

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No.12083 of 2007

Bijaya Kumar Panda

....

Petitioner

Mr. Manoj Ku.Mohanty, Advocate

-versus-

Gramadevati Bije

....

Opp. Parties

None

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

Order No.

**ORDER
06.01.2022**

9. 1. The present writ petition has been filed by Opp. Party No.3 in O.A. Case No. 12 of 2005 filed by Opp. Parties Nos. 1 to 19 herein. The petition questions the order dated 7th March, 2006 passed by the Additional Assistant Commissioner of Endowments, Berhampur (AACE) declining to appoint a non-hereditary trustee as in-charge of the management of the temple in question during the interim period. This petition also challenges the subsequent order dated 28th August, 2007 passed by the Commissioner of Endowments, Orissa (CoE) dismissing the revision petition filed by the Petitioner, thereby confirming the aforementioned order dated 7th March, 2006 of the AACE, Berhampur.

2. At the outset Mr. Mohanty states that to the best of the Petitioner's knowledge, O.A. Case No. 12 of 2005 is still pending adjudication.

3. The said petition was filed under Section 41 of the Orissa Hindu Religious Endowment Act, 1951 ('OHRE Act') for declaration of Petitioners 2 to 19 therein as hereditary trustees—cum-Sebayats of the Deity i.e., Shri Gramadevati Bijē at Kuthari Temple, Old Berhampur.

4. In the present petition an order was passed by this Court on 4th September, 2008 whereby in the interim it was directed that:

“the operation of the order under Annexure-3 and the order of the Commissioner under Annexure-4 shall remain stayed till the next date and the Inspector of Endowment shall remain in-charge of the administration of the deity Shri Gramadevati Bijē at Kuthari Temple.”

5. For more than 13 years now, the said interim order has continued. Despite of service of notice, none has appeared on behalf of the contesting Respondents.

6. Mr. Mohanty points out that in terms of the observations in para 21 and 22 of the Full Bench decision of this Court in ***Khetramohan Rout v. Sr Sri Nageswar Mahadev 1992 (II) OLR 330*** the right of a non-hereditary trustee to be in-charge of

the administration of the temple in question at the interim stage has been recognized. The said paras 21 and 22 read as follows:

“21. We may make it clear that the view taken by us would not in any way adversely affect the interest of a hereditary trustee because it is admitted at all hands that despite an order passed under Sec.27 of the Act, it would be open to the trustee in question to raise a dispute about his being so under Sec.41 of the Act, which proceeding, if it terminates in favour of the trustee, would override the order passed under Sec.27 of the Act appointing a non-hereditary trustee. It would also be permissible, according to us, on approach being made to an Assistant Commissioner under Sec. 41 of the Act, to pass such interim order as would be deemed necessary by him in exercise of the power conferred by Sec. 8(2) of the Act. There is no dispute before us that a dispute under Sec.41 of the Act has to be treated as a ‘proceeding’ of which mention has been made in Sec. 8(2) of the Act. For the case at hand, it is not necessary to express any opinion as to whether the order passed by an Assistant Commissioner under Sec. 27 of the Act could also be said to be an order in a proceeding. We may observe that colloquially though one could say that the word ‘proceeding’ indicates conducting of “juridical business before a Court or judicial officer”, as would appear from what has been stated in Black’s Law Dictionary, this word also refers to “administrative proceeding before agencies, tribunals, bureaus or the like”, as mentioned in that dictionary, itself. Indeed, the word “proceeding” is not a technical expression with any definite meaning attached to it, but one, the ambit of whose meaning attached to it, but one, the ambit of whose meaning will be governed by

the statutes, as stated in *Babu Lal v. Hazari Lal* (1982) 1 SCC 525.”

“22. While on the question of remedy available to a person claiming to be a hereditary trustee despite appointment as non-hereditary trustee in exercise of power under Sec.27 of the Act, we may state that apart from Sec.41 being there to help him, he can also approach the Commissioner in revision against the Commissioner’s order by invoking the power of the former under Sec. 9 of the Act. Though revisional power is not as wide as appellate power, which cannot be invoked in the case of an order under Sec. 27 of the Act, it is settled law that even a revisional authority can set aside an order if the same be based on no materials, or be arbitrary, or if the conclusion of the subordinate authority be perverse. It is apparent that to enable the revisional authority to examine these aspects of the order, the Assistant Commissioner must give reasons, may be short and precise, in support of his order.”

7. Subsequently, another Full Bench of this Court in ***Dahi Parida v. Commissioner of Consolidation, Orissa 1996 (I) OLR 345*** reiterated the view of the earlier Full Bench and held thus:

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

8. Considering that the interim order passed by this Court on 4th September, 2008, in virtual acceptance of the prayer of the Petitioner, has continued undisturbed for over 13 years, the Court directs that the said interim order shall continue during the pendency of O.A. No.12 of 2005 before the AACE, Berhampur at Ganjam. Further, the AACE, Berhampur is requested to dispose of O.A. No. 12 of 2005 within a period of four months from today and in any event not later than 16th May, 2022. A copy of this order be delivered by the Registry through a Special Messenger to the AACE, Berhampur at Ganjam forthwith for compliance.

9. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge