

**IN THE COURT OF THE ADDL. DISTRICT JUDGE -CUM-
SPECIAL JUDGE, C.B.I. COURT NO.II, BHUBANESWAR.**

PRESENT:

Dr.A.K.Mishra,
Addl. District Judge -cum-
Special Judge, C.B.I. Court No.II,
Bhubaneswar.

R.F.A. No. 9/42 OF 2016/2013

(Arising out of Judgment dtd.26.4.2013 and decree
dtd.3.5.2013 passed by the learned Civil Judge (Senior
Division) Bhubaneswar in C.S.No. 656 of 2006)

Srimati Ramamani Barik, aged about 67 years,
W/o. Sourindranath Barik,
resident of Sabik Plot No.483/1 and
Hal Plot No.566, Bhimpur,
Aerodrum Area (Near Punama Gate)
P.S. Air-Field, Bhubaneswar, Dist.Khordha.

... Appellant

Versus...

1. State of Orissa, Represented through
Special Secretary to G.A. Department,
Secretariate, Bhubaneswar, Dist. Khordha

... Respondent

2. Smt. Priyalata Behera, aged about 72 years,
W/o. Sudarsana Behera,
Radhakrishna Street,
Berhampur, Dist.Ganjam
(Appeal dismissed vide order dtd.9.11.2015)

... Proforma Respondent

COUNSELS

For the Appellant : Sri A.C. Pattnaik & Associates,
Advocates.

For the Respondent : Sri R.P. Nanda, G.P.

Date of hearing : 18.06.2016.

Date of Judgment : 03.05.2016

JUDGMENT

The unsuccessful plaintiff as appellant has assailed the judgment and decree dtd.26.4.2013 in dismissing suit for declaration of title, confirmation of possession, correction of ROR and for permanent injunction by learned Civil Judge (Sr.Division), Bhubaneswar in CS No.656 of 2006. The defendants are respondents. The appeal against respondent No.2 was dismissed for non-filing of requisites by appellant vide order dtd.9.11.2015.

2- Adumbrated in brief, the plaintiff case is that the suit land described in plaint schedule originally stood recorded in the name of deity Sri Lingaraj Mahaprabhu Marfat Trust Board in the record of rights published in the year 1962 vide Ext.C. It was Anabadi Status. The Commissioner of Endowment vide order dtd.18.11.1970 in O.P.P. Case No. 591/66 sanctioned the lease in favour of Joginath Mohapatra with Salami and rent, in lieu of performing service to Lord Lingaraj. The order had a stipulation restricting transfer in any form. Joginath Mohapatra paid Salami Rs.180/- on 13.12.1970. The said Joginath Mohapatra for his legal necessity sold the suit land to one Nisakar Barik by Registered sale deed dtd.9.4.1973 Ext.4 for consideration, but continued to perform Seva Puja of deity. Even after the death of Joginath, his successors continued to perform Seva Puja of the vehicle.

Purchaser Nishakar got the suit property mutated to his name paying mutation fees to Lingaraj Mohaprabhu Endowment on 14.8.1973. He constructed building over the suit land obtaining permission from Special Planning authority. The suit land was mortgaged by him to the Government by execution of a registered mortgage deed on 18.1.1974 for securing a loan as he was a government servant. The mortgage was accepted by the government as the suit

property was free from all encumbrances. It is the specific case of the plaintiff that in the year 1973 the land of Lingaraj vested with the state of Odisha. By acceptance of the mortgage of suit land from Nisakar by Government, as per plaintiff, the initial restriction against transfer by endowment commissioner was waived and the title of Nisakar over suitland was confirmed. Nisakar died unmarried leaving behind her two sisters who are plaintiff and defendant No.2 . Both of them possessed the suit land. In the subsequent settlement, the settlement Parcha was issued in the name of Nisakar Barik, but record of rights was finally published in the name of State of Odisha General Administration Department (Ext.B) with an endorsement in the remark column "Beaini Kharidi Sutra Dakhala Nisakar Barik" with Kissam- Gharabari-II. The house standing in the suit land is in possession of the plaintiff and defendant No.2.

The Estate Officer, Bhubaneswar initiated a proceeding under Odisha Public Premises (Eviction of Unauthorised Occupants) 1972 and passed order of eviction on 26.9.1988 in O.P.P. Case No.21 of 84 (L). Nisakar preferred an appeal bearing Appeal Case No.227 of 1988 before the Revenue Divisional Commissioner, Central Division, Cuttack. In the said appeal vide order dtd.26.9.1989 The case was remanded to the lower court which is still pending awaiting order. On 1.9.1988 the defendant No.1, Government, threatened to disposses the plaintiff. The plaintiff issued notice under Sec.80 C.P.C. on 15.9.2006 and filed this suit on 18.9.2006 seeking relief of declaration of title of plaintiff and proforma defendant No.2 and confirmation of their possession. Further prayer has been made for correction of record of rights and to grant permanent injunction.

3- Proforma Defendant No.2 filed written statement supporting the plaintiff. The contesting defendant No.1 filed written statement challenging the maintainability and cause of action. The plea of non-joinder of Commissioner of Endowment as necessary party has been specifically taken in the written statement by defendant No.1. It is admitted that the plaintiff is in possession of the suit land, the description of suit land as per suit schedule is admitted. It is stated that Sabik Plot was Anabadi land having Kissam-Puratana Patita and stood recorded in the name of Lingaraj Mahaprabhu and in the year 1974 it was vested to the State free from all encumbrances. The money receipt regarding payment of salami and rent are stated to be forged. It is stated that the land was not leased out to Joginath Mohapatra with the permission of the Commissioner of Endowment as required under Sec.19 of the Orissa Hindu Religious Endowment Act. After vesting of the suit land to the state free from all encumbrances, the government in General Administration Department became the owner of the suit land and accordingly record of rights was correctly published in the year 1988-1989. Joginath Mohapatra having not acquired any title, could not have sold the deity's property to Nisakar and such sale being void, Nisakar had not acquired any title. After vesting, Nisakar being found a trespasser, the Estate Officer started eviction proceeding as per law. The plaintiff and proforma-defendant No.2 having acquired no title and their possession of the suit land being illegal, as per defendant No.1, they are not entitled to any relief.

4- Plaintiff herself and her son as P.W.1 and P.W.2 were examined. Twenty documents were exhibited by the plaintiff. On behalf of contesting defendant No.1, one Revenue

Inspector of Govt. of Odisha in G.A. Department is examined and four documents are exhibited.

5- Learned lower court framed as many as six issues. In answering issue No.3 and 4 regarding title of plaintiff, the learned lower court found that the suit land originally stood recorded in the name of ex-intermediary Lord Lingaraj Mahaprabhu represented through trust board and in the year 1974 the same was vested to the State of Odisha free from all encumbrances under the provisions of Odisha Estate Abolition Act. Learned lower court also found that Joginath Mohapatra and Nisakar Barik having not cultivated the suit land, were not Raiyats and could not be protected under Sec. 8 of the OEA Act and the lease deed in favour of Joginath Mohapatra having not been registered, it was inadmissible for any purpose to confer title. For that the learned lower court has relied on the decision of Hon'ble Apex Court reported in 2009 (II) OLR (SC) page 229 State Vrs. Harapriya Bissoyi. The contentions of the defendants was accepted by the learned lower court to the extent that in absence of registered lease deed, no tenancy was created in favour of Joginath. Accordingly, finding no title in favour of plaintiff to protect the possession of the suit land, the learned lower court disentitled the plaintiff from any relief prayed in the suit and ergo, dismissed the suit.

6- Learned counsel for appellant vehemently urged that Executive Officer of Lord Lingaraj Temple having given the ownership certificate to Joginath Mohapatra and Endowment Office having received land revenue, it cannot be said that Joginath Mohapatra had not acquired any title over the suit land particularly when Joginath Mohapatra and after him his successors have been performing Seva Puja and thereby the purpose of giving land to Joginath Mohapatra has

not yet been defeated. On his second plank, it is submitted that when the possession of Nisakar Barik has been admitted and the said land was taken by government as mortgage admitting the same to be the property of Nisakar, it cannot be said that Nisakar Barik had not acquired title from Joginath. According to learned counsel for appellant, if the suit land was granted to Joginath Mohapatra as Jagiri in lieu of Seva Puja and the same Seva Puja has not been discontinued till date, the defendant No.1 State of Odisha cannot be said to have acquired title over the land burdened with service and for that the impugned judgment is liable to be reversed.

Per contract, learned G.P. Mr. Nanda supported the impugned judgment stating that the restriction by the Endowment Commissioner in its order against transfer cannot be said waived subsequently in absence of any registered lease deed. Further intermediary interest of the deity being a trust property was vested to the State of Odisha in the year 1973 and accordingly record of rights has been prepared in favour of General and Administration Department, Government of Odisha. Lastly he submits that non-impletion of Endowment Commissioner in this nature of suit is fatal for the maintainability of the suit.

7- Rival contentions have occasioned to confine the following points for consideration in this appeal.

- (i) Whether the suit land vested to Govt. of Odisha free from all encumbrance ?
- (ii) Whether transfer of suit land by Joginath Mohapatra in favour of Nisakar Barik under registered sale deed dtd.9.4.1973 under Ext.4 is valid ?

8- It is admitted and is proved from ROR Ext.C that the original suit Khata 1878 stood recorded in the name of

Lingaraj Mahaprabhu Marfat Trust Board under Khewat No.1 under D-register No.14803. It was Anabadi status having Puratan Patita Kissam. The Deity Lingaraj Mahaprabhu was the intermediary. The order dtd.28.11.1970 vide Ext.1 of the Commissioner of Endowment Odisha, Bhubaneswar has contained the stipulation inter-alia in the following manner:-

“Para-3 - So, sanction is accorded for 0.060 decimals of land to each out of Khata Nos.1878 or 1880, of Bhubaneswar mouja as mentioned in the Inspector's report on a salary of Rs.3/- per decimal and rent of Rs.25/- per acre. Besides, they shall not transfer the lands and shall render Seva Puja, failing which, the land shall revert to the institution.”

Para-4- Execution and registration shall be made by the Executive Officer at the cost of the applicants”.

Admittedly, no deed is executed or registered in the terms of the above order. P.W.1 in her cross-examination in para 36 has categorically given such admission. On the other hand the plaintiff not only in the plaint but also in the appeal memo has categorically admitted that Joginath Mohapatra and after him his successors have been performing Seva Puja of Lord Lingaraj till date. So the moot point is whether the intermediary interest of deity was vested under OEA Act in the year 1973.

(8-A) In the case of Niranjana Meikap and others Vrs. State of Orissa, (Judgment dtd.30.3.2015) , reported in 2015 (11) OLR -315 , Their Lordships of our Hon'ble High court in the facts and circumstance alike of this case have reiterated the law in the following manner.

“43. The stand of the State Government is that the property of Lord Lingaraj has passed to and become vested in the State free from all encumbrances vide Revenue Department Notification dated 18.03.1974 and in absence of any application under Sections 6 and 7 of the OEA Act to settle the land in question in the name of Lord Lingaraj Mahaprabhu, the said land became the absolute property of

the State Government. This stand of the State is not correct for the following reasons:

44. Under the OEA Act, "Trust Estate" of deity has been dealt with in different footing. It is very pertinent to note that even after repeal of Chapter II-A which contains special provision for public Trust, by Act 33/70 of 21.12.1970, the State recognizes the existence of the Trust Estate by the selfsame Act by inserting 'proviso' to Section 8(3) of the OEA Act.

45. Now, it is necessary to know what is provided in [Section 8\(3\)](#) and proviso to Section 8(3) of the OEA Act. [Section 8\(3\)](#) provides that "any person who immediately before the date of vesting held land under an Intermediary on favourable terms for personal service rendered by him to such Intermediary shall, from the date of vesting, be discharged from the conditions of such service and the land may be settled with him in such manner and under such terms and conditions as may be prescribed."

Proviso to Section 8(3) of the OEA Act contemplates that nothing in sub-section (3) shall apply to a Trust Estate which is vested in the State on or after the date of coming into force of the Orissa Estate Abolition (Amendment) Act, 1970.

Therefore, in view of proviso to [Section 8\(3\)](#), the sevayats are not discharged from rendering their seva to Lord Lingaraj even after vesting of the land of Lord Lingaraj in the State and the status of sevayat lands belonging to Lord Lingaraj which form part of the "Trust Estate" remains unaffected even after vesting of trust estate. Otherwise, any kind of settlement of seva land will hamper the seva puja of the deity.

Xxx

xxx

xxx

53. By virtue of proviso to [Section 8\(3\)](#) and [Section 7-A](#) read with above noted Government orders/notifications/circulars/guidelines, the State Government has acknowledged the right, title and interest of Lord Lingaraj over the properties declared as "Trust Estate" which includes the properties in question even after vesting of the said property in Government by notification dated 18.03.1974 and therefore, there is no need to make any application under Sections 6 and 7 of the OEA Act for settlement of the land forming part of the Trust Estate in the name of Lord Lingaraj and consequentially [Section 8-A\(3\)](#) and provisions of Clause (h) of [Section 5](#) have no application so far as properties declared as Trust Estate of Lord Lingaraj are concerned.

xxx

xxx

xxx

57. Thus, in [Section 2\(h\)](#), "religious endowment" has not been included. It may be relevant to note here that while enacting the OEA Act, 1951 the Legislature were fully aware about existence of 'religious endowment' as the same dealt with under the OHRE Act, 1939 which subsequently dealt with in OHRE Act, 1951, but the legislature in its wisdom excluded the expression 'religious endowment' from Section 2(h) of the OEA Act which defines 'intermediary'. Therefore, the expression 'religious endowment' cannot be read into Section 2(h) of the OEA Act, 1951 by the State. Apart from that Lord Lingaraj is not a holder or owner of any interest in land between the raiyats and the State as required under Section 2(h) of the OEA Act, 1951 which defines 'Intermediary'. Therefore, Lord Lingaraj being not an intermediary as defined in Section 2(h) of the OEA Act, the provisions of Sections 6 and 7 of the OEA Act have no application to Lord Lingaraj.

58. Further, it may be noted here that since the lands in question form part of the "religious endowment" of Lord Lingaraj, Lord Lingaraj is the absolute owner of such property and its administration shall be governed by the provision of the OHRE Act, 1951.

59. A coherent reading of proviso to sub-section (3) of [Section 8](#) and [Section 7\(d\)](#) and Section 7-A of the OEA Act read with Government Orders/notifications referred to above and Section 3(xii) of OHRE Act which defines "religious endowment", Section 2(h) of the OEA Act, which defines the term 'intermediary' makes it amply clear that nobody has any right, title and interest over the property of Lord Lingaraj except the deity.

60. The Sevayats have only right to possess the land as long as they render specific services. The sevayats, therefore had/have no alienable right in the seva land.

Therefore, the Sevayats could not have transferred any right, title and interest on the property belonging to Lord Lingaraj to any of their Vendees and the said Vendees could not have made transfer to the subsequent purchaser(s).

61. Apart from the above, under Section 19 of OHRE Act, without prior sanction by the Commissioner of Endowment, sale of the land belonging to the deity is expressly barred. Such sanction can be accorded when such sale is necessary or beneficial to the institution.

Xxx

xxx

xxx

63. In view of the above, we are of the considered view that Lord Lingaraj has right, title and interest over the property declared "Trust Estate" of Lord Lingaraj even after vesting of the said property by Government notification dated 18.03.1974 and in absence of any application under Sections 6 and 7 of the OEA Act, the ownership of the Trust Estate of Lord Lingaraj remains unaffected and it cannot become the property of the State Government. "

(8-B) In view of above law, the admission of plaintiff that the suit land which was burdened with service i.e. Seva Puja, is still being offered by the successors of Joginath, runs counter to the fact that Joginath had transferable title. The status of Joginath can only be decided in presence of Commissioner of Endowment as suit land is still available with the domain of Lord Lingaraj Mahaprabhu. The absence of Commissioner of Endowment as a party in this suit, is fatal being contravention of Odisha Hindu Religious Endowment Act.

Suffice it to conclude that Joginath Mohapatra had no valid absolute title over the suit land to make a registered sale deed on 9.4.1973 and the sale deed Ext.-4 is void.

9- The ratio of Niranjana Meikap case explores the dual challenges of law regarding vesting of the land of Lord Lingaraj and land burden with service. Learned lower court has not tested the case in the light of above law. Though the end result of dismissal of suit is acceptable, on independent analysis of fact and law, the finding that the suit land vested to state of Odisha cannot be supported and the same is reversed. The effect of it does not pave way to interfere in the impugned judgment in this appeal. Hence it is ordered.

ORDER

The appeal is dismissed on contest but in the peculiar circumstance of the case, the parties shall bear to their respective costs.

Addl. District Judge-cum-
Special Judge, C.B.I.- II, Bhubaneswar

Dictated and corrected by me. The judgment is pronounced in the open court today this the 3rd May, 2016.

Addl. District Judge-cum-
Special Judge, C.B.I.- II, Bhubaneswar