

ORISSA HIGH COURT: CUTTACK

O.J.C. NO.7793 OF 1998

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

Sri SriJagannath Mahaprabhu Bij
Puri, represented by the Administrative
Officer.

..... *Petitioner*

-Vs-

Radha Pankaj Das and others

..... *Opp. Parties*

For Petitioner : M/s. B.Rath, S.K.Mishra, B.Senapati, J.Rath,
P.S.Samantra, P.K.Panda, M.K.Panda,
S.K.Jethy & S.B.Mohanty.

For Opp. Parties : M/s. N.K.Sahoo, A.K.Parida and
M.K.Nayak
(For opposite party No.1)
Addl. Government Advocate
(For opposite party Nos.10 to 12).

P R E S E N T :

**THE HONOURABLE KUMARI JUSTICE S.PANDA
AND
THE HONOURABLE DR. JUSTICE B.R.SARANGI**

Date of Judgment : 27.9.2013

S.Panda, J. Petitioner, in the present writ application, has challenged the order passed by opposite party Nos. 10 to 12 in a proceeding under Orissa Estate Abolition Act rejecting the prayer of the petitioner to settle the land in favour of the petitioner under sthitiban status on the ground that Lord Jagannath is the proprietor of the case land as

recorded in the current settlement and major settlement R.O.R. The application of the petitioner was registered as O.E.A. Case No. 9 of 1990 so also the petitioner filed application to record its name in the O.E.A. proceeding filed by opposite party Nos. 1 to 9 which were registered as O.E.A. Case Nos. 1 of 1989, 1 of 1990 and 9 of 1990 in respect of plot Nos. 1191, 1192, 1197, 1202, 1203, 1204, 1205, 1339, 1198, 1517, 1218, 1518. The aforesaid plots situate at different villages in the district of Balasore. Admittedly, the land was recorded in the name of Sri Jagannath Mahaprabhu Bijje Puri Dhama, Amruta Monohi Marfat Raghunath Dev Goswami.

2. It is contended by learned counsel for the petitioner that in the Major Settlement R.O.R. prepared in the year 1927, these plots were recorded in the name of the deity which has been described as proprietor. Since the property involved donated as "Amruta Monohi" by the donor, the same is the absolute property of Lord Jagannath and it cannot be treated as intermediary. Therefore, after abolition of the estate, the question of vesting of the property on the State does not arise. Hence, the petitioner sought for only to change the status of Marfatdar taking into consideration the Notification of the State Government, which was published on 20th December, 1991 with regard to abolition of estate of Lord Jagannath and vesting of the same on the State of all intermediary status in the properties of Lord Jagannath. It was further stipulated therein that as per Section 6 and 7 of the O.E.A. Act, the Administrator of the temple on behalf of the Temple Managing Committee, may be impleaded as party in cases filed by the last recorded Marfatdars and settlement of land made in favour of the committee in the aforesaid manner or the compensation in connection with vesting of the estate may be paid to the committee, which represents Lord Jagannath. At Clause-8 thereof it was further stipulated that if however a property has been endowed to a matha, the position would be different. In such cases the Mahanta will be the intermediary, provided the endowment was for an object not directly connected with the sevapuja of Lord

Jagannath. In view of the said resolution, since the property was donated as “Amruta Monohi” by the donor, the property is the absolute property of Lord Jagannath as reflected in the R.O.R. and at best the opposite party can negotiate as tenant under Lord Jagannath. Learned counsel for the petitioner further submitted that the property being “Amruta Monohi” property it holds a special status and therefore, it cannot be settled in favour of tenants, as the temple is not an intermediary under the State and therefore there is no question of vesting of this particular property as per the provision of the Orissa Estate Abolition Act. The Tahasildar-cum-Estate Abolition Collector however came to the conclusion that in the last settlement the case land stood recorded in Jornal No. 50811 in favour of Sri Jagannath Mohaprabhu Amruta Monohi Marfat Raghunath Dev Goswamy Guru Shayama Sundar Dev Goswami and as such the Marfatdar may maximum be treated as a tenant under Lord Jagannath. Challenging the said order, the petitioner filed O.E.A. Appeal Nos. 1 and 2 of 1995 respectively which were dismissed on 19th June, 1997. He further submitted that Lord Jagannath being a perpetual minor, its properties were kept under marfat. The Marfatdar had no right to allow any tenant under it to construct house over the “Amrit Monohi” property of Lord Jagannath as the properties are donated for a particular purpose to Lord Jagannath Bijie Sri Khetra, Puri. Therefore, the order passed by the O.E.A. Collector as well as the Appellate Authority vide Annexures-3 and 4 are liable to be quashed.

3. Learned counsel for the opposite party submitted that the father of present opposite party No.1 Radha Prasanna Das was the intermediary in third part Khewat No.1 under the superior proprietorship of Sri Jagannath Mohaprabhu Bijie Puri Marfat Raghunath Dev Goswami Guru Shyam Sundar Dev Goswami, II Part, Khewat No.8 on payment of a fixed amount of rent of Rs.11.50 paisa as reflected in the Record of Right under the original Khata No. 38, Ledger No. 50811, mouza Srikanthapur. Admittedly, the status of land was “Amruta Monohi” and was recorded under “Nijdakhal”

status under intermediary in sabik settlement R.O.R. The estate in question was vested under blanket Notification on 18.3.1974. The said notification was challenged before this Court and this Court upheld the validity of the notification which was confirmed by the Apex Court subsequently. The Apex Court held that the estate Jagannath Temple is coming within the definition of Trust Estate as defined under Clause(00) of Section 2 of OEA Act. After the said judgment, the opposite party being in khas possession of the property in dispute filed application under Section 8(A) of the O.E.A. Act, seeking settlement of Ac.1.15 dec. of land before the O.E.A. Collector-cum-Tahasildar, Balasore on 1.3.1989. Similarly, the Administrative Officer of the Temple filed application on 18.7.1990. Both the claim applications involved in respect of the same schedule of land as such both the cases were heard together. The O.E.A. Collector observed that out of the disputed land as major portion thereof have been settled in favour of different persons by order of civil court as well as by order of Commissioner, Settlement, as such the rest land will follow the same procedure for settlement of land in favour of legal heirs of intermediary as recorded in the Major Settlement ROR as the property in question is in khas possession of the intermediary. As such while allowing the application of the opposite party he has rightly rejected the claim of the petitioner. The Appellate Authority held that as the land was in Nijdakhal status the same is the private land of the intermediary and from the order of the O.E.A. Collector, it appears the inferior intermediary Radha Prasanna Das was only paying Rs.11.50 paisa as annual rent for Nijdakhal land recorded in disputed C.S. Khata No. 38. Therefore, whatever nexus the appellant had as intermediary, it ceased from the date of vesting and the former was only entitled to compensation under the Act for loss of income. The deemed settlement, in no circumstances, shall be available to the appellant. Therefore, the impugned order need not be interfered with as the same has been passed in accordance with the statutory provisions of law.

4. Considering the above submission of the parties, it is the admitted position that the disputed land is recorded as “Amruta Monohi” land of Lord Jagannath. The Apex Court in a decision reported in **AIR 1967 S.C. 256** in the case of **Mahant Shri Srinivas Ramanuj Das V. Surjanarayan Das and another** taking into consideration to the passage in the Puri Gazetteer of O’Malley of 1908 observed that “both Saiva and Vaishnava Maths exist in Puri. The lands of the latter are known as Amruta Manohi (literally nectar food), because they were given with the intention that the proceeds thereof should be spent in offering bhoga before Jagannath and that the Mahaprasad thus obtained should be distributed among pilgrims, beggars and ascetics; they are distinct from the Amruta Manohi lands of the temple itself which are under the superintendence of the Raja”. This “Amruta Monohi” lands has been discussed in a catena of decisions. In the case of **Sri Chiranjilal Patwari V. the Commissioner, Hindu Religious Endowments, Orissa, Bhubaneswar and others** reported in **Vol.40(1974)CLT 41**, where it was held that Amruta Monohi land in the Dalziel’s Settlement Report has been referred as the property of Lord Jagannath. In G.C. Praharaj’s Bashakosh it is mentioned to be the property dedicated to the Seva of Lord Jagannath of Puri. In **Mahant Sri Srinivas** case it is stated to be property of Lord Jagannath. But it is of two categories, one directly managed by the Administrator and the other by persons as 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 about the respective interest of the deity and the Math in the Amruta Monohi land. In the decision reported in **2009 (Supp.-II) OLR 238** in the case of **Sri Siddha Math represented by Mahanta Satya Narayan Ramanuj Das and two others V. Sri Jagannath Temple Managing Committee and another**, this Court reiterated the above position and held as follows:-

“The properties are recorded as Amrutomonohi 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 Amrutomonohi, 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.” xxx (emphasis supplied)

However, in the meantime Clause-16 of the Temple Act has undergone amendment in the year 2003 and Sub-clause-3 thereof reads as follows:-

“16. Alienation of the Temple properties:-

(1) xxx xxxx xxxxx

(2) xx xxxx xxxx

(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.” xxx
(emphasis supplied)

5. In view of the above well settled position of law and provision of the Act, this Court comes to the conclusion that the O.E.A. Collector as well as the Appellate Authority while passing the impugned orders have not taken into consideration the terms and conditions attached with properties regarding offering bhogo before Lord Jagannath. Therefore, this Court remits back the matter to the O.E.A. Collector-cum-Tahasildar, Balasore with a direction to hear and dispose of the respective claims of the petitioner and opposite parties afresh in accordance with law after affording opportunity of hearing to the parties. The parties are at liberty to produce documents in support of their respective claims.

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S.Panda, J.

Dr. B.R.Sarangi, J. I agree.

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Dr.B.R.Sarangi, J.

Orissa High Court, Cuttack
27th September, 2013/ **K.K.Sahoo**