

Hindu Public and anr. Vs. Rabadi Gopal Reddy and ors.

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Court : Orissa

Decided On : Nov-23-1990

Reported in : 1991(I)OLR50

Judge : G.B. Pattnaik, J.

Acts : Orissa Hindu Religious Endowments Act, 1939; [Orissa Hindu Religious Endowments Act, 1951](#) - Sections 3

Appeal No. : Miscellaneous Appeal No. 68 of 1982

Appellant : Hindu Public and anr.

Respondent : Rabadi Gopal Reddy and ors.

Advocate for Def. : N.C. Panigrahi, Adv.

Advocate for Pet/Ap. : R.K. Mohapatra and B. Routray

Disposition : Appeal allowed

Judgement :

G.B. Pattnaik, J.

1. This appeal Under Section 44(2) of the Orissa Hindu Religious Endowments Act (hereinafter referred to as the 'Act') is directed against the appellate order of the Deputy Commissioner of Endowments, Orissa, declaring respondents 1 to 5 in this

appeal to be the Hereditary Trustees of the institution. The said respondents 1 to 5 filed an application invoking the jurisdiction of the Commissioner Under Section 41 of the Act for a declaration that the institution of Mahammayee Thakurani at Kabisuryanagar is a public religious institution and the properties endowed are public religious endowments and they are the Hereditary Trustees thereof. It was alleged in the petition that the Deity was founded by their ancestors some two hundred years back and since the date of foundation it was the forefathers of respondents 1 to 5 herein who were in peaceful possession of the properties and management by way of succession from generation to generation and the members of the general public had no right whatsoever in the management of the institution and, therefore, the necessary declaration be made. The present appellants representing the Hindu public filed their objection before the original authority inter alia on the ground that it is the grandfather of one Malley Das Behera who had collected funds from the general public and was the founder of the institution. He had appointed one Rabadi Ammana, an old lady as Archak and had given 41 Bharans of land in lieu of her service as Archak. The said lady Archak was issueless and, therefore, she took one Gumba Reddy in adoption and settled the land of 41 Bharans on condition that Currba would worship the Deity. After said Gumba, his son R. Kalia Reddy succeeded to the property and worshipped the Deity and after Kalia Reddy, his son Guruba Reddy stepped into the shoes of R. Kalia Reddy. After Guruba, his grandson R. Gopala Reddy continued as Archak. It was, therefore, urged that the relief claimed in the application Under Section 41 of the Act could not be granted.

2. Three issues were framed on these pleadings and the learned Additional Commissioner came to hold that the Deity Mahammayee Thakurani was founded by the ancestors of opposite party No. 2 before him as collector of funds from the public in general and it was being managed by a village committee with a member of opposite party No. 2's family as managing trustee. Therefore, the petitioners before him could not claim trusteeship hereditarily over the Deity. He also found that the Deity was a public religious endowment and it was the Archakship that devolved amongst the Archaks' family to perform the Seva Puja and in fact, the Archakship was suspended for misconduct on the part of petitioner No. 1 and, therefore, the petitioners (respondents 1 to 5 herein) were not entitled to the relief

claimed Thus essentially it was held that the institution was a public. Hindu religious institution without any right of hereditary trustee- ship in favour of anybody and, therefore, the application Under Section 41 of the Act was dismissed.

3. On an appeal being carried, the learned Deputy Commissioner who was the appellate authority, reversed the findings of the learned Assistant Commissioner and allowed the appeal. In reversing the findings and allowing the appeal the learned Deputy Commissioner very much relied upon the Record-of-Rights and the rent receipts which show that the respondents 1 to 5 are performing the Seva Puja and are managing the institution as Hereditary Archaks for quite a long time. The Deputy Commissioner took into consideration the admissions of parties which negative the case of Hereditary Trusteeship, but in view of the entry in the Record-of-Rights which shows the Archaks to be in possession of the lands, came to the conclusion that respondents 1 to 5 were not merely Archaks but were in active management of the Deity's properties. Relying upon a decision of this Court in the case of Commissioner of Hindu Religious Endowments, Orissa v. Basta Patra and others, 17(1951)C.L.T.132, the appellate authority came to hold that it was not unusual to find the function of a trustee and an Archak being combined in the same individual and since the applicants (respondents 1 to 5) have been managing the properties since the time of their forefathers as Archaks of the institution, they were entitled to be declared as Hereditary Trustees of the institution. Accordingly, the appeal was allowed.

4. Mr. Mohapatra, the learned counsel For the appellants, relying upon the definition of 'Hereditary Trustee' in Section 3(vi) of the Act contends that a Court can declare a person to be a Hereditary Trustee only when it comes to the conclusion that the succession to the office of the religious institution devolves by hereditary right since the time of the founder or is regulated by custom or is specifically provided for by the founder, so long as such scheme of succession is in force. Since admittedly, no custom has been proved nor is there any specific provision made by the founder in the present case, the applicants could be declared as Hereditary Trustees only if on the materials on record it is established that the succession is devolved by hereditary right since the time of the founder. In

the absence of such finding, the conclusion of the appellate authority is contrary to the provisions contained in Section 3(vi) of the Act and, therefore the impugned order cannot be sustained. He also contended that since there has been a disruption in the management as would be apparent from Ext. A, even if it is held that there was any hereditary right but such right cannot be declared because of the disruption contained in Ext A. lastly he contends that the right of an Archak and the right of a Hereditary Trustee are different. Though, in the case of a smaller institution both the rights could be combined, but in the present case there has been no such combination of rights and, therefore, the Deputy Commissioner committed an error in declaring hereditary trusteeship merely because respondents 1 to 5 were enjoying some properties as Archaks for performing Seva Puja of the Deity.

Mr. Panigrahi, the learned counsel appearing for the respondents, on the other hand, contends that where the origin of an institution is not available being of a very ancient time, the fact that a particular family continues to be in management of the institution raises a presumption that the succession to the office of trusteeship devolved hereditarily and this principle would apply to the present case. He further urges that on the materials the Deputy Commissioner having found that both Archakship and trusteeship have been combined, the said conclusion is unassailable. The rival contentions require a careful examination of the law on the subject as well as the materials on record.

5. Coming to the first submission of Mr. Mohapatra, it depends upon an interpretation of the expression 'hereditary trustee' as defined in Section 3 (vi) of the Act, The said expression was defined in a different manner in the old Act of 1939 than the Act of 1951 with which the present case is- concerned. Noting, the difference of language in the definition of the expression in the two Acts, a Bench of this Court in the case of Commissioner of Hindu Religious Endowments, Orissa v. Shri Dadhibabart Deb and Ors. 27 (1961) C.L.T., 437 held;

'.....In the new Act the position has been made absolutely clear that unless devolution by-hereditary right is shown to have continued uninterruptedly from the time of the founder of the institution, the trustee cannot be considered to be a

Hereditary trustee.....,'

The aforesaid question was considered by me recently in the case of Mitrabhanu Naik and 6 others v. Jaleswar Panigrahi and 7 others, 1989 (II) OLR 69, 68 (1989) C. L. T. 333, and I held :

'.....The definition of 'hereditary trustee' makes it amply clear that a claim of hereditary trusteeship can be provided in three distinct ways : (i) when succession to such office devolves by hereditary right since the time of founder; (ii) when succession is regulated by custom, or (iii) when it is specifically proved for by the founder according to the scheme of succession, so long as such scheme is in force.'

While deciding, the manner as to how the hereditary trusteeship could be claimed in the aforesaid case, I had relied upon the decisions of this Court in Biswanath Das and Anr. v. Jagannath Misra and another, 31 (1965) C. L. T. 189 and in Gopinath Das Adhikari and Ors. v. Sri Chaitanya Mahaprabhu and others., 62 (1986) C. L. T. 576, The same view has been reiterated in yet another recent decision of this Court in the case of Uchhab Mohapatra and Ors. v. Sri Amruteswar Dev and others, 68 (1989) C. L. T. 380. It is undoubtedly true, as contended by Mr. Panigrahi for the respondents that where the founder is not known or the time of foundation is not known and a particular state of affairs is found to have continued for a sufficient length of time, the theory of lost grant has been applied and in such a case if a party establishes long continued possession in assertion of a right, Courts have come to the conclusion that the said right should be presumed to have had a lawful origin and further presumption may be available that the acts necessary for creation of such right were done. This view finds support from the decisions of this Court in Dhruba Charan Swain and Ors. v. Jagannath Panda and another, 26 (1960) CLT 293; Chintamani Pati v. Krishna Chandra Panda and others, 34 (1968) CLT 1111; Krishna Mohan Panda and Ors. v. Radhashyam Panda and others, 1971 (2) CWR 379 and Raja Bahadur A. N. M. R. Mohapatra v. Bidyadhar Nayak, ILR 1971 Cuttack, 578. But a word of caution has been given in the aforesaid cases to the effect that the presumption must not be drawn in every case particularly when the definition of hereditary trustee' in the

new Act has inserted the expression since the time of the founder which was not there in the old Act. (See Bhagirathi Mohapatra and Ors. v. The Deity Sukarmala Thakurani and others, 43(1977) CLT 103 and Balunkeswar Dev and Ors. v. Kulamani Panda and others 51(1981) CIT 169). In fact, in the earlier decision of mine in Mitrabhanu Nrik's Case (68(1989) CIT 333), I have noticed all these decisions. Bearing in mind the aforesaid principles, if the materials on record are examined, I find that in Exts. 1 and 2 what has been recorded is that respondents 1 to 5 or their ancestors are the Archaks. Even Ext. A indicates the removal of the respondents from the Archakship, Respondent No. 1 who was P. W. 1 categorically admitted that he did not keep any account of the Deity's income and expenses nor did he have any idea of the extent of land the Deity owns and further that opp. party No. 2 (appellant No. 2) collected rent from the houses on behalf of the Deity. This admission of said P. W. 1 goes against the concept of Archakship and management going together. The document (Ext.A) unequivocally proves the fact that Gopal Reddy was the Archak and Sevait and had no right in management. Under the said document, the said Archak has prayed for his reinstatement in the Archakship and the management was vested with a Committee of Management of Mahammayee Thakurani. Ext. D also establishes the aforesaid state of affairs. In that view of the matter, even though in a smaller institution as a proposition of law Archakship and management could be vested with one person, but in the present case, the materials on record do not indicate the same. On the other hand, the materials on record establish that respondents 1 to 5 were merely Archaks with whom right of Seva Puja had been vested and the management was vested in a village Committee. In that view of the matter, 'howsoever long, those Archaks may have been in possession of some properties which were given to them in lieu of services rendered, that would not confer a right of hereditary trusteeship in them and the theory of lost grant on which Mr. Panigrahi, the learned counsel for the respondents, relies will have no application. The only basis on which the lower appellate Court reversed the conclusion of the Assistant Commissioner is that the respondents have been noted to be the Archaks in the Record-of-Rights. It is well established that Records-of-Rights do not create any title. That apart, the ingredients of hereditary trusteeship as contained in Section 3(vi) of the Aft not having been proved and

found, the lower appellate Court, namely the Deputy Commissioner committed gross error of law. in declaring respondents 1 to 5 to-be the Hereditary Trustees. I would, therefore, accept the submission of Mr. Mohapatra appearing for the appellants and hold disagreeing with the learned Deputy Commissioner of Endowments that respondents 1 to 5 have failed to establish that they are the Hereditary Trustees in respect of the institution in question and, therefore, that right cannot be declared in their favour.

6. Even otherwise, the second contention of Mr. Mohapatra is also sustainable. In view of the definition of 'Hereditary Trustee' unless the devolution of right is shown to have continued uninterruptedly from the time of the founder of the institution, the trustee cannot be considered to- be a hereditary trustee. Therefore, if it is established that there has been a discontinuity, then the hereditary right goes. Even if it is held (although I have held to the contrary) that the Archakship and trusteeship go together in the present case, but Ext. A unequivocally indicates that there has been, a disruption to the said right and such disruption, therefore, negatives the case of respondents 1 to 5 for being declared as Hereditary Trustees. (See *o Adhitrandu Panda and Ors. v. Gobinda Chandra Pradhan and another*, 1973(1) CWR 438). It is not necessary for me to discuss this matter in great detail since I have already come to the conclusion that respondents 1 to 5 were merely Archaks and not Hereditary Trustees of the institution and they had never assumed the management of the institution.

7. In the premises, as aforesaid, the order of the Deputy Commissioner of Endowments is set aside and the order of the Assistant Commissioner of Endowments is confirmed. This Miscellaneous Appeal is allowed. However, there will be no order as to costs.