

(2003) 03 OHC CK 0062

In the Orissa High Court

Case No : Second Appeal No. 215 of 1985

Sri Jagannath Temple Managing Committee and Another

APPELLANT

Vs

Narayan Mohapatra

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Sri Jagannath Temple (Administration) Act, 1952 — Section 2
Sri Jagannath Temple Act, 1954 — Section 23A, 4

Citation : (2003) 96 CLT 29

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : S. Mishra-2, S. Mohanty, R.C. Rath and A.K. Mishra, for the Appellant; R. Ch. Mohanty, R.K. Mohanty and B. Pujari, for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—This appeal is directed against reversing judgment and decree passed by the learned District Judge, Puri in Title Appeal No. 14/37 of 1984/83 dated 6th May, 1985 whereby and whereunder the plaintiff's suit for declaration of his right to place "Bhogas" on "Bada" bad Chhamu Kona Panti" was decreed.

2. The case of the plaintiff-respondent is as follows :

The plaintiff is one of the recognised Suara sebaya'ts of Lord Jagannath Temple, Puri who claims to have hereditary right to place his Bhogas in earthen pots on the Badabad Chhamu Kona Panti to offer the deity Bada Thakura Balabhadra Jew. According to the prevailing practice, Bhogas are usually offered daily at least four times which are known as Saka! Dhupa, Bhogamandap, Dwiprahara Dhupa and Sandhya Dhupa. Except the time of offering Bhogamandap the sebayat like Supakars, Suaras and Mahasuaras used to keep their cooked food in Handis (earthen pots) at a specified area within sanctum sanctorum which is locally known as "Bhitara Pokharia" in front of "Ratna Singhasan" of the Lords Balabhadra, Subhadra, Jagannath and Sudarsana. Before offering-Bhogas in the "Bhitara Pokharia" the concerned Puja Pandas demarcate the places where the

Bhogas of four deities are to be placed every day by stone dusts, locally known as "Muruja". They also divide the areas into small patches indicating the places where the different Suaras/ Supakars are to place their Handis containing Bhogas and the said places are called "Badas" and the specific places being earmarked in the "Badas" meant for placing the "Bhogas" for offering to the deities are known as "Panti" or "Chhamupanti".

3. According to the plaintiff- respondent the right of placing Bhogas by Supakaras in the "Panti" or "Chhamupanti" had been acknowledged by the erstwhile Superintendent of the Temple, namely, the Maharaja of Puri. After the management and administration of the temple vested in the appellants, they have also recognised such rights of placing Bhogas in the "Panti" or "Chhamupanti" in front of the deities. Such rights accrued to the Suaras/ Supakars have been duly recorded in the R.O.R. of the Temple prepared by a Special Officer appointed under The Puri Shri Jagannath Temple (Administration) Act, 1952 and it is heritable and transferable. In the said record of right detail description of Pantis, the name of Supakars and the number of Handis (earthen pots) containing Bhogas they offer are being mentioned. It is the case of the plaintiff that the Panti which he claims previously belonged to one Hari Suara and another, who transferred the same to one Sambhu pratihary, who in turn again transferred the same to one Rama Chandra Mahapatra. The said Rama Chandra Mahapatra transferred such right to the plaintiff under a registered sale deed hearing No. 445 dated 7.2.1976. It is claimed by the plaintiff- responded that the Panti which is located towards a corner in front of Lord Balabhadra locally known as "Badabad Chhammu Konapanti" inside the Bhitara Pokharia was being allotted to his predecessors-in-interest and such right having been transferred in his favour he acquired an indefeasible right to place his Bhogas in earthen pots on the said Panti and since the date of transfer by his predecessor-in-interest he has been exercising his right uninterruptedly without being interfered with by the appellants. Therefore, on 6.4.1976 he applied for mutation of the said Panti in his favour which was allowed by defendant No. 2 vide his order dated 1.10.1977. But defendant No. 2 refused to mention in his order the fact of placing the earthen pots on the disputed Panti. The appellants without any rhyme or reason abruptly prohibited the plaintiff-respondent from placing his Bhogas in the earthen pots on the said Panti as a reason whereof he filed the suit for the aforesaid relief.

4. The defendant-appellants filed their written statement, inter alia, stating that all the Supakaras have no right to cook food and offer the same to the deities. A few of them have been given the said privilege. The regular Bhogas which are offered to the deities are known as "Kotha Bhogas". If any extra Bhoga is to be offered, it can only be done with the permission of the temple authorities. Only the persons, who are given this privilege to cook and offer Bhogas in the three Dhupas during the day could do it. The Supakaras are not permitted to place their Bhogas specified in Bhitara Pokharia and Bhogamandapa as a matter of right. It is only with the permission given by the Raja of Puri or his Dewan they

used to offer Bhogas. The permission is revocable and the persons desirous to place their Bhogas at the time of Chhamupanti can also be denied of that right. The defendant appellants, on the other hand have taken a plea that the right of the Sebayats in placing Bhogas in the panti is neither hereditary nor transferable. If there has been any such recognition by any such person connected with the management of the Temple at any point of time, then it is illegal and unenforceable. The R.O.R. does not confer any permanent right on any Suara or any other Sebak to offer Bhoga in the Panti. By the order dated 1.10.1977. the Assistant Administrator referred to the sale deed and found that there, was no mention of any Panti or the number of earthen pots to be placed in accordance with R.O.R. Therefore, he did not allow the respondent to place two earthen pots in the Panti as claimed by him. That matter was left open for further enquiry. The Committee after due deliberation has resolved to make further enquiry and decide as to how different persons should be allowed to acquire the Panti. As per Section 15 of the Shri Jagannath Temple Act, 1954, the appellants are empowered to make adequate arrangement for performance of Seba-puja and observance of periodical niti of the Temple. Assuming, there has been any licence or permission granted to any person to enjoy a particular privilege, it can be revoked at any time by the management of the Temple. As a matter of fact, the Administrator of the Temple has withdrawn that privilege from many Sebaks for regulation the nitis and preforming the same in time. With these prayers the appellants claimed dismissal of the suit.

5. The trial Court held that the plaintiff has no right, title or interest. Therefore the appellants cannot be asked to provide a space for placing Bhogas in Badabad Chhammu Kona Panti in front of Lord Balabhadra. The lower appellate Court has found that the right flowing from the deed of conveyance is heritable and transferable. Since such right is recognised by the Administrator and Gajapati Maharaja, therefore, it has been reflected in the R.O.R. prepared by the Special Officer of the Jagannath Temple. In the record of right "niti" or "seba" which is being performed by different Sebayats has been reflected. Offering of Bhoga is an indispensable niti of the temple. It has been further recorded in the R.O.R. that the Bhogas are to be placed in "Bhitara Pokharia¹, The name of plaintiff's vendor Rama Chandra has been reflected at serial No. 30 of page 205 of the R.O.R. prepared by the Special Officer. At page 209 there has been some changes in the list due to death and/or transfer of the predecessors-in-interest. At page 205 of the R.O.R. there is a note which clinches the issue that the right of placing Bhogas is heritable. Therefore, the defendant-appellants couldn't have refused to place the Bhogas by the plaintiff in the "Badabad Chhamu Kona Panti". With these observations the Appellate Court has up-set the findings of the learned trial Court and decreed the suit.

6. Mr. Mishra, the learned Advocate appearing for the appellants has contended with strong intensity of conviction that the finding of the lower appellate Court is apparently wrong inasmuch as no space within the sanctum-sanctorum of the Bhitara Pokharia can be assigned to any person as of right even if custom

permits to do so. The area within the Bhitara Pokharia cannot be transferred by way of sale, lease or otherwise. Thus, the plaintiff cannot claim any right within sanctum-sanctorum of Bhitara Pokharia. On the basis of the deed of conveyance, the plaintiff at best can claim such right to perform his service as "Suara" and nothing beyond that.

7. The learned counsel appearing for the plaintiff-respondent while supporting the judgment of the lower appellate Court has advanced an inexorable plea that the appellate Court has correctly found that placing of Bhoga in the Panti being permissible under the custom and recognised by the Administrator of the Temple and the Maharaja of Puri, therefore, the appellants cannot question the plaintiff's right.

8. While dealing with the rival claims of the parties, it is necessary to consider different provisions of the Act. The expression "Sevak" has been defined in the Shri Jagannath Temple Act, 1954 u/s 4(d-1). It defines as follows :

"Sevak means any person who is recorded as such in the record of rights or is recognised by a competent authority as a Sevak or his substitute or has acquired the rights of a Sevak by means of any recognised mode of transfer and includes a person appointed to perform any niti or Seva under Clause (i) of Sub-Section (2) of Section 21."

9. From the aforesaid definition, of the word "Sevak", it connotes a person has only a right to perform a particular service to the deity. Sebayati right can be transferred to a person, but it must be recognised by the competent authority. The expression "Temple" has been defined in Section 2(d) of Puri Shri Jagannath Temple (Administration) Act, 1952, which is quoted below :

" "Temple" means the temple of Lord Jagannath at Puri, other temples within its premises, all their appurtenant and subordinate shrines, other sacred places and tanks and any additions which may be made thereto after the commencement of this Act."

10. It is needless to mention that Shri Jagannath Temple, Puri is one of the famous temples of the country. Before considering the rival contentions, it is necessary to state how the rights of management of Lord Jagannath Temple, Puri vested in the appellants and who are statutory authorities constituted under the provisions of Shri Jagannath Temple Act, 1954 (hereinafter referred as the "Temple Act"). The administration of temple had vested in the successive Rules, Government and their officers. Even during pre-Independence period by Regulation IV of 1809 passed by the Governor General in Council on 28th April, 1809 and thereafter, by other Laws and Regulations and in pursuance of the arrangement entered into with the Raja of Puri, the said Raja was entrusted hereditarily with the management of the affairs of the Temple. After the Temple Act came into force, it is indicated in the said Act that notwithstanding anything contained in any other law for the time being in force or custom, usage or contract, Sanad, deed or engagement, the administration and the governance of

the Temple and its endowments shall vest in a Committee called "Shri Jagannath Temple Managing Committee", constituted as such by the State Government. Section 15 of the Temple Act, enshrines that it is the duty of the Committee to ensure maintenance of order and discipline in the Temple. u/s 15-B of the Act, the Administrator is vested with the powers and jurisdiction to make an order effecting any change in the entry of the record-of-rights on an application made in that behalf by any Sevak, after making an enquiry in the prescribed manner on all or any of the grounds enumerated in that Section. Section 21-A of the Temple Act confers power and control on the Administrator over all Sevaks and servants attached to the Temple or in receipt of any emoluments or perquisites therefrom, whether such service is hereditary or not. In other words/the general power of supervision and management of the institution in question which previously vested in Raja of Puri has now been entrusted with the statutory authorities created under the Temple Act. Before the Temple Act came into force, the Legislature enacted a separate Act, namely, The Puri Jagannath Temple (Administration) Act, 1952. The object of 1952 Act was to provide for consideration of the rights and duties of Sevaks Pujari and other persons connected with the Seva Puja and management of Shri Jagannath Temple for the purpose of facilitating proper administration of the Temple and to prevent mismanagement of its endowments. Under the Act, the post of Special Officer was created to prepare the record-of-rights in connection therewith. From the report of the Special Officer, it is, however, indicated that the Temple of the Lord Jagannath is situated on an area of 10 acres of land.

11. The respondent wanted to enforce his right in Plot No. 2, which is a portion by the side of Ratna Singhasana where four deities have been placed. Plot No. 2 is within sanctum sanctorum, i.e., Bhitara Pokharia of the temple. Before actual Puja starts, Puja Pandas, who perform sevapuja of the deity demarcate the line by stone dust (Muruja) defining the areas where "Bhogas" are to be placed. Within such lines demarcated by "Muruja" Bhogas meant for offering the deities are being placed by earthen pots called "Kundas". The Special Officer has attached a map in the record-of-right at page 204. It has been indicated at page 205 of the R.O.R. that the predecessors-in-interest of the plaintiff used to keep their "Bhogas". The plaintiff claimed as a matter of right to place Bhogas in two earthen pots in a corner within the delineated line by "Muruja" in front of Lord Balabhadra, known as "Bada Chhamu Kona Panti". This Panti which previously belonged to Hari Suara had transferred the same to Sambhu Pratihari. But again it was conveyed to Rama Chandra Mahapatra, the predecessor-in-interest of the plaintiff. Rama Chandra Mahapatra again transferred the same in favour of the plaintiff by a registered sale deed on 7.2.1976, vide Ext. 2. In the record-of-rights it has been indicated that Hari Suara, Jaga Suapa, Ganesh Suara were permitted to place four Handis (earthen pots) Neither the size of the earthen pot nor the individual rights of these three persons indicating the number of Handis were reflected in the record-of-rights. Though the names of Rama Chandra Mahapatra and Narayan Mahapatra were reflected in the R.O.R., but how many

Handis (earthen pots) were required to be kept was not reflected. Defendant No. 2 mutated the name of the plaintiff authorising him to use Chuli Nos. 21 and 22 (earth) for offering Bhogas in "Badabad Sakala Dhupa Kona Panti". It was not indicated about the particular place or area where those earthen pots are to be placed.

12. In the aforesaid factual backdrop the first question to be adverted is whether or not any place near the sanctum sanctorum in front of "Ratna Singhasan" of the deity is alienable, subject to the exception that a sebayat can alienate the same in case of need or for the benefit of the estate. Even assuming the right of office is hereditary and in case of necessity the power of a sebayat is just like a manager who may dispose of the endowed properties, but any space or area within inner temple near the throne is inalienable. In this regard reliance has been placed on a reported judgment in ILR 1974 Cut 623 in the case of Shri Jagannath Temple Managing Committee and Anr. v. Sridhar Suar and Anr., wherein an identical question came up for consideration and this Court answered in negative. Such sale of the area within the sanctum sanctorum in front of Ratna Singhasan is ab initio void. Any such transfer inside the abode of the deities shall amount to a sacrilege, which by no means can be upheld. In a judgment reported in Kali Kinkor Ganguly Vs. Panna Banerjee and Others, , an identical question came up for consideration before the Supreme Court and in that case the Supreme Court held that the doctrine of transfer of Sebayat's right for the benefit of the deity is illegal for the principal reason that neither the temple nor the deities can be benefited by such transfer. The transfer by sale was therefore, held to be void. It was further held :

"The rule against alienation of shebaiti right has been relaxed by reason of certain special circumstances. These are classified by Dr. B.K. Mukherjee at page 231 in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust, 1st Edition under three heads. The first case is whether transfer is not for any pecuniary benefit and the transferee is the next heir of the transferor or stands in the line of succession of shebaiti and suffers from no disqualification regarding the performance of the duties. Second, when the transfer is made in the interests of the deity itself and to meet some pressing necessity. Third, when a valid custom is proved sanctioning alienation of Shebaiti right within a limited circle of purchasers, who are actual or potential shebaiti of the deity or otherwise connected with the family."

13. In the light of the principle enunciated by the Supreme Court let me now examine the facts of the case whether there was any justifiable reason for transfer of such right by Rama Chandra Mohapatra in favour of the plaintiff-respondent. It appears that in the sale deed, Ext. 2, it has been described that by such sale the institution has been benefitted. It is true that such transfer of Sebayati right is permissible among the same sect of Sebayats. But sale of any area/place/abode near the throne of the deity within the sanctum sanctorum is ab initio void. At best, the respondent can request the management to permit

him for keeping two earthen pots of Bhogas in front of Lord Balabhadra Jew without causing any hindrance to the institution. u/s 23-A of the Jagannath Temple Act the administration has unfettered right to regulate the performance of niti and can supervise and keep control over all the Sebayats. Therefore, if the Managing Committee is approached by the plaintiff respondent, they can take into account the "Pali" service which the respondent purchased from Rama Chandra Mahapatra and permit him without causing any hindrance or inconvenience to the management. But this cannot be claimed as a matter of right as it has been held in the preceding paragraph that such sale is ab initio void. The Special Officer while preparing the R.O.R. has no right to record the area or place in favour of any Sebayat. At best, he can only indicate the service rendered by the Sebayats and the nature of performance of such service whether hereditary or not.

14. From the above conspectus of the case I, therefore, disagreeing with the findings of the learned appellate Court hold that the plaintiff has absolutely no right to claim a place inside the sanctum sanctorum in front of Ratna Singhasana for offering Bhoga to the deities.

15. Accordingly, the appeal in the light of the above discussions is allowed in consequence whereof the suit is dismissed, No costs