

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.27721 of 2022

(Through Hybrid mode)

Uttareswari Thakurani Bije, ***Petitioner***
Jagatsinghpur

-Versus-

Commissioner of Endowments, ***Opposite Parties***
Odisha and others

For Petitioners : Mr. Ramakanta Mohanty,
Senior Advocate

For Opposite Parties : Ms. P. Naidu, Advocate

CORAM:

JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA

JUDGMENT

01.12.2022

ARINDAM SINHA, J.

1. Mr. Mohanty, learned senior advocate appears on behalf of petitioner and submits, impugned is order dated 5th July, 2022 made by the Commissioner, in exercise of power under section 7 of the Odisha Hindu Religious Endowments Act, 1951. He submits, it is a private deity and his clients are the descendants. Section 41 proceeding is pending. In the circumstances, impugned order could not have been made.

2. He relies on **Jasobanti v. Commissioner**, reported in **1999 (1) OLR - 608**, from which paragraph 9 is reproduced below.

*“9. The submission of Shri S. Mishra-2 that the petitioners ought to have been given an opportunity of hearing before the impugned order was passed, has force. The Commissioner in his affidavit and opposite parties 3 to 11 in their own affidavit have admitted that the R.O.R. of 1930 did contain the names of the ancestors of the petitioners. Opposite parties 3 to 11 in their counter affidavit have further averred that the entry of names of the ancestors of the petitioners in the R.O.R. is under challenge before the Consolidation Officer, Thauri. The petitioners thus can be said to be persons having interest in the management of the deity and its properties. **In our considered opinion, the Commissioner ought to have given an opportunity of hearing to them before he passed the impugned order.** Since there is violation of the principle of natural justice, we are not inclined to relegate the petitioners to seek alternative remedies available under the Act.”*

(emphasis supplied)

He submits, thereafter his client was directed to be given opportunity of hearing by **order dated 9th August, 2021** of coordinate Bench in earlier **WP(C) no.21808 of 2021** (his client's own case). Yet opportunity was not given.

3. Mr. Choudhury, learned advocate appears on behalf of private opposite party no.12. He submits, his client had lodged caveat. His client is managing trustee of the Interim Trust Board. He relies on **order dated 18th February, 2021** made by coordinate Bench, disposing of **WP(C) no.8368 of 2020 (Sri**

Sukant Kumar Swain and others v. Hon'ble Minister Law, Government of Odisha and others). Relied upon paragraph in the order is reproduced below.

“Considering the above it appears that the term of the said Interim Trust Board was already over. Accordingly, we dispose of the writ petition with a direction to Commissioner of Endowments, Bhubaneswar to take appropriate step if there is any allegation regarding mismanagement of the institution as provided under Section 7 of the Act and if necessary the Commissioner of Endowments, Bhubaneswar shall also take appropriate step for constitution of Non-Hereditary Trust Board. The above exercise shall be completed within a period of three months.”

4. Ms. Naidu, learned advocate appears on behalf of the Commissioner and submits, opportunity of hearing was given to petitioner. She prays for direction upon her client to file counter.

5. Perused impugned order. Recitals therein are extracted and reproduced below.

“Whereas steps have already been taken by the A.A.C. Cuttack for the formation of N.H.T. Board U/s-27 of the Act.

Whereas it will take time to appoint Non-Hereditary Trust Board U/s-27 of the O.H.R.E. Act for management of the institution.

Whereas it is necessary to make an Interim arrangement for proper and efficient management of the institution and to safeguard its properties.”

6. Section 7 provides for, inter alia, powers of the Commissioner. It is to be exercised for general superintendence

of all religious institutions and endowments, for the Commissioner to do all things, which are reasonable and necessary to ensure proper administration and due appropriation of the incomes. In the case at hand, it will appear from recitals of impugned order that there is no whisper regarding either administration or appropriation of income. The recitals say that steps have already been taken for formation of non-hereditary Trust Board under section 27. Section 27 empowers creation of non-hereditary Trust Board on there being no hereditary Trustee. Admitted position is pendency of section 41 proceeding.

7. Impugned order is set aside and quashed.
8. The writ petition is allowed and disposed of.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge

R.K.Sethi