ORISSA HIGH COURT: CUTTACK

ORIGINAL JURISDICTION CASE NO. 2421 OF 2000

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sri Siddha Math, represented by
Mohanta Satya Narayan Ramanuj Das
and two others. ..... Petitioners

-Versus-

Sri Jagannath Temple Managing
Committee and another. ..... Opp. Parties

For Petitioners : M/s. Ashok Mukherjee,
G.Mukherjee, P.Mukherji,
L. Sukla, J.Rath, S.Patnaik &
M.K.Mazundar.

For Opp. Parties: M/s. Biswanath Ratho, J.N.Ratho,
S.K.Jethy, M.K.Panda,
P.S. Samantara,
M.K.Singhdeo &
S.Pattajoshi.
(for O.P.No.1)

Date of judgment- 07.07.2009

P R E S E N T :

THE HONOURABLE SHRI JUSTICE B.P. DAS
A N D
THE HONOURABLE SHRI JUSTICE M.M. DAS

M. M. DAS, J. The petitioners are aggrieved by the order dated 30.11.1992 of the Tahasildar, Puri passed in O.E.A. Claim Case No. 68 of 1990, which has been annexed as Annexure-5 to the writ petition.

2. The moot question that arises to be determined in this writ petition has been dealt with by this Court as well as the Apex Court from various angles in different cases, which would be referred subsequently in this judgment. The petitioner no. 1 is a public religious Math governed under the Orissa Hindu Religious Endowments Act, 1951, petitioner no. 2 is the Mahanta in Succession, of the petitioner no. 1 – Math. The lands in dispute are *LAKHRAJ BAHEL* lands recorded in the status of *Amrutmonohi.* The properties were declared as trust estate by the Subordinate Judge, Puri, who was the Estate Abolition Tribunal in E.A.A. Case Nos. 50 of 1963 and 1013 of 1965 by order dated 18.10.1965 (Annexure-2). After vesting of the trust estate, pursuant to the notification issued under the provisions of the Orissa Estate Abolition Act in 1974, the petitioner no. 2 filed a Claim Case before the Tahasildar – opp. party no. 2 under sections 6 and 7 of the O.E.A. Act. The said claim case was allowed and the disputed lands were settled in the name of Shri Jagannath Mohaprabhu, Bije Srikhetra Marfat Mahanta Siddha Brundaban Ramanuj Das. In the Hal Settlement, the same was also recorded in the name of Shri Jagannath Mohaprabhu, Bije Srikhetra Marfat Mahanta Siddha Brundaban Ramanuj Das.

3. It is alleged by the petitioners that the opp. party no.1, i.e., Shri Jagannath Temple Managing Committee filed a

claim case bearing O.E.A. Case No. 68 of 1990 before the opp. party no. 2 – Tahasildar behind the back of the petitioners and without issuing notice to the petitioners, the opp. party no. 2 resettled the lands in favour of the opp. party no.1 by his order dated 30.11.1992 (Annexure-5). It is further alleged that the petitioners, who had no knowledge about the order under Annexure-5 could come to know about the same, when the opp. party no. 1 came to survey the plot inside the Math premises on 21.9.1999. The petitioners further allege that the petitioner no.1 is a Math and the opp. party no. 1 is the Managing Committee of the Temple of Shri Jagannath , Puri, which are two different institutions and they cannot be amalgamated or held to be one. The properties having been declared as a trust estate at the behest of the opp. party no. 1 and having been settled in the name of Shri Jagannath Mohaprabhu marfat the petitioner no.2, the application under sections 6 and 7 of the O.E.A. Act filed in the year 1990 by the opp. party no. 1 was misconceived. Being aggrieved by the order dated 30.11.1992 passed by the Tahasildar-cum-O.E.A. Collector, Puri in O.E.A. Claim Case No. 68 of 1990 under Annexure-5 to the writ petition and the subsequent action taken by the Temple Administration, pursuant to the said order, the petitioner has sought for quashing the said order.

4. Though considering the nature of dispute involved in the present writ petition, it is not very much essential to refer to the question as to what is a “Math” and what are the nature of rights and privilege enjoyed by the ascetic heading such a Math commonly known as “Mahanta”, but it would be appropriate to discuss the same for proper appreciation of the facts involved in this case.

5. Hindu Maths for the first time were established by Adi Shankar (Sankaracharya). He founded four Maths at four corners of India and made them institutions for his vendantic teachings. In the East, Gobardhan Math at Puri, in North – Jyotir Math at Badrinath, in the West – Saroda Math at Dwaraka and in the South Sringeri Math. Then came a galaxy of Vaishnab teachers and philosophers, who founded different sects of Vaishnavism as found in India. First was Ramanujacharya whose followers are known as Sri Vaishnavas. He founded a large number of Maths for strengthening the doctrines propounded by him. His disciple Ramanand also founded a sect of vaishnavas known as Ramats and built a Math for the ascetics of his sect in Banaras Thereafter, many were founded and known as Ramanandi Maths , which admits Sudras in their brotherhood and obey no caste rules. Madhabacharya was the founder of Madhab School of

Vaishnavas in the 12th Century, who founded Madhaba Maths for Brahmin ascetics. There are two other well-known sects of Vaishnavas, whose founders were Nimbarka and Ballavacharya. The Nimbarka sect is known as Sanapodi Sampradaya, while the Ballavacharya sect is called Rudra Sampradaya. The system of Vaishnavism founded by Sri Chaityanna Mahaprabhu is another popular system which has numerous followers in Bengal, Orissa and some parts of Utter Pradesh near about Brundaban and there are several Maths in these places founded by Vaishnavas of this sect. The rules guiding these institutions are diverse in nature, which have their origin in customs and usages and vary widely from each other. Nevertheless, there are certain common features which are the essentials of a monastic institution and distinguish it from an endowment of the Debottar type. The primary distinction between a Debottar and a Math lies in the fact that unlike Debottar where the essential or central part of the institution is a deity or idol, the presiding element in a Math is an ascetic or religious teacher, who together with his disciples and co-disciples forms a sort of spiritual family. Both a Math as well as a Debutter owe their existence to benefactions or grants of property made by pious benefactors. In one case, the grantee is an idol for whose ministration or service the Debottar is created, in the other case

the result of the benefaction is the creation of an institution for the benefit of a fraternity of religious men at the head of which stands the superior or Mahanta, who represents the entire institution. (See B.K. Mukherjee on the Hindu Law of Religious and Charitable Trusts, 3rd Education and the decision in the case of ***Satya Charan Sarkar v. Mohanta Rudrananda Giri***, AIR 1953 Calcutta, 716).

6. A counter affidavit has been filed by the opp. party no. 1, inter alia, stating that the writ petition involves various disputed question of facts and, as such, the same cannot be decided in an application under Article 226 of the Constitution. It has been further stated in the counter affidavit that the petitioner – Mahanta being a Marfatdar of Lord Jagannath Temple property, he cannot claim title over the same. The opp. party no. 1 has further stated that this is an attempt by the petitioner – Mahanta to grab the temple property illegally. The status of the petitioner no. 1 – Math has also been disputed to be a religious Math. The specific plea of the opp. party no. 1 is that Misc. Case No. 50 of 1963 decided by the Tribunal under section 13-D of the O.E.A. Act was in respect of Ac. 0.760 decimals of land in Khata no. 21, village Dalomandap Sahi, which was recorded as "A.M.Lakhraj Bahel" property of Lord Jagannath of Shri Mandir and the whole income of the trust

estate is meant for religious purpose of the deity. The trust estate of Lord Jagannath defined under the provisions of section 13 of the O.E.A. Act is the same, as defined in section 2 (oo) of the said Act, and, therefore, the property recorded in the name of Jagannath Mohaprabhu is a trust estate in which the recorded Marfatdar had no personal interest or any reservation of any pecuniary benefit. In spite of this, the late Mahanta knowing it to be the property of Lord Jagannath sold Ac. 0. 210 decimals of valuable lands of the deity before filing his claim case under the O.E.A. Act and, therefore, the recording of the name of late Siddha Brundaban Ramanuj Das in the O.E.A. rent schedule as Marfatdar, has no legal value, more so, when there was a status quo order passed in O.J.C. No. 233 of 1977. This recording also violates the principles of sections 5 and 31 (1) of Shri Jagannath Temple Act. Similarly, the Hal R.O.R. under Annexure-4 was prepared when there was stay order of the Supreme Court in Civil Appeal No. 3177 of 1982. After the Civil Appeal was disposed of by the Supreme Court on 2.11.1988, the Government of Orissa in its Revenue Department issued a notification dated 18.4.1989 extending time to file claims in exercise of the powers conferred under the provisions of sub-section (3) of section 8(A) of the O.E.A. Act, 1951. Therefore, the temple authority filed O.E.A. Claim Case No. 68 of 1990 before

the O.E.A. Collector to settle the land in their favour within the stipulated time and the O.E.A. Collector after performing all legal formalities settled the land in favour of Lord Jagannath. It is, therefore, contended by the learned counsel for the opp. party no. 1 that the settlement under Annexure-3 is an irregular settlement in the name of the previous Mahanta as the Marfatdar instead of the Managing Committee created by the Special Act, i.e., Jagannath Temple Act, 1955, as the Marfatdar. The distinction between a Math and Temple is not relevant for the purpose of this case. As per section 2 (1) of the Jagannath Temple Act, the provisions of Orissa Hindu Religious Endowments Act shall cease to apply to Shri Jagannath Temple and section 2 (2) of the said Act provides that all law, regulation and other enactments passed for the purpose of providing for the management of affairs of the temple and its properties shall cease to have any effect.

7. This Court is called upon to address itself and decide as to whether the property in dispute, though declared as a trust estate and, thereafter, though vested in the State under the O.E.A. Act and settled in the name of Shri Jagannath Mohaprabhu Bije, Puri, marfat Mahanta Sidha Brundaban Ramanuja Das in O.E.A. Claim Case No. 58 of 1975, can again be resettled under sections 6 and 7 of the O.E.A. Act on an

application filed by the Administrator, Shri Jagannath Temple, numbered as O.E.A. Claim Case No. 68 of 1990 by the impugned order under Annexure-5 and to decide as to whether the property in dispute though recorded in the name of Lord Shri Jagannath Bije, Puri under the Marfatdar, Mahanta Sidha Brundaban Ramanuja Das in the status of *Amrutmohoni* can be said to be the property of the temple of Lord Shri Jagannath to be administered by the Administrator, Shri Jagannath Temple under the provisions of Shri Jagannath Temple Act, 1955 as amended from time to time.

8. In the case of ***Lord Jagannath through Jagannath Sinari Narasingh Das Mahapatra Sridhar Panda etc. v. The State of Orissa and others,*** 67 (1989) CLT 360 (S.C.), the Supreme Court, while dealing with the question as to whether the property of Shri Jagannath Temple under the management of the temple administration comes within the purview of the Orissa Estates Abolition Act , interpreting the relevant provisions of the O.E.A. Act, 1959 including section 2 (oo) thereof, which defines "Trust Estate" repelled the contention that the decision under Chapter - II-A declaring "Lord Jagannath Estate" as a "trust estate" must be deemed to have been excluded from the scope of the Act and this result , in the eye of law, becomes final and continued to remain

effective even after the repealing of Chapter-II-A as well as the further contention that the right, which the petitioner in the said case, acquired under section 13-I cannot dis-appear on the repeal of the said chapter and the estate in question went completely out of the ambit of the O.E.A. Act and for this reason, it was necessary in the Amending Act of 1974 to define "trust estate" in section 2 and to expressly include "Lord Jagannath Estate" within the expression with a view to set at rest any controversy in that regard thereby intending to permanently spare estate of the petitioner therein from the mischief of the Act. Quoting section 13-I, it was held as follows:-

> "It is manifest from the language of the Section that it saves a "trust estate" so declared under section 13-G from the operation of a notification issued under section 3 or 3-A, but does not extend the benefit any further. The provisions do not confer protection from the Act itself and cannot be interpreted to clothe it with a permanent immunity from being vested by a later notification issued under the Act. Such an estate could be vested in the State of Orissa by a subsequent notification was made clear by clear by clause (b) of Section 13-K which reads as follows:-
>
> "(a).....
> (b) nothing in this Chapter shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification under Section 3".
>
> Sections 7-A, 8-A, 8-D and 8-E of the Act include special provisions for a trust estate and unmistakably indicate that "trust estate" are within the purview of the Act. The benefit they receive from a declaration under section 13-G is limited and referable only to a vesting notification issued

> earlier. There is, thus, no merit in the argument of the learned counsel for the appellant that the petitioner's estate could not be vested in the State by a notification issued subsequently."

9. However, of course, the property involved in the present case unlike the property in the above referred case was recorded in the name of Lord Jagannath Bije, Puri maraft Sidha Brundaban Ramanuja Das and not the Administrator, Shri Jagannath Temple. The property in question in the present case though declared as a trust estate vested in the State by the amendment brought into the O.E.A. Act in the year 1974, the recorded marfatdar, therefore, rightly filed the application under sections 6 and 7 of the O.E.A. Act for settlement of the same.

10. Before delving into the question as to whether the temple administration had a right to file an application under sections 6 and 7 of the O.E.A. Act for settlement of the land, it would be appropriate to find out the nature of right over the property recorded in the status of *Amrutmonohi* in the name Lord Shri Jagannath Bije, Puri marfat Mahanta Sidha Brundaban Ramanuja Das.

11. Nature of rights with regard to a property recorded as *Amrutmonohi* has been considered by this Court in several cases. In the case of ***Sri Jagannath Mohaprabhu and another v. Bhagaban Das and others,*** A.I.R. 1951 Orissa 255,

this Court in a Second Appeal, while deciding the rights of the parties inter se in respect of the property recorded as *Amrutmonohi* held that the word "*Amrutmonohi*" literally means "food offering" and there is no warrant for holding that it indicates only a partial dedication. The test to determine whether the dedication is absolute or partial, is whether the dedication amounts only to a charge upon the property to meet the expenses of some religious acts or ceremonies the surplus being left at the disposal of the shebait. In the facts of the said case, it was further observed that strong evidence is required to show that the interest of the deity in the properties is only a charge on the income thereof contrary to the prima facie import of the settlement entries. With regard to dealings over the said property by the family of the marfatdar which belonged to the deity as if it was their own personal property, the Court held that such dealings derogate from the completeness of the trust itself in favour of the deity, because, persistent abuse of trust cannot furnish the basis of a claim which the Court will recognize. *(Emphasis supplied)*. In the case of ***Chiranjilal Patwari v. The Commissioner, Hindu Religious Endowments, Orissa, Bhubaneswar and others,*** 40 (1974) CLT 41, the Court while determining the incidence of *Amrutmonohi* land arrived at a finding that *Amrutmonohi* property is necessarily dedicated to

Lord Jagannath, Puri. It consists of two categories, one directly managed by the Administrator of the deity's estate, and the other by any other person as trustee for the performance of service of offering to the deity. The Court in the said case referred to the decision in the case of ***Krushna Chandra Badapanda v. Iswar Karan and others,*** 36 (1970) CLT 1257, wherein it was held as follows:-

> "The next point for examination is about the bar for leasing out Endowment property in contravention of section 19(1) of the Orissa Hindu Religious Endowments Act. Mr. S. Mohanty for the respondents contends that the disputed property is *'Amrutmonohi'* of Lord Jagannath and is not an absolute Debottar of such a type which would not be transferable. Incidence of Amrutmonohi came to be determined in this Court on more than one occasion and this Court has taken the view that Amrutmonohi leaves sufficient interest in the holder thereof and he is entitled to make alienations. Whoever takes the property on alienation receives it with the burden to which the property is subject for the purpose of the deity. But the alienation is not vitiated. If it is property of the Lord Jagannath, admittedly, the Orissa Hindu Religious Endowments Act has no application and instead, Orissa Act 11 of 1954 would apply. Thus, at any rate, section 19 of the Orissa Hindu Religious Endowments Act would have no application. I think, there is force in the contention raised by Mr. S. Mohanty that this reasoning given by the lower appellate Court to negative the plaintiff's claim is without any legal basis and is thus liable to be vacated. I would accordingly, in disagreement with the lower appellate Court, hold that the plaintiff is not to suffer on this account."

Considering the facts of the said case, this Court observed that if the factual aspect had been examined by the Commissioner and whether in the grant in question the Math had any interest or the entire proceeds were meant for the deity had been determined, it

would have been convenient for the Court to dispose of the case finally. Observing thus, the Court came to the conclusion that since these aspects have not been gone into, the Commissioner is required to consider these aspects again. As a matter of fact, the Court in the said case was examining the legality of an order passed by the Commissioner of Hindu Religious Endowments, Orissa under section 25 of the Orissa Hindu Religious Endowments Act directing a requisition to be sent to the Collector, Puri for effecting delivery of possession of land included in a lease hold granted in favour of the petitioner therein by the Ex-Mahanta of Khaki Akhada Math, Puri and receiving such requisition, the Collector called upon the petitioner therein to deliver possession of the property to the interim trustee of the Math. In the case of ***Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das and another,*** AIR 1967 SC 256, the Supreme Court, while considering as to whether an institution, which comes within the definition of "Math" in section 6 (7) of the Orissa Hindu Religious Endowments Act, 1939 is also a "Hindu public religious endowment" within the meaning of section 6 (12) of the said Act held as follows:-

> "It is not disputed for the appellant that the institution is a math. What is disputed is that it is not a public math as required by the Act. The premises of the Emar Math constituted a religious endowment, which includes the premises of Maths or temples. Further if the

> premises of the Emar Math had been used both for secular purposes and for religious purposes, it, according to the explanation to sub-s. (12) of S. 6, shall be deemed to be a religious endowment and its administration shall be governed by the provisions of the Act. This makes it clear that the premises of the math is not only deemed to be a religious endowment, but is deemed to be a Hindu public religious endowment to which the Act applies, as the provisions of the Act govern its administration. It follows that an institution which comes within the definition of 'math' under the Act ipso facto comes within the expression 'Hindu public religious endowment' and, therefore, becomes subject to the provisions of the Act"

12. It would be appropriate at this stage to examine the nature of dedication of a property endowed to Lord Jagannath as "*Amrutmonohi*" in the marfat of an individual, which, in the present case, is Mahanta Sidha Brundaban Ramanuja Das. The observations and the findings of the learned Judges in the case of ***Bhupati Nath Smrititirtha v. Ram Lal Maitra***, XXXVII (1910) ILR 128 (F.B.) (Calcutta Series), with regard to a dedication made to a deity are as follows:-

> "Mitra, J.
>
> Xx xx xx
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> As a matter of fact, no Hindu deity is supposed, except by a fiction, to actually accept or enjoy the benefits arising out of use of property, in the sense that these words may be used with respect to human beings. A gift to a deity is in substance a gift for charity, for the use generally of Brahmans or a particular Brahman or his family, and the idea attached to such a gift is a charitable use coupled with spiritual benefit to the donor. An image is supposed to be necessary for worship, as the conception by man of a deity without a physical representation is psychologically impossible……"

"Stephen, J.

Xx xx xx

There is no doubt, in the first place, that dedication by a Hindu of property to a deity is not only lawful, but commendable in a high degree. But the question arises what is the legal effect of such a dedication. A gift consists of two parts, abandonment of rights over the subject-matter of the gift by the donor, and acceptance of those rights by the donee. In a dedication to a deity, the abandonment by the donor takes place according to the ordinary law, but there can be no acceptance by the deity. Why this should be so many be a matter that we need not enquire into; but the fact appears to me to be explained by two self-evident propositions, namely, that it is a contradiction in terms, to talk of the Creator accepting anything, in the legal sense of the word, from a creature, and that it is inconceivable that laws which were made for, if not by, men should be applicable to a deity. But though a dedication to a deity does not constitute a gift, it has a legal effect. The intention of the donor is that the subject-matter of the gift shall be used for doing honour to the deity by worship and for conferring benefit on the worshippers and the ministers of the deity who conduct it. This worship is properly and, I understand, necessarily carried out by having recourse to an image or other physical object; but the image is nothing till inspired by the deity. It is the duty of the Sovereign to see that the purposes of the dedication are carried out……."

Sir Asutosh Mookerjee, J. referred to a passage from Mitakshara in which, Vijnaneswara, commenting on verse 27 of the Vyavaharadhyay of the Institutes of Yajnavalkya, observes:

> " Gift consists in the relinquishment of one's own right and the creation of the right of another, and the creation of the right of another man is completed on that other's acceptance of the gift and not otherwise. Acceptance is made by three things-mental, verbal or corporeal".

And further, referring to a passage from Bhasya of Savaraswami on the Purvamimansa, which defines the characteristics of a gift that a gift is the cessation of the ownership of one and the generation of the ownership of another" held as follows:-

> " Hence (the term) is explained in another manner (thus) – Property that is set apart or relinquished for the purpose of performance of sacrifies and the like in honour of Gods is (to be taken as intended by the term) "God's property" by reason of the impossibility of the application to Gods of the primary meaning, namely, the relation of property and owner (a thing is property in relation to a person having proprietary rights over it, and a person is owner in relation to a thing over which he can exercise proprietary rights).
>
> For the Gods do not use the property according to pleasure, nor is their found exertion for the protection (of the property): and property is described to be of that character in popular view. Accordingly, when by referring or pointing to Gods, it is stated - This is not mine, this is God's – that is God's property – and that property is enjoined (by the Vedas) for the Fire-God and the like in the Darsa-purnamassa sacrifice and the like-(and also

> enjoined) by the well-known practice of the learned (not by the Vedas, for Gods worshipped) in the Durga sacrifice and the like secondary means (of attaining spiritual benefit, but not primary, inasmuch as these are not enjoined by the Vedas)".

Mookerjee, J. further held that it is conclusively established from these authorities that according to strict Hindu juridical notions, there can be no gift in favour of the Gods. We are not concerned now with the philosophical reason for this position, and it is needless to enquire whether it is due to the fact that in the earliest times physical objects were deified, and could not, therefore, be very well supposed to be capable of acceptance of a gift, or to the fact that the deity was conceived as a being to whom a mortal could not aspire to make a gift, but could only content himself with a dedication of things for acceptance. Durgacharyya, however, in his commentary on the following passages of the Nirukta, seems inclined to adopt the view that as the Gods were originally physical objects deified, they could not very well be regarded as sentient beings capable of acceptance of gifts in the strict sense of the terms.

13. From the facts of the present case, though it is not known as to who made the dedication of the property to Lord Shri Jagannath Bije, Puri as *Amrutmonohi* property, but it is clear that the dedication was made with the avowed purpose that the

usufructs from the property should be used as a food offering (bhog) to Lord Jagannath and as has been held in the case of Shri Jagannath Mahaprabhu and another (supra), it does not warrant for holding that the same is a partial dedication. Referring to Dalziel's Settlement Report, where *Amrutmonohi* land is stated to be the property of Lord Jagannath and to Gopal Chandra Praharaj's Vasakosh, which mentions *Amrutmonohi* land to be the property dedicated to the Seva of Lord Jagannath of Puri and further from the conclusion of this Court in the case of Shri Chiranji Lal Patwari (supra) that *Amrutmonohi* properties are of two categories, one directly managed by the Administrator of the Temple and the other by persons or trustees for performance of service of offering to deity and in case where a Mahanta is a trustee of such property , it has to be found out about the respective interest of the deity and the math in the *Amrutmonohi* land, it is seen that in the instant case, the property has been dedicated as *Amrutmonohi* to Lord Shri Jagannath of Puri and the marfatdar of the property is Mahanta Siddha Brundaban Ramanuj Das. Thus, the property is attached with a charge of rendering service to Lord Jagannath by using the usufructs thereof as food offering to Lord Jagannath. It is further found that on the above analysis, the property cannot be held to be under the control of the administrator of Shri Jagannath

Temple but is a trust property attached with a charge and the trustee has to fulfil the wish of the dedicator of the said property by offering the usufructs to Lord Jagannath as food offering. However, since the trustee/marfatdar is the Mahanta of Siddha Math, it cannot be said that the math has absolutely no interest over the said property just because it is recorded as *Amrutmonohi*. Applying the ratio of the decision in the case of Mahanta Shri Srinivas Ramanuj Das (supra) of the Supreme Court, it is seen that the Siddha Math is an institution, which comes within the definition of "Math" as given in section 3 (vii) of the Orissa Hindu Religious Endowments Act, 1951. The property involved in this writ petition comes within the definition of "Trust Estate" as defined in section 2 (oo) of the O.E.A. Act and vested in the State Government pursuant to the notification made under section 3-A of the O.E.A. Act issued on 18.3.1974. It is also an admitted position that upon such vesting, the intermediary had a right to make an application under sections 6 and 7 of the O.E.A. Act. As a matter of fact, as stated earlier, such application was made by the marfatdar of the property, i.e., Mahanta of Siddha Math and the land was settled in the name of Shri Jagannath Mohaprabhu Bije, Puri marfat Mahanta Siddha Brundaban Ramanuj Das. Hence, there was no scope for the administrator of Shri Jagannath Temple to make a subsequent application under

sections 6 and 7 of the O.E.A. Act for re-settlement of the land and the impugned order dated 30.11.1992 having been passed without jurisdiction cannot be sustained and the said order is accordingly quashed.

14. However, as it is seen that the properties are recorded as *Amrutmonohi* and it cannot be ruled out that the Siddha Math has absolutely no right over the same, the Mahanta, as the marfatdar of the property, which is recorded as *Amrutmonohi*, is required to perform the service attached to the said property by offering the usufructs from the said property if it is agricultural in nature or the earnings from the same if the property is of any other nature as food offering to Lord Jagannath Bije, Puri. In case of alienation by the Marfatdar of any portion of the said property, the alienee purchases the same with the service attached thereto and under no circumstance, the said service to be rendered can be stopped. The transferee, therefore, has to render such service as is attached to the property alienated.

However, applying the ratio of the decision in the case of *Krushna Chandra Badapanda* (supra), as quoted above, it is clear that section 19 of the O.H.R.E. Act would have no application to the case as the property in question has been dedicated to Lord Shri Jagannath of Puri. The corollary,

therefore, would be that such alienation, if proposed to be made, would be governed by the provisions of sub-sections (3) and (4) of section 16 of Shri Jagannath Temple Act, 1955, which provides as follows:-

> "16. **Alienation of the Temple properties:**
>
> (1) and (2) xx xx xx
>
> (3) Any transfer of immovable property recorded in the name of Lord Jagannath of Puri by any person including any institution being the Marfatdar of such property shall be absolutely null and void and of no force or effect whatsoever, unless the Administrator or any officer authorized by him in writing in this behalf, execute the deed of such transfer as one of the executants. (Emphasis supplied)
>
> (4) Notwithstanding anything contained in the Registration Act, 1908 no deed of transfer of any immovable property executed in contravention of the provisions of sub-section (3) above shall be accepted for registration".

Considering the complexity of the matter of alienation of property recorded as *Amrutmonohi,* as in the instant case, it would be expedient in the interest of justice to direct that in case any alienation of such property recorded as *Amrutmonohi* is made in accordance with the provisions as quoted above, i.e., the Administrator or any officer authorized by him in writing in that behalf is to execute the deed of such transfer as one of the executants, 75% of the consideration money as per the market value obtained on account of such alienation shall be deposited with the temple administration for

being used as "food offering" to Lord Shri Jagannath and the balance 25% will be taken by the Marfatdar/Mahanta as one time measure so that the transferee/purchaser will not have to render the service attached to the property any further. We accordingly issue such direction.

15. The above observations and directions will operate prospectively and will neither affect the orders passed in cases of properties, which have already been transferred after obtaining due permission of the Commissioner of Endowments under section 19 of the O.H.R.E. Act, where this Court has directed that consolidated amounts, taking into consideration the extent of land transferred, is to be paid by the petitioners/transferees to the temple administration.

16. With the aforesaid observations and directions, the writ petition is allowed, but in the circumstances without cost.

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M. M. Das, J.

B.P. Das, J. I agree.

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B. P. Das , J.

Orissa High Court, Cuttack
July 7th ,2009/Biswal