

(2022) 11 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No.30382 Of 2021

Sri Grameswar Dev Bijee Amuri

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Odisha Hindu Religious Endowments Act, 1951 — Section 27, 27(1)

Citation : (2022) 11 OHC CK 0017

Hon'ble Judges : Arindam Sinha, J;Sashikanta Mishra, J

Bench : Division Bench

Advocate : A.K.Mohapatra, A.K.Sharma, P.Naidu, Amit Sahoo, S.K.Choudhury

Final Decision : Disposed Of

Judgement

1. The claimed hereditary trustee of the deity is petitioner. Mr. Mohapatra, learned advocate appears on behalf of petitioner and submits, by impugned order dated 11th August, 2021, Assistant Commissioner of Endowments, Bhubaneswar appointed seven persons as members of Non-Hereditary Trust Board of the deity. This was followed by impugned order dated 18th August, 2021, inter alia, directing purportedly appointed Managing Trustee to take over complete charge of the institution from his client. He refers to annexure-3 being extract from the R.O.R. to submit, his client is hereditary trustee. There is no question of operation or application of section 27 in Odisha Hindu Religious Endowments Act, 1951.

2. He then draws attention to annexure-6 being order dated 3rd November, 1983 made by the Commissioner of Endowments. He submits, same was passed on revision against order made under section 27 of the Act, whereby the order challenged was set aside.

3. Ms. Naidu, learned advocate appears on behalf of the Asst. Commissioner. On omission in impugned order regarding finding there is no hereditary trustee she submits, there is catena of judgments having taken view that notwithstanding

pendency or no decision taken under section 41 of the Act, there can be appointment of non-hereditary trustees under section 27 of the Act.

4. Mr. Choudhury, learned advocate appears on behalf of private opposite parties, who are the appointees. On query from Court he draws attention to inquiry report on prima facie nature, the present state of management for appointment of Non-Hereditary Trust Board dated 30th December, 2019, submitted by the Inspector of Endowments.

5. Mr. Mohapatra in reply draws attention to annexure-4 being disclosure of Original Application no.3/2021 filed by his client before the Assistant Commissioner for decision under section 41 of the Act.

6. We find the writ petition was moved on 28th September, 2021, when coordinate Bench had said, inter alia, as follows:-

"We are of the opinion that the materials available on record show that the petitioner-deity is a hereditary trustee of Shri Purna Chandra Mishra. Therefore, the order passed under Section 27 of the Orissa Hindu Religious Endowments Act, 1951 holding that there is no hereditary trustee, appears to be erroneous on the face of record. However, this observation shall not be binding or its advantage cannot be taken by the parties in final hearing of the case. Moreover, the order passed under Section 27 of the Orissa Hindu Religious Endowments Act, 1951 is not appealable under Section 44 and the O.A. has been filed before the Commissioner on different grounds seeking different reliefs. So, we are inclined to issue notice and pass the order of stay."

7. Impugned order does not bear any finding regarding there being no hereditary trustee. In this connection, sub-section (1) in section 27 of the Act is produced below:-.

"27(1) The Assistant Commissioner shall, in cases where there is no hereditary trustee,[with the prior approval of the State Government] appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained."

(emphasis supplied)

8. Aforesaid order dated 3rd November, 1983 made by the Commissioner in revision stayed case of the office for appointment. In addition, above observations made by coordinate Bench on moving the writ petition. At this final hearing we have given opportunity to the parties but no further material has been disclosed to upset the prima facie view expressed in the said order dated 28th September, 2021. The only document that was shown is the report on prima facie nature of present state of management for appointment of Non-Hereditary Trust Board, submitted by the Inspector of Endowments. That is

insufficient for being relied upon as evidence, to come to conclusion that there is no hereditary trustee. In fact, there is no such conclusion in impugned order.

9. Impugned order is set aside and quashed.

10. The writ petition is allowed and disposed of.

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