

**HIGH COURT OF ORISSA : CUTTACK**

**W.P.(C) No.18392 of 2013**

An application under Articles, 226 and 227 of the Constitution of India.

Umesh Chandra Mishra & others ... .. Petitioners.

Versus.

Mayadhar Lenka & others	...	...	opp.parties.
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For Petitioners : M/s. A.K. Mohapatra, A.K. Dash,  
B.Panda, S.S. Mohapatra,  
S.K. Mishra, S.K. Barik,  
T. Dash and S.P. Mangaraj.

For opp.parties : M/s. S.Pr. Das-A, A.K. Nath.  
(opp.party no.14)

M/s. G.K. Mohanty, P.K. Panda,  
D.Misra and N. A. Khan  
(caveator-opp.party no.3)

M/s. S. Mohapatra, J. Sahu and  
K. Raj (Intervenor)

M/s. D. Tripathy & T. Kumar.  
(opp.party no.10)

Mr. B.R. Sahu (Intervenor)

Mr. A.K. Nath  
(for opp. party nos.12 to 14)

Mr. Pravat Ku. Dash  
(for opposite party nos.11)

## PRESENT

**THE HON'BLE SHRI JUSTICE B.K.NAYAK**

***Date of hearing : 12.05.2014 : Date of judgment: 24 .06.2014***

***B.K.NAYAK, J.*** Order dated 09.07.2013 passed by the Additional Assistant

Commissioner of Endowments, Cuttack constituting non-hereditary trust

board in respect of Sri Geleswar Mahadev & Sri Geleswari Thakurani Bije, Gelpur, Bhadrak under Annexure-8 and order dated 08.07.2013 passed by the Commissioner of Endowments, Orissa, Bhubaneswar under Annexure-9 approving the resolution dated 25.04.2013 of the interim trust board with regard to election of interim managing trustee, have been challenged in the present writ petition.

2. It is the case of the petitioners that Sri Geleswar Mahadev & Sri Geleswari Thakurani are the family deities of the petitioners' family and the petitioners are the hereditary trustees. The deities were established by the forefathers of the petitioners on their private land since time immemorial. One Harihar Mishra is the common ancestor of the present petitioners. Admittedly in 1928 settlement R.O.R. all the properties were recorded in the name of the deities as per Annexures-1 and 2 series under the marfatdarship of Harihar Mishra. It is stated that at the instance of some of the villagers, who were inimically disposed towards petitioners' family, the Divisional Inspector of Endowments, Baripada submitted a false report dated 11.03.2012 suggesting for constitution of non-hereditary trust board under Section 27 of Orissa Hindu Religious Endowments Act and until such constitution, interim trust board under Section 7 of the Act be appointed. The Endowment Authorities without making any enquiry have passed order for constitution of interim trust board as well as regular non-hereditary trust board under Section 27 of the Orissa Hindu Religious Endowments Act with the arbitrary approval of the Government and without issuing any notice to the majority of the family members of the petitioners except one

or two, who have joined hands with inimical persons, even though the deities in question are the private deities of the petitioners' family and the petitioners are the hereditary trustees. It is stated that the notices issued by the Additional Assistant Commissioner of Endowments on 28.06.2012 (Annexure-16) were not served on the petitioners and elder members of the family of the petitioners except one or two members of the petitioners' family.

3. A counter affidavit has been filed jointly by opposite party nos.1 to 9 contending that the deities in question are not the private deities of the petitioners' family nor the petitioners are the hereditary trustees. It is further stated that the temple of the deities was established some time in 1925 by the then Zamindar-Rama Krushna Bose and after him Sushila Bala Dasi donated huge extent of land in favour of the deities for daily seva puja and brought the family of late Harihar Mishra to Gelpur for performing seva puja of the deities. It is stated that the deities are the public deities and the properties are under public endowments. It is also stated that the petitioners, who were merely to perform the seva puja of the deities, have managed to get their names recorded as marfatdars of the deities by deleting the names of the villagers and they have also mismanaged the deities' properties by getting them partitioned and have sold away some lands. The matter was reported to the Endowment Authorities and the Divisional Inspector of Endowments, Baripada conducted preliminary enquiry and being satisfied about mismanagement by petitioners, suggested for appointment of trust board. It is also stated that Additional Assistant Commissioner of Endowments

served notice as required under law and such notice was served on the elder members of the petitioners' family. Therefore, the constitution of non-hereditary trust board by the Endowment Authorities is legal and justified.

4. A counter affidavit has been filed by opposite party no.11, the ward member of village-Gelpur, wherein it has been stated that the deities in question are public deities and were established by the then Zamindar-Ram Krushna Bose and after him, Zamindar-Sushila Bala Debi had donated huge cultivable lands to the deities and the temple was being managed by the local Zamindar. At that time late Harihar Mishra was brought from village-Lunia to do seva puja of the deities. After Harihar Mishra, his successors continued with the seva puja of the deities, but the petitioners did not take proper care of the temple and the deities and on the contrary, sold away the deities property without any legal necessity, used the temple premises as their crematorium and have raised Samadhis, as a result of which, opposite party no.10 along with other villagers and the Sarpanch filed representation before the Endowment Authorities to constitute appropriate trust board for the management of the deities and the temple. The petitioners have also been able to manipulate the record of rights of the properties and to delete the name of the villagers from ROR being in connivance with the settlement authorities.

5. It was contended by the learned counsel for the petitioners that no enquiry was conducted at all by the learned Additional Assistant Commissioner of Endowments before sending the proposal to the State Government for appointment of no-hereditary trust board, for his

satisfaction that there was no-hereditary trustee in respect of the institution in question and that there was no material before him to reach such prima facie satisfaction. It was also submitted that the State Government has also mechanically approved the proposal of the Additional Assistant Commissioner of Endowments, even though the Additional Assistant Commissioner of Endowments was not prima facie satisfied that there was non-hereditary trustee in respect of the institution.

Mr. Nath, learned counsel appearing for Endowment Authorities submitted that Additional Assistant Commissioner of Endowments, Cuttack has recorded in his file that on enquiry he was satisfied that there was no hereditary trustee.

6. In order to decide the lis, it is necessary to see the provision of Section 27 of the OHRE Act, 1951 as amended in 2003, which is extracted hereunder:

**“27. Non-hereditary trustees, their number and appointment-**(1) The Assistant Commissioner shall, in cases where there is no hereditary trustee, [with the prior approval of the State Government] appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

[Provided that the Assistant Commissioner shall, before sending any proposal to the State Government

for such prior approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication, and forward to the State Government the suggestions and objections, if any, received, along with such proposal.

(1-a) On receipt of a proposal made under Sub-section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the religious denomination for whose benefit, the concerned religious institution is chiefly maintained.]

[(2) A non-hereditary trustee shall, unless he is sooner removed or dismissed or otherwise ceases to be a trustee, hold office for a period of two years from the date of his appointment.

Provided that the Assistant Commissioner may, for sufficient reasons to be recorded by him, from time to time, extend the aforesaid term of a trustee, so, however, that the total extension so granted shall in no case exceed six months in the aggregate.

(3) Every non-hereditary trustee holding office immediately prior to the date of commencement of the Orissa Hindu Religious Endowments (Amendment) Act, 1978 shall cease to hold office as such on the completion of a period of two years from the date of this appointment or on the expiration of three months

from the date of commencement of the said Act, whichever is later.]”

7. The scope of Section 27 in the context of initiating and sending proposal to the Government for appointment of non-hereditary trustee by the Additional Assistant Commissioner of Endowments, it would be apposite to refer to the full Bench decision of this Court in the case of ***Khetramohan Rout & others v. Sri Sri Nageswar Mahadev and others : 1992 (II) OLR 330 (FB)***, where it has been held as follows :

“**20.** .... The absence of a hereditary trustee being a condition precedent for exercise of the power under Section 27 of the Act, the Assistant Commissioner shall have to record, while exercising this power, as to why he is of the opinion that there is no hereditary trustee of the religious institution. This satisfaction may be arrived at on the basis of materials placed before the Assistant Commissioner for which purpose, he may go in for a summary inquiry only, as indicated in paragraph-27 of Bantala’s case by the Supreme Court. This may be because of the fact that while exercising power under Section 27 of the Act, the Assistant Commissioner does not perform a quashi-judicial function; his action under this section may strictly speaking, be regarded as an administrative act, as opined in ***Rajkishore v. Commissioner of Endowments***, AIR 1979 Orissa, 169, to which our attention is invited by Sri Naidu.”

8. The Full Bench in the aforesaid case was considering the question whether the Assistant Commissioner of Endowments can

appoint non-hereditary trustee in respect of the religious institution other than 'Math' in exercise of power under Section 27 of the OHRE Act, 1951 without prior determination of the fact if there is a hereditary trustee or not in a disputed case visualized by Section 41 of the said Act, after the act was amended by inserting Section 8-B. In view of insertion of Section 8-B, the Full Bench answered the reference holding that before exercising power under Section 27 of the Act prior determination of the question as to the trustee as hereditary by taking recourse to Section 41 of the Act would not be necessary.

9. The observation of the Full Bench of this Court in paragraph-20 in the case of ***Khetramohan Rout and others*** (supra) as seen above has also been followed by a subsequent Full Bench of this Court in the case of ***Dhadi Parida (and after him) Sundari Parida & others v. Commissioner of Consolidation, Orissa and others: 81 (1996) C.L.T. 477 (FB)*** where it was held in paragraphs-10 to 12 as follows :

“10. We have perused the judgment of the Full Bench in the case of ***Khetramohan Rout*** (supra) and carefully considered the rival contentions raised by learned counsel for the parties. As noted earlier, the area of dispute is very limited. It relates to the nature of inquiry to be held by the Assistant Commissioner for appointing non-hereditary trustee under section 27 of the Act. There is no dispute that the inquiry contemplated is of summary nature since the appointment of a non-hereditary trustee for a temporary period subject to the final determination to be made after detailed enquiry in the proceeding under section 41 of the Act.



**11.** The main purpose in investing the power to appoint a non-hereditary trustee is to ensure proper management of the affairs of religious institution including its properties and to avoid mismanagement and misappropriation. In the context of things, the appointment of non-hereditary trustee is to be made with utmost expedition. Therefore, the Full Bench held that the enquiry in such proceedings should be of a summary nature.

**12.** Coming to the nature of enquiry and the procedure to be followed therefore, it is our considered view that the nature of enquiry will depend on the facts and circumstances of each case. Therefore, it is for the Assistant Commissioner to decide the nature of the enquiry to be held in the case since it is for him to be satisfied whether there is a hereditary trustee in the institution or not.”

10. With regard to the specific manner of enquiry to be held by the Assistant Commissioner for his satisfaction that there is no hereditary trustee, ***Khetramohan Rout and others*** (supra) did not lay down anything. Therefore, the latter Full Bench in ***Dhadi Parida*** (supra) instead of laying down any specific manner of enquiry to be held by the Assistant Commissioner of Endowments, only emphasized that the Assistant Commissioner is to state the reason for his satisfaction that there is no hereditary trustee in the institution and the nature of enquiry will depend on the facts and circumstances of each case. In this regard, the Full Bench in ***Dhadi Parida*** (supra) observed as follows in paragraph-13 of the judgment :

“**13.** We would like to state here that the Full Bench in the case of ***Khetramohan*** Rout (supra) has not laid down any specific manner of enquiry to be held by the Assistant Commissioner, and, in our considered view, in the context of things, it will not be appropriate to do so. We hasten to add there that in the said Full Bench decision, it has not been laid down that the Assistant Commissioner will in no circumstance entertain an objection or give opportunity of hearing to the objector while deciding appointment of a non-hereditary trustee. Rather it has been laid down therein that the Assistant Commissioner is to state the reason for arriving at the satisfaction that there is no hereditary trustee in the institution. This, in our view, sufficiently safeguards against any arbitrary and whimsical action on the part of the authority. If the order of the Assistant Commissioner is vitiated on account of arbitrariness, then it is also open to the person concerned to move the Commissioner in revision. Thus, an aggrieved party is not without any remedy.”

11. This Court has also having being confronted with similar question in the case of ***Shyamsundar Sahoo & others v. State of Odisha and others : 2014 (I) CLR 903*** held as follows :

“**18.** In both the aforesaid Full Bench decisions, the Court was considering the power of Assistant Commissioner of Endowments under Section 27 of the 1951 Act as it is stood prior to 1992 amendment in which the State Government had no role at all to play in the matter of appointment of non-hereditary trustee. But, now the position has changed and

particularly after 2003 amendment the State Government has a greater role to play as because all objections and suggestions to the proposal of the Assistant Commissioner of Endowments for appointment of non-hereditary trustee for an institution are to be considered by the State Government before it decides to grant approval. That however does not mean that the Assistant Commissioner of Endowments is not required to be satisfied that the institution has no hereditary trustee. Such satisfaction is necessary to be reached for initiation of the proposal and before publication of notice as required under the 'proviso' to Section 27(1) of the Act. The satisfaction can be reached from any material including the report of an Endowment Inspector or from documents evidencing prior determination under Section 64 of 1939 Act or under Section 41 of the 1951 Act with regard to the nature of institution as well as nature of the trustee or from any order of a competent authority showing that the hereditary trustee has either been removed or suspended.

His satisfaction shall be based on the materials produced before him, which has a concrete bearing on the question whether the institution has or has not a 'hereditary trustee' within the meaning of the 1951 Act. The Assistant Commissioner shall have to record reasons about his satisfaction for proposing appointment of non-hereditary trustee, which must be before publication of notice as per proviso to Section 27(1) of the Act. Once the

Assistant Commissioner publishes the notice of his proposal as required under the proviso to Section 27 (1) of the Act he cannot again enter into any further enquiry on the basis of any objection that may be received after publication of notice.”

12. In order to appreciate the contention raised by the learned counsel for the parties this Court called for the records from the office of the Additional Assistant Commissioner of Endowments, Cuttack. Perusal of the said record reveals that on the basis of allegation petition with regard to mismanagement of the deities and their properties by the family of the petitioners, the Divisional Inspector of Endowments, Baripada conducted a preliminary enquiry on the spot and submitted report dated 11.3.2012 to the Additional Assistant Commissioner of Endowments, Cuttack. The said report reveals about the establishment and installation of the deities in question and the construction of the temple, engagement of Harihar Mishra by the then Zamindar as Pujak (Priest) to do seva puja of the deities. In the report there is no mention that the institution has no hereditary trustee. While dealing with the aforesaid report of the Divisional Inspector of Endowments, the learned Additional Assistant Commissioner of Endowments has stated in the note sheet of the file on 28.06.2012 to the following effect :

“from enquiry it is satisfied that there is no hereditary trustee.”

There is however, no mention as to what enquiry was conducted and how, nor any reason has been recorded as to his

satisfaction. Though notices were published thereafter, as required under the proviso to sub section (1) of Section 27 of the Act, the letter sent to the Government by the Additional Assistant Commissioner of Endowments for approval of the proposal for appointment of non-hereditary trust board, did not indicate that the institution has no hereditary trustee. Although the petitioners even after publication of notice did not file any objection, it is apparent that the Government also mechanically approved the proposal of the Additional Assistant Commissioner of Endowments being oblivious of basic statutory requirement that there was no hereditary trustee in respect of the deities in question.

13. For the aforesaid reasons, the impugned order dated 09.07.2013 under Annexure-8 passed by the Additional Assistant Commissioner of Endowments, Cuttack constituting non-hereditary trust board in respect of the institution in question cannot be sustained. The same is accordingly quashed. The matter is remitted back to the Additional Assistant Commissioner of Endowments, Cuttack, who shall fix a date for a preliminary enquiry and issue notice to the petitioners to take part in such enquiry if they so like and thereafter pass appropriate order with regard to his prima facie satisfaction about existence/non-existence of '*hereditary trustee*' in respect of the institution within the meaning of OHRE Act and thereafter proceed in accordance with law. The enquiry shall be completed by the learned Additional Assistant Commissioner of Endowments, Cuttack within two months.

Since the order of appointment of interim trust board by the learned Commissioner of Endowments has not been

challenged, I am not inclined to interfere with the order passed by the Commissioner of Endowments, Orissa, Bhubaneswar on 08.07.2013 (Annexure-9) approving the resolution of the interim trust board with regard to the election of the interim managing trustee.

The writ petition is accordingly disposed of.

A free copy of this order be handed over to Mr. A.K. Nath, learned counsel for transmission to the Additional Assistant Commissioner of Endowments, Cuttack for compliance.

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**B.K.Nayak,J.**

*Orissa High Court, Cuttack*  
*The 24<sup>th</sup> June, 2014/Gs.*