person u/s 28(3) of the Act the Commissioner of Endowments thinks that in the best interest of the religious institution he should exercise his powers under Sections 12 and/or 7 of the Act, then there is nothing in the Act to prohibit him from doing so. Sections 12 and 7 are general provisions in the Act and they apply to cases which are not specifically covered by any other provisions in the Act. As the specific provision made u/s 68 of the Act can be invoked only under the special Circumstances mentioned therein as stated above, the Commissioner of Endowments should not be left powerless to act suo motu in the best interest of the institution if and when situation demands his interference in that direction. So the general powers vested in the Commissioner under Sections 12 and 7 of the Act can and should be exercised under the circumstances and for the purposes mentioned in the said sections and a proper order to that effect can legally be passed in due exercise of the jurisdiction conferred under one or the other or both the said two sections.

6. The order under Annexure-2 appointing opposite party No. 2 as a fit person to take possession of certain properties of the institution was passed as the Petitioner in violation of the lawful orders of the authority continued unlawfully in management of the religious institution in question even though he was to make over charge of the institution to the next hereditary branch quite a number of years ago. Besides this, as is evident from the said order, there were certain other allegations against the Petitioner. Due to all these reasons the order in Annexure-2 was passed. The said order was passed on 9-2-1973, and on 13-3-1973 by the order Annexure-3 the Petitioner was put under suspension as he defaulted to make over charge of the records and documents relating to the properties of the religious institution to opposite party No. 2. As opposite party No. 1 has passed the said order in accordance with the general powers vested in him under the said two sections of the Act, it cannot be said that the said order has been passed without jurisdiction. Nothing convincing has been shown on which the said order can be held to be other wise illegal or improper on any other consideration. Rather on the facts and circumstances of the case the impugned order appears to have been passed on just and proper consideration of the facts of the case and in the best interest of the institution in question.

7. On the above considerations, we do not see any reason to quash the said order in Annexure-3.

8. There is therefore no merit in this writ petition which is accordingly dismissed with costs. The Petitioner will pay a hearing fee of Rs. 200/- which on payment will be shared equally by both the opposite parties.

S.K. Ray J.

9. I agree.