

(2016) 09 OHC CK 0015
In the Orissa High Court
Case No : W.P.(C) No. 6806 of 2016

Sri Antaryami Dash

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
ORISSA HINDU RELIGIOUS ENDOWMENTS Act, 1951 — Section 19A, Section 76
Orissa Hindu Religious Endowments Rules, 1959 — Rule 4A

Citation : (2016) AIRCC 3365 : (2016) 2 ILRCuttack 1021

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Sidharth Pr. Das-A and Amit Kumar Nath, Mr. C.A. Rao and Mr. Manoj Mishra (Amicus Curie), Advocates, for the Opp. Parties No. 2 in W.P.(C) No.7013 of 2016; M/s. Rajjet Roy, R. Routray, S.K. Singh and S. Sourav, Advocates, for the Petitioners in W.P.(

Final Decision : Disposed Off

Judgement

S.N. Prasad, J. - In both the writ petitions common issues are involved and as such both the writ petitions have been heard together and this common judgment is passed.

This court vide order dated 20.07.2016 in W.P.(C) No. 7013 of 2016 has requested learned senior counsels Mr. C.A. Rao and Mr. Manoj Mishra to assist the court so far as Section 19-A of Orissa Hindu Religious Endowments Act along with Rules and in view thereof both the learned senior counsels after taking much pain have assisted the court at length.

The order passed by the Commissioner of Endowments, Odisha, Bhubaneswar refusing to grant no objection certificate U/s.19-A of the Orissa Hindu Religious Endowments Act, 1951 (OHRE Act, 1951) is under challenge. The issue fell for consideration in these writ petitions is:-

"As to whether requirement of no objection certificate in order to sell the

property of private family deity is necessary?"

2. The brief facts of the case of petitioners in W.P. (C) No.7013 of 2016 is that the founder of deity/institution had donated a piece of land which has been recorded in the name of the deity and when the petitioners needed huge amount of money for their personal purposes they wanted to sell the schedule land and when the petitioners approached the Sub-Registrar for the purpose of registration of the said land in the name of the purchaser, the Sub-Registrar insisted upon no objection certificate from the court of Commissioner of Endowment, Odisha, Bhubaneswar. So a petition has been filed before the Commissioner of Endowment U/s. 19-A of the Orissa Hindu Religious Endowments Act, 1951 with a prayer to issue no objection certificate in favour of the petitioners to sell the schedule land for their personal purposes but the Commissioner, Endowment has passed order refusing to grant no objection certificate.

3. The fact of the case of petitioners in W.P. (C) No. 6806 of 2016 is that the petitioners have made an application to issue no objection certificate to sell the schedule land recorded in the name of Shree Gobinda Gopinath Jew. According to the petitioners the schedule land stood recorded in the name of father of petitioner nos.1 to 3 as well as in the name of petitioner no. 4 as Marfatdar of the case deity with Sthitiban status. The schedule land was purchased by the fore-fathers of petitioner nos. 1 to 4 out of their personal funds. The case deity was being worshipped inside the residential premises of the petitioners as their private family deity. The case deity being the private family deity of petitioner nos. 1 to 4, they wanted to sell/transfer the schedule land to the intended purchaser to meet their legal necessity, but the local Registering Authority refused to register the proposed sale deed in respect of the case land and insisted upon them to obtain "No Objection Certificate" from the Commissioner of Endowments, Odisha, Bhubaneswar U/s.19-A of the O.H.R.E. Act and therefore the petitioners have approached the Commissioner of Endowment who has framed three issues, one of them is "as to whether the case deity/institution is the private family deity of the petitioners?" and after discussing evidence in this regard has come to conclusion that the case deity/institution cannot be accepted as the private family deity of the petitioners as claimed by them and hence the petition U/s.19-A of O.H.R.E. Act, 1951 is not maintainable in the eye of law and accordingly held the petitioners not entitled to avail the compensation amount awarded and deposited in favour of the case deity/institution.

Thus in the writ petition being W.P.(C) No. 7013 of 2016 the issue is with respect to selling of the property of private family deity wherein conscious finding has been given by the Commissioner of Endowment that it is the private family deity while in W.P.(C) No.6806 of 2016 the finding given by the Commissioner of Endowment is that the deity is a public deity, hence in these two factual aspects both the cases have been taken for their final disposal.

4. Before dealing with the issues, it would be relevant to discuss certain

provisions of Orissa Hindu Religious Endowments Act, 1951, these are short title, extent, application and commencement of the Act. Section 1 contains short title, extent, application and commencement which speaks as follows:-

"1. Short title, extent, application and commencement ? (1) This Act may be called the Orissa Hindu Religious Endowments Act, 1951.

(2) It extends to the whole of the State of Orissa and applies to all Hindu public religious institutions and endowments.

Explanation I - In this sub-section Hindu public religious institutions and endowments do not include Jain or Buddhist public religious institutions and endowments but include Sikh public religious institutions and endowments.

(3) It shall come into force on such date as the State Government may, by notification, direct."

The definitions of "religious endowment" or "endowment" as defined U/s.3(xii) of the Orissa Hindu Religious Endowments Act, 1951 which speaks as follows :-

"3(xii) "religious endowment" or "endowment", means all property belonging to or given or endowed for the support of maths or temples or given or endowed for the performance of any service or charity connected therewith or of any other religious charity, and includes the institution concerned and the premises thereof and also all properties used for the purposes or benefit of the institution and includes all properties acquired from the income of the endowed property:

Provided that gifts of immovable properties made as personal gifts to hereditary trustee of a math or temple or the archaka, sevaka, service-holder or other employee of a religious institution shall not be so included, if the donee has been possessing and enjoying the same as a separate and distinct identity all along;

Explanation I - Any jagir or inam granted to an archaka, sevaka, service-holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the said archaka, service-holder or employee but shall be deemed to be a religious endowment;

Explanation II - All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction, or the service or charity has ceased to be performed :

[Provided that this Explanation shall not be deemed to apply in respect of any property which is vested in any person before the commencement of this Act by the operation of the law of limitation;]

Explanation III - Where an endowment has been made or property given for the support of an institution which is partly of religious and partly of a secular character or where an endowment made or property given is appropriated partly religious and partly to secular uses, such endowment or property or the income therefrom shall be deemed to be a religious endowment and its administration shall be governed by the provisions of this Act."

It is evident after going through the provisions of 'religious endowment' or 'endowment' which means all property belonging to or given or endowed for the support of maths or temples, for the performance of any service or charity connected therewith or of any other religious charity and includes the institution concerned and the premises thereof and also all properties used for the purposes or benefit of the institution and includes all properties acquired from the income of the endowed property, meaning thereby if any property has been endowed by any body by way of devotion towards a deity, the property is to be used for all practical purposes for the benefit of the deity. It is also evident from the definition that the moment the property will be endowed for the support of maths, the person who is endowing the property will cease his right, title and claim over the said land.

Section 19 which provides provision of alienation of immovable trust property speaks as follows:-

"Section 19 - Alienation of immovable trust property- (1) Notwithstanding anything contained in any law for the time being in force no transfer by exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned.

[Explanation-A lease for a term not exceeding five years but with a condition of renewal permitting continuance of the lease beyond five years shall, for the purposes of this sub-section, be deemed to be a lease for a term exceeding five years.

(1 -a) The fact of execution of a lease deed with a condition for renewal or renewal of such a deed shall be communicated to the Commissioner by the Trustee not later than fifteen days from the date of execution.

(1-b) After expiry of the term of the lease the lessee shall deliver possession of the leasehold land to the lessor, failing which, the Commissioner may take action in accordance with the provision of Section 68 :

Provided that all structures, permanent or temporary, if any, constructed plants and machineries and other things installed and kept on the leasehold land, which is a subject-matter of a lease executed after commencement of the Orissa Hindu Religious Endowments (Amendment) Act 22 of 1989 by the lessee, his servants

or agents, shall become the property of the religious institution unless removed from the land within such period, as may be prescribed, after expiry of the term of lease, in respect of which the Commissioner shall take action under the provision of Section 68.

(1 -c) Notwithstanding anything contained in the proviso to Sub-section (1-b), no property belonging to a person other than the lessee shall be subjected to confiscation under the said proviso, unless such person fails to remove his property within a period of thirty days from the date of publication of a notice which shall be issued by the Trustee within such period as may be prescribed after the expiry of the term of lease :

Provided that any person whose property is affected under Sub-section (1-c), may file an application to the Commissioner claiming the property whose decision shall, subject to the decision of the Civil Court, be final.]

(2) In according such sanction, the Commissioner may declare it to be subject to such conditions and directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period,

(3) A copy of the order made by the Commissioner under this section shall be communicated to the State Government and to the trustee and shall be published in such manner as may be prescribed.

[(4) The trustee may, within thirty days from the date of receipt of a copy of the order and any person having interest may, within thirty days from the date of publication of the order, appeal to the State Government to modify the order or set it aside :

Provided that appeals from the orders communicated or published prior to the date of commencement of the Orissa Hindu Religious Endowment (Amendment) Act, 1980 shall lie within a period of three months from the date of communication or, as the case may be, publication of the order or within a period of thirty days from the commencement of the said Act whichever period expires earlier.

(5) In any case where appeal has not been made to the State Government it appears to the State Government [Inserted vide O.A. No. 22 of 1989.] [that the alienation is not necessary or beneficial to the institution, or] that the consideration fixed in respect of the transfer by exchange, sale, mortgage or lease for a term exceeding five years of any immovable property is inadequate, they may, within ninety days from the date of the receipt of the order communicated to them under Sub-section (3) or the date of the publication of the order whichever date is later, call for the record of the case from the Commissioner and after giving an opportunity of hearing to the parties concerned, revise the order of the Commissioner :

Provided that in any case where the transfer has not been effected in pursuance of the order of the Commissioner under Sub-section (1), the State Government may exercise the aforesaid power even after the expiry of ninety days from the date of such order.

(6) The State Government may, by order, stay execution of the deed of transfer in respect of the immovable property which form the subject-matter of an appeal or revision till the disposal of the appeal, or as the case may be, the revision.

(7) The order of the Commissioner made under this section shall, subject to orders, if any, passed in an appeal or revision, be final.]"

After going through the provisions of Section 19 the alienation of immovable trust property has been barred but, however, subject to condition that in case if sanction to dispose of the property has been granted by the Commissioner as being necessary or beneficial to the institution, then only the immovable trust property can be alienated.

The provision further transpires that Section 19 deals with the property which has been endowed by a person and having been given under custodian of a trust and in order to put restriction upon the trust to dispose of the property which has been endowed by the person for the benefit of deity or for benefit of the institution, the same cannot be disposed of without seeking sanction from the Commissioner of Endowment, thus the alienation of immovable property has been allowed for any religious institution whose property is being taken care of by a trust.

Section 19-A provides provision for regulation of registration of documents which speaks as follows:-

"Section 19A - Regulation of registration of documents - Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under Section 17 of the Registration Act, 16 of 1908, purports to evidence a transfer, by exchange, sale, mortgage or by lease for a term exceeding five years, of any immovable property belonging to or given or endowed for the purpose of any public religious institution, no Registering Officer, appointed under that Act, shall register any such document unless the transfer or produces before such Registering Officer, the sanction order passed by the Commissioner under Section 19, or, as the case may be, no objection certificate in the prescribed form granted by the Commissioner or any Officer authorised by him in that behalf:

Provided that a no objection certificate granted under this sub-section shall not be a bar to a dispute or abate any dispute, if pending under Section 41:

Provided further that a no objection certificate shall be deemed to have been granted, if the Registering Officer is satisfied that the transfer or having applied for grant of no objection certificate to the Commissioner or the authorised officer, as the case may be, has not received the same within three months from the

date of the application under Section 19 is moved before the Commissioner and that the application has not been rejected before expiry of that period."

From perusal of the provision as contained in Section 19-A, it is evident that apart from sanction of the Commissioner of Endowment as required U/s.19 a "No Objection Certificate" is required to be produced before the Registering Authority for registration of the land in case of transfer of property of any public religious institution.

The State of Orissa in exercise of power conferred U/s.76 of Orissa Hindu Religious Endowments Act, 1951 and in consonance of all Rules on the subject, makes a Rule, known as the Orissa Hindu Religious Endowments Rules, 1959 which contains a provision under Rule-4-A which provides provision of procedure for obtaining "No Objection Certificate" U/s.19-A which speaks as follows:-

"4A-Procedure for obtaining No Objection Certificate under Section 19-A ? (1) For the purpose of obtaining necessary No Objection Certificate from the Commissioner for production before the Registering Officer for registration of document purporting to evidence, transfer, exchange, sale or mortgage or lease for term exceeding 5 years, of any immovable property belonging to or give or endowed for the purpose of any religious institution on the ground that it is not public religious institution for which it does not require sanction U/s.19 of the Act, an application shall have to be filed by the person/persons in control or charge over the immovable property and the institution in the manner prescribed in Rules 34 to 41 of these rules.

(2) On receiving such application, the Commissioner shall issue notice for information of general public together with copy of the application filed under Sub-rule (1) to be published in a conspicuous place of the Office of the Urban or Rural local bodies as the case may be under whose jurisdiction the property is situated and at such other place as the Commissioner deems fit and proper, inviting objection to the said application to be received within one month from date of publication of such notice.

(3) On receiving the objection if any, within the stipulated period and after giving reasonable opportunity of hearing to the parties if the Commissioner is prima facie satisfied that the institution in question is not a public religious institution for which no sanction under section 19 of the Act is required, he shall grant "No Objection Certificate" in Form AA to these rules."

From perusal of provision of Rule-4A it is evident that for getting registration of the land of public religious institution for its transfer, an application has to be filed by the religious institution before the Commissioner of Endowment for getting "No Objection Certificate" on the ground that it is not a public religious institution for which it does not require sanction U/s.19 of the Orissa Hindu Religious Endowments Act, 1951.

After going through these statutory provisions it is evident that Legislature has

made provision for transfer of immovable property of the public religious institution but subject to condition as laid down U/s.19 to get sanction from the Commissioner of Endowment and for getting the property registered "No Objection Certificate" is required to be obtained from the Commissioner of Endowment under the provision of Section 19-A of the Orissa Hindu Religious Endowments Act, 1951, read with Rule-4A of Orissa Hindu Religious Endowments Rules, 1959, but in the entire statute there is no reference that what procedure to be adopted for transfer of land of private family deity.

The Legislature while enacting the Act, 1951 or Rules, 1959 has taken care of the trust property which has been endowed to the public religious institution and given under the custody of trust and for the benefit of the deity or the religious institution and in order to run the institution smoothly, in case of exigency, provision has been made in the enactment to dispose of the property, subject to the condition that the proceeds will be used for the benefit of the institution only and if the Commissioner of Endowment will be satisfied with the purpose, then only the sanction for alienation of immovable property and for getting "No Objection Certificate" Section 19-A of the Act, 1951 and Rule 4-A of the Rules, 1959 have been made mandatory requirement which suggests that the Legislature was conscious about the fact that if there is complete embargo in disposing the property of any public religious institution having been controlled by the trust, then in future there may be situation that due to lack of finance the public religious institution may not be able to function smoothly and ultimately the purpose for which the property has been endowed by a person for the benefit of the institution would be frustrated.

Keeping these aspects into consideration the provision has been made to dispose of the property subject to the condition laid down U/s.19, 19-A of the Act, 1951, read with Rule 4-A of the Rules, 1959, but no such provision has been made regarding property of private family deity the reason being that the private family deity is being controlled by a family for worshipping the deity and for that purpose the property has been endowed in the name of the deity by surrendering the right and title in favour of the deity to be used for the benefit of the deity and once the property has been endowed in the name of the deity by the title holder, he will cease his right, title over the property since it has been recorded in the record of right in the name of the family deity and once the right and title of a property has been relinquished by the title holder making it in the name of the deity, he/his legal heirs ceases from his/their rights to transfer the title of the property in favour of the third party.

The intention of Legislature in allowing the alienation of immovable trust property is also for the reason that if any decision is to be taken for alienation of immovable property, it is to be taken by the trust which consists of the trustees but in case of family deity there is no such committee, rather it is only by legal heirs or the person who has endowed the property and there is every likelihood of disposal of the property by the legal heirs for their personal use laying behind

the whole purpose of the forefathers who had endowed the property for the benefit of the deity and it is for this reason no provision has been made in the enactment to alienate the property of the family deity.

The difference being in the public religious institution and the private family deity that in the public religious institution the property which is being endowed or has been endowed is in the name of the trust so the title has been shifted in the name of the trust and thereafter the trust becoming the title holder has got every right over the property to transfer it in consonance with the provisions of law, but in the case of private family deity the title of the endowed property is not being handed over to any trust, rather it is in the name of the deity having been recorded in the Record of Right and the moment it has been recorded in the Right of Record, the title holder will cease his right to claim any title over the land and once the title has been ceased, the person who has endowed the property cannot have any right to think about transferring the property in the name of third party and it is only for this reason the Hindu Religious Endowment Act, 1951 has not made any provision regarding transfer of property which has been endowed by the title holder in the name of the private family deity because of the reason that once title has been relinquished and recorded in the name of the deity in the Record of Right, there cannot be shift of title.

At this juncture reference needs to be made to the judgment rendered by Hon"ble Apex Court in the case of Kalanka Devi Sansthan v. The Maharashtra Revenue, Tribunal Nagpur and others, AIR 1970 SC 439 wherein their Lordships have been pleased to hold at paragraph 4 and 5 that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. The idol is capable of holding property in the same way as a natural person. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager.

Thus there is no dispute about the fact that the moment a property is being endowed or donated in favour of family deity it becomes the property of the deity and the other family members can only be said to be the manager to protect the same which means that the manager or the legal heirs of the forefathers who had donated the property has got no right, title over the land in question save and except to manage it.

It is also this explanation gets support from the provision of Section 1(2) which speaks that the provision of Orissa Hindu Religious Endowment Act, 1951 extends to the whole of the State of Orissa and applies to all Hindu public religious institutions and endowments.

This stipulation as contained in Section 1(2) itself is clear that the entire Act known as the Orissa Hindu Religious Endowment Act, 1951 has been made applicable to the Hindu public religious institutions and endowments falling within

the State of Orissa.

5. So far as applicability of Section 8-B of the O.H.R.E. Act, 1951 is concerned, the same has got no nexus with the property of private family deity as would be evident from the bare reading of provisions as contained in Section 8-B which speaks that the Commissioner and the Assistant Commissioner shall have power to take action under any of the provisions of this Act in respect of any institution, if on information received or otherwise, they are satisfied that such institution is a religious institution within the meaning of this Act and the religious institution has been defined U/s.3(xiii) of the Act which speaks that the religious institution means a Math, a temple and endowment attached thereto or a specific endowment and includes an institution under direct management of the State Government. But here the facts relates to the property endowed in favour of the private family deity, the fact does not say about a Math or a temple or endowment attached thereto rather it is endowment made in favour of the family deity and as such Section 8-B is not applicable so far as it relates to the property endowed in favour of the family deity.

Otherwise also the provision of Section 8-B confers power upon the Commissioner or the Assistant Commissioner to act without initiating proceeding U/s.41-(1) with respect to the religious institution and Section 41 confers power upon the Assistant Commissioner to enquire into and decide the disputes and the matters relates to as to (i) whether an institution is a public or religious institution; (ii) whether an institution is a temple or a math; (iii) whether a trustee holds or held office as a hereditary trustee, and hence we are of the considered view that Section 8-B also does not pertains to the property related to the family deity.

6. In the light of this now it is to be seen that as to whether the order passed by the Endowment Commissioner which is under challenge in W.P.(C) No. 7013 of 2016 has got infirmity.

After having discussed the factual as well as legal aspect, it is thus evident that in the O.H.R.E. Act, 1951 there is provision U/s.19 or 19(A) read with Rule 4(A) of the Rules, 1959 which meant for transfer of property of deity of public religious institution, where sanction U/s.19 or "No Objection" U/s.19(A) or under Rule 4(A) is required. But so far as the land of private family deity is concerned there is no provision of transfer of immovable property by any means since no provision is provided under the Act which clarifies the position that immovable property once endowed in favour of family deity having been recorded in the name of the deity in the Record of Rights, the title of property ceases to be in the name of the donee and it became in the name of deity and when the erstwhile owner seizes to be the title holder, he cannot be said to be the title holder and as such he seizes his/her right to transfer the said property in the name of others and it is only for this reason there is no provision of sanction or to get "No Objection" for transfer of the land in the O.H.R.E. Act, 1951.

It has also been clarified in this way that a person having locus in the property has a right to make application for its sale or transfer by any means and that person is supposed to make application for its transfer but once the property endowed in favour of family deity and the deity being a juristic person he cannot make application before any authority and hence Legislature has not intended to any anything in the statute for getting sanction or "No Objection" for transfer of immovable property of family deity, meaning thereby once immovable property has been endowed in favour of family deity, for all the time it became the property of deity.

Accordingly we hold that the provision of Section 19 or 19(A) of the Act, 1951 or Rule 4(A) of Rules, 1959 is only applicable to immovable property of public religious institution because in that situation the title of immovable property shifts in favour of trust.

After going through the order passed by the Endowment Commissioner which is impugned in W.P.(C) No. 7013 of 2016 we find that the Commissioner has gone into wrong direction that if the property will be disposed of for the benefit of deity it can be sold but the applicability of the provision of Section 19(A) of the Act, 1951 or Rule 4(A) of the Rules, 1959 has not been discussed as has been discussed by us above.

In view of the discussion made above we are of the considered view that the order impugned needs modification to the effect that Section 19(A) which requires application to be filed for seeking "No Objection" for transfer of immovable property endowed in favour of private family deity is not maintainable, hence the writ petition being W.P.(C) No. 7013 of 2016 is dismissed.

7. So far as the fact of the case in W.P.(C) No. 6806 of 2016 is concerned, the same is little bit different, because in this case the property has been found to be not of the private family deity and taking into consideration the various depositions recorded in course of hearing the Commissioner of Endowment has given a specific finding in this regard.

Section 19 or 19-A of the Act, 1951 or Rule 4-A of the Rules 1959 speak of getting sanction for alienation of immovable trust property and to get no objection for registration of the property from the office of the Registering Authority but before according sanction or before giving "No Objection Certificate" the authority is required to see that the proceeds is to be used for the benefit of the institution. The sale proceeds to the tune of Rs.10,33,449/- has been awarded in favour of the case deity and the same has been deposited in long term fixed deposit scheme in the name of the deity in U.B.I., Balasore which has been pledged in favour of the Commissioner of Endowment and the original T.D.Rs. have been deposited in the head office for safe custody. Since the finding has been given to the effect that it is not a private family deity and the Commissioner who has been made custodian to see as to whether the proceeds

is to be used for the benefit of the institution and considering the fact that keeping the amount of compensation in the fixed deposit scheme he has thought it proper that it will be more beneficial for the benefit of the deity and taking into consideration this aspect of the matter it has been held that the application U/s.19-A of the Act, 1951 is not maintainable and accordingly the petitioner nos.1 to 4 are held not entitled to get the award deposited in favour of the case deity/institution. Accordingly we found no reason to interfere with the order. The issue is answered accordingly.

8. Since we have answered the issue by holding that there is no applicability of either Section 19 or Section 19-A of the Orissa Hindu Religious Endowment Act, 1951 and Rule 4-A of the Orissa Hindu Religious Endowment Rules, 1959 keeping the fact into consideration that once the land has been endowed in favour of the family deity and have been recorded in the records of right, the title is shifted from the title holder in favour of the deity, hence the land once endowed in favour of the family deity, it cannot be transferred in the name of the third party, meaning thereby there is complete embargo in transfer of the land once endowed by the forefathers in favour of the family deity, but simultaneously we are also conscious of the fact that if the immovable properly donated for the purpose of worshiping of the family deity and if at the time of urgency it will not be transferred, the whole purpose of donating immovable property by way of endowment would frustrate. Although in the Act, 1951 or Rules 1959 no provision has been made conferring power of Endowment Commissioner to protect the property of the family deity, but we thought it proper to authorise the Endowment Commission concern to look after the property of the family deity, hence the deity desirous to transfer immovable property of the family deity will have to make application before the Endowment Commissioner showing the reason of the disposal of the property in the name of third party for worshiping the deity, shall also to furnish before the Endowment Commissioner showing reason and if the Endowment Commissioner is satisfied that the purpose for disposal of the property is to worship deity and if it will not be disposed of, worship will be hampered, he will take into consideration regarding availability of other alternative means for worshiping the deity. If alternative means is available, he shall deny permission and if alternative means are not available he shall grant permission for disposal of the immovable property. The deity shall have to furnish permission from the Endowment Commissioner to be enclosed along with the application to be submitted before the Registering authority and it is only thereafter the registering authority will transfer the immovable property in the name of third party.

We thought it proper to direct the Secretary of the Revenue and Disaster Management being the controlling authority of registration, to issue instruction making it necessary to submit the Record-of-Rights along with the application which is to be filed by the applicant for registration of the land in question (if not already issued) and to be circulated widely for knowing public in general. The Registering authority will verify from the Record-of-Rights the nature of the land

by calling upon report from the concerned Tahasildar.

This observation is made in the peculiar facts and circumstances of the case and in order to protect immovable property of the family deity and sentiment upon which the immovable property has been endowed by the forefathers in favour of family deity and also keeping the fact into consideration that the immovable property may not be squandered in any manner by the legal heirs. With these observations, both the writ petitions are disposed of. ?..???????

Sanju Panda, J. - I agree.