

ORISSA HIGH COURT CUTTACK

O. J. C. NO.7192 OF 1996

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

Sri Janmajaya Das & another
Petitioners

Versus

State of Orissa and others Opp.
Parties

For petitioners : M/s C.A. Rao, S.K. Behera
and P.K. Sahoo.

For opp. parties : Dr. A.K. Rath (O.P. No.2)

M/s S.C. Panda, D.P. Sarangi,
R. Samal and S. Patnaik.
(for O.P. No.3)

PRESENT :

**THE HONOURABLE SHRI JUSTICE P. K. TRIPATHY
AND
THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

Date of hearing and judgment : 12.03.2008

Heard further and the judgment is as follows.

2. The order of the Addl. Assistant Commissioner of Endowments, Sambalpur passed on 25.11.1995 in O.A. Case No.5 of 1994 under Section 68 of the Orissa Hindu Religious Endowments Act, 1951 (in short “the Act”) is under challenge.

3. The fact noted in the impugned judgment indicates that the property in dispute belongs to the deity Shri Jagannath Mohaprabhu Bijee at Mundadar under Belpara police station in the district of Bolangir. Trustees came into authority in view of constitution of the trust board under Section 27 and initiated action under Section 68 through one of them with the prayer to recover possession of the disputed property from the possession of opposite parties 1 and 2, who are the petitioners in this writ petition. Non-hereditary trustee advanced the contention that the writ petitioners have no right to possess the land after their removal from the Sebaitship before the decision taken in O.A. No.5 of 1992, a proceeding under Section 41 of the Act and, therefore, possession of the disputed property should be recovered in favour of the deity. The substance of the claim advanced by the writ petitioners was that from the time of their grandfather, they are in possession of the property as the Sebait of the deity and there is no legal order enforceable to remove them from Sebait, and under such circumstances their possession over the property in lieu of Seva Puja cannot be disturbed.

4. Learned Addl. Assistant Endowment Commissioner taking note of the aforesaid contentions of the parties and the oral and documentary evidence adduced by them, recorded the finding that since the property belongs to the deity and the writ petitioners have been disengaged from the Seva Puja and the institution being a public religious institution declared in O.A. No.5 of 1992, therefore the claim of the writ petitioners must fail and the prayer of the trustee must succeed. Accordingly, order was passed for recovery of possession in favour of the religious institution.

5. While challenging the order, Mr. Rao, learned advocate appearing for the petitioners with the wit and wisdom at his command argues that notwithstanding the aforesaid finding of the Assistant Commissioner, the provision in sub-section 1(c) of Section 68 makes it clear that the writ petitioners are not in unauthorized

occupation being the Sebais and, therefore, the impugned order under Section 68 is wholly misconceived and liable to be set aside.

6. Dr. Rath, on the other hand, argues that petitioners' claim of possession as Sebais is improper and in any event when the property belongs to the religious institution, it should be possessed and managed by the trustees in furtherance of the improvement of the religious institution and not by the writ petitioners. In addition to that, he challenges the maintainability of the writ petition in view of the alternative remedy provided to the petitioners as against the impugned order as per the provisions in Section 9 of the Act.

7. Regard being had to the aforesaid fact and submissions, we find that in fact the petitioners should have approached the Commissioner of Endowments under Section 9 instead of directly approaching this Court under Articles 226 and 227 of the Constitution of India. Be that as it may, the dispute being simple in nature it is adjudicated within the scope of Section 68 and not by interfering with the rights and interest of either of the parties available to them under any other provision of law. When the property belongs to the deity and the non-hereditary trustees want to retain the possession, obviously for the purpose of improvement of the religious institution, the writ petitioners cannot claim a right over the same on the ground of rendering Seva Puja. Apart from that, the reason assigned in the impugned order also sounds just and proper in furtherance of the order of eviction. Therefore, in absence of any illegality or perversity, we do not interfere with the order of eviction inasmuch as the writ petitioners do not come within the category of S["[""""""""""";[""]ebak to retain the possession but they come within the meaning of any other person as employed in the aforesaid provision of law, i.e., Clause (c) of sub-section (1) of Section 68.

Accordingly, the writ petition is dismissed.

8. Before parting with the case, we observe that if the property is managed by Debottar, the Sub-Collector, Patnagarh may

look into the grievance of the petitioners, if they apply for redressal, either for their continuance as Pujaks/Sebais or otherwise. Any such representation made be considered by the said authority, if it has the jurisdiction, strictly in accordance with law inasmuch as we do not express any opinion in that respect. Apart from that, the Sub-collector, Patnagarh may do well to see that there is improvement of the religious institution, and quarterly report in that respect be submitted to the Commissioner of Endowments. We further direct the Commissioner of Endowments to supervise the progress in improvement of the institution either personally or through subordinate officers. In that respect, if the Sub-Collector or any other authority/officer of the State does not carry out the work for improvement of the institution, then a report be submitted to this Court, and in that event, Registry is directed to list the case for suitable orders. The Commissioner of Endowments, his subordinate officers and the Sub-Collector shall bear in mind that deity is a perpetual minor and, therefore, they are the guardians to look to the best interest of the religious institution.

Free copy of the order be supplied to Dr. Rath, learned counsel appearing on behalf of the Commissioner of Endowments.

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P.K. TRIPATHY,J.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack,
 The 12th March, 2008/GDS