

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 25531 of 2013

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

Niranjan Mekap and others ... Petitioners

-Versus-

State of Orissa and others ... Opp. parties

For Petitioners : M/s. Iswar Ch. Dash,
D.Nanda & T.R. Mohanty.

For opp. parties : Mr. B. Bhuyan,
Addl. Govt. Advocate
[for O.Ps. 1, 2 & 5]

M/s S.P. Das & A.K.Nath
[For O.P. No.3]

M/s A.R. Das, N.Swain,
S.K.Nanda, B.Mohapatra, K.S.Sahu
& L.D.Achari
[For O.P. No.4]

Mr. A.Saran, Sr. Advocate
Mr. R.K. Rath, Sr. Advocate
M/s T.Roy & S.Roy
[For O.P. No.6]

P R E S E N T:

**THE HONOURABLE SHRI JUSTICE I. MAHANTY
A N D**

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment : 30.03.2015

B.N. Mahapatra, J. This writ petition has been filed with a prayer for quashing Annexure-10 series which inter alia contain the letter dated 22.6.2013 issued by the Director of Estates & Ex-Officio Addl. Secretary, Government of Odisha to the Executive Officer, Lingaraj Temple Trust Board,

Bhubaneswar and Director, M/s Assotech Milan Resorts (P) Ltd. Lewis Road, Lewis Plaza, Bhubaneswar for submission of Tripartite Deed along with the documents in support of withdrawal of all the cases filed before different courts pursuant to second meeting dated 3.5.2013 under the Chairmanship of Special Secretary, G.A. Department for Settlement of dispute on Ac.2.865 decimals of land in Bhimpur. The further prayer of the petitioners is to issue a direction prohibiting the attempt /liaisoning of the Government high officials with the statutory authorities for closure of the pending cases in compliance of decision made in joint meeting under the Chairmanship of Special Secretary, G.A. Department and for a further direction to dispose of the cases pending before the Revenue Authorities, Civil Authorities and Authorities under the Special Statute within a stipulated period without being influenced by the illegal, arbitrary and unauthorized dictates of the higher officials in the hierarchy of the State Government.

2. Petitioners' case in a nut-shell is that the land in question belongs to Lord Lingaraj Mahaprabhu Marfat Trust Board under Khewat No.1B Register No.14830, Khata No. 1874, which has been declared as "trust estate" burdened with incidence of service in favour of Sebayat late Govinda Mekap. The vernacular terminology of "Seva" is "Deba Mausuphankanra Bhandara Jagiba Bartana Sakase Paichanti". The said property of the deity was declared as a Trust Estate under Section 13-D of Orissa Estates Abolition Act, 1951 (for short, "the OEA Act") by designated Tribunal. Thus, the property remained protected from vesting. In 1965, the

Sebayat, late Govinda Mekap, executed one unregistered lease deed in favour of D. Ananda Rao Dora and his brothers. On 30.06.1980, one deed of agreement for sale bearing Registered Deed No.4630 dated 30.06.1980 was executed by Sebayat, late Govinda Mekap in favour of D. Ananda Rao Dora and others. The registered sale deeds nos.5072, 5073, 5074 and 5308 dated 30.03.2009 were executed by the successors of late Gobinda Mekap in favour of Smt. Rutupurna Dhirsamanta. One Joint venture agreement has been entered into by the purchaser Rutupurna Dhirsamanta with M/s. Assotech Millan Resorts Pvt. Ltd. for construction of Hotel/Resort on the land in question.

3. Further, case of the petitioners is that though on 18.03.1974 vesting notification was notified, the property in question did not vest with the State Government in view of proviso to Section 8(3) of the OEA Act. The State Government in Revenue Department prohibited settlement of Jagir land of deity-intermediary, vide notification No.25283-EA-II 17/76 R dated 11.6.1976. On 14.03.1991, the State Government issued instruction regarding modalities of settlement of rent in respect of Bebandobasta status of the landed property of the intermediaries excluding deity's land in respect of personal service. Notification dated 11.01.1995 was issued in respect of settlement of land relating to Lord Lingaraj Mahaprabhu empowering the Board of Revenue to remedy the irregularities or illegalities committed by Sub-ordinate Officials. On 06.12.2000, the State Government issued another instruction in respect of rent settlement of lands recorded in Bebandabosta Status in the record of rights. The Board of Revenue was

endowed with extensive powers, even *suo motu* power to remedy the wrongs, illegality and irregularity committed by subordinate authorities.

4. According to the petitioners, several cases were filed before the Revenue, Appellate and Revisional Authorities, Civil Courts and in this Court by the petitioners and some of the opposite parties claiming right, title and interest over the properties in question, some of which have already been disposed of and others are pending. In the writ petition, the petitioners have furnished particulars of those cases. There is no need to refer to those cases in detail in this judgment as they have no relevance so far as the present dispute is concerned.

5. In January 2011, Bhubaneswar Development Authority (in short, “B.D.A.”) has sanctioned construction of Hotel plan of M/s. Assotech Milan Heritage Resorts (P) Ltd. In October, 2011, the State Government in G.A. Department wrote to the B.D.A. that since the title of land now stands recorded in the name of G.A. Department, the construction should be stopped.

On 1.10.2011, B.D.A. passed an order directing to stop construction work. Rutupurna Dhir Samanta, the Director of M/s. Milan Heritage Resort Private Limited, Bhubaneswar (O.P. No.7) filed W.P.(C) No.33403 of 2011 challenging the show cause notice issued by opposite party No.5 (OSD) therein under Orissa Development Authorities Act, 1982 (in short, “O.D.A. Act”), and opposite party No.6 (Planning Member of BDA, Bhubaneswar) therein to the petitioners as to why building plan shall not be cancelled. In that case, as an interim measure, this Court prohibited further construction. Thereafter, this Court vide order dated 30.05.2013

dismissed the writ petition as withdrawn on the basis of the memo filed by the petitioners seeking withdrawal of the writ petition. Misc. Case No.12790 of 2013 was filed by Chittaranjan Mekap and others to recall the order dated 30.5.2013 passed in W.P.(C) No.33403 of 2011. The said misc. case is pending.

6. Further case of the petitioners is that while the litigations are pending before different courts/authorities, the Government came forward to make liaisoning with different courts/authorities and suggested amicable out of court settlement on the basis of a representation filed on 18.01.2012 by M/s Assotech Milan Heritage Resorts (P) Ltd. stating their hardship.

On 15.12.2012, Government convened a joint meeting presided by Special Secretary, G.A. Department-cum-Liaison Officer to mediate with Law Department and Commissioner of Endowment.

On 3.4.2013, meeting under the Chairmanship of Special Secretary, G.A. Department with Secretary, Law, Endowment Commissioner, and Executive Officer of Lord Lingaraj Temple Trust Board was held.

On 3.5.2013, in the meeting presided by the Special Secretary, G.A. Department with Endowment Commissioner, Lord Lingaraj Temple Trust Board, Secretary, G.A. Department and Secretary, Law Department some suggestions were agreed upon as per which a tripartite agreement would be made with certain stipulations to lease out the property in question in favour of opposite party No.6. Pursuant to such suggestion dated 03.05.2013, Annexure-10 series have been issued. Hence, the present writ petition.

7. Mr. Iswar Chandra Dash, learned counsel appearing for the petitioners submitted that the Commissioner of Endowment and B.D.A. being the statutory authorities are seisin of the matter within their specified statutory jurisdictions. At this stage, the action of the Government calling for a joint meeting of the statutory authorities for tripartite settlement keeping in mind the purported hardship of one party, i.e., Hotel Radiation, is against the judicial spirit. The Special Secretary, G.A. Department has been authorized to liaison with Law Department and Commissioner of Endowment. This attempt of the Government is nothing but a colourable exercise of power to do away with the judicial system by influencing /pressurizing the statutory authorities which cannot be accepted. The Government is a party to a good number of litigations in different Courts and those litigations are continuing for years together. The Government is not taking any step to do away with the hardship of large number of citizens involved. The undue haste and anxiety exhibited for mediating execution of the tripartite agreement in the case at hand has resulted in creating pressure on the statutory authorities and its subordinate authorities to do away with the case in order to benefit one of the parties who has no legal right or interest over the property in question. The petitioners' right still continues. The petitioners are continuing as Sebaks of Lord Lingaraj. This property has been endowed on them in lieu of their seva puja to the deity. The property involves no alienable interest. Placing reliance on the copy of RoR (Annexure-11) to the rejoinder, Mr. Dash submitted that originally the suit land belonged to Lord Lingaraj Mahaprabhu Marfat Trust Board under Khewat No.1B Register No.14830, Khata No.1874, which has

been declared as Trust Estate, burdened with incidence of service in favour of Sevayats, late Govinda Mekap. Mr. Dash, further submitted that vide notification dated 24.06.1990, the Government has framed regulations as to how the lands are to be recorded after vesting and Clause 44 relates to recording of the land of the estate of the deity endowed/burdened with services for the deity. Section 19 of the Orissa Hindu Religious Endowment Act, 1951 (in short, "OHRE Act") bars any transfer of the property of the deity except with prior sanction of the Commissioner of Endowments. The proposed tripartite agreement is without legal sanction and amounts to a wrongful gain by a person claiming right, title, interest and possession over the property of Lord Lingaraj, which has been given to the petitioners in lieu of their service. Because crores of rupees are involved, the higher officials in hierarchy of the State Government have been influenced and it is understood that there is under-table transaction with some of them. Deity's property should not have been dealt with in such clandestine manner. Concluding his argument, Mr. Dash submitted to allow the writ petition.

8. Mr. Bhuyan, learned Additional Government Advocate for the State appearing on behalf of opposite party Nos.1 and 2 submitted that the petitioners have no *locus standi* or cause of action to file the present petition challenging the decision taken at the Government level on 03.05.2013 for out of Court settlement of disputes involving G.A. Department, the Trust Board of Lord Lingaraj Mahaprabhu and opposite party Nos. 6 and 7, especially when petitioners have admitted that their predecessors had transferred the case land to the vendor of opposite party

No.7, through an unregistered lease deed in 1965 ostensibly confirmed by execution of regular lease on 30.06.1980 and 25.08.1983. Mr. Bhuyan further submitted that the land in question was recorded in the name of Lord Lingaraj Mahaprabhu Marfat Trust Board, in the intermediary trust estate of Bhubaneswar vide Sabik Khata No.1874 and Sabik Plot Nos.174, 190 and 190/4724. One Madhab Mekap was the rent free service tenure holder under Khewat No.1 of Lord Lingaraj Mahaprabhu in respect of the said land who was given the said Jagir for guarding the store of the said deity as per one Sabik RoR finally published in the year 1974. Thus, father of the present petitioners, late Govinda Mekap, who claimed to be the successor of said Madhab Mekap, had only heritable but not transferable right of enjoyment of said service tenure land. Thus, Govinda Mekap had no authority to alienate the land in question to D. Ananda Rao Dora and others by an unregistered sale deed executed in the year 1965. Further the said deed is hit by Section 49 of the Indian Registration Act read with Section 91 of the Indian Evidence Act, and therefore, cannot be cited as evidence due to want of registration. Moreover, in view of Section 35 of the Indian Stamps Act, the said un-registered deed also cannot be considered by any Court of Law for any purpose. It is only the Trust Board of Lord Lingaraj, who with prior approval of the Endowment Commissioner under Section 19 of the OHRE Act, can transfer by exchange, sale or mortgage or lease out the land in question in favour of another person in case of any lease exceeding 5 years. Therefore, the registered sale deed executed by late

Govinda Mekap in favour of D. Ananda Rao Dora and others is *void ab initio*.

As per Section 3 (xii) of OHRE Act, any Jagir or Inam granted to an Archaka or Sebak or service tenure holder or other employee shall not be deemed to be personal gift to the said Archaka/Sebaka/service tenure holder or employee, which shall deem to be a religious endowment. The land in question granted to Madhab Mekap for rendering certain services is thus a religious endowment.

9. Mr. Bhuyan further submitted that the intermediary trust of Lord Lingaraj Mahaprabhu vested in the State Government is free from all encumbrances vide Revenue Department Notification No.13699E.A dated 18.03.1974 under sub-Section (1) of Section 3A of the OEA Act. Since, Govinda Mekap illegally transferred the land in question in violation of the terms and conditions of the Jagir and handed over possession to D. Ananda Rao and others, he was not a subsisting jagir holder or service tenure holder on the aforesaid date of vesting. The Trust Board of Lingaraj Temple has not filed any application for settlement of land in favour of Lord Lingaraj in terms of Sections 6 and 7 of the OEA Act. The Trust Board of Lord Lingaraj Mahaprabhu, who are not in khas possession of the land in question have also not filed their claim under Section 8A of the OEA Act before the OEA Collector; therefore, in view of Section 8A(3) which provides that on failure to file claim within the prescribed period under the said section, the provisions of clause (h) of Section 5 shall, notwithstanding anything contrary to Sections 6, 7 and 8 shall apply as if the right to

possession of lands and buildings or structures, as the case may be, has been vested in the State Government by operation of the said Act and thereafter the right to make any such claim as aforesaid shall stand extinguished. In view of the aforesaid provisions of law, the land in question is absolutely vested in the State Government. Thus, the original transfer made in favour of the vendor of opposite party No.7 is *ab initio void* and the subsequent transfer of the said property is *non-est* in the eye of law.

10. The Revenue Court has no authority to settle the land in question in favour of the petitioners in Bebandobasta Case No.362 of 1991 by mis-interpreting the Revenue Department Circular No.11782/R dated 14.03.1991, wherein, it was categorically mentioned that the service tenure land of the Trust Estates cannot be settled. Section 8A of the Orissa Land Reforms Act, 1960 (in short, "OLR Act") provides that only a "Raiyat" can file an application to the Authorized Officer for conversion of his agricultural land to non-agriculture status. Since opposite party No.7 is not coming within the meaning of the term "Raiyat" as defined in Section 2(26) of the OLR Act read with Section 4(1) of the said Act, she is not entitled to file any application before the Tahasildar, Bhubaneswar under Section 8-A of the said Act. Further, the Revenue Officer is not competent to entertain such prayers. Therefore, the order dated 26.05.2009 of the Revenue Officer-cum-Tahasildar, Bhubaneswar is *ab initio void*.

11. It was further submitted that the Government has not come forward to liaison with different courts and authorities as alleged by the

petitioners. A high level meeting under the Chairmanship of the Chief Secretary, Odisha was conducted on 15.12.2012. The said meeting was attended by the Principal Secretary, Revenue (opposite party No.1), the Legal Remembrancer, Collector, Khurda, opposite party No.4 as well as opposite party No.2 and Land Officer G.A. Department. Further, two meetings under the Chairmanship of opposite party No.1 were held with opposite party No.5-Law Department, opposite party Nos.3 and 4 on 03.04.2013 and 03.05.2013 and decision thereof as minuted vide proceedings dated 03.05.2013 under Annexure-10 series was taken. After taking the Government orders into consideration in relation to the said course of the action, the same was communicated to opposite party No.4- Executive Officer, Lord Lingaraj Temple Trust and opposite party No.6- Director, M/s Assotech Milan Resorts (P) Ltd. by opposite party No.2- Director of Estates & Ex-Officio Additional Secretary to Government with a direction to submit tripartite deed along with documents in support of withdrawal of all cases filed before different courts/authorities. It was further submitted that the decision taken by the Government after due deliberation in the meetings held on 15.12.2012, 03.04.2013 and 03.05.2013 cannot be said to be colourable exercise of power to do away with judicial system and/or interfering with the same. The Government while taking the decision to transfer the land in question in favour of opposite party No.6 has kept in view the Industrial Policy Resolution of the Industry Department which recommends grant of land for promoting Hotel Industry. Since, a decision has been taken in a most transparent and fair

manner keeping in view the interest of the deity as well as the Government and the existing policy of the Government to promote hotel industry, the petitioner is not correct in saying that the proposed tripartite agreement has resulted in wrongful gain to any person.

12. Mr. S.P. Das, learned counsel for opposite party No.3-Commissioner of Endowments, Odisha submitted that the land in question belongs to Lord Lingaraj Mahaprabhu Trust Board and the properties remained under the possession of one Madhab Mekap, the sevayat of the deity for rendering permanent service. Therefore, the land in question is meant for rendering permanent service to the deity by the sevayat and is inseparable from the deity. As per Section 3(xii) of the OHRE Act, the property granted to late Govinda Mekap shall be deemed to be a religious endowment. Any transaction made in contravention of Section 19 of the said Act is *ab initio void* and can confer no title to the vendee in any manner. The Estate of Lord Lingaraj Mahaprabhu was declared as a Trust Estate in pursuance of the reference of the then Collector, Puri vide Orissa Gazette Notification dated 04.09.1963. The reference of the Collector was allowed by the designated Tribunal, Sub-Judge, Bhubanewar vide order dated 04.11.1967 and the land in question was part of the Trust Estate, which remained as such till the Trust Estate vested in the Government on 18.03.1974.

13. After vesting, since the land in question does not come under the purview of Sections 6 and 7 of the OEA Act, there is no scope for intermediary to apply for settlement. The land also does not come under

Sections 8(2) and 8(3) of the OEA Act so as to make the person in possession of the land eligible to apply under the provisions of Section 8(A) of the OEA Act seeking fixation of fair and equitable rent. Since the land in question comes under Section 8(3) of the OEA Act, thus there is no scope for either intermediary or sevayat to apply for settlement of the land for which in pursuance of Clause 44 of the Government circular dated 26.04.1990, the land was recorded in 'Bebandobasta' status in the settlement operation during the year 1990. Thus, the land in question of Lord Lingaraj remained as such till 11.01.1995, when the Government of Odisha directed the Revenue authorities to record the seva lands of Lord Lingaraj in the name of the deity. Therefore, the plea of the Government that since the intermediary has not applied for settlement of the property of the deity vested in the Government as per section 5(h) of the OEA Act is misconceived.

14. It was submitted by Mr. S.P. Das that opposite party No.4- Executive Officer, Lord Lingaraj Temple Trust Board has filed O.A. No.7 of 2010 before the Commissioner of Endowments, Odisha under Section 25 of the OHRE Act to get back possession of the property in question from the vendees which is still pending adjudication. The alleged tripartite agreement cannot override the statutory provisions made under the OHRE Act and any action in violation of the said provisions is a nullity in the eye of law. The Endowment Commissioner, being one of the Government functionaries, is required to attend any meeting called by the State Government. It is undisputed that the learned Commissioner of

Endowments has always submitted its views in accordance with law without being influenced or biased by anybody in any manner. Opposite party No.3-Commissioner of Endowments, Odisha vide letter dated 2241 dated 20.03.2013 (Annexure-A/3) and letter No.4957 dated 28.05.2013 (Annexure-B/3) has submitted its independent views to the Addl. Secretary to Government, Law Department, Odisha, Bhubaneswar in respect of the land of Lord Lingaraj in question. Since the deity is a perpetual minor, it is the primary duty of the State and its functionaries to protect the interest of the deity. In case of failure to do so by the State and/or any of its instrumentalities, this Court has to protect the interest of the deity, a perpetual minor.

15. Mr. A.R. Dash, learned counsel appearing for opposite party No.4- Executive Officer of Lord Lingaraj Temple Trust Board submitted that no agreement of the parties can either take away or vest jurisdiction on any legal entity or authority. Any agreement worthy of being enforceable ought to comply with the basic requirements of law as contained in the Indian Contract Act, 1872 (in short, "Contract Act") and any contract between the parties in order to be enforceable ought to be legal. Further, any action for and on behalf of the deity if in law does not enure to the benefit of the deity, such action through whomsoever it may be, cannot stand the test in any court of law. Lord Lingaraj at Bhubaneswar is one of the ancient public religious institutions having religious Endowment of its own from time immemorial and now governed under the law enshrined under the OHRE Act. The State Government or any other authority including the Trust

Board of Lord Lingaraj Mahaprabhu cannot take any action which ultimately is not in the interest of the deity. The property involved in the present proceeding has been declared as a Trust Estate vide Gazette Notification dated 04.09.1963. The property of Lord Lingaraj is a religious endowment and immovable property, besides being a seva land it continues to remain as such of Lord Lingaraj after vesting of all trust estates. Such status of the land involved in the present proceeding remains unaffected by any other proceeding so far taken up or to be taken up. The ultimate say over the property in question remains with Lord Lingaraj. Any transaction relating to the property in question has to be strictly in accordance with the provisions contained under Section 19 of the OHRE Act and the corresponding Rules. Any action or transaction bereft of the said Act and Rules is *non-est* in the eye of law. Therefore, any proposal, agreement or contemplated contract before compliance of the said provisions of law, is not only beyond the permissible limit under the Contract Act and therefore, does not stand the test of legality and not specifically enforceable but also is not in the interest of the deity and on the other hand is destructive of such interest.

16. Opposite party No.4 has been instructed by the Commissioner of Endowment in the context of the tripartite deed and withdrawal of all the cases pending in different courts for settlement of dispute in respect of the land in question have to be in consonance with provisions of Section 19 of the OHRE Act. Accordingly, opposite party No.4 by his letter dated 10.08.2013 informed the Director of Estates and Ex-Officio Additional

Secretary to Government, G.A. Department, Odisha. Opposite party No.4 has been intimated by the Under Secretary to Government in the G.A. Department by letter dated 25.09.2013 to emphasize more on the steps already taken at the Government level without any reference to the legal recourse available in the matter. Any transaction of whatever nature and by whomsoever in relation to the property of Lord Lingaraj, if found to be not in accordance with the legal procedure provided should be considered as *void ab initio* and therefore, the same can not affect the right, title, interest and possession of the deity while at the same time does not give any benefit to anybody through such transaction. The property in question of Lord Lingaraj continues to be his seva land without being affected by any such transaction or dealings and would continue as such till the requirement of Section 19 is complied with. The deity-Lord Lingaraj has different seva and sevaks are enjoying land in lieu of seva. Any settlement affecting the seva will hamper the seva puja of the deity. Therefore, any settlement or any action in relation to the land of deity-Lord Lingaraj and the Endowment attached thereto ought to be without affecting the seva and the sevaks of the deity. In the temple of Lord Lingaraj in respect of each seva, the sevak through succession has been continuing to discharge seva to the deity. Likewise, the seva land in question allotted to the sevaks in lieu of their seva is being continued by them. The Board takes necessary steps to recover temple lands by appropriate legal action after obtaining previous sanction of the Commissioner.

17. Mr. Saran and Mr. R.K. Rath, learned Senior Advocates appearing for opposite party No.6-Director, M/s Assotech Milan Resorts (P) Ltd. and opposite party No.7-Smt. Rutupurna Dhirsamanta submitted that as the title suit for declaration filed by the petitioners is pending before the Civil Court since 2000, the writ petition under Articles 226 and 227 of the Constitution at the behest of the petitioners is not maintainable. The question of title cannot be adjudicated/determined under Article 226 of the Constitution of India. In course of hearing, opposite party No.6 filed a memo along with a copy of C.S. No.1851 of 2010 filed before the Civil Judge (Senior Division), Bhubaneswar and copy of the order sheet maintained in the said Civil Suit. Referring to the prayer made in the said Civil Suit and order dated 10.11.2014 passed therein and various averments made in the writ petition, Mr.R.K.Rath, learned Senior Advocate appearing for opposite party No.6 submitted that the present writ petition is not maintainable since the petitioners are pursuing two parallel proceedings seeking self-same relief, i.e., one by way of filing Civil Suit and the other by means of present writ petition. In support of his contention, Mr.Rath relied upon the judgment of the Hon'ble Supreme Court in the case of *Orissa Power Transmission Corporation Limited and others Vs. Asian School of Business Management Trust and others*, reported in (2013) 8 SCC 738.

18. It was also submitted that the petitioners have no *locus standi* or cause of action to file the present writ petition as admittedly their father, late Govinda Mekap, a sevayat to Lord Lingaraj Mahaprabhu had executed

an un-registered lease deed on 03.02.1965 and subsequently, a registered sale deed on 25.08.1983 in favour of one D. Ananda Rao Dora and others. Therefore, the petitioners have no right, title and interest over the property in question. The petitioners have also failed to make out a case as to whether they themselves have inherited the title of the sevayats of their late father and still render the service being recognized by the Trust Board of Lord Lingaraj.

19. It was submitted that the opposite parties though not asserting their title over the land in question but the said land is in physical possession of opposite party No.6 from 2009 and was in possession of the vendor of opposite party No.6 since 1965. Originally, the land was purchased from one Mr. D. Ananda Rao Dora by Smt. Rutupurna Dhirsamanta, Director M/s. Assotech Milan Heritage Resorts (P) Ltd. vide Regd. Sale Deed Nos.5420, 5422 & 5423 dated 30.03.2009. For legal necessity and Bank finance requirement of the Company Smt. Rutupurna Dhirsamant sold the land to M/s. Assotech Milan Resorts (P) Ltd. in the year 2011, which is evident from the Regd. Sale Deed vide Deed No.11081116037 dated 04.07.2011 and also Smt. Rutupurna Dhirsamant was a Director in M/s Assotech Milan Resorts (P) Ltd. earlier known as M/s. Milan Heritage Resorts (P) Ltd. M/s. Assotech Hotels (P) Ltd., a Company registered at New Delhi and M/s. Milan Developers & Builders (P) Ltd. (opposite party No.8), a company registered in Odisha invested as share holders in “Assotech Milan Resorts Pvt. Ltd. Assotech Milan Resorts Pvt. Ltd. entered an agreement with “Radisson Hotels International Inc”

vide MOU/Agreement dated 11.07.2009 for construction of a Five Star Hotel over Plot Nos.930, 931, 932, 933, 934, 935 and 980 in Mz : Bhimpur. Subsequent to this purchase, the land was converted from agricultural to homestead and so also mutation was allowed recording the name of the opposite party No.6 in the record of rights (RoR) by the Government Authorities in compliance of the procedure and law for the time being in force. The land in question was in intermediary estate of Lord Lingaraj prior to its vesting under the OEA Act. In 1962 RoR, the land in question was recorded in the name of Lord Lingaraj Mahaprabhu and in the remarks column, the name of the sevayats rendering service was recorded. The sevayat-Govinda Mekap transferred the land in 1965 vide un-registered Hatta Patta to one G. Ananda Rao Dora, which was registered in 1983. In the RoR of 1989, the land in question was recorded in the name of the Doras in Bebandobasta status. In 1990, the Commissioner, Settlement ordered that this is a Government land of G.A. Department but the RoR was not corrected as per the orders of the Commissioner of Settlement.

20. In a deliberation dated 03.04.2013, it was unanimously decided by opposite party Nos.1 to 5 that the views of the Law Department may be obtained on three different issues/points. The Law Department after examining the matter opined that to resolve the issues, the matter should be dealt with jointly, but prior to such endeavour, the parties should withdraw all the pending cases/suits and writs from the respective judicial forums including this Court. Lord Lingaraj Temple by its Trust Board on 31.01.2013 resolved and decided that keeping in view the interest

of deity, which should not be ignored while disposing/leasing of the land in question by Government in G.A. Department, Odisha, the Government should pay lion share out of the sale proceeds on the deity's land which would be deposited in the corpus fund of Lord Lingaraj for smooth management of Nitikanti of the deity. The resolution by the Trust Board was communicated to the Commissioner of Endowments, Odisha vide its letter dated 27.02.2013. Opposite party No.6 gave its consent to purchase the land in question as per the Benchmark valuation and had no objections for sharing of the sale proceeds by the Temple Trust Board or the Government under G.A. Department to which both agreed to share in the ratio of 60:40 as the temple asked for 60% of the sale proceeds. The Government in all its wisdom also agreed because in any case the management of Lord Lingaraj Mahaprabhu Temple is also done by a Board appointed by the Commissioner of Endowments, Odisha under the provisions of the OHRE Act.

21. It was submitted that whether the property belongs to the State or Lord Lingaraj Mahaprabhu, it is a public interest. It was decided that an amicable settlement out of Court needs to be worked out without prejudice to the interest of the Temple and Government keeping in view the need of utilization of the resources and web of litigations. During the course of the sanction of plan by the B.D.A. Authorities a question with regard to the security (as the land is in a neighbouring plot to that of the residence of the present Chief Minister of Odisha) by the D.G. Intelligence was raised and no approval was given and after series of deliberations by

the Home Department, the sanctioning authority approved the plan with certain terms and conditions keeping in view the security aspect. Thereafter, the building plan for hotel construction was approved on 14.12.2010 vide letter No.21024/BP of B.D.A. Opposite party No.6 started its construction by availing loan from the Nationalized Bank. An approval for a loan amount of Rs.53 crores was sanctioned out of which almost Rs.20 crores have been availed and utilized as the Hotel is almost complete with regard to the structures. Opposite party No.6 has made a huge investment from its own source to a tune of Rs.40 crores and due to the non maintainable dispute, its construction has been stalled for almost two years and only to save the account to slip into NPA, the interest is being paid to the Banks as once the account is termed NPA it will seriously affect the company and its other group of companies and will have an impact on the goodwill of the company.

22. It was further submitted that when the parties have agreed for an amicable settlement in an utmost sacrosanct manner and the Temple Trust Board having no inhibition/reservation volunteered for such a settlement, now for that matter no one should stand on its way to defeat the settlement process which has attained finality keeping in view the larger interest of the deity, for which the State is also obliged to. Opposite party No.6 in compliance to the settlement process by the parties and further to their direction took immediate steps for withdrawal of all its pending cases filed on its behalf from this Court.

23. It was submitted that acting on the representation of the respondent-authorities, opposite party No.6 had altered its position to its disadvantage and had incurred huge expenses and liabilities for setting up the hotel. It had also withdrawn cases pending in relation to the properties in question from various courts and forums. Therefore, the opposite party-authorities are estopped from acting to the contrary and to the disadvantage of opposite party No.6. The Commissioner of Endowments was very well apprised of the fact viz. letter dated 27.02.2013 of the Temple Trust Board to him and his presence in the subsequent meeting that the interest of the deity will be protected if the pending litigations in relation to the property in question are withdrawn by the parties and if the land in question is disposed of/leased out, lion share (60%) will be deposited in the corpus fund of Lord Lingaraj Temple Trust Board for smooth management of Nitikanti of the deity. It was further submitted that no law prohibits the parties to enter into compromise and settle their dispute amicably among themselves. Further contention of opposite party No.6 is that bona fide efforts to establish the present hotel would not only encourage the religious tourism in the State but also for the Temple Trust Board. While concluding argument, Mr. Rath submitted to dismiss the writ petition.

24. On the rival contentions of the parties, the following questions fall for consideration by this Court:

- (i) Whether the present writ petition at the instance of the writ petitioners who are legal heirs of the Sevayat late Govinda Mekap is maintainable?

(ii) Whether Lord Lingaraj has right, title and interest over the properties declared as Trust Estate of Lord Lingaraj even after vesting of said properties in Government by notification dated 18.03.1974?

(iii) Whether in absence of any application under Section 6 and Section 7 of the OEA Act to settle the land in question in the name of Lord Lingaraj Mahaprabhu, the said land becomes absolute property of the State Government?

(iv) Whether Sevayats had/have any alienable right in deity's land in question which form part of Trust Estate and lease/sale of the said property by the Sevayat Madhaba Mekap and his family members/legal heirs in favour of D. Anand Rao Dora and subsequent sale of the said property by D. Ananda Rao Dora in favour of Rutupurna Dhirsamanta and further sale of the said property by Rutupurna to M/s. Assotech Milan Resorts Pvt. Ltd. and agreement between M/s. Assotech Milan Resorts Pvt. Ltd. with Radisson Hotels International, Inc for construction of a Five Star Hotel over the land in question are valid in law?

(v) Whether actions/steps taken by the State Government through Special Secretary to G.A. Department, Bhubaneswar to sale the land in question in favour of opposite party No.6- Assotech Milan Resorts Pvt. Ltd. and to share the sale proceeds in 60:40 ratio (60% for temple Trust and 40% for G.A. Department) and the proposed tripartite agreement are permissible/valid in law?

(vi) What order?

25. Question No.(i) is whether the present writ petition at the instance of the writ petitioners, who are legal heirs of the Sevayat late Govinda Mekap is maintainable.

A preliminary objection has been raised by opposite party Nos. 1, 2 and 6 to the maintainability of the writ petition, basically on two grounds viz., (i) the petitioners having filed a consolidated Civil Suit No.1851 of 2010 in Civil Court pertaining to the property in question under Bhimpur mouza and as the same is pending since 2000, they cannot maintain parallel proceeding seeking selfsame relief by way of filing the present writ petition. In support of the contention that petitioners seek selfsame relief both in the civil suit and the writ petition, Mr. Rath drew our attention to the prayer made in the Civil Suit and various averments made in the writ petition. It was also contended that under Articles 226 and 227 of the Constitution, the right, title and interest of the petitioners over such property cannot be decided; (ii) the predecessor of the present petitioners having sold the land in question in favour of D. Ananda Rao Dora and others, the petitioners have no right, title and interest over the property in question. Moreover, the petitioners have failed to make out a case as to whether they still render the service to Lord Lingaraj Mahaprabhu being recognized by the Trust Board of Lord Lingaraj. Therefore, they do not have any right to file this writ petition.

26. The above grounds taken by opposite party Nos.1, 2 and 6 challenging maintainability of the present writ petition are fallacious for the reasons stated hereinafter.

27. So far the first ground with regard to pursuing parallel proceedings for selfsame relief is concerned; we find the civil suit has been filed for declaration of right, title and interest etc. of the petitioners over the property in question. Paragraph 15 of the plaint contains the prayer of the plaintiffs. The reliefs sought for in the prayer are as follows:

“15. Therefore, the plaintiffs, pray for the following reliefs:

- (a) To declare the plaintiff have the right to enjoy the suit property as Savayat of Lord Lingaraj till date;
- (b) Let the possession of the plaintiffs over the suit land be confirmed, in alternative and possession of the plaintiffs over the suit land be recovered to them, if they found to be dispossessed from the suit land during the pendency of the suit;
- (c) Let the defendants No.6 and 7 be directed to correct the Hal R.O.R. in respect of the suit properties inserting the names of the plaintiffs after deleting the name of the defendants;
- (d) Let the Chirastave deed bearing no.8523 dt.12.10.83 executed in favour of defendants No.1 to 4 and the order of O.E.A. Collector in suomoto Bebandobasta Case No.355/91, 356/91 and 362/91 be declared as void and in operatives.
- (e) Let a decree for permanent injunction be issued in favour of the plaintiffs and against the defendants directing them, their men/agents/servants not to interfere in the peaceful possession of the plaintiffs over the suit land in any manner whatsoever;
- (f) Let the costs of the suit be decreed in favour of the plaintiffs and against the defendants;

- (g) Let any other relief/s be granted in favour of the plaintiffs as the Hon'ble court think fit and proper under circumstances of the suit."

Thus, in the suit, the ultimate beneficiary is the plaintiff-petitioner.

28. It is pertinent to mention here that no such prayer is made in the present writ petition filed under Articles 226 and 227 of the Constitution of India. The main prayer in the writ petition as noted in the first paragraph of this judgment is to protect the deity's property by quashing Annexure-10 series attached to the writ petition by which, it is alleged that attempts are being made at Government level to alienate the properties of Lord Lingaraj illegally in favour of private party. In the present writ petition, the ultimate beneficiary is the deity, which is a perpetual minor and not the petitioners. Thus, the relief sought for in the present writ petition is completely different from the relief prayed in the Civil Suit filed at the instance of the petitioners.

Further, in order to decide whether a party invokes the jurisdiction of Civil Court as well as Writ Court for selfsame relief what is relevant is the relief claimed in both the proceedings and not the averments made in the plaint or petition.

Hence, the contention of opposite party No.6 that by means of the present writ petition the petitioners invoke the jurisdiction of this Court to decide their right, title and interest over the land in question is not correct and thus fails.

29. The decision of the Hon'ble Supreme Court in the case of ***Orissa Power Transmission Corporation Limited (supra)*** is of no assistance to opposite party No.6 as in that case the writ petition was dismissed by the learned Single Judge which was upheld by the Hon'ble Supreme Court holding that the respondent had availed parallel remedies and gave up its pursuits before the Civil Court only after the Division Bench of the High Court indicated its willingness to hear the writ appeal on merit.

30. As regards second ground of challenge to maintainability of the writ petition, we find, petitioners' assertion in the writ petition is that they have been performing seva to Lord Lingaraj like their predecessors. In paragraph 15 of the writ petition, the petitioners have taken a specific stand that their right continues and they are continuing as sevaks of Lord Lingaraj. Opposite party No.4-Executive Officer, Lord Lingaraj Temple Trust Board, Bhubaneswar in paragraph 13 of the counter affidavit has stated that "in the temple of Lord Lingaraj in respect of each seva, the sevaks through succession have been discharging seva to the deity. Likewise, the seva land in question under Bhimpur Mouza allotted to the sevaks in lieu of their seva is being continued by them." Thus, according to opposite party No.4-Executive Officer, Lord Lingaraj Temple Trust Board, the seva land in question under Bhimpur Mouza was allotted to the sevak, who was predecessor of the petitioners and the petitioners are rendering their continuous seva to Lord Lingaraj uninterruptedly.

31. There can also be no dispute to the settled legal proposition that the deity is a juristic perpetual minor/disabled person, and the property belonging to a minor and/or a person incapable to cultivate the holding by reason of physical disability or infirmity requires protection. A deity is covered under both the classes. The manager/trustee/pujari and ultimately the State authorities are under obligation to protect the interest of such a minor or physically disabled person. The deity cannot be divested of any title or rights of immovable property in violation of the statutory provisions. The object is laudable and based on public policy. In order to protect deity's interest even a worshiper/sebayat having no interest in the property may approach the authority or Court. In the instant case, the petitioners being sebayats, whether they have any interest in the deity's property or not they are competent to approach any authority or Court to protect the deity's property.

32. For the reasons stated above, the writ petition is maintainable at the instance of the present petitioners.

33. Otherwise also, for the reasons stated hereinafter, the present writ petition is maintainable.

34. The issue involved in the present case is the interest of the deity. Deity being a perpetual minor, it is the primary duty of the State and its authorities to protect the interest of the deity. In case of any allegation of failure on the part of the State and its instrumentalities to do so, finally, the Court has to protect the interest of the deity, who is a perpetual minor.

The Hon'ble Supreme Court in the case of **A.A. Gopalakrishnan vs. Cochin Devaswom Board & Ors., AIR 2007 SC**

3162, held as under:

“10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of “fences eating the crops” should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

(Emphasis supplied)

35. Further, it may also be relevant to note here that at the instance of opposite party No.7-Ritupurna Dhirsamanta, writ petition bearing W.P.(C) No.33403 of 2011 was filed challenging the show cause notice issued by the Bhubaneswar Development Authority under the Orissa Development Authorities Act for cancellation of building plan. In the said Writ Petition, vide order dated 12.01.2012, a Division Bench of this Court allowed two intervention petitions, i.e. Misc. Case No.486 of 2012 filed by the Additional Land Officer, G.A. Department and Misc. Case No.345 of 2012 filed by Chitaranjan Mekap and others (petitioners in the present writ petition) and they were impleaded as opposite party No.7 and opposite

party Nos.8 to 11 respectively. In that case, in Misc. Case No.485 of 2012 filed by the State for vacation of the interim stay, the Division Bench of this Court vide its order No.9 of the even date directed the parties to maintain status quo as on that date with regard to construction and possession of the land in question.

While the matter stood thus, during Vacation, opposite party No.7 filed a memo before the Vacation Bench seeking withdrawal of the said writ petition. Vide its order dated 30.05.2013, the Vacation Bench allowed withdrawal of the writ petition on the basis of such memo. Chitaranjan Mekap and others, who are petitioners in the present case filed Misc. Case No.12790 of 2013 to recall the said order dated 30.05.2013 passed in W.P.(C) No.33403 of 2011 allowing withdrawal of the writ petition and the said Misc. Case is pending.

36. There is no dispute that petitioner in a writ petition is the master of his own case but conduct of a party sometimes casts suspicion in the mind of others. In W.P.(C) No.33403 of 2011, while the regular assigned Division Bench of this Court was in seisin of the matter and the interim order was operating against the petitioner, she (petitioner) who is opposite party No.7 in the present writ petition, did not choose to make a prayer for withdrawal of the writ petition before the regular assigned Division Bench. For the reasons best known to opposite party No.7, she preferred to file a memo before the Vacation Bench during vacation for withdrawal of the writ petition and on the basis of such memo the said writ petition was allowed to be withdrawn.

37. Needless to say that only the matters which are urgent in nature and cannot wait till functioning of the regular assigned Bench petitions are moved before the Vacation Bench for some urgent relief. From the aforesaid facts, it does not reveal that there was any such urgency to move the vacation Bench during vacation seeking withdrawal of the writ petition assigned to a different Division Bench which was in seisin of the matter and the said assigned Division Bench passed interim order dated 12.01.2012 to maintain *status quo* as on that date over the land in question. As it appears, the petitioner in that case moved a memo before the Vacation Bench seeking withdrawal of the writ petition to get rid of the interim order passed by the assigned Division Bench to maintain status quo by which she was prohibited to make further construction over the land. This does not appear to be a bona fide act of opposite party No.7.

38. Law is well-settled that writ jurisdiction is discretionary in nature and must be exercised in furtherance of justice. The Court has to keep in mind that its order should not defeat the interest of justice nor it should permit an order to secure dishonest advantage or perpetuate an unjust gain nor approve an order which has been passed in contravention of the statutory provisions. (See **Champalal Binani Vs. CIT, West Bengal & others**, AIR 1970 SC 645; **K.D.Sharma Vs. Steel Authority of India Ltd. & Ors.**, (2008) 12 SCC 481, 2008 AIR SCW 6654).

39. The Hon'ble Supreme Court in **Karnataka State Road Transport Corporation v. Ashrafulla Khan & others**, AIR 2002 SC 629, held that the High Court under Article 226 of the Constitution is required to

enforce rule of law and not pass an order or direction which is contrary to what has been injuncted by law.

40. Considering from any angle, we are of the view that the present writ petition is maintainable at the instance of the present petitioners.

41. Question Nos.(ii), (iii) and (iv) being interlinked, they are dealt with together.

42. The issues involved in these three questions are whether Lord Lingaraj or sevayats of Lord Lingaraj or the State Government has right, title and interest over the property declared as “Trust Estate” of Lord Lingaraj, i.e, whether after vesting of the “Trust Estate” in Government by notification dated 18.03.1974 and in absence of any application under Sections 6 and 7 of the OEA Act to settle the land in question in the name of Lord Lingaraj Mahaprabhu, the said land becomes absolute property of the State Government or the said property still remains the property of Lord Lingaraj after vesting in the Government and whether sebayats had/have any alienable right in the property of Lord Lingaraj.

43. The stand of the State Government is that the property of Lord Lingaraj has passed to and become vested in the State free from all encumbrances vide Revenue Department Notification dated 18.03.1974 and in absence of any application under Sections 6 and 7 of the OEA Act to settle the land in question in the name of Lord Lingaraj Mahaprabhu, the said land became the absolute property of the State Government. This stand of the State is not correct for the following reasons:

44. Under the OEA Act, “Trust Estate” of deity has been dealt with in different footing. It is very pertinent to note that even after repeal of Chapter II-A which contains special provision for public Trust, by Act 33/70 of 21.12.1970, the State recognizes the existence of the Trust Estate by the selfsame Act by inserting ‘**proviso**’ to Section 8(3) of the OEA Act.

45. Now, it is necessary to know what is provided in Section 8(3) and proviso to Section 8(3) of the OEA Act. Section 8(3) provides that “any person who immediately before the date of vesting held land under an Intermediary on favourable terms for personal service rendered by him to such Intermediary shall, from the date of vesting, be discharged from the conditions of such service and the land may be settled with him in such manner and under such terms and conditions as may be prescribed.”

Proviso to Section 8(3) of the OEA Act contemplates that nothing in sub-section (3) shall apply to a Trust Estate which is vested in the State on or after the date of coming into force of the Orissa Estate Abolition (Amendment) Act, 1970.

Therefore, in view of **proviso** to Section 8(3), the sevayats are not discharged from rendering their seva to Lord Lingaraj even after vesting of the land of Lord Lingaraj in the State and the status of sevayat lands belonging to Lord Lingaraj which form part of the “Trust Estate” remains unaffected even after vesting of trust estate. Otherwise, any kind of settlement of seva land will hamper the seva puja of the deity.

46. Further the provisions of Section 7(d) of the OEA Act speaks about deemed settlement of waste land and tank forming part of the Trust

Estate. Section 7-A of the OEA Act also empowers the State Government to settle all other lands forming part of the Trust Estate with the intermediary.

As it appears, pursuant to power vested under Section 7-A of the OEA Act, government orders/guidelines/circulars/notifications were issued from time to time for settlement of the land which form part of the Trust Estate with Lord Lingaraj. It may be appropriate to refer to some of such government orders/guidelines/circulars/notifications relevant for our purpose.

47. It may be noted that the Secretary to Government, Department of Revenue, Odisha vide G.O. No.45283-E.A.-11-17/70-R dated 11th June, 1976 intimated to the Land Reforms Commissioner, Odisha, Cuttack that service jagirs have irregularly been settled with service jagir holders in some Tahasils in spite of clear provision under the **proviso** to sub-section (3) of Section 8 of the OEA Act not to settle such lands with them. As a result of such settlement, the Seva Puja of the deities suffers to a great extent. Therefore, he requested to issue necessary instruction to all concerned not to settle service jagir of the deity-intermediaries with jagir holders.

48. The relevant portions of the Government circular/ clarification dated 11.01.1995 issued by the Joint Secretary to Government in Revenue and Excise Department to Collector, Khurda on the subject 'Problem of irregular settlement of land belonging to Lord Lingaraj' are extracted below:

“1. SEVAYAT LAND: The provision of sub-section (3) of Sec.8 of OEA Act is not applicable in respect of Sevayat Lands under the Trust Estate according to the proviso under the said sub-section. So the

status of Sevayat land belonging to the Trust Estate of Lord Lingaraj remains unaffected even after vesting of Trust Estates. The land granted for rendering various categories of service to the deity will continue to be recorded under the same status under the management of the Trust board. When the Sevayat lands have been recorded under Stitiban status in favour of the Sevayats during survey and settlement operation such recordings are illegal.....

2. BEBANDOBASTEE CASES:

Notwithstanding instructions contained in Revenue Department G.O. No.11782 dated 14.3.1991 the lands of Lord Lingaraj with Bebandobasta status may be settled with the deity Lord Lingaraj Mahaprabhu Bije, Bhubaneswar and in the remarks column of the record-of-right it should be mentioned that when the said Sebayat/tenant will cease to render services to the Deity his tenancy will cease and the proprietor will be at liberty to settle it in the name of another tenant on similar condition."

(underlined for emphasis)

49. Thus, as per the above Government circular/clarification dated 11.1.1995 in which reference has been made to G.O. No.11782 dated 14.3.1991 the status of sevayat lands belonging to Trust Estate of Lord Lingaraj Mahaprabhu remains unaffected even after vesting of "Trust Estate" in Government and the said lands were directed to be settled with deity Lord Lingaraj Mohaprabhu Bije Bhubaneswar and in the remarks column of the record-of-rights it is to be mentioned that when the said Sevayat/tenant will cease to render services to the deity his services will cease and the proprietor will be at liberty to settle the land in the name of another tenant on similar condition.

50. Further, Clause (XVIII) of the Government Order dated 06.12.2000 issued by the Revenue Department *inter alia* provides that the land belonging to public deity after settlement shall be recorded in Stitiban status in the name of the deity Marfat Endowment Commissioner.

51. It would be pertinent to mention here that the circulars/notifications/orders/guidelines issued by the Government from time to time hereinbefore referred to have not yet been withdrawn by the State Government.

52. It may also be noted here that the provisions of Section 8-A(3) of the OEA Act does not override Section 7-A which have been specifically excluded from Section 8-A(3) by the Legislature in its wisdom. Therefore, Section 7-A cannot be read into Section 8-A(3) of the OEA Act by the State.

53. By virtue of proviso to Section 8(3) and Section 7-A read with above noted Government orders/notifications/circulars/guidelines, the State Government has acknowledged the right, title and interest of Lord Lingaraj over the properties declared as "Trust Estate" which includes the properties in question even after vesting of the said property in Government by notification dated 18.03.1974 and therefore, there is no need to make any application under Sections 6 and 7 of the OEA Act for settlement of the land forming part of the Trust Estate in the name of Lord Lingaraj and consequentially Section 8-A(3) and provisions of Clause (h) of Section 5 have no application so far as properties declared as Trust Estate of Lord Lingaraj are concerned.

54. The matter can be looked at from a different angle. The expression “Religious Endowment” or “Endowment” has been defined in Section 3(xii) of the OHRE Act, 1951 as follows:

“3.(xii) “religious endowment” or “endowment”, means all property belonging to or given or endowed for the support of maths or temples or given or endowed for the performance of any service or charity connected therewith or of any other religious charity and includes the institution concerned and premises thereof and also all properties used for the purposes or benefit of the institution and includes all properties acquired from the income of the endowed property.

xx xx xx

Explanation I – Any jagir or inam granted to an archaka, sevaka, service-holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the said archaka, service-holder or employee but shall be deemed to be a religious endowment;

xx xx xx

55. According to the above definition, all property belonging, given or endowed to Lord Lingaraj and any Jagir or Inam granted to an Archak, Sevak, Service Holder or other employees’ of a religious institution for the purpose of any service or charity or in connection with a religious institution and properties acquired from the income of the endowed property shall be deemed to be a religious endowment. The expression “religious endowment” was also defined in Section 6(12) of the Orissa Hindu Religious Endowment Act, 1939.

56. Section 2(h) of the OEA Act, 1951 defines the term “intermediary” which reads as follows:

“2(h) ‘Intermediary’ with reference to any estate means a proprietor, sub-proprietor, landlord, land holder, malguzar, thikadar, gaontia, tenure-holder, under-tenure holder and includes an inamdar, a jagirdar, Zamindar, Illaquedar, Khorposhdar, Pargnadadar, Sarbarakar and Maufidar including the ruler of an Indian State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the State.”

57. Thus, in Section 2(h), “religious endowment” has not been included. It may be relevant to note here that while enacting the OEA Act, 1951 the Legislature were fully aware about existence of ‘religious endowment’ as the same dealt with under the OHRE Act, 1939 which subsequently dealt with in OHRE Act, 1951, but the legislature in its wisdom excluded the expression ‘religious endowment’ from Section 2(h) of the OEA Act which defines ‘intermediary’. Therefore, the expression ‘religious endowment’ cannot be read into Section 2(h) of the OEA Act, 1951 by the State. Apart from that Lord Lingaraj is not a holder or owner of any interest in land between the raiyats and the State as required under Section 2(h) of the OEA Act, 1951 which defines ‘Intermediary’. Therefore, Lord Lingaraj being not an intermediary as defined in Section 2(h) of the OEA Act, the provisions of Sections 6 and 7 of the OEA Act have no application to Lord Lingaraj.

58. Further, it may be noted here that since the lands in question form part of the “religious endowment” of Lord Lingaraj, Lord Lingaraj is the absolute owner of such property and its administration shall be governed by the provision of the OHRE Act, 1951.

59. A coherent reading of proviso to sub-section (3) of Section 8 and Section 7(d) and Section 7-A of the OEA Act read with Government Orders/notifications referred to above and Section 3(xii) of OHRE Act which defines “religious endowment”, Section 2(h) of the OEA Act, which defines the term ‘intermediary’ makes it amply clear that nobody has any right, title and interest over the property of Lord Lingaraj except the deity.

60. The Sevayats have only right to possess the land as long as they render specific services. The sevayats, therefore had/have no alienable right in the seva land.

Therefore, the Sevayats could not have transferred any right, title and interest on the property belonging to Lord Lingaraj to any of their Vendees and the said Vendees could not have made transfer to the subsequent purchaser(s).

61. Apart from the above, under Section 19 of OHRE Act, without prior sanction by the Commissioner of Endowment, sale of the land belonging to the deity is expressly barred. Such sanction can be accorded when such sale is necessary or beneficial to the institution.

62. In the instant case, deity’s lands in question were sold by Sevayats even without complying with the statutory requirement of Section 19 of the OHRE Act, which starts with a non-obstante clause.

63. In view of the above, we are of the considered view that Lord Lingaraj has right, title and interest over the property declared “Trust Estate” of Lord Lingaraj even after vesting of the said property by Government notification dated 18.03.1974 and in absence of any

application under Sections 6 and 7 of the OEA Act, the ownership of the Trust Estate of Lord Lingaraj remains unaffected and it cannot become the property of the State Government. The Sevayats had/have no alienable right in the land in question and sale/lease of the said land by them in favour of D. Ananda Rao Dora and others and all subsequent sales/transfers are not valid in law. Needless to say that the vendees cannot acquire better title than their vendors. Consequentially, D.Ananda Rao Dora and others, Rutupurna Dhirsamant and opposite party No.6 have not acquired any right, title and interest in the lands in question which they purchased through registered sale deed from sevayats or their vendor(s) who purchased the lands in question from Sevayats or their legal heirs.

64. Question No.(v) whether action of the State Government through Special Secretary to G.A. Department, Bhubaneswar to sale the land in question in favour of opposite party No.6-Assotech Milan Resorts Pvt. Ltd. and to share the sale proceeds in 60:40 ratio (60 for temple Trust and 40 for G.A. Department) are permissible/valid in law.

65. In the instant case, the reasons given by the opposite party-Government to sell the property in question in favour of opposite party No.6, which find place in the draft tripartite agreement (Annexure-10 series), are as follows:-

“Let not State govt. fight out the matter with Lord Lingaraj Mahaprabhu, as in any case management of Lord Lingaraj Temple is also done by a Board appointed by Commissioner of endowment (the Collector being the Ex-Officio Chairman of the Trust Board) under OHRE Act and as to whether the

property belongs to State Government or Lord Lingaraj Mahaprabhu is a public interest. That in the said meeting it was also decided that an amicable out of court settlement need be worked out without prejudice to the interest of temple and government keeping in view of the continuance of Hotel to have been called and the land be utilized for earning state resources without indefinitely waiting for disposal of cases finally. That party of the first part asked the law Department to let have its views on the said matter and the Law Department opined for execution of Tripartite Agreement. That on dt. 3.05.2013 in the said meeting held under the Chairmanship of Special Secretary, General Administration Department (Party of first part), it was considered expedient to arrive at a Tripartite Agreement between Govt. in General Administration Department, Temple Trust Board, Lingaraj Temple and Hotel. That the State or Temple get its dues without affecting the interest of the land owner. The Govt. in General Administration Department and the Temple Trust Board, Endowment Commissioner, the Law Department while arriving at such decision took paramount consideration not only the public interest but the public policy as protracted litigations would not be beneficial to any of the parties rather than to settle the matter amicably so that the State Exchequer or the Temple Trust continue to run their respective chores without hampering any public policy at large.”

66. Now, it is very much necessary to know what are the suggestions of the joint meeting held on 03.05.2013 under the Chairmanship of Special Secretary, G.A. Department. The various suggestions of the joint meeting are as follows:

- “1. All cases filed by Lingaraj Temple Trust Board and Hotel Radisson [Assotech Milan Resorts (P) Ltd.] will be withdrawn.
2. Tripartite Deed of transfer of land will be executed between Lingaraj Temple Trust Board as first party, General Administration Department as second party and Hotel Radisson as third party after vetting by Law Department.
3. The suit land will be leased out on payment of premium at the prevailing rate of General

Administration Department. Lingaraj Temple Trust Board shall not be part of the lease agreement as lessor.

4. The premium amount received by General Administration Department will be shared with the Temple Trust Board and General Administration Department in 60:40 ratio (60 for Temple Trust Board and 40 for General Administration Department).

5. Concurrence of Finance Department will be obtained on the sharing of land premium in 60:40 ratio between Temple Trust Board and General Administration Department.

6. Orders of Government will be obtained on the proposed action taken to resolve the issue which is entangled in the web of litigation.”

67. Thereafter on dt. 18.06.2013 the Government Order was also obtained.

68. At this stage, the Director of Estate and Ex-Officio Additional Secretary to Government issued letter dated 22.06.2013 (Annexure-10 series) to Lord Lingaraj Temple Trust Board and Director, M/s Assotech Milan Resorts (Pvt.) Ltd. for submission of tripartite deed along with the documents in support of withdrawal of all cases filed before different Courts pursuant to the meeting dated 03.05.2013 for settlement of dispute on Ac 2.865 decimals of Government land.

69. Now, the question arises whether issuance of above letter dated 22.06.2013 (Annexure-10 series) is sustainable in law.

70. While answering question Nos.(ii), (iii) and (iv) in the preceding paragraphs, for the reasons stated therein, we have already held that Lord Lingaraj has right, title and interest over the property, which was declared as Trust Estate of the deity and the said property is also religious endowment and its administration shall be governed by the provisions of

OHRE Act. Therefore, State Government has no right to sell properties of Lord Lingaraj to any party including opposite party No.6.

71. It may be relevant to mention here that perusal of the tripartite agreement reveals that in the tripartite agreement the G.A. Department, Government of Odisha represented by its Special Secretary has been referred to as the **Seller** of the First Part and also Lord Lingaraj Temple Trust Board, Old Town, Bhubaneswar was represented by its Executive Officer as **Seller** of the Party of the Second Part and M/s Assotech Milan Resorts (P) Ltd. represented by its Director Sri Sanjeev Srivastava as **Purchaser** of the party of the Third Part. Thus, the tripartite agreement is for sale of the property in question which forms part of the Trust Estate of Lord Lingaraj Mahaprabhu and not an agreement to transfer the land in question in favour of opposite party No.6 by way of lease as suggested in the joint meeting held on 03.05.2013.

72. As a general proposition of law, if any person claims to have acquired any kind of right in the property belonging to the deity, the transaction is required to be ignored being illegal and the deity becomes entitled to recover the possession as well as the right, title and interest in the property.

73. Otherwise also, the action of the State Government to sell the property in question to opposite party No.6 is not sustainable in law for the following reasons.

74. It may be noted that in the definition of “Religious Endowment” or “Endowment” under Section 3 (xii) of the OHRE Act, the lands held by

Sevayats and Jagirdars are also included. The Trust Board is the only custodian of deity's property.

75. Further Section 19 of the OHRE Act, 1951 reads as follows:-

“19. Alienation of immovable trust property – (1) Notwithstanding anything contained in any law for the time being in force no transfer by exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned.”

Thus, without prior sanction by the Commissioner of Endowment, sale/lease exceeding five years of the land belonging to the deity is expressly barred under Section 19 of OHRE Act.

76. On a plain reading of the statutory provisions contained in Section 19 of the OHRE Act, it is manifest that the provisions are mandatory in nature and any alienation made in contravention of the provisions is void. (See *Basanti Kumari Sahoo vs. State of Orissa*, 81 (1996) CLT 571 (Full Bench).

77. The lands belonging to the deity cannot be subjected to alienation in violation of statutory requirement. (See ***Temple of Thakurji vs. State of Rajasthan*, AIR 1998 Raj. 85).**

78. Under Section 19 of the OHRE Act, the deity's property can be transferred by sale, exchange, or mortgage etc. with prior permission of the Endowment Commissioner only when such transfer is necessary or beneficial to the institution. Therefore, before transferring the deity's

property by any means either of two conditions is to be satisfied, i.e., (i) there must be necessity to sell the deity's property, or (ii) such sale must be beneficial to the deity. In the present case, no case is made out by any of the opposite parties that sale of deity's property in question is necessary or beneficial to Lord Lingaraj.

Admittedly, the sanction of the Commissioner as required under Section 19 of the OHRE Act has not been obtained to sell the property in question belonging to Lord Lingaraj. Therefore, without satisfying the conditions stipulated in Section 19 of the OHRE Act the decision taken in the joint meeting dated 03.05.2013 to transfer by lease the deity's property in question in favour of opposite party No.6 and all actions taken pursuant to such decision dated 03.05.2013 by any authority/party including the attempts made/steps taken to sell the property of Lord Lingaraj in question are void *ab initio*.

79. It is also the admitted case of State-opposite party Nos.1 and 2 that only trust Board of Lord Lingaraj with prior approval of the Endowment Commissioner under Section 19 of the OHRE Act can transfer by exchange, sale or mortgage or lease for a term exceeding five years the land in favour of another person.

80. Opposite party No.6 in its written submission contended that in the meeting dated 03.05.2013, suggestions were agreed upon to amicably settle the matter in between the parties, which of course would be subject to the permission of Endowment Commissioner under section 19 of the OHRE Act.

81. Further since the property in question is Lord Lingaraj's property, giving 60% of the sale proceeds to Lord Lingaraj is certainly not beneficial to the deity. Moreover, the property in question is situated in posh area of the capital city with better locational advantages being back to the residence of the Hon'ble Chief Minister, near to Airport, Odisha Legislative Assembly, Secretariat, Lord Lingaraj Temple, Hospital etc. It is common knowledge that the actual cost of the land located in posh area of the capital city with better locational advantage is much more than the Bench mark value determined by the Government for a particular area as a whole. Therefore, even if, it is accepted that there was any necessity to sell the land in question, the same should have been put to public auction to fetch the best market price which would be beneficial to Lord Lingaraj as in that way the interest of the deity would be protected. The Hon'ble Supreme Court has in many cases stressed on the desirability of adopting transparent methods while dealing with properties of public interest. The stand of opposite party No.6 that transparent process was adopted gets demolished when one looks at the complete set of actions which patently show collusion, deceit and more than suspicious circumstances.

82. It may be pertinent to mention here that both the Endowment Commissioner and Shree Lingaraj Temple Trust Board, i.e., opposite party Nos.3 and 4 respectively strongly oppose the proposed transfer by sale of the deity's property in question. It is very much shocking that in spite of the letter dated 10.08.2013 (Annexure-B/4) of the Executive Officer, Lord Lingaraj Temple addressed to Director of Estates & Ex-Officio Addl.

Secretary, Government of Odisha intimating that with reference to submission of tripartite deed and withdrawal of all cases pending in different courts, clarification was sought for from the Commissioner of Endowment and in response to such letter, the Deputy Commissioner of Endowments vide his letter No.7316 dated 31.07.2013 (Annexure-C/4) has instructed to strictly follow Section 19 of the OHRE Act before entering into any agreement for transaction of the deity's property, the Under Secretary to Government, G.A. Department vide his letter dated 25.09.2013 (Annexure-D/4) informed the Executive Officer, Lord Lingaraj Temple to emphasize more on the steps already taken at the Government level without reiterating the matter with reference to Section 19 of the OHRE Act.

In any event, any decision/action taken by any authority/party which is not for the best interest or necessity of deity and/or detrimental to the interest of the deity which is a perpetual minor lacks legal sanction and therefore *void ab initio*.

83. Supporting the action of the State Government in taking steps at the instance of opposite party No.6 to sell the land in its favour, it was submitted by opposite party No.6 that there is no statutory bar against the parties to enter into compromise or settle their dispute amicably amongst themselves.

Needless to say that any compromise made by the parties contrary to or without fulfilling the requirement of law is *void ab initio*. In the instant case, as stated above, steps are being taken to sell the property

of Lord Lingaraj in favour of opposite party No.6 without complying with the conditions stipulated in Section 19 of the OHRE Act and the Endowment Commissioner and the Temple Trust Board (opposite party Nos.3 and 4 respectively) strongly oppose the proposal to sell out the deity's property in question.

84. Mr.A.R.Dash, learned counsel appearing on behalf of Lingaraj Temple submitted that Lord Lingaraj Mahaprabhu has filed O.A. No.7 of 2010 before the Commissioner Endowment, Bhubaneswar under Section 25 of the O.H.R.E. Act for appropriate order and to execute the said order for recovery of possession of the land in question from opposite party Nos.1 to 5 in O.A. No.7 of 2010 who are Smt. Rutupurna Dhirsamant, M/s Milan Developers & Builders Pvt. Ltd., D.Anand Rao Dora, D.Jagannath Dora and D.Papa Rao Dora.

Mr. S.P. Das, learned counsel for Endowment Commissioner also submitted that the petition made under Section 25 of the OHRE Act to get back possession of the property in question from the vendees is still pending adjudication.

85. It is therefore, clearly established that the actions of the State Government are not in the interest of the deity and/or beneficial to it. Therefore, the so-called compromise/decision on the basis of joint meeting dated 03.05.2013 lacks sanctity as well as legal sanction. Consequentially, letter dated 22.06.2013 (Annexure-10 series) is not sustainable in law.

86. It goes without saying that the State Executive Bodies, quasi-judicial authorities/judicial authorities cannot act contrary to statutory

provisions and executive instructions should be subservient to statutory provisions.

87. Taking the plea of promissory estoppel, opposite party No.6 vehemently argued that acting on the representation of the opposite party-authorities, it had altered its position to its disadvantage by incurring huge expenses and liability to the tune of Rs.60 crores for setting up the hotel. It had also withdrawn cases pending in relation to suit property from various courts/forums. Therefore, the opposite party authorities are estopped from acting to the contrary and to the disadvantage of the present opposite parties. In support of its contention, reliance was placed upon the decision of the Hon'ble Supreme Court in the case of *The Gujarat State Financial Corporation vs. M/s Lotus Hotels Pvt. Ltd.*, (1983) 3 SCC 379, *Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and others*, (1979) 2 SCC 409 and *Jit Ram Siv Kumar vs. State of Haryana*, (1981) 1 SCC 11.

88. In the instant case, there is no promise made by any authority to opposite party No.6. On 03.05.2013 a discussion took place and some suggestions were made. Before all the authorities present in the said meeting, acted upon the suggestions and tripartite agreement was executed and vetted by the Law Department, opposite party No.6 claims that it altered its position to its disadvantage by incurring huge expenses and has withdrawn the pending case relating to the property in question. Such a plea is ridiculous in view of the said party's own contention in the written submission that only suggestions were agreed upon to amicably settle the matter in between the parties which of course would be subject to the

permission of the Endowment Commissioner under Section 19 of the OHRE Act and that pursuant to the said meeting, no lease/sale of the suit land had taken place. Therefore, by no stretch of imagination the principle of promissory estoppel would come into play in the fact of present case. Hence, the plea of promissory estoppel fails.

89. The judgment of the Hon'ble Supreme Court in the case of *M/s Lotus Hotels Pvt. Ltd.* (supra) is of no assistance to opposite party No.6 because in that case the Corporation by its letter dated 24.07.1978 and the subsequent agreement dated 01.02.1979 entered into agreement in performance of statutory duty to advance Rs.30 lakhs loan to the defendant. On Corporation's promise evidenced by above two documents the defendant acted upon. In that circumstance, it was held that principles of promissory estoppel apply. In the present case, there is even no concluded contract between the competent parties. Hence, principle of promissory estoppel would not apply.

90. In *Motilal Padampat Sugar Mills Co. Ltd.* (supra), the principle decided by the Hon'ble Supreme Court is that if one party by his words or conduct made to the other party a clear and unequivocal promise which is intended to create legal relation or affect a legal relationship in future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted by other party, the promise would be binding on the party making it and he would not be entitled to go back. But the fact situation in the present case is otherwise. Nobody competent legally made any promise to opposite party No.6. On the

other hand, on 03.05.2013 a joint meeting was held and some suggestions were given which have not yet been acted upon. Therefore, this case is of no help to opposite party No.6.

91. For the reasons stated in the foregoing paragraphs and more particularly, in absence of any concluded contract among the parties, the decision of the Hon'ble Supreme Court in the case of *Jit Ram Siv Kumar (supra)* is also of no assistance to the petitioners.

92. The other contention of opposite party No.6 that establishment of a Five Star Hotel by it on the land in question would not only encourage religious tourism in the State but also would generate good revenue for the State as well as the Temple Trust Board. Such contention of opposite party No.6 is fallacious because construction of a Five Star Hotel by opposite party No.6 without legal sanction cannot be allowed because of the supposed boost to tourism or generating revenue. Such action on the part of opposite party No.6 would not confer legitimacy on a transaction which has no legal foundation.

93. For the reason stated in the foregoing paragraphs, the actions/steps taken by the State Government through Special Secretary to G.A. Department, Bhubaneswar to sell the land in question belonging to Lord Shri Shri Lingaraj Mahaprabhu in favour of opposite party No.6-M/s Assotech Milan Resorts (P) Ltd., Lewis Road, Lewis Plaza, Bhubaneswar and to share the sale proceeds in 60:40 ratio (60% for Temple Trust and 40% for G.A. Department), letter of the Director of Estate Ex-Officio Additional Secretary, Government of Odisha dated 22.06.2013 and the

proposed tripartite agreement are impermissible as not sustainable in law having no legal foundation. Accordingly, Annexure-10 series are quashed. Consequentially, no action can be taken by opposite party No.6 on the basis of the suggestions made in the meeting dated 03.05.2013 pursuant to which Annexure-10 series were issued.

94. Needless to say that the Civil Courts and authorities under the statute shall dispose of the matters pending before them in accordance with law.

95. In the result, the writ petition is allowed with the aforesaid observations and directions, but without any order as to costs.

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B.N. Mahapatra, J.

I. Mahanty, J. *I agree.*

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I. Mahanty, J.