(2008) 03 OHC CK 0074

In the Orissa High Court

Case No : O.J.C. No. 4646 of 2002

Renubala Deo APPELLANT

Vs

Commissioner of Endowment and Others RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 19, 68, 9

Citation : (2008) CLT 19 Supp

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : R.K. Mohanty, D.K. Mohanty, P.K. Rath, P.K. Samantray and A.P. Bose, for the Appellant; A.K. Rath, N. Behura, P.K. Padhi, P.K. Panda and S.K. Nayak, for the Respondent

Judgement

P.K. Tripathy, J.—Petitioner has filed this writ petition with the prayer to quash the orders Annexures 1 and 2.

2. Annexure-1 is the order passed on 18.03.2002 by the Commissioner of Endowments, Orissa, Bhubaneswar in R.C. Case No. 31 of 1996, registered u/s 9 of the Orissa Hindu Religious Endowments Act, 1951 (in short ''the Act''). It reveals from that order that on 19.11.1996 Assistant Commissioner of Endowments, Orissa, Bhubaneswar has passed order in O.A. No. 7 of 1990 initiated u/s 68 of the Act, directing the Petitioner to make over possession of the case land to the deity Sri Alamath Dev through the non-hereditary trustees. That order was challenged in R.C. Case No. 31 of 1996. Annexure-2 is the above noted order dated 19.11.1996 of the Asst. Commissioner of Endowments, Orissa.

3. The property in dispute is plot No. 493 under Khata No. 112 measuring an area of Ac.1.47 decimals and plot No. 493/1028 under Khata No. 272/22, measuring an area of Ac.0.47 decimals. The case land situates in Mouza Alarpur. It is the admitted case of the parties that the land belongs to the deity Alamath Dev and the Petitioner as the ex-trustee managed to remain in possession of that property. Accordingly the trustee functioning by the year 1990 initiated the

proceeding u/s 68 of the Act before the Asst. Commissioner of Endowments. Petitioner claims therein to have purchased the case land under Registered Sale Deed marked Ext.B. In course of the enquiry, learned Assistant Commissioner of Endowments found that the property of the ex-intermediary vested with the State under the Orissa Estate Abolition Act and thereafter the property is belonging to the deity Alarnath Dev and, therefore, it is the deity who is entitled to the land and not the Petitioner as the purchaser from a person who had no title over the property. Accordingly the Asst. Commissioner of Endowments directed the Petitioner to make over possession of the case land to the deity through the non hereditary trustees.

4. Petitioner challenged that order before the Commissioner of Endowments, Orissa, Bhubaneswar in the above noted R.C. Case No. 31 of 1996.. After hearing the parties, learned Commissioner of Endowments, Orissa recorded that,

The only point urged on behalf of the Petitioner in this revision is that the Petitioner is never a Trustee or Ex-Trustee of the deity Sri Alarnath Dev and, therefore, application u/s - 68 of the O.RR.E. Act is not at all maintainable."

5. On the other hand, learned Commissioner of Endowments took note of the entry in the Record of Rights to the effect that Petitioner had been recorded as ''Marfatdar'', which means trustee, and accordingly he analyzed the evidence afresh and concurred with the findings of learned Asst. Commissioner of Endowments and directed the Petitioner to give delivery of possession. In the concluding part of the order, learned Commissioner of Endowments recorded that,

By order dated 16.10.97 the Petitioner has been appointed as a Receiver in respect of the case land which also includes some tenanted houses. The said order appointing the Petitioner as Receiver stands vacated... Admittedly, the Petitioner-Receiver has not paid or deposited the rents, profits and usufructs derived by her from the case land. On a petition filed by the Opp.Party for direction to the Receiver to deposit the income derived by her from the case land, the Petitioner for the first time filed certain accounts showing the income and expenditure in respect of the case land. During the time of hearing the Learned Counsel for the Opp. Parties raised vehement oral objection to the expenses shown in the accounts of the Petitioner. In the circumstances, in order to assess the actual liability of the Petitioner Receiver, it is necessary that the Opp.Party should file written objection and the question of liability shall be finally decided. Hence the Opp.Party is directed to file his written objection to the accounts submitted by the Receiver.

6. Certain developments and events, after institution of the writ petitions, are noted as follows:

(i) Vide order No. 13, dated 09.12.2003, opposite party No. 2, i.e., the Petitioner in the application u/s 68 was appointed as the Receiver which essentially supersedes the order of status quo passed on 30.04.2002 in Misc. Case No. 4818 of 2002. On 24.12.2003 that order was stayed by an order of status quo. On

12.02.2004 the interim Managing Trustee was impleaded as opposite party No. 3. On 02.03.2004 order was passed in Misc. Case No. 2555 of 2003 restoring the order dated 09.12.2003 (appointing opposite party No. 2 as the receiver) and directing opposite party No. 2 to take possession as per order dated 09.12.2003. On 01.09.2004 this writ petition was taken up analogously with O.J.C. No. 13183 of 2000 and W.P.(C) No. 1943 of 2003. There it was noted that parties to the proceeding amicably agreed to the following solutions to resolve the dispute:

(a) Commissioner of Endowments would conduct a summary enquiry to determine the market value of the property involved in O.J.C. No. 4646 of 2002 and on determination of such market value Petitioner shall deposit that amount with the Commissioner within a period of four weeks.

(b) Similar order, as above, was also passed with respect to the property in dispute in W.P. (C) No. 1943 of 2003.

(c) So far as O.J.C. No. 13183 of 2000 is concerned, it was noted that one Bikram Kumar Parida as the highest bidder had deposited a sum of Rs. 3,36,100/- in two instalments on 27.04.2001 and 04.05.2001. Since the writ Petitioner (in O.J.C. No. 13183 of 2000) contested on the factum of possession of the property and expressed his willingness to participate in a bid between him and said Bikram Kumar Parida, therefore, both the parties agreed that in between them the person who offers the highest amount would be entitled to title as well as possession on the basis of sale made in accordance with the order u/s 19 of the O.H.R.E. Act. Accordingly it was directed to determine the aforesaid amount deposited together with interest accrued as off-set price, with the further direction to the manner in which the further amount was to be deposited by the highest bidder.

(d) The Commissioner of Endowments was directed to submit a report after completing the aforesaid exercise.

(ii) On 05.11.2004 when three cases were taken up together with the report of the Commissioner, valuation of Ac.0.47 decimals of plot No. 493/1028 (OJ.C. No. 4646 of 2002) was determined at Rs. 25,00,000/- (twenty five lakhs) per acre whereas Ac.0.147 decimals of plot No. 493 was determined at rupees one lakh per acre. Similarly valuation of Ac.0.08 decimals in plot No. 401/25 was determined at Rs. 25,00,000/- (twenty five lakhs) per acre. The intervener in O.J.C. No. 4646 of 2002 and W.P. (C) No. 1943 of 2003 claimed that valuation of the property is more than Rs. 30 lakhs per acre and they are willing to deposit the amount at such minimum rate if the land is sold in their favour. To know bona fide in that offer, Court directed the interveners to file affidavit in support of such offer on valuation. On 10.12.2004 the following order was passed:

Mr. Padhi, Learned Counsel for the intervener-petitioner states that the price at the rate of Rs. 30,00, 000/- (rupees thirty lakh) per acre quoted by him and incorporated in Order No. 26, dated 5.11.2004 is on the basis of the instruction received from the said Petitioner. He further states that the intervener-petitioner is willing to purchase the entire extent of land measuring Ac.1.94 decimals on payment of Rs. 30, 00, 000/- (rupees thirty lakh), because he has no capacity to arrange fund more than that amount notwithstanding the fact that the price per acre is Rs. 30,00,000/?(rupees thirty lakh) so far as the case lands are concerned. We find that the said Petitioner is taking prevaricating stand at different times and therefore, to test the bonafide in his contention, we direct the intervenor-petitioner to deposit a sum of Rs. 10,00,000/- (rupees ten lakh) with the Registry of this Court by 15th of January, 2005, and thereafter we shall take up the issue and pass appropriate order.

On 17.01.2005 the intervener deposited Rs. 10,00,000/- (ten lakh rupees) vide A/c. Payee Cheque bearing No. 818691, dated 15.01.2005 drawn on Indian Overseas Bank, Puri.

(iii) On 24.08.2005 the intervener again stated that he is willing to purchase one acre of land at a price of rupees thirty lakhs per acre and unable to purchase the rest of the land from the disputed property in OJ.C. No. 4646 of 2002 because of lack of financial capacity.

(iv) On 07.02.2007, O.J.C.. No. 13183 of 2000 and W.P.(C) No. 1943 of 2003 were individually disposed of. In the first case the writ Petitioner agreed to purchase the disputed property of Ac.0.24 decimals on payment of rupees seven lakhs as against the highest bid amount of Rs. 5,76,000/- offered by him. Therefore, that O.J.C. stood dispose of on settling the price accordingly. In W.P.(C) No. 1943 of 2003 also the Petitioner agreed to purchase Ac.0.08 decimals of disputed land @ Rs. 30,00,000/- per acre and accordingly that writ petition was disposed of.

7. It appears from the aforesaid developments that notwithstanding determination of a low amount by the Commissioner of Endowments, the writ Petitioner in the other two writ petitions ultimately agreed to purchase the property in dispute on payment of price @ thirty lakhs per acre. We feel it proper to observe here that under law deity being a perpetual minor, its protector is the Management of the religious institution, and if they do not see to the well-being of the institution, then it is the Commissioner of Endowments who is to look to the best interest of the deity and the religious institution. The development in the case indicates that while submitting the valuation report the Commissioner of Endowments was not diligent to ascertain the actual market price. Be that as it may, ultimately the institution was benefited on parties coming forward to transact on the existing market price.

8. So far as O.J.C. No. 4646 of 2002 (the present writ petition) is concerned, the intervener represented by advocate Mr. Padhi in clear terms admitted his capacity to only purchase one acre of land and in fact a sum of rupees ten lakh has been deposited. But the Petitioner neither volunteered to purchase the property nor disclose or offered the market price. At the same time she resorted to various technicalities in course of the amicable settlement pursued by this

Court. The writ Petitioner wanted to purchase the property as per his own choice by covering the vital area facing to the road and by offering the same price which the intervener offered for one acre of land. To resolve the dispute, on 09.03.2007 two senior lawyers of the Court, who were Govt. Counsels, were deputed as Lawyer Commission to submit a report in terms of the order passed on that date. They submitted the report together with map, but the greediness of the Petitioner did not end. On the other hand Petitioner wanted that the writ petition should be heard and disposed of on merit.

9. The disputed property in O.A. No. 7 of 1990 u/s 68 of the O.H.R.E. Act and R.C. No. 31 of 1996 u/s 9 of the O.H.R.E. Act is plot No. 493 measuring Ac.1.47 decimals under Khata No. 112 and Plot No. 493/1028 measuring Ac.0.47 decimals under Khata No. 272/28 in mouza Alarapur. The total extent comes to Ac.l.94 decimals.

10. Application u/s 68 was filed by opposite party No. 2 as the Trustee of the deity Sri Alarnath Dev to take possession of that property from the writ Petitioner as ex-trustee. Petitioner contested that case on the ground of acquiring title and possession over the property by virtue of registered sale deed dated 07.12.1971. As noted earlier, the Asst. Endowment Commissioner found the transferor having no title to convey the property in favour of the writ Petitioner and apart from that the property being vested with the deity, any transaction without permission u/s 19 was found to be ab initio void and accordingly order was passed for possession in favour of the deity. Petitioner challenged that order before the Commissioner of Endowments in R.C. No. 3 of 1996 and the learned Commissioner of Endowments upheld the finding and the order of the Asst. Commissioner of Endowments. Various grounds have been taken in the writ petition, but while testing that issue under Article 227 of the Constitution of India, we are not required to go into the facts and in the absence of any illegality or perversity in the findings recorded by the tribunal below we find no reason to interfere with the order of possession in favour of the deity through the Trustee by evicting the Petitioner. Notwithstanding the greediness of the Petitioner, in course of our effort for an amicable settlement, we considered the whole case on its own merit without being influenced by such conduct of the Petitioner. The claim of title and possession through registered sale deed having been negatived by the Tribunal below and that order having been challenged here, we find such orders to be unassailable in the absence of any illegality or perversity. Accordingly the writ petition is dismissed.

11. Since certain developments, as noted earlier, have taken place, therefore while disposing the writ petition we issue the following directions and make the following observations for compliance by the Commissioner of Endowments, Orissa and his subordinate officers and also the Trustees of the deity Sri Alamath Dev.

(i) Possession of the property having gone to opposite party No. 2 as the trustee and the receiver, if he is no more continuing as the trustee of the deity, then possession be handed over to the Managing Trustee of the deity within a fortnight from the date of receipt of a copy of this order by the Commissioner of Endowments. The Revenue Authorities and the Police Authorities, if required, be requisitioned to do the needful to implement this direction.

(ii) Mr. P.K. Padhi, advocate on behalf of the intervener has already offered a sum of rupees thirty lakhs towards the price. Therefore, if he submits a proposal consistent with his proposal before this Court offering the price not below rupees thirty lakhs, then the Commissioner of Endowments shall pass necessary order u/s 19 for transfer of such land in favour of the intervener. At that stage if the writ Petitioner also offers a better price than the intervener, for retaining the whole area, then that may be favourably considered by the Commissioner of Endowments provided 1/4th of such price is deposited in advance with an undertaking to pay the balance amount within a period not exceeding six weeks from the date of finalization of the deal.

(iii) If the Petitioner and the intervener both offer similar price, then the Commissioner shall arbitrate and divide the area facing to the road at the ratio of 40% in favour of the intervener and 60% in favour of the Petitioner and carve out the extent of land purchased by them. In that case if the Petitioner does not offer to purchase the entire 94 decimals of land or the intervener does not propose to purchase the area of one acre as proposed by him, then both of them or any of them, who deposits in the above indicated manner, be provided with the land in the backside with a fifteen feet width road allotted to his share from the main road up to the plot and such area be also adjusted to that area.

(iv) If all such possibilities do not work out, then the learned Commissioner of Endowments shall get the property plotted with the provision of roads and fix the valuation of plots accordingly so that the valuation of the land within a period of three months is not less than@ Rs. 30,00,000/- (thirty lakhs) per acre. The valuation be enhanced in case of subsequent purchasers who have to afresh apply u/s 19. The Commissioner of Endowments shall see that the disputed property is kept under proper protection by construction of compound wall, fencing, etc. so as to prevent encroachment and the Managing Trustee shall be diligent in that respect. In the event of slackness or negligence of the Managing Trustee, the Commissioner of Endowments in exercise of his power under Sections 7 and 8, as the case may be, shall take appropriate steps to take care of the religious institution and its property by competent persons.

N. Prusty, J.

12. I agree

