

PETITIONER:

LORD JAGANNATH THROUGH JAGANNATH SINARINARASINGH DAS MAHAPAT

Vs.

RESPONDENT:

STATE OF ORISSA & ORS.

DATE OF JUDGMENT 02/11/1988

BENCH:

SHARMA, L.M. (J)

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SHARMA, L.M. (J)

SINGH, K.N. (J)

CITATION:

1989 AIR 464 1988 SCR Supl. (3) 732
1989 SCC Supl. (1) 553 JT 1988 (4) 296
1988 SCALE (2) 1191

ACT:

Orissa Estates Abolition Act, 1951: Sections 3A, 7A, 8D, 8E, 131 and 13G--Estate of Lord Jagannath--Whether has vested in the State of Orissa.

HEADNOTE:

Orissa Estates Abolition Act, 1951 was enacted to abolish all the rights in the land of intermediaries between the raiyats and the State of Orissa by whatever name known and for vesting the same in the State. Section 3 authorises the State Government to declare by a notification any estate specified therein to have passed to and become vested in the same State, i.e., the intermediary concerned is divested of the notified interests and becomes entitled to compensation. By an amendment s. 3-A was included in the Act permitting the State Government to issue a single notification in respect of a class or classes of intermediaries in the whole or a part of the State. By a further amendment in 1963 Chapter II-A was inserted in the Act making special provisions for public trusts. Clause (e) of s.13-A described "trust-estate". provisions were made in Chapter II-A for entertaining claims and determining the nature of the estates claimed to be trust estates and announcing the decision by notification. The effect of such a determination was, as mentioned in s. 13, to save the estate from vesting under a notification issued under s. 3 or 3-A.

A notification under s. 3 of the Act was issued in respect of the estate of Lord Jagannath on 27-4-1963, and on the same date another notification under s. 13-C., Chapter II-A followed declaring the estate as "trust estate". The consequence was the diety was not divested of the estate. In 1970 Chapter II-A was repealed. By insertion of clause (oo) in s. 2 in 1974 the said estate continued to be "trust estate." On 18.3.1974 a notification under s. 3-A was issued declaring the estate of the diety to have vested in the State.

A writ petition was filed in the High Court challenging the validity of the said notification, which was dismissed.

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In the appeal to this Court, on behalf of the appellant it was contended that as a result of the decision under chapter II-A declaring Lord Jagannath's estate a "trust estate" the same must be deemed to have been excluded from the scope of the Act and this decision became final and continued to remain effective even after the repeal of Chapter II-A. The right which was acquired under s. 13-I cannot disappear on the repeal of Chapter II-A as the estate in question went completely out of the ambit of the Act. The intention of the Legislature to include Lord Jagannath's estate within the expression "trust estate" in cl. (oo) in s. 2 by the Amending Act 1974 was clearly to spare the said estate permanently from the mischief of the Act.

Dismissing the appeal, this Court,

HELD: 1. There is no infirmity in the notification dated 18.3.1974 issued under s. 3-A of the Act. [737E]

2. It is manifest from the language of s. 13-1 that it saves a "trust estate" so declared under s. 13-G from the operation of a notification issued under s. 3 or 3-A, but does not extend the benefit any further. The provisions do not confer protection from the Act itself and cannot be interpreted to clothe it with a permanent immunity from being vested by a later notification issued under the Act. [737A-B]

3. Sections 7-A, X-A, 8-D and 8-E of the Act include special provisions for a trust estate and unmistakably indicate that "trust estates" are within the purview of the Act. The benefit they receive from a declaration under s. 13-1 is limited and referable only to a vesting notification issued earlier. [737D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 3177 of 1982.

From the Judgment and Order dated 24 ' 81 of the Orissa High Court in Original Jurisdiction Case No. 233 of 1977.

N K Das and A P Mohanty for the Appellant

G L. Sanghi R K Mehta, Ms. Mona Mehta and J R Das for the Respondents

The Judgment of the Court was delivered by

SHARMA, J. The question which arises in this appeal by special leave from the decision of the Orissa High Court in a writ case is whether the "estate" of Lord Jagannath has

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vested in the State of Orissa as a result of the notification dated 18.3.1974 issued under s. 3-A of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the Act) or the said notification is ultra vires and fit to be quashed.

2. The writ petition in the High Court was filed by a number of persons claiming to be Sevaks and worshippers of Lord Jagannath, the presiding deity of the famous Jagannath temple. The management of the temple and the properties including the intermediary interest is in the hands of a trust which was impleaded as a respondent in the case. Besides, the State of Orissa and Collector, Puri, the Administrator, Jagannath temple, the Jagannath Committee were also made parties. They, however, do not support the writ petitioners and agree with the State that the "estate" has vested under the impugned notification.

3. The Act was passed in 1952 for the purpose of abolishing all the rights in land of intermediaries between the raiyats and the State of Orissa by whatever name known

and for vesting the same in the State. Section 3 authorises the State Government to declare by a notification any estate specified therein to have passed to and become vested in the State. The result of such a notification is dealt with in s. 5. In substance the intermediary concerned is divested of the notified interests and becomes entitled to compensation to be computed in the manner indicated in the Act. By an amendment s. 3-A was included in the Act permitting the State Government to issue a single notification in respect of a class or classes of intermediaries in the whole or a part of the State. By a further amendment in 1963 Chapter II-A was inserted in the Act, making special provisions for public trusts. Clause (e) of s. 13-A described "trust estate" as an estate the whole of the net income whereof is dedicated exclusively to charitable or religious purposes. Admittedly the estate belonging to Lord Jagannath is included in the expression "trust estate". Provisions were made in Chapter II-A for entertaining claims and determining nature of the estates claimed to be trust estates and announcing the decision by notification. The effect of such a determination was, as mentioned in s. 13-I(1) to save the estate from vesting under a notification issued under s 3 or 3-A.

4. A notification under s. 3 of the Act was issued in respect to the estate of Lord Jagannath on 27.4.1963 and on the same date another notification under Chapter II-A followed declaring the estate as trust estate. Consequently the deity was not divested of the estate. In 1970 Chapter

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II-A was repealed. In 1974 the Act was further amended and "trust estate" which was not included in the definition section of the original Act was defined in clause (oo) in the following terms (excluding the Explanation which is not relevant for the present case):

0"(oo) 'trust estate' means an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual:

Provided that all estates belonging to the Temple of Lord Jagannath at Puri within the meaning of the Shri Jagannath Temple Act, 1955 and all estates declared to the trust estates by a competent authority under this Act prior to the date of coming into force of the Orissa Estates Abolition (Amendment) Act, 1970, shall be deemed to be trust estates.

On 18.3.1974 the impugned notification under s. 3-A, as quoted below, was issued:

"The 18th March 1974

S.R.O. No. 184/74-In exercise of the powers conferred by sub-section (1) of section 3-A of the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952), the State Government do hereby declare that

(i) the intermediary interests of all intermediaries whose estates have been declared as trust estates under Chapter II-A of the said Act;

(ii) those in respect of which claims and references made under the said chapter were pending on the date of commencement of the Orissa Estates Abolition (Amendment) Act, 1970 (Orissa Act 33 of 1970); and

(iii) the intermediary interests of all intermediaries in respect of all estates other than those which have already vested in the State have passed to and become vested in the State free from all encumbrances.

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(No. 13699-EA-I-ND-1/74-R)

By order of the Governor

S.M. Patnaik

Commissioner-cum-Secretary to Government."

In this background the writ application was filed in the High Court challenging the notification. The High Court rejected the claim of the petitioner and dismissed the writ application by the impugned judgment.

5. The learned counsel for the petitioner has contended that as a result of the decision under Chapter II-A declaring Lord Jagannath's estate a "trust estate" the same must be deemed to have been excluded from the scope of the Act, and this result in the eye of law became final and continued to remain effective even after the repeal of Chapter II-A. Reliance was placed on Section 5 of the Orissa General Clauses Act and it was argued that the right which the petitioner acquired under Section 13-1 as a result of the decision cannot disappear on the repeal of this Chapter. The learned counsel proceeded to urge that as a result of the said decision the estate in question went completely out of the ambit of the Act and for this reason when in 1974 the Act was further amended it was considered necessary to define "trust estate" in Section 2 of the Act and to expressly include Lord Jagannath's estate within the expression with a view to set at rest any controversy in this regard. According to the learned counsel the intention of the legislature is clearly to permanently spare the petitioner's estate from the operation of the Act. In our view the argument has no merit and must be rejected.

6. It is true that an order was passed under s 13-G declaring the petitioner's estate as a trust estate" and further by the insertion of clause (oo) in s 2 the petitioner's estate continued to be a 'trust estate", but the question is as to what is the legal effect flowing from such a declaration. This aspect is dealt within s 13-I, which is quoted as under (omitting sub-section (2) which is not relevant in the present context):

"13-1. Effect of orders passed under section 13-G: (I) All estates declared under this Chapter to be trust estates by the Tribunal or the High Court, as the case may be, shall be deemed to have been excluded from the operation of the vesting notification and never to have vested in the State in pursuance thereof." (emphasis added)

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It is manifest from the language of the Section that it saves a "trust estate" so declared under s. 13-G from the operation of a notification issued under s. 3 or 3-A, but does not extend the benefit any further. The provisions do not confer protection from the Act itself and cannot be interpreted to clothe it with a permanent immunity from being vested by a later notification issued under the Act. Such an estate could be vested in the State of Orissa by a subsequent notification was made clear by clause (b) of s 13-K which reads as follows:

"(a) . . .

(b) 'nothing in this Chapter shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification under Section 3."

Sections 7-A, 8-A, 8-D and X-E of the Act include special provisions for a trust estate and unmistakably indicate that trust estates" are within the purview of the Act. The benefit they receive from a declaration under s. 13-G is limited and referable only to a vesting notification issued earlier. There is thus, no merit in the argument of the learned counsel for the appellant that the petitioner's

estate could not be vested in the State by a notification issued subsequently

7. We accordingly hold that there is no infirmity in the notification dated 18.3.1974 issued under s. 3-A of the Act. The appeal fails and is dismissed but in the circumstances without costs.

A.P.J.

Appeal dismissed

JUDIS