

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10101 of 2004

***Pradipta Kumar Parida and
another***

.... Petitioners
Mr. M.R. Panda, Advocate

-Versus-

State of Odisha and others

.... Opposite Parties
Mr. D.K. Mohanty, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK**

**ORDER
08.02.2022**

Order No.

R.K.PATTANAİK, J

11. 1. In the instant case, the Petitioners by invoking writ jurisdiction of this Court under Article(s) 226 and 227 of the Constitution of India have assailed the legality and judicial propriety of the impugned order dated 28th May, 2004 (Annexure-1) passed in O.A. No.8 of 2003 by the Assistant Commissioner of Endowments, Orissa, Bhubaneswar (in short 'the Endowment Authority') on the ground that it is not tenable in law.
2. While seeking the relief, it is contended that the schedule property was settled vide OEA Lease Case No.2 of 1960-61 in favour of one Nakul Panda and others after rejecting the claim of the then Managing Trustee by order dated 29.06.1963 by the OEA Collector-cum-Tahasildar, Puri, where after, rent and cess was paid by them and subsequently,

their names were recorded in Hal Settlement RORs published in the year 1976 and later on, an area of Ac.0.01 dec. and Ac.0.02 dec. from it were sold to the late father of Petitioner No.1 and one Pramod Kumar Parida by a vendor, namely, Gundicha Panda under RSD No. 1108 (Annexure-2) dated 21.12.87 and to Petitioner No.1's father under RSD No.1520 (Annexure-3) dated 11.09.87 respectively on payment of consideration money and possession was delivered and ever since, such sales being effected vide Annexure-2&3, the Petitioners are in occupation of the land in question succeeding the interest of Petitioner No.1's father but without taking cognizance of it, the impugned order under Annexure-1 to submit vacant possession was passed which, therefore, cannot be sustained and thus, deserves to be interfered with.

3. Heard Mr. M.R. Panda, learned counsel for the Petitioners and Mr. D.K. Mohanty, learned Additional Government Advocate for the State.

4. The O.P.No.3 filed a counter affidavit denying the claim of the Petitioners in so far as settlement of the schedule property under OEA Lease Case No.2 of 1960-61 is concerned. It is contended that the property in question situate at Mouza-Alarapur under Brahmagiri P.S. in the district of Puri over Plot No.786, Consolidation Khata No.42 with Kissam Gharabari stands recorded in the name of deity Shree Alaranath Dev, Marfat Endowment Trust Board in stitiban status and after the final publication of record of rights in consolidation, the deity has been paying annual rent to the

Revenue Authority through O.P.No.3 which is within the knowledge of all concerned and in such view of the matter, correctly the impugned order under Annexure-1 has been passed which is, therefore, not to be disturbed.

5. In response to the claim of O.P.No.3 disputing the settlement of property in question in OEA Lease Case No.2 of 1960-61, no material has been brought on to record by the Petitioners in order to substantiate the fact that it had been settled by the OEA Collector-cum-Tahasildar, Puri and accordingly, Hal RORs were prepared. As earlier stated, as per the contention of O.P.No.3, rather the consolidation record of rights in respect of the schedule property stands in the name of the deity and annual rent is being regularly paid to the Revenue Authority.

6. As is made to understand, O.P.No.3 approached the Endowment Authority seeking restoration of possession vis-à-vis schedule property as per Section 68 of the Orissa Hindu Religious Endowments Act, 1951 (here-in-after referred to as 'the OHRE Act') for a direction to deliver its possession being the subject of the deity which was allowed vide Annexure-1 and in that proceeding, the Petitioners though initially entered appearance but neither filed any written statement nor participated and thus, were set ex-parte. The Endowment Authority received evidence from the side of O.P.No.3 to the effect that the schedule property was never disposed of in any manner whatsoever as lawfully required under the OHRE Act, referring to which, it was concluded that the same belongs to

the deity and accordingly, with the finding that the Petitioners illegally possessed it, directed them to submit vacant possession thereof.

7. Mr. D. Mohanty, learned Additional Government Advocate submits that the impugned order under Annexure-1 is absolutely justified which needs no interference. Mr. Panda, learned counsel for the Petitioners reiterated the claim that the interest was acquired under valid sale deeds vide Annexure-2&3 and the property in question is being possessed by them since 1987 having derived the source vide OEA Lease Case No.2 of 1960-61. The aforesaid contention is stoutly denied by O.P. No.3 in the counter affidavit dated 07.03.2005 filed before this Court on 06.05.2005 and as such, it has not been effectively countered by the Petitioners. In any case, the schedule property is stated to be recorded in the name of deity in consolidation RORs and O.P.No.3 is paying the annual rent to the Revenue Authority for and on deity's behalf and the aforesaid fact couldnot be successfully rebutted. Thus, at the cost of repetition, this Court holds that there is no material on record which could reasonably justify the claim of the Petitioners for having acquired interest over and in respect of the schedule property in a lawful manner.

8. As far as the deity's property is concerned, evidence was adduced by O.P.No.3 before the Endowment Authority that for the alleged disposal either by lease or sale, no permission of any kind was obtained or granted and therefore, the Petitioners cannot have any basis and claim over the same

and hence, the Endowment Authority exercising power under Section 68 of the OHRE Act rightly directed its restoration and delivery of possession. In fact, a deity's property, if not disposed of, in the manner prescribed in Section 19 of the OHRE Act, it shall be invalid and shall have no legal effect. In other words, no transfer by whatever means either by exchange, sale or mortgage and lease exceeding a term of five years belonging to or given or endowed for the purpose of any religious institution shall be made except upon sanction being obtained from the Commissioner of Endowments in terms of Section 19 of the OHRE Act which shall be accorded only if it is necessary or beneficial to the institution or else, such disposal shall be void or inoperative.

9. Indeed, there is no material on record to suggest that the schedule property was in any manner lawfully acquired by the predecessor-in-interest of Petitioner No.1 as against the fact that O.P.No.3 out rightly denied and disputed any such settlement of schedule property vide OEA Lease Case No.2 of 1960-61. In fact, the schedule property was alienated under Annexure- 2 & 3 resting upon which the Petitioners claimed to have acquired the interest. No material is on record even to suggest that before any such acquisition, permission was obtained from the Commissioner of Endowments when the sole ground upon which the title is claimed falls flat in view of the objection of O.P.No.3. Any disposal of a deity's property by an individual in whatever capacity without the approval of the Commissioner of Endowments is void ab initio since

Section 19 of the OHRE Act creates a clear embargo against it. That apart, Section 19A of the OHRE Act and Rule 4A of the Orissa Hindu Religious Endowments Rules, 1959 are the provisional safeguards to ensure lawful disposal of immovable property of a public religious institution. In the case at hand, in absence of any material to show a lawful title to have been acquired with respect to the schedule property of the deity, the Petitioners cannot be allowed to succeed notwithstanding their physical possession over it and therefore, the Endowment Authority did in no way commit any error or illegality by usurping jurisdiction under Section 68 of the OHRE Act.

10. Furthermore, it can be said that the predecessor-in-interest of the Petitioner No. risked for having indulged in the alleged transactions under Annexure-2 & 3 involving the deity's property not being conscious of the statutory compliances and in this context, it would be apt to apply a maxim 'qui ignorare non debuit quod jus alienum emit' which is generally known as caveat emptor meaning thereby 'let a purchaser beware' and suffer at his own peril. Lastly, it has been claimed that the property in question has been in possession of the Petitioners and their predecessor-in-interest since more than 30 years as of date but such assertion is of no avail, when the continuity is broken and intervened by the action under Section 68 of the OHRE Act initiated in 2003.

11. For the reasons aforesaid, this Court finally reaches at an inescapable conclusion that in any view of the matter, the Petitioners do not appear to have any lawful entitlement over

the schedule property, which exclusively belongs to the deity Shree Alaranath Dev having been so recorded in the Consolidation settlement and therefore, the Endowment Authority cannot be said to have erred in law for having directed restoration and delivery of its possession in favour of O.P.No.3 and as an inevitable corollary, it is to be held that the impugned order under Annexure-1 suffers from no legal infirmity and accordingly, it is ordered.

12. In the result, the writ petition stands dismissed.



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