

(1958) 05 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 120 of 1957

Srinivasa Ramanuja Das

APPELLANT

Vs

Commissioner of Orissa Hindu Religious Endowments

RESPONDENT

Date of Decision : 12-05-1958

Acts Referred:

Orissa Hindu Religious Endowments (Amendment) Act, 1952 — Section 42, 42(6), 42(7), 79A

Orissa Hindu Religious Endowments Act, 1939 — Section 38, 39, 39(1), 40, 41

Citation : AIR 1959 Ori 83 : (1959) 25 CLT 88

Hon'ble Judges : R.L. Narasimham, C.J.;G.C. Das, J

Bench : Division Bench

Advocate : M. Mahanty, P. Mahanty and B.K. Ray, for the Appellant; S. Mahanty, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is an application under Article 226 of the Constitution by the present Mahant of Dakshina Parswa Math, Puri, challenging the validity of a scheme dated the 14th January 1954 settled by the Commissioner of Hindu Religious Endowments, Orissa, in association with another gazetted officer, for the administration of the said Math. The scheme was published in the Orissa Gazette dated the 29th January 1934 at page 64.

2. Dakshinaparswa Math of Puri is a well known Srivaishnava Math following the Vishishtadwait philosophy propounded by Sri Ramanuja. The petitioner succeeded to the Mahantship on the 6th September 1956, on the demise of his Gum Mahant Sri Jaganath Ramanuja Das. During the year 1953 the then Commissioner of Hindu Religious Endowments held an enquiry u/s 38 of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939) (hereinafter referred to as the old Act) into certain allegations of mismanagement made against the previous Mahant. The enquiry was held jointly with another officer of Government (named Sri L.N. Patnaik) as required by the proviso to that Section. The two officers by

their order dated the 4th December, 1953 came to the following finding:

"We are now convinced beyond any shadow of doubt that the Mahant of Dakshinaparswa math has alienated the Math properties for improper purposes and is guilty of gross acts of mismanagement of the math properties. We are therefore of opinion that it is highly necessary in the interests of the math and its endowments, that a scheme of administration should be settled and we direct accordingly."

Then they consulted the Mahant, as required by Sub-section (1) of Section 39 of the old Act for the purpose of settling a detailed scheme for the administration of the math. The consultation was made in accordance with the procedure prescribed in Rule 108 of the Rules framed under the old Act. The Mahant did not appear in person, but his legal adviser appeared before the two officers on his behalf.

Then, on the 14th January 1954 the Endowments Commissioner and his associate-officer settled a detailed scheme for the administration of the Math and it was, in due course, published in the Orissa Gazette as mentioned above.

3. On the 28th January 1954 the previous Mahant Sri Jagannath Ramanuja Das filed an application under Article 226 of the Constitution before this Court against the order dated the 4th December 1953, passed by the Endowments Commissioner and his associate officer u/s 38 of the old Act and also against the scheme settled on the 14th January 1954. This application (O.J. C. No. 6 of 1954; was however permitted to be withdrawn on the 9th March, 1954. Then after the decision of the Supreme Court in the case reported in Sri Sadasib Prakash Brahmachari Vs. The State of Orissa, -- (to which the Mahant was a party) -- he filed another application under Articles 226 and 227 (O. J. C. No. 180 of 1956) challenging the validity of the various provisions in that scheme.

After his death, the present petitioner who was his chela was substituted in his place in that O.J.C. The present application was filed on the 2nd August 1957 by the petitioner challenging the applicability of the scheme on grounds different from those taken in the previous application. Both the applications were heard together. After disposing of the points raised in this application, I shall, in a separate judgment in O.J.C. No. 180 of 1956, examine in detail the various clauses of the scheme in the light of the Constitution, especially of Article 26 as construed in some of the recent decisions of the Supreme Court.

4. It is necessary to describe briefly the various enactments made by the Orissa Legislature for the control of maths in Orissa. The old Act came into force on the 31st August 1939. Section 38 of that Act conferred jurisdiction on the Commissioner of Hindu Religious Endowments to hold an enquiry in association with another officer to be appointed by Govt., if he had reasons to believe that the trustee of a math had been mismanaging the endowments of the math or had been spending or alienating them for improper purposes. After completing such an enquiry, if the Commissioner and his associate officer are satisfied that

the Mahant concerned has mismanaged the endowments or, has alienated them for improper purposes and that in the interests of the proper administration of such endowments a scheme should be settled, the two officers may, after consulting the Mahant in the manner laid down in the Rules, settle a scheme u/s 39 of the old Act.

A scheme settled under that Section may provide for the association of any person or persons with the Mahant or for constituting a separate body for participating or assisting in the administration of the math, provided such persons are chosen from those "having interest" in the math. The expression "person having interest" was defined in Section 6 (10) of the old Act as meaning in the case of a math "a disciple of the math, or a person of the religious persuasion to which the math belongs."

The aggrieved party was given the right to move the Civil Court by a regular suit against an order of the Endowments Commissioner settling a scheme. Section 40 of the old Act expressly stated that a scheme once settled u/s 39 shall be final and binding on the trustee and on all persons having interest. Section 41 further stated that a scheme so settled may be modified or cancelled by the Court in a suit properly instituted, but not otherwise.

5. On the 19th May 1953 the Governor of Orissa issued an Ordinance known as the Orissa Hindu Religious Endowments (Amendment) Ordinance 1953 (Ordinance No, II of 1953) amending sections 38 and 39 of the old Act. The main feature of the amendment was the deprivation of an aggrieved Mahant of his right to institute a suit in a Civil Court to modify or set aside a scheme settled by the Endowments Commissioner u/s 39 of the old Act. This Ordinance was replaced by the Orissa Hindu Religious Endowments (Amendment) Act 1953 (Orissa Act XVIII of 1953) which came into force on the 30th October 1953. That Act was practically on the same lines as the ordinance and deprived the Mahant of his right to challenge the scheme settled by the Commissioner and the associate officer, in a civil court.

6. The constitutional validity of the old Act, as amended by Orissa Act XVIII of 1953 was challenged before the Supreme Court by the Mahants of several maths at Puri including the Mahant of Dakshina Parswa Math. Their Lordships of the Supreme Court, in their judgment reported in Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, held that sections 38 and 39 of the old Act as amended by Orissa Act XVIII of 1953 were unconstitutional inasmuch as they denied to the aggrieved Mahant his right to approach a judicial tribunal against an order of the Endowments Commissioner and his associate officer settling a scheme.

7. But as early as the 27th February 1952, the Orissa Legislature passed another Act known as the Orissa Hindu Religious Endowments Act (Orissa Act No. II of 1952) (hereinafter referred to as the new Act) which was intended to be a self-contained statute dealing with Hindu Religious Endowments and repealing the old

Act. This Act was not however brought into force immediately, presumably because the constitutional validity of the Madras Hindu Religious and Charitable Endowments Act, 1951 (on which it was modelled) was then under challenge before the Supreme Court.

When their Lordships of the Supreme Court delivered their judgments in the Shirur Math case in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, , the Legislature made consequential amendments to the new Act giving a right of appeal to the High Court (Vide section 44 of the new Act) against an order settling a scheme and also making some modifications and additions to the Act so as to conform to the principles laid down in the aforesaid two judgments of the Supreme Court. The new Act was eventually brought into force on the 1st January 1955.

8. It is now necessary to describe some of the relevant provisions of the new Act. The expression "person having interest" was defined in Section 3(x) as meaning, in the case of a math, "a disciple of the math or a person professing the Hindu religion or the Sikh faith to which the math belongs." This definition is slightly at variance with the definition given in Section 6 (10) of the old Act to which I have already referred, namely :

"a disciple of the math or a person of the religious persuasion to which the math belongs."

The words "Hindu religion, to which the math belongs" occurring in the new definition may prima facie, appear to be wider than the words "religious persuasion to which the math belongs", unless as a matter of construction, bearing in mind the provisions of Article 26(b) of the Constitution, it is held that the two expressions convey the same idea. I shall discuss this point in my judgment in O.J.C. No. 180 of 1956. The new Act, by Section 42, replaces Sections 38, 39, 40 and 41 of the old Act. Under the old Act two separate enquiries one u/s 38 and another u/s 39, were contemplated.

Under the new Act, however, if the commissioner has reasons to believe that in the interests of the proper administration of the religious endowment a scheme may be settled he may immediately proceed to frame such a scheme, and for that purpose may hold an enquiry as provided, in the Act. The new Act does not require him to satisfy himself that the trustee concerned has mismanaged the endowments or has spent or alienated them for improper purposes.

If he has reasons to believe that "in the interests of the proper administration of the institution a scheme may be settled" he has jurisdiction to proceed to settle the scheme. Sub-section (7) of Section 42 of the new Act stated that the scheme shall be binding on the trustee, the Executive Officer and all persons having interest, subject of course to any modification or cancellation made by the Assistant Commissioner or Commissioner of Endowments. As regards schemes

framed under the old Act, Section 79-A of the new Act stated that those schemes shall be deemed to have been settled under the provisions of the new Act and any person aggrieved by such a scheme was given a special right of appeal to the High Court within sixty days from the commencement of the new Act.

10. The constitutional validity of the new Act, especially of Sections 42 and 79-A was challenged before the Supreme Court in *Sri Sadasib Prakash Brahmachari Vs. The State of Orissa*, but their Lordships of the Supreme Court held both those provisions to be valid and constitutional. The following passage in their judgment (at page 439 of the report) dealing with the deeming provisions of Section 79-A of the new Act may be quoted:

"What the Legislature has purported to do is to take up those very schemes and deem them to have been settled under the provisions of the present Act and thereby to leave them open to any attack available under the present law.

Such a provision is not uncommon in legislative practice and is enacted in order to avoid the public inconvenience of having to re-do what has previously been done. The result of Section 79-A is to treat the schemes framed within the specified period as schemes framed immediately after the commencement of the present Act and to impute thereto, by a fiction, compliance with the various procedural and other steps which are requisite u/s 42".

10a. In the present application the scheme under challenge was settled on 14-1-1954 at a time when the old Act as amended by Orissa Act XVIII of 1953 was in force. Doubtless Sections 38 and 39 of the old Act as so amended were declared unconstitutional by the Supreme Court in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, and consequently the scheme framed under those sections also became unconstitutional and invalid. But by virtue of Section 79-A of the new Act, as construed by the Supreme Court in *Sri Sadasib Prakash Brahmachari Vs. The State of Orissa*, the scheme framed under the old Act should be deemed to be a scheme prepared u/s 42 of the new Act notwithstanding the pronouncement of the Supreme Court in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, .

11. On behalf of the petitioner, Mr. M. Mohanty raised the following two important contentions against the constitutional validity of the scheme:

(i) The scheme did not conform to the provisions of Section 38 or Section 39 of the Old Act and was consequently invalid under the old Act itself. Such an invalid scheme could not be saved by Section 79-A of the new Act.

(ii) The scheme having been framed by reason of the finding about the mismanagement on the part of the predecessor in office of the present Mahant, cannot enure beyond the life-time of that Mahant and that consequently it must be held to be inoperative on his death.

12. Mr. Mohanty's first contention is mainly based on the preamble to the

scheme which is as follows:

"Whereas the Commissioner of Endowments Orissa and the Associate Officer appointed by the Provincial Government in this behalf are satisfied that the institution of Sri Dakshinaparswa Math, Puri, with its endowments and branch institutions thereof, cannot be effectively managed under the general provisions of Orissa Hindu Religious Endowments Act IV of 1939, they after consulting the trustees and the persons having interest in the institution, hereby settle the following scheme of administration u/s 38 of the said Act."

Mr. Mohanty contended that under the old Act a scheme can be settled only u/s 39 and not u/s 38 and when the preamble to the scheme expressly says that it is a scheme u/s 38 such a scheme is invalid. He further urged that even if Section 38 be taken as a clerical mistake for Section 39, yet the preamble does not conform to the requirements of Sub-section (1) of Section 39 which says that the jurisdiction of the Commissioner to frame a scheme arises only if, after enquiry, he is satisfied that the trustee concerned has mismanaged the endowments of such math or has spent or alienated them for improper purposes and that in the interest of the proper administration of such endowment a scheme of administration should be settled".

Doubtless the preamble does not incorporate the above language used in Sub-section (1) of Section 39. The preamble merely says that the Commissioner and his associate officer are satisfied that the math cannot be effectively managed under the general provisions of the old Act. This is indeed an unfortunate omission on the part of the Endowments Commissioner who settled the scheme. He is a judicial Officer and he should have while drafting the preamble, carefully scrutinized the provisions of the aforesaid sub-section and used the language found therein. I would have attached much importance to the argument of Mr. Mohanty but for the fact that our attention has been drawn to an order u/s 38 of the old Act, made by the Commissioner and his associate officer, on 4-12-1953 wherein they came to a clear finding that "the Mahant has alienated math properties for improper purposes and is guilty of acts of gross mismanagement of the math properties."

This finding was also challenged by the Mahant in O. J. C. No. 6 of 1954, but as already pointed out, he did not press that application and allowed it to be withdrawn. Once, it is thus clear that the findings required for the purpose of settling a scheme u/s 39 were properly arrived at, in a previous enquiry u/s 38 of the old Act, the omission to repeat those findings in the preamble to the scheme will be only an irregularity and will not render the scheme invalid.

13. The second contention of Mr. Mohanty is also equally unconvincing. Under 5. 40 of the old Act, a scheme is final and binding on the trustee and all persons having interest subject to such modifications or cancellations as may be made by the Civil Court u/s 41, in a properly constituted suit. Under Sub-sections (6) and (7) of Section 42 of the new Act also the same principle has been recognised and

it has been provided that subject to any modification or cancellation that may be made by the officers of the Endowments Department and to an order that may be passed by the High Court on appeal u/s 44, the scheme shall be binding on the trustee, the executive officer and all persons having interest.

Mr. Mohanty urged that the word "trustee" used in the aforesaid Sections means only the trustees in whose presence the scheme was framed and it cannot include his successor-in-interest. In support of this argument he relied very much on the fact that under the old Act the condition precedent to the framing of the scheme is the finding about acts of mismanagement and misfeasance by the trustee and since such acts cannot be attributed to his successor in interest unless and until he is given an opportunity to manage the Math for some time, it would not be proper to hold that the scheme binds the successor in interest also.

There might have been some force in this argument but for the fact that both under the old Act and under the new Act it is expressly provided that a scheme binds not only the trustee but all persons having interest. As already shown, "a person having interest" has been defined, in the case of a math, as including the disciple of a Mahant. The petitioner was undoubtedly a disciple of the previous Mahant at the time when the scheme was settled. He was therefore bound by the scheme not in his capacity as a "person having interest" in the math. Thus, when the scheme was binding on him when it was settled in January 1954, it will be futile to say that it ceased to be binding on him when he succeeded the previous Mahant on his demise on the 6th September, 1956.

His change in status from that of a disciple to that of a Mahant is not material, so far as the Binding nature of the scheme is concerned, Sub-sections (6) and (7) of Section 42 of the new Act and Sections 40 and 41 of the old Act make it clear that a scheme validly settled is final and binding on all persons concerned unless it is modified or cancelled in accordance with the provisions of the two Acts, that is by an application to the Civil Court under the old Act, or by an application to the Endowments Commissioner or by an appeal to the High Court under the new Act. I would therefore hold that the scheme binds the present Mahant also.

14. I may now dispose of a minor point raised by Mr. Mohanty. Section 39 of the old Act says that while settling the scheme the Mahant shall be consulted "in the prescribed manner". Rule 108 of the Endowment Rules prescribes the procedure to be observed while consulting a Mahant u/s 39 of the old Act.

That rule merely says that the Mahant shall be called upon by notice to submit any representation which he may wish to make, within a specified date and that the notice may be sent either by messenger or by registered post. It is not denied that such a notice was issued to the previous Mahant prior to the settling of the scheme. On the other hand, in O. J. C. No. 6 of 1954 (in paragraph 11 of the petition) it was admitted by the Mahant as follows :

"That the notice of consultation u/s 39 of the Orissa Hindu Religious Endowments Act was served on the Agent of the petitioner on 6-1-54 and the Advocate of the

petitioner attended the office on 11-1-54 and the case was adjourned to 12-1-54 and in spite of objections by the petitioner's Advocate a scheme of administration was adopted."

Again in Miscellaneous Appeal No. 18 of 1956 which the previous Mahant filed against the scheme and which was allowed to abate, it was admitted in paragraphs 7 and 8 that the Mahant did receive a notice from the Commissioner of Endowments to the effect that a scheme would be prepared but that -

"he did not realise the importance of the enquiry and did not take proper steps for representing matters which should have come to the knowledge of the Commissioner of Endowments in framing a scheme suitable to the institution and consistent with the obligations and privileges of the Mahant. So, naturally the Commissioner and his associate prepared a scheme according to their idea without any assistance from the Manager of the Math."

Mr. Mohanty's argument is that consultation for the purpose of Sub-section (1) of Section 39 requires that even if the Mahant does not appear in response to a notice properly served on him the draft scheme should be first sent to him, after its preparation by the commissioner and his associate officer, in order to obtain his comments if any. A mere general notice to the Mahant to the effect that a scheme for the administration of the Math would be settled on a specified date and that if he cared to enter appearance and submit any representation that would also be taken into consideration would not suffice. I am however unable to find anything in the language of Sub-section (1) of Section 39 of the old Act to support this argument.

All that the sub-section says is that consultation shall be made in the prescribed manner. Rule 108 of the Endowment Rules does not say that even if the Mahant fails to appear on receipt of notice, the draft scheme should be first sent to him and that it should be finalised only after he is given a further opportunity to give his suggestions. The Mahant, by his own negligence, allowed the scheme to be framed ex parte. It does not appear that on any subsequent occasion he requested the Endowments Commissioner and his associate officer to re-consider the scheme in the light of his further representations if any. On the materials available before us, I cannot hold, as a proposition of law that unless the draft scheme is first sent to the Mahant for his comments, there would be no "consultation" as required by Sub-section (1) of that Section. In this connection I may also refer to a Division Bench decision of this Court in O.J.Cs. Nos. 3 and 4 of 1954 where consultation of the same type as has been found in the instant case, was held to be valid for the purpose of Sub-section (1) of Section 39 of the old Act.

15. The application is therefore dismissed with costs. Hearing fee Rs. 100/- (Rupees one hundred only)

G.C. Das, J.

16. I agree.