

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.16574 of 2011*****Mohanlal Panch and another* *Petitioners******-versus-******Sri Jagannath Mahaprabhu Bije Opposite Parties*
Puri Marfat Sri Mandir Parichalana
*Committee, Puri and others*****Advocates appeared in this case:*****For the Petitioners* : Mr. D.P. Mohanty,
Advocate*****For the Opposite Parties* : Mr. Debakanta Mohanty,
Additional Government Advocate
(For the State)
Mr. Subrat Satpathy,
Advocate
(For Opposite Party No.1)****CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK****JUDGMENT
10.05.2022****Dr. S. Muralidhar, CJ.**

1. The two Petitioners, who are residents of Puri, have challenged an order dated 25th April 2011 passed by the Board of Revenue, Orissa in OEA Revision Case No.133 of 2008. By the said order passed in the aforementioned revision case under Section 38B of the Orissa Estate Abolition Act, 1951 (OEA Act), the order dated 4th June 2008 of the Additional District Magistrate (ADM), Puri in OEA Appeal Case No.8 of 1999 was affirmed and the aforementioned revision case filed by the present two Petitioners

was dismissed. The aforementioned order dated 4th June 2008 of the ADM, Puri had dismissed the appeal filed by the present Petitioners against an order dated 18th May 1999 of the Tahasildar, Puri-cum-OEA Collector in OEA Claim Case No.173 of 1990 which had been filed by the Administrator of Sri Jagannath Temple, Puri (Opposite Party No.1).

Background facts

2. The background facts are that the aforementioned claim case was filed before the Tahasildar, Puri by Opposite Party No.1 for fixation of fair and equitable rent and settling the land admeasuring Ac. 4.960 decimals in favour of Sri Jagannath Mahaprabhu Bije Puri Marfatdar Sri Jagannath Temple Managing Committee, Puri under Sections 6 and 7 of the OEA Act. The said land is located in Khata No.123 Plot Nos.68, 69, 70 and 71 in Mouza-Markandeswar Sahi District-Puri. The contesting Claimant was the Sri Jagannath Puri Gosala (Opposite Party No.3).

3. Notice and proclamation inviting public objections was served by notices dated 24th December, 1998. The present Petitioners subjected their objections by claiming that they had purchased suit Plot No.170 Ac.1.084 pertaining to Khata No.149 by a registered sale deed dated 7th December 1998 and that Petitioner No.2 had purchased Plot No.203 Ac.0.101 and Plot No.204 Ac.2.102 of the same Khata No.149 by a registered sale deed dated 30th November 1998 from the President Babubhai Chhagalani and Secretary Arabinda Parekha of Sri Jagannath Puri Gosala through

Kishnalala Panch power of attorney holder by a registered power of attorney dated 23rd September, 1998.

4. In turn, it was claimed that Sri Jagannath Puri Gosala Marfat Secretary Purusottam Sundar Das was the recorded land owner in respect of the suit land by virtue of permanent registered lease deed dated 31st July 1931 which had been executed by one Niladri Sahu by obtaining permission from the Civil Court. It was further claimed that "the suit Plot Nos.170, Ac.1.084; 203 Ac.0.102 and 204 Ac.2.102 related to the part of Sabik Plot Nos.68, 69, 70 and 71 of Sabik Khata No.123. The Sabik Khata No.123 containing the Sabik Plot Nos.68, Ac.4.280; 69, Ac.0.160; 70, Ac.0.010 and 71, Ac.0.010 stood recorded in the name of Sri Jagannath Dev Marfat Mahant Sri Ram Das Guru Keshab Das of Badasantha Math in the ROR of 1899 Settlement in Amrutamanohi status".

5. The further case was that the suit property had not been declared as a trust estate property by the OEA Tribunal and hence, it had not vested in the Government on 18th March, 1974 when the Government of Odisha issued a notification under Section 3A of the OEA Act whereby the estate of Lord Jagannath Mahaprabhu Bije Puri vested in the State Government.

6. The above vesting notification dated 18th March, 1974 was the subject matter of challenge in this Court in OJC No.233 of 1977 and was rejected by this Court. Ultimately, the judgment of this Court was upheld by the Supreme Court of India in **Lord**

Jagannath through Jagannath Singri Narasingh Das Mahapatra Sridhar Panda v. State of Orissa AIR 1989 SC 464.

7. The Government of Orissa subsequently issued a notification dated 18th April 1989 extending the time for filing cases under Section 8A of the OEA Act. It is within this extended time that the Administrator of Sri Jagannath Temple, Puri filed the aforementioned OEA Claim Case No.173 of 1990. The Tahasildar taking note of Section 5 of the Shri Jagannath Temple Act, 1955 corrected the record of rights (ROR) in favour of Opposite Party No.1 namely Sri Jagannath Mahaprabhu Bijei Puri Marfatdar Managing Committee Sri Jagannath Temple, Puri.

8. Section 5 of Shri Jagannath Temple Act reads as under:

“Notwithstanding anything in any other law for the time being in force or custom, usage or contract, Sanad, deed or engagement, the administration and the governance of the Temple and its endowments shall vest in a Committee called the Shri Jagannath Temple Managing Committee constituted as such by the State Government, and it shall have the rights and privileges in respect thereof as provided in Section 33. It shall be a body corporate, having perpetual succession and a common seal, and may, be the said name sue and be sued.”

9. The aforementioned provision came up for interpretation in the Supreme Court of India in the decision in ***Sri Jagannath Temple Managing Committee v. Siddha Math AIR 2016 SC 564***. Among the questions framed for consideration by the Supreme Court was “whether the suit lands can vest in the Respondent Math in light

of the provisions of the Shri Jagannath Temple Act, 1955”. In para 25 of the said judgment, the conclusion reached by the Supreme Court was as under:

“It is a settled principle of law that once a property is vested by an Act of legislature, to achieve the laudable object, the same cannot be divested by the enactment of any subsequent general law and vest such property under such law.”

Order of the ADM

10. The Petitioners were aggrieved by the above decision of the Tahasildar, Puri and filed OEA Appeal No.8 of 1999 under Section 9 of the OEA Act before the ADM, Puri. By the order dated 4th June 2008, the ADM dismissed the aforementioned appeal.

11. The ADM noted that the recital of the registered sale deed dated 6th August 1931 revealed that the suit land belonged to 'Amrutamanohi' of Sri Jagannath Mahaprabhu under D. Register No.13356/A-47. This had, by notification dated 14th September 1963, been declared by the OEA Tribunal as trust estate under Section 13 (E) of the OEA Act. It was therefore held that the suit land had vested in the Government on 18th March 1974 and not on 29th April 1963.

12. The ADM further held that the suit land belonged to Amrutamanohi of Sri Jagannath Mahaprabhu Bije Puri and that the suit land was governed by the Shri Jagannath Temple Act,

1955. The so-called permission obtained from the Court as claimed by the Petitioners for Niladri Sahu to execute the registered lease deed was not accepted by the ADM because “nobody has produced the said permission before this Court for examination.” Thus, since Niladri Sahu had no authority to execute the permanent lease deed, it was held to be *ab initio void* in the eye of law. The preparation of the RORs in the name of Sri Jagannath Puri Gosala in Khata No.149 under Bebandobasta status by the settlement authority on the basis of the above “null and void document” was held to be “wrong and illegal as per law”.

13. As a consequence, it was held that the vendor who executed the registered sale deeds dated 7th December 1998 and 30th December 1998 had no right, title and interest in the suit land so as to alienate it in favour of the present Petitioners.

14. It was further noticed that the Petitioners had not filed any application to implead themselves as party in OEA Claim Case No.173 of 1990 and as such their *locus standi* was also questioned. Accordingly, the ADM concluded that there was no illegality in the order dated 18th May 1999 of the Tahasildar, Puri.

Order of the Board of Revenue

15. Aggrieved by the above orders, the Petitioners filed OEA Revision Case No.133 of 2008 before the Board of Revenue, Orissa.

16. In the impugned order dated 25th April 2011, the Member, Board of Revenue noted that the suit Sabik Khata No.123 was under 'Amrutamanohi' status which as per the settled principle of law was an intermediary status of land belonging to Sri Lord Jagannath Bije Puri. It was further noticed that “as per instructions communicated in L.No.17920/R dated 03.04.1992 of Government of Orissa in Revenue & Excise Department to Land Reforms Commissioner, Orissa, Cuttack the meaning of “endowment” is shown to be wide and includes properties held by Mathas as Marfatdars of Lord Jagannath. And according to above instruction of Government, claims under Section 6 & 7 of OEA Act by a recorded Marfatdar other than Shri Jagannath Temple Managing Committee in respect of estates of Lord Jagannath are not maintainable”.

17. It was further concluded by the Board of Revenue that

“during any sale transaction of land the onus lies on the vendee to verify the ownership of vendor of that land and to obtain all relevant documents of such ownership from the vendor for mutation purposes. But it is seen that the Petitioners have not substantiated their claim in the revision petition through relevant documents regarding the order passed in 1926 in the appeal case filed by the Mahanta before the Hon’ble Privy Council and the permission granted by the District Judge in 1931 to the lessor for executing permanent lease deed No.2952 dated 31.07.1931 in favour of present Opposite Party No.3. As such, the Petitioner’s claim of having right, title and interest on the suit property is not proved for want of substantiation.”

18. It must be mentioned here that while directing notice to be issued in the present writ petition on 27th March 2012, status quo was ordered in respect of the properties in question.

19. This Court heard the submissions of Mr. D.P. Mohanty, learned counsel for the Petitioners and Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) appeared for the State and Mr. Subrat Satpathy, learned counsel appeared for Opposite Party No.1.

Submissions of counsel for the Petitioners

20. Mr. D.P. Mohanty, learned counsel for the Petitioners submitted that the claims of the present Petitioners had not been considered in the proper perspective. He claimed that the permanent lease was granted in favour of the vendor of the Petitioners as early as 1931 by which date neither the OEA Act nor the Orissa Hindu Religious Endowments Act, 1939 (OHRE Act) repealed by the OEA Act had come into operation. Since the property had been leased out by the ex-intermediary in favour of the Jagannath Puri Gosala i.e., the vendor of the Petitioners much prior to the date of estate, the vesting of the property under Section 3A of the OEA Act can have no effect on the lease hold property.

21. Mr. Mohanty submitted that Opposite Party No.3 should automatically be treated as a *Stitiban* tenant under the State under Section 8 of the OEA Act. He submitted that such a record was in fact published but the only irregularity was that instead of

describing Opposite Party No.3 i.e. the Gosala as *Stitiban* (permanent tenant) status was described as '*Bebandobast*'. According to him, the Tahasildar should have corrected the said irregularity by fixing a fair rent in favour of the recorded owner.

22. Mr. Mohanty further submitted that the Math in question was never declared as a trust estate under Section 13 E of the OEA Act and that there was no basis for such a conclusion. He questioned the *locus standi* of Opposite Party No.1 to file an application for settlement of the property under Sections 6 and 7 of the OEA Act. It was also barred by limitation. According to him, merely because the status of the property was described as 'Amrutamanohi' in the settlement ROR of 1899, it did not *ipso facto* give a right to Opposite Party No.1 that too after long lapse of 90 years to get itself settled under Sections 6 and 7 of the OEA Act.

23. Mr. Mohanty referred to the fact that the recorded owner Badasantha Matha of Markandeswar Sahi Town Puri was an intermediary recorded under Serial No.13356 of Register D of the Puri Collectorate and leased out the disputed property to the Puri Gosala as early as 1931. He maintained that Opposite Party No.1 had no interest in the property in question.

Submissions of counsel for the Opposite Parties

24. Countering the above submissions, both Mr. Debakanta Mohanty, learned AGA and Mr. Subrat Satapathy, learned counsel submitted that once it was clear that the land in question

was the 'Amrutamanohi' of Sri Jagannath Mahaprabhu, it automatically vests in the Temple in terms of Section 5 of the Shri Jagannath Temple Act. Even the recital in the registered lease deed 2952 reveals that the suit land belongs to 'Amrutamanohi' of Sri Jagannath Mahaprabhu Bijepuri.

25. Counsel for the opposite Parties pointed out that a perusal of the notification dated 14th September 1963 revealed that D.R. No.13356/A-47 had been declared by the Tribunal as trusted estate under Section 13E of the OEA Act. The so-called permission obtained from the Court for execution of the lease deed by Niladri Sahu was non-existent. Learned counsel for the respective Opposite Parties therefore submitted that the judgment of the Supreme Court in ***Sri Jagannath Temple Managing Committee v. Siddha Math*** (*supra*) was a complete answer to all the contentions of the learned counsel for the Petitioners.

Analysis and Reasons

26. The above submissions have been considered. The history of the vesting of the properties of Lord Jagannath Mahaprabhu Bijepuri can be traced back to the notification dated 18th March 1974 issued by the Government of Odisha under Section 3-A of the OEA Act. This was the subject matter of the decision of the Supreme Court in ***Lord Jagannath v. State of Orissa*** (*supra*).

27. In ***Sri Jagannath Temple Managing Committee v. Siddha Math*** (*supra*), the Supreme Court again traced this complete history and explained as under:

"21.xxx The OEA Act, 1951 was enacted to provide for the abolition of all rights, title and interest in the land of intermediaries and vesting the same in the State. The Act was thus meant to abolish the interest of the intermediaries in the land. A Constitution Bench of this Court, upholding the constitutional validity of the Act in the case of *K.C Gajapati Narayan Deo & Ors. v. State of Orissa AIR 1953 SC 375* held as under:

“The primary purpose of the Act is to abolish all zamindari and other proprietary estates and interests in the State of Orissa and after eliminating all the intermediaries, to bring the ryots or the actual occupants of the lands in direct contact with the State Government. It may be convenient here to refer briefly to some of the provisions of the Act which are material for our present purpose. The object of the legislation is fully set out in the preamble to the Act which discloses the public purpose underlying it. Section 2(g) defines an "estate" as meaning any land held by an intermediary and included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a district. The expression "intermediary" with reference to any estate is then defined and it means a proprietor, sub-proprietor, landlord, land-holder... thikadar, tenure-holder, under-tenure-holder and includes the holder of inam estate, jagir and maufi tenures and all other interests of similar nature between the ryot and the State. Section 3 of the Act empowers the State Government to declare, by notification, that the estate described in the notification has vested in the State free from all encumbrances. Under section 4 it is open to the State Government, at any time before issuing such notification, to invite proposals from "intermediaries" for surrender of their estates and if such proposals are accepted, the surrendered estate shall vest in the Government as soon as the

agreement embodying the terms of surrender is executed. The consequences of vesting either by issue of notification or as a result of surrender are described in detail in section 5 of the Act. It would be sufficient for our present purpose to state that the primary consequence is that all lands comprised in the estate including communal lands, non-ryoti lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals, quarries rivers and streams, tanks, water channels, fisheries, ferries, hats and bazars, and buildings or structures together with the land on which they stand shall, subject to the other provisions of the Act, vest absolutely in the State Government free from all encumbrances and the intermediary shall cease to have any interest in them.”

28. The insertion of Section 2(oo) by the amendment of 1974 was disapproved by the Supreme Court in *Sri Jagannath Temple Managing Committee v. Siddha Math* (*supra*). It set aside the settlement of land belonging to the Temple in favour of various Maths as Marfatdars of Sri Jagannath Mahaprabhu Bije Puri and held this to be in violation of Shri Jagannath Temple Act, 1955. The Supreme Court went to the extent of holding that there was no need for the Temple Committee to file a claim proceeding under Section 8A of the OEA Act in respect of its own lands which were already vested in it under Section 5 of the Temple Act of 1955. It was categorically held "the suit land vests in the temple committee itself".

29. The upshot of the discussion in *Sri Jagannath Temple Managing Committee v. Siddha Math* (*supra*) is that with the land already being recognized as having "Amrutamanohi" status

there was nothing more to be done as far as Opposite Party No.1 was concerned. The registered lease deed itself recognized this status. The suit land vested on 18th March 1974 and is governed by the Shri Jagannath Temple Act, 1955.

30. As rightly pointed out concurrently by the Tahasildar, the ADM and the Board of Revenue, there was no basis for Niladri Sahu to have executed the permanent lease deed. There was no valid title to be conveyed by the Jagannath Puri Gosala in favour of the present Petitioners. The registered sale deeds were, therefore, void *ab initio*. Section 5 of the Shri Jagannath Temple Act is categorical and therefore any attempt to convey title contrary thereto cannot have any validity in the eye of law.

31. Consequently, the Court is satisfied that no error has been committed in the concurrent orders of the Tahasildar, the ADM and the Board of Revenue. The present writ petition is without any merit and is dismissed as such with no order as to costs. The interim orders passed by this Court stand vacated.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin/Sr. Stenographer