

ORISSA HIGH COURT: CUTTACK

WRIT APPEAL NO.18 OF 2013

In the matter of appeal against the order dated 15.01.2013 passed by the learned Single Judge in W.P.(C) No.680 of 2013.

Pragnyadipta Panda Appellant

V e r s u s

Ranjan Kumar Panda & others Respondents

For Appellant : M/s. M.S. Panda & M. Panda

For Respondents : M/s. K.R. Mohapatra, S. Ghosh,
D. Panigrahi & A.R. Panigrahi
(For Respondent Nos.1 & 2)

Mr. A.P. Mishra
(For Respondent No.4)

M/s. Choudhury P.K. Mishra,
S.C. Satpathy, S.K. Nayak & K.B. Kar
(For Respondent No.5)

Dr. A.K. Rath
(For Respondent Nos.8 & 9)

P R E S E N T :

**THE HONOURABLE MR. JUSTICE I. MAHANTY
A N D
THE HONOURABLE MR. JUSTICE R. DASH**

Date of hearing : 22.04.2013

Date of judgment : 17.05.2013

R. Dash, J. This appeal is preferred against the order dated 15.1.2013 passed by the learned Single Judge in W.P.(C) No.680 of 2013 vide Annexure-6 confirming the order dated 14.11.2012 (Annexure-5)

passed by the learned Addl. Assistant Commissioner of Endowment, Cuttack (for short 'the Assistant Commissioner') in O.A.No.30 of 2011.

2. R.1 and R.2 are the petitioners and the Appellant is the O.P.No.1 in O.A.No.30 of 2011 pending before the Assistant Commissioner. In the O.A., R.1 and R.2 have sought for a declaration, inter alia, that they being the hereditary Badapandas of the deity Sri Sri Sarala Thakurani, Jhankada, in the district of Jagatsinghpur are entitled to perform the Badapanda rituals of the deity as well as the emoluments attached thereto. On an interim application of R.1 and R.2 the learned Assistant Commissioner has passed the impugned order dated 14.11.2012 to the effect that R.1 and the Appellant shall jointly perform the Badapanda rituals of the deity till disposal of O.A. No.30 of 2011. Against that order, the appellant has filed Revision Case No.17 of 2012 under Section 9 of the Orissa Hindu Religious Endowment Act, 1951 (for short, 'the Act') before the Commissioner of Endowment, Orissa (for short, 'the Commissioner'). Pending that Revision the Appellant filed the writ petition virtually to stay the operation of the Assistant Commissioner's order dated 14.11.2012 citing the reason that at the time of filing of the Revision the Commissioner was on long leave for which it was not possible on the Appellant's part to obtain an order for staying operation of the impugned interim order. Challenging the legality of the interim order, the Appellant sought for quashing of that order. The learned Single Judge has passed the impugned order vide

Annexure-6 observing that since the Assistant Commissioner has made only an interim arrangement allowing both the parties to jointly perform Badapanda rituals till final disposal of the O.A., no interim relief ought to be granted in favour of the Appellant. Instead, he has directed that the interim arrangement should be complied with strictly with further direction for expeditious disposal of the Revision Case pending before the Commissioner.

3. Admittedly, the Appellant and R.7 on one hand and R.1 and R.2 on the other are two branches of one common ancestor. Appellant's constant stand is that either R.1 and R.2 or the ancestors of their branch have never before performed Badapanda rituals of the deity. He claims that all along it was the ancestors of the Appellant's branch who had been performing the rituals and after the death of Appellant's brother late Bhabani Sankar on 20.10.2011 and Bhabani Sankar's son (R.7) being a minor, the appellant being duly selected by the competent authority to perform Badapanda rituals, has been performing the rituals on behalf of the minor. R.1 and R.2, on the other hand, claim that the ancestors of their branch were the Badapandas of the deity. But, the Appellant's father late Bhagirathi, taking advantage of his position in the family, could take over full charge of the Badapanda rituals completely depriving late Baishnab, father of R.1 and R.2, and, after his demise his son-R.1, from performing the Badapanda rituals of the deity. R.1 and R.2 have further admitted that

while Appellant's father late Bhagirathi was in full control of Badapanda rituals he introduced the Appellant in the year 2003 to perform the rituals without consulting late Baishnab or his sons-the present R.1 and R.2. Further contention made by R.1 and R.2 is that after the sudden death of Bhabani, his younger brother, the present Appellant, forcibly started performing the rituals preventing R.1 and R.2 from performing the same.

4. Thus, from the pleadings of the parties, it is crystal clear that since long the Appellant's father Bhagirathi had taken over full charge of Badapanda rituals depriving R.1 and his ailing father from performing the rituals and even during the life time of Bhagirathi he introduced his son Bhabani Sankar to perform the rituals and after the death of Bhabani, the present appellant has been performing the rituals. It is also admitted by R.1 and R.2 in the O.A.No.30 of 2011 that they are prevented from performing the rituals not only by the Appellant but also by the Deity's Trust Board, the Temple Administration and the Hindu Public represented by R.5 and R.6 (arrayed as O.P.Nos.4 and 5 in the O.A.).

5. R.1 and R.2 filed the O.A. in the last week of October, 2011 claiming the cause of action to have last arisen on 22.10.2011 when the Appellant prevented them from performing Badapanda rituals. In the O.A. they have sought for a declaration that they are the hereditary Badapandas of the deity. They have admitted that long before filing of

the O.A., they were not performing the Badapanda rituals and were deprived of the emoluments derived therefrom. Despite of such clear pleadings of the contesting parties, the learned Assistant Commissioner has come to an erroneous conclusion that till the death of Bhabani in 2011, R.1 and late Bhabani both were performing the rituals with mutual consent. As a result of such wrong assumption, the learned Assistant Commissioner passed the impugned order allowing R.1 and the Appellant to perform the rituals jointly. Thus, ex facie, the impugned interim order passed by the Assistant Commissioner has the effect of disturbing the long standing status quo. Unless and until R.1 and R.2 are declared to be the hereditary Badapanda of the deity, it would not be just and proper to allow them to perform the Badapanda rituals jointly with the Appellant.

In the case of **Sridhar Panda v. Taramani Dibya and another, 84 (1997) C.L.T. 323**, this Court by a Bench presided over by Justice A. Pasayat (as His Lordship then was) in paragraph-4 of that judgment came to hold as follows:

“xxx An interlocutory or interim injunction is to preserve matters ‘in situ’ until the case can be tried. xxx”

According to the Chambers English Dictionary, the meaning of words “in situ” is “in the original situation”.

6. Under such circumstances and in order to maintain status quo ante, the impugned order passed by the learned Single Judge

confirming the interim order passed by the learned Assistant Commissioner is liable to be quashed and the operation of the impugned interim order dated 14.11.2012 ought to be stayed till disposal of the O.A.

7. Accordingly, the Writ Appeal is allowed. The impugned order dated 15.1.2013 passed by the learned Single Judge in W.P.(C) No.680 of 2013 vide Annexure-6 is quashed and the operation of the impugned order dated 14.11.2012 passed by the Assistant Commissioner in O.A. No.30 of 2011 vide Annexure-5 is stayed till disposal of O.A. No.30 of 2011. The learned Asst. Commissioner shall take all efforts to dispose of the O.A. within three months from the date a copy of this judgment is placed before him.

.....
R. Dash, J.

I. Mahanty, J. I agree.

.....
I.Mahanty, J.