

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No.1921 of 1999

Radhakanta Math

.....

Petitioner

-versus-

State of Odisha and others

....

Opp. Parties

For Petitioner : Mr. Dayananda Mohapatra,
Advocate

For Opposite Parties : Mr. A. R. Dash,
Addl. Government Advocate
Miss. Pratyusha Naidu, Advocate
(For Commissioner of Endowments)

CORAM:
JUSTICE K.R. MOHAPATRA

JUDGMENT
7th June, 2022

K.R. Mohapatra, J

1. This matter is taken up through Hybrid mode.
2. Radhakanta Math, a Public Religious Institution, represented through Sri Parsuram Das, has filed this writ petition assailing the legality and propriety of order dated 9th September, 1998 (Annexure-7) passed by Additional District Magistrate, Puri in OLR Revision Case No.1 of 1997 initiated under Section 59 of the Odisha Land Reforms Act, 1960 (hereinafter referred to as, 'OLR Act').
3. The genesis of the present writ petition emanates from the order passed on 19th January, 1996 (Annexure-5) by the Revenue Officer-cum-Tahasildar, Puri (Opposite Party No.2) in Ceiling Case No.1/243 of 1986 in which the land under Khata

No.21 of mouza- Sipasurubuli in the district of Puri (hereinafter referred to as 'the case land') was declared as ceiling surplus.

4. The case of the Petitioner-Math before the Revenue Officer was that the Math is a trust estate and is a '*Privileged Raiyat*' as defined under Section 2(24) (e) of the OLR Act. In the Ceiling proceeding, the Revenue Officer held the property in question to be the personal property of Mahanta and is amenable to Ceiling proceeding. Accordingly, he passed the order under Annexure-5.

5. The Petitioner-Math being aggrieved, preferred OLR Appeal No.12 of 1996 under Section 58 of the OLR Act. The Sub-Collector, Puri-Opposite Party No.3 in his order dated 11th August, 1997 under Annexure-6 dismissed the appeal and thereby confirmed the order passed by the Revenue Officer in the Ceiling proceeding. Against the said order, the Petitioner-Math preferred OLR Revision No.1 of 1997 before the ADM, Puri through its Manager being appointed by the Commissioner of Endowments. Some of the villagers claiming themselves to be Raiyats of the land in question made complaint before Collector, Puri, which was referred to learned Member, Board of Revenue, Odisha, Cuttack under Section 59 (2) of the OLR and OLR Revision No.8 of 1997 was initiated. However, the ADM heard the ORL RC Case No.1 of 1997 on its own merit and passed the impugned order dated 9th September, 1998 under Annexure-7 dismissing the Revision and thereby confirming the orders passed under Annexures-5 and 6. Assailing the same, the present writ petition has been filed.

6. In course of hearing, the State Government by filing IA No.26 of 2021 raised an issue with regard to maintainability of the writ petition stating that since notification under Section 3(1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as 'the Consolidation Act') has been published and consolidation operation has started in the village, the OLR proceeding stands abated and accordingly the writ petition is not maintainable. This Court, vide its order dated 4th February, 2022, held that upon initiation of consolidation operation, the Ceiling proceeding under the OLR Act does not abate. Hence, this writ petition was heard on merit.

7. Mr. Mohapatra, learned counsel for the Petitioner strenuously argued that the Petitioner-Math is a trust estate and is deemed to be a '*Privileged Raiyat*' as defined under Section 2(24) (e) of the OLR Act. As such, the land in question held by the Petitioner Math is exempted from ceiling, as provided under Section 38 of the OLR Act. He submitted that the Petitioner-Math is one of the Public Religious Institutions of Baisnab cult. Consequent upon vesting of the estate under Section 3(A) of the Odisha Estate Abolition Act, 1951 (hereinafter referred to as 'OEA Act'), the Petitioner-Math through its Manager, namely, Sri Udayanath Das filed a petition under Section 13(D)(1) of the OEA Act to exempt its property from vesting. Accordingly, a Tribunal was constituted under Section 13(C) of the OEA Act and declared a part of the estate of the Petitioner-Math as trust estate. It is his submission that Chapter-II-A was introduced to the OEA Act, vide Amendment Act 5 of 1963, which came into

force on 11th April, 1963. The said Chapter was repealed vide Orissa Act 33 of 1970 with effect from 21st December, 1970. Sub-clause (e) of Section 13-A of the said Chapter defined 'Trust Estate' as '*an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any resolution of pecuniary benefit to any individual.*' Section 13-D of the said Chapter stipulated that upon issuance of a notification under Section 13-A of the OEA Act, the trustee in respect of a trust estate shall make an application claiming the estate as a trust estate. Cumulative reading of the aforesaid provisions of the OEA Act would reveal that in order to get a declaration as Trust Estate, the trust must own an estate whose net income is dedicated exclusively for charitable or religious purposes of public nature without any provision of benefit to any individual.

8. When the matter stood thus, by amendment of OLR Act, 1960, Chapter-IV came into force which introduced Ceiling proceeding. Consequently, the Legislature also introduced a provision in Section 2(24) to the OLR Act, which defined '*Privileged Raiyat*'. Similarly, the Act introduced Section 57-A into the OLR Act for constitution of a Tribunal for declaration of a trust to be religious or charitable one of public nature. Once the Tribunal held the institution to be a trust, it shall be a '*Privileged Raiyat*', as defined under Section 2(24)(e) of the OLR Act. Resultantly, said trust will be exempted from Ceiling proceeding as provided under Section 38 of the said Act (OLR Act).

9. Mr. Mohapatra made an endeavour to bring a distinction between Section 2 (24)(c), (d) and (e) of the OLR Act. It was his submission that Clause-‘(c)’ of Section 2 (24) refers to the trust, which has been declared as ‘*Privileged Raiyat*’ prior to commencement of OLR Amendment Act, 1973, whereas Clause-‘(d)’ of the said Section refers to a trust or other institution whose estate has been declared as a trust estate by a competent authority under the OEA Act. In such a situation, the said trust estate will be a ‘*Privileged Raiyat*’ as defined under Section 2(24) of the OLR Act. However, Clause ‘(e)’ refers to ‘*other trust*’, which is of religious and charitable character of public nature and is unconnected with its ‘*estate*’, which finds place in Clause ‘(d)’. Section 2 (24) (e) read with Section 57-A Sub-sections (1) and (3) of the OLR Act provide that the ‘*other trust*’ is essentially a trust of religious and charitable character and is to be declared as such so as to bring it within the meaning of ‘*Privileged Raiyat*’ under Section 2(24) of the OLR Act. Once such a declaration is made, the immovable properties of the trust will be exempted from Ceiling proceeding in view of the provisions under Section 38 of the OLR Act.

10. Mr. Mohapatra, learned counsel for the Petitioner referring to the orders under Annexures-1 and 2 to the writ petition, i.e., the order of the Tribunal constituted under the provisions of repealed Chapter-II-A of the OEA Act, submits that declaration made therein clothes the Petitioner-Math with the benefit of exemption under Section 38 of the OLR Act being a trust estate having complied with the requirement of Section 13-A of the OEA Act. Learned counsel for the

Petitioner also placed reliance on Annexure-3, i.e., the petition filed under Section 57-A of the OLR Act to declare the institution to be a religious or charitable trust of public nature. The property of the Petitioner-Math as described at paragraph-7 of the said petition refers to Sabik Khata and Plot numbers of the case land. Considering the said application, the Tribunal, vide its order dated 2nd April, 1977 (Annexure-4) passed the following order:-

“This is a case under Section 57 A of the OLR Act for having a declaration in favour of the public endowment known as Radhakanta Math of Balisahi, Puri to the effect it is a privileged raiyat in respect of the properties described in detailed in the petition filed by its Mahant-cum-Trustee Gaurgobind Das Goswamy as detailed under Section 2 (24)(e) of the said Act. The authorized agent of the Mahant who has examined on behalf of the petitioner, proved that the Math is a public religious endowment and that a declaration to that effect under the revised Section 13-D of the OEA Act. He proved relevant order copy of Tribunal as Ext.1; and supports the statement. As defined under Section 2(24) of the OLR Act, a privileged raiyat means any trust, other Institution whose estate has been declared to be a trust estate by a competent authority under OEA Act, 11 of 1952 and the Math as is apparent, had taken such a declaration.

This case accordingly has no merit. Another declaration would be redundant. Proceeding therefore is dropped and rejected as not maintainable.”

The said proceeding was dropped being not maintainable, as the Petitioner-Math has already been declared as a trust estate by competent authority under the OEA Act. In the light of the aforesaid order, Mr. Mohapatra, learned counsel submits that the Petitioner-Math complied with requirement of Section 2(24) (e) of the OLR Act. As such, he is protected under Section 38 of the OLR Act. This material question of law was never taken

into consideration by the authorities under the OLR Act, while adjudicating the matter.

11. The 2nd limb of submission of Mr. Mohapatra was that during Hal settlement operation, ROR was published on 8th February, 1977 relating to Khata No.21 in the name of the then Mahanta of Petitioner-Math. However, law is well-settled that the ROR prepared under the Odisha Survey and Settlement Act, 1958 (hereinafter referred to as 'OSS Act') neither creates nor extinguishes right of a tenant. On the other hand, learned counsel for the Petitioner referred to an affidavit dated 15th March, 2020, and a memo filed on 14th September, 2021 enclosing therein the order passed in OJC No.574 of 1978 in order to buttress his contention that the income of the scheduled property was all along being utilized for the purpose of the Petitioner-Math. The then Mahanta had never challenged such enjoyment of the property in question by the Petitioner-Math either in common law forum or under section 41 of the Odisha Hindu Religious Endowments Act, 1951 (hereinafter referred to as 'Endowments Act'), which clearly reveals that right of the Mahanta, if any, over the case land has already been blended with Math. In addition to the above, the petition under Annexure-3 itself discloses that the Mahanta of the Math himself filed an application to acknowledge the property in question to be the property of the Petitioner-Math, which is a religious and charitable institution. Further, the Mahanta of the Math being a Nihangi (ascetic and celibate), any property purchased in his name and used for the purpose of the trust should be construed to have been purchased from out of the

earnings of the Petitioner-Math. In support of his submission, Mr. Mohapatra, learned counsel for the Petitioner placed reliance on a decision of the Constitution Bench of the Hon'ble Supreme Court reported in AIR 1967 SC 256 (***Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das and another***), wherein it is held as under:-

“29.The documents relied upon for the appellant relate to acquisition of properties by purchase or gift and are in the name of the Mahant of the Math. Such documents being in the name of the Mahant alone, do not necessarily lead to the conclusion that the properties were acquired or received in donation by the Mahant in his personal capacity for his personal use and possession. An inference that they were acquired by the Mahant for the Math is equally possible and in fact is to be preferred to what appears on the face of the documents. The onus of proof being on the appellant, it was possible for him to establish his case from the documents available to him. But he has chosen not to place at the disposal of the Court all the relevant documents. It is significant to note that not a single document has been produced by the plaintiff which specifically mentioned the purchase or the gift to be by or to the Math itself. It is difficult to believe that the Math acquired no property during the long period of its existence. The Mahant as the head of the institution acts for the Math and is its real representative. All the dealings for and on behalf of the Math must be conducted by the Mahant and it should be no wonder if the Mahant acting for the Math acts ostensibly in his own name. Though the documents relating to purchase of properties have been produced, no evidence was led to show that they were purchased from the personal assets of the Mahant. Presumably if there was such evidence, it would have been produced. The only possible inference which can be drawn is that they were purchased from the assets of the Math.....”

30. Reference may be made to *Sitaram Days Banasi v. H.R.E. Board Madras(1)* and to *Raghubir Lala v. Mohammad Said(1)*. In the former case, Varadachariar, J. said:-

"From the few sale deeds filed in the case, it no doubt appears that some of those properties were purchased in the name of the prior Mahant; but it

being admitted that he was an ascetic and celibate and the head of the institution, the probabilities are that they were purchased with the funds of the institution." and in the latter it was said:- "No doubt if a question arises whether particular property acquired by a given individual was acquired on his own behalf or on behalf of some other person or institution with whom or with which he was connected the circumstance that the individual so acquiring property was a professed ascetic may have importance."

Mr. Mohapatra further relied upon the case law in the case of ***Madhu Sudan Panda and after him Mukta Devi and others Vs. the Commissioner of Hindu Religious Endowments, Orissa and others***, reported in 2004 (I) OLR 72, wherein this Court held as under:-

"9. Defendant Nos. 1 and 2, i.e the Commissioner and the Secretary to the Commissioner respectively, have categorically in their written statement stated that after due enquiry the Commissioner gave a finding that the suit properties were the trust properties belonging to the institutions and the Mahants had no right to alienate the said properties without prior permission. There is also nothing in the evidence on record to indicate that the successive Mahants ever had personal income of their own out of which they could acquire the properties including the disputed properties in their personal capacity. That too, if properties were ostensibly purchased by the Mahants cannot be said to have been acquired in their personal capacity. In the case of Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das, AIR 1967 SC 256, the Apex Court held that:

" The gift being to the Math, though ostensibly in the name of the Mahant, the Mahant held the properties as a trustee for the indeterminate class of beneficiaries, viz., sishyas, anusishyas and visitors. This stamps the Math with the public character".

So, it is clear that in the present case even if the onus was on the plaintiff to prove that the property in dispute does not belong to Math or Trust, but to Mahant personally, the plaintiff has not discharged the same.”

11.1 Mr. Mohapatra, learned counsel for the Petitioner, therefore, submitted that from the above it is clearly established that.-

- (i) Radhakanta Math is a public religious endowment;
- (ii) It is a religious trust of public nature;
- (iii) It has declaration of the Tribunal under Section 57-A of the OLR Act read with Section 13-D of the OEA Act so as to be treated as ‘*Privileged Raiyat*’ as defined under Section 2 (24) (e) of the OLR Act;
- (iv) Thus, its properties are exempted from Ceiling as provided under Section 38 of the OLR Act;
- (v) The case land being religious endowment is under the administrative control of the Commissioner of Endowments;
- (vi) Any contention that when the property in question belongs to Mahanta is incorrect in view of the law laid down by Hon’ble Supreme Court in the case of ***Mahant Shri Srinivas Ramanuj Das (supra)*** and documents referred to by the Petitioner in affidavit filed on 15th March, 2020, Annexure-8 to the writ petition together with the memo filed on 14th September, 2021 enclosing the order of this Court in OJC No.574 of 1978.

11.2. In view of the above, he prayed for setting aside the order under Annexure-7 by which the order passed under Annexures-5 and 6 have been confirmed.

12. Mr. Dash, learned Additional Government Advocate refuted the submission made by learned counsel for the Petitioner. He contended that the Petitioner primarily relied

upon the orders passed under Annexures-1 and 2 by the Tribunal under Section 13-A (Chapter-II-A) of the OEA Act in Misc. Case No.1813 of 1965. The said declaration has no relevance for adjudication of the case. In support of his submission, he relied upon Section 13-A(e) as well as Section 13-D of Chapter-II-A (since repealed) of the OEA Act, which are quoted below.

“ Section 13-A (e)

‘Trust estate’ means an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual.

Section 13-D

- (1) The trustee in respect of a trust estate shall upon the issue of a notification under Section 3-A make an application in the prescribed form and manner to the Tribunal within three months from the date of such notification claiming that the estate is a trust estate.*
- (2) If the Collector of the district on his own information or on receipt of any information from the Endowment Commissioner or the Board of Wakfs or from any source whatsoever, is of the view that there are circumstances to indicate that any estate is a trust estate he may make a reference within the aforesaid period to the Tribunal for determination whether the Estate is a trust estate or not.”*

By order under Annexure-2, the entire property under Sabik Khata No.55 measuring an area Ac.32.81 decimal and Khata No.56 measuring an area Ac.0.27 decimal (in total Ac.33.08 decimal) were absolutely dedicated for the seva puja of Radhakanta Dev, which is a public deity. Accordingly, learned Tribunal Judge, vide order dated 20th December, 1966, declared those properties to be the trust estate. On the other hand, the property referred to under Annexure-3, i.e., the application made

under Section 57-A of the OLR Act, does not relate to those properties. The properties referred to under Annexure-3 are Sabik Khata No.70 of Sipasurubuli mouza and Khata No.15 of Sundarpur mouza. The property under Annexure-3 is no way related to that under Annexure-2. Said properties were never declared as trust estate by the competent authority. Further, the properties under Annexures-5, 6 and 7 do not relate to the properties either under Annexure-2 or Annexure-3. As such, the order under Annexure-2 is of no assistance to the Petitioner-Math.

13. Further, the contention of learned counsel for the Petitioner that the Petitioner-Math being a religious institution is a '*Privileged Raiyat*' and the properties belonging to the Petitioner-Math being utilized as such, are exempted from ceiling proceeding under Section 38 of the OLR Act, has no legal basis. It is more so, because of the language and tenor of Section 2(24) (e) of the OLR Act. A property on being declared as 'trust estate' either under the OEA Act or under the OLR Act, can only be exempted from ceiling proceeding, which is not so in the instant case. The ROR (Annexure-A to the counter affidavit filed by the Opposite Parties) is prepared by the settlement authority in the year 1977. It is prepared in the name of a private person and not in the name of the Petitioner-Math. The entry in the ROR under Annexure-A has a presumptive value of correctness under Section 13(1) of the OSS Act unless it is proved to the contrary.

14. It is contended by learned counsel for the Petitioner that since the usufructs from the properties in question under Annexure-A have been utilized for the benefit of the religious institution, the

same can be exempted from the provisions of the OLR Act, is contrary to law. The definition of '*Privileged Raiyat*' does not cover such a situation or contingency. As such, the orders under Annexures-5, 6 and 7 are based on sound legal proposition.

14.1 Further, the authorities under the OLR Act have no jurisdiction to treat the property to be a religious endowment unless it is so declared by a competent authority. Section 41(1)(d) of the Endowments Act clearly provides that the Assistant Commissioner of Endowments is competent to take decision with regard to the nature of the property. No declaration having been made in that regard, the OLR authorities have to respect the ROR under Annexure-A on its face value and proceed with the matter. During adjudication of the ceiling proceeding, the Petitioner has never established that the property in question belongs to the deity by producing orders/declaration by the competent authorities. In view of the above, Mr. Dash, learned AGA prayed for dismissal of the writ petition and also prayed to vacate the interim order dated 3rd August, 2012 staying further proceeding initiated under the Consolidation Act.

15. Miss Naidu, learned counsel for the Commissioner of Endowments was served with notice under Section 69(1) of the Endowments Act to participate in the hearing of the writ petition. On instruction, she submitted that the property in question does not belong to the Petitioner-Math. It is the personal property of the recorded tenant and cannot be said to be a religious endowment. She on instructions also clarified that no such declaration has been made by Assistant Commissioner of

Endowments. She, however, submitted that since the matter relates to legality and propriety of the orders under Annexures-5, 6, and 7, she has no say on the merit of such orders.

16. As discussed above, this Court, vide order dated 4th February, 2022 held that the question of abatement of ceiling proceeding under the OLR Act does not arise upon publication of notification under Section 3(1) of the Consolidation Act. Thus, this Court proceeded with hearing of the writ petition on merit.

17. Heard learned counsel for the parties. Perused the materials on record as well as the case laws cited by learned counsel for the parties.

18. Before delving into merits of the rival contentions of learned counsel for the parties, this Court feels it proper to discuss the relevant provisions of law for just adjudication of the case. Section 2(24) of the OLR Act defines the meaning of 'Privileged Raiya', which reads as under;

“Privileged raiyat means-

- (a).....
- (b).....
- (c) *any trust or other institution declared under this Act to have been a privileged raiyat prior to the commencement of the Orissa Land Reforms (Amendment) Act, 1973;*
- (d) *any trust or other institution whose estate has been declared to be a trust estate by a competent authority under the Orissa Estate Abolition Act, 1951 (Act 11 of 1952);*
- (e) *any other trust which is declared to be a religious or charitable trust of public nature by the Tribunal constituted under Section 57-A;*
- (f).....”

On a conspectus of the aforesaid provisions, it is clear that any trust or other institution declared to be a trust estate or religious

or charitable trust of public nature by a competent authority under the provisions of OEA Act or under Section 57-A of the OLR Act, shall be treated to be a '*Privileged Raiyat*'. Section 57-A(3) of the OLR Act provides that any trustee or trustees desiring to get any trust declared to be a religious or charitable trust of a public nature under Sub-clause (e) of Clause (24) of Section 2 may make an application to the Tribunal in the prescribed manner. Proviso to said sub-section (3) makes it clear that no application under this sub-section shall be maintainable, if-

- (a) it relates to a trust which has been created and established after the 26th day of September, 1970; or
- (b) it is filed after the date of expiry of a period of six months from the date of commencement of the Orissa Land Reforms (Second Amendment) Act, 1976;

It is further provided that nothing in Clause (a), as stated above, shall affect any declaration made prior to the date of commencement of Orissa Land Reforms (Second Amendment) Act, 1976. Mr. Mohapatra, learned counsel for the Petitioner submitted that there has already been a declaration under Section 13-D of the OEA Act that the Petitioner-Math is a trust estate, vide order dated 10th December, 1966, Annexures-1 and 2 to the writ petition in Misc. Case Nos.1814 and 1813 of 1965 respectively. In the said orders under Annexures-1 and 2, Khata No.39, measuring an area Ac.10.00 decimal of mouza Astaranga, Kakatpur (in Misc. Case No.1814 of 1965) and entire Khata No.55 to an extent of Ac.32.81 decimal and Khata No.56 to an extent of Ac.0.27 decimal (in total Ac.33.08 decimal) of mouza Kantapariyera, Kakatpur in the district of

Puri (in Misc. Case No.1813 of 1965) have been declared to be the trust estate of Petitioner-Math.

19. 'Trust estate' has been defined under Section 2(oo) of the OEA Act, which reads as follows:

"Section 2 (oo)

'trust estate' means an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual."

Under Chapter-II-A of the OEA Act (since repealed), Section 13-A (e) defined 'trust estate' in the same terms and manner as defined under Section 2(oo) of the OEA Act. Section 13-D of said Chapter-II-A provided that upon issuance of a notification under Section 3-A of the OEA Act, the trustee in respect of a 'trust estate' may make an application in the prescribed form and manner to the Tribunal within three months from the date of such notification claiming that the estate is a trust estate.

20. Thus, in order to get a declaration either as a '*trust estate*' or a '*Privileged Raiyat*', a trust has to make an application in the prescribed manner to the competent authority in that regard. In the instant case, Khata No.39 of Mouza- Astaranga and Khata Nos. 55 and 56 of mouza-Kantapariyera under Kakatpur Police Station have been declared as '*trust estate*' under Section 13-D of the OEA Act. Further, it appears that the Petitioner-Math had made an application under Section 57-A of the OLR Act by the Tribunal in Misc. Case No.287 of 1976 to declare Khata No.70 of Mouza Sipasurubuli and Khata No.15 of mouza Sandhapur under Puri Sadar Police Station to be declared as a religious and charitable trust of public nature. The said application was

dismissed by learned Tribunal Judge vide order dated 2nd April, 1977 (Annexure-4) holding that it has no merit as the Petitioner-Math has already been declared as '*trust estate*' under the OEA Act. As such, another declaration would be redundant. Properties involved under Annexure-3 are not the properties under Annexures-1 and 2. It further appears that the Court refused to grant prayer made under Section 57-A of the OLR Act. On perusal of the record, it appears that ceiling proceeding was in respect of Hal Khata No.21 of mouza Sipasurubuli to an extent of Ac.515.03 decimal. The properties of Petitioner-Math, which has been declared as '*trust estate*' under Section 13-D of the OEA Act in Misc. Case Nos.1813 and 1814 of 1965 do not belong to mouza Sipasurubuli. Thus, properties under Annexures-1 and 2 are no way connected to the ceiling proceeding. Further, it is apparent from Annexure-4 that the properties under Annexure-A in respect of which ceiling proceedings have been initiated has not been declared as '*trust estate*' under Section 57-A of the OLR Act.

21. A '*trust estate*' is declared in respect of property and in the instant case there is no material on record to come to a conclusion that the properties under Annexure-A has been declared as '*trust estate*'. Further, the Petitioner-Math has never been declared as a religious or charitable trust of public nature under Section 57-A of the OLR Act.

22. An argument has been advanced by Mr. Mohapatra, learned counsel for the Petitioner that the Mahanta of the Math belonged to Nihangi cult. Thus, relying upon the decision of ***Mahant Shri Srinivas Ramanuj Das (supra)***, he made an

endeavour to pursue this Court that even if the properties have been recorded in the name of the Mahanta, but in fact the same belongs to the institution. He also relied upon the case of *Madhu Sudan Panda (supra)* in which this Court held that a gift to the Math though ostensibly in the name of the Mahanta, he held the property as a trustee for the Math. Even if the submission of learned counsel for the Petitioner to be correct, but still the property in question requires a declaration to be a 'religious or charitable trust of public nature' under Section 57-A of the OLR Act to attract exemption under Section 38 of the said Act. Such a declaration was neither sought for nor granted in the case at hand. Only by making a submission to the effect that the property in question is being used for the benefit of the Petitioner-Math will not be sufficient to attract Section 38 of the OLR Act. Order dated 19th May, 1978 passed in OJC No.574 of 1978 has no relevance for determination of the issue in the instant case. The said order was passed on an application for extension of time to make deposit of Rs.1.00 lakh as directed vide order dated 5th May, 1978 by which said writ petition was disposed of. The said deposit was directed to be made towards auction price of cashew nut plantation for the relevant year. Few other documents were also relied upon by learned counsel for the Petitioner to establish that the case land belongs to the Petitioner-Math, but in view of discussions made above, such contentions are not acceptable.

23. In view of the discussions made above, this Court is of the considered opinion that the authorities under the OLR Act have committed no error in passing the orders under

Annexures-5, 6 and 7. As such, the writ petition being devoid of any merit stands dismissed, but in the facts and circumstances of the case, there shall be no order as to costs.

24. In view of dismissal of the writ petition, interim order dated 3rd August, 2012 stands vacated.

Issue urgent certified copy of the judgment on proper application.

(K.R. Mohapatra)
Judge



Orissa High Court, Cuttack
On this the 7th day of June, 2022/s.s.satapathy