

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.15022 & 15020 of 2022

(An application under Articles 226 & 227 of the
Constitution of India)

Amaresh Das ... **Petitioner**
(In W.P.(C) No.15022 of 2022)

-versus-

State of Orissa & others ... **Opposite Parties**

AND

Amaresh Das ... **Petitioner**
(In W.P.(C) No.15020 of 2022)

-versus-

State of Orissa & others ... **Opposite Parties**

For Petitioner : **Mr. S.K.Dash, Advocate**

For Opposite Parties : **Mr.G.N.Rout, ASC**
Ms. P.Naidu, Advocate
(for OPNo.2)

CORAM:

HON'BLE MR. JUSTICE D. DASH

HON'BLE MR. JUSTICE G. SATAPATHY

DATE OF HEARING :16.01.2024

DATE OF JUDGMENT:22.01.2024

G. Satapathy, J.

1. The petitioner by way of these two writ petitions not only challenges the condition/stipulation imposed by the learned Commissioner of

Endowments, Odisha, Bhubaneswar in his judgment dated 23.03.2018 in O.A. No. 144 of 2015, but also seeks for a direction to Opposite Party Nos. 1 to 4 in W.P.(C) No. 15020 of 2022 to execute and register the sale deed in respect of the land against which NOC was sought for in O.A. No. 144 of 2015.

2. The reliefs as sought for in both the writ petitions being inextricably interrelated and the result being inter dependant with common facts in between majority of the parties, the same are heard together and disposed of by way of this common judgment.

Facts in W.P.(C) No. 15022 of 2022

3. Briefly stated, the petitioner's case is that the deity namely, "Sri Nitai Gauranga Milita Tanu Sri Radharaman Dev Bije, Nijagruha" marfatdars Sakhi Das W/O Late Banabihari Das and Debendra Nath Das S/O Late Anand Kishore Das is the private family deity of the petitioner and proforma Opposite Parties Nos. 4 to 11 being the successors-in-interest of the marfatdars Sakhi Das and Debendra Nath Das, but

the marfatdar namely, Sakhi Das died issueless, whereas the other marfatdar Debendra Nath Das died leaving behind his three sons namely, Amiya, Raicharan, Nabdip and four daughters namely, Sarojini, Rashmirekha, Pravasini and Pramodini and out of the three sons, Nabdip died leaving behind his wife, two sons and a daughter namely, Anuradha Das, Amaresh Das(petitioner) and Swetalina Das respectively. The predecessors-in-interest of the petitioner and proforma Opposite Party Nos. 4 to 11 created a nominal debottar and endowed the property in land under Plot No. 364 measuring an area Ac.0.122dec. and Plot No. 365 measuring an area Ac.0.080 dec. both under Khata No. 353 of Mouza Bandhu Mohanty Nagar, Unit-10 and accordingly, the land stood recorded in the name of aforesaid private deity. After the death of marfatdars Sakhi Das and Debendra Nath Das, the petitioner and proforma Opposite Party Nos. 4 to 11 are managing the affairs of the deity as "marfatdars". While the

matter stood thus, the Executive Engineer, Jajpur Irrigation Division intended to purchase an area of Ac.0.160dec. out of the land recorded in the name of the private deity for construction of capital embankment No. 2A in the right hand side of river Baitarani and he, accordingly, issued notice for the said purpose vide notice No. 7944 dated 13.11.2014. In this situation, for the purpose of obtaining "No Objection Certificate"(NOC), the petitioner and proforma Opposite Parties made an application U/S. 19-A of the Orissa Hindu Religious endowments Act, 1951(in short the "Act") before the Commissioner of Endowments, Odisha, Bhubaneswar in O.A. No. 144 of 2015, but even after recording a finding that Opposite Party No.3 as the private deity of petitioner and proforma Opposite Party Nos. 4 to 11 by its judgment dated 23.03.2018, the Commissioner of Endowments directed for issuance of NOC in the prescribed format in "Form AA" in favour of the petitioner and proforma Opposite Parties subject to

condition of the deposit of sale proceeds in the name of the deity in any Nationalized Bank under long term fixed deposit scheme and pledging the same in favour of Commissioner of Endowments, and thereby prohibited the petitioner and proforma Opposite Parties Nos. 4 to 11 from utilizing the sale proceeds for their personal benefit. However, NOC was issued in favour of petitioner and proforma Opposite Parties Nos. 4 to 11 in Form No. AA, but according to the petitioner, Section 19-A of the Act is only applicable in case of public religious institution and not in case of private deity and therefore, the stipulation as imposed by the Commissioner of Endowments is contrary to the provisions of the Act. Accordingly, the petitioner challenges such stipulation in this writ petition i.e. W.P.(C) No. 15022 of 2022.

Facts in W.P.(C) No. 15020 of 2022

4. In addition to the aforesaid factual background, the petitioner herein claims that the Executive Engineer, Jajpur Irrigation Division by way

of notice No. 2282 dated 20.03.2015 called upon the petitioner and proforma Opposite Party Nos. 8 and 11 to execute the sale deed on receipt of the consideration amount in lieu of compensation due to compulsory nature of acquisition, but neither any sale deed has yet been executed nor has any consideration amount been paid to the parties in lieu of compensation. In such situation, the petitioner submitted a representation to Executive Engineer Irrigation Division, Jajpur to take effective steps, but pursuant to such representation, the Land Acquisition Officer(Civil), Jajpur by its letter No. 2643 dated 11.02.2020 requested the Executive Engineer, Jajpur to take necessary steps for execution of sale deed on payment of compensation amount. According to the petitioner, the land has already been acquired in the meanwhile and the embankment thereon has already been constructed and thereby, the petitioner and Opposite Party Nos.6 to 13 in W.P.(C) No.15020 of 2022 issued a pleader's notice to Opposite Party

Nos.1 to 4 to execute the sale deed in respect of the land used by them for the construction of embankment, but in vain. Finding no way out, the petitioner in W.P.(C) No.15020 of 2022 prays for a direction to Opposite Party Nos.1 to 4 to pay the consideration money in lieu of compensation amount so as to enable them to execute and register the sale deed in respect of the land already used for construction of embankment.

5. Relying upon the decisions in ***Gopal Chandra Ramanuj Das v. State of Odisha and Others; 2021 (II) OLR 947*** and ***Sri Laxminarayan Thakur v. Commissioner of Endowments, Odisha in W.P.(C) No.14407 of 2019*** decided on 04.02.2020, Mr. S.K. Dash, learned counsel appearing for the petitioners in both the writ petitions has submitted that the imposition of condition for grant of NOC in the judgment dated 23.03.2018 passed by Commissioner of Endowments, Odisha, Bhubaneswar in OA No.144 of 2015 being

contrary to the law as held by this Court in the relied on decisions, the same is required to be set aside/quashed. It is further submitted that due to the aforesaid condition as imposed by the Commissioner of Endowments, the land of the private deity could not be purchased by the Executive Engineer, Irrigation Division, Jajpur, and thereby, depriving the parties as well as the deity of their legitimate due. It is, accordingly, prayed by the learned counsel for the petitioner that necessary direction may kindly be issued to Opposite Party Nos.1 to 4 in W.P.(C) No. 15020 of 2022 to pay the consideration money in lieu of the compensation so as to enable the petitioner and proforma Opposite Party Nos.6 to 13 to execute and register the sale deed in question within a stipulated time.

6. On the other hand, Ms. P. Naidu, learned counsel appearing for the Commissioner of Endowments, Odisha, Bhubaneswar, however, supporting the impugned judgment of the

Commissioner has submitted that the imposition of condition being for the benefit of the deity, the same needs not be quashed or set aside and, therefore, the petitioner is not entitled to any relief.

7. On the other hand, Mr. G.N. Rout, learned Additional Standing Counsel, however, has submitted that no direction can be passed to direct Opposite Party Nos.1 to 4 in W.P.(C) No. 15020 of 2022 to pay the consideration money in lieu of compensation as sale and purchase being in the domain and pleasure as well as choice of the parties.

8. In view of the exposition of the facts involved in these two writ petitions and keeping in view the rival submissions as advanced, the issue involved in W.P.(C) No.15022 of 2022 being with regard to challenge of the petitioner to the condition as imposed by the Commissioner of Endowments, Bhubaneswar and identical issues having been the resolved by the judgment of this Court in **Gopal Chandra Ramanuj Das (supra)** and **Sri**

Laxminarayan Thakur (supra), this Court feels it appropriate to reiterate the principle laid down in these two decisions. In **Sri Laxminarayan Thakur (supra)**, the petitioner therein has prayed to quash/set aside the conditions imposed by the opposite party under Annexures-4 and 5 while allowing the application of the petitioner praying for issuance of "No Objection Certificate" to sale the case schedule land. It is the further prayer of the petitioner therein that the opposite party be directed to issue "No Objection Certificate" in Form-AA as required under Rule-4-A(3) of the Orissa Hindu Religious Endowments Rule, 1959. In the aforesaid case, the Division Bench of this Court after surveying the facts involved in that case, wherein the issue/dispute was identical to the issue involved in the present writ petition, has been pleased to held as under:

*"In view of such discussion, we have no hesitation in **setting aside the conditions imposed by the learned Commissioner under Annexure-4** while allowing application*

of the petitioner for issuance of "No Objection Certificate" and also the conditions contained in "No Objection Certificate" under Annexure-5 as the same are not in conformity with the requirements of law. Since we have maintained the direction of the learned Commissioner of Endowments for issuance of No Objection Certificate, we hereby direct the learned Commissioner of Endowments to issue such Certificate to the petitioner deity strictly in consonance with Form-AA within a period of four weeks from the date of receipt of certified copy of this order".

Similarly, in the other decision in **Gopal Chandra Ramanuj Das (supra)** wherein the issue raised before this Court was also identical; a Division Bench of this Court has recorded its conclusion in paragraphs-9 and 10 as under:

"9. *In view of the discussions made above, this Court is of the considered view that the learned Commissioner has **travelled beyond its jurisdiction by imposing condition while granting the NOC** under Annexure-5. Consequently, the NOC granted under Annexure-6 is also not sustainable in the eyes of law.*

10. *Accordingly, **the conditions imposed under Annexure-5 for grant of NOC in respect of the private religious institution of the Petitioner are set aside.** The learned Commissioner is directed to issue fresh NOC without imposing any condition in Form AA strictly in adherence to Rule 4-A of the Endowments Rules."*

9. On advertng to the case at hand, it is never in dispute that the Commissioner of Endowments by the impugned judgment has clearly held that the case deity/institution is a private family deity of petitioner Nos.2 to 10, who are the petitioner and proforma Opposite Parties in W.P.(C) No.15022 of 2022 and the case schedule land belongs to the deity. The unambiguous position of law is that Rule 4A of the Orissa Hindu Religious Endowments Rules, 1959 (in short the "Rules") prescribes procedure for obtaining "No Objection Certificate" under Section 19-A of the Act, which provides for regulation of registration of documents, but sub Rule-3 of Rule 4A of the Rules mandates as under:-

"on receiving the objection if any, within the stipulated period and after giving reasonable opportunity of hearing to the parties, if the Commissioner is prima facie satisfied that the institution in question is not a public religious institution for which no sanction under Section 19 of the Act is required, he shall grant NOC in Form AA to these Rules".

10. A conjoint and harmonious reading of provision of Section 19-A of the Act and sub Rule-3 of Rule 4A of the Rules makes it very clear that Section 19-A cannot be confined to public religious institution only and it extend to private religious institution also and an NOC is required to be issued for alienation of immovable property of a private religious institution. The admitted averments taken in the writ clearly goes to show that the Executive Engineer, Jajpur Irrigation Division had intended to purchase a piece of land Ac.0.160 dec. out of the land recorded in the name of the private deity of the petitioner and proforma Opposite Party Nos.4 to 10 in W.P.(C) No. 15022 of 2022 who have approached the Commissioner of Endowments in OA No.144 of 2015 under Section 19-A of the Act, but the learned Commissioner of Endowments has passed order for issuance of NOC in their favour by stipulating therein certain condition which is contrary to law and liable to be set aside.

11. In the aforesaid facts and circumstance and discussions made hereinabove as well as the law laid down by this Court in ***Gopal Chandra Ramanuj Das (supra) and Sri Laxminarayan Thakur (supra)***, the condition as imposed by Commissioner of Endowments for issuance of NOC in favour of the petitioner and proforma Opposite Party Nos.4 to 10 in W.P.(C) No. 15022 of 2022 being contrary to law is liable to be set aside and hence so far as the condition imposed in the judgment passed by the Commissioner of Endowments, Bhubaneswar in OA No.144 of 2015 for grant of NOC in respect of the private deity namely, "Sri Nitai Gauranga Milita Tanu Sri Radharaman Dev Bije, Nijagruha" is hereby set aside.

12. The petitioner has also prayed in the other writ i.e. W.P.(C) No.15020 of 2022 to direct Opposite Party Nos.1 to 4 therein to purchase the aforeaid land by paying the consideration amount in lieu of compensation, but as it appears that sale and

purchase being the right of the parties concerned therein, no such direction can be issued. In this case, the petitioner has sought for a direction to Opposite Party Nos.1 to 4 to purchase the property of the private deity, but the same cannot be positively ordered.

13. In the result, W.P.(C) No.15020 of 2022 stands dismissed and W.P.(C) No.15022 of 2022 is allowed. There is no order as to cost. Consequently, the condition as imposed in the judgment dated 23.03.2018 passed by the Commissioner of Endowments, Odisha, Bhubaneswar in OA No.144 of 2015 for grant of NOC in Form AA under Annexure-1 is hereby quashed/set aside.

(G. Satapathy)
Judge

I Agree

(D.Dash)
Judge

*Orissa High Court, Cuttack,
Dated the 22nd day of January, 2024/Kishore*