
(2010) 06 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No. 13576 of 2003

Sri Mangala Thakurani Bijee. and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7

Citation : (2010) 110 CLT 574

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Petitioners claimed to be the erstwhile Marfatdars of the Deity, Sri Mangala Thakurani Bijee, Kakatpur in the district of Puri. The said institution has been declared to be a Public Religious Endowment under the provisions of the Orissa Hindu Religious Endowment Act, 1951, hereinafter to be caned as "OHRE Act". In consonance with the provisions of the said Act, a Committee of Management was constituted to manage the institution & its properties. Admittedly, the Petitioners do not claim to be the members of the Managing Committee, but according to them before the institution was declared as a public religious endowment, their ancestors were acting as the Marfatdars of the Deity. The controversy in this Writ Petition is with regard to settlement of the lands made by the O.E.A. Collector, Kakatpur in Bebandobasta (O.E.A) Case No. 1833 of 2001. By the said order, the disputed lands have been settled in favour of the Deity represented through it's Trust Board. The disputed lands over which the Petitioners put-forth their claim appertains to Plot No. 2013 of Khata No. 857, measuring an area of Ac.0.11 decimals situated in Mouza Kakatpur. The nomenclature of the said lands was Gharabari. According to the Petitioners, their ancestors had purchased the land in the name of the Deity & were in possession thereof in lieu of performing "Seva Puja". They were also managing the affairs of the Deity, which was a private trust then. The grievance of the Petitioners in this

Writ Petition is that though the lands in question were purchased by their ancestors. who were Sevayat Marfatdars, after vesting of the estate under the provisions of the O.E.A. Act, the same had been wrongly settled in favour of the Deity. The ancestors of the Petitioners their & after them, the Petitioners, being the defacto owners of the lands, the same should have been settled in their favour & not in favour of the Deity, Sri Mangala Thakurani Bijee, Kakatpur.

2. Mr. Chatterji, Learned Counsel appearing for the Petitioners in course of hearing submitted, rather emphatically, that the lands having been purchased from out of the income of the ancestors of the Petitioners, who were Marfatdards & were managing the affairs of the Deity, after vesting of the estate under the D.E.A. Act, the authorities should have settled the lands in favour of the Petitioners. Further, Mr. Chatterji submitted that in consonance with the provisions of the D.E.A. Act, as no petition Under Sections 6 & 7 having been filed by the Trust Board with a prayer to settle the lands, the authorities acted illegally in settling the same in favour of the Deity under the lease principle.

3. All these submissions are strongly repudiated by Learned Counsel appearing for the Opp. Parties. According to him, in consonance with the O.E.A. Act, the estate of the Deity vested with the State free from all encumbrances. After such vesting, whatever right any person had over the lands belonging to the Deity intermediary, i.e., Sri Mangala Thakurani Bijee, Kakatpur, lost their right, title & interest over the said lands. It is further submitted that as no petitions had been filed Under Sections 6 & 7 of the O.E.A. Act by the Managing Committee constituted under the O.H.R.E. Act, the land stood recorded under bebandobasti khata. Subsequently, on enquiry, it was found that the lands stood recorded in the name of the Deity, Sri Mangala Thakurani Bijee, Kakatpur. Consequently, Bebandobasta (O.E.A) Case No. 1833 of 2001 was registered, notices were issued & objections were called for & after following all paraphernalia, the lands were settled in favour of the Deity. Thus, no infirmity or illegality has been committed.

4. To countenance the submissions made, Learned Counsel for the Petitioners further submitted that as the Deity was not in khas possession of the lands & the Petitioners were possessing the lands as Marfatdars, the authorities acted illegally in settling the same in its favour. In support of his submission, Learned Counsel for the Petitioners relied upon the decision of this Court in the case of Dayanidhi Naik v. Mangala Thakurani of Kakatpur Anr. (M.A No. 180 of 1982 disposed of on 23.12.1983) & submitted that following the ratio of the said Judgment, the lands should have been settled in favour of the Petitioners, who were not only in possession of the lands but also were the Marfatdars of the Deity before it was declared to be a religious endowment.

5. Heard Learned Counsel for the parties at length, perused the pleadings & the documents annexed meticulously. Fact remains, the institution, Sri Mangala Thakurani Bijee, Kakatpur is a public religious endowment governed under the provisions of the O.H.R.E Act & was an ex-estate. After abolition of the estate in

consonance with the D.E.A. Act, the rights of the persons got abolished & the lands became that of the Government. The provisions of the D.E.A. Act further stipulates that after vesting the intermediary was required to file petitions Under Sections 6 & 7 of the O.E.A. Act for settlement of the land in its favour. The Act also provides that the tenancy right of the persons, who claimed to be the tenants under the intermediary prior to vesting do not vest & such tenants, who were in physical possession of the lands, were deemed to be tenants under the State. That apart, those persons, who were rendering personal service to the intermediary & in lieu thereof were in possession of the lands were entitled to settlement of the lands in their favour bereft of the service. In the case of Dayanidhi Naik and Ors. the Petitioners of the said case were performing "Kahali Seva" & in lieu of performing such seva, they were in possession of certain lands belonging to the Deity-Intermediary. Thus, after vesting of the estate under the O.E.A. Act, they were entitled for settlement of the lands bereft of performing seva puja. The ratio of the said case, however, is not applicable to the case in hand. Fact remains, the Petitioners are not the tenants under the Deity & thus, they cannot claim for deemed settlement. They also do not claim to have rendered personal service to the ex-intermediary, i.e., Sri Mangala Thakurani Bije, Kakatpur, thus, they were also not entitled to any settlement of lands. They claim to be the Marfatdars of the Deity & defacto owners of the lands on that capacity. Fact remains, the lands were recorded in the name of the Deity & the Deity is the absolute owner thereof. It is well known that the Deity is a perpetual minor & it has to be represented through some human agency. According to the Petitioners, their ancestors were Marfatdards & were managing the affairs of the Deity & on that capacity they were in possession of the lands. After the institution was declared as a public religious endowment & a Trust Board was framed, the Petitioners lost their right to manage the affairs of the Deity and/ or remain in possession of the lands any more. It appears that after vesting of the estate, petitions Under Sections 6 & 7 were not filed by the Trust Board, but then, non-filing of petitions would not take away the right of the Deity as it is a perpetual minor. It is a fact that, many intermediaries failed to file petitions Under Sections 6 & 7 of the O.E.A. Act claiming settlement of the lands & continued to remain in possession of the lands & enjoy the usufructs. Consequently, the State Government was prevented from collecting land revenue from those lands & the lands were recorded under the bebandobasti status. After coming to know about huge loss of land revenue, the Government took a decision & issued circular authorizing the Tahasildars, who are designated as Collectors under the OEA Act to initiate suo motu proceedings & settle the lands in favour of the ex-intermediary, so that revenue can be collected. In consonance with the said circular, it appears, the Tahasildar, Kakatpur initiated Bebandobasti (O.E.A.) Case No. 1833 of 2001 & after following all paraphernalia, settled the lands in favour of the Deity. Admittedly, the lands were purchased in the name of the Deity, stood recorded in the name of the Deity in sabik R.O.R. & had valid right, title & interest over the same before vesting of the estate. All these aspects are well discussed by the O.E.A. Collector in his order.

6. After going through the impugned order, this Court finds no infirmity or illegality. In view of the fact that the lands belong to the Deity & not to the Marfatdar & the affairs of the Deity is managed by the Board of Trustees framed under the O.H.R.E. Act, the authorities have not committed any illegality or irregularity in settling the lands in favour of the Deity, represented through the Trust Board.

7. In view of the discussions made above, I am not inclined to interfere with the impugned order. The Writ Petition is accordingly dismissed.