

PETITIONER:
HINDU PUBLIC & ANOTHER ETC.

Vs.

RESPONDENT:
RAJDHANI PUJA SAMITHEE & OTHERS ETC.

DATE OF JUDGMENT: 16/02/1999

BENCH:
M. JAGANNADHA RAO, & M.B. SHAH.

JUDGMENT:

M. JAGANNADHA RAO, J.

These three Civil appeals arise out of the same judgment of the High Court and can be disposed of together. Civil Appeal No.2546 of 1992 has been filed by the 'Hindu Public' through their representative Sri K.C.Malla, Advocate Bhubaneswar, Orissa. The said Advocate also figures as the 2nd appellant. Civil Appeals Nos.2547-48 of 1992 have been filed by Rajdhani Puja Samithee(hereinafter called the 'Society'), on behalf of itself and also representing appellants nos. 2 to 4, the Deities Sri Bhubaneswar, Sri Bhubaneswari and Sri Hanuman.

The following are the facts:

In 1949, a group of persons started Durga Puja, Laxmi and Kali Puja and related festivals in Bhubaneswar near the Raj Mahal Chhat. Later, at any rate from 1955, these religious festivals and pujas were shifted to an open place belonging to Government, opposite to the Market building. In that year, an informal Committee came into being. Donations were being received for the aforesaid purposes from public as is clear from Exhibit F. With a view to have a permanent place for these pujas, a group of persons from among the organisers of these festivals and pujas, formed into the Durga Puja Samithee and registered it as a Society on 21.1.1960 under the Societies Registration Act, 1860 (Act 21 of 1860) with a Memorandum of Association which included cultural and other activities also besides religious activities. The Society then applied to the Government of Orissa for grant of land for conducting these pujas and religious festivals. Government of Orissa granted a lease on 17.9.1960 at Rs.1 as rent. Initially the lease was for 30 years but it was later extended for over a period of 90 years. In 1977, a part of the land was acquired for road widening but another piece of equal area was granted under a deed Exhibit 5 dated 8.11.1977. In 1965, construction of the Durga Mandap took place on the leasehold property. During 1969-1970, shop rooms were constructed and in the same year temples for

Hanuman, Radha Krishan, Durga etc. were constructed. During this period, an appeal (Ext.F) was issued to the public to contribute generously for the deities and the temples. That appeal refers to the religious activities right from 1949. According to the appellants, this Appeal to the public clinchingly proves that the entire leasehold land was intended to be and was used as a religious endowment. In 1973, it is said that a Puja Mandap was constructed. On 28.5.1974 as per Ex.A, printed annual report for the years 1973 and 1974 was approved at the General Body Meeting. The members of the Society were then 67. According to the 'Hindu Public', this Report also confirmed the public nature of the temples and other constructions on the leased land.

At that stage disputes arose between the members of the Society. The Assistant Commissioner, Hindu Religious Endowments, issued notice on 27.1.1978 to the Society, to produce records in connection with the temple. On 4.5.1978, the Vice President of the Society was asked to appear before the authority with records failing which non hereditary trustees under section 27 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter called the 'Act') would be appointed. On 27.5.78, the Society informed him that there was no deity, either Radha Krishan or Durga installed in the premises. On 2.6.78, Deities of Sri Bhubaneswar and Bhubaneswari were installed in the constructed temples 1 and 2. On 2.8.1978, the Assistant Commissioner issued notice (Ext.25) directing the Endowments Inspector to inspect the premises and submit a report.

At that stage, on 30.9.78, the Governing Body is said to have amended the byelaws (as per Ex.2A) with the object of preventing the Endowment Department from interfering with the Society. On 29.10.78, the Society's Secretary wrote a letter to the Commissioner, HRE denying that the institution was a religious institution.

The Assistant Commissioner passed an order on 12.1.1979 appointing non-hereditary trustees under section 27 of the Act. The Society then filed O.A. No.49/79 under section 41 for stay of the order of the order passed under section 27. Thereafter there were various orders passed by the Department and ultimately Writ petition No.774 of 1979 was filed by the Society on 8.9.80. That writ petition was disposed of by staying the order under section 27 and directing disposal of Society's application under section 41.

Thereafter, the Assistant Commissioner passed an elaborate order on 6.3.1981 declaring the temples in which the deities were installed, as a public temple. The Society was declared as the hereditary trustee. But so far as the remaining part of the leasehold land and the buildings thereon were concerned, it was held that they were not part of the endowment. There were two appeals FA No.17/84 and FA 20 of 1984 to the Deputy

Commissioner, one by the Hindu Public and the other by the Society. The Deputy Commissioner, by order dated 30.12.1989, allowed the appeal of the Hindu Public and held that the temples as well as the remaining land and buildings were part of the endowment. The FA 17/84 was allowed and FA 20/84 was dismissed.

Against the said order of the Deputy Commissioner the Society filed two appeals namely Misc. Appeals 88 and 89 of 1990. The High Court allowed the appeals in part and in effect, restored the orders of the Assistant Commissioner stating that:

"(i) places where deities Sri Bhubaneswar, Sri Bhubaneswari and Hanuman are installed and puja Mandap are religious institutions being temples;

(ii) other parts of leasehold areas are not parts of the temple and are also not proved to be religious endowments;

(iii) Major portion of the income including monthly rent of the shop rooms is religious endowment though there is no immovable property of the religious institution;

(iv) What portion of the income and funds of the Samity are religious endowments would be examined afresh by the Assistant Commissioner; and

(v) the Samity is not wholly secular in character being partly of religious character."

On these findings, the High Court remanded the application under section 41 for the limited purpose of determining the portion of the funds of the Samithee which should go to the religious endowment.

It is against the above orders of the High Court that the 'Hindu Public' has filed Civil Appeal No.2546 of 1992 while the Society has filed Civil Appeals Nos. 2547-48 of 1992.

Learned counsel for the appellants in Civil Appeal No.2546 of 1992 Sri JanaRanjan Das contended that the entire leasehold property including the Mandap, Library, shop rooms etc. constituted endowment property and that the High Court was wrong in confining the endowment to the temples alone. The Society was not secular in character as contended by the Society.

On the other hand, the learned counsel for the Society, Sri Vinoo Bhagat contended that the Society was secular in character, that the temples were private temples meant for the members of the Society, that the rest of the leasehold was, in any event, not endowment property, that, in fact, the registration of the Society under the Societies Registration Act, 1860 could not be for religious purposes. It was also contended that if a temple is constructed on lease hold land, because of the

right of resumption at the end of the term, such a temple cannot be a public temple.

On the above contentions, the following four points arise for consideration:

(1) Whether a Society can be registered under the Societies Registration Act (Act 21 of 1860) for religious purposes treating such purposes as part of 'Charitable purposes' as mentioned in the preamble and sections 1 and 20 of the abovesaid Act?

(2) Whether the puja and religious festivals were being carried on in this very premises since 1949 and if so, whether the inclusion of certain social and cultural purposes in the aims and objects of the Society at the time of its subsequent registration in 1960, - alongwith the religious activities - was intended to transform the nature of the trust from religious into one of a secular character?

(3) Whether a temple located on lease-hold land could not be a public temple?

(4) Whether the High Court was right in setting aside the order of the Deputy Commissioner in part and restricting the public trust only to the temples and not to the library, mandap, pandal, shops and other constructions and in virtually restoring the order of the Assistant Commissioner?

Point 1:

Learned counsel for the Society contended in the Society's Appeals that no Society could be registered under the Societies Registration Act, 1860 for 'religious purposes' either in whole or in part, inasmuch as the said purposes would not be 'charitable purposes' falling within the preamble to the Societies Registration Act, 1860 (Act 21 of 1860) and sections 1 and 20 of the said Act.

The Preamble to the above Act reads as follows:

"Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes, it is enacted as follows- -"

Again, Section 1 of the Act 21/1860 reads as follows:

"S.1--Societies formed by memorandum of association and registration-- Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of

association, and filing the same with the Registrar of Joint-stock Companies, form themselves into a society under this Act."

Section 20 of the said Act reads as follows:

"S.20-To what societies Act applies--The following societies may be registered under this Act:--

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

According to the learned counsel for the Society, the words 'charitable purposes' used in the Preamble and sections 1 and 20 of Act 21/1860 do not include 'religious purposes'.

In our opinion, this contention is not well founded. More than ninety years ago, such a contention raised under Act 21 of 1860 was negatived by the Allahabad High Court in *Anjuman Islamia of Muttra vs. Nasiruddin* [(1906) ILR 28 All. 384]. It was contended in that case that the registration of a society called 'Anjuman Islamia' under Act 21 of 1860 was not permissible as the society was formed for 'religious purposes only' and not for charitable purposes. The Allahabad High Court rejected the said contention and held that a society for religious purposes would ordinarily be a society for charitable purposes. A similar question arose before the Madras High Court in *Khaji Muhammed Hussain Sahib vs. Masjiday Mehmood Jamait Managing committee, Puddupet* [AIR 1940 Madras 167]. A Division Bench consisting of Wadsworth and Venkataramana Rao, JJ. held that the Act 21/1860 was passed in 1860 when, according to English law, a gift for the advancement of religion or promotion of religious worship was treated as a charitable purpose and, therefore, a society formed for such a purpose would be a charitable society under Act 21/1860. The only condition was that it should be for the benefit of the public. No doubt, in some statutes enacted subsequent to Act 21 of 1860, the legislature used the words 'charitable' and 'religious' but the definition of these words was expressly stated to be for the purposes of those Acts. The subsequent legislation, the Madras High Court held, would not be helpful in interpreting the words 'charitable' in Act 21 of 1860. The real question was: "What did the term mean in 1860"? We are in agreement with the view of the Allahabad and Madras High Courts. In fact, Lord McNaughten in his celebrated judgment in *Commissioner of Income Tax vs. Pemsel* [1891 AC 531

(581)] said that charitable purposes which came within the language and spirit of the statute of Elizabeth (43 Eliz ch 4) could be grouped into four heads (i) relief of poverty, (ii) education, (iii) advancement of religion and (iv) other purposes beneficial to the community not coming under any of the preceding heads. The words in Act 21/1860 are, therefore, to be understood as including religious purposes also. Point No.1 is held against the society.

Points 2 & 3:

In the present case, the facts as found by the Deputy Commissioner and as may be gathered from the record are that there were religious activities relating to Durga Puja etc. and festivals right from 1949. Initially they were being conducted by the members of the public of Bhubaneswar at Raj Mahal Chhat. Later on, at any rate from the year 1955, a committee was formed and these Pujas and festivals were being performed on government land lying opposite to the Market building. Donations were being collected from the public, as is clear from Ext. F, for the purpose of the said pujas right from 1949. Thereafter, in 1959 a public meeting was held and it was decided that the Government of Orissa should be approached for assignment of the very land in which these functions and festivals were being conducted. For that purpose, it was decided to register a Society. Accordingly the Society in question was registered on 21.1.1960 and the Government was moved for lease of this very land for religious purposes. A lease was granted on 17.9.1960 for 30 years (later amended as for 90 years). A part of the land was acquired for a road and an equal extent was granted by deed dated 8.11.1977. Thereafter these functions were regularly going on year after year in the leasehold land. Subsequently donations were received. In 1965, the Durga Mandap was constructed. During 1969-70 shop rooms were constructed. In 1971, the Hanuman temple was constructed. Later temples of RadhaKrishan, Durga etc. were constructed. Then in 1973, Puja Mandap was constructed. The evidence on record is that they were constructed from public donations and subscriptions. No evidence was adduced that the members alone personally contributed.

Even so, learned counsel for the Society submitted that the temples were not public temples inasmuch as there was no restriction that only Hindus would be eligible to become members of the Society. Further, it was contended that the aims and objects of the Society were both secular and religious in character. The aims and objects of the Society read as follows:

"(a) The Samittee shall, as far as practicable, provide common place for meeting of the members of the Samittee, for purposes of recreation, discussion of literary, cultural and common problems, encouragement of thrift, advancement of social welfare ideas and protection

of the interests of its members.

(b) celebrate social festivals like Durga Puja etc., advance other objects, provide facilities like Mandap, Temple, Parks, Educational, Mental and Physical Institutions, Library, Charitable dispensary, rest rooms and commercial centres for the interest of the members"

Learned counsel for the Society contended that even though para (b) of the aims and objects referred to Durga Puja etc., still para (a) dealt with several secular activities and further, the concluding words in para (b), namely, 'for the interest of the members' meant that the Durga Puja etc. were restricted to members only.

In our view, the fact that the membership of the Society was not restricted to any particular religious community makes no difference. Membership is one thing and nature of the property which the Society manages is another thing. In fact, as pointed out by the Deputy Commissioner, members professing Islam and Christianity were never inducted from 1960 to 1980. It was only in 1980, long after the disputes started and notices were issued by the Department, that a few members were inducted from other communities. Even those professing Islam were not allowed into the temple part of the endowment. It is true that the last part of clause (b) of the aims and objects uses the words 'and commercial centres for the use of the members'. It is not clear whether the words 'for the use of members' qualifies only the words 'commercial centres'. In fact, we cannot think of a charitable dispensary confined only to members of the Society. In the light of the above material, it cannot be said that the Durga puja etc. were pujas intended only for members.

We shall approach the question from another angle. It has been found that right from 1949, these festivals were being conducted by the Hindu Community and at any rate from 1955 at this very place. Public donations and subscriptions were being collected. Then lease for this land was applied. Lease was granted. If that be so, can some of the members of the public registering a Society claim that the festivals were for members of the Society only or that the society wanted to use the land mainly for secular purposes and incidentally for these pujas and festivals, merely by addition of para (a) in the aims and objects, in addition to these pujas in para (b).

It is in the evidence of witnesses examined on behalf of the 'Hindu Public' before the Assistant Commissioner that para (a) of the aims and objects was introduced alongwith para (b) so as to ensure that the request for grant of lease of this very land was not rejected by Government on the ground that land could not be leased exclusively for religious purposes. On this aspect, the Assistant Commissioner rejected the oral evidence as inadmissible as it contradicts the recitals in the

deed of registration of the Society in view of sections 91 and 92 of the Evidence Act. In our view, this is not correct in law. Oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon or that they were not meant to alter the existing state of affairs. Oral evidence could therefore be issued to show that the Society's main concern was the celebration of the Durga puja festivals etc. and that other activities were subsidiary. Therefore, the Deputy Commissioner was right in relying on this part of the oral evidence.

Eleven years after the Society was formed, the appeal Ex.F was issued for donations. It reveals that the main purpose of the Society was the construction of temples and celebration of these festivals. It states:

"Although for last so many days, Sri Sri Sri Durga Puja is being performed here, yet no special effort has been made for construction of a permanent mandap and temples for other gods and Goddesses. Although major population in the capital is Hindu, yet it is regrettable that a permanent mandap and temples of other Gods and Goddesses have not yet been established here. On the other hand, minority communities like Muslims, Christians and Sikhs have already constructed beautiful permanent Mosque, Church and Gurudwara. But it has not yet been possible for we Hindus. It is most regrettable."

In addition, we have the Report of the General Secretary of the year 1973 which refers to various activities of the Society. Except the religious activities, there is no reference to any other activities. The report refers to puja expenditure, construction of temples for Goddesses, for Mahadev Temple, construction of Mandap, Kitchen, Court yard and guest house etc. It states that almost all religious functions like Durga puja, Kali Puja, Laxmi Puja, Kartikeswar Puja, Rama Navami, Astaprahari, Ganesh Puja, Dolo and Jhulana Jatra were being performed. There is also evidence of collection of subscription through a receipt book from members of the public for the aforesaid religious purposes and festivals of the Hindu community.

As pointed by the Deputy Commissioner, though the Hanuman temple was installed in 1971 and public functions were being performed throughout, a board was put up for the first time in 1976 by a resolution dated 26.9.76, that the temple was meant 'for members only'. This was done after dispute stated among the members. It is, however, in the evidence of one of the witnesses who was a Muslim (Ext.A.P.W.5) and was engaged for some decoration that after the decoration, he as well as other non-Hindus, were not allowed to enter the premises of the deity. The Deputy Commissioner held:

"This explodes the theory propounded by the petitioners that functions like Durga Puja, Kali

Puja, and Laxmi Puja etc. are secular and social functions."

So far as the resolutions allowing certain other communities to use the mandap or other buildings for performance of their functions, the Deputy Commissioner held that from the evidence, it was clear that the documents evidencing the said resolutions were subsequently fabricated and were antedated. He further pointed out that for the first time people professing Islam or Christianity were inducted as members during 1980 long after the notices were issued by the Assistant Commissioner. He also held that the Samithi 'drastically amended the provisions' of the Samithi's constitution', during the pendency of the case, in an attempt to take away the religious character of the institution. The amendments were made with oblique motives.

On the basis of the aforesaid facts both prior to 1960 and after 1960, and conclusions of the Deputy Commissioner it must be held that the predominant purpose in the formation of the society and grant of lease was for religious purposes. The other purposes were not the dominant purposes and the addition of the aims and activities in para (a) was not intended to change the basic religious character of the trust.

From the above material, it is clear that the temples established were intended to be public temples in which every member of the Hindu community was entitled to enter as of right and entry was not restricted to the members of the Society. Point 2 is held against the Society.

Point 3:

It was argued for the Society, that a temple in order to be a public temple must be constructed in land of which the founders were owners and in case the land was leasehold land, it must be held that it was not intended to be a public temple. According to him there cannot be a public trust whose life will be coterminus with the expiry of the term of a leasehold land.

On facts, we do not find any substance in this contention. It is an admitted fact that the Government granted a lease of land for 90 years in 1960. Assuming that the proposition contended for is correct, we are of the view that the said proposition cannot apply to land leased for as long a period as 90 years. The point is rejected.

Point 4:

It was contended for the 'Hindu Public' by its learned counsel that the High Court and the Assistant Commissioner were wrong in thinking that the public endowment was confined only to the temples and did not extend to the mandap, the library, shop-rooms and other constructions.

Apart from the evidence to which we have already referred the contents in the public appeal of 1971 for donations, Ex.F, proves that not only the temples but the mandap, the shop rooms, the library and other constructions were part of the religious endowment. It states that the Government granted lease of one and half acres at the central place of the new capital in front of the market to the Society for construction of Durga Mandap and other constructions, 11 years before this appeal. From 1949, every year, on this place, public worship of Sri Durga, Laxmi and Kali were being performed. Worship of Deity Kartikeswar started two years before. Sri Ram Navami, Pana Sankranti, Ekadashi, Sibaratri, Bhagabat Janma, Ganesh Puja, Saraswati Puja etc. were to be performed. Two years before, Hanuman temple had been established. The appeal says that "although for the last so many days, Sri Sri Sri Durga Puja is being performed here, yet no special effort has been made for construction of a permanent mandap and temples for other Gods and Goddesses". This shows that the Mandap was for Durga Puja and not, as contended by the learned counsel for the Society, to be used by all other communities for various functions like marriages etc. The Appeal further states that all other communities, Mohammendan and Christian communities were having their own buildings in Bhubaneswar. So far as the other constructions are concerned, the Appeal states:

"Constructions have started here for a permanent Devi Mandap, compound, 6 permanent shop room and a garden. For this purpose, a small amount of donation has been received. About Rs.40,000/- has been received towards advance rent from prospective tenants. Besides this, some amount is collected from tenants of temporary shops. There is proposal for construction of temples for deities, Radhakrishna, Sita Rama, Siva and Devi. Minimum estimated cost for each temple has been fixed at Rs.8,000/-.

There is no library of religious books. Many distinguished Sadhus, Sanyasis and devotees are coming here. As there is no suitable place for them to stay, they are staying in family houses contrary to Sastras and in Dharmasala at Bhubaneswar. So a small Dharmasala and a library of religious books are essential for them.....

.....there is no permanent public pandal for religious meetingsThose religious institutions who need an office here, the same can be constructed for them at their expenses."

On that basis, public donations were called for. The above appeal, in our view, clinchingly establishes that the mandap, shops, garden, library and Dharmasala or guest house and office rooms etc. were all meant for religious purposes of the Hindu community. There is not a whisper in this appeal of any secular purposes or purposes of other than religious.

In our view, the Deputy Commissioner was right in holding that the leasehold land, the temples, the mandap, the library, the guest house or Dharmasala, the office and shops, all of them, formed the endowment. The Deputy Commissioner was, right in rejecting all the contentions of the Society and in appointing non-hereditary trustees under section 27 of the Endowment Act.

For the aforesaid reasons, Civil Appeal No.2546 of 1992 is allowed and the Civil Appeals Nos. 2547-48 of 1992 are dismissed. The order of the Deputy Commissioner is restored. There will be no order as to costs in all the appeals.

JUDIS