

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1054 of 2022

***Sri Nrusinghanath Jew @ Naga Math Petitioners
Bije and others***

Mr. Ganesh Prasad Samal, Advocate

-versus-

***The Commissioner of Endowments, Opp. Parties
Odisha, Bhubaneswar and others***

Mr. Baibaswata Panigrahi,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
16.12.2022**

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. 2. Petitioners in this CMP seek to assail the order dated 11th October, 2022 (Annexure-9) passed by learned Additional District Judge, Salipur in FAO No.26 of 2022, whereby dismissing the appeal learned appellate Court confirmed the order dated 10th August, 2022 (Annexure-8) passed by learned Senior Civil Judge, Salipur in IA No.47 of 2018 (arising out of CS No.48 of 2018) dismissing an application under Order XXXIX Rules 1 and 2 CPC.
3. 3. Mr. Samal, learned counsel for the Petitioners submits that the suit has been filed for declaration of right, title, interest, permanent injunction and for other consequential and ancillary relief. The Plaintiff No.1 is a public deity and is represented by Plaintiff/Petitioner Nos. 2 to 10. Documents available on record clearly reveal that their father, namely, late Bishnu Charan Mishra was the Marfatdar of the deity. The same was also reflected in consolidation ROR. However, after formation of

new trust board, a proceeding under Section 25 of the Odisha Hindu Religious Endowments Act, 1951 (for short, 'the Act') was initiated in OA No.2 of 1984 under section 41 of the Odisha Hindu Religious Endowment Act, 1951 (hereinafter referred to as 'the Act' for convenience), in which it is held that the Petitioner No.1 is a public deity having no hereditary trustee, declaring its properties to be public religious endowment. The Petitioners unsuccessfully assailed the said order till this Court. Subsequently, a proceeding under Section 25 of the Act was also initiated in O.A. No. 2 of 1992 and the order of eviction was passed. Assailing the same, the Petitioners preferred W.P.(C) No.10202 of 2014, which also dismissed. As the valuable right of the Petitioners was affected and they were threatened of eviction in view of order under Section 25 of the Act, they filed suit as provided under Section 25 (3) of the said Act for the aforesaid relief.

3.1 Along with the plaint, the Petitioners also filed an application to restrain the Opposite Parties from entering upon the suit land and disturb their peaceful possession. It is submitted that although they are performing the Seva Puja and are in management of the deity, learned trial Court rejected the petition holding that only because the Petitioners are in possession over the suit land, they cannot claim any injunction against the Opposite Parties, particularly when the said possession has already declared unlawful by the competent authority. Assailing the order under Annexure-8 passed by learned Senior Civil Judge, Salipur, Petitioners preferred FAO No.26 of 2022. Learned appellate Court, without discussing the ingredients to grant an order of injunction, rejected the same

directing learned trial Court to dispose of the suit within four months from the date of receipt of the said order. Hence, this CMP has been filed.

4. It is submitted by learned counsel for the Petitioners that admittedly the Petitioners are in possession over the suit land and thus they have a *prima facie* case in their favour. Balance of convenience also leans in their favour, as they are in management of the deity. They will definitely suffer irreparable loss if they are evicted from the suit property. Hence, the impugned orders under Annexures-8 and 9 are liable to be set aside.

5. Mr. Panigrahi, learned ASC vehemently objects to the above submission and contends that although consolidation ROR was prepared in the name of the deity showing father of the Petitioners as Marfatdar, but in the meantime non-hereditary trust board has already been constituted and it is not impleaded as party to the suit. It is at their instance, the proceeding under Section 25 of the Act was initiated and order of eviction has been passed by the competent Court. Petitioners also tested their fate before this Court and failed in setting aside the order passed under Section 25 of the Act. He further submits that in the proceeding under Section 41 of the Act in OA No.2 of 1984, the Plaintiff-Petitioner No.1 has already been declared as a public deity having no hereditary trustee. The said order was challenged in FA No.2 of 1992 and was dismissed. Although the writ petition assailing the said order has already been dismissed, but a review application bearing No.55 of 2013 has been filed by the Petitioners. In view of the above, learned trial Court as well as the appellate Court has committed no error in rejecting the prayer for injunction sought for by the Petitioners.

6. Taking into consideration the rival contentions of the parties, it is admitted that in a proceeding under Section 41 of the Act, the Plaintiff No.1 has been declared as Public deity having no hereditary trustee. It is also not disputed that a non-hereditary trust board has already been constituted. It is at their instance the proceeding under Section 25 of the Act was initiated and an order of eviction has already been passed. Receiving requisition when the Collector, Cuttack proceeded to evict the Petitioners, an attempt is made by filing suit to frustrate the direction made by the competent Court. The claim of the Petitioners as hereditary trustee does not survive any more in view of order passed in OA No.2 of 1984, by the Additional Assistant Commissioner of Endowments, which has attained its finality. Thus, claim of the Petitioners that they are in management of the deity is unbelievable. In view of the order passed under Section 25 of the Act, possession of the Petitioners is not lawful. In that view of the matter, the Petitioners do not have *prima facie* case in their favour. In view of the discussion made above, neither balance of convenience leans in favour of the Petitioners nor they will suffer any irreparable loss, as alleged. As such, both the learned trial Court as well as the appellate Court has committed no error in refusing to grant an order of injunction in favour of the Petitioners.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge