

THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No.8968 of 2010

Krushna Chandra Satapathy & Others ***Petitioners***

Mr.M.K.Mishra, Senior Advocate
-versus-

Commissioner of Endowment & another ***Opp. Parties***

Mr.A.K.Nath, Advocate for OP No.1
Mr. D.K. Mohanty, AGA

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

Order No.

**ORDER
14.02.2022**

21.

1. The challenge in the present petition is to an order dated 17th February, 2009 passed by the learned Commissioner of Endowments (CoE) in O.A. No. 173 of 2008 which is an application filed under Section 19-A of the Orissa Hindu Religious Endowment Act, 1951 (OHRE Act) seeking issuance of a 'No Objection Certificate' (NOC) for the sale of a land in Plot No. 5456 area A.1.57 dec. and Plot no.4556, area A.1.59 dec. in total area A.3.16 dec. in Khata No.3, under Mouza-Samang in Puri district.

2. By the impugned order, the learned CoE has come to the conclusion, on the basis of a report submitted by the Inspector of Endowments (IoE), the land in question is not the private property of the Petitioner and therefore, there is no scope for

issuance of any no objection as contemplated under Section 19-A of the OHRE Act.

3. The admitted facts as stated by the Petitioners in the present petition are that the land in question was recorded in the name of Shri Jagannath Mahaprabhu, Marfat- Dambarudhar Padhiary and others in the year 1930. One major difference in the statement of facts is that according to Petitioners the record of rights (ROR) recorded their 'sthitiban status' whereas in the counter affidavit filed on behalf of the CoE it is stated that it was recorded as 'Lakharaj Bahel Debottar' in the name of Shri Jagannath Mahaprabhu.

4. Mr. Manoj Mishra, learned Senior counsel for the Petitioner did not dispute that the nature of the property in the ROR and that it was in the name of the deity. He also did not dispute that the report of the IoE stated that the deity was a public deity managed by a Hereditary Trustee and one Premananda Padhiary had been approved as the Hereditary Managing Trustee. The question, therefore, of treating the property in question to be a private property did not arise.

5. Mr. Mishra repeatedly argued before the Court that in the lists of the properties of the deity, the property in question is does not figure and therefore, it cannot be said that the properties belonged to the deity, although it may be a public deity.

6. What appears to have happened is that the property in question was apparently 'sold' by the aforementioned Marfatdar Shri Dambarudhar Padhiary in favour of one Shri Banchanidhi

Satapathy. There was a family arrangement between Shri Satapathy and his three brothers as Marfatdars of the deity and in 1983 the property was recorded as having 'bebandobasta status'. The stand of the Opp. Party is that with the abolition of baheli right way back on 27th April, 1963 on the ground that the revised rent has not been assessed, the property was recorded having 'bebandobasta status'. In other words, at no point in time was the property recorded as having 'stithiban status'. There was no dispute also that since inception it was 'Debottar Lakharaj Bahel'. In view of the all above facts, it is difficult to accept the contention of Shri Mishra that the property in question should be treated as 'private property'.

7. Mr. Mishra then submitted that the ROR entries of 1930 preceded the OHRE Act, 1951 and, therefore, the OHRE Act is inapplicable. This contention cannot be accepted since the Petitioner themselves went before the CoE with an application for an NOC under Section 19-A of the OHRE Act. If indeed it was a private property as contended, there was no occasion for the Petitioners to go before the CoER with such an application.

8. The Petitioners took the law as they found it. On the date of their intending to sell the property the OHRE Act was very much applicable. The status of the property as recorded in the ROR was on 'Lakharaj Bahel Debottar' in the name of Shri Jagannath Mahaprabhu. It was mandatory for them to obtain such an NOC.

9. Merely because the property does not figure in the list of the properties of the deity will not finally settle the issue. This is the

reason why report of the IoE became important. The IoE had occasion to examine the ROR. and notice that right from the inception it was recorded as 'Debottar Lakharaj Bahel'. At no point of time therefore, was the property in question a 'private property'.

10. As a last submission, Mr. Mishra offered that the Petitioner will now approach the Assistant Commissioner under Section 41 (1) (d) of the OHRE Act which says that the Assistant Commissioner of Endowments has the power to enquire into and decide a dispute 'whether any property and money is of the religious endowment or specific endowment'. This Court does not propose to permit the Petitioners to start another entire round of litigation. The Petitioner has failed to make out any case for this Court to interfere with the impugned order.

11. The writ petition is dismissed.

12. An urgent certified copy of this order be granted as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge