2019 INSC 1039

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9576 OF 2010

K. ARJUN DAS .....APPELLANT(S)

VERSUS

COMMISSIONER OF ENDOWMENTS, ORISSA & ORS. .....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 9577 OF 2010

J U D G M E N T

Rastogi, J.

1. These appeals arise from the judgment dated 8th April, 2009 passed by the Division Bench of Orissa High Court directing the

Commissioner Endowments to put the subject land in question by fixing the upset price afresh and sell the property by public auction with the liberty to the parties to participate and if the highest bid goes less than Rs. 25 lakhs per acre, respondent nos. 4 & 5(appellants in the writ appeals) shall be responsible to purchase the property @ Rs. 25 lakhs per acre and in the event of non-deposit, the District Authority shall recover the said amount as a land revenue.

2. The brief facts culled out and relevant for the purpose are that the fit person, namely, Sunaram Sabat on behalf of the deity Sri Rama Laxman Sita Swamy Bije at P.O. Luchapada, District Ganjam filed an application under Section 19 of the Orissa Hindu Religious Endowments Act, 1951(hereinafter being referred to as the "Act, 1951") seeking permission for sale of Ac. 4.255 decimals of land belong to the deity indicated in the application and referred to by the Commissioner Endowments, Orissa, Bhubaneshwar in its order dated 22nd February, 2005.

3. It was pleaded that the subject land in reference to which the permission is being sought was managed by him and is

recorded in the name of the deity under Sections 6 and 7 of the Act, 1951 and it is lying barren and no income is being derived by the institution and is in possession of the appellant (K. Arjun Das, s/o K. Pitabas Das) for a long time and the income derived from it is very scanty. According to him, the market value of the subject land may be about Rs. 2 lakhs per acre and in case it is sold, the sale proceeds may be kept in fixed deposit account and it will fetch more than the present income and, therefore, requested that the proposed sale is, therefore necessary and beneficial in the interest of the deity.

4. After publication of the notice, opposite party entered their appearance and also filed their written response. The Commissioner Endowments directed Inspector, Endowments to make enquiry and submit report. Pursuant thereto, the Inspector, Endowments submitted his report dated 27th April, 2002 indicating that after making local visit to the subject land, he found the same as lying fallow and no income is generated for the institution and in his view it will be beneficial for the institution if the sanction would be accorded for the proposed sale. He further opined that the value of the land would be in the

range of Rs. 5 to 5.50 lakh per acre and this has been assessed by the Officer after visit to the office of Sub-Registrar and after obtaining details of the sale deeds of the area.

5. The appellant in the instant proceedings, also filed affidavit before the Commissioner Endowments that he is in possession of the subject property as a tenant for the last 40 years and paying bhag(share) of the crop to the deity. In support of the claim of tenancy and paying bhag(share) notices of the Inspector Endowments for deposit of bhag, various receipts of payment of bhag were produced before the Commissioner Endowments which has been placed on record in the instant Civil Appeal No. 9576/2010 at pages (32-40).

6. Taking note of the fact that application was filed in the year 2001, the Inspector Endowments submitted his report on 27th April, 2002 relying on the sale statistics of the year 2000 and 2001 and four years have been rolled by and there is always a considerable increase in the market value of the land day by day noticing the cumulative effect of the facts into consideration, the Commissioner Endowments with due diligence fixed Rs. 10 lakhs

per acre as upset price and accorded permission for sale. The appellant being in possession of the subject land, the Commissioner Endowments considered it appropriate to offer first choice to purchase subject land at the rate of Rs. 10 lakhs per acre and in case he fails to purchase, the subject land be put to public auction fixing Rs. 10 lakhs per acre as the upset price and such auction be conducted in the presence of Inspector Endowments and while disposing of the application vide order dated 22nd February, 2005, apart from execution of the sale deed, the order to be published in the religious institution and in a conspicuous place of the locality where the property is situated as per rule 4 sub-rule (2) of clauses (1) and (b) of the Orissa Hindu Religious Endowments Rules, 1959(hereinafter being referred to as "Rules 1959").

7. Indisputedly, the order of the Commissioner Endowments dated 22nd February, 2005 was communicated to the State Government and also published in the manner prescribed in compliance of sub-section (3) of Section 19 of the Act, 1951.

8. Under the scheme of the Act, 1951, the order passed by the Commissioner Endowments is appealable by the trustee or any person taking interest to the State Government under sub-section (4) of Section 19 of the Act subject to the limitation provided therein. At the same time, the State Government can also exercise its inherent power if it appears to the State Government that alienation is either not necessary or beneficial to the institution or the consideration fixed in respect of the transfer by exchange, sale, mortgage or lease of the property is inadequate, invoking sub-section (5) of Section 19 of the Act, 1951 within the statutory period of 90 days of the receipt of the order communicated under sub-section (3) of the date of publication of the order whichever is later.

9. Since the limitation of filing appeal against the order of Commissioner Endowments expired in terms of sub-section (4) of Section 19 of the Act on 6th May, 2005, the sale deeds were executed and registered in favour of the appellant in respect of the land admeasuring Ac. 2.019 decimals on payment of Rs. 20.19 lakhs on 2nd August, 2005 and 30th August, 2005 respectively.

10. Respondent no. 8(Chinmaya Mohapatra) being a person interested filed appeal before the State Government on 20th September, 2005 against the order of the Commissioner Endowments dated 22nd February, 2005 and simultaneously the State Government also suo motu initiated the proceedings to revisit the procedure adopted by the Commissioner Endowments under sub-section (5) of Section 19 and in the pending proceedings, respondent nos. 4 and 5(Lokesh Patro and Debendranath Patro) filed their intervention application, inter alia, stating that they are interested in a piece of land ad-measuring Ac. 0.619 decimals for which they are prepared to pay Rs. 30 lakhs per acre.

11. The State Government after taking note of the rival claims and noticing that it was time barred claim of the intervenors and also the fact that the sale deed for Ac. 2.019 decimals of land has been executed by a registered deed on 2nd August, 2005 and 30th August, 2005 respectively and took note of the report of the

Inspector Endowments who also opined that land could fetch Rs. 5.50 lakhs per acre in the year 2002 and the Commissioner Endowments has granted permission to sell the land in the year 2005 at the rate of Rs. 10 lakhs per acre with preferential right to the appellant. As regards the intervention application filed by respondent nos. 4 and 5, it was alleged that they never pleaded before the Commissioner Endowments despite publication nor filed any appeal confirmed the order of the Commissioner Endowments vide its order dated 30th May, 2006. However, further directed that with regard to the remaining Ac. 2.206 decimals of land, the same may be sold by public auction after due publicity in accordance with law.

12. It is informed to this Court that despite order of the State Government dated 30th May, 2006, no public auction for the remaining Ac. 2.206 decimals of land has so far been held by the authority as yet.

13. That order of the State Government dated 30th May, 2006 came to be challenged by respondent nos. 4 and 5 who were intervenors in the proceedings in a writ petition under Article 226

& 227 of the Constitution of India, inter alia, on the ground that the present appellant was not the tenant and they were willing to offer the rate of Rs. 25 lakhs per acre for the subject land.

14. The Single Judge of the High Court after noticing the facts of the case observed that the land ad-measuring Ac. 2.019 decimals has been sold in February, 2005 by a registered sale deed and is no more available for public auction and there is no procedural defect in the decision making process pointed out by the writ petitioners and the action being in conformity with the provisions of the Act, 1951 dismissed the writ petition vide order dated 25th February, 2008 with a liberty to go ahead for public auction of the remaining land ad-measuring Ac. 2.206 decimals after adopting the procedure prescribed under the Act, 1951.

15. The order of the Single Judge came to be challenged by respondent nos. 4 & 5 in Letters Patent Appeal before the Division Bench of the High Court which came to be allowed under the judgment impugned dated 8th April, 2009 on the premise that there was no evidence to show that the appellant was tenant and there was no basis to fix the price at Rs. 10 lakhs

per acre and accordingly directed the Commissioner Endowments to put the total land as prayed for public auction at the rate of Rs. 25 lakhs per acre which was offered by respondent nos. 4 and 5 and in case the property fails to fetch Rs. 25 lakhs per acre, respondent nos. 4 & 5(original writ petitioners) shall be responsible to purchase the property @ Rs. 25 lakhs per acre and in the event of non-deposit, the District Collector, Ganjam shall recover the said amount as a land revenue which is a subject matter of challenge in the appeals before us at the instance of the persons in whose favour the sale deed was executed and registered in reference to land ad-measuring Ac. 2.019 decimals dated 2nd August, 2005 and 30th August, 2005 respectively and also by the applicants who later purchased a piece of land from the present appellant in Civil Appeal No. 9576 of 2010 claiming to be the bonafide purchaser, and their rights are being infringed by the judgment of Division Bench impugned dated 8th April, 2009.

16. Learned senior counsel for the appellant, Mr. Vijay Hansaria, submits that it was an admitted case from the day one when the application was filed on behalf of the deity before the

Commissioner Endowments seeking permission under sub-section (1) of Section 19 of the Act, 1951 indicating that the present appellant is in possession of the subject land in question as tenant and this fact was nowhere questioned either before the Commissioner Endowments or in the suo motu proceedings initiated by the State Government in exercise of sub-section (5) of Section 19 of Act, 1951 and in support of his status, he has placed the receipts on record before the authority to establish that he was the tenant and has paid bhag(share) for sufficient long time and paying bhag(share) was also recorded by the Inspector Endowments in his report dated 27th April, 2002 and to support it further, the receipts have been placed on record at pages 32-40 in Civil Appeal No. 9576 of 2010 to which no counter has been filed in rebuttal.

17. Learned counsel submits that the Commissioner Endowments after holding enquiry under sub-section(1) of Section 19 of the Act, 1951 of which a detailed reference has been made fixed a valuation at the rate of Rs. 10 lakhs per care as it reveals from its order dated 22nd February, 2005. That apart, there was a concealment on the part of respondent nos. 4

& 5 that they have purchased an adjoining piece of land from the private land owner for a consideration of Rs. 6.50 lakhs per acre by registered sale deed dated 27th December, 2006. Still they intervened in the instant proceedings to purchase a piece of land extending an area of Ac. 0.0619 decimals and not the total subject land which was purchased by the appellant ad-measuring Ac. 2.019 decimals at the rate of Rs. 10 lakhs per acre as fixed by the Commissioner Endowments after holding inquiry under the Act, 1951.

18. Learned counsel submits that in the given facts and circumstances, the blanket order passed by the Division Bench of the High Court without appraisal of the evidence on record to put the total land to public auction and nullifying the registered sale deed executed by the competent authority in favour of the appellant dated 2nd August, 2005 and 30th August, 2005 under Article 227 of the Constitution of India is not legally sustainable in law.

19. Learned counsel submits that it was not the case of the respondent nos. 4 and 5 at any stage that the sale deed has been

registered either in contravention of law or being obtained by fraud. In absence thereof, nullifying their registered sale deed under the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India was not sustainable and deserves to be interfered by this Court.

20. Learned counsel in Civil Appeal No. 9577 of 2010 supported the submission made by the appellants and in addition further submits that they are the bonafide purchasers and both of them have purchased the piece of land by a registered sale deed dated 24th June, 2006 and 6th May, 2008 respectively and at least the land which they have purchased by the registered sale deed after payment of due consideration could not be nullified by the High Court under the impugned judgment and needs to be interfered with by this Court.

21. Per contra, learned counsel for respondent nos. 4 and 5 who have primarily opposed the appeals, while supporting the judgment of the Division Bench further submits that from the day one they had made an offer to purchase the subject land at the rate of Rs. 25 lakhs per acre but no one has listened to their

request and this fact cannot be ruled out that the deity being a perpetual minor and a person incapable to nullify the holdings and ultimately the state authorities are under obligation to watch the interest of such minor/disabled persons. The deity cannot be divested of any title or rights of immovable property in violation of the statutory provisions and this fact cannot be ruled out that the property belonging to the deity must fetch the best possible price which the respondents are willing to pay for the subject land in question belonging to the deity which alone will serve the purpose in upholding the best interest of the deity and whose interest is to be awarded by the manager/trustee/pujari and ultimately by the State Government under the provisions of the Act, 1951 and that being the paramount consideration which has been noticed by the Division Bench under the impugned judgment needs no further interference.

22. Learned counsel during the course of arguments has informed to this Court that if the total land in question ad-measuring Ac. 4.255 decimals of Luchapada, District Ganjam Khata No. 181 and 381 of which a description has been made by the Commissioner Endowments, Orissa in its order dated 22nd

February, 2005 is taken into consideration, he has instructions to inform to this Court that his client (respondent nos. 4 and 5) are ready to pay a sum of Rs. 75 lakhs per acre but no offer was made for the remaining land of Ac. 2.206 decimals which has been directed by the State Government to put to public auction vide order dated 22nd February, 2005.

23. We have heard learned counsel for the parties and with their assistance perused the material available on record.

24. At the outset, it may be noticed that the present appellant is only concerned in respect of the land ad-measuring Ac. 2.019 decimals in reference to which the sale deed was executed and registered in his favour on 2nd August, 2005 and 30th August, 2005 respectively.

25. Before adverting to the facts of the case, it will be apposite to take note of the scheme of the Act, 1951. The State of Orissa with its legislative competence introduced the Act, 1951 with an object to provide better administration and governance of Hindu public religious institutions and endowments in the State of

Orissa. The extract of the Section 19 relevant for the purpose is reproduced as under:-

> **"Section 19 - Alienation of immovable trust property**
>
> (1) Notwithstanding anything contained in any law for the time being in force no transfer by exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned.
>
> [Explanation-A lease for a term not exceeding five years but with a condition of renewal permitting continuance of the lease beyond five years shall, for the purposes of this sub-section, be deemed to be a lease for a term exceeding five years.
>
> (1-a) The fact of execution of a lease deed with a condition for renewal or renewal of such a deed shall be communicated to the Commissioner by the Trustee not later than fifteen days from the date of execution.
>
> (1-b) After expiry of the term of the lease the lessee shall deliver possession of the leasehold land to the lessor, failing which, the Commissioner may take action in accordance with the provision of Section 68:
>
> Provided that all structures, permanent or temporary, if any, constructed plants and machineries and other things installed and kept on the leasehold land, which is a subject-matter of a lease executed after

commencement of the Orissa Hindu Religious Endowments (Amendment) Act 22 of 1989 by the lessee, his servants or agents, shall become the property of the religious institution unless removed from the land within such period, as may be prescribed, after expiry of the term of lease, in respect of which the Commissioner shall take action under the provision of Section 68.

(1-c) Notwithstanding anything contained in the proviso to Sub-section (1-b), no property belonging to a person other than the lessee shall be subjected to confiscation under the said proviso, unless such person fails to remove his property within a period of thirty days from the date of publication of a notice which shall be issued by the Trustee within such period as may be prescribed after the expiry of the term of lease:

Provided that any person whose property is affected under Sub- section (1-c), may file an application to the Commissioner claiming the property whose decision shall, subject to the decision of the Civil Court, be final.]

(2) In according such sanction, the Commissioner may declare it to be subject to such conditions and directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period,

(3) A copy of the order made by the Commissioner under this section shall be communicated to the State Government and to the trustee and shall be published in such manner as may be prescribed.

[(4) The trustee may, within thirty days from the date of receipt of a copy of the order and any person having interest may, within thirty days from the date of publication of the order, appeal to the State Government to modify the order or set it aside:

Provided that appeals from the orders communicated or published prior to the date of commencement of the Orissa Hindu Religious Endowment (Amendment) Act, 1980 shall lie within a period of three months from the date of communication or, as the case may be, publication of the order or within a period of thirty days from the commencement of the said Act whichever period expires earlier.

(5) In any case where appeal has not been made to the State Government it appears to the State Government [that the alienation is not necessary or beneficial to the institution, or] that the consideration fixed in respect of the transfer by exchange, sale, mortgage or lease for a term exceeding five years of any immovable property is inadequate, they may, within ninety days from the date of the receipt of the order communicated to them under Sub-section (3) or the date of the publication of the order whichever date is later, call for the record of the case from the Commissioner and after giving an opportunity of hearing to the parties concerned, revise the order of the Commissioner :

Provided that in any case where the transfer has not been effected in pursuance of the order of the Commissioner under Sub-section (1), the State Government may exercise the aforesaid power even after the expiry of ninety days from the date of such order.

(6) The State Government may, by order, stay execution of the deed of transfer in respect of the immovable property which form the subject-matter of an appeal or revision till the disposal of the appeal, or as the case may be, the revision.

(7) The order of the Commissioner made under this section shall, subject to orders, if any, passed in an appeal or revision, be final.]"

26. Keeping in view the paramount object of good governance, if any decision is taken to alienate the immovable trust property, an inbuilt mechanism has been provided with a *non obstante*

clause having overriding effect contained in any law to restrict the alienation of any immovably trust property belonging to, or given or endowed for the purpose of, any religious institution, unless sanctioned by the Commissioner as being necessary or beneficial to the institution with a further restriction that no such transfer shall be valid or operative unless it is so sanctioned.

27. After due compliance of the mandate of law as envisaged under sub-section (1) of Section 19 of Act, 1951 while granting sanction, the requirement as provided under sub-section (2) of Section 19 has to be properly taken care of in reference to the utilisation of funds and further mandating under sub-section(3) that copy of the order of the Commissioner shall be communicated to the State Government and to the trustee and shall be published in such a manner as may be prescribed.

28. After the order of the Commissioner is communicated to the State Government and published in the manner as may be prescribed, the trustee or any person if interested may prefer an appeal, if so desired, under sub-section (4) to the State Government. At the same time, the State Government may

exercise its inherent power suo motu as provided under sub-section (5) of the Act with the period of limitation provided therein and Order of the Commissioner Endowments under sub-section (6) shall be final subject to orders, if any, passed in appeal or revision as referred to sub-section (7) of the Act.

29. In the instant case, the Commissioner Endowments taking note of the affidavits filed by the respective parties and also the fact that the appellant is the tenant and in possession over the subject land since last 40 years paying bhag(share) to the deity and has shown his inclination to purchase the subject land at a price which the Commissioner Endowments may fix and took note of the report of Inspector Endowments dated 27th April, 2002 who has admitted in his report that the subject land is lying barren and no income is derived to the institution and is not in cultivable position. On the contrary, the institution used to bear the expenditure towards payment of land revenue out of the institution fund, which is an extra burden to the institution and taking note of the market value as proposed by the Inspector Endowments based on the sale statistics relating to the year 2000-2001 of Rs. 5.50 lakhs per acre and 4 years had rolled

thereafter, with due diligence, granted permission for sale of the subject land with pragmatic approach by fixing the price of Rs. 10 lakhs per acre and the appellant being in possession of the land was given the first choice to purchase the subject land failing which it may be put to public auction under its order dated 22nd February, 2005.

30. It reveals from the record that the Division Bench of the High Court has initially proceeded on the basic principles that deity being a perpetual minor and ultimately the State authority is under an obligation to protect the interest of the minor and the deity cannot be divested of any title or rights of immovable property in violation of the statutory provisions leaving aside the mandate of the Act, 1951. There could not be any two views possible, so far it has to protect the rights of the deity is concerned, the object is indeed laudable and based on public policy which each one has to uphold but that is always to be examined keeping in view the parameters as mandated under the law.

31. The plain reading of the judgment of the Division Bench of the High Court shows that it has committed a manifest error in not appreciating the concurrent finding noticed by the Single Bench of the High Court and has proceeded on a tangent, brushing aside the factual foundation on a price of hand offered by respondent nos. 4 & 5 who were merely intervenors in the proceedings standing on the fence having no stakes on their shoulders, came forward just to nullify the registered sale deed executed in favour of the appellant by adopting the indirect method in making a public offer. To the contrary, if there was any error in the decision making process adopted by the respondents, the remedy available with the intervenors respondent nos. 4 and 5 was to question the registered sale deed in the appropriate proceedings available under the law which certainly must have been appeared to be more cumbersome and the easy walkover was to attack the procedure adopted by the competent authority by making a stray offer with no liability to discharge, such a procedure cannot be countenanced to nullify the registered sale deed executed in favour of the appellant after due compliance and mandated by law under Act, 1951.

32. It has not been controverted by the respondent nos. 4 and 5 that they themselves have purchased an adjoining piece of land from private owners for a consideration of Rs. 6.50 lakhs per acre on 27th December, 2006 in the given circumstances, the so called lucrative offer made by them appears to be only to frustrate the action of the respondent authority which was easily accessible to them under the writ jurisdiction of the High Court under Article 226 & 227 of the Constitution of India.

33. In our considered view, the Division Bench of the High Court has committed a manifest error of law and facts in setting aside the concurrent finding noticed by the Single Judge of the High Court in the impugned judgment which, in our considered view, on this score is not legally sustainable in law.

34. Before parting, we would like to observe that the learned counsel for the respondent nos. 4 and 5 has made an offer that his client is ready to pay Rs. 75 lakhs per acre as on today but his offer was for the total land of Ac. 4.255 decimals including the subject land Ac. 2.019 decimals to which the sale deed has been executed and registered in favour of the appellant has to be

parted with. This factual statement recorded by us is to be noticed and may be taken into consideration by the respondents while taking any future action in reference to the remaining land Ac. 2.206 decimals in question, if any decision is being taken for its alienation if so required, it goes without saying, after due compliance, as mandated under the law.

35. The appeals succeed and are accordingly allowed. The judgment of the Division Bench of the High Court dated 8th April, 2009 is hereby set aside with the observations(supra). No costs.

36. Pending application(s), if any, stand disposed of.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
SEPTEMBER 17, 2019