(1954) 08 OHC CK 0002

In the Orissa High Court

Case No : F.A. No. 57 of 1950

Sarat Kumar Mohanty and Others — APPELLANT

Vs

Gourhari Samantaray and Gour Chandra Das — RESPONDENT

Date of Decision : 04-08-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Orissa Hindu Religious Endowments Act, 1951 — Section 11, 38, 39, 39(1), 39(3)

Citation : (1955) 21 CLT 93

Hon'ble Judges : Panigrahi, C.J;Mohapatra, J

Bench : Division Bench

Advocate : D. Mohanty, for the Appellant; L.K. Das Gupta, H.C. Mukharjee and S.C. Parija, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C.J.—This appeal arises out of a suit filed by the hereditary trustee of a deity by name Gopinath Jieu of village Khantpara in District Cuttack, for a declaration that the order passed by the Commissioner of Hindu Religious Endowments, Orissa, (who was Defendant No. 5 in that suit) is ultra vires and not binding upon the Plaintiffs. The first Plaintiff is the hereditary trustee and the second Plaintiff is the deity Gopinath Jieu. Defendants 1 to 4 are the associate trustees appointed by the Commissioner of Hindu Religious Endowments, Orissa.

2. The short facts are that a scheme had been framed u/s 92 of the CPC in a suit filed by the villagers against the trustee of the deity, in O.S. 11 of 1939 on the file of the District Judge, Cuttack. In accordance with that scheme the learned District Judge directed that Plaintiff No. 1 being the hereditary trustee of the endowment "will continue in the management of the affairs of this temple subject to the supervision and orders of the committee". This scheme, however, it is alleged, did not work satisfactorily and the Commissioner of Hindu Religious Endowment wanted that some alternative arrangement should be made for the satisfactory management of the temple. Accordingly, by an order dated 24-5-47

(Ext. 4) the Commissioner appointed Plaintiff No. 1 and Defendants 1 to 4 as associate trustees and empowered them to elect a managing trustee from among themselves. This order purports to have been passed u/s 11 of the Orissa Hindu Religious Endowments Act. The Plaintiffs thereupon filed the suit (out of which the present appeal arises) for a declaration that the Commissioner exceeded his powers by authorising the associate trustees to appoint a managing trustee, whereby the Plaintiff No. 1 has-been removed from his hereditary office.

3. The learned Subordinate Judge who tried the suit has accepted the contention of the Plaintiffs and decreed the suit. The Defendants have come up in appeal against this judgment.

4. The only point urged before us by Mr. Mohanty learned Counsel for the Appellants is that Section 11 of the Orissa Hindu Religious Endowment Act is comprehensive enough to include the power to remove a hereditary trustee for a temporary period, pending the framing of a scheme. He has particularly relied on the Explanation to that Section which reads as follows

The general powers of superintendence of the commissioner shall include the power to pass such interim orders as he deems necessary, in the interests of the proper maintenance of the math or temple, or the administration of a religious endowment.

The Explanation must, however, be read subject to the opening words of Section which are as follows

Subject to the provisions of this Act and of any rules made under it and of any scheme settled, or deemed to be a scheme settled under this Act, the general superintendence of a religious endowment shall vest in the Commissioner and he may do all things which are reasonable and necessary to ensure that the maths and temples are properly maintained and that all religious endowments are properly administered.

Section 57 of the Act declares that any scheme settled u/s 92 of the CPC shall be deemed to be a scheme settled under the Orissa Hindu Religious endowments Act, and such scheme may be modified or cancelled in the manner provided by the Act. The procedure prescribed by the Act for the settlement of a scheme is laid down in Section 39. Section 38 says that the Commissioner should first make a preliminary enquiry into alleged mismanagement of the endowment and such enquiry should be held by a tribunal consisting of himself and one or more persons to be appointed by the State Government, Section 39(1) lays down how a scheme should be settled, after the enquiry is made, for the proper administration of the trust. Section 39(3) provides that a scheme framed u/s 92 of the CPC may be modified or cancelled in the manner provided in Sub-section (1) of Section 39.

5. Admittedly, in the present case, the above procedure has not been followed. Nor did the Commissioner undertake any enquiry either prior or subsequent to

his order dated 24-5-47. Mr. Mohanty, however, contends that inasmuch as the Commissioner purported to act under Sect ion 11 of the Act, which enables him to pass any interim orders in the interests of the general administration of the endowment, his order must be deemed to be an interim order. This, however, is to beg the question. If the Commissioner had started a preliminary enquiry u/s 38, or if he had in contemplation a modification of the scheme u/s 39, it was open to him to exercise such interim powers as were reasonable and necessary for the due management of the temple. But, what the Commissioner appears to have done is to dispose of the matter in a summary way without any enquiry and without having the remotest idea of framing a scheme at any time. It seems to me that he was labouring under a mistaken impression that Section 11 is an over-riding Section and that all other provisions of the Act must be read as subordinate to it. Such a reading of the Section is clearly erroneous. 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 sewed or deemed to be a scheme settled under it.

6. Our attention was drawn to the case of Lakshmi Narayana v. Subbayya in which Horwill J. held that it was open to the Board and such an interim order may involve the suspension of the rights of the hereditary trustee. That case is clearly distinguishable on facts as admittedly there was an enquiry pending at the time when the interim order was passed. There is however a decision of a Division Bench of that Court Board of Commissioners v. Palani Andi which bears directly on the point. In that case it was held that under the Madras Hindu Religious Endowments Act there is no power in the Board to exclude the trustees of an Excepted Temple even for a short period, from taking an active part in the management of the trust. We are inclined to follow the reasoning adopted by Their Lordships of the Madras High Court in this case, as it appears to be more in consonance with the spirit and language of the Act.

7. We are accordingly satisfied that the power vested u/s 11 of the Orissa Hindu Religious Endowments (Sic on the) Endowment Commissioner has not been properly exercised by him in this case add that the action of the managing committee in appointing a new managing trustee has virtually amounted to a dismissal of the hereditary trustee and that it must according be held to be illegal. The Commissioner''s order purporting to vest such a power on the managing committee must, as a consequence, also be pronounced ultra vires.

8. In the result, the judgment of the learned Additional Subordinate Judge is affirmed and this appeal is dismissed with costs.

Mohapatra, J.

9. I agree.

