
(2005) 08 OHC CK 0041
In the Orissa High Court
Case No : Writ Petition (C) No. 1075 of 2003

Smt. Sabitri Sahu

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Hindu Religious Endowments Act, 1951 — Section 19, 25, 25(1)

Citation : (2005) 08 OHC CK 0041

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : S. Misra for Petitioner 2, S. Mantry, A.K. Mishra, A.K. Sharma, M.K. Dash, R.N. Prusty and P.K. Dash, for the Appellant; A.K. Rath, A. Routray and U.R. Bastia, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. This writ petition stands disposed of at the stage of admission after notice on consent of the parties.

3. Opp. Party No. 7 in O.S. No. 26 of 1994-II u/s 25 of the Orissa Hindu Religious Endowments Act, 1951 (in short, "the Act") has filed this writ petition challenging to the judgment delivered on 27.7.2002 by the learned Commissioner of Endowments, Orissa. It appears from the impugned order that the managing trustee of the public religious institution applied for recovery of possession of Schedules A and B landed properties inter alia on the assertion that opposite parties 1, 2, 3 and 6 while in possession of such properties in lieu of rendering services, they illegally sold away such properties to opp. Parties 4, 5 and 7 through registered sale deeds and in that respect no prior permission u/s 19 of the Act was obtained from the Commissioner of Endowments. During pendency of the proceeding the opp. party No. 6 died and was substituted by her legal heir i.e. opp. Party No. 7. None of the opposite party-members, in spite of

providing opportunities, filed any written statement or adduced evidence before learned Commissioner of Endowments.

4. Be that as it may, in course of hearing and recording of evidence from the side of the Petitioner before the Court below, the opp. party No. 7 i.e. the writ Petitioner participated in the hearing and cross-examined the witnesses examined on behalf of the claimant-Petitioner. On assessment of evidence on record and the documentary evidence, such as Records of Right Exts. 1 and 1/a, learned Commissioner of Endowments recorded the finding that the property belongs to the deity and that was in possession of the Sebayats, who rendered the services to the deity and the landed properties were sold illegally and in violation of provision of Section 19 of the Act. Accordingly, learned Commissioner of Endowments passed order to evict Opp. Parties 4 and 5 from the Schedule-A land and the opp. party No. 7 from the Schedule-B land and to restore the said land to the possession of the Petitioner-deity through its managing trustee. As noted above, opp. party No. 7 in that proceeding has filed this writ petition challenging to the order passed by the Endowment Commissioner directing eviction of the Petitioner from the Schedule-B property.

5. Mr. S. Mishra-2 learned Counsel appearing for the Petitioner argues that endorsement in the R.O.R. Ext. 1/a clearly indicates that the property under Schedule-B was settled with Kali Sahoo on sthitiban status and the Jamindar had settled the land and exempted payment of rent in lieu of supplying the Balbhog to the deity. He further argues that once the status of transferor of opp. party No. 7 was that of sthitiban rayat and the arrangement of the above indicated manner relating to payment of rent is made, therefore, in view of the ratio in the case of Dayanidhi Naik Vs. Mangala Thakurani and Another, , the property belonging to the Sebayat- Kali Sahoo and his descendants cannot be regarded as endowed property. He further argues that in view of fact situation and position of law as stated above, the order passed u/s 25(1) of the Act with respect to the Schedule-B property is illegal and liable to be set aside.

6. On behalf of learned Counsel appearing for the Commissioner of Endowments (Opp. Party No. 1) and the Managing Trustee (Opp. Party No. 3), argument is advanced that finding recorded by learned Commissioner is on the basis of evidence available on record. The Records of Right with respect to Schedule-B property was correctly read with due reference to the evidence on record of P.W. 1, who was subjected to cross-examination by the writ Petitioner and in course of cross-examination the writ Petitioner also suggested about the nature of land given for providing balbhog and not projecting a case or advancing the plea that balbhog was supplied in lieu of the rent for possessing such land. In such circumstance, a new case cannot be made out before the Writ Court and the factual finding being neither illegal nor suffering from perversity, the matter cannot be effectively adjudicated under Articles 226 or 227 of the Constitution of India.

7. Upon considering all the aforesaid submissions and on perusal of the evidence

on record, we find that the contentions advanced by the Petitioner is devoid of merit inasmuch as there is no adequate evidence on record to prove that balbhog was directed to be supplied in lieu of the rent of the land. Be that as it may, the person who is competent to speak about the nature of the settlement was the person who was settled with the land, and, they are the sebayats. Such persons have not come forward to depose anything much less filing of written statement advancing such a plea. Therefore, contention of the managing trustee asserting right over the property and claiming that to be service tenure land in the hands of sebayats having remained uncontroverted, the entry in the ROR does not clearly establish the claim of the Petitioner, which has been before us in course of argument. Under such distinguishable facts situation, we do not find applicability of the ratio in the case of Dayanidhi Naik (supra) so far as the present case is concerned. In the absence of any illegality or perversity recorded in the finding of the Commissioner, we are not inclined to invoke our jurisdiction to interference with the impugned order.

8. Accordingly, the writ petition stands dismissed. Under the given circumstances, we direct the parties to bear their respective costs of litigation in this Court.