

(2023) 01 OHC CK 0149
In the Orissa High Court
Case No : Writ Petition (C) No. 2606 Of 2023

Smt. Amratalini Das

APPELLANT

Vs

Commissioner Of Endowments And Others

RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:

Odisha Hindu Religious Endowments Act, 1951 — Section 7, 12, 25

Citation : (2023) 01 OHC CK 0149

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : M.K. Dash, P. Naidu, P.K. Rath

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Dash, learned advocate appears on behalf of petitioner and submits, impugned is order dated 7th January, 2023 made by the Commissioner directing his client's eviction by authorizing the Inspector of Endowments to enter into the premises and take all necessary steps for vacating two rooms under his client's occupation, with police help if required. He submits, his client had earlier filed civil suit and obtained status quo order. Yet, impugned order was made. He submits further, section 25 in Odisha Hindu Religious Endowments Act, 1951 directs summary enquiry. Such was not made, inasmuch as no notice was given to his client.

2. Miss. Naidu, learned advocate appears on behalf of the Commissioner and submits, opportunity of hearing was given. However, she prays for adjournment to obtain instructions.

3. Mr. Rath, learned advocate appears on behalf of opposite party no.3 and submits, his client is interested in executing impugned order. Suit filed by petitioner is in respect of different premises. No interference is warranted.

4. We reproduce below text of impugned order.

"Since the lessee Smt. Amrutalini Das, W/o-Late Ganganarayan Das has failed to handover the possession of two rooms existing in Khata No.395, Plot No.414 and Plot No.416 of mouza-Dolamandap Sahi, Puri to Mahant Sri Parsuram Das, Hereditary Trustee of the above institution after expiry of the lease period since 2014 the Commissioner of Endowments, Odisha, Bhubaneswar in exercise of power conferred U/S 12 read with Section-7 of the OHRE Act 1951 do hereby authorize the Inspector of Endowments, Puri-1 I/c of Puri-II to enter in to the premises of the institution and take all necessary steps for vacation of the two rooms of the math under occupation of Smt. Amrutalini Das.

He is authorized to take police assistance if required for the purpose."

(emphasis supplied)

5. It appears the Commissioner invoked sections 12 and 7 for evicting petitioner. Section 7 provides for power and duties of the Commissioner and section 12, for power to enter religious institutions on being authorized by the Commissioner, for purpose of exercising any power conferred, or discharging any duty imposed, by or under the Act. As aforesaid, power and duties of the Commissioner have been provided in section 7. Section 12 therefore is the executing power of the Commissioner, through a person duly authorized in that behalf by the office. Considering that there is separate section 25 regarding, inter alia, eviction of unauthorized occupants in premises belonging to an institution, impugned order made in exercise of power in sections 12 and 7 cannot be sustained.

6. Impugned order is set aside and quashed. This will not prevent the institution from taking steps for recovery of possession in event occupation of the two rooms is found to be unauthorized.

7. The writ petition is disposed of.

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