
(2012) 07 OHC CK 0024

In the Orissa High Court

Case No : Writ Petition (Civil) No. 17259 of 2008

Sri Pabitra Kumar Panigrahi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 19, 19(5)

Citation : (2012) 07 OHC CK 0024

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : B.D. Pradhan, B.C. Sahoo-1, O.P. Mohanty, S. Pradhan, D. Mishra and L. Mohapatra, for the Appellant; A.K. Rath, for O.P. 2, M/s. R.K. Mohanty, D.K. Mohanty, Sangeeta Mohanty, D. Bhardwaj, S.N. Biswal, P. Jena, S. Mohanty and S.K. Mohanty, for Intervenor and M/s. B.H. Mohanty, D.P. Mohanty, R.K. Nayak, B. Das, T.K. Mohanty and S. Burma, for O.P. 5, for the Respondent

Judgement

M.M. Das, J.—In both these writ applications, the petitioners have prayed to set aside the auction sale of the scheduled land, which was to be held on 28.11.2008. The land, which was to be put to auction, belongs to Sri Sidheswar Dev Bije Nijgaon, i.e., Jagamara. The hereditary trustee of the above deity filed an application u/s 19 of the Orissa Hindu Religious Endowments Act, 1951 (for short, "the Act") before the Commissioner of Endowments, which was registered as O.A. No. 122 of 2003. The learned Commissioner granted permission and allowed to sell the property in question by holding public auction in favour of the highest bidder fixing the up set price at Rs. 32,00,000/-per acre. It may be mentioned here that the property in respect of which, permission for sale was allowed by the Commissioner constitutes an area Ac.1.461 decimals appertaining to Plot Nos.994 and 995 under Khata No. 1121 situated in Mouza -Jagamara under Bhubaneswar Tahasil in the district of Khurda. The learned Commissioner, while allowing permission, granted a preferential right to one Smt. Basanti Mallik - opposite party No. 5 in both the writ applications to purchase the said land at the rate of Rs.35,00,000/-per acre, failing which, to hold the public auction. He

further directed to advertise the auction sale in Oriya Newspaper as well as by beat of drums and the auction was directed to be conducted by the Inspector of Endowments. The sale proceeds were directed to be kept in a fixed deposit. Such auction was directed to be held within six months from the date of the said order, i.e., 14.06.2006. The hereditary trustee - opposite party No. 4 on behalf of the deity, filed a revision u/s 19 (5) of the Act to enhance the up set price. The Government, in the revision confirmed the order u/s 19 of the Act granting permission to sell the property by the Commissioner, by enhancing the up set price to Rs. 42,00,000/-per acre. One Uma Charan Jena as a person interested and as a person ready and willing to purchase the property at a higher rate challenged both the orders of the Commissioner as well as the Government in W.P.(C) No. 2223 of 2007. The intervener in W.P.(C) No. 17259 of 2008, i.e., one Kailash Chandra Parija also intervened in the aforesaid W.P.(C) No. 2223 of 2007 and supported enhancement of price of the land in question disclosing that earlier he deposited Rs.15,00,000/-before the learned Commissioner. On 18.9.2007, a lis pendense sale of the said property was made in favour of the opposite party No. 5 - Smt. Basanti Mallik, for which the petitioner -Uma Charan Jena in W.P.(C) No.2223 of 2007, filed a Misc. Case in the said writ application to restrain said Smt. Basanti Mallik from alienating the said land to any stranger. As per the direction of this Court in the said writ application issued in order dated 04.01.2008, the intervener deposited a sum of Rs. 1,00,00,000/-(Rupees one crore) by way of Fixed Deposit. Again on 28.01.2008, said Smt. Mallik sold the land to the present petitioner in W.P.(C) No. 17259 of 2008. On 26.02.2008, in the earlier writ application, this Court directed said Smt. Basanti Mallik not to change the nature and character of the disputed property. W.P.(C) No. 2223 of 2007 was disposed of on 20.06.2008 by quashing the order of the Commissioner as well as the State Government with the following observation and direction :

Considering the matter from any angle, this Court finds that opposite party No. 8 cannot claim any equity and the order of the Commissioner of Endowments, confirmed by the Principal Secretary, Law Department so far as fixing the upset price and granting preference to opposite party No. 8 to purchase the lands cannot be sustained, the interest of the Deity being of paramount importance.

This Court, accordingly, allows the writ petition and quashes the orders Annexures -1 and 2 so far as the same relate to granting preference to opposite party No. 8 to purchase the property at the upset price and the sale deed executed in favour of the said opposite party. The authorities are directed to take appropriate steps to put the property in question in public auction fixing the upset price at Rs. 2 crores per acre. This Court grants liberty to opposite party No. 8 to participate in the said auction. It is made clear that if opposite party No. 8 offers the highest bid, or offers to pay the amount quoted, preference shall be given to her. It is needless to say that the amount already deposited/paid by opposite party No. 8 shall be adjusted towards the sale proceeds or the same shall be returned with interest accrued thereon. The proposed sale by auction shall be advertised in two local Oriya daily newspapers having wide circulation

and there shall be proclamation of sale by beat of drums at the locality and also publication of notice in the locality where the lands in question situate at least fifteen days prior to date of auction of sale. The auction shall be conducted within three months hence in presence of the Assistant Commissioner of Endowments, Bhubaneswar and the sale price shall be kept in fixed deposit in any Nationalized Bank in the name of the Deity and shall be utilized as per the direction of the Commissioner. This Court further directs that if the intervenor Kailash Chandra Parija, opposite party No. 10 does not participate in the auction sale or offers bid of less than Rs. 2 crores per acre of land, the sum of Rs. 1 crore as well as the auction money to be deposited by him shall stand forfeited. Apart from that, he shall also be liable to be appropriately proceeded against.

2. The said judgment passed in W.P.(C) No. 2223 of 2007 on 20.06.2008 was challenged before the Hon'ble apex Court in SLP, which was dismissed by the apex Court on 08.09.2008. Pursuant to the dismissal of the SLP, a Misc. Case filed for modification of the judgment being rejected, in the previous writ application on 12.11.2008, a paper publication was made for public auction. Thereafter, the present writ application, being, W.P.(C) No. 17259 of 2008 was filed by the petitioner claiming himself to be the purchaser of the said property from the opposite party No. 5 - Smt. Basanti Mallik and challenging the auction sale notice. As an interim measure, this Court directed that the auction may be held, but no final decision shall be taken.

3. It appears that auction was held on 28.11.2008, but could not be completed. The intervenor having come to know of the auction sale notice, filed the Intervention Application and submitted that fresh auction shall be held fixing the price per acre of land at Rs. 2.00 crores. The petitioner - Pabitra Kumar Panigrahi in W.P.(C) No. 17259 of 2008 claimed that in the order granting permission on 14.06.2006, the Commissioner gave the preference to the opposite party No. 5 - Smt. Basanti Mallik to purchase the land at Rs.35,00,000/-The Principal Secretary to the Government of Orissa, Law Department in the revision, by his order dated 14.12.2006 confirmed the order of the Commissioner in Revision Case No. 20 of 2006 only by enhancing the price of the land from Rs. 32,00,000/- to Rs. 42,00,000/-per acre, while maintaining preference give to the opposite party No. 5 - Smt. Basanti Mallik. Thereafter, the hereditary trustee - opposite party No. 4 in both the writ applications sold the scheduled property to the said opposite party No. 5 - Smt. Basanti Mallik vide registered sale deed No. 8117 dated 20.08.2007. As the opposite party No. 5 was in urgent need of money, she sold the said land to the petitioner - Pabitra Kumar Panigrahi in W.P. (C) No. 17259 of 2010 and as the opposite party No. 5 belongs to Scheduled Caste community, she obtained permission vide order dated 25.08.2007 from the Sub-Collector and the Revenue Officer - opposite party No. 3 under the O.L.R. Act and, thereafter, she sold the scheduled land to the petitioner in W.P. (C) No. 17259 of 2010 vide registered sale deed No. 994 dated 28.01.2008. After purchasing the land, the said petitioner Pabitra Kumar Panigrahi has developed the same and has invested huge money in the said land and suddenly on coming

to know that the property is going to be put to auction on 28.11.2008 as per the order of this Court passed in W.P.(C) No. 2223 of 2007, he has been compelled to file the present writ application.

In W.P.(C) No. 17210 of 2008, the petitioner - Sarat Kumar Dash also claims to be the purchaser of a portion of the land mentioned in the schedule of the writ application by making averments, which are exactly similar to the averments made in W.P.(C) No. 17259 of 2008. Therefore, it transpires that both the petitioners are purchasers of different portions of the land, which was allegedly purchased by the opposite party No. 5 - Smt. Basanti Mallik from the hereditary trustee - opposite party No. 4 in both the writ applications.

4. It is an admitted position that this Court, by the judgment delivered in W.P.(C) No. 2223 of 2007 has quashed the order passed by the learned Commissioner of Endowments u/s 19 of the Act as well as the revisional order passed by the Government thereon and has specifically directed the manner, in which the land is to be put to auction. It is also revealed from the records of W.P.(C) No. 2223 of 2007 that during pendency of the said writ application, the intervenor deposited a sum of Rs.1,00,00,000/-in a Fixed Deposit in the name of the Registrar (Judicial) of this Court. The opposite party No. 5 - Smt. Basanti Mallik has purchased the property from the hereditary trustee - opposite party No. 4 in both the writ applications on 20.08.2007 and, thereafter, sold portions of the same to both the petitioners. W.P.(C) No. 2223 of 2007 was filed on 26.02.2007 impleading said Smt. Basanti Mallik as opposite party No. 8.

5. It is, therefore, clear that the sale made by the hereditary trustee in favour of the said Smt. Basanti Mallik was a *lis pendens* sale, which was subject to the result of W.P.(C) No. 2223 of 2007.

6. This Court having set aside the order after observing that the lease deed, basing upon which the opposite party No. 5 - Smt. Basanti Mallik claims to be in possession of the land is void *ab initio*, as no prior permission was obtained from the Commissioner of Endowments for such lease and after holding that the status of the opposite party No. 5 - Smt. Basanti Mallik was that of a trespasser, for which specifically set aside the order of the Commissioner, as confirmed in the revision with regard to giving preference to said Smt. Basanti Mallik, the sale by the hereditary trustee - opp. Party o. 4 to her cannot be said to be a valid sale, it cannot be held that either Smt. Basanti Mallik - opposite party No. 5 or the petitioners have acquired any valid title and interest over the property in question. Hence, the petitioners have no right to challenge the auction sale. Since the said auction could not be held on 28.11.2008 as per the notice, while dismissing both the writ applications, it is directed that fresh auction of the property in question shall be held strictly in accordance with the directions issued in the judgment passed in W.P.(C) No. 2223 of 2007 by publishing appropriate notice. It would, however, be open for the petitioners, the opposite party No. 5 - Smt. Basanti Mallik as well as the intervener to participate in the said auction sale.