
(1966) 11 OHC CK 0005
In the Orissa High Court
Case No : M.A. No. 77 of 1965

Sri Gobinda Chandra Harichandan Jagadeb	APPELLANT
Vs	
The State of Orissa	RESPONDENT

Date of Decision : 15-11-1966

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 13A, 13B, 13C, 13D, 13D(1)
Orissa Estates Abolition Rules, 1952 — Rule 9A, 9A(1)

Citation : (1967) 33 CLT 1185

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : N.V. Ramdas and K.V. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—One Gobindachandra Harichandan Jagadeb, trustee of the deity Sri Jagannath Swami situate at Athagarh in the district of Ganjam, filed an application in Form "L" before the Tribunal u/s 13D(1) of the Orissa Estates Abolition Act, 1951, and Rule 9-A of the Orissa Estates Abolition Act's, 1952 (hereinafter referred to as the Act and Rules), with a prayer that the trust estate was to be excluded from the operation of the vesting notification. Under Rule 9-A(1), an application by the trustee in respect of a trust estate shall be verified in the manner prescribed for verification of a plaint under the CPC by the applicant or his agent duly authorised in that behalf. The averment made in the application in accordance with this rule may be stated in brief.

2. The entire village Konkroda is a trust estate. The trust was created by the ancestors of the present trustee for Bhog and maintenance of the deity. It was a pre-settlement unenfranchised Devadaya inam. By a notification under the Act published in the Orissa Gazette on 15th July 1955 the estate vested in the State free from all encumbrances. The compensation payable in respect of the income of the estate has been assessed as a perpetual annuity and is being paid to the

trustee. There was no reservation of pecuniary benefit to any individual. On the afore said averments the trustee prayed that the estate was a trust estate within the meaning of Section 13A(e) of the Act and was to be excluded from the operation of the vesting notification dated 15-7-55. The Tribunal dismissed the application holding that the trust estate had vested in the State since 1955 and would not be governed by the provisions of Section 13D of the Act.

3. Mr. Ramdas contends that Section 13 D applies and that the view of the Tribunal is contrary to law. This necessitates, an examination of the provisions of the Act before and after the passing of the Orissa Estates Abolition (Amendment) Act (Orissa Act 5) of 1963, hereinafter referred to as 1963 Act.

"Trust estate" has been defined in Section 13A(e) of the Act-

"trust estate" means an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual.

Explanation: The salary, remuneration or any allowance payable to a Mutawalli in the case of a Wakf or to a Trustee in any other case including a Sebayat of a Hindu Religious Trust not exceeding fifteen per cent of the income dedicated exclusively to charitable or religious purposes shall not be deemed to be a reservation of a pecuniary benefit to any individual within the meaning of this clause.

It is not disputed that this estate is a trust estate within the aforesaid definition.

4. Mr. Ramdas concedes that the estate vested in the State of Orissa by the notification dated 15-7-55 u/s 3 of the Act. Section 3(1) prescribes that the State Government may from time to time by notification, declare that the estate specified in, the notification, has passed: to and became vested in to the State free from all encumbrances. Sub-section (2) deals with the particulars contained in the notification and, the manner of publication in the official gazette and in the Notice Board. Under Sub-section (3) such publication shall be conclusive evidence of the notice of the declaration to every body whose interest is affected by it. Section 5 of the, Act deals with the consequences of the vesting of an estate in the State. The essence of the matter is that the Intermediary shall cease to have any interest in such estate other than the interest expressly saved by of under the Provisions of the Act. Section 28(1) of the Act deals with compensation payable in the case of a permanent or resumable estate. Sub-section (2) covers cases of compensation payable respect of trust estates. It lays down that in the case where in the opinion of the Compensation Officer the net income or any portion of the net income in respect of any estate held under trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual, the compensation payable in respect of such income or such portion thereof shall, instead of being assessed under Clause (1), be assessed as a

perpetual annuity equal to such net income or such portion thereof, as the case may be. It is unnecessary to refer to the proviso to the Sub-section.

It is can ceded by Mr. Ramdas, and that is the averment in the application itself, that an the vesting of the estate in the State of Orissa in the year 1955, the compensation payable was assessed u/s 28(2) of the Act and the trustee is being paid a perpetual annuity. Even if the compensation had not been assessed, the position would not be in any way different.

5. Mr. Ramdas contends an the strength of Section 13I (1) that even though the estate had vested in 1955, it shall be declared as a trust estate and shall be deemed to have been excluded from the operation of the vesting notifications of the year 1955 and never to" have vested in the State in pursuance thereof. The validity of this argument depends upon the conclusion as to whether the 1963 Act-is retrospective in operation. It came into force on 12th April 1963 Section 3 of the 1963 Act lays down that after Section 13, the new Chapter II-A shall be inserted. It does not say that the new Chapter shall be deemed to have always been inserted. The new Chapter is prospective in operation and is retroactive to limited extent as would be discussed later.

6. Section 13A(f) of the Act defines vesting notification as meaning a notification issued u/s 3A of the Act. Section 3A was inserted in to the Act by the Orissa Estates Abolition (Amendment) Act, 1956 (Orissa Act 14 of 1956). Sub-section (1) thereof lays down without prejudice to the power u/s 3 the State Government, may by notification declare that the intermediary interests of all Intermediaries or a class or classes of Intermediaries in the whole or a part of the State have passed to and become vested in the State free from all encumbrances. Under Sub-section (2), the notification referred to in Sub-section (1) shall be published in the Gazette and on such publication shall be conclusive evidence of the notice of declaration to every body whose interests is affected thereby. Thus while Section 3 deals with vesting notification in respect of individual estates. Section 3A refers to a general notification whereby the intermediary interest of all Intermediaries or a class or classes of Intermediaries vest.

Section 13B of the Act enacts that notwithstanding anything to the contrary in any of the provisions contained in any other Chapter, a vesting notification shall have effect subject to the provisions of this Chapter. Thus if there had been a vesting notification u/s 3. A, it would have effect subject to the provisions of the new Chapter II-A.

It is the common case that there has been no notification in respect of the disputed estate u/s 3A. The Appellant's case is liable to be dismissed On the simple ground that Chapter 11 A has no application unless, there is a vesting notification u/s 3A.

7. u/s 13 D(1), the trustee in respect of a trust estate shall, upon the issue of a notification u/s 3A, make an application in the prescribed form and manner to

the Tribunal within three months from the date of such notification claiming that the estate is a trust estate. As there is no notification u/s 3A, the question of the trustee making an application within three months from the date of such notification does not arise. The notification in this case being in 1955, Section 13D(1) would be of no assistance to the appellate as the notification is not u/s 3A and the application is not within three months thereof. Sub-section (2) of Section 13 D is not of such relevance in this case as there is no reference by the Collector and the Tribunal had to deal with the case on an application purporting to have been made u/s 13 D(1). The limitation prescribed in Sub-section (2) is also the same period of three months from the date of the vesting notification. The three months" period of limitation prescribed u/s 13D is determinative of the question that the 1963 Act is prospective. It is to a limited extent retroactive inasmuch as the new Chapter would have application to all vesting notifications made within three months prior to the date of the coming into force of the 1963 Act.

8. Section 13E deals with publication of claims and reference. Section 13F prescribes that upon the publication of the list u/s 13E, all the estates covered by the vesting notification other than these which find a place in the said list shall, for all purposes of this Act, be deemed to have vested in the State with effect from the date of such notification. Section 13G prescribes the procedure for disposal of claims, references and appeals.

9. u/s 13I(1) an estates declared under this Chapter to be trust estates by the Tribunal or the High Court, as the raise may be, shall be deemed to have been excluded from the operation of the vesting notification and never to have vested in the State in pursuance thereof.

10. The legal position may be Bummed up thus:

If an application u/s 13D(1) is filed before a Tribunal constituted u/s 13C of the Act, within three months from the date of a vesting notification u/s 3A, the Tribunal would proceed to make an inquiry as to whether the estate, already vested u/s 3A, is a trust estate as defined in Section 13A(o). Under the Act, as it stood before the 1963 Act, there was no distinction between trust estates and other estates except in the matter and manner of assessment of compensation as laid down in Section 28. After the coming into force of the 1963 Act, if an estate is found to be trust estate, it would be excluded from the operation of the vesting notification and shall be deemed not to have vested in the State in pursuance of the notification. Before the 1963 Act, many trust estates had vested in the State by notifications either u/s 3 or u/s 3A. These which vested u/s 3 would not at all come within the purview of the new Chapter II-A and no further enquiry would be made in respect of those estates. Those which had vested u/s 3A can be classified into two categories. These trust estates in respect of which applications u/s 13D would be barred by limitation would not be governed by the new Chapter and the Tribunal has no jurisdiction to enquiry into those cases. The Tribunal has got jurisdiction to exclude a particular estate from

the operation of the vesting notification only if the application u/s 13D(1) has been filed within time and on examination of the facts and circumstances of the particular case it comes to the conclusion that the estate is a trust estate within the meaning of Section 13A(e).

11. Thus the trustee's application has no merit on the ground that there is no vesting notification u/s 3A and Chapter II-A of the Act is not retrospective. The vesting notification of the year 1955 extinguished the title of the deity in the disputed estate and it is entitled to a perpetual annuity only u/s 28(2).

12. In the result, the appeal fails and is dismissed, but in the circumstances, parties to bear their own costs throughout.