

(2025) 07 OHC CK 1277

In the Orissa High Court

Case No : Writ Petition (C) No. 28734 Of 2020

Sri Radhamohan Mahapravu and Sri Radha Damodar
Mahapravu, Bije at Radhamohan Math, Ganjam

APPELLANT

Vs

State Of Odisha, represented through Department of Law,
Odisha, Bhubaneswar Vs

RESPONDENT

Date of Decision : 10-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Odisha Hindu Religious Endowments Act, 1951 — Section 19, 19(1), 19(2)

Orissa Land Reforms Act, 1960 — Section 15

Citation : (2025) 07 OHC CK 1277

Hon'ble Judges : K.R. Mohapatra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : Satyabadi Mantry, Sibanarayan Biswal, Pratyusha Naidu, Deepali Mahapatra

Final Decision : Disposed Of

Judgement

1. This matter is taken up through hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 27th December, 2017 (Annexure-6) passed by learned Commissioner of Endowments, Odisha, Bhubaneswar (for brevity 'learned Commissioner') in O.A. No. 198 of 2016 granting permission under Section 19 of the Odisha Hindu Religious Endowments Act, 1951 (for brevity 'the Act') to alienate the property in question of the deity Sri Radhamohan Mahapravu and Sri Radha Damodar Mahapravu Bije at Radhamohan Math, Nua Sahi, Digapahandi in the district of Ganjam (for short 'the Deity'). The Petitioners also assail the order dated 4th September, 2019 (Annexure-7) passed by the Minister of Law in Revision No.5 of 2019. The Petitioners further assail the auction proceeding under Annexures-8 and 12 and the registered sale deed executed in favour of the Opposite Party No.4 under Annexure-13.

3. Mr. Mantry, learned counsel submits that the Petitioners are tenants under the Trustee of the Deity. They are in cultivating possession of the land in question. When the matter stood thus, the Hereditary Trustee filed an application under Section 19 of the Act before learned Commissioner (O.A. No. 198 of 2016) seeking permission to alienate a portion of the land of the Deity. Learned Commissioner vide order dated 27th December, 2017 (Annexure-6) granted permission to alienate the property in public auction with the upset price of Rs.14,00,000/- (Rupees fourteen lakhs) per acre. It was also directed that the auction should be conducted in the presence of learned Additional Assistant Commissioner of Endowments, Berhampur and local Inspector of Endowments. Thirty days notice of the public auction should be given by advertisement by beat of drums in the locality as well as by publication in any daily Oriya News paper like Dharitri, Samaj, Sambad, Samay etc. or English daily like Times of India etc. having wide circulation in the locality. Learned Commissioner further directed that, if necessary, the Deity during public auction in order to maintain law and order situation may take help of the local police. Further, detail directions were also issued in the order under Annexure-6. The Trustee challenging the order under Annexure-6 with regard to fixation of upset price moved the Minister of Law in Revision No.5 of 2019. The Minister of Law, vide order dated 4th September, 2019 (Annexure-7), disposed of the Revision by reducing the upset price from Rs.14,00,000/- (Rupees fourteen lakhs) to Rs.2,28,000/- (Rupees two lakhs Twenty-Eight thousand) per acre. Accordingly, auction notice was published and Opposite Party No.4 being the successful bidder purchased the land in question by virtue of registered sale deed dated 27th May, 2020.

3.1 Mr. Mantry, learned counsel for the Petitioners further submits that the entire auction process is vitiated for non-compliance of provisions under Rule 4(2) of the Orissa Hindu Religious Endowments Rules, 1959 (for brevity 'the Rules'). It is his submission that the notice was not given due publication as provided under Rule 4(2) of the Rules. He, therefore, submits that the entire auction process and consequential sale deed become void. He also assails the order of the Minister of Law on the ground that reduction of the upset price was illegal, as it is prejudicial to the interest of the Deity, which is a perpetual minor. It is further submitted that the entire auction process was undertaken during pandemic of Covid-19 when there was restriction in movement and lockdown. He, therefore, prays for setting aside the entire auction process pursuant to the direction of the learned Commissioner of Endowments in O.A. No. 198 of 2016 and for a direction to set aside the orders under Annexures-6, 7, 8, 12 as well as sale deed executed under Annexure-13.

4. Ms. Mahapatra, learned counsel for the Opposite Party No.3-Trustee, submits that the auction was held following due procedure of law. The auction was conducted on 17th March, 2020 when restrictions were yet to be imposed for pandemic of Covid-19. First patient suffering from Covid-19 was diagnosed in Odisha during last week of March, 2020. Thereafter, restrictions were imposed by the Government of Odisha. She further submits that the Petitioners have no

locus standi to maintain the Writ Petition. The Petitioners are in no way aggrieved by the orders under Annexures-6 and 7 or auction process as well as sale deed executed in favour of Opposite Party No. 4. It is her submission that as far as practicable, Rule-4(2) of the Rules was complied with and there was wide publication of the auction. Previously a Public Interest Litigation being W.P.(C) No. 26466 of 2020 was filed before this Court challenging the auction price. This Court disposed of the said Writ Petition vide order dated 3rd April, 2023 with the following order:-

"2. Learned counsel appearing for the Petitioner, however, disputes the above valuation as well. Clearly, these are the disputed questions of fact. If the Petitioner wants to challenge the validity of a sale deed on the basis of its valuation, then the appropriate remedy would be to go before the Civil Court for that purpose since evidence will have to be laid by the parties to enable the Court to ascertain what the correct bench mark value was at the relevant point in time and whether in relation thereto, the valuation of the sale deed was appropriate. These are not the matters for determination in a writ petition.

3. Leaving it open to the Petitioner, if so permissible in law, to avail of other civil remedies, the Court declines to interfere in the present petition. It is disposed of as such. The interim order passed earlier stands vacated."

In view of the observation made in the said order, if the Petitioners feel aggrieved by the auction price at which the property of the Deity was sold, then they, may avail the remedy before the competent Civil Court. It is further submitted that the Petitioners styling themselves as Hindu public have filed this Writ Petition. But, the pleadings of the Writ Petition clearly disclose that the Petitioners have espoused their individual cause. Hence, they are neither Hindu public nor person interested to maintain the Writ Petition. It appears that the Petitioners are aggrieved by the auction as their alleged tenancy right over the land in question is likely to be affected by the said auction. The Petitioners had also approached the OLR Authority to recognize their tenancy right over the land in question under Section 15 of the Orissa Land Reforms Act, 1960. But, the said application was rejected vide order dated 19th September, 2021. Thus, the contention of the Petitioners that the auction process is void, merits no consideration. Thus, the Writ Petition is not maintainable and is liable to be dismissed.

5. Ms. Naidu, learned counsel for the Commissioner of Endowments submits that procedure provided under Rule 4(2) of the Rules was not followed in conducting the auction. It is further submitted that out of the property put to auction, a portion had already been acquired by the State Government by the time the auction was held. Further, the notice for auction cannot be treated to be a public notice without wide publication as stipulated under Rule 4(2) of the Rules. She, therefore, submits that this Court while adjudicating the matter, may take into consideration the same and pass necessary orders.

6. Heard learned counsel for the parties and perused the record. It appears from the record that the Petitioners claim to be the tenants under the Deity through Hereditary Trustee. They also claim to be in possession over the land in question.

7. Since Mr. Mantry, learned counsel for the Petitioners assails the auction process with an allegation that Rule 4(2) of the Rules has not been complied with in its letter and spirit, it is apt to have close reading of the provision itself before delving into the rival contentions of learned counsel for the parties in that regard.

Rule 4(2) of the Rules reads as under:-

"4. Procedure for obtaining order of sanction under Section 19.

(1) xx xx xx

(2) Manner of publication of the order of sanction by Commissioner - A copy of the order passed by the Commissioner under Sub-sections (1) and (2) of Section 19 relating to the exchange, sale, mortgage or lease for a term exceeding five years shall, in addition to being communicated to the State Government and to the trustee or trustees concerned and to the intended alienees, be published by affixture-

(a) on the notice board or the front door of the religious institution concerned;

(b) in a conspicuous place of the village where the property in question is situate."

8. On close reading of the said provision, it appears that Sub-Rule (2) of Rule 4 provides the manner of publication of the order of sanction by the Commissioner. It stipulates that a copy of the order passed by the Commissioner under Section 19(1) and (2) of the Act relating to the auction sale (in the instant case) is communicated to the State Government and to the Trustee or Trustees concerned and its intended alienates. It shall also be published by affixture on the notice board of the front door of the religious institution concerned and in a conspicuous place of the village where the property in question is situated. It appears from the record that Rule 4(2) of the Rules has not been complied with in the instance case. It was not published in the manner in which it was required to be published. As it appears, the notice was published in the notice board of the religious institution, namely, the Deity.

9. It is submitted by Ms. Mahapatra, learned counsel for the Opposite Party No.3 that communication of the order of sanction was made to the Trustee and it was published through beat of drum in the locality. It is also her submission that it was published in a conspicuous place. Of course, such submission was vehemently objected by Mr. Mantry, learned counsel for the Petitioners.

10. From the submissions of learned counsel for the parties and on scrutiny of materials on record, it appears that the order of sanction was published in the notice board of the religious institution. There is some doubt with regard to the manner of publication. As submitted by Ms. Mahapatra, learned counsel the

auction notice was published by beat of drum and affixed in a conspicuous place.

10.1 Even that be so, the Petitioners appears to have only challenged the auction process. But there is no pleading in the Writ Petition and no contention is raised by Mr. Mantry, learned counsel for the Petitioners as to how the Petitioners are prejudiced by non-compliance of Rule 4(2) of the Rules. The auction sale was conducted on 17th March, 2020. A Public Interest Litigation being W.P.(C) No.26466 of 2020 was filed assailing the auction price. This Court, without interfering with the auction process and the price at which the auction was held, by its order dated 3rd April, 2023, disposed of the Writ Petition with an observation that the Petitioners therein if aggrieved, may avail other civil remedies. Thus, the challenge with regard to the auction price was set at rest in W.P.(C) No. 26466 of 2020 and is no more available to be challenged in this Writ Petition. There is no material on record to come to a conclusion that by not following the provision of procedure in strict adherence of Rule 4(2) of the Rules, either the Petitioners or the Deity is prejudiced.

11. The Petitioners are essentially espousing cause of their tenancy right in the Writ Petition stating that if the auction sale is allowed to stand the Petitioners would be highly prejudiced as they are likely to be evicted. The Petitioners have distinct remedy under the law to espouse the same. In the garb of protecting the interest of the Deity, this Writ Petition has been filed to espouse the individual cause of the Petitioners.

12. Section 3 (x) of the Act defines person having interest. Only because the Petitioners visit or are entitled to visit the temple for darsan of Deity and are Hindu by religion, would not bring them within the meaning of 'persons having interest' in Section 3 (x) of the Act. The person must espouse the cause of the Deity who is a perpetual minor and not his/her personal interest or right in the Deity or its endowments. Thus, the Petitioners do not satisfy the test of the definition of Section 3 (x) of the Act.

13. Further, Ms. Mahapatra, learned counsel for the Trustee-Opposite Party No.3 submits that the Deity is no way affected by the auction sale or the sale price at which the property of the Deity was sold. She further submits that the Opposite Party No.4 was not delivered with possession of the land already acquired by the government and he did not raise any claim with regard to the property already acquired in a land acquisition proceeding. Since the auction purchaser itself is not aggrieved in parting with the land acquired, and the Trustee, which is in management of the Deity, is not aggrieved by the auction process or sale undertaken in pursuance thereof, we are not inclined to reopen the matter and make a roving enquiry into it which would be only academic.

14. Hence, we are not inclined to interfere either with the orders under Annexures-6 and 7 or the auction process so also the sale deed executed pursuant to the auction sale under Annexure-13. In view of the above, the Writ Petition stands dismissed.

15. In the facts and circumstances of the case, there shall be no order as to costs.

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