

# SUPREME COURT OF INDIA

State of Orissa & Anr.

Vs.

Abani Ballav Dey & Ors.

C.A.No.6122 of 2008

(Kurian Joseph and R.F.Nariman,JJ.)

02.03.2016

## JUDGMENT

**Kurian Joseph,J.**

1. The application for intervention is dismissed.
2. Appellant No. 1 - State of Orissa is aggrieved by the impugned order dated 14.05.2008 passed by the High Court of Orissa in RSA No. 10 of 2002 and Misc. Case No. 65 of 2008.
3. For the purpose of disposal of this appeal, we shall extract the short impugned order as under:-

”The appellants and respondent no. 2 have filed a petition under Order 23 Rule 3 of the CPC for compromise stating therein that to cut short the long term litigation and for the benefit and improvement of the respondent no. 2 Religious Trust they want to compound the matter. Previously the parties had filed Misc. Case No. 189 of 2006 for recording compromise in the appeal. But the Tahasildar, Cuttack raised objection on the plea that the property under litigation has high market value and the amount contemplated in compromise is very low. Objection was also raised by the Commissioner of Endowments that in absence of the permission of the Commissioner u/s 19 of the OHRE Act, the compromise cannot be effected as the compromise will create stitiban tenancy in favour of the appellants. The prayer for compromise was accordingly, disallowed for want of permission of the Commissioner of endowments u/s 19 of the OHRE Act. The parties, therefore, filed the present petition for compromise indicating inter alia that permission of the Commissioner of endowments has been obtained for the compromise and the amount to be paid by the appellants has been raised to Rupees thirty lakhs. Counter affidavit has been filed by the Commissioner of Endowments wherein it is stated that Deputy Commissioner of endowments by successive letters dated 5.2.2008 and 31.3.2008 intimated the respondent No.2 that no permission can be accorded for compromise in the greater interest of the institution. It is also indicated in the counter affidavit that present

petition for compromise is not maintainable after the order of rejection in Misc. Case No. 189 of 2006. Reply to this affidavit of the Commissioner of Endowments has been filed by the respondent no. 2 to the effect that the letters of the Deputy Commissioner of Endowments under Annexures A & B are to be ignored as the Commissioner of Endowments in Memo No. 10864 dated 5.9.2007 granted permission to respondent no. 2 to effect compromise in the second appeal. In this regard, the appellants and respondent no. 2 rely on the order dated 28.4.1989 of the Commissioner of Endowments, Orissa passed in OA No. 171 of 1988-II under Section 19 of the Act, Order No. 7 dated 11.12.2006 of the Commissioner of Endowments in misc. Case No. 17 of 2005 and Memo No. 10864 dated 5.9.2007 of the office of the Commissioner of Endowments, Orissa. On the other hand, learned counsel for the Commissioner of Endowments rely on Memo No. 1589 dated 5.2.2008 and 4369 dated 31.3.2008 issued by the Deputy Commissioner of Endowments to respondent no. 2. In the order in A. No. 171 of 1988 on the prayer of the respondent no. 2, the Commissioner of Endowments accorded permission for sale of the lands of the religious institution fixing minimum rate at Rs. 20,000/- per gunth for lands adjoining road and at the rate of Rs. 15,000/- per gunth for other lands. In order dated 11.12.2006 of Misc. Case No. 17 of 2005 it is reflected that permission was sought for the compromise, but because it was submitted that the matter does not come within the purview of section 19 of the OHRE Act, the misc. case was dropped and the matter was left to be dealt with in management side. In memo No. 10864 respondent no.2 was permitted to enter into compromise in the second appeal, if he so wants. But thereafter, in Memo nos. 1589 dated 5.2.2008 and 4369 dated 13.3.2008 respondent no.2 was intimated by the Deputy Commissioner of Endowments that he cannot be permitted to enter into a compromise in the greater interest of the institution. All these documents show that initially the Commissioner of Endowments had permitted for sale of the lands of the institution for rupees seven lakhs approximately, but litigation crept in and no such sale could be effected. Now, by way of compromise respondent no. 2 is willing to create stitiban tenancy in favour of the appellants in respect of the same lands of religious institution in exchange for a sum of Rs. 30,00,000/- to be paid by the appellants to the religious institution. The Commissioner of Endowments has also passed order and intimated the order to respondent no.2 that he can enter into a compromise. The previous orders passed under section 19 of the Act and the present order permitting respondent no.2 to enter into compromise passed by the Commissioner of Endowments in substance amounts to accord of permission under section 19 of the OHRE Act. Dr. Rath, learned counsel appearing for Commissioner of Endowments, however, states that because the money aid by the appellants will go for the benefit of religious institution, the parties may do well to raise the amount considering the fact that the suit lands are now urban valuable lands. After this submission of Dr. Rath, there was a discussion in open court and learned counsel for the appellants on instruction submitted that instead of rupees thirty lakhs, the appellants would pay rupees forty five lakhs and that may be incorporated in the terms of compromise. A memo was also filed in this regard. Since the parties are willing to enter into compromise and end the litigation and the Commissioner of Endowments has permitted the respondent no. 1 to enter into such

compromise and since the amount offered by the appellants is more than six and half times of the amount initially set by the Commissioner of Endowments, the prayer for compromise is allowed and the appeal is disposed of on compromise according to the terms of the compromise. The compromise petition along with memo enhancing the compromise amount from rupees thirty lakhs to rupees forty five lakhs will form part of the decree. The appeal and misc. case are thus disposed of."

4. It is the main contention of the State that the property of the Deity could not have been disposed of by way of a compromise as referred to in the impugned order. After having heard Mr. P. S. Patwalia, learned senior counsel appearing for the State and also the learned counsel for the respondents, on 14.01.2016, this Court passed the following order :-

"Having heard the learned Senior Counsel appearing for the appellants and also learned Senior Counsel for the respondents, we are of the view that it would be in the interest of all the parties, that the matter is considered afresh by the Commissioner of Endowments in exercise of power under Section 19 of the Orissa Hindu Religious Endowments Act, 1951. We Permit the Respondent No.3 herein to make a fresh application before the Commissioner within two weeks from today and the Commissioner, after hearing the appellant Nos. 1 and 2 as well as respondents, consider the application on merits and pass appropriate order within a period of one month thereafter. We make it clear that the orders already passed by the Commissioner of Endowments in the matter, shall not stand in the way of the Commissioner considering the matter afresh and passing appropriate orders. However, we make it clear that this order is passed without prejudice to the contentions raised by parties before this Court. Post after six weeks."

5. The learned counsel appearing for the State today has made available the order of the Commissioner of Endowments, Orissa, Bhubaneswar dated 24.02.2016. According to the Endowment Commissioner also Respondent Nos. 1 and 2 have long been in possession of the property. The Deity and the Math are in a neglected position and for want of funds, no improvements could be made. The Deity is badly in need of money and having regard to the background of litigation, the property needs to be, in any case, disposed of. We shall extract the relevant consideration of the Endowment Commissioner :-

"7 The case land is located in urban area in one patch. The case land is situated by the side of main road which runs from Biju Pattnaik Chhak to Deula Sahi of Cuttack Town. Plot No. 321 has been recorded as Jalasaya kizam, but major part of that plot is filled with sand and earth. Permission for sale of the case land was accorded in O.A.No. 171/1988 vide order dated 28.02.1989, but the same could not be sold within the stipulated period of one year due to several litigations. The case deity/institution is not getting any income from the case land due to number of litigations. In case of sale of the case land, the deity will get a considerable amount by way of interest from long term fixed deposit of the sale proceeds. The report of the concerned Inspector of Endowments as well as the Bench mark valuation of the case land obtained from the District Sub-Registrar, Cuttack indicate that the cost of plot no. 317 of kizam

Gharabari is Rs. 4 crores forty lakhs (Rupees four crores forty lakhs) per acre. The cost of plot No. 318 of kisam Bagayat is Rs. 2 crores 75 lakhs (Rupees two crores seventy five lakhs) per acre. The cost of plot No. 320 of kisam Gharabari is Rs. 2 crores 75 lakhs (Rupees two crores seventy five lakhs) per acre. The cost of plot No. 321 of kisam Jalasaya is Rs. 2 crores 75 lakhs (Rupees two crores seventy five lakhs) per acre.”

8. Thus, I found that the case land belongs to the deity Sri Sri Raghunath Jew, bije Matha Sahi, Tulasipur of Cuttack Town under Bidanasi P. S. marfat Mahant Bijoy Narayan Ramanuja Das which has been reflected in the R.O.R. vide Ext. 1 produced by the petitioners. Admittedly, the deity/institution is public in nature. So, necessary permission / sanction order U/S. 19 of the O.H.R.E. Act, 1951 is required to sell the case land of the deity for any legal necessity. The report of the concerned Inspector of Endowments and the R.O.R. of the case land and the management file available in the Endowment Office indicate that Mahant Bijoy Narayan Ramanuja Das is the Hereditary Trustee of the deity/institution and as such he has filed the case U/s 19 of the O.H.R.E. Act, 1951 before the Court of the Commissioner of Endowments, Odisha, Bhubaneswar in order to sell the landed properties of the deity/institution for legal necessity, which is beneficial for the deity/institution.

9. As regards the legal necessity, I found that the petitioner Math is an old institution. During my tour I have seen the deity/institution as well as the case land located at Tulasipur of Cuttack Town. The Temple and the surrounding pucca houses of the institution are now standing in dilapidated condition which require major repair/renovation and for that purpose huge amount of money is required. The deity/institution has no funds to meet the above expenses. The only way is open to the deity/institution to sell some landed properties. The deity/institution has some cultivable lands which are now under the possession of the the institution. But the case land is now under the possession of the O.Ps since long and the institution is not getting anything from the case land. It will be very expensive on the part of the institution to evict the O.Ps from the case land through litigations. Therefore, in my opinion it will be beneficial for the deity/institution to sell the case land in order to meet the above legal necessity of the deity/institution. The O.Ps No. 1 and 2 are now staying over in the case land with their family members after constructing their house over it. The O.Ps are now ready and willing to purchase the case land at the reasonable rate fixed by this Court. If the case lands are sold away and the sale proceeds deposited in any Nationalized Bank under Long Term Fixed deposit scheme, the deity/institution will definitely get substantial income annually in safe of interest. Hence, I feel that it is necessary to sell away the case land for the above legal necessity which is beneficial for the deity/institution.”

6. It is seen from the order at Paragraph 5 that prior to the consideration of the matter, the Endowment Commissioner had given a public notice and that, "In spite of publication of notice, no objection has been received from any corner."

7. The Endowment Commissioner having taken note of the fact that the circle rate available could be less than the actual market price, passed the order for auctioning the property with upset price at Rs. 5 crores per acre for the first item, Rs. 4 crores per acre for the second item and Rs. 3 crores per acre for the third item.

8. It is seen from the order passed by the Endowment Commissioner that even if the property is put to auction, it is likely to ensue a long drawn litigation in the matter of eviction of the present occupants.

9. Mr. Guru Krishna Kumar, learned senior counsel, on instruction and after referring to the records, submits that Respondent Nos. 1 and 2 have been in occupation of the property since 1956.

10. The offer originally made by Respondent Nos. 1 and 2 before the High Court was for Rs. 30 Lakhs, which was enhanced to Rs. 45 Lakhs and it was on Rs.45 Lakhs, the compromise was entered into and the appeal was disposed of by the High Court by the impugned Judgment in 2008.

11. When the appeal was pending before this Court, by way of an application filed in July, 2015, Respondent Nos. 1 and 2 offered an amount of Rs.80 Lakhs, whereas the intervenor had offered an amount of Rs.1.68 crores.

12. Having regard to the background of the litigation, having regard to the dire necessity for the Deity to dispose of the property, having regard to the fact that Respondent Nos. 1 and 2 have been in occupation of the property since 1956 and that they have constructed their houses in the property, we are of the view that it is in the interest of all concerned to put a quietus to the litigations between the State and Respondent Nos. 1 and 2 of the sale of the property under Section 19 of the Orissa Hindu Religious Endowment Act.

13. After considering the suggestions made from all quarters and having regard to the offers made before this Court, having regard to the circle rate and market rate and having regard to more than five decades of the admitted occupancy by Respondent Nos. 1 and 2, we fix the rate at Rs. 2.75 crores for the entire property now occupied by Respondent Nos. 1 and 2

14. This amount shall be deposited by Respondent Nos.1 and 2 within a period of three months from today. On such deposit, whatever rights available to Respondent Nos.1 and 2 in respect of property under Section 19 of the Act shall be transferred to them.

15. In view of the above observations and directions, this civil appeal is disposed of with no order as to costs.

16. We make it clear that this Judgment is passed in the peculiar background of the case we have extracted above and the same shall not be treated as a precedent.