

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.465 of 2011

Ashok Kumar Satpathy

....

Petitioner

Mr. Rama Chandra Rath, Advocate

-versus-

***Commissioner of Endowments, Orissa,
Bhubaneswar and others***

....

Opposite Parties

Mr. Debakanta Mohanty, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE M. S. RAMAN

ORDER

13.04.2022

Order No.

04. 1. The challenge in the present petition is to an order dated 16th April, 2010 passed by the Commissioner of Endowments, Orissa, Bhubaneswar (CoE) in OA No.90 of 1993, which has been passed under Section 25 of the Odisha Hindu Religious Endowments Act, 1951 ('OHRE Act'). The further challenge is to another order dated 13th May, 2010 passed by the CoE in OA No.90 of 1993 again under Section 25 of the OHRE Act.
2. A preliminary issue has been raised by Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) appearing for the State regarding maintainability of the present petition. He refers to Section 25(3) of the OHRE Act, which states that "any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights."
3. Section 25 of the OHRE Act reads as under:

"25. Recovery of immovable trust property unlawfully alienated. –

[(1) In case of any alienation, in contravention of Section 19 of this Act or Section 51 of the Orissa Hindu Religious Endowments Act, 1939, or in case of unauthorised occupation of any immovable property belonging to or given or endowed for the purpose of any religious institution, the Commissioner may, after summary enquiry as may be prescribed and on being satisfied that any such property has been so alienated or unauthorisedly occupied send requisition to the Collector of the district to deliver possession of the same to the trustee of the institution or a person discharging the function of the said trustee.

(2) The Collector in exercising his powers under Sub-section (1), shall be guided by rules made under this Act.

(3) Any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights.]”

4. It is seen that Section 25(3) of the OHRE Act states that “any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights.” That order passed by the Collector would be under Section 25(1) of the OHRE Act, which would be consequential upon a requisition being sent to the Collector by the Commissioner of Endowments. In the present case, although by the order dated 13th May, 2010 the CoE directed issuing a requisition to the Collector to deliver possession of the case land, there was no consequential order passed by the Collector. Meanwhile, the Petitioner moved this Court and a stay order was passed on 12th January, 2011. As a result, the Collector was not in a position to pass any order under Section 25(1) of the OHRE Act. The result of the above discussion is that the occasion for the Petitioner to invoke Section 25(3) of the OHRE Act to question the order of the

Collector has not arisen in the present case. The preliminary objection is accordingly negated.

5. On merits, learned counsel for the Petitioner points out that the Petitioner is a tenant in the suit land, but the impugned order of the CoE had been passed without issuing notice to him.

6. It is seen that although the order dated 13th May, 2010 passed by the CoE records the appearance of counsel for the present Petitioner i.e. Ashok Kumar Satapathy and states in para 2 thereof that “the O.Ps contended in the objections that”, learned counsel for the Petitioner asserts that no notice was in fact issued to the present Petitioner by the CoE after the remand by this Court of the proceedings to the CoE.

7. In para 7 of the writ petition, it has been averred as under:

“7. That after disposal of the aforesaid writ application, whenever the petitioner went to the office of the opp. Party no.1 to enquire about the posting of the case he was told that the date would be communicated to him as and when the matter is fixed to be taken up on a particular date. But as ill luck would have it, the opp. Party no.1 took up the petition for stay filed by the petitioner and proforma opp. Parties for hearing on 16.04.2010 without any prior notice or summons to them of the date so fixed and having considered the merit of their petition in their absence, rejected the same and passed an order directing the parties to get ready on 21.04.2010 for hearing of the case. A copy of the said order dated 16.04.2010 is annexed herewith as Annexure-4.”

8. There has been no reply filed to the present petition to contradict the above averment. This is despite the fact that notice

was issued way back on 12th January, 2011. Therefore, the Court proceeds on the basis that the above averment is correct.

9. In that view of the matter, the impugned order dated 13th May, 2010 is hereby set aside and the matter viz., OA No.90 of 1993 is remanded to the file of the CoE, Bhubaneswar to be proceeded with in accordance with law. Considering that the case is nearly 30 years old, the CoE is requested to dispose it of within a period of four months from today i.e. in any event, not later than 16th August, 2022.

10. The matter will now be listed before the CoE on 9th May, 2022, on which date the Petitioner will appear along with a downloaded copy of this order. No further notice is required to be issued to the Petitioner for this purpose.

11. Copy of this order be sent to Opposite Party No.3 to enable them to make necessary arrangement to appear before the CoE on that date.

12. The writ petition is disposed of in the above terms. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

M. Panda