
(2010) 09 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (C) No. 16298 of 2009

Sudarsan Nayak and Another

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 27, 27(1)

Citation : (2010) 110 CLT 869 : (2011) 1 ILR (Ori) 89 : (2010) 2 OLR 754

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—In this writ petition, the Petitioners call in question Annexure-3, the order of appointment of Non-hereditary Trust Board represented by opp. party Nos. 3 to 17 in respect of the deities, viz., "Nilakantheswar Deb" and "Dula Dei Thakurani" Bije at Kunjar under Pipili P.S. in the district of Puri.

2. As per the writ petition, the Petitioners are the hereditary trustees of the aforesaid deities. While the forefathers of Petitioner No. 1 were performing Mali Seba, the forefathers of Petitioner No. 2 were performing Anna/Dhupa Seba of the said deities. At present, the Petitioners are performing the Seba like their respective ancestors as hereditary trustees to the best satisfaction of the public. The father of the Petitioner No. 1 and Petitioner No. 2 Have recorded as Marfatdars of the deities and their properties in the Major Settlement R.O.R. of the year 1966. In the final consolidation R.O.R. published in the year, 1982, both the Petitioners have also been recorded as Marfatdars in respect of the deities and their property. However, opp. party Nos. 3 to 17, influencing the Assistant Endowment Commissioner, Bhubaneswar managed to constitute a Non-hereditary Trust Board being represented by them in respect of said deities and their property without the knowledge of the Petitioners and the general public of the locality, The Petitioners as well as the villagers came to know about constitution of the Non-hereditary Trust Board only on 24.07.2009, when some

personnel of the office of the Commissioner of Endowments along with some police personnel locked the temple. Hence, the writ petition.

3. Learned Counsel appearing for the Petitioners submitted that as per Section 27(1) of Orissa Hindu Religious Endowments Act (hereinafter referred to as OHRE Act), before constituting Non-hereditary Trust Board in respect of any religious institution other than math, the Assistant Commissioner of Endowments must be satisfied that there is no hereditary trustee in respect thereof. Since there are hereditary trustees in respect of religious institution in question, constitution of Non-hereditary Trust Board was illegal. In support of his submission, he relied on the decisions in the case of Khetramohan Rout and Others Vs. Sri Sri Nageswar Mahadev and Others, and Upaleswari Thakurani and Upaleswari Narayani Thakurani and Others Vs. Commissioner of Endowments Orissa and Others,

4. Learned Counsel for the Petitioners further submitted that as per the provision contained u/s 27 of the O.H.R.E. Act, the Assistant Commissioner of Endowments is duty bound to publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum inviting suggestion and objection before sending the proposal to the State Government for constitution of Non-hereditary Trust Board, but he has not done so in the instant case. So, he submitted that the writ petition should be allowed and Annexure-3 should be quashed.

5. On the other hand, learned Counsel appearing for opp, party Nos. 1 and 2 contended that all the formalities were complied with before the Non-hereditary Trust Board was constituted. He further contended that the Petitioners are only performing the Seba Puja since their forefathers, but they are not trustees of the deities. As they neglected in their duty, the Assistant Commissioner of Endowments, Bhubaneswar rightly constituted the Non-hereditary Trust Board.

6. It would be profitable to quote Section 27(1) of O.H.R.E. Act, which reads as follows:

27. Non-hereditary trustees, their number and appointment -(1) the Assistant Commissioner shall, in cases where there is no hereditary trustee, with the prior approval of the State Government appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

Provided that the Assistant Commissioner, shall, before sending any proposal to the State Government for such prior approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication, and forward to the State Government the suggestions and objections, if any, received, along with such proposal.

As per this provision, the Assistant Commissioner of Endowments can appoint a Non-hereditary Trust Board with approval of the State Government in respect of the religious institution other than Math where there is no hereditary trustee.

7. In the Full Bench decision of this Court in the case of Khetramohan Rout and Ors. (supra), It was held that:

The absence of a hereditary trustee being a condition precedent for exercise of the power u/s 27 of the Act, the Assistant Commissioner shall have to record, while exercising this power, as to why he is of the opinion that there is no hereditary trustee of the religious institution. This satisfaction may be arrived at on the basis of materials placed before the Assistant Commissioner, for which purpose, he may go in for a summary inquiry

Again in the decision Upaleswari Thakurani and Upaleswari Narayani Thakurani and Ors. (supra), this Court held that:

Therefore, the Assistant Commissioner has to be satisfied and has to record a finding that there is no Hereditary Trustee of the religious institution and therefore, he is empowered to appoint a Non-Hereditary Trust Board and he is making such appointment. The satisfaction of the Assistant Commissioner has to be arrived at on the basis of the materials placed before him and he may also hold a summary enquiry for the aforesaid purpose.

In the instant case, learned Counsel appearing for the opp. party Nos. 1 and 2 produced the relevant records from the office of Assistant Commissioner of Endowments before this Court. On perusal of the said records, nowhere it was found that the Assistant Commissioner of Endowments enquired into the matter and was satisfied that there was no hereditary trustee in respect of the religious institution in question.

8. As quoted above, as per Section 27 of the O.H.R.E. Act before sending any proposal to the State Government for appointment of Non-hereditary Trust Board, it is incumbent upon the Assistant Commissioner of Endowments to publish a notice in the Notice Board of the concerned religious institution and to intimate the general public of the locality by beat of drum inviting suggestions and objection on the proposal. On perusal of the record of the Assistant Commissioner of Endowments produced before this Court, it is found that the general public of the locality was intimated by beat of drum inviting suggestions and objections on the proposal from the persons affected, but there is nothing to show that any notice was published in the Notice Board of the religious institution in question, compliance of which is mandatory in nature.

9. Therefore, under such circumstances, the writ petition is allowed and Annexure-3 is hereby quashed.

10. No cost.