(2008) 06 OHC CK 0032

In the Orissa High Court

Case No : Writ Petition (C) No. 2223 of 2007

Uma Charan Jena APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 19, 41

Citation : (2008) 2 OLR 709 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.K. Chowdhury, S.K. Kanungo, B.M. Nayak and L. Mohanty, for the Appellant; A.K. Rath, for Opp. Party No. 2 and A.A. Das, for Opp. Party No. 8 and S.S. Rao, for Opp. Party No. 10, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The dispute in the present Writ Petition is with regard to alienation of certain lands belonging to deity Sri Sidheswar Dev, Bije Jagamara, P.S. Khandagiri in the district of Khurda, a public religious endowment, governed under the provisions of the Orissa Hindu Religious Endowment Act, 1951 (hereinafter referred to as ''the Act'').

2. An application was filed in the year 2003 by the Deity represented through its hereditary trustee u/s 19 of the Act, before the Commissioner of Endowments, opposite party No. 2, seeking permission to alienate Ac.1.461 decimals of land appertaining to Plot Nos. 994 and 995 under Khata No. 1121 of Mouza Bhubaneswar Sahar. The said permission was sought mainly on the ground that though the lands had been recorded as ''Sarada-I'' by efflux of time the same had become unfit for cultivation due to mushroom growth of residential complexes all around and consequent thereof, the institution was not getting any income from the said lands. Further, there was always threat of encroachment by outsiders and it was not possible for the persons in the management of the Deity to keep vigil over the lands or evict the trespassers. As the institution had no

other source of income, a lot of difficulties were faced in meeting the day to day expenses, and for the benefit of the institution it was necessary to alienate the lands and to invest the money fetched thereby in Fixed Deposit in any Nationalised Bank so that the expenses required for the daily ''Niti Kranti'' of the Deity could be met out of the interest earned there-from. The said application was registered as O.A. No. 22 of 2003. The Commissioner issued notice to the opposite parties and also to the general public by publication in the newspapers having wide circulation in the State. After receipt of notice, five persons entered appearance out of whom four, being opposite parties 1 to 4, did not contest the case and were set ex parte. Present opposite party No. 8 who was opposite party No. 5 before the Commissioner alone contested the case by filing her written statement taking the stand that she had been inducted as a lessee by the hereditary trustee in respect of the disputed lands since 14.9.1997 and was in possession of the same. She expressed her intention to purchase the said lands at the rate to be fixed by the Commissioner. In course of hearing, the hereditary trustee got himself examined as P.W.1 and produced the certified copies of the order passed u/s 41 of the Act declaring the institution as public religious endowment, the appellate order as well as the record-of-rights and rent receipts which were marked as Exts.1 to 4. On the other hand, opposite party No. 8 got herself examined as O.P.W. 1 and produced two deeds of agreement which were marked as Exts.A and B. The Commissioner also called for a report from the Divisional Inspector of Endowments with regard to the nature and character of the disputed lands and as to whether alienation of the said lands would be beneficial for the institution.

3. After discussing the evidence and other materials in extenso, the Commissioner observed that the disputed lands were unfit for cultivation as there was growth of residential complexes all around the lands. There was also likelihood of encroachment by others and it was difficult for the persons in management of the institution to protect the disputed lands from such encroachment; and that payments of land revenue, etc. were in fact burden for the institution. The Commissioner further observed that the lands had the potentiality to be used as house site and could fetch better price and it would be more beneficial if the same were sold and the sale proceeds invested in Fixed Deposit in any Nationalised Bank. The Commissioner thereafter proceeded to determine the market value of the lands and relying upon the report of the Inspector of Endowments and the sale statistics by order 14.6.2006 (Annexure-1) fixed the upset price of the lands at Rs. 32,00,000.00 (thirty-two lakhs) per acre and granted permission to alienate the same. Considering the claim of opposite party No. 8 that she was in possession of the lands since 1997 by virtue of lease-deeds Exts.A and B, to avoid future complicacies, the Commissioner observed that preference was to be given to the said opposite party to purchase the lands at the rate of Rs. 35,00,000.00 (thirty-five lakhs) per acre and on her failure to purchase at that rate, the lands would be put to public auction fixing the upset price at Rs. 32,00,000.00 per acre and sold to the

highest bidder. The Commissioner also granted liberty to opposite party No. 8 to participate in the auction if she so desired, and accordingly disposed of the OA.

4. The scenario of facts reveals that the Principal Secretary to Government of Orissa, Law Department in exercise of powers u/s 19 of the OHRE Act suo molu took a decision to revise the order Annexure-1 passed by the Commissioner and registered Revision Case No. 20 of 2006. After issuing notice to the opposite parties and hearing the parties, the Principal Secretary, Law Department confirmed the conclusions arrived at by the Commissioner of Endowments to the extent that the lands needed to be sold for the benefit of the institution. With regard to the sale price as fixed by the Commissioner, after considering an application filed by one Swapna Sarita Kanungo who had offered Rs. 40,00,000.00 (forty lakhs) per acre and also considering other materials available on record, vide order Annexure-2, increased the upset price from Rs. 32,00,000.00 to Rs. 42,00,000.00 per acre and directed that opposite party No. 8 might be given preference to purchase the lands at the said price and on her failure to purchase the same, the lands would be put to public auction.

5. Being aggrieved by the aforesaid order of the Principal Secretary, Law Department vide Annexure-2, the present Writ Petition has been filed mainly on the ground that the Hereditary Trustee being hands in glove with opposite party No. 8 clandestinely filed the petition u/s 19 of the OHRE Act before the Commissioner of Endowments and by a mere show of contest could obtain an ex parte order to the effect that preference would be given to her to purchase the lands, she having claimed to have been in possession thereof. According to the Petitioner, the Deity being a perpetual minor, the lands belonging to it was to be sold at the highest price on public auction and selling the same at lesser price being not in the interest of the Deity the same should not be permitted at any cost. That apart, the claim of opposite party No. 8 that she was a lessee under the Deity and was in possession of the lands in question was denied. In the alternative, it is averred, that the lease deeds said to have been executed in favour of opposite party No. 8, being illegal, no prior permission having been obtained from the Commissioner for that u/s 19 of the OHRE Act, no right whatsoever had accrued to the said opposite party and she deserved no preference whatsoever.

6. On being prima facie satisfied, this Court had issued Rule Nisi on 5.9.2007 and further directed that any action taken in the meanwhile would be subject to result of the Writ Petition. According to the Petitioner, in spite of receiving such order passed by this Court a sale deed was executed and got registered on 18.9.2007, vide Annexure A/8. In course of hearing, a petition for intervention was filed by opposite party No. 10 inter alia submitting that the entire deal was made in a camouflage manner and it was never a fact that opposite party No. 8 was in possession of the disputed lands. The cost of the lands being much higher than the. price fixed by the Principal Secretary, Law Department, it was averred, if a public auction was conducted, the Deity will be more benefited as the lands

would fetch more value.

7. In course of hearing, learned Counsel appearing for the intervener, submitted that valuation of the lands in question would be in fact more than Rs. 2 crores per acre but then attempt was being made to sell the same at a rate of Rs. 42,00,000.00 {forty two lakhs) per acre.

To test the bona fide of the intervener, this Court directed him to deposit a sum of Rs. 1 crore by way of Fixed Deposit in a Nationalised Bank and file the Fixed Deposit Receipt with the Registrar (J) of this Court. The said order has been duly complied with.

8. Opposite party No. 8 has filed a counter-affidavit taking the stand that after receiving notice from the Commissioner of Endowments she had appeared in the aforesaid O.A. According to the said opposite party she was in peaceful possession of the case lands since 14.9.1997 and that she was protecting the lands against outside encroachment. Considering the said aspects, the Commissioner had directed that the lands be sold giving her preference to purchase if she was ready and willing to pay the upset price. The said order was also confirmed by the State Government in a suo motu revision. She further averred that in consonance with the aforesaid order she had deposited an amount of Rs. 61,36,2000.00 which was kept in a Fixed Deposit account in the name of the Deity in a Nationalised Bank. After receipt of that amount, sale deed in respect of the lands was executed in her favour and was got registered on 20.8.2007. The submission that the price of the lands would be much higher than the upset price fixed by the Commissioner is stoutly denied. She has also averred that there was absolutely no clandestine transaction and she was a bona fide purchaser for value.

According to Mr. A.A. Das, learned Counsel appearing for opposite party No. 8, a right having accrued to opposite party No. 8, the same may not be interfered with by this Court exercising Writ Jurisdiction.

9. Dr. A.K. Rath, learned Counsel appearing for the Commissioner of Endowments, fairly submitted that alienation of the lands in question was for the benefit of the institution and the lands had been sold at just price. He produced the entire file of the office of the Commissioner for perusal of this Court.

10. Mr. Chowdhury, learned Counsel for the Petitioner, reiterating the stand taken in the Writ Petition forcefully submitted that opposite party No. 8 neither was nor is in possession of the lands in question and neither the Commissioner nor the Principal Secretary of Law Department had considered the question as to whether opposite party No. 8 was in possession of the said lands. He further submitted that law being well settled that a party cannot claim any right of equity by virtue of an invalid lease deed and the lease deed having been executed in favour of opposite party No. 8 being ab initio void, being contrary to the provisions of Section 19 of the OHRE Act, she could not claim any right and balance of equity never tilted in her favour. Thus the direction of the authorities

below to give preference to opposite party No. 8 to purchase the lands was unjustified. Mr. Chowdhury also supported the stand of the intervener and submitted that if the lands in question are sold in public auction it would fetch more than Rs. 2 crores per acre, but then there is an attempt to sell the same for a paltry consideration of Rs. 42,00,000.00 (forty-two lakhs) per acre and in the process the interest of the Deity, which is a perpetual minor would be greatly affected.

11. This Court heard learned Counsel for the parties at length and perused the entire materials available on record. There is no dispute that the lands in question exclusively belong to a public religious endowment governed under the provisions of the OHRE Act. No doubt Section 19 of the said Act vests power upon the Commissioner to grant permission to alienate the lands, but then such permission should always be granted with due care and caution, and only if the Commissioner is satisfied that the alienation would be for the benefit of the institution.

12. The language of Section 19 of the OHRE Act clearly indicates that sanction for alienation of a property belonging to public religious endowment can be given only if the Commissioner is satisfied that there exists true legal necessity for doing so. While considering the question of legal necessity, regard must be had to the actual or imminent danger to the property; and pressure or necessity of funds vis-a-vis benefit of the institution. Law is well settled that like any other State largess the property of a Deity which is a perpetual minor, if exigencies arise, should be sold at the best price it would fetch and within the four corners of Section 19 of the Act there is no provision for showing favour or giving preference to any person to purchase the property. Even otherwise, if the Commissioner in his wisdom, considering the necessity of the Deity and in order to avoid litigations intends to give preferential right of purchase to any person who is found to be in possession of the property he may direct so, provided the said person pays the maximum price the property may fetch, and not the upset price inasmuch as preference can only be between persons similarly placed. Law is also well settled that upset price is always the minimum. While dealing with property of a Deity, or the State largess, endeavour should always be made to sell or lease out the same at the maximum price that would fetch by conducting public auction. Any contrary action would jeopardize the interest of the institution and frustrate the aims and objects of Section 19 of the Act.

13. It appears that the Commissioner, vide Annexure-1, ordered as follows:

In the result the petition filed by Petitioner on behalf of the case Deity Sri Sidheswar Dev is allowed. Permission for sale of the case land is granted subject to condition that the sale shall be made by way of public auction in favour of the highest bidder/s The upset price for auction of the case land be fixed at Rs. 32,00,000.00 (thirty-two lacs) per acre. The O.P. No. 5, who is at present in possession of the case land since the year 1997 by virtue of the lease deeds has claimed preferential right to purchase the case lands. The contentions of Exts.A and B goes (sic) to show that condition has been stipulated that in case the case institution desired to sell the case land in future preference would be given to the O.P. No. 8. In view of the same and to avoid future litigation preference shall be given to the O.P. No. 5 for purchase of the case land at the rate of Rs. 35,00,000.00 (thirty-five lacs) per acre. On the failure of O.P. No. 5 to purchase the case land at the rateofRs.35,00,000.00 (thirty-five lacs) per acre, the case land shall be put to public auction fixing the upset price at Rs. 32,00,000.00 (thirty-two lacs) per acre in favour of the highest bidder/s in which case the O.P. No. 5 would be at liberty to participate. The proposed sale shall be advertised in one Oriya daily newspaper having wide circulation in the locality and wide circulation in the State of Orissa and by beat of drums in the locality and by publication in the Notice Board of the institution and in the village where the case land situates at least 15 days prior to the date of public auction. The auction shall be conducted by the Inspector of Endowments, Bhubaneswar. The sale proceeds shall be kept in a fixed deposit in the name of Sri Sidheswar Dev, Bije at Jagamara, P.O./P.S. Khandagiri, Dist. Khurda in long term fixed deposit in any Nationalised Bank and shall be pledged in favour of the Commissioner of Endowments, Orissa, Bhubaneswar. The sale shall be effected within six months after the expiry of the period of Appeal or Revision if no Appeal or Revision is preferred and in case of any Appeal or Revision as directed by the Appellate/ Revisional authority or where the Appellate/Revisional authority do (sic.) not stipulate any time limit, then within four months from the date of disposal of the Appeal or Revision. The stamp for sale deed/s shall be borne by the vendee/s. xx xx.

14. The order Annexure-1 was passed on 14th June, 2006. In a Suo motu Revision, the Principal Secretary to Government of Orissa in the Law Department directed as follows:

Accordingly the upset price per acre is enhanced to Rs. 42 lakhs (rupees forty-two lakhs) per acre with the preferential right to O.P. No. 5 to purchase the land at the said price as ordered by the learned Commissioner. If the O.P. No. 5 fails from purchasing the same at that above price, it can be put to public auction fixing the above price as upset price. The rest part of the order of the learned Commissioner stands.

15. A perusal of both the orders reveals that the time fixed by the Commissioner for effecting sale was not altered or extended in the revision. Thus for all acts and purposes sale deed ought to have been executed within four months from the date of disposal of the revision, i.e. 14th December, 2006. Thus the last date for execution of sale deed ought to have been 13th April, 2007. It appears from records that no petition was filed seeking extension of time fixed by the Commissioner for execution of sale deed. Instead, a petition was filed before the Secretary for grant of some time to pay the consideration money which was of course allowed. It further appears that in the present Writ Petition an interim order was passed on 5th September, 2007 indicating that any action taken would

be subject to result of the Writ Petition. The said order was communicated to the hereditary trustee, but in spite of the said order sale deed was executed on 18th September, 2007. Such action reveals that opposite party No. 8 and the hereditary trustee were in a hurry to somehow or other frustrate the litigation by executing sale deed. Be that as it may, in view of the fact that this Court had already directed that any action taken would be subject to result of the Writ Petition which meant that in the event this Court found that the order of the Commissioner which was modified by the Principal Secretary of the Law Department cannot be sustained and needs modification. The sale deed executed by the hereditary trustee in favour of opposite party No. 8 would become invalid being hit by the principles of lis pendens.

16. The scope, ambit and function of the trustee of a religious endowment are just like that of a prudent owner. As a prudent owner would not desire his property to be sold at a lesser price if it can be alienated at higher price, the trustee should not also do so. A fortiorari, a Commissioner, as the custodian should also not desire that the property belonging to a religious institution is alienated for an inadequate consideration, if higher offer is available. Even if permission is granted in the interest of religious institution and for its benefit, if so required, the same can be recalled, if the Court is satisfied that higher offer is real and genuine, the interest of the institution being of paramount consideration in the matter of alienation of property.

17. In the case at hand, the order passed by the Commissioner which was revised to certain extent by the Principal Secretary of Law Department is assailed. Thus the lis is still continuing. Any alienation made during lis pendens, law is well settled, would not pass any title. That apart, there is also an interim order to the effect that any action taken would be subject to result of the Writ Petition. If the orders of the Commissioner/Principal Secretary of the Law Department are satisfied or modified, the consequences thereof shall bind the parties. Thus no right can be claimed by opposite party No. 8 only on the ground that a registered sale deed has been executed in her favour. It should be borne in mind that such sale deed was executed by the trustee even after communication of the interim order passed by this Court.

18. Now let us examine as to whether the Commissioner acted prudently in fixing the upset price at Rs. 35,00,000.00 and similarly the Principal Secretary, Law Department in enhancing the said price to Rs. 42,00,000.00 and whether opposite party No. 8 by virtue of lease deeds said to have been executed in her favour can claim preferential right of purchase and, if so, to what extent. In course of hearing, the Petitioner came up with submission that the present value of the disputed land would be much more than the upset price fixed by the Commissioner/Principal Secretary. The Petitioner who is a person interested in the institution further forcefully submitted that considering the location of the lands and over-all development of the locality if the lands are put to public auction the same would fetch much higher price and thus the alienation of the

lands at a rate of Rs. 45,00,000.00 (forty-five lakhs) per acre in favour of opposite party No. 8 without any auction is unjustified, illegal and against the interest of the Deity and the sole purpose of for which Section 19 was provided in the Act would be frustrated.

19. Mr. Chowdhury further submitted that the lands are lying vacant and the claim of opposite party No. 8 that she has been in possession thereof and protecting the same against trespassers is blatantly false and this fact was never enquired into by the opposite party-authorities.

20. Learned Counsel appearing for the intervener-opposite party while reiterating the submission of Mr. Chowdhury took a positive stand that the valuation of the property would be much more than Rs. 2 crores per acre. To show his bona fide he has produced a Fixed Deposit Receipt with the Registrar (Judicial) of this Court for an amount of Rs. 1 crore pursuant to order of this Court which reveals that he is not a speculative litigant but is really interested in the property of the Deity.

21. A careful perusal of the orders of the Commissioner of Endowments and the Principal Secretary of Law Department reveals that the said authorities have not dealt with the claim of possession of opposite party No. 8. It is also revealed that no materials were produced before the said authorities nor was any boundary witness examined or the Inspector or the Divisional Inspector of Endowments was directed to conduct a spot inspection and report as to whether opposite party No. 8 was in fact possessing the lands and protecting against trespassers as claimed by her. That apart, the lease deeds basing upon which opposite party No. 8 claims to be in possession of the lands are ab initio void as no prior permission was obtained from the Commissioner of Endowments. The only other question that needs consideration is as to whether opposite party No. 8 deserves to be given any preferential right of purchase. It is well settled that the status of a person who claims possession of a property on the basis of a void deed is nothing but that of a trespasser. Even otherwise, if the Commissioner wanted to grant any preference to opposite party No. 8, he ought not to have directed her to purchase the lands offering the upset price. A preferential right to purchase a property, by no stretch of imagination, can be given to a person at the cost of the paramount owner, e.g. the Deity in the present case. If the price of the lands would be more than Rs. 2 crores per acre, while directing preference to be given to opposite party No. 8, the property cannot be sold for a paltry sum of Rs. 42,00,000.00 (forty-two lakhs). If the Commissioner or the Principal Secretary of Law Department intended to give any preference to opposite party No. 8, it would have been just and proper on their part to direct the lands to be put to public auction and grant preference to Opposite party No. 8 if she so desired by offering the highest bid. That apart, the sale deed was registered after the date fixed by the impugned orders and during pendency of the litigation.

22. 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.

23. 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 Nationalised 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 intervener 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 caution money to be deposited by him shall stand forfeited. Apart from that, he shall also be liable to be appropriately proceeded against.

The Writ Petition is, accordingly, disposed of.

