

(2025) 04 OHC CK 1405
In the Orissa High Court
Case No : RVWPET No. 200 Of 2018

Santosh Mishra And Others

APPELLANT

Vs

Sukadev Dash (Deceased) And Other Vs

RESPONDENT

Date of Decision : 10-04-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Orissa Hindu Religious Endowments Act, 1951 — Section 27, 41

Citation : (2025) 04 OHC CK 1405

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : Rabindra Kumar Sahoo, A.K. Mishra, S. Mishra, A. Mishra

Final Decision : Dismissed

Judgement

S.S. Mishra, J

1. The present review petition is directed against the order dated 16.05.2014 passed by the learned Single Judge of this Court in W.P.(C) No. 9687 of 2014, whereby the writ petition has been disposed of quashing the impugned order dated 31.03.2014 passed by the Additional Assistant Commissioner of Endowments, Cuttack and granting liberty to the parties to resort to the remedy under Section 41 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the "The Act, 1951").

2. The defendants in the writ petition had approached the Hon'ble Supreme Court by filing S.L.P.(Civil) Dairy No. 24901 of 2018, Santosh Mishra and others vrs. Sukadeb Dash and others. The Hon'ble Supreme Court vide order dated 13.08.2018 dismissed the S.L.P. as withdrawn and passed the following order:-

"The learned counsel for the petitioners seeks leave to withdraw this Special Leave Petition so as to approach the High Court by way of a Review Petition. Permission is granted.

The Special Leave Petition is, accordingly, dismissed as withdrawn.”

3. Pursuant to the aforementioned liberty granted by the Hon’ble Supreme Court, the present review petition has been filed.

4. The brief background of this case is that the present petitioners had earlier approached this Court by filing W.P.(C) No.4358 of 2012 challenging the inaction of the Additional Assistant Commissioner of Endowments in not disposing of their application filed under Section 27 of the Act for appointment of non-hereditary Trust Board in respect of the institution, i.e., Sri Ananta Madhab Jew, Bije, Malhasahi of Jagatsinghpur on the assertion that the said institution is a temple having no hereditary trustee.

5. This Court vide order dated 16.07.2013 disposed of the said writ petition directing the Additional Assistant Commissioner of Endowments, Cuttack to decide the application under Section 27 of the Act within a period of six months.

6. Pursuant to the aforesaid order of this Court, the Additional Assistant Commissioner of Endowments, Cuttack has disposed of the application under Section 27 of the Act filed by the petitioners inter alia arrived at a finding that the institution is a public temple that the ancestors of the persons in management were not the founder of the temple. Accordingly, the predecessors of the respondents in the writ petition are not the non-hereditary trustee of the temple.

7. The predecessors of the respondent to this writ petition, namely, Sukadev Dash assailed the order dated 16.07.2013 passed by the Additional Assistant Commissioner of Endowments, Cuttack by filing W.P.(C) No. 9687 of 2014.

8. The learned Single Judge of this Court disposed of the aforesaid writ petition inter alia observing as under:-

“During the course of hearing, it is submitted by the learned counsel for the petitioner that disregarding the effect of different earlier orders passed by the endowment authorities in respect of the institution concerned and to give a finding that the institution is a public temple without hereditary trustee, could have been given only under section 41 of the OHRE Act, 1951 and not under section 27 of the Act.

Learned counsel for the O.Ps do not dispute this proposition. It is, however, submitted by Mr. Das, learned senior counsel appearing for O.Ps. 1 to 7 that the opposite parties could still initiate a proceeding under section 41 of the Act for which there is no bar.

Learned counsel for the petitioner does not dispute that a proceeding under section 41 of the 1951 Act can be initiated and all questions including the question of res judicata can be raised in the said proceeding.

In view of the aforesaid submissions, the order dated 31.3.2014 passed by the learned Additional Assistant Commissioner of Endowments, Cuttack (O.P.8) is

quashed. It is directed that in the event any proceeding under section 41 of the 1951 Act is filed in respect of the institution, the same shall be considered by the learned Additional Assistant Commissioner of Endowments, Cuttack (O.P.8) on its own merits and disposed of in accordance with law without being influenced by the observation and findings given in the impugned order.

The writ petition is thus disposed of.

Consequently the Misc. Case No.8668 of 2014 also stands disposed of.”

9. The learned Single Judge of this Court in effect arrived at a conclusion that the issue in lis could only be determined in a proceeding under Section 41 of the Act, but not under Section 27 of the Act. This position of law is undisputed by both the parties. The impugned order dated 31.03.2014 passed by the Additional Assistant Commissioner of Endowments, Cuttack being an order passed under Section 27 of the Act, the same has been set aside by the learned Single Judge. The learned Single Judge also granted liberty to resort to the remedy under Section 41 of the Act, if so advised and directed the Additional Assistant Commissioner of Endowments to decide the application, if preferred under Section 41 of the Act without being influenced by the observation made therein. The said order of the learned Single Judge dated 16.05.2014 was subjected to challenge by the petitioners in the present

review petition by obtaining liberty from the Hon’ble Supreme Court in the SLP, as mentioned above.

10. The petitioners herein have preferred the review petition by relying upon certain earlier orders passed by the Additional Assistant Commissioner of Endowments. The primary ground urged by the petitioners reads as under:-

“11. That, it is pertinent here to mention that it creates doubt in as much as the caveat petition was filed on 13.05.2014, the W.P.(C) No.9687/2014 was filed on 14.05.2014, the W.P.(C) was listed on 16.05.2014 and on the very same date was disposed of allowed with the prayer against the petitioners when there was no instruction advanced to the counsel of the petitioners and that too the brief was not handed over to the counsel except a vakalatnama for the purpose of filing caveat petition.

12. That, it is crystal clear that it was the outcome of the action taken by the counsel in negligent, inadvertent and superfluous manner and for such latches on the part of the lawyer the parties cannot be allowed to suffer.

13. That, the matter resolves around the fraudulent and back door business in as much as in existence of an order u/s. 6(13) of ORHE Act, 1939 declaring the institution, a public temple, fresh declaration under section 41 of O.H.R.E Act, 1951, is urged, Section 6(13) of 1939 Act, is a parimateria to section 41 of 1951 Act.

14. That, the case having been decided without full consideration of arguments

made by the counsel and the order passed on exceptional circumstances, it is a fit case for review, since the order frustrates the ends of justice.”

11. This Court heard Mr. Rabindra Kumar Sahoo, learned counsel for the review petitioners and Mr. Amiya Kumar Mishra, learned counsel for the opposite parties extensively. The counsel for the review petitioners were specifically put to the question as to whether the ground urged, as reproduced above, falls under Order 47 of C.P.C.? This Court could not get a satisfactory reply. The order of the learned Single Judge which is sought to be recalled by the petitioners is an order giving opportunity to the parties to resort to the remedy under Section 41 of the Act. Since the Additional Assistant Commissioner of Endowments has already decided the issue in subject by resorting to Section 27 of the Act, the learned Single Judge has set aside the same asking the parties to resort to the right remedy. The parties to the proceeding have also conceded to the fact that the nature of dispute raised by the parties could only be decided under Section 41 of the Act. Therefore, there is no error apparent on record which needs to be reviewed by this petition.

12. In view of the aforementioned, this Court is of the considered view that the ground urged by the petitioners in the review petition is not falling under any rule to the Order 47 C.P.C.

Therefore, the review petition deserves no merit. Accordingly, the same is dismissed.

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