

(2005) 09 OHC CK 0050

In the Orissa High Court

Case No : Writ Petition (C) No. 1169 of 2005

Sri Chandi Thakurani - Bijee and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 27, 41, 8, 8(2), 8B

Citation : (2005) 100 CLT 644 : (2005) OLR 954 Supp

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Prahallad Kar, A.K. Mohanty, G. Kar, M.R. Satpathy and J. Behera, for the Appellant; S. Mishra-2, A.K. Mishra, A.K. Sharma, M.K. Dash and P.K. Dash for O.P. Nos. 1 to 7, Ch. P.K. Mishra, A.G.A. for O.P. No. 8, A.K. Rath and A. Panda for O.P. No. 9, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—Petitioners have filed this Writ Petition to quash the order Nos. 1608 (13)/142-CC (M) dated 20.10.2004 and 1870 (2)/142-CC (M) dated 22.12.2004 passed by learned Additional Assistant Commissioner of Endowments, Cuttack (in short, "A.A.C.E., Cuttack") appointing non-hereditary trustees in respect of the deity Sri Chandi Thakurani -Bijee-at Bakhrabad (hereinafter called as "the deity") and directing the petitioners and others who are Marfatdars in management of the deity to hand over the complete charge of the institution and its properties, both movable and immovable, to the non-hereditary trustees.

2. Petitioners claim that they are the recorded Marfatdars of the deity and in possession of the deity's property from the time of their forefathers in lieu of performance of Sevapuja. They further state that they have filed O.A. No. 10 of 2003 before the A.A.C.E., Cuttack u/s 41 of the Orissa Hindu Religious Endowments Act, 1951 (in short "the Act") for declaration that Sri Chandi Thakurani -Bijee-at Bakhrabad is a private deity of the petitioners and the other

recorded Marfatdars and the properties standing in the name of the deity are their private Debottar properties and the said institution is not a temple. In that proceeding written statement has already been filed by the Opposite Party members disputing to the claim of the petitioners. When the matter stood thus, learned A.A.C.E., Cuttack, as per orders Annexures 2 & 3, appointed Opposite Party Nos. 1 to 7 as non-hereditary trustees for a period of two years giving them the authority and liberty to manage the affairs of the deity, take charge of the movable and immovable properties of the deity and render statement of accounts, etc. to the authorities. Petitioners pray to quash the orders Annexures 2 & 3 mainly on the ground that such orders were passed without issuing the statutory notice and proclamation inviting objections and suggestions and also without making a proper enquiry. Petitioners also state that when the proceeding u/s 41 of the Act is pending and the character of the endowment is yet to be determined, whether it is a hereditary trustee or not, the A.A.C.E. could not have appointed the Opposite Parties 1 to 7 as the non-hereditary trustees.

3. In support of his contention, Mr. Prahallad Kar, learned Senior Counsel appearing for the petitioners relied on the ratio in the cases of Bhramarbar Santra and Ors. v. The State of Orissa and Ors. 36 (1970) CLT 897 and the confirming judgment of the Supreme Court in the same case having been reported in Hindu Religious Endowments and Others Vs. B. Samitra and Others, . In that respect petitioners also relied on a later Division Bench's decision of this Court in the case of Baikunthanath Patjoshi and Others Vs. Commissioner of Endowments, Orissa, Bhubaneswar and Others, .

4. In their counter affidavit Opposite Parties 1 to 7 denied to the claim of the petitioners that they are the hereditary trustees and the deity is a private deity. They put forth their claim that the deity is a public deity. They also asserted that before passing of the orders Annexures 2 & 3, procedure as contemplated u/s 27 of the Act relating to publication of the notice and inviting objections, etc. were duly performed by the A.A.C.E. after an enquiry and the names of the Opposite Party Nos. 1 to 7 were recommended by him being not opposed by the general public. Mr. Srinibash Mishra-2, learned Senior Counsel appearing for Opposite Parties 1 to 7 and Mr. A.K. Rath, learned Counsel appearing for the Commissioner of Endowments, Orissa, argued on the legal issue that after the decision of this Court and the Supreme Court, as referred to above in Hindu Religious Endowments and Others Vs. B. Samitra and Others, , the State Government made amendment of Section 8 of the Act by inserting Sub-section 2 of Section 8 and Section 8-B; therefore, the aforesaid decision in the case of Bhramarbar Santra (supra) has become a matter of history without any enforceability. In support of such contention they relied on the cases of Bairagi Pradhan and Ors. v. The Commissioner of Hindu Religious Endowments and Ors. 1988 (I) OLR 6, Khetramohan Rout and Others Vs. Sri Sri Nageswar Mahadev and Others, and Dhadi Parida (and after him) Sundari Parida and Others Vs. Commissioner of Consolidation and Others, The later two decisions (supra) are the decisions of the Full Bench of this Court.

5. The moot point in this Writ Petition is as to whether during pendency of an application u/s 41 of the Act, interim non-hereditary trustee can be appointed. As noted earlier, law underwent change after the ratio in the case of Bhramarbar Santra (supra), as propounded by a Division Bench of this Court and confirmed by the Apex Court reported in Hindu Religious Endowments and Others Vs. B. Samitra and Others, . Taking note of that situation, in the case of Bairagi Pradhan (supra), a Division Bench of this Court propounded that the ratio in the above indicated decisions are no more enforceable and the Asst. Commissioner of Endowments under the changed law has the jurisdiction to appoint non-hereditary interim trustee without deciding a dispute u/s 41 of the Act. Therefore, applying the rule of precedent, that ratio is to prevail over the ratio in the case of Baikunthnath Patjoshi (supra) being a subsequent decision of the co-ordinate Bench without referring the matter to a larger Bench. Be that as it may, the full Bench of this Court in the cases of Khetramohan Rout (supra) and Dhadi Parida (supra) upheld the view of the Division Bench in the case of Bairagi Pradhan (supra). Therefore, at present the ratio which prevails is that there is no prohibition for the Assistant Endowments Commissioner to exercise jurisdiction u/s 27 of the Act whether or not a proceeding u/s 41 of the Act is pending or contemplated. Under such circumstance, we have no hesitation to reject such contention advanced by the petitioners alleging illegality in the impugned orders Annexures 2 & 3.

6. The allegation relating to non-following the procedure in Section 27 of the Act before appointing the non-hereditary trustees was found to be not substantiated. On the contrary, on perusal of the concerned file it appears that the A.A.C.E. received some allegations regarding misuse of the properties of the deity by the petitioners and mismanagement in the Sevapuja of the deity and thereafter directed the Endowment Inspector to conduct a local enquiry, and after being prima facie satisfied about the truth in such allegation against the petitioners that he initiated the matter for appointment of interim non-hereditary trustee. It also appears from the said files as well as from the contention of Opposite Parties 1 to 7 that in the above context requirement of law as contemplated in Section 27 relating to issue of notice and proclamation inviting objections was duly published and notified. Under such circumstance we do not find that the orders Annexures 2 & 3 suffer from any illegality calling for our interference. Accordingly that contention of the petitioners is also rejected.

7. As an alternative argument, learned Counsel for the petitioners stated that direction may be given to the A.A.C.E., Cuttack to expedite and complete the proceeding u/s 41 of the Act. Opposite party members have no objection to that submission. That being so, it would be just and proper that the proceeding u/s 41 of the Act should be decided expeditiously and preferably within a period of four months from the date of receipt of a copy of this order.

With the said direction to the A.A.C.E., Cuttack regarding disposal of O.A. No. 10 of 2003, we dismiss the Writ Petition.

P.K. Tripathy, J.

8. I agree.