
(2023) 01 OHC CK 0048
In the Orissa High Court
Case No : Writ Petition (C) No.21091 Of 2018

Tamala Das

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 12-01-2023

Acts Referred:

Odisha Hindu Religious Endowments Act, 1951 — Section 19, 19A
Registration Act, 1908 — Section 17
Odisha Hindu Religious Endowments Rules, 1959 — Rule 4A, 4A(3)

Citation : (2023) 01 OHC CK 0048

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : Manmaya Kumar Dash, A. K. Sharma, P. Naidu,

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. The writ petition was moved on 30th November, 2022. On behalf of petitioner it was submitted that she wants to deal with property purchased by her under a registered conveyance dated 12th August, 1992. As such, she applied for 'No Objection' certificate under section 19-A in Odisha Hindu Religious Endowments Act, 1951. Inserted by amendment rule 4A in Odisha Hindu Religious Endowments Rules, 1959 lays down procedure for application for issuance of 'No Objection' certificate. It requires issuance of public notice. It was submitted, in spite of not receiving any objection to the public notice issued, the Commissioner passed impugned judgment dated 20th July, 2018 rejecting the application for 'No Objection' certificate under section 19-A. Furthermore enquiry report was also in favour of petitioner.

2. Mr. Dash, learned advocate appears on behalf of petitioner, while Mr. Sharma, learned advocate, Additional Government Advocate for State and Ms. Naidu, learned advocate for Commissioner of Endowments.

3. On said earlier occasion Ms. Naidu had pointed out from paragraph 6 of impugned judgment that her client found case schedule land stood recorded in name of deity Sri Dadhibaban Dev, bije 'Nijagaon', indicating public deity. In the circumstances, enquiry report was disbelieved and the judgment duly made. She had submitted further, section 19-A was inserted by amendment in year 1989 and applied thereafter. There should not be interference. Mr. Dash in reply had relied on view taken by a learned Single Judge of this Court in Sumit v. State, reported in 2012 (I) OLR – 922. He had submitted, rule 4A was inserted by amendment in year 2012, pursuant to the view.

4. We had noticed from rule 4A that sub-rule (3) therein provides for consequence on receiving objection. Impugned judgment says, no objection was received. Hence, we found a situation of section 19-A having coming to force in year, 1989 but thereafter, petitioner had obtained registered conveyance in year, 1992, without requirement of obtaining permission.

5. We had directed petitioner to obtain official translation of the deed. It was obtained and filed by additional affidavit dated 4th December, 2022.

6. We reproduce below section 19-A without the provisos.

"19-A. Regulation of registration of documents – Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under Section 17 of the Registration Act, 16 of 1908, purports to evidence a transfer, by exchange, sale, mortgage or by lease for a term exceeding five years, of any immovable property belonging to or given or endowed for the purpose of any public religious institution, no Registering Officer, appointed under that Act, shall register any such document unless the transferor produces before such Registering Officer, the sanction order passed by the Commissioner under Section 19, or, as the case may be, no objection certificate in the prescribed form granted by the Commissioner or any Officer authorized by him in that behalf."

(emphasis supplied)

7. Today too we have heard learned advocates for the parties.

8. On behalf of the Commissioner there is contention that though record in the Record of Rights is a rebuttable presumption nevertheless, the entry in appropriate column is 'Nijagaon' implying worship of the deity by the villagers, making it a public deity. This was what weighed with the Commissioner in making impugned order. On the other hand we have, the Registering Officer duly appointed under the Registration Act, 16 of 1908 had registered said sale deed dated 12th August, 1992, sometime after the inserted by Odisha Amendment Act no.22 of 1989 provision of section 19-A. We looked at official translation of the deed and found that there is description of the deity being vendor therein both as 'Nijagaon' as well as 'Nijagraha'. It is clear that the registering authority, on having had the sale deed presented for registration, found that the deity was

private but the villagers permitted to also participate in worship. We infer as such since, the enquiry report was in favour of petitioner. By Sumit (*supra*) it was said that there was no procedure for applying for permission. Here we reproduce paragraph 23 from the judgment.

"23. As this Court has already found that the Rules are silent with regard to the procedure to be followed by the Commissioner in case an application is made under Section 19-A of the Act, and no specific form is prescribed as mentioned in the section for granting a "No Objection Certificate, this Court is of the affirmative view that until such procedure is laid down in the Rules by way of amendment and the form is prescribed for grant of "No Objection Certificate', the Registering Authority cannot insist upon production of a "No Objection Certificate" from the Commissioner under Section 19-A of the Act and, therefore, the said Section 19-A cannot be operated in its present form."

9. An additional fact that goes to support working of provision in section 19-A in allowing registration of sale deed dated 12th August, 1992, in spite of absence of procedure for applying for 'No Objection' certificate from the Commissioner is that on issuance of public notice, no objection was received regarding petitioner's application under rule 4-A. That brings us to the contentions made on behalf of the Commissioner that the office was empowered to take a prima facie view under sub-rule (3) in rule 4A.

10. We reproduce below rule 4A.

"4A-Procedure for obtaining No Objection Certificate under Section 19-A – (1) For the purpose of obtaining necessary No Objection Certificate from the Commissioner for production before the Registering Officer for registration of document purporting to evidence, transfer, exchange, sale or mortgage or lease for term exceeding 5 years, of any immovable property belonging to or give or endowed for the purpose of any religious institution on the ground that it is not public religious institution for which it does not require sanction U/s.19 of the Act, an application shall have to be filed by the person/persons in control or charge over the immovable property and the institution in the manner prescribed in Rules 34 to 41 of these rules.

(2) On receiving such application, the Commissioner shall issue notice for information of general public together with copy of the application filed under sub-rule (1) to be published in a conspicuous place of the Office of the Urban or Rural local bodies as the case may be under whose jurisdiction the property is situated and at such other place as the Commissioner deems fit and proper, inviting objection to the said application to be received within one month from date of publication of such notice.

(3) On receiving the objection if any, within the stipulated period and after giving reasonable opportunity of hearing to the parties if the Commissioner is prima facie satisfied, that the institution in question is not a public religious institution for which no sanction under section 19 of the Act is required, he shall, grant "No

Objection Certificate” in Form AA to these rules].”

(emphasis supplied)

This rule was notified by publication in Odisha Gazette Extraordinary no.1209 dated 23rd June, 2012, to be effective from 28th March, 2012.

11. Our interpretation of sub-rule (3) in rule 4A is that prima facie view can be taken by the Commissioner on receiving objection. The view is necessitated by existence of objection. It follows that the rule contemplates, where there is no objection, the exercise of taking a prima facie view, provided for by sub-rule (3), becomes unnecessary. In other words, on receiving the objection and after reasonable opportunity of hearing to the parties, the Commissioner can be prima facie satisfied that the institution in question is not a public religious institution, for which no sanction under section 19 of the Act is required. He shall then grant ‘No Objection’ certificate in prescribed form. The provision in sub-rule (3) indicates three factors. The application is by a religious institution claiming to be a private one. Receipt of objection and reasonable opportunity of hearing to the parties given. The application was by petitioner, purchaser of the deity’s land, not a religious institution claiming to be a private one. The second two factors are in conjunction. Hence, our view that in absence of objection, the exercise provided for by sub-rule (3) is not necessary. More so because, sub-rule (3) is worded in enabling the Commissioner to grant ‘No Objection’ certificate in spite of objection filed.

12. There is another aspect of the controversy in the case. Petitioner’s registered deed dated 12th August, 1992 is a duly executed registered deed of conveyance. By it was sold schedule property for consideration Rs.25,560/- and petitioner placed in peaceful possession of all the purchased property. Vendor was marfatdar of the deity. As aforesaid, the deed mentioned description of vendor deity as being both ‘Nijagaon’ and ‘Nijagruha’. View taken in Sumit (supra) was that until procedure is laid down by the rules and form is prescribed for grant of ‘No Objection’ certificate, the registering authority cannot insist upon production thereof issued by the Commissioner or the delegate, under section 19-A. Petitioner’s submission that pursuant to this view there was insertion by amendment, rule 4A could not be rebutted. In the circumstances, the view was acted upon. The situation gave sanctity to petitioner’s purchase by sale deed dated 12th August, 1992, executed and registered prior to 28th March, 2012, date from which the rule was given effect. Thus, petitioner’s application to transfer her purchased land cannot be said to belong to the deity, as duly conveyed away on 12th August, 1992. In acting as required under sub-rule (3) in rule 4A the Commissioner must be confined to prima facie finding regarding whether ‘No Objection’ certificate can be issued. It is not a procedure for pronouncing validity of title documents presented for the purpose.

13. We are satisfied that petitioner is entitled to have registration of deed on issuance of ‘No Objection’ certificate per procedure under rule 4A for registration

to be effected in compliance of section 19-A.

14. Impugned judgment is set aside and quashed. The Commissioner is directed to forthwith issue 'No Objection' certificate in prescribed form.

15. The writ petition is allowed and disposed of.

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