The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

*THE ODISHA HINDU RELIGIOUS ENDOWMENTS ACT, 1951

An Act to provide for the better administration and governance of Hindu Religious Institutions and Endowments in the State of Odisha

Whereas it is expedient to amend and consolidate the law relating the administration and governance of Hindu Religious Institutions and Endowments in the State of Odisha.

It is hereby enacted as follows :

CHAPTER – I

PRELIMINARY

1. Short title, extent, application and commencement :– (1) This Act may be called the Odisha Hindu Religious Endowments Act, 1951.

(2) It extends to the whole of the State of Odisha and applies to all Hindu Public Religious Institutions and Endowments.

Explanation I – In this Sub-Section Hindu Public Religious Institutions and Endowments do not include Jain or Buddhist Public Religious Institutions and Endowments but include Sikh Public Religious Institutions and Endowments.

Explanation II – [1][xxx]

(3) It shall come into force on such date[2] as the State Government may, by notification, direct.

2. Power to extend Act to Jain or Buddhist Institutions and Endowments :– The State Government may, by notification, extend to any Jain or Buddhist Public Religious Institution and Endowment or to any Public Endowments or a Charitable and Religious Institution all or any of the provisions of this Act and of any rules made thereunder and may declare such extension to be subject to such restrictions and modifications as they think fit :

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* Published *vide* Odisha Act 11 of 1952.

For Statement of Objects and Reasons, see Odisha Gazette Ext./10.03.1951, p. 49; and for Report of Select Committee, see *ibid,* 17.9.1951, pp. 1-10, and for proceedings in the Assembly, see Proceedings of the Odisha Legislative Assembly, Vol. XIV, No. 23, pp. 8-11.

1. Omitted *vide* O.H.R.E. (Amendment) Act, 1954 (O.A. No. 18 of 1954).
2. The Act came into force with effect from the 1st January, 1955, *vide* Notification No. 7631-End./22.12.1055 - published *vide* Odisha Gazette, Part-III/31.12.1955.

Provided that before issuing such notification, the State Government shall, publish in the Gazette a notice of their intention to do so, fix a period not exceeding three months from the date of publication of the notice for the persons interested in the institution and endowment concerned to show-cause against the issue of such notification and consider their objections, if any.

SYNOPSIS

Modes to Recognize Hereditary Trustee : A claim to the hereditary trustee can be recognized if the three modes as provided in the said section are proved, 61 (1986) Sn. 49 (Rama Chandra Misra Vs. Hadibandhu Panda and others)

3. Definitions :– In this Act unless there is anything repugnant in the subject or context–

(i) **"Assistant Commissioner"** means an Assistant Commissioner appointed under Section 5;

(ii) **"Commissioner"** means the Commissioner appointed under [1][Section-4];

(iii) **"Collector"** in any provision under this Act includes (a) any Deputy Collector who is specially empowered by the State Government to discharge any of the functions of a Collector under that provision; and (b) any Deputy Collector to whom the Collector may, by general or special order, transfer any of his functions under that provision;

[2][xxx]

[3][(iv) **"Deputy Commissioner"** means the Deputy Commissioner appointed under Section 5 :]

[4][(v) **"Endowment Fund"** means the Odisha Hindu Religious Endowments Administration Fund constituted under Section 63;]

(vi) **"Hereditary Trustee"** means the Trustee of a Religious institution succession to whose Office devolves by hereditary right since the time of the founder or is regulated by custom or is specifically provided for by the founder, so long as such scheme of succession is in force; [2][xxx]

(vii) **"Math"** means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose Office devolves in accordance with the directions of the founder of the institution or is regulated by custom and includes places of Religious worship other than a temple and also places of instruction or places for the maintenance of Vidyarthis or places for rendering charitable

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1. Substituted vide Odisha Gazette Ext./7.10.1978-O.A. No. 29 of 1978.
2. Omitted vide O.H.R.E. (Amendment) Act, 1954 A. No. 18 of 1954.
3. Inserted vide Odisha Gazette Ext./7.10.1978-O.A. No. 29 of 1978.
4. Substituted *vide* O.A. No. 18 of 1954.

or Religious services in general which are or may be appurtenant to such institution;

(viii) **"non-Hereditary Trustee"** means a Trustee who is not a hereditary Trustee;

(ix) [1][xxx]

(x) **"person having interest"** means -

(a) in the case of a math a disciple of the math or a person [2][at the Religious persuasion] to which the math belongs;

(b) in the case of temple, a person who visits or who is entitled to visit the temple for *darsan* of the deity or attend at the performance of worship or service in the temple or who is in the habit of attending such performance or of partaking in the benefit of the distribution of gifts thereat and in the case of a specific endowment, a person who visits or who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(xi) **"prescribed"** means prescribed by rules made by the State Government under this Act;

(xii) **"Religious Endowment"** or **"Endowment"** means all property belonging to or given or endowed for the support of maths or temples or given or endowed for the performance of any service or charity connected therewith or of any other Religious charity and includes the institution concerned and the premises thereof and also all properties used for the purposes or benefit of the institution and includes all properties acquired from the income of the endowed property;

Provided that gifts of immovable properties made as personal gifts to hereditary Trustee of a math or temple or the archaka, sevaka, service-holder or other employee of a Religious institution shall not be so included, if the donee has been possessing and enjoying the same as a separate and distinct identity all long;

Explanation I :– Any jagir or inam granted to an archaka, sevaka, service-holder or other employee of a Religious institution for the performance of any service or charity in or connected with a Religious institution shall not be deemed to be a personal gift to the said archaka, service-holder or employee but shall be deemed to be a Religious endowment.

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1. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
2. Substituted *vide* Odisha Gazette Ext. 7.10.1978-O.A. No. 29 of 1978, w.e.f. 7.7.1978.

Explanation II :– Any property which belonged to or was given or endowed for the support of a Religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other Religious charity shall be deemed to be a "Religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the Religious institution has ceased to exist or ceased to be used as a place of Religious worship or inspection, or the service or charity has ceased to be performed;

[1][Provided that this Explanation shall not be deemed to apply in respect of any property which is vested in any person before the commencement of this Act by the operation of the law of limitation;]

Explanation III :– Where an endowment has been made or property given for the support of an institution which is partly of Religious and partly of a secular Character or where an endowment made or property given is appropriated partly Religious and partly to secular uses, such endowment or property or the income therefrom shall be deemed to be a Religious endowment and its administration shall be governed by the provisions of this Act.

Explanation IV :– [2][xxx]

(xiii) **"Religious Institution"** means a math, a temple and endowment attached thereto or a specific endowment and includes an institution under direct management of the State Government;

(xiv) **"Specific Endowment"** means any property or money endowed.

(a) for the performance of any specific service or charity in a math or temple, or

(b) for the performance of any other Religious charity,

but does not include any jagir or inam of the nature described in Explanation I to Clause (xii);

(xv) **"Temple"** means a place by whatever designation known, used as a place of public Religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or [3][any class or section thereof,] as a place of public Religious worship and also includes any cultural institution or mandap or library connected with such a place of public Religious worship;

(xvi) **"Trustee"** means a person by whatever designation known, in whom the administration of a Religious institution and endowment are vested and includes any person or body who or which is liable as if such person or body were a Trustee;

(xvii) **"year"** means the financial year.

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1. Added *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
2. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
3. Substituted *ibid.*

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1. There cannot be a straight jacket formula to be a hereditary trustee :– Whether a person is a hereditary trustee of a public religious endowment which includes matha and temple will depend upon the facts of each case and there cannot be a straight jacket formula applicable to all cases, 2012 (II) OLR 639 (Danardan Mohapatra and Others Vs. Pitamber Jena and Others)

2. Installation of Idols is not enough to establish a Temple :– Distinction between mathas and temples and its definition – Explained – Merely if same idols are installed in a matha and members of the public are offering worship to such idols would not make the same a temple. 2011 (II) CLR (SC) 958 (Parasamaya Kolerinatha Madam Tirunelveli Vs. P. Natesa Achari and others)

3. Succession to the Hereditary Trustee :– Succession to the office of hereditary trustee – the right being hereditary since the period of the founder duly regulated by custom and is specifically provided by the founder if the same remains in force is to be followed with regard to the succession to the office of hereditary trustee, 108 (2009) CLT 349, 2009 (II) CLR 409, 2009 (Supp. II) OLR 922 (Benudhar Hota and others Vs. Jagannath Nayak and others)

4. Meaning of the word "Trustee":– Meaning of the word 'Trustee' – Explained – Usually a trustee is a person in whom the administration of religious institutions and endowment is vested, which may be any person or a body, 108 (2009) CLT 349, 2009 (II) CLR 409, 2009 (Supp. II) OLR 922 (Benudhar Hota and others Vs. Jagannath Nayak and others), 2012 (II) OLR 639 (Danardan Mohapatra and others Vs. Pitamber Jena and others)

5. Constituting Hereditary Trustee :– Constitution of the hereditary trustee as per Section 3 (vi). There are mainly three distinct ways by which the hereditary trustee can be constituted and approved when succession to the office devolves by hereditary right since the time of the founder. Secondly, succession to the hereditary trustee is regulated by customs and usages and thirdly, as per the scheme specifically laid down by or provided by the founder so long the said scheme is in force. 2007 (II) CLR 796, 2007 (Supp. II) OLR 1109 (Smt. Rukmini Mishra Vs. Sri Sri Radhakrushna Mahaprabhu and others)

6. Person having Interest :– Meaning of the term "person having interest" – Explained – means a disciple of the matha or a person professing the hindu religious or sikh faith to which the matha belongs, 61 (1986) CLT 189 (Mahanta Sri Raghunath Das and another Vs. Commissioner of Hindu Religious Endowment, Orissa, Bhubaneswar)

7. Hereditary Trustee :– The definition of the term hereditary trustee provides for three distinct ways by which a claim of hereditary trusteeships can be proved namely:

(i) Firstly, when succession to such office devolves by hereditary right since the time of the founder.

(ii) Secondly, when succession to the office is regulated by custom, and

(iii) Thirdly, when it is specifically provided for by the founder according to the scheme of succession so long as such scheme is in force. The mere fact that a person was a trustee for a very long period will not be sufficient for a declaration that he is a hereditary trustee, 62 (1986) CLT 576 (Gopinath Das Adhikari and Others Vs. Sri Chaitanya Mahaprabhu and Others)

Burden lies on the person who claimed right of hereditary trusteeship to establish that succession to the office devolved upon by hereditary right since the time of the founder of the institution, since the evidence being unsatisfactory it is difficult to establish the case of hereditary trusteeship. 67 (1989) CLT 829 (Maheswar Das and others Vs. Sri Nilakantheswar Mahadeb and others.

Ingredience of the word hereditary trustee – explained – the person ascertaining such rights must establish and prove to show that he comes within the three categories, 73 (1992) CLT 303 (Hindu Public represented through Jadunath Das and others Vs. Sankarsan Das and others)

8. De-jure and De-facto Trustee :– Distinction between the term De-jure trustee and De-facto trustee – Explained – Further the meaning of the term trustee explained. A person having a legal right to hold the office of the trustee is a de-jure trustee whereas a de-facto trustee is one who is in possession of the endowment and exercises all the functions of the trustee though a legal title is lacking. The Odisha Hindu Religious Endowment Act defines the word "trustee" to mean a person by whatever designation known, in whom the administration of a religious institution and endowment are vested and includes any person or body who or which is liable as if such person or body were a trustee, thus the term trustee is a very wide one and would include a de-facto trustee who by his own action and conduct make himself liable as a trustee, 63 (1987) CLT 115 (Radhakrushna Dutta and others Vs. State of Orissa and Others)

9. Meaning of the word "Temple":– Meaning of the word temple means a temple in common parlance. It is not enough that a deity installed in a building or the place would be the abode of the deity. The definition requires that it shall be a place of worship dedicated to the public or dedicated for the public or used as of right by the public, 63 (1987) CLT 223 (Kunja Bihari Parida Vs. Sri Narayani Thakurani and Others)

10. R.O.R. is not enough to establish claim of Trusteeship :– Principles of the backward and forward presumption – explained – merely because record of rights indicating a person as a ruler showing as a sebayat cannot be said

that the institutions were founded by him or by any office ancestors, 72 (1991) CLT 277 (Raghunath Das after him Kamini Dei @ Krishna Kamini Dei and others Vs. Sri Grama Devati Ambica Thakurani and others)

Categories of hereditary trust – defined – 72 (1991) CLT 530 (Sri Rama Chandra Rana and others Vs. Hindu Public and Shri Kaleswar Mahadev at Kalarapadar and others)

Meaning of the term hereditary trustee means trustee of religious institution succession to whose office devolves to hereditary right since the time of the founder or is regulated by custom or is specifically provided for by the founder, so long as such scheme of succession is in force. 71 (1991) CLT 32 (Alekha Chandra Swain and others Vs. Nrusinghanath Thakur and others). If by the passage of time it is not possible to trace back to the time of founder, the principles of Lost grant and backward presumptions is available for the Courts to be drawn from the evidence available from the records backward presumption of lost grant theory cannot be drawn as there is paucity of materials to draw such presumption, 71 (1991) CLT 339 (Shyama Charan Pradhan and Others Vs. Naikhani Thakurani and others)

11. Onus to establish claim over the Property :– Onus lies on the plaintiff to prove that the mahanta who sold the properties to him was the absolute owner of the property – Inference cannot be drawn from the act or omission of the authorities under the Endowment Act and Collector to confer title of the property on the mahanta as a owner of the properties, 2004 (I) CLR 71, (Madhu Sudan Panda and after him Mukta Devi and others Vs. The Commissioner of Endowment, Orissa and others)

Appointment of non-hereditary trustee by the Additional Assistant Commissioner of Endowment. The tenure of the order having been expired operating for more than 1½ yrs. The Hon'ble Court was not inclined to interfere the order, 98 (2004) CLT 221, 2004 (II) OLR 174, 2004 (II) CLR 657 (Dibyakanta Dash Vs. The Commissioner of Endowment, Orissa, Bhubaneswar and others) please also see 2004 (4) CCC 56, 98 (2004) CLT 357, 2004 (II) OLR 229, 2004 (II) CLR 418, (Shri Mahadev Bisi and others Vs. Niranjan Bisi)

12. Powers to determine the status of trustees :– The authorities under the Act are empowered to determine as to whether the institution is without hereditary trustee or not after appreciating the evidence available on record. AIR 1995 Orissa 197, 79 (1995) CLT 135 (Sri Kanteisuni Thakurani Vs. Sri Babudhar Rout)

13. Whether temples of the Society registered under Society Registration Act can be treated as a Public Temples :– Determination of the nature and character of the temples of the Society whether are public temples or temples confined only for the members of the society. It cannot be conceived that any charitable dispensary run by the members of the society can be said only confined to the members of the society and the Durga Pujas and other pujas organized in the temples by the said society are only for the members, 88 (1999) CLT 60 (SC) (Hindu Public and others Vs. Rajadhanee Puja Samithee and others)

CHAPTER - II

POWERS AND DUTIES OF COMMISSIONER AND OTHERS

[1]**[4. Appointment of Commissioner :–** The State Government may, by notification, appoint a person who professes the Hindu religion [2][and who is a member of the Odisha Superior Judicial Service, Senior Branch] to be the Commissioner of Endowments and he shall cease to hold Office as such when he ceases to processes that religion.

5. Appointment of [1][Deputy and] Assistant Commissioners :– (1) The State Government may appoint a [3][Deputy Commissioner] and such number of Assistant Commissioners as they deem necessary.

(2) Appointment of the said Officers shall be from among persons who prefers the Hindu religion and who are members of the State Judicial Service.

(a) in the case of the [3][Deputy Commissioner,] not below rank of a Subordinate Judge ; and

(b) in the case of an Assistant Commissioner, of the rank of a Munsif or above and they shall cease to hold Office as such when they cease to profess that religion.

5-A. Officers and Servants to be appointed by the Commissioner :– The Commissioner of Endowments may, subject to the control of the State Government, from time to time, appoint such Sub-ordinate Officers and staff, as may be deemed necessary for the purpose of this Act and they shall, subject to the control of the Commissioner, discharge such functions and perform such duties as may be assigned to them by the Commissioner [1][Deputy Commissioner] or the Assistant Commissioners.

6. [4][Conditions of services of Commissioner, Deputy Commissioner, etc.] :– (1) The Commissioner, the Deputy Commissioner, the Assistant Commissioners, the Sub-ordinate Officers and staff appointed under this Act shall be the Servants of the State Government and they shall draw their pay pension, leave and other allowances from the Consolidated Fund of the State. The conditions of service of such Officers shall be such as may be prescribed from time to time.

(2) There shall be paid out of the Endowment Fund and the State Government shall have power to direct the payment of, at such time as they may deem fit, such cost as the State Government may from time to time incur from out of the Consolidated Fund on account of pay, pension, leave and other allowances of the Commissioner, the [3][Deputy Commissioner] Assistant Commissioners, other Sub-ordinate Officers and staff appointed under this Act.]

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1. Secs. 4, 5, 5-A and 6 substituted for original Sections 4, 5 and 6 *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
2. Substituted *vide* O.A. No. 29 of 1978.
3. Inserted *vide* O.A. No. 29 of 1978 - w.e.f. 7.6.1978.
4. Added *vide* O.A. No. 29 of 1973 - w.e.f. 7.6.1978.

7. Powers and Duties of Commissioner :– (1) Subject to the provisions of this Act, the general superintendence of all Religious institutions and endowments shall vest in the Commissioner.

[1][x x x]

[2][(2)] The Commissioner may do all things which are reasonable and necessary to ensure that the Religious institutions and endowments are properly administered and that their income is duly appropriated for the purposes which they were founded or exist.

Explanation :– The Commissioner shall have power to pass such interim orders as he deems necessary for the proper maintenance of a Religious institution, or the proper administration of a Religious endowment including the power to pass such orders if and when necessary for the proper management of any institution when a dispute concerning the same is pending in a Court.

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1. Powers of the Commissioner :– As per the provisions of the Section 35 of the Act if a hereditary trustee is found acting contrary to the provisions of the said section, then he can be declared disqualified after following due procedure, making due inquiry as provided under the said section, the Commissioner otherwise cannot suspend the hereditary trustee and constitute the interim trust board as provided U/s- 7 of the Act. (Raj Gopal Ramanuja Das Vs. Commissioner of Endowments, Orissa and others) 2011 (II) OLR 969.

2. Appointment of Interim Trustee :– Scope of the Section – Explained – Validity of appointment of interim Trust Board for proper administration of religious institution like Gopinath Jew and Sri Achyutananda Ashram of Nemalo challenged, 2009 (I) CLR 579 (Gangananda Goswamy and others Vs. State of Orissa and Others)

Appointment of interim trustees by Commissioner – Duty of the Commissioner is to make due inquiry in the matter when there is an objection, as the trustees so appointed are interested persons in view of the Section 29 of the Act – Appointment of such trustees is void. Further distinction between Section 28 and 29 – Explained, 82 (1996) (I) OLR 529 (Anam Charan Mallick and others Vs. Commissioner of Endowment, Bhubaneswar and another)

Proceeding U/s- 42 of the Act pending and as per the report of Additional Asssistant Commisioner the personal property of the petitioners which were in question did not belong to religious institution. A Deputy Commissioner Endowment appointing the Opp. Parties as an interim trustee under the provision of Section 7 of the Act without extending due opportunity of hearing to the petitioner

1. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
2. Re-numbered *ibid.*

which was held to be illegal, 2004 (II) OLR 492, 2004 (II) CLR 513, (Sri Padmanav Giri Goswami Vs. Commissioner of Endowment and others)

3. Principles of Natural Justice :– Inspector of Endowment submitting a report to form a non-hereditary Trust Board and the same having being sent to the Commissioner – Interim Trust Board can be formed if there is no hereditary trustee – However the Additional Commissioner or the Commissioner is to make enquiry as to whether there was any hereditary trustee or not, as the R.O.R. prepared in the name of the petitioner. Further the matter having being in dispute before the Consolidation Authorities, they have interest in the matter. But they have not been given an opportunity of hearing, as such the matter was remanded to the Commissioner to be dispose of after extending due opportunity of hearing to the petitioner. AIR 1999 Orissa 175, 1999 (I) OLR 608 (Jasobanti Thakurani and others Vs. Commissioner of Endowment and others)

4. Notice under Order 1 Rule 8 (2) of C.P.C. is mandatory :– Assistant Commissioner appointed hereditary trustee which was challenged in appeal. However there being no notice issued under Order 1 Rule 8 (2) of C.P.C. The Order of the Trial Court is vitiated, 2005 (1) OLR 612, (2005) 1 CLR 702 (Jogiram Mohapatra and other Vs. Sibaram Pradhan and others)

5. Deities being not permanent whether appointment of interim trustees justified :– The Commissioner of Endowment is empowered to appoint interim trustees of the deities who are prepared, worshipped and emerged every year by the Societies registered under the Society Registration Act. Such action of the authorities challenged on the ground that such institution are not Hindu Public Religious Endowment, such question can be decided under the provisions of the Section 41 of the Act. Thus appointment of interim trustees is not illegal. 2007 (II) OLR 801, 2007 (II) CLR 769 (Haraparbati Thakurani and others Vs. Commissioner of Endowment and others)

8. Powers and Duties of the Deputy and Assistant Commissioners :– [1][(1) [2][The Deputy Commissioner] and the Assistant Commissioners shall exercise such powers and discharge such duties as are assigned to them by or under this Act, either generally or in respect of any particular area :

Provided that the Commissioner, may, subject to the other provisions of this Act, by order in writing, declare that the exercise of all or any of such powers and discharge of all or any of such duties shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise or discharge any power or duties so expected.

[3](2)[4][The Deputy Commissioner] and the Assistant Commissioners shall, for the proper management of the institution, have power to pass such interim orders as they deem necessary in the course of proceedings pending before them.]

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1. Re-numbered *vide* O.A. No. 29 of 1978.
2. Inserted *ibid.*
3. *Added* ibid.
4. Inserted ibid.

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1. Application of the Provisions:– Distinction between Sections 27 and 41 explains the question whether the religious institution is managed or not managed by the hereditary trustee is to be decided under Section 41, 69 (1990) CLT 213 (Baikunthanath Patjoshi and others Vs. Commissioner of Endowment of Orissa, Bhubaneswar and others)

The provisions of the section vested powers on the Commissioner of Endowment to transfer any appeal to the Deputy Commissioner for disposal, 72 (1991) CLT 277 (Raghunath Das after him Kamini Dei @ Krishna Kamini Dei and others Vs. Sri Grama Devati Ambica Thakurani and others)

2. Upmost care is required for Appointment of Trustee :– Appointment of non hereditary trustee is to be made with utmost expedition in order to avoid mismanagement and misappropriation. While doing so the Assistant Commissioner is to make a summary inquiry which must be reasonable and satisfactory holding that whether there is a hereditary trustee in the institution or not. If the order is arbitrary than the said order can be challenged in the revision. 81 (1996) CLT 477 (Dhadi Parida after him Sundari Parida and others Vs. Commissioner of Consolidation and others)

Before exercising the powers under Section 8B of the Act, the Commissioner is required to form an opinion on the basis of the objective material. It cannot be his ipse dixit without any supporting materials, whatsoever. Such power cannot be used arbitrarily. Thus whether a disputed matha is a public religious institution is to be decided and adjudicated U/s- 41 (1) (a) (d) of the Act, 94 (2002) CLT 30 (Jayaram Dash Jee Maharaj and after him Mahanta Premananda Dash Jee Vs. Commissioner of Endowment, Orissa and another)

The Assistant Commissioner of Endowment can exercise its jurisdiction for appointment of non-hereditary trustees whether any proceeding under the provisions of Section 41 of the Act is pending or not, 2006 (I) CLR 230 (Sri Chandi Thakurani Bije at Bakharabad, Jagatsinghpur Vs. State of Orissa and others)

Whether order passed U/s-7 can be treated to have been passed U/s-8B of the Act because of the non-obstante clause contained. As per the provisions of Section 8-B, a summary enquiry is to be conducted with regard to the fact that the institution is a religious one, 2004 (II) OLR 492, 2004 (II) CLR 513, (Sri Padmanav Giri Goswami Vs. Commissioner of Endowment and others)

3. Principles of Natural Justice :– It is an established principle of law that any person having interest in the disputed lands before passing an order is to be given an opportunity of hearing, 88 (1999) CLT 549 (Harihara Chatuari and others Vs. Commissioner of Endowment, Orissa and others)

4. Summary Inquiry before appointing non hereditary trustee :– The Assistant Commissioner while appointing

a non- hereditary trustee is to conduct a summary inquiry into the matter and he is to satisfied with regard to the necessity and also it is to be seen whether there is any hereditary trustee or not. However, the Commissioner is not debarred from exercising the powers as provided U/s- 27 in case of any application pending U/s- 41 of the Act. In view of the amendment of 1973, thus any order passed by the Assistant Commissioner is revisable, 1999 (1) OLR 163 (Sri Sri Raghunath Jew and another Vs. Commissioner of Endowment Orissa and others)

5. Institution is to be a religious one :– The Authorities are to be satisfied before taking any action under the provisions of the section prima facie that the institution is a religious one. 2004 (II) OLR 492, 99 (2005) CLT 117 ((Sri) Padmanav Giri Goswami Vs. Commissioner of Endowment and Others)

[1]**[8-A. Delegation of Power by the Commissioner :–** The Commissioner may transfer any appeal filed before him to [1][the Deputy Commissioner] for hearing and disposal and any appeal so transferred and disposed of by [4][the Deputy Commissioner] shall, for the purposes of this Act, be deemed to have been disposed of by the Commissioner.

8-B. Power of authorities to act without initiating proceedings under Section 41 :– (1) Notwithstanding anything contained in any other provision of this Act the Commissioner, [1][the Deputy Commissioner] and the Assistant Commissioners shall have power to take action under any of the provisions of this Act in respect of any institution, if on information received or otherwise, they are satisfied that such institution is a Religious institution within the meaning of this Act.

(2) For the removal of doubts, it is hereby declared that where any person disputes such action on the ground that the institution is not a Religious institution within the meaning of this Act, he may raise a dispute as provided in Section 41.]

9. Power of Commissioner to call for Records and Pass Orders *:–* (1) The Commissioner may call for and examine [2][the record of any proceeding under this Act before the Deputy Commissioner [3][or before an Assistant Commissioner except under Sub-Section (1) of Section 27] to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed thereon; and if in any case it appears to the Commissioner that any such decision or order shall be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly:

Provided that the Commissioner shall not pass any order prejudicial to any party without hearing him or giving him a reasonable opportunity of being heard :

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1. Inserted ibid.
2. Substituted *vide* O.A. No. 29 of 1978.
3. Sustituted *vide* O.A. No. 13 of 2003 (O.G.E. No. 825 dated 31.5.2003).

[1][Provided further that in cases where an appeal lies under this Act, no proceedings by way of revision shall be entertained by the Commissioner at the instance of a person who could have appealed:

Provided also that nothing in this Sub-Section shall apply to the proceedings in an appeal transferred by the Commissioner to the Deputy Commissioner for hearing and disposal.

(2) The Commissioner may stay the execution of any such decision or order, pending the exercise of his power under Sub-Section (1) in respect thereof.

Notes :– *Revisional Power of the Commissioner not abridged or taken away 76 (1993) CLT 434 (Gouranga Jena Vs. Commissioner of Endowments and others)*

10. [2][x x x]

11. [3][x x x]

12. Power to enter Religious Institutions :– (1) The Commissioner, [1][the Deputy Commissioner] and Assistant Commissioners and such other Officers professing Hindu religion as may be authorised by the Commissioner in this behalf shall have power to enter [4][subject to the local practice, customs or usages] [2][the premises of any Religious institution or] any place of worship at any reasonable hour for the purpose of exercising any power conferred, or discharging any duty imposed, by or under this Act.

[2][x x x]

(2) If any such Officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such Officer, direct any Police Officer not being below the rank of Sub-Inspector to render such help as may be necessary to enable the Officer to exercise such power or discharge such duty.

(3) Nothing in this Section shall be deemed to authorise any person who is not a Hindu to enter the premises or place referred to in Sub-Section (1) or any part thereof.

13. Trustee bound to obey orders issued under the act :– The Trustee of a Religious institution shall be bound to obey all orders issued under the provisions of this Act by the State Government, the Commissioner, [1][the Deputy Commissioner] or [5][an] Assistant Commissioner.

Notes :– *Acts and omissions of the authorities not ground to prove the claim :– Onus lies on the plaintiff to prove that the mahanta who sold the properties to him was the absolute owner of the property – Inference cannot be drawn from the act or omission of the authorities under the Endowment Act and*

1. Inserted *vide* O.A. No. 29 of 1978.
2. Omitted *ibid.*
3. Inserted *ibid.*
4. Inserted *vide* O.A. No. 18 of 1954.
5. Substituted *vide* O.A. No. 18 of 1954.

Collector to confer title of the property on the mahanta as a owner of the properties, 2004 (I) CLR 71, (Madhu Sudan Panda and after him Mukta Devi and others Vs. The Commissioner of Endowment, Orissa and others)

14. Care required of Trustee and his Powers :– (1) The Trustee of every Religious Institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties as if they were his own.

(2) A Trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental to the provident and beneficial administration of the Religious institution and to do all things necessary for the due performance of the duties imposed on him.

(3) A Trustee shall not be entitled to spend the funds of the Religious Institution for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceeding for, or incidental to, his removal from Office or the taking or any disciplinary action against him .

Provided that the Trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under Section 69.

15. Preparation of Register for all Institutions :– (1) For every Religious institution, there shall be prepared and maintained a register showing–

(a) the names of past and present Trustees and particulars as to the custom, or the direction of the founder, if any, regarding succession to the Office of Trustee;

(b) particulars of all endowments of the institution and all title deeds and other documents including the properties standing in the name of the hereditary Trustees relating thereto ;

(c) particulars of the scheme of administration and of the scale of expenditure.

(d) the names of all Officers to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case ;

(e) the jewels, gold, silver, precious stones, all vessels and other movables belonging to the institution with their estimated value ;

(f) particulars of the idols and other images in or connected with the institution, whether intended for worship or for being carried in processions;

(g) such other particulars as may be required by [1][the Commissioners].

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1. Substituted *vide* Odisha Act No. 18 of 1954.

(2) The register shall be prepared, signed and verified by the Trustee of the institutions concerned or by his authorised agent and submitted by him to [1][the Commissioner], in duplicate through the Assistant Commissioner, within one year from the commencement of this Act or from the founding of the institution, as the case may be, or within such further period not exceeding one year as may be allowed by [1][the Commissioner]:

Provided that each Trustee shall be required to swear an affidavit that the list of properties, both movable or immovable, owned by the institution and furnished, is exhaustive :

Provided further that this Sub-Section shall not apply where a register so signed and verified has been submitted to [1][the Commissioner] before the commencement of this Act.

(3) The Assistant Commissioner may, after such enquiry as he may consider necessary, recommend such alterations, omissions or additions in the register as he may think fit.

(4) [1][The Commissioner] may, after receiving the register and the recommendations of the Assistant Commissioner with respect thereto and making such further inquiry, as he may consider necessary, direct the Trustee to make such alterations, omissions or additions in the register as he may deem fit.

(5) The Trustee shall carry out the orders of [1][the Commissioner] and then submit the register to [1][the Commissioner] for approval.

(6) A Copy of the register as approved by [1][the Commissioner] shall be furnished to the Trustee and to the Assistant Commissioner concerned.

16. Annual Verification of the Register :– (1) The Trustee or his authorised agent shall scrutinise the entries in the register every year, or after such interval, as may be prescribed and submit to the Commissioner for his approval, through the Assistant Commissioner, a verified statement showing the alterations, omissions or additions required in the register.

(2) The Commissioner may, thereupon, after such inquiry as he may consider necessary, direct what alternations, omissions or additions, if any, should be made in the register.

(3) A Copy of the order made under Sub-Section (2) shall be furnished to the Trustee and to the Assistant Commissioner concerned.

(4) The Trustee shall carry out the alterations, omissions or additions ordered by the Commissioner in the Copy of the register kept by him.

17. Trustee to furnish accounts, returns, etc. :– The Trustee of every Religious institution shall furnish to the Commissioner, [2][the Deputy Commissioner] or the Assistant Commissioner such accounts, returns, reports or other informations relating to the administration of the institution in his charge,

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *vide* O.A. No. 29 of 1978.

its funds, property or income or moneys connected therewith, or the appropriation thereof, as the Commissioner, [1][the Deputy Commissioner] or the Assistant Commissioner may require, and at such time and in such form as he may direct.

18. Inspection of Property and Documents :– The Commissioner, [1][the Deputy Commissioner] or Assistant Commissioner, or any Officer or other person deputed by the Commissioner, [1][the Deputy Commissioner] or Assistant Commissioner in this behalf, may inspect all movable and immovable property belonging to all records, correspondence, plans, accounts and other documents relating to any Religious, institution; and it shall be the duty of the Trustee of such institution and all Officers and Servants working under him, his agent and any person having concern in the administration thereof, to afford all such assistance and facilities as may be necessary or reasonably required in regard to such inspection, and also produce any such movable property or document for inspection if so required.

[2]**[19. Alienation of immovable trust Property :–** (1) Notwithstanding anything contained in any law for the time being in force no transfer be exchange, sale or mortgage and no lease for a team 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 and no such transfer shall be valid or operative unless it is so sanctioned.

[3][**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 purpose 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 Odisha 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.

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1. Inserted *vide* O.A. No. 29 of 1978.
2. Substituted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
3. Inserted *vide* O.A. No. 22 of 1989.

(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 suc 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 may 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.

[1](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 Odisha 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 of expires earlier.

(5) In any case where appeal has not been made to the State Government it appears to the State Government [2][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 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.

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1. Inserted *vide* O.A. No. 22 of 1989.
2. Substituted *vide* O.A. No. 29 of 1978.

(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.]

SYNOPSIS

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1. Registering authority cannot insist upon "No Objection Certificate":– Any immovable property belonging to a religious trust cannot be transferred or leased out for more than 5 years without according permission from the Commissioner of Endowment. There being no procedure to be followed by the Commissioner in a case where an application is made U/s- 19 A of the Act and no specific form is prescribed as mentioned in the section for granting a "No Objection Certificate". A registering authority cannot insist upon production of a "No Objection Certificate" from the Commissioner and as such the provisions of Section 19-A cannot operate in its present form, 2012 (I) OLR 922 (Sumit Kumar Bose and others Vs. State of Orissa and others)

2. Without permission permanent lease is void :– The provisions of the section lay down an embargo for transferring or alienating or leasing out any property of the public religious endowment for over 5 years. A permanent lease without permission of the commissioner is ab initio void 108 (2009) CLT 657, 2009 (Suppl. II) OLR 855, 2009 (II) CLR 728 (Bijaya Ketan Brahma and others Vs. State of Orissa and others).

3. No transfer of property without permission :– It is the duty of the Court to protect the interest of the deity, the marfatdar cannot alienate the properties of a deity in violation of its statutory provisions. Endowment Commissioner according permission fixing an offset price for sale of the land of Rs. 10 Lakhs per acre. The Hon'ble High Court directed to put the entire land of the deity to public auction by fixing the upset price afresh 108 (2009) CLT 61, 2009 (I) OLR 929, 2009 (II) CLR 63 (Lokesh Patro and another Vs. Commissioner of Endowment, Orissa and 6 others).

4. Locus Standi to intervene :– Locus Standi to intervene in the matter – Endowment Commissioner according permission to sale the lands of the deity

in the Suo motu revision, application for intervention was filed which was disposed of and later on in the writ petition it was held that the appellants being never inducted as tenant and were not in possession of the land, they has no locus standi challenging such sale in the writ appeal, it was held that the deity being a perpetual minor and disable person, the appellants being Hindu worshippers has got right and have locus standi to intervene in the matter. 108 (2009) CLT 61, 2009 (I) OLR 929, 2009 (II) CLR 63, (Lokesh Patro and another Vs. Commissioner of Endowment, Orissa and 6 others).

5. Provisions of Section 19 not applicable to the property of Lord Jagannath :– The provisions of the Section 19 are not applicable to the property belonging to Lord Jagannath which are governed by the provisions of Section 16 of Shri Jagannath Temple Act, 1955 as the property has been dedicated to Lord Jagannath, Puri, direction issued to deal with the property as per the said provisions, 108 (2009) CLT 508, 2009 (Supp. II) OLR 238, 2009 (II) CLR 588 (Sri Siddha Matha represented by Mahanta Satya Narayan Ramanuj Das and two others Vs. Sri Jagannath Temple Managing Committee)

6. Permission to be granted with much care :– Powers of the Commissioner according permission for alienation of the lands belonging to a public religious endowment – explained – permission is to be granted with much care and caution. The Commissioner is to see and satisfy that the same is for the benefit of the religious institution. 2008 (II) CLR193, 2008 (Suppl. II) OLR 709 (Uma Charan Jena Vs. State of Orissa and others)

On an application U/s- 19 of the Act the Commissioner of Endowment is required to make an enquiry and will sanction the transfer only if it is found to be necessary and beneficial to the institution. It is the satisfaction of the Commissioner as to the necessity and interest of the deity in justification of a transfer and not that of the trustee who merely files the application, as such the de-facto trustee as used in Rule-4 of the Orissa Hindu Religious Endowment Rules does not lead to a situation by which the de-facto trustee acquires and uncontrolled power which may be utilize against the interest of the deity in the matter of alienation of its properties, 63 (1987) CLT 115 (Radhakrushna Dutta and others Vs. State of Orissa and Others)

The period of limitation as provided U/s- 19 (4) of the Act is 3 months from the date of receipt of the copy of the order in the case of a trustee and from the date of the publication of the order in the case of any person having interest in institution, 63 (1987) CLT 115 (Radhakrushna Dutta and others Vs. State of Orissa and Others)

The provision of Section 19 are to safeguard the interest of the deity and function of the sebayat or mahanta is that of a prudent owner who would not desire his property to be sold at a lesser price if higher price is available for the property. A fortiorari the Commissioner being the watch dog should not also desire the property belonging to the religious institution to be alienated for inadequate consideration, if there is a higher offer. The order of alienation being administrative in nature can be modified and altered for cogent reason, 71 (1991) CLT 450 (Mahant Sri Pranab Kishore Bharati Vs. Commissioner of Endowment, Orissa and another)

7. Any alienation without permission is void :– The provisions of the section are mandatory in nature and any alienation made in contravention of the

provisions is void, 81 (1996) CLT 571 (FB) (Smt. Basanti Kumari Sahoo Vs. State of Orissa and others)

The Commissioner of Endowment while granting permission to sale away land belonging to deity for its benefit and permitting the sale in question by way of public auction not followed strictly and the process of auction sale was improper. 102 (2006) CLT 471, 2006 (II) CLR 316, 2006 (Supp. I) OLR 1061, (Sri Yedia Narasimhulu Vs. Commissioner of Endowment, Orissa and others)

There was no material available on record on the basis of which there was fixation of upset price of the land. Further there has not been any observation in this regard as to on what basis the price has been fixed. The order is liable to be quashed. 2006 (II) CLR 736 (K. Iswar Rao Vs. State of Orissa and others)

Claim having been made for permanent tenancy of the rooms which had been occupied under the leases granted by the hereditary trustees – the leases were granted without due procedure of law as there being no sanction of the Commissioner of Endowment and the leases were void in view of section 19, 2003 (I) OLR 145 (Surendra Babu Patra and Others Vs. Commissioner of Endowment Orissa, Bhubaneswar and Others)

8. Prior Permission for Transfer of Land :– Any transfer of land without permission given by the Commissioner for the transfer by the trustee is invalid, 88 (1999) CLT 712, 1999 (II) OLR 319, 1999 (4) CCC 259 (Orissa Natabar Behera Vs. Batakrushna Behera)

9. Revisional Powers of State Government :– After order is made for transfer of immovable trust property, any trustee or any person having interest may prefer appeal and further the provisions of the Section 19 (3) provides any order for sanction of transfer is to be communicated to the State Government as well as to the trustee and published as provided under the said section and in case the transfer has not been affected the State Government may exercise revisional power. Mahanta Sri Pranab Kishore Bharati Goswami and another Vs. The Government of Orissa through its Secretary Law Department, 1995 (II) OLR 118.

10. Order of Eviction :– Landed properties of a deity transferred by way of Registered Sale Deed in violation of the provision of this section. Order of eviction was passed. Though the properties were in possession of the sebayat but they failed to prove that they supplied the balbhog in lieu of the rent of the land. Mere entry in R.O.R. cannot establish the claim of the petitioner, as such eviction order not to be interfered with, 2005 (II) CLR 409, 2005 (Suppl.) OLR 910 (Sabitri Sahu Vs. Commissioner of Endowment and two others)

11. Fixation of upset price :– A public religious institution making application for sale of the land by its non-hereditary Trust Board, permission was granted fixing upset price which was again fixed by the Appellate Authority much more higher as fixed by the Commissioner. Matter was challenged in the Writ Petition and it was found that there was no material to show to fixed the high price by the Appellate Authority, as such the matter was remanded for disposal afresh. 103 (2007) CLT 392, (2007) 1 OLR 6 (K. Iswar Rao Vs. State of Orissa and others)

12. Circumstances in which the sanction for alienation of property can be granted :– There are various factors which are to be taken into consideration before granting permission to alienate the properties of Hindu Religious Endow-

ment. The dominant factor is whether the alienation of the property of the Religious Institution would be beneficial and are in the interest of the institution or not, when there are pressing and urgent legal necessity then only regard must be given for granting sanction. The properties should not be permitted to be sold at the whims and caprices of the persons who are in the management of the same. The legal necessity is the sine qua non to accord permission for sale of the land of the deity. 2007 (II) CLR 733, 2007 (Suppl.II) OLR 1084 ((Sri) Jagnya Baraha Mahaprabhu Bije, Jharuapada and others Vs. State of Orissa through Secretary, Law Department and others)

[1][**19-A. Regulation of registration of documents :–** Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under Section 17 of the Registration Act, 16 of 1908, purports to evidence transfer, by exchange, sale, mortgage or by lease for a term exceeding five years, of any immovable property belonging to or given or endowed for the purpose of any public Religious institution, no Registering Officer, appointed under that Act, shall register any such document unless the transfer or produces before such Registering Officer, the sanction order passed by the Commissioner under Section 19, or, as the case may be, no objection Certificate in the prescribed form granted by the Commissioner or any Officer authorised by him in that behalf.

Provided that a no objection Certificate granted under this Sub-Section shall not be a bar to a dispute or abate any dispute, if pending under Section 41:

Provided further that a no objection Certificate shall be deemed to have been granted, if the Registering Officer is satisfied that the transfer or having applied for grant of no objection Certificate to the Commissioner or the authorised Officer, as the case may be, has not received the same within three months from the date of the application under Section 19 is moved before the Commissioner and that the application has not been rejected before expiry of that period.

19-B. Restriction against money-lending :– Notwithstanding anything contained in any other law for the time being in force, no Religious institution shall lend or borrow money without the prior sanction of the Commissioner :

Provided that no such sanction shall be necessary for borrowing such amount as may be prescribed for meeting the urgent expenses to carry on the daily rituals of a Religious institution.]

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1. Inserted *vide* O.A. No. 22 of 1989.

[1][**19-C. Purchase of Trust property by the State Government :–** (1) Where the commissioner has sactioned for transfere of immovable property, by way of sale, belonging to, or given or endowded for the propose of, any religious institution which become final under sub-section(7) of the section 19, notwithstanding anything contained in this Act or in any other law for the time being in force, the Trustee or the person in-charge of the immovable property of the religious institution,covered undered such order of sanction, shall be bound to first offer the said immovable property to the State Goverment for purchase of such immovable property for public purpose on payment of the amount which the Commisioner has fixed as adequate consideration for the purpose under Section19.

(2) The State Government shall, within a period of forty-five days from the date of receipt of the offer under sub section (1) or such extended period not exceeding thirty days thereafter, intimate its intentionwether to purchase the said immovable property or not in such form and in such manner as may be prescribed.

(3)Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 shall registrar any document relating to transfor of immovable property by the way of sale, as mentioned in sub-section (1), unless certificate from the state Government to the effect that it has no intention to purchase such immovable property is furnished before the registering officer along with such document".]

20. Authority of Trustee to incur expenditure for securing the health, safety or convenience of pilgrims and worshippers :– (1) The Trustee of a Religious institution may out of the funds in his charge, after satisfying adequately the purposes of the institution, incur expenditure on arrangements for securing the health, safety or convenience of disciples, training of Vidyarthis or for securing the health and safety of pilgrims or worshippers resorting to the institution.

(2) [2][x x x]

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1. Inserted *vide* O.H.R.E. (Amendment) Act, 2012, O.G.E. No. 308, Dt. 22.02.2013.
2. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

21. Enforcement of service or charity in certain cases :– (1) Where a specific endowment attached to a Math or Temple consists merely of a charge on property and there if failure in the due performance of the service or charity, the Trustee of the Math or Temple concerned may require the person in possession of the property on which the endowment is a charge to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, Assistant Commissioner may, on the application of the Trustee and after giving the person in possession a reasonable opportunity of stating his objections in regard thereto, by order, determine the amount payable to the Trustee.

(2) Where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession, the Assistant Commissioner may, on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so said or recovered.

(3) Against an order of the Assistant Commissioner under Sub-Section (1) or Sub-Section (2), the Trustee or the person affected may, within one month of the date of the receipt of the order by him, appeal to the Commissioner which may modify or cancel the same.

(4) On application by the Trustee to the Collector of the district in which the property referred to in Sub-Section (1) is situated, or an application by the person in possession to the Collector of the district in which is situated any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession, or the person responsible in law as the case may be, the amount specified in the order of the Assistant Commissioner as modified by the order of the Commissioner, if any, and the expenses of such recovery, as if they were arrears of land revenue and pay to the Trustee or, as the case may be, to the person in possession, the amount due to him.

22. Power of Trustee of Math or Temple over Trustees of specific Endowments :– The Trustee of a specific endowment made for the performance of any service or charity connected with a Math or Temple shall perform such service or charity subject to the general Superintendence of the Trustee of the Math or Temple and shall obey all lawful orders issued by him.

23. [1][x x x]

24. Resumption and re-grant of inam granted for the performance of any charity or service connected with a Math or Temple in case of alienation of the inam or of failure to perform the charity or service :– (1) Any exchange gift, sale or mortgage and any lease for a term exceeding five

1. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

years, of the whole or any portion of any inam or jagir granted for the support or maintenance of a Religious institution or for the performance of a charity or service connected therewtih or of any other Religious charity made, confirmed or recognised by the State Government shall be null and void.

(2) (a) The Collector may, on his own motion, or on the application of the Trustee of the Religious institution or of the Commissioner or the Assistant Commissioner or of any person having interest in the institution who has obtained the consent of such Trustee or the Commissioner, by order, resume the whole or any part of any such inam or jagir in one or more of the following grounds, namely :

(i) that the Trustee of the institution or the holder of such inam of jagir or part, as the case may be, has made an exchange, gift, sale or mortgage of such inam or part or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years; or

(ii) that the Religious institution has ceased to exist or the charity or service in question has in any way become impossible or incapable of performance; or

(iii) that the holder of such inam or jagir or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage, the cahrity or service for performing which the inam had been made, confirmed or recognized as aforesaid, or any part of the said charity or service, as the case may be; or

(iv) that such service is no longer required.

When passing an order under this clause, the Collector shall determine whether such inam or jagir or the inam comprising such part, as the case may be, is a grant of both the landlord's interest and the ryot's interest or only of the landlord's interest :

Provided that in the absence of evidence to the contrary, the Collector shall presume that any minor inam is a grant of both the landlord's interest and the ryot's interest.

(b) Before passing an order under Clause (a), the Collector shall give notice to the Trustee, to the Commissioner, to the Assistant Commissioner, to the inamdar concerned or where only a part of the inam is affected, to the holder of such part as well as to holders of the other part or parts and to the aliene, if any, of the inam, hear their objections, if any and hold such inquiry as may be prescribed.

(c) A Copy of every order passed under Clause (a) shall be communicated to each of the persons mentioned in Clause (b) and shall also be published in the manner prescribed.

(d) (i) Any party aggrieved by an order of the Collector under Clause (a) may appeal to the Collector of the district within such time as may be prescribed

and on such appeal the Collector of the district may, after giving notice to the Commissioner and each of the persons mentioned in Clause (b) and after holding such inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.

(ii) The order of the Collector of the district on such appeal, or the order of the Collector under Clause (a) where no appeal is preferred under Sub-Clause (i) to the district Collector within the time prescribed, shall be final :

Provided that where there has been an appeal under Sub-Clause (i) and it has been decided by the Collector of the district or where there has been no appeal to the Collector of the district and the time for preferring an appeal has expired, any party aggrieved by the final order of the Collector of the district or the Collector, as the case may be, may file a suit in the Civil Court for determining whether that inam comprises both landlord's interest and the ryot's interest or only the landlord's interest. Such a suit shall be instituted within one year from the date of the order of the Collector of the district on appeal where there has been an appeal under Sub-Clause (i) or from the date of the expiry of the period prescribed under Sub-Clause (i) for an appeal to the Collector of the district in a case where there has been no appeal.

(e) Except as otherwise provided in Clause (d), an order of resumption passed under this Section shall not be liable to be questioned in any Court of law.

(f) Where any inam or part of any inam is resumed under this Section, the Collector or the Collector of the district, as the case may be, shall by order regrant such inam or part -

(i) as an endowment to the Religious institution concerned, or

(ii) in case of a resumption on the ground that the Religious institution has ceased to exist or that the charity of service in question has in any way become impossible or incapable of performance, as an endowment for appropriation to such Religious, educational or charitable institution as the Commissioner may recommend.

(g) The order of regrant made under Clause (f) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.

(h) Nothing in this Section shall affect the operation of Section 23.

[1]**[25. Recovery of immovable trust Property unlawfully alienated :–** (1) In case of any alienation, in contravention of Section 19 of this Act or Section 51 of the Odisha Hindu Religious Endowment Act, 1939, or in case of unauthorised occupation of any immovable property belonging to or given or endowed for the purpose of any Religious institution, the Commissioner may, after summary enquiry as may be prescribed and on being satisfied that any such property has been so alienated or unauthorisedily occupied send requisition

1. Substituted *vide* O.A. No. 2 of 1981.

to the Collector of the district to deliver possession of the same to the Trustee of the institution or a person discharging the function of the said Trustee.

(2) The Collector in exercising his powers under Sub-Section (1), shall be guided by rules made under this Act.

(3) Any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights.]

SYNOPSIS

1. Power of the Commissioner 56
2. Order of Eviction 56

1. Power of the Commissioner :– Application made by the deity claiming that the lands belong to it and Opp. Party 2 to 4 occupied the lands unauthorisedly. Since the suit is filed and status quo has been passed in the said suit. The Commissioner stayed the proceeding. 2008 (I) CLR 342 (Lord Lingaraj Mahaprabhu, Bhubaneswar, represented through its Executive Officer Vs. Commissioner of Endowment, Orissa and others)

The provision of Section -25 (3) permits the aggrieved party to approach the Civil Court as the right of the respondent and his predecessor about the claim of the occupancy right had to be determined and adjudicated by some competent authority and as such it was directed the appellant should approached the Civil Court for appropriate relief, 80 (1995) CLT 275 (SC) (Lord Lingaraj Bije, Bhubaneswar and another Vs. Nityananda Mishra and others)

Onus lies on the plaintiff to prove that the mahanta who sold the properties to him was the absolute owner of the property – Inference cannot be drawn from the act or omission of the authorities under the Endowment Act and Collector to confer title of the property on the mahanta as a owner of the properties, 2004 (I) CLR 71, (Madhu Sudan Panda and after him Mukta Devi and others Vs. The Commissioner of Endowment, Orissa and others)

2. Order of Eviction :– Landed properties of a deity transferred by way of Registered Sale Deed in violation of the provision of this section. Order of eviction was passed. Though the properties were in possession of the sebayat but they failed to prove that they supplied the balbhog in lieu of the rent of the land. Mere entry in R.O.R. cannot establish the claim of the petitioner, as such eviction order not to be interfered with, 2005 (II) CLR 409, 2005 (Suppl.) OLR 910 (Sabitri Sahu Vs. Commissioner of Endowment and two others)

26. [1][x x x]

CHAPTER – III

RELIGIOUS INSTITUTIONS OTHER THAN MATHS AND SPECIFIC ENDOWMENTS ATTACHED THERETO

27. Non-hereditary Trustees, their number and appointment :– (1) The Assistant Commissioner shall, in case where there is no hereditary Trustee, [2][with the prior approval of the State Government] appoint non-hereditary Trustee

1. Omitted *vide* O.A. No. 18 of 1954.
2. Inserted *vide* O.A. No. 4 of 1992.

in respect of each Religious institution other than Maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the Religious denomination for whose benefit the said institution is chiefly maintained.

[1][Provided that the Assistant Commissioner shall, before sending any proposal to the State Government for such prior approval, publish a notice in the Notice Board of the concerned Religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication and forward to the State Government the suggestions and objections, if any received, alongwith such proposal.

(1-a) On receipt of a proposal made under Sub-Section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the Religious denomination for whose benefit, the concerned Religious institution is chiefly maintained.]

[2][(2) A non-hereditary Trustee shall, unless he is sooner removed or dismissed or otherwise ceases to be a Trustee, hold Office for a period of two years from the date of his appointment :

Provided that the Assistant Commissioner may, for sufficient reasons to be recorded by him, from time to time, extend the aforesaid term of a Trustee, so, however, that the total extension so granted shall in no case exceed six months in the aggregate.

(3) Every non-hereditary Trustee holding Office immediately prior to the date of commencement of the Odisha Hindu Religious Endowments (Amendment) Act, 1978 shall cease to hold Office as such on the completion of a period of two years from the date of this appointment or on the expiration of three months from the date of commencement of the said Act, whichever is later.]

SYNOPSIS

1. After expiry of term of Trust Board no writ lies 58
2. Powers of the Assistant Commissioner of the Endowment 58
3. Meaning of the term Religious Institution 58
4. Power of Assistant Commissioner to appoint non hereditary trustee 58
5. Principles of Natural Justice 59
6. Summary Inquiry before appointing non hereditary trustee 59
7. Procedure to be followed before appointment of non-hereditary trustee 59
8. Notice under Order 1 Rule 8 (2) of C.P.C. is mandatory 59

1. Inserted *vide* O.A. No. 13 of 2003 (O..E. No. 825, dated 31.5.2003).
2. Substituted *vide* O.A. No. 29 of 1978.

1. After expiry of term of Trust Board no writ lies :– Writ petition filed challenging the appointment of the members of the trust board, however, the term of the trust board expired and as such there was no question of interfering in the orders and High Court was not inclined to quash the same. 2011 (Suppl.I) OLR 631.

2. Powers of the Assistant Commissioner of the Endowment :– The Assistant Commissioner of the Endowment can appoint the non hereditary trust board subject to approval of the State Government, but before forwarding any such proposal to the State Government a notice is to be published in the notice board of the concerned religious institution which is mandatory in nature, without such notice the order of appointment of trust board is illegal and as such liable to be quashed. 2011 (2) OJR 103, 2010 (II) OLR 754 (Sudarsan Nayak and another Vs. Commissioner of Endowments and others) 110 (2010) CLT 869.

Powers of the Deputy Commissioner of Endowment to constitute non hereditary Trust Board. The Deputy Commissioner of Endowment not following the procedure as prescribed and laid down in the provisions of Section 27 of the Act. The Order cannot be sustained constituting the Trust Board under Clause 3 (a) of the scheme, the matter remanded to the Deputy Commissioner with certain directions 108 (2009) CLT 169, 2009 (Supp. II) OLR 113, 2009 (II) CLR 585, (Pramod Behera and others Vs. Commissioner of Endowment and others)

3. Meaning of the term Religious Institution :– Meaning of the word the "Religious Institution" has been defined which means those religious institution in Section 27 of the Act, which are public in nature. The nature of the religious institution may be public or private is to be decided by the Assistant Commissioner of Endowment, 69 (1990) CLT 213 (Baikunthanath Patjoshi and others Vs. Commissioner of Endowment of Orissa, Bhubaneswar and others)

4. Power of Assistant Commissioner to appoint non hereditary trustee:– The Assistant Commissioner can appoint non hereditary trustee to a religious institution other than matha without determination of a dispute U/s- 41 of the Act, 74 (1992) CLT 969 (Khetramohan Rout and Others Vs. Sri Sri Mugeswar Mahadev and others)

Appointment of Non Hereditary Trustee – Powers of Assistant Commissioner of Endowment – When there is no hereditary trustee, Assistant Commissioner is authorized to appoint non-hereditary trustee in respect of each religious institution other than mathas with approval of the State Government. Such appointment can continue for 2 years from the date of appointment. Such appointment can be extended from time to time which cannot exceed 6 months. Further the meaning of the term "Sufficient" – Explained – Which means adequate, enough, as much as may be necessary to answer the purposes intended, 81 (1996) CLT 694 (Narayan Sahu and others Vs. The Commissioner of Endowment of Orissa and others)

Appointment of non hereditary trustee is to be made with utmost expedition in order to avoid mismanagement and misappropriation. While doing so the Assistant Commissioner is to make a summary inquiry which must be reasonable and satisfactory holding that whether there is a hereditary trustee in the institution or not. If the order is arbitrary than the said order can be challenged in the revision. 81 (1996) CLT 477 (Dhadi Parida after him Sundari Parida and others Vs. Commissioner of Consolidation and others)

The Assistant Commissioner of Endowment can exercise its jurisdiction for appointment of non-hereditary trustees whether any proceeding under the provisions of Section 41 of the Act is pending or not, 2006 (I) CLR 230 (Sri Chandi Thakurani Bije at Bakharabad, Jagatsinghpur Vs. State of Orissa and others)

5. Principles of Natural Justice :– Inspector of Endowment submitting a report to form a non-hereditary Trust Board and the same having being sent to the Commissioner – Interim Trust Board can be formed if there is no hereditary trustee – However the Additional Commissioner or the Commissioner is to make enquiry as to whether there was any hereditary trustee or not, as the R.O.R. prepared in the name of the petitioner. Further the matter having being in dispute before the Consolidation Authorities, they have interest in the matter. But they have not been given an opportunity of hearing, as such the matter was remanded to the Commissioner to be dispose of after extending due opportunity of hearing to the petitioner. AIR 1999 Orissa 175, 1999 (I) OLR 608 (Jasobanti Thakurani and others Vs. Commissioner of Endowment and others)

6. Summary Inquiry before appointing non hereditary trustee :– The Assistant Commissioner while appointing a non- hereditary trustee is to conduct a summary inquiry into the matter and he is to satisfied with regard to the necessity and also it is to be seen whether there is any hereditary trustee or not. However, the Commissioner is not debarred from exercising the powers as provided U/s- 27 in case of any application pending U/s-41 of the Act. In view of the amendment of 1973, thus any order passed by the Assistant Commissioner is revisable, 1999 (1) OLR 163 (Sri Sri Raghunath Jew and another Vs. Commissioner of Endowment Orissa and others)

7. Procedure to be followed before appointment of non-hereditary trustee :– Before appointment of non-hereditary trustee of any religious institution, the Assistant Commissioner is to invite suggestion and objection from the public by publishing a notice in the Notice Board of the concerned religious institution and also by beat of drums, the said suggestion and objection are to be forwarded to the State Government alongwith the proposals. A duty is cast upon the State Government to verify the suggestion and objection and if it intends to modify the said proposal of the Assistant Commissioner then again it has to invite suggestion and objection from the local public through the Assistant Commissioner, State Government not following the procedure substitution of the new name is illegal. 2005 OLR 465, 2005 (1) CLR 391 (Ch.) Krisna Murty and others Vs. State of Orissa and others)

8. Notice under Order 1 Rule 8(2) of C.P.C. is mandatory :– Assistant Commissioner appointed hereditary trustee which was challenged in appeal. However there being no notice issued under Order 1 Rule 8 (2) of C.P.C. The Order of the Trial Court is vitiated, 2005 (1) OLR 612, (2005) 1 CLR 702 (Jogiram Mohapatra and other Vs. Sibaram Pradhan and others)

28. Power to Suspend, Remove or Dismiss Trustees :– (1) [1][The Commissioner, in the case of a hereditary Trustee, and the Assistant

1. Substituted *vide* O.A. No. 29 of 1978.

Commissioner, in the case of a non-hereditary Trustee, may suspend, remove or dismiss the Trustee of a Religious institution referred to in Section 27] –

(a) for persistent default in the submission of budgets, accounts, reports or returns or in payment of contribution or other dues payable to Government;

(b) for wilful disobedience of any order issued under the provisions of this Act by the State Government or the Commissioner, [1][the Deputy Commissioner] or Assistant Commissioner;

(c) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the trust or alienation of the trust property in contravention of this Act, or the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939);

(d) for any misappropriation of, or improper dealing with, the properties of the institution of which he is Trustee;

(e) for unsoundness of mind or other mental or physical defect or infirmity which makes him unfit for discharging the functions of a Trustee; or

(f) [2][x x x]

(2) When it is proposed to take action under Sub-Section (1), the Commissioner or the Assistant Commissioner, as the case may be, shall frame charges against the Trustee concerned and give him an opportunity of meeting such charge of testing the evidence adduced against him and of adducing evidence in his favour and the order of suspension, removal or dismissal shall state the charges framed against the Trustee, his explanation and the finding on each charge with the reasons therefor.

(3) Pending the disposal of the charges framed against the Trustee, the Commissioner or the Assistant Commissioner, may place the Trustee under suspension and appoint a fit person to discharge the functions of the Trustee.

(4) A Trustee, who is suspended, removal or dismissed by an Assistant Commissioner under Sub-Section (1), may within one month from the date of the receipt of the order of suspension, removal or dismissal, appeal to the Commissioner against such order in the prescribed manner and the Commissioner shall pass such orders on the appeal as he may thinks fit :

Provided that no appeal shall be entertained unless the person affected by the order complies with it and makes over charges of his Office or unless such a condition is waived by the Commissioner at his discretion.

[3][(5) Any hereditary Trustee aggrieved by an order passed by the Commissioner under Sub-Section (1) [2][x x x] may within thirty days from the date of receipt of the order, appeal to the High Court and the Court may either

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1. Inserted *vide* O.A. No. 29 of 1978.
2. Omitted *vide* O.A. No. 29 of 1978.
3. Inserted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

summarily dismiss the appeal or after hearing the parties pass such orders as the Court may deem fit.

(6) A hereditary Trustee so suspended, removed or dismissed may be allowed such maintenance allowance as may be fixed by the Commissioner considering the financial condition of the institution and the rules made in the behalf.]

Notes :– *Appointment of interim trustees by Commissioner – Duty of the Commissioner is to make due inquiry in the matter when there is an objection, as the trustees so appointed are interested persons in view of the Section 29 of the Act – Appointment of such trustees is void. Further distinction between Section 28 and 29 – Explained, 82 (1996) (I) OLR 529 (Anam Charan Mallick and others Vs. Commissioner of Endowment, Bhubaneswar and another)*

[1]**[29.** (1) A person shall be disqualified for appointment as a Trustee if he–

(a) is a minor;

(b) has been convicted by a Criminal Court of any offence involving moral turpitude;

(c) is of unsound mind and is so declared by a competent Court;

(d) is an undischarged insolvent;

(e) has directly or indirectly any interest in a lease or any other transaction relating to the property of the institution;

(f) is a paid employee of the institution or has any share of interest a contract for the supply of goods to, or the execution of any works or the performance of any service undertaken by the institution;

(g) has been found to be guilty of misconduct; or

(h) does not profess the religion or does not belong to the Religious persuasion or determination to which the institution belongs.

(2) A Trustee shall be disqualified to continue and shall cease to hold Office as such if he incurs any of the disqualifications specified in Clauses (b) to (h) of Sub-Section (1).]

Notes :– *Appointment of interim trustees by Commissioner – Duty of the Commissioner is to make due inquiry in the matter when there is an objection, as the trustees so appointed are interested persons in view of the Section 29 of the Act – Appointment of such trustees is void. Further distinction between Section 28 and 29 – Explained, 82 (1996) (I) OLR 529 (Anam Charan Mallick and others Vs. Commissioner of Endowment, Bhubaneswar and another)*

30. Filing up of Vacancies in the Office of hereditary Trustee :– When a permanent vacancy occurs in the Office of the hereditary Trustee of such Religious institution the next in the line of succession shall be entitled to succeed to the Office.

1. Substituted *vide* O.A. No. 29 of 1978.

(2) When a temporary vacancy occurs in such an Office by reason of the suspension of the hereditary Trustee under Sub-Section (1) of Section 28 or by reason of his ceasing to hold Office under the provisions of Section 29, the next in the line of succession shall be appointed to discharge the functions of the Trustee until his disability ceases.

(3) When a permanent or temporary vacancy occurs in such an Office and there is a dispute respecting the right of succession to the Office, or when such vacancy cannot be filled up immediately or when a hereditary Trustee is minor and has no legally constituted guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as such guardian, the [1][xxx] Commissioner may, [1][xxx] appoint a fit person to discharge the functions of the Trustee of the institution until the disability of the hereditary Trustee ceases or another hereditary Trustee succeeds to the Office or for such shorter term as the [1][xxx] Commissioner may direct. The Commissioner [1][xxx] shall have power to remove such interim Trustee for the reasons specified in Section 28.

Explanation :– In making any appointment under this Sub-Section [1][xxx] the Commissioner, shall have due regard to the claims of members of the family, if any, entitled to the succession.

[2][(4) Nothing in this Section shall affect the right of any person aggrieved by an order of the Commissioner under Sub-Section (3) to establish the right to hold Office of the hereditary Trustee in a Court of law :

Provided that such Court shall have no power to stay the operation of the Commissioner, pending the disposal of the suit or other proceedings arising in relation thereto.]

SYNOPSIS

1. Power of Commissioner to determine status of Religious Institution 62
2. Declaration of Hereditary Trustee 62

1. Power of Commissioner to determine status of Religious Institution :– An order made without proper enquiry as to whether the institution is a public religious institution or not than the said order cannot have any binding effect. Religious institution, the Commissioner is empowered to decide the nature and character of the institution in accordance with law, 66 (1988) CLT 661 (Suryanarayan Das and others Vs. Mahanta Shri Chaitanya Das and others)

2. Declaration of Hereditary Trustee :– Powers of the Commissioner for appointment of hereditary trustee, the institution being a matha, one Guru Parankush Das executed a will appointing Raghunath Ramanuja Das and after him Raghunath Ramanuja Das appointed a Chela, the said will having been held genuine by the Civil Court, as such Raghunath Das had acted as a hereditary trustee of the matha. Thus he duly appointed the petitioner as a Chela who is to

1. Omitted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.
2. Substituted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

be declared as the hereditary trustee of the said matha, but the Commissioner having not done, the order is to be set aside, 1999 (1) OLR 428 (Sri Anil Kumar Das @ Ananta Ch. Ramanuja Das Vs. The Commissioner of Hindu Religious Endowment, Orissa)

Determination of the hereditary trustee by the Commissioner – its powers and functions – explained – commissioner accepting the Opp. Party No.3 as hereditary trustee did not commit any illegality, 2008 (I) CLR 555 (T.Kalyani Subudhi and others Vs. Commisioner of Endowments, Orissa Bhubaneswar and others)

31. Appointment of Office-holders and Servants in Religious Institutions :– (1) Vacancies, whether permanent or temporary, amongst the Office-holders or Servants of a Religious Institution shall be filled up by the Trustee in cases where the Office or service is not hereditary.

(2) In cases where the Office or service is hereditary the next in the line of succession shall be entitled to succeed.

(3) Where however there is a dispute respecting the right of succession, or

where such vacancy cannot be filled up immediately, or

where the person entitled to succeed is a minor without a legally constituted guardian fit and willing to act as such, or

where the hereditary Office-holder or Servant is suspended from his Office under Sub-Section (1) of Section 32;

the Trustee may appoint a fit person to discharge the functions of the Office of perform the service, until the disability of the Office-holder or Servant ceases or another person succeed to the Office or Service, as the case may be.

Explanation :– In making any appointment under this Sub-Section, the Trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

(4) Any person affected by an order of the Trustee under Sub-Section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Assistant Commissioner whose order shall be final :

Provided that no appeal shall be entertained unless the person affected by the order complies with it and makes over charge of his Office or unless such a condition is waived by the Commissioner at his discretion.

32. Punishment of Office-holders and Servants in Religious Institution :– (1) All Office-holders and Servants attached to a Religious Institution or in receipt of any emolument to perquisite from the institution shall, whether the Office or service is hereditary or not, be controlled by the Trustee and the Trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any Office-holder or Servant punished by a Trustee under Sub-Section (1) may, within one month from the date of the communication of the order to him, appeal to the Assistant Commissioner whose order shall be final.

(3) If any such Office-holder or Servant against whom an order, fine, suspension, removal or dismissal has been made by the Trustee or the Assistant Commissioner, as the case may be, disobeys such order, he shall, unless he shows reasonable cause to the satisfaction of the Commissioner to the contrary, be liable to pay to the [1][Endowment Fund] within such date as may be specified in the order such penalty not exceeding [1][two] hundred rupees and in case of default a daily fine not exceeding twenty rupees. The penalty to be paid by such person shall in no case be paid from the fund of the institution concerned.

(4) If such penalty is not paid within the time fixed or within such further time as may be granted by the Commissioner, the Collector of the district, in which any property of the person against whom an order is made under Sub-Section (3) is situated, shall, on a requisition made to him by the Commissioner, recover the amount as if it were an arrear of land revenue.

33. Office-holders and Servants of temples, not to be in possession of jewels or other Valuable articles except under conditions :– [1][Without prejudice to the generality of the provisions of this Act no Office-holder or Servant of a temple shall have the right to be in possession of the jewels or other valuable belongings to the temple except under such conditions and safeguards as the Commissioner may by general or special order direct.]

34. Fixing of standard scales of expenditure :– (1) The Trustee of a Religious Institution may, from time to time, submit to the Assistant Commissioner proposals fixing the scale of expenditure in the institution and the amounts which should be allotted to the various objects or ceremonies connected with such institution or the proportion in which the income or other property of the institution may be applied to such objects or ceremonies.

(2) The Trustee shall publish such proposals at the premises of the institution and in such other manner as the Assistant Commissioner may direct, together with a notice starting that, within one month from the date of such publication, any person having interest might submit his objections or suggestions to the Assistant commissioner.

(3) After the expiry of the said period, the Assistant Commissioner shall, after considering any objections or suggestions received by him, pass such order as he thinks fit on such proposals having regard to the established usage of the institution and its financial position and communicate a Copy of the order to the Trustee.

(4) The Trustee or any person having interest may, within one month from the date of the receipt of the order by the Trustee, appeal against it to the Commissioner.

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1. Substituted *vide* O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

(5) The scale of expenditure for the time being in force in an institution shall not be altered by the Trustee except in accordance with the procedure laid down in this Section :

Provided that the Assistant Commissioner may at any time on his own motion, for sufficient cause, direct the Trustee to modify the scale of expenditure.

(6) The Trustee or any person having interest may within one month from the date of the receipt by the Trustee of any direction issued under the proviso to Sub-Section (5) appeal against such direction to the Commissioner. The order of the Commissioner shall be final.

CHAPTER – IV

MATHS

35. Disqualification of hereditary Trustees :– (1) A hereditary Trustee of a Math shall be declared disqualified and shall consequently cease to hold his Office if he –

(a) is of unsound mind ; or

(b) is suffering from any physical or mental disease or defect or infirmity which renders him unfit to be a Trustee; or

(c) has ceased to profess and practise Hindu religion or tenets of the Math; or

(d) is convicted for any offence involving moral turpitude [1][x x x]; or

(e) has committed breach of trust in respect of any of the properties of the Religious Institution; or

(f) persistently and wilfully defaults in discharging his duties or functions under this Act or any other law for the time being in force or in payment of contribution or other dues payable to Endowment Fund.

(2) The Commissioner shall, after enquiry in accordance with the provisions of the Act and so far as may be, of the Code of Civil Procedure, 1908 (V of 1908) relating to trial of suits and with the prior approval of the State Government, declare by an order in writing whether a Trustee is disqualified either temporarily or for the life-time under this Section.

(3) Any person affected by the order of the Commissioner under Sub-Section (2) may within sixty days from the date of the receipt of the order by him appeal to the High Court.

(4) The hereditary Trustee so disqualified may be allowed such maintenance as may be fixed by the Commissioner considering the financial condition of the institution and rules made in this behalf.

(5) If a Trustee is declared disqualified under this Section, it shall be the duty of the Commissioner to appoint one or more persons to discharge the

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1. Omitted *vide* O.A. No. 18 of 1954.

functions of the Trustee of the Institution. In making any appointment under this Sub-Section the Commissioner shall have due regard to the claims of the next in line of succession and failing this of the disciples of the Math:

Provided that in case of disqualifications falling under Clauses (a) and (b) of Sub-Section (1) the appointment shall be until such period when the disqualification ceases.

SYNOPSIS

1. Powers of the Commissioner 66
2. Disqualification of hereditary trustee 66

1. Powers of the Commissioner :– As per the provisions of the Section 35 of a act if a hereditary trustee is found acting contrary to the provisions of the said section, then he can be declared disqualified after following due procedure, making due inquiry as provided under the said section, the Commissioner otherwise cannot suspend the hereditary trustee and constitute the interim trust board as provided U/s- 7 of the Act. (Raj Gopal Ramanuja Das Vs. Commissioner of Endowments, Orissa and others) 2011 (II) OLR 969.

2. Disqualification of hereditary trustee :– The person affected has to be given an opportunity of hearing by the State Government before it accords approval to the recommendation for disqualification. To be stripped of the office and status, to be deprived of the rights and to be removed from the responsibilities in any unceremonious way as to suffer in pubic esteem, in volves civil consequences which encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non pecuniary damages. In its comprehensive connotation, everything that affects a citizen in a civil life inflicts a civil consequence which requires before its implication rules of natural justice by way of affording an opportunity of being heard particularly when the proceedings are quasi-judicial. The principles of natural justice is the prevention of miscarriage of justice, 81 (1996) CLT 244 (Mahanta Sri Raghabendra Prapana Ramanuj Das Vs. State of Orissa and others)

Order for approval of disqualification of trustee of the institution not received – the writ application is premature and not maintainable.

Nature and origin of matha and its meaning described, 84 (1997) CLT 309 (Sri Pandit Matha and others Vs. State of Orissa and another)

The Civil Court has no powers to declare a person disqualified on the ground of moral conduct for the simple reason that the provision of Section 35 of the Act provides for an enquiry about such disqualification, 2006 (II) CLR 693, 2006 (Supp.II) OLR 357 (Sri Ramaballav Das Vs. Sri Dhyan Chandra Das)

The provisions of this section lay down disqualification of the hereditary trustee and the Commissioner of Endowment is empowered to conduct enquiry as to whether a hereditary trustee is to remain as such or not. He can declare by a written order that a trustee is disqualified either temporarily or permanently – A mahanta of a matha is a religious head of the institution and he should have the faith in the cult or the school to which the matha belongs and a mahanta should also have an exemplary character. 103 (2007) CLT 199, 2006 (Suppl. II) OLR 357 (Sri Ramaballav Das Vs. Sri Dhyan Chandra Das)

36. Filling up of Vacancies :– (1) When a vacancy occurs in the Office of the Trustee of a Math or specific endowment attached to a Math except as provided in the preceding Section and there is a dispute respecting the right of succession of such Office, or

When such Office cannot be filled up immediately or when the Trustee is a minor and there is no recognised guardian willing to act as such or when there is a dispute respecting the person who is entitled to act as such guardian.

[1][the Commissioner] after being satisfied that an arrangement for the administration of the Math and its endowment or of the specific endowment, as the case may be, is necessary shall make such appointment and arrangements as he thinks fit until the dispute is settled or another Trustee succeeds to the Office, as the case may be. [1][The Commissioner] may also remove such interim Trustee for the reasons specified in Section 28.

(2) In making any appointment under Sub-Section (1) [1][the Commissioner] shall have due regard to the claims of the disciples of the Math, if any, or in the absence of any such disciples of the Math claims of one of the allied or as far as possible closely connected Maths shall be taken into consideration.

[2][(3) Nothing in this Section shall affect the right of any person aggrieved by the order of [1][the Commissioner] under Sub-Section (1) to establish his right of succession to the Office of the Trustee in a Court of law :

Provided that such Court shall have no power to stay the operation of the order of [1][the Commissioner] pending disposal of the suit or other proceedings arising relation thereto.]

Notes :– *Powers and functions of the Commissioner for appointment of the hereditary trustee indicated – The power of the Commissioner U/s- 36 of the Act accrues when there is a vacancy in the office of the hereditary trustee of the matha. When there is no vacancy the application U/s- 36 or 39 would not be maintainable, 2008 (I) CLR 177, AIR 2008 Orissa 187, 2008 (Supp.II) OLR 719 (Swami Shree Dutta Yogeshwar Dev Tirtha Maharaj Vs. State of Orissa and others)*

37. Fixing of standard scales of expenditure - (1) The Trustee of every Math or specific endowment attached to a Math may, from time to time, submit to [1][the Commissioner] proposals, for fixing the scale of expenditure in the institution and the amounts which should be allotted to the various objects or ceremonies connected with the Institution or the proportions in which the income or other property of the institution may be applied to such objects or ceremonies.

(2) The Trustee shall publish such proposals at the premises of the Math and in such other manner as [1][the Commissioner] may direct, together with a notice stating that, within one month from the date of such publication, any person having interest may submit suggestions to him.

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *ibid*.

(3) If, on a scrutiny of such proposals and any suggestions made by persons having interest, [1][the Commissioner] is of opinion that the scale of expenditure or any item in the scale of expenditure is at variance with the established usages of the institution or for sufficient reasons needs modification, [2][the Commissioner] may call for an explanation from the Trustee and after considering the same, may pass such order as he thinks fit on such proposals and communicate a Copy of the order to the Trustee.

(4) The Trustee or any person having interest may, within one month from the date of receipt by the Trustee of any order under the foregoing provision, appeal [1][to the State Government and their decision shall be final.]

38. [3][x x x]

39. Appointment of successors by hereditary Trustees - When the hereditary Trustee of a Math nominates his successor he shall give intimation in writing to [1][the Commissioner]. Subsequent changes in the nomination may also be intimated within three months of the nomination. For purpose of succession the last nominee so intimated shall be recognised by [1][the Commissioner]. If no appointment is made during life-time of the Trustee. [1][the Commissioner] shall have full power to appoint an Executive Officer and the trust shall be brought under the direct control of [1][the Commissioner] and shall be treated as an institution under Chapter VII. In making this appointment [1][the Commissioner] shall have due regard to the custom and usage and tenets of the Math. Any person aggrieved by the decision may within ninety days from the date of the decision institute a suit in a competent Court of law to establish his right to the Office of the hereditary Trustee but pending the result of such suit, if any, the order of [1][the Commissioner] shall be final.

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1. Powers and functions of the Commissioner for appointment of the hereditary trustee indicated :– The power of the Commissioner U/s- 36 of the Act accrues when there is a vacancy in the office of the hereditary trustee of the matha. When there is no vacancy the application U/s- 36 or 39 would not be maintainable, 2008 (I) CLR 177, AIR 2008 Orissa 187, 2008 (Supp.II) OLR 719 (Swami Shree Dutta Yogeshwar Dev Tirtha Maharaj Vs. State of Orissa and others)

The Civil Court has no powers to declare a person disqualified on the ground of moral conduct for the simple reason that the provision of Section 35 of the Act provides for an enquiry about such disqualification, 2006 (II) CLR 693, 2006 (Supp.II) OLR 357 (Sri Ramaballav Das Vs. Sri Dhyan Chandra Das)

Procedure for appointment of he-

1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *ibid.*
3. Omitted *ibid.*

reditary trustee – Explained and indicated – The reigning mahanta of the institution is to make a nomination of his successor which is to be duly intimated to the Commissioner who after being duly satisfied of the genuineness of such nomination. The Commissioner is required to accept the same and recognized it while doing so, he has jurisdiction to make an inquiry in the matter. However, he has no power whether such nominee is worthy of occupying the "Gaddi" of the mahantaship or of the matha, 2006 (Supp. I) OLR 357 and 2006 (II) CLR 693, (Sri Ramaballav Das Vs. Sri Dhyan Chandra Das)

2. Declaration of Hereditary Trustee :– Powers of the Commissioner for appointment of hereditary trustee, the institution being a matha, one Guru Parankush Das executed a will appointing Raghunath Ramanuja Das and after him Raghunath Ramanuja Das appointed a Chela, the said will having been held genuine by the Civil Court, as such Raghunath Das had acted as a hereditary trustee of the matha. Thus he duly appointed the petitioner as a Chela who is to be declared as the hereditary trustee of the said matha, but the Commissioner having not done, the order is to be set aside, 1999 (1) OLR 428 (Sri Anil Kumar Das @ Ananta Ch. Ramanuja Das Vs. The Commissioner of Hindu Religious Endowment, Orissa)

40. [1][x x x]

CHAPTER – V
INQUIRIES

41. Assistant Commissioner to decide certain disputes and matters :– (1) In case of a dispute the Assistant Commissioner shall have power to enquire into and decide the following disputes and matters–

(a) whether an Institution is a Public or Religious Institution;

(b) whether an Institution is a Temple or a Math;

(c) whether a Trustee holds or held Office as a hereditary Trustee;

(d) whether any property or money is of a Religious endowment or specific endowment;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any Religious institution and what the established usage of a Religious Institution is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a religious or secular character, and whether any property or money has been given wholly or partly for religious or secular uses; and

(g) where property or money has been given for the support of an institution or the performance of a charity, which is partly of Religious and partly of a secular Character or when any property or money given is appropriated partly to Religious and partly to secular uses, as to what portion thereof shall be allocated to Religious uses :

1. Omitted *ibid.*

Provided that the burden of proof in all disputes or matters covered by Clauses (a) and (d) shall lie on the person claiming the institution to be private or the property or money to be other than that of a Religious endowment or specific endowment, as the case may be.

(2) [1][x x x]

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13. Powers of the Appellate Authority for direction 73
14. Deities being not permanent whether appointment of interim trustees justified 73
15. Claim for Hereditary Trustee 74

1. Distinction between Private and Public Temple :– Distinction between "Private Temple" and "Public Temple" – Explained – The nature and character of the same is to be adjudged looking at the various circumstances. When a party claims the institution is being a private one, the claim for hereditary trustee becomes inherent to the said claim 108 (2009) CLT 349, 2009 (Supp. II) OLR 922, 2009 (II) CLR 409, (Benudhar Hota and others Vs. Jagannath Nayak and others)

A person who claims to be hereditary trustee of an institution within the meaning of Section 41 (1)(C) of the Act will have to establish the said fact and the burden lies on him. (60) (1985) CLT 565.

Whether an institution is a matha or temple is to be decided on a dispute U/s- 41(b) of the Act, when there is a dispute whether it is a matha or temple normally, burden under the Evidence Act would be on the person who would loose if the fact is not proved, 63 (1987) CLT 223 (Kunja Bihari Parida Vs. Sri Narayani Thakurani and Others)

Duties of the Authorities under the Act – Explained – The deity of the statutory authority under the act would be first to consider the character of the institution. A religious institution may either be a matha or a temple, the consideration that would weigh with the authorities would, therefore, depends upon the character of the institution after the character of the institution is determined, the question of its being public or private would arise, 63 (1987) CLT 223 (Kunja Bihari Parida Vs. Sri Narayani Thakurani and Others)

1. Omitted *vide* Odisha Act No. 18 of 1954.

Distinction between private and public trust – explained – In the private trust the beneficiaries are definite and ascertained individuals or who, within a definite time, can be definitely ascertained but in the matter of public trust the beneficial interest must be vested in an uncertain or flactuating body of persons either the public at large or some considerable portion of it answering a particular description, 72 (1991) CLT 530 (Shri Rama Chandra Rana and others Vs. Hindu Public and Shri Kaleswar Mahadev at Kalarapadar and others)

Under the provisions of the section the Assistant Commissioner of Endowment is to enquire and decide the question whether a trustee is hereditary one and institution is private or other than that of the religious institution. The theory of Lost grant is applied as the name itself indicates where chain is lost and the founder and time of foundation are not definitely ascertainable. In such case, it is necessary to make technical presumption to trace out lawful origin from contemporaneous materials. There is no hard and fast rule as to the length of time that is required to establish hereditary nature of the trustee can be laid down. 73 (1992) CLT 303 (Hindu Public represented through Jadunath Das and others Vs. Sankarsan Das and others)

The Object of Order 1 Rule 8 of Code of Civil Procedure read with Section 41 of the Act – Explained – There cannot be any determination of the institution whether private or public, unless public are impleaded in a proceeding U/s- 41 of the Act, 74 (1992) CLT 309 (Purna Chandra Panigrahi Vs. Baidya Jani and others)

2. Dedication of Property by the Donor :– Dedication of a property to a deity is dependant on the mental frame of the donor, if the donor has totally dedicated himself at the feet of the deity worldly attachment is of little significance to him. As such the view of the Deputy Commissioner that a poor person could not have dedicated his entire land to the deity is not acceptable, 78 (1994) CLT 285 (Hadibandhu Senapati and others Vs. Mani Biswal and others)

The authorities after taking into consideration the evidence available on records holding that the deity is a public one being a temple without any hereditary trustee, 79 (1995) CLT 135 (Sri Sri Kanteisuni Thakurani Bije Rampur Kaitha Vs. Babudhar Rout and Others)

Powers and functions of the authorities under the act to determine all questions as provided under the different provisions of the act – explained – petition filed claiming non hereditary trusteeships under a Seva Samarpana Patra and the other side filed a suit in Civil Court for setting aside the same on the ground illegality and fraud. Thus the Additional Assistant Commissioner of Endowment can decide whether any document or deed is acceptable while deciding whether any institution is a public religious one which can be challenged in the appeals and cannot be questioned in any Civil Court. The authority under the act can refuse to accept any such document for the limited purpose, whether any institution is a public religious or not, 1998 (I) OLR 146 (Bisnab Singh Vs. Sri Sri Trinath Dev)

Before exercising the powers under Section 8B of the Act, the Commissioner is required to form an opinion on the basis of the objective material. It cannot be his ipse dixit without any supporting materials, whatsoever. Such power cannot be used arbitrarily. Thus whether a disputed matha is a public religious institution is to be decided and adjudicated U/s- 41 (1) (a)

(d) of the Act, 94 (2002) CLT 30 (Jayaram Dash Jee Maharaj and after him Mahanta Premananda Dash Jee Vs. Commissioner of Endowment, Orissa and another)

3. Compromise Decree cannot be effected by a Resolution of a Board of Trustee :– The trust board of the institution had no legal authority to implement the compromise decree by way of resolution, 94 (2002) CLT 755 (Brahman Nijog Vs. Badu Nijog). Further the rights of the party to be decided by the competent authority under the Act – Explained – indicating the jurisdiction of the Civil Court.

The Assistant Commissioner of Endowment can exercise its jurisdiction for appointment of non-hereditary trustees whether any proceeding under the provisions of Section 41 of the Act is pending or not, 2006 (I) CLR 230 (Sri Chandi Thakurani Bije at Bakharabad, Jagatsinghpur Vs. State of Orissa and others)

4. Declaration of Hereditary Trustee :– Powers of the Commissioner for appointment of hereditary trustee, the institution being a matha, one Guru Parankush Das executed a will appointing Raghunath Ramanuja Das and after him Raghunath Ramanuja Das appointed a Chela, the said will having been held genuine by the Civil Court, as such Raghunath Das had acted as a hereditary trustee of the matha. Thus he duly appointed the petitioner as a Chela who is to be declared as the hereditary trustee of the said matha, but the Commissioner having not done, the order is to be set aside, 1999 (1) OLR 428 (Sri Anil Kumar Das @ Ananta Ch. Ramanuja Das Vs. The Commissioner of Hindu Religious Endowment, Orissa)

5. Jurisdiction of Civil Court :– Suit filed for claiming the right of sale of "Ghee Dipa" in the premises of Lingaraj Temple, in such matter Civil Court has no jurisdiction to entertain the suit, direction was given to approach the appropriate forum, AIR 1999 Orissa 185, 88 (1999) CLT 87 (Brundaban Samartha and others Vs. Shiba Samartha and others)

6. Summary Inquiry before appointing non hereditary trustee :– The Assistant Commissioner while appointing a non- hereditary trustee is to conduct a summary inquiry into the matter and he is to satisfied with regard to the necessity and also it is to be seen whether there is any hereditary trustee or not. However, the Commissioner is not debarred from exercising the powers as provided U/s- 27 in case of any application pending U/s- 41 of the Act. In view of the amendment of 1973, thus any order passed by the Assistant Commissioner is revisable, 1999 (1) OLR 163 (Sri Sri Raghunath Jew and another Vs. Commissioner of Endowment Orissa and others)

7. Circumstances to remand the matter for fresh disposal :– An institution declared as public deity on an application by Additional Assistant Commissioner and the said order was confirmed in appeal as such, such declaration of institution as a public deity not be interfered with. However, so far as the management of the institution is concerned the authorities failed to consider the oral as well as several documents by way of not referring the same. The matter was remanded for fresh disposal. 2005 (II) OLR 798 (Baikuntha Nath Das and others Vs. Nrusinghanath Mohaprabhu and others)

8. Appointment of interim non-hereditary trustee :– When there is

pendency of an application under the provisions of this Act, the Assistant Endowment Commissioner can exercise the power as provided U/s- 27 of the Act by way of appointing an interim non-hereditary trustee. 100 (2005) CLT 644, 2005 (Suppl.) OLR 954 (Sri Chandi Thakurani Bije at Bakhrabad, Jagatsinghpur and Others Vs. State of Orissa and Others)

9. User of public is a dominant factor to determine the status of a deity :– Though there being long usages and acceptance that general public were visiting a temple and offering/ performing pujas and also participating in procession and daily pujas which clearly raises strong presumption that the deity is a public one. During Jagara Yatra the villagers also used to visit the temple. However, the records shows and also there being no evidence that villagers used to visit the temple everyday and participating in all the functions of the deity. There being no proof that the temple was a public one and the hereditary trustee was ever thrown away by the public and the management was taken over by the public, 100 (2005) CLT 104, 2005 (1) OLR 671, 2005 (1) CLR 696 (Hindu Public represented through Baikuntha Behera Vs. Sankarsan Das and others)

10. Notice under Order 1 Rule 8 (2) of C.P.C. is mandatory :– Assistant Commissioner appointed hereditary trustee which was challenged in appeal. However there being no notice issued under Order 1 Rule 8 (2) of C.P.C. The Order of the Trial Court is vitiated, 2005 (1) OLR 612, (2005) 1 CLR 702 (Jogiram Mohapatra and other Vs. Sibaram Pradhan and others)

11. Whether a deity is a public or private onus is on the Board to proof :–The nature and character of a religious temple is to be decided on the basis of various factors and the onus lies on the Board to proof, 2009 (1) CLR (SC) 442 (C.R.Jayaraman and Others Vs. M. Palanippan and Others)

12. Whether a temple is a public or private one is question of fact :– As per the Hindu Law the religious endowment are of two types one is private and another is public. In case of a public endowment the dedication of the endowment is for the use and benefit of the public at large or for a specific class and in a case where public is not interested or involved, the endowment is a private one, 103 (2007) CLT 62 (SC) (State of West Bengal and others Vs. Sri Sri Lakshmi Janardan Thakur and others)

13. Powers of the Appellate Authority for direction :– Whether an institution is public or private the Assistant Commissioner is empowered to decide such question. The Appellate Authority is not justified to issue direction to decide the matter afresh, (2007) 1 OLR 677 (Malati @ Malaprabha Sahoo and others Vs. Haraparbati Thakur and others)

14. Deities being not permanent whether appointment of interim trustees justified :– The Commissioner of Endowment is empowered to appoint interim trustees of the deities who are prepared, worshipped and emerged every year by the Societies registered under the Society Registration Act. Such action of the authorities challenged on the ground that such institution are not Hindu Public Religious Endowment, such question can be decided under the provisions of the Section 41 of the Act. Thus appointment of interim trustees is not illegal. 2007 (II) OLR 801, 2007 (II) CLR 769 (Haraparbati Thakurani and others Vs. Commissioner of Endowment and others)

15. Claim for Hereditary Trustee :– The Additional Assistant Commissioner after considering the evidence decided that the Respondents No.2 to 4 had failed to establish their claim for hereditary trustee and the Commissioner also confirming the said decision. The conclusions of both the authorities being in confirmity with the evidence cannot be interfered with. 2007 (II) CLR 796, 2007 (Suppl.II) OLR 1109 (Smt. Rukmani Misra Vs. Sri Sri Radha Krusna Mahaprabhu and others)

42. [1][Power to frame schemes] :– (1) [2][Whenever there is reason to believe that in the interest of the proper administration of a Religious institution a scheme may be settled for it, or when not less than five persons having interest make an application in writing stating that in the interests of the proper administration of a Religious institution a scheme should be settled for it, the Assistant Commissioner] or [3][the Deputy Commissioner], as the case may be, shall proceed to frame a scheme in the manner hereinafter provided -

(a) in the case of a Religious Institution managed by a non-hereditary Trustee the Assistant Commissioner shall consult in the prescribed manner the Trustee and the persons having interest and if after such consultation he is satisfied that it is necessary or desirable to do so, he shall after recording his reasons therefor by order frame a scheme for the administration of the institution.

(b) in the case of a Religious Institutution presided over or managed by a hereditary Trustee, the Assistant Commissioner shall make such enquiry as he thinks fit and submit his report to the Deputy Commissioner who shall hold an enquiry in the manner prescribed and so far as may be, in accordance with the provisions of the Code of Civil Procedure, 1908 (V of 1908) relating to the trial of suits and if he is satisfied that in the interests of the proper administration of such institution a scheme of administration should be settled, he shall consult in the prescribed manner the Trustee and the persons having interest and by order settle a scheme of administration for the Institution.

(2) A scheme settled under Sub-Section (1) for a temple or its specific endowment may contain provision for–

(a) fixing the number of non-hereditary Trustees;

(b) removing any existing Trustee, whether hereditary or non-hereditary anything in Section 28 to the contrary notwithstanding :

Provided that where provision is made in the scheme for the removal of a hereditary Trustee, provision shall also be made therein for the appointment as Trustee of the person next in succession who is qualified;

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1. Substituted *vide* Odisha Act No. 29 of 1978 w.e.f. 07.06.1978.
2. Substituted *vide* Odisha Act No. 18 of 1954.
3. Omitted *vide* Odisha Act No. 18 of 1954.

(c) appointing a new Trustee or Trustees in addition to, or in the place of, any existing Trustee or Trustees;

(d) defining the powers and duties of the Trustee or Trustees;

(e) the appointment of a paid Executive Officer, who shall be a person professing the Hindu religion, on such salary as may be fixed to be paid out of the funds of the institution; and defining the powers and duties of such Trustee or Officer:

Provided that the Executive Officer so appointed shall, for purposes of Section 68 be deemed to be a person appointed to discharge the functions of a Trustee under this Act;

(f) appointing an Advisory Board where necessary in respect of institution where an Executive Officer is appointed as may be prescribed.

(3) A scheme settled under Sub-Section (1) for a Math may contain provision for–

(a) [1][xxx] the appointment of a paid Executive Officer, who shall be a person professing the Hindu religion, on such salary as may be fixed to be paid out of the trust funds and defining the powers and duties of such Officer :

Provided that the Executive Officer shall, for purposes of Section 68, be deemed to be a person appointed to discharge the functions of a Trustee under this Act :

[1][x x x]

(b) defining the powers and duties of the Trustee;

[2][(c) associating one or more person with the Trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowment of such Math or of the specific endowment; provided that such person or persons or the members of such body shall be chosen from persons having interest in such Math or Endowment.]

(4) The Assistant Commissioner [3][or the Commissioner], as the case may be, may determine what the properties of the Religious institution are and append to the scheme a schedule containing a list of such properties :

Provided that the absence of such a schedule shall not invalidate the scheme :

Provided further that such determination shall not affect the rights of persons who are in hostile possession of any of the said properties.

(5) [4][The Deputy Commissioner] or the Assistant Commissioner, as the case may be, may, pending the framing of a scheme for a temple or a specific

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1. Omitted *vide* Odisha Act No. 29 of 1978.
2. Inserted *vide* Odisha Act No. 18 of 1954.
3. Substituted *vide* Odisha Act No. 18 of 1954.
4. Substituted *vide* Odisha Act No. 29 of 1978-w.e.f. 07.06.1978.

endowment [1][suspend the Trustee] appoint a fit person to discharge all or any of the functions of the Trustee thereof and define his powers and duties.

(6) The authority framing a scheme may, at any time, after consulting the Trustee and the persons having interest, by order, modify or cancel any scheme settled under Sub-Section (1) or under Odisha Hindu Religious Endowment Act, 1939 (Odisha Act IV of 1939)].

(7) Every order of the Assistant Commissioner [2][or the Deputy Commissioner] settling, modifying or cancelling a scheme under this Section shall, subject to the provisions of Section 44, be binding on the Trustee, the Executive Officer and all persons having interest.

[1][(8) An Executive Officer appointed in pursuance of a Scheme framed under this Section may be removed by the appointing authority for all or any or any of the reasons specified in Section 28 and an appeal against the order of removal, if passed by the Assistant Commissioner or [2][the Deputy Commissioner], shall lie to [3][the Commissioner] if preferred within thirty days from the date of order.]

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1. Exercise of Power beyond authority not permissible 76
2. Distinction between the terms marfatdar and hereditary trustee . 76
3. Due opportunity of hearing to be extended 76
4. Status of Interim Trustee 77

1. Exercise of Power beyond authority not permissible :– The Commissioner being the creature of the Act is required not only to act within the scope of the powers given under the statute, but also in the manner provided therein. If the statutory authorities keep in mind that they cannot act beyond the scope of power given under the statute and are only to act in the manner provided therein, the much cherished rule of law in the Republic can be established. Whenever an authority exercise power beyond authority, arbitrariness creeps in even in matters of benevolence. 61 (1986) CLT 189 (Mahanta Sri Raghunath Das and Others Vs. Commissioner of Hindu Religious Endowment, Bhubaneswar Orissa,)

2. Distinction between the terms marfatdar and hereditary trustee :– Distinction between "Marfatdar" and "Hereditary Trustee" – explained – the determination of hereditary trustee – how it is to be made – explained – and how the doctrine of Lost grant is to be inferred or assumed – explained. 90 (2000) CLT 746 (SC), 2000 (II) OLR 318 (SC) (Braja Kishore Jagdev Vs. Lingaraj Samantaray and others)

3. Due opportunity of hearing to be extended :– Proceeding U/s- 42 of the Act pending and as per the report of Additional Asssistant Commisioner the personal property of the petitioners which were in question did not belong to religious institution. A Deputy

1. Inserted *ibid.*
2. Substituted *vide* Odisha Act No. 29 of 1978-w.e.f. 07.06.1978.
3. Substituted *vide* Odisha Act No. 18 of 1954.

Commissioner Endowment appointing the Opp. Parties as an interim trustee under the provision of Section 7 of the Act without extending due opportunity of hearing to the petitioner which was held to be illegal, 2004 (II) OLR 492, 2004 (II) CLR 513, (Sri Padmanav Giri Goswami Vs. Commissioner of Endowment and others)

4. Status of Interim Trustee :– In a proceeding the interim trustee was given custody to the lands of the deity. The interim trustee is a custodian or a receiver of the property and his custody immediately comes to an end when the proceeding is terminated. 87 (1999) CLT 69, 1999 (1) OLR 111 (Khali Rout and others Vs. A.D.M, Cuttack and others)

43. Cypres application for funds :– (1) The Assistant Commissioner may, on being satisfied that the purpose of a Religious institution has, from the beginning, been or has subsequently become, impossible or incapable of realisation, or that the machinery for effecting such purpose has failed or no longer exists, or that after providing adequately for the purposes of the institution and after setting apart a sufficient sum for the repair and renovation of the buildings connected therewith, there is a surplus which is not required for such purposes, by order direct that the endowments of the institution or such surplus as is declared to be available, as the case may be, be appropriated to Religious educational or charitable purposes not inconsistent with the objects of the institution :

Provided that, in the case of a temple founded and maintained by community or a specific endowment attached to such a temple, the endowments or surplus shall, as far as possible, be utilised for the benefit of the community for the purposes mentioned above.

(2) It shall be competent to the Assistant Commissioner when giving a direction under Sub-Section (1) to determine what portion of such endowments or surplus shall be retained as a reserve fund for the Religious institution and to direct the remainder to be appropriated to the purposes specified in that Sub-Section.

(3) The Assistant Commissioner may at any time by order modify or cancel any order passed under Sub-Section (1) or under the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939).

(4) The order of the Assistant Commissioner under this Section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Section 44, be binding on the Trustee, the Executive Officer and all persons having interest.

44. [1][(1) Any person aggrieved by an order passed under Section 41, or Sub-Section (1) or (6) of Section 42, or Section 43 may, within thirty days from the date of receipt of the order under Section 41 or Section 43 nor from the date of publication of the order under Section 42, as the case may be, prefer an appeal to [2][the Commissioner.]

1. Substituted *vide* Odisha Act No. 29 of 1978, w.e.f. 7.6.1978.
2. Substituted *vide* Odisha Act No. 18 of 1954.

(2) Any party aggrieved by the order of [1][the Commissioner] passed under Sub-Section (1), may within thirty days from the date of the order prefer an appeal to the High Court.]

SYNOPSIS

1. Hereditary Trustee 78
2. Powers of the High Court 78
3. Powers of the High Court in Appeal 78
4. Notice under Order 1 Rule 8 (2) of C.P.C. is mandatory 79

1. Hereditary Trustee :– In order to proof the hereditary trusteeship of a religion institution, the person must proof that the office of the trusteeship has been devolved upon him by the hereditary right since the time of the founder of the religious institution, 2012 (II) OLR 639 (Danardan Mohapatra and Others Vs. Pitamber Jena and Others)

2. Powers of the High Court :– The Provisions of the Section provides wide scope and power to the High Court to go into facts and law in a P.I.L., which are quite distinct from the provisions of Section 100 of the Code of Civil Procedure, 108 (2009) CLT 349, 2009 (Supp. II) OLR 922, 2009 (II) CLR 409, (Benudhar Hota and others Vs. Jagannath Nayak and others)

It is well settled that in an Appeal U/s- 44 (2), the High Court can go both into facts and law and not subject to the limitation placed on a Second Appellate Court by Section 100 of the Code of Civil Procedure, (60) (1985) CLT 565. (Sri Sri Jhadeswar Mahaprabhu and Sri Sri Mukteswar Mahaprabhu Vs. Sukrasena Rana and others).

3. Powers of the High Court in Appeal :– As per the provisions of this section the High Court can go into facts and law in appeal. 61 (1986) Sn. 49 (Rama Chandra Misra Vs. Hadibandhu Panda and others)

Duties of the Authorities under the Act – Explained – The deity of the statutory authority under the act would be first to consider the character of the institution. A religious institution may either be a matha or a temple, the consideration that would weigh with the authorities would, therefore, depends upon the character of the institution after the character of the institution is determined, the question of its being public or private would arise, 63 (1987) CLT 223 (Kunja Bihari Parida Vs. Sri Narayani Thakurani and Others)

The power of the High Court under the provision of this section are wide and the High Court can pass interim order in the certain circumstances, 74 (1992) CLT 618 (Sri Sri Andhari Mangala Thakurani and another Vs. Sri Gopinath Panda and others)

Scope of the High Court to decide the question whether the institution is a public temple or not – Explained – The High Court is not handicap in considering the oral and documentary evidence as an Appellate Court though the appeal before the High Court was Second Appeal, having regard to the scope of Section 44 of the Act. After taking into consideration it was held that the High Court has correctly held that the institution in question falls within the definition of the temple under the Act, 87 (1999) CLT 591 (SC) (Smt. Marua Dei @ Maku Dei and others Vs. Murlidhar Nanda and others)

Whether the provisions of Section 5 are applicable when an appeal U/s-44 of the Act has been. It was held that the provisions of Section 5 of Limitation Act

1. Substituted *vide* Odisha Act No. 18 of 1954.

are applicable, 98 (2004) CLT 609, 2004 (II) CLR 520 (Satrughana Sahoo Vs. Sri Kameswar Mahadev, Bije Mundi Deuli and others)

Order of Deputy Commissioner of Endowment remanding the matter to the Trial Court for disposal of the case after issuing notice under Order 1 Rule 8 of Code of Civil Procedure. Such order of remand was held to be bad and illegal in view of the evidence available on record, 96 (2003) CLT 732 (Sri Sri Balunkeswar Mahadev and another Vs. Smt. Brajeswari Mohapatra and another)

4. Notice under Order 1 Rule 8 (2) of C.P.C. is mandatory :– Assistant Commissioner appointed hereditary trustee which was challenged in appeal. However there being no notice issued under Order 1 Rule 8 (2) of C.P.C. The Order of the Trial Court is vitiated, 2005 (1) OLR 612, (2005) 1 CLR 702 (Jogiram Mohapatra and other Vs. Sibaram Pradhan and others)

45. to 51 [1][x x x]

CHAPTER – VII

RELIGIOUS INSTITUTIONS UNDER DIRECT CONTROL

52. Appointment of salaried Executive Officer :– (a) For every institution or a group of institutions under the direct control of the State Government the Commissioner shall, as soon as may be, appoint a salaried Executive Officer who shall be a person professing the Hindu religion.

(b) The salary and allowance of the Executive Officer as determined by the Commissioner shall be paid from the fund of the Religious institutions concerned.

53. Term of Office and duties of Executive Officer :– (a) The Executive Officer shall hold Officer for such period as may be fixed by [2][the Commissioner] and he shall exercise such powers and perform such duties as may be assigned to him by [2][the Commissioner].

(b) [2][The Commissioner] shall define the powers and duties which may be exercised and performed by the Executive Officer.

(c) The Executive Officer shall be deemed to be a Public Servant within the meaning of Section 21 of the Indian Penal Code (XLV of 1860).

54. Removal of Executive Officer :– [2][The Commissioner] may, for good and sufficient causes, suspend, remove or dismiss the Executive Officer in the prescribed manner.

55. Fixing of standard scale of expenditure :– (a) The Executive Officer shall after due inquiry submit proposals for fixing the scale of expenditure in the institution and the amounts which shall be allotted to the various objects or ceremonies connected with the institution or the proportions in which the income or other property of the institution may be applied to such objects and ceremonies.

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1. Omitted *vide* Odisha Act No. 18 of 1954.
2. Substituted *vide* Odisha Act No. 18 of 1954.

(b) The Executive Officer shall publish the proposal at the premises of the institution and in any other manner as the Assistant Commissioner may direct together with the notice stating that within one month from the date of publication any person having interest may submit suggestion to the Commissioner.

(c) After expiry of the said period [1][the Commissioner] shall after considering the objections and suggestions received by him pass such orders as he thinks fit on such proposals and communicate a Copy of the order to the Executive Officer.

(d) The Collector may, for the purpose of control and supervision of the institution under direct control exercise the powers of [2][xxx] [1][the Commissioner] if [1][the Collector] is specially empowered in this behalf by the Commissioner.

56. Control of Collector, Assistant Commissioner and Endowment Commissioner :– (1) In exercising his powers the Executive Officer shall act under the supervision of the Collector who shall be under general control of the Commissioner.

(2) The Executive Officer appointed under Section 52 shall be deemed to be a Trustee for purposes of Sections 32 and 34 and Chapters VIII, IX and X.

CHAPTER – VIII

BUDGET, ACCOUNTS AND AUDIT

57. Budget of Religious Institutions :– (1) The Trustee of every Religious institution shall, before the end of December in each year, submit to the Assistant Commissioner in such form as may be fixed by [1][the Commissioner] a budget showing the probable receipts and disbursements of the institution during the following financial year.

(2) Every such budget shall make adequate provision for–

(a) the scale of expenditure for the time being in force and in the case of a Math, its other customary expenses;

(b) the due discharge of all liabilities binding on the institution;

(c) the repair and renovation of the buildings connected with institution;

(d) expenditure on Religious, educational and charitable purposes not inconsistent with the object of the institution not more than ten per cent of the gross income unless [1][the Commissioner] otherwise directs.

(e) the maintenance of a working balance;

(f) the amount of expenditure that may be incurred by the Trustee under Section 20.

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Omitted *ibid.*

(3) (a) The Assistant Commissioner may, on receipt of the budget, make such alterations, omissions or additions therein as may be prescribed.

(b) Notwithstanding anything contained in any other law for the time being in force or any custom or practice obtaining to the contrary, the provisions made for remuneration of the Office-holder or any other item of expenditure of any institution may be increased, decreased or modified by the Assistant Commissioner if such increase, decrease or modification is considered necessary in the interest of the financial condition of the institution whether hereditary or not.

(4) A Trustee may, within one month of the date of receipt by him of the order passed by the Assistant Commissioner under Sub-Section (3), appeal against such order to [1][the Commissioner].

58. Accounts and Audit :– (1) The Trustee of every Religious institution shall keep regular accounts of all receipts and disbursements.

[2][(2) The accounts of every Religious institution the annual income of which is calculated for the purpose of assessment of contribution for the year immediately preceding is two thousand rupees or more, shall be subject to annual audit. The accounts of every other Religious institution shall be audited in alternative years or if the Commissioner so directs in any case of classes of cases, at a shorter interval.]

[2][(3) The accounts of such Religious institutions, as may be notified from time to time by the State Government, shall be audited by Auditors appointed by them in consultation with the Accountant-General and the accounts of other Religious institutions shall be audited by the Special Audit Staff appointed by [1][the Commissioner].

59. Authority to whom Audit Report is to be submitted - After completing the audit for any year or shorter period, or for any transaction or series of transactions, as the case may be, the auditor shall send a report to [2][the Commissioner] sending a copy thereof to the Assistant Commissioner.

60. Contents of Audit Report :– (1) The auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Religious institution, or of loss or waste of money or other property thereof, caused by neglect or misconduct.

(2) The Auditor shall also report on any other matter relating to the accounts as may be prescribed, or on which [1][the Commissioner] or the Assistant Commissioner concerned, may require him to report.

61. Rectification of defects disclosed in audit and order of surcharge against Trustee - (1) [1][The Commissioner] shall send a Copy of every audit report relating to the accounts of a Religious institution to the Trustee thereof, and it shall be the duty of such Trustee to remedy any defects or irregularies pointed out by the auditor and report the same to Assistant Commissioner.

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Substituted *vide* Odisha Act No. 2 of 1981.

(2) The Assistant Commissioner shall forward to [1][the Commissioner] a Copy of every audit report received by him under Section 59 and the report, if any, of the Trustee made under Sub-Section(1), together with such remarks as the Assistant Commissioner may wish to make thereon.

(3) If, on a consideration of the report of the auditor alongwith the report, if any, of the Trustee the Assistant Commissioner thinks that the Trustee or any employee of the institution concerned with the management of the trust property was guilty of misappropriation or wilful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, he may, after giving notice to the Trustee to show-cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amounts so lost and direct the Trustee or employee concerned to pay such amount personally, within a specified time.

(4) The Assistant Commissioner shall forward a Copy of the order under Sub-Section (3) with the reasons for the same, by registered post, to the Trustee concerned.

(5) The Trustee aggrieved by such order may, within one month of the receipt of the order, appeal to the Commissioner to modify or set aside the order and [1][the Commissioner] after taking such evidence as is necessary may pass such orders thereon as he may deem fit.

(6) The sum specified in the order of surcharge shall be paid within time specified in such order, unless the Trustee has appealed to [1][the Commissioner] to modify or set aside the order and has obtained an order for stay.

(7) An order of surcharge under this Section against a Trustee shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order.

(8) The Collector of the district, in which any property of the Trustee or the employee is situated from whom an amount by way of surcharge is recoverable, shall, on a requisition made by [1][the Commissioner] recover such amount as if it were an arrear of land revenue and pay the same to the religious institution concerned.

62. Application of the provisions of this Chapter :– The provisions of this Chapter shall apply to every Religious institution, notwithstanding anything to the contrary contained in any Scheme settled or deemed to be settled under this Act.

CHAPTER – IX

FINANCE

[1]**[63. Constitution of the Endowment Fund -** (1) There shall be established a fund to be called the Odisha Hindu Religious Endowments Administration Fund'. The fund shall be vested in and be administrated by [1][the

1. Substituted *vide* Odisha Act No. 18 of 1954.

Commissioner] of Endowments who shall be a corporation sole with perpetual succession and common seal and may sue and be sued by this corporate name.

(2) The following sums shall be credited to the said fund, namely -

(a) fees levied under Section 77;

(b) contribution levied under Sub-Section (4);

(c) fines and penalties realised in pursuance of Sections 32 and 70;

(d) any grant or contribution by the State Government, any local authority or any individual whether corporate or not;

(e) all sums to the credit of the fund constituted under Section 50 of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939);

(f) any other sum which may be credited by or under any of the other provisions of this Act.

(3) All fees levied under Section 71 shall be deemed to be a part of the Endowment Fund for all purposes of maintenance of its accounts under this Act.

(4) Every Religious institution having an annual income exceeding two hundred and fifty rupees shall, from the income derived by it, pay to the fund annually such contribution not exceeding seven per centum of its income as may be prescribed.

(5) Every Religious institution, the annual income of which for the financial year immediately preceding, as calculated for the purpose of levy of contribution under Sub-Section (4) is not less than two thousand rupees, shall pay to the fund annually for meeting the cost of auditing its accounts such further sum not exceeding one and a half per centum of its income as [1][the Commissioner] may determine.

(6) The annual payments referred to in Sub-Sections (3) and (4) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the Religious institution concerned.

(7) The said fund shall be utilised for the payments provided for in Section 6 and for the other expenses incidental to the purposes of this Act including the cost of auditing the accounts of Religious institutions and the cost of any staff maintained for conducting the said audit.]

Notes :– *The Powers of the High Court – The High Court has no jurisdiction while deciding the Second Appeal to dislodge and interfere in the finding of the fact by the First Appellate Court, after careful consideration of evidence both oral and documentary available on record, the High Court cannot reverse the same. 2005 (I) CLR (SC) 288, AIR 2005 SC 770, JT 2005 (I) SC 201 (Commissioner Hindu Religious and Charitable Endowment Vs. P. Shanmugama and others)*

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1. Substituted *vide* Odisha Act No. 18 of 1954.

[1][**64.** All costs, charges and expenses incurred by the State Government [1][the Commissioner] [1][the Deputy Commissioner] or an Assistant Commissioner in connection with legal proceedings in respect of any Religious institution to which any of them is a party, shall be payable out of the funds of such Religious institution.]

Notes :– *Power of the Commissioner to decide the nature and character of an institution either as a matha or a temple and if necessary to decide further whether the temple is a excepted one. And whether it is managed by hereditary trustee. The scope of the Section 41 is wider than that of Section 64 and expressly provides not only for determination, whether the institution is public religious institution and is a temple or matha but also inter alia, whether any property or money is of a religious endowment or specific endowment, 64 (1987) CLT 390 (Shri Banabihari Dev and another vs. Assistant Commissioner, Hindu Religious Endowment, Orissa and others.)*

65. Assessment and recovery of contribution and costs and expenses :– (1) The contributions, costs and expenses payable under Sections 63 and 64 shall be assessed on and notified to Trustee of the Religious institution concerned in the prescribed manner. The assessment shall be made by the Commissioner on the basis of average income of the preceding three years for the following three years. [2][The Commissioner] if he considers necessary may call for reports from Assistant Commissioners in this behalf.

(2) (a) Such Trustee may, within fifteen days from the date of the receipt of such notice or within such further time as may be granted by [1][the Commissioner] prefer his objection thereto, if any, to [2][the Commissioner] in writing. Such objection may relate either to his liability to pay or to the amount specified in the notice. [2][The Commissioner] shall consider such objection and give his decision confirming withdrawing or modifying his original notice.

(b) Within one month from the date of receipt of the notice of assessment, or when objection has been preferred, within one month from the date of the decision of [2][the Commissioner] or within such further time as may be granted by him, such Trustee shall pay the amount specified in the original notice or the amount as fixed by [2][the Commissioner] on objection.

(3) If the Trustee fails to pay the amount aforesaid within the time allowed, the Collector of the district in which any property of Religious institution is situated shall, on a requisition made to him in prescribed manner by [2][the Commissioner] and subject to the provisions of this Section, recover such amount as if it were an arrear of land revenue.

(4) The Collector of the district shall, on receipt of a requisition under Sub-Section (3), withhold the amount mentioned therein out of the Tasdik or any other allowance payable by the State Government to the Religious institution concerned, but where the *Tasdik* or any other allowance is insufficient for the

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1. Substituted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.
2. Substituted *vide* Odisha Act No. 18 of 1954.

purpose the said Collector shall withhold the amount available and recover the balance as if it were an arrear of land revenue.

(5) Places of worship, including temples and tanks and places where Utsavams performed, idols, Vahanams, jewells and such vessels and other articles of the Religious institution as may be necessary in accordance with the usage of the institution for purposes of worship or ceremonial processions shall not be liable to be proceeded against in pursuance of Sub-Sections (3) and (4).

(6) Instead of selling the property after attachment thereof under the provisions of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864) or the Bihar and Odisha Public Demands Recovery Act, 1914 (Bihar and Odisha Act IV of 1914) as the case may be, it shall be open to the said Collector at the instance of [1][the Commissioner] to appoint a Receiver to take possession of the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The remuneration, if any, paid to the Receiver and the other expenses incurred by him, shall be paid out of the income of the institution concerned.

(7) Any objection which could be preferred or which was preferred and rejected by [1][the Commissioner] under Sub-Section (2) shall not be entertained under Section 9 of the Bihar and Odisha Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) and the said Section shall be deemed to be amended accordingly for the purpose of this Act in the matter of issue of Certificate under that Act.

(8) No suit, prosecution or other legal proceeding shall be entertained in any Court of law against the State Government or any Officer or Servant of the State Government for anything done or intended to be done in good faith in pursuance of this Section [2][x x x].

66. Contribution not to be levied for more than six years immediately preceding the year in which notice of assessment is issued :– (1) It shall not be competent for [1][the Commissioner] to levy any contribution for more than six years immediately preceding the year in which a notice of assessment is issued under Section 65.

(6) Nothing in this Section shall affect any levy of contribution made or moneys collected by [1][the Commissioner] under the Odisha Hindu Religious Enodwments Act, 1939 (Odisha Act IV of 1939).

CHAPTER – X

MISCELLANEOUS

67. Public Officer to furnish copies of or extracts from certain documents :– All Public Officers having custody of any record, register, report or other document relating to a Religious institution or any movable or immovable

1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Deleted *vide* Odisha Act No. 29 of 1978, w.e.f. 7.6.1978.

property thereof shall furnish such copies or extracts from the same as may be required by [1][the Commissioner], [2][the Deputy Commissioner] or an Assistant Commissioner.

68. Putting Trustee or Executive Officer in possession :– (1) Where a person has been appointed–

(a) as Trustee or Executive Officer of a Religious institution; or

(b) to discharge the functions of a Trustee of a Religious institution in accordance with the provisions of this Act; or

(c) as the Executive Officer in any scheme settled under the provisions of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939) and such person is resisted in, or prevented from, obtaining possession of the Religious institution or of the record, accounts and properties thereof, by a Trustee, Office-holder or Servant of the Religious institution who has dismissed or suspended from his Officer or is otherwise not entitled to be in possession, or by any person claiming or deriving title from such Trustee, Office-holder or Servant, other than a person claiming in good faith to be in possession of his own account or on account of some person not being such Trustee, Office-holder or Servant.

the Assistant Commissioner concerned shall, on application by the person so appointed, direct delivery of possession of the Religious institution and its endowments or the records, accounts and properties thereof, as the case may be, to him in the prescribed manner.

Explanation :– A person claiming under an alienation contrary to Sub-Section (1) of Section 19 and Section 24 shall not be regarded as a person claiming in good faith within the meaning of this Section.

(2) The Assistant Commissioner and any person authorised by him or acting under his written instructions in the prescribed form, may, for the purpose of delivery of possession under Sub-Section (1), take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be reasonably necessary and may also enter upon any land or other property whatsoever and in the event of any apprehension of breach of peace in the course of such delivery of possession, the Superintendent of Police shall, on a requisition from the Assistant Commissioner in the prescribed manner, provide such Police aid as may be necessary for the purposes.

(3) (a) [1][The Commissioner] may also make a requisition to the Collector of the district in which the property of the math or temple or endowment is situated, in the prescribed form to deliver its possession to the Trustee.

(b) On receipt of a requisition under Clause (a) the Collector shall serve a notice on the person reported to be in occupation or his agent to vacate the

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *ibid.*

said property within such time as the Collector may specify in the said notice. If such notice is not obeyed, the Collector shall remove him or depute a Sub-ordinate Officer to remove such person or agent. In the case of any resistance or obstruction the Collector shall hold a summary enquiry into the facts of the case and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance may send him with a warrant in such form as may be prescribed for imprisonment in the civil jail of the district for a period not exceeding thirty days as may be necessary to prevent the continuance of such resistance or obstruction.

(4) No suit, prosecution or other legal proceedings shall lie against the Assistant Commissioner or any person acting under his instruction or authorised by him for anything done in good faith under Sub-Sections (1) and (2).

(5) Every person authorized by [1][the Commissioner] or acting under his instructions in pursuance of this Section shall be deemed to be a 'Public Servant' within the meaning of Section 21 of the Indian Penal Code (XLV of 1860).

[2][(6) The provisions contained in this Section shall *mutatis mutandis* apply to cases –

(a) for delivery of possession of a Religious institution alongwith its endowments or recorded, accounts and properties thereof to a succeeding hereditary Trustee; and

(b) for recovery of pension of leasehold land belonging to a Religious institution after expiry of the term of the lease.]

Notes :– *The property belongs to the deity – the non hereditary trustee intend to retain the same for the purpose of improvement of the religious institution cannot directly approach the Hon'ble High Court. Rather they should have approached the Commissioner of Endowment U/s- 9 against the order of Additional Commissioner of Endowment passed the order for recovery of possession in favour of the religious institution. 106 (2008) CLT 150, 2008 (II) CLR 117, 2008 (Supp. I) OLR 737 (Sri Janmajaya Das and another Vs. State of Orissa and others)*

Claim having been made for permanent tenancy of the rooms which had been occupied under the leases granted by the hereditary trustees – the leases were granted without due procedure of law as there being no sanction of the Commissioner of Endowment and the leases were void in view of section 19, 2003 (I) OLR 145 (Surendra Babu Patra and Others Vs. Commissioner of Endowment Orissa, Bhubaneswar and Others)

69. Notice by Court and cost of proceedings :– (1) Whenever the Trustee or any Religious institution is sued in any Civil or Revenue Court in respect of any property belonging to or given or endowed for the purpose of any

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *vide* Odisha Act No. 22 of 1989.

Religious institution notice of such Suit shall be given by the Court concerned to [1][the Commissioner] at least a month before commencement of the hearing.

(2) The costs, charges and expenses incidental to all proceedings before [1][the Commissioner], [2][the Deputy Commissioner] or Assistant Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what funds and to what extent such costs, charges and expenses are to be paid; and the order passed in this regard may be transferred to the Collector for execution and recovery as arrears of land revenue.

SYNOPSIS

1. Jurisdiction of the Authorities 88
2. Notice to the Commissioner of Endowment in a suit 88

1. Jurisdiction of the Authorities :– The Petitioner claim its right over the properties which he inherited from his predecessor who was the marfatdar of the deity but as a non-hereditary trustee. However, there is no evidence with regard to the continuance of his predecessor as a trustee beyond 1955. Though the deity being a public one duly managed by a Trust Board. However, the matter is to be decided by the Consolidation Authorities, 104 (2007) CLT 68, 2007 (I) OLR 791, (2007) 1 CLR 766 (Prafulla Chandra Mohapatra Vs. State of Orissa and others)

Suit file for specific performance of contract but the compliance of Section 69 not made as such, the suit dismissed as was held to be proper 107 (2009) CLT 210, 2009 (I) CLR 781 (Ram Chandra Sahu Vs. Subhas Kumar Sinha and others)

Since the suit filed have got nothing to do with the administration of the temple, the provisions of Section 73 of the Act will not stand on the way of the Civil Court to entertain the suit and as such no notice required to be served on the Commissioner of Endowment, 94 (2002) CLT 755 (Brahman Nijog Vs. Badu Nijog and others)

The notice as provided U/s- 69 is to be complied with and is necessary in the proceedings U/s-19 or U/s-30 of the Land Acquisition Act, where the land belongs to the deity, 78 (1994) CLT 44 (Sri Sri Hanuman Mahabir Jew Vs. Purusottam Kar and others)

The provisions of the section being mandatory in nature and the same having not been complied with the impugned judgement must be set aside and the suit should proceed from the stage where the notice under the said section was required under law to be issued. 61 (1986) CLT 614 (The Deity Sri Jagannath Swami and others Vs. Biswanath Panda)

2. Notice to the Commissioner of Endowment in a suit :– When there is filing of any suit by the trustee of an religious institution before the Civil Court or a Revenue Court with regard to any dispute of any property of a religious institution, a notice is to be given by the Concerned Court to the Commissioner of Endowment atleast before 1 month of the commencement of the hearing of the suit. 2007 (II) CLR 184, 2007 (Suppl.I) OLR 1066 (Gulei @ Golap Samal Vs. Shaikh Saffiqueuddin and others)

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.

70. Penalty for refusal by Trustee to comply with provisions of the Act :– (1) If any Trustee, Executive Officer or other person [1][x x x] in whom the administration of a Religious institution is vested -

(a) refuses, neglects or fails to comply with the provisions of Section 13, 15, 16, 17 or 18 or fails to make over charge of the institution when so ordered; or

(b) refuses, neglects or fails to furnish such accounts, returns, reports or other information relating to the institution or its funds, property or income or the application thereof, at such time and in such manner as [2][the Commissioner] [3][the Deputy Commissioner] or the Assistant Commissioner may require ; or

(c) refuses or causes obstruction to the inspection by [1][the Commissioner] [3][the Deputy Commissioner] or Assistant Commissioner of the movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to the Religious institution or fails to produce them for inspection.

he shall, unless he shows reasonable cause to the satisfaction of [1][the Commissioner], [3][the Deputy Commissioner], be liable to pay to the State Government such penalty not exceeding five hundred rupees and in case of persistent default in compliance with the order a daily fine not exceeding fifty rupees.

[4][(1-a) If any person exercises any deed of transfer or immovable property belonging to any Religious institution in contravention of the provisions contained in Section 19, such person shall, unless he shows reasonable cause to the satisfaction of the Commissioner, be liable to pay such penalty, not exceeding an amount equal to the value of the property, as the Commissioner may impose.

(1-b) Any person aggrieved by an order of the Commissioner imposing any penalty under this Section may, within one month from the date of intimation of the order to him by the Commissioner, prefer an appeal before the State Government.]

(2) The penalty shall be paid within the time fixed by [5][the Commissioner] by the person against whom the order is made from his own funds and not from the funds of the Religious institution concerned.

(3) If the penalty is not paid within the time fixed or within such further time as may be granted by [5][the Commissioner], the Collector of the district in which any property of the person against whom an order has been made is

1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Substituted *ibid.*
3. Inserted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.
4. Inserted vide Odisha Act No. 22 of 1989.
5. Substituted vide Orissa Act No. 18 of 1954.

situated shall, on requisition made to him by [1][the Commissioner] recover the amount, as if it were an arrear of land revenue and pay the same to the Endowment Fund.

[2]**[70-A.Failure to deliver possession in contravention of direction and filing of prosecution :–** (1) Any Trustee other than a hereditary Trustee, Executive Officer, or other person who fails to deliver possession of the Religious institution, any money, record, accounts or property thereof without any reasonable or sufficient cause, in contravention of any direction of the Commissioner, Deputy Commissioner or Assistant Commissioner shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) In respect of an offence committed under Sub-Section (1) the Officer authorised in this behalf, by the Commissioner by general or special order, shall institute the prosecution with the written consent of the authority whose direction has been contravened.]

71. Court-fees to be paid as prescribed in Schedules and altered from time to time :– Notwithstanding anything contained in the First or Second Schedule to the Court-Fee Act, 1870 (Act VII of 1870) proper fees for the documents described in Columns (1) and (2) of the Schedule shall be its fees indicated in Column (3) thereof.

[1]**[72. Saving of established usage :–** Notwith contained in this Act shall –

(a) save as otherwise expressly provided in or under this Act, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any Religious institution or its established usage in regard to any other matter; or

(b) authorise any interference with the Religious and spiritual functions of the head of a Math including those relating to imparting of Religious institution or the rendering of spiritual service.]

[1]**[72-A. Act not to affect rights under Article 26, Clauses (a) to (c) of the Constitution :–** Nothing contained in this Act shall be deemed to confer any power or impose any duty in contravention of the rights conferred or any Religious denomination or any Section thereof by Clauses (a), (b) and (c) of Article 26 of the Constitution.]

73. Bar of suits in respect of administration of Religious Institutional :– (1) No suit or other legal proceeding in respect of the administration of a Religious institution or in respect of any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act.

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Inserted *vide* Oriss Act No. 29 of 1978, w.e.f. 07.06.1978.

(2) Nothing contained in this Section shall affect the right of the Trustee appointed under the Act of a Religious institution to institute a suit to enforce the pecuniary or property rights of the institution or the rights of such institution as a beneficiary.

SYNOPSIS

1. Suit is not barred in certain cases :– Application made by the deity claiming that the lands belong to it and Opp. Party 2 to 4 occupied the lands and authorisedly since the suit is filed and status quo has been passed in the said suit. The Commissioner stayed the proceeding. 2008 (I) CLR 342 (Lord Lingaraj Mahaprabhu, Bhubaneswar, represented through its Executive Officer Vs. Commissioner of Endowment, Orissa and others)

Applicability of the provisions – Explained – Suit filed by one sect against the another religious sect for not disturbing their right of worship and participation in religious rituals seeking for accounts of such religious institution, such relief is not relating to administration of religious institution, as such the provisions of Section – 73 not applicable, 1995 (II) OLR 554, AIR 1996 Orissa 112 (Satyamahima Samaj and other Vs. Mahima Gossain and others).

The provision of this section bars any suit or other legal proceeding in respect of the administration of religious institution or in respect of any other matter under dispute for the determination or decision of which provisions have been made in the Act and requires that all substitution must be determined only in accordance with an in conformity with the provision of the act. 64 (1987) CLT 390 (Shri Banabihari Dev and another vs. Assistant Commissioner, Hindu Religious Endowments, Orissa and others.)

On the plain reading of the provision of the section it shows that there is no total bar on the maintainability of the suit in the Civil Court. There are certain statutory restriction on suits and other legal proceedings to administration of religious institution and any other matter or dispute for determining or deciding which provisions have been made in the Act. The words matha, temple and endowment would mean public matha, public temple and public endowment, 60 (1985) CLT Sn. 52 (Ramesh Chandra Dash Vs. Botcho Das and others)

[1][74. Procedure at enquiries and appeals and service of notice :– (1) In relation to all proceedings before [1][the Commissioner], [2][the Deputy Commissioner] or the Assistant Commissioner, the orders in pursuance of which are under the provisions of this Act appealable to the High Court, [1][the Commissioner], [2][the Deputy Commissioner] or the Assistant Commissioner, as the case may be, shall have the powers vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters :

(a) discovery and inspection;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Substituted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.

(c) compelling the production of documents;

(d) examining witnesses on oath ;

(e) granting adjournments;

(f) reception of evidence taken on affidavit; and

(g) issuing commissions for the examination of witnesses;

and may summon and examine suo motu any person whose evidence appears to him to be material; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898).

(2) [1][the Commissioner], [2][the Deputy Commissioner] and the Assistant Commissioner shall, with respect to all such proceedings be deemed to be persons acting judicially within the meaning of the Judicial Officer's Protection Act, 1850 (XVIII of 1850).

(3) The Court hearing an appeal from the order of [1][the Commissioner] may direct further enquiry or modify or set aside such order as the Court may deem fit; and unless the appeal is summarily dismissed, [1][the Commissioner] shall be given an opportunity of being heard before the order passed by him is interfered with in any manner; provided that the operation of the order of [1][the Commissioner] shall not be stayed pending the disposal of the appeal.

(4) The service of all processes and notices issued by the Assistant Commissioner, [2][the Deputy Commissioner] or [1][Commissioner] by or under any of the provisions of this Act shall be on requisition from the Assistant Commissioner, [2][the Deputy Commissioner] or [1][Commissioner], as the case may be, effected by the Subdivisional Magistrate, having jurisdiction.]

75. Notifications, orders, etc., under Act not to be questioned in Court of law :– Save as otherwise expressly provided in this Act, no notification issued, order passed, decision made, proceedings or action taken, scheme settled, or other thing done under the provisions of this Act by the State Government or [1][the Commissioner] or an Assistant Commissioner shall be liable to be questioned in any Court of law.

76. Power to make Rules :– (1) The State Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters.

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the effectual exercise of the powers of superintendence vested the State Government;

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Substituted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.

(c) the form and manner in which applications and appeals should be submitted to the State Government, [1][the Commissioner], [2][the Deputy Commissioner] or an Assistant Commissioner;

(d) the powers of the State Government, [1][the Commissioner], [2][the Deputy Commissioner] or an Assistant Commissioner to hold enquiries, to summon and examine witnesses and to compel the production of documents;

(e) the inspection of documents and the fees to be levied for such inspection;

(f) the fees to be levied for the issued and service for processes and notices;

(g) the grant of certified copies and the fees to be levied therefor;

(h) the budgets, reports, accounts, returns or other information to be submitted by Trustees;

(i) the custody and investment of the funds of Religious institutions;

(j) the manner in which the accounts of Religious institutions shall be audited and published, the time and place of audit and the form and contents of the auditor's report;

(k) the method of calculating the income of a Religious institution for the purpose of levying contribution and the rate at which it should be levied;

(l) the security, if any, to be furnished by Officers and Servants employed for the purposes of this Act;

(m) the preservation, maintenance, management and improvement of the properties and buildings of Religious institutions;

(n) the inspection and supervision of the properties and buildings of Religious institutions by such persons as the State Government may direct, the reports to be submitted by such persons and the fees leviable for such inspection, supervision and report;

(o) the preservation of the images in temples;

(p) the methods by which Religious institutions should promote the interests of such institution;

(q) the qualifications to be possessed by the Officers and Servants for appointment to non-hereditary Offices in Religious, institutions, the qualifications to be possessed by hereditary Servants for succession to Office and the conditions of service of all such Officers and Servants;

(r) the qualifications, method or recruitment, pay, grant of leave allowance and travelling allowance, personal conduct and

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1. Substituted *vide* Odisha Act No. 18 of 1954.
2. Substituted *vide* Odisha Act No. 29 of 1978, w.e.f. 07.06.1978.

punishment of Executive Officer appointed for any Religious institution or institutions under direct management and paid Officers appointed under Schemes settled or deemed to be settled under the Act and generally their conditions of service;

(s) the qualifications, method of recruitment, grant of leave, leave allowances and travelling allowances of Sub-ordinate Officers and Staff appointed for the purpose of this Act;

(t) the custody and investments of the Endowment Fund by [1][the Commissioner];

(u) the manner in which the accounts of the Endowment Fund shall be maintained and audited and the audit report published;

(v) all matters which under the provisions of this Act are required to be or may be prescribed.

(3) The power to make rules under this Section shall be subject to the condition or previous publication.

Notes :– *Any immovable property belonging to a religious trust cannot be transferred or leased out for more than 5 years without according permission from the Commissioner of Endowment. There being no procedure to be followed by the Commissioner in a case where an application is made U/s- 19 A of the Act and no specific form is prescribed as mentioned in the section for granting a "No Objection Certificate". A registering authority cannot insist upon production of a "No Objection Certificate" from the Commissioner and as such the provisions of Section 19-A cannot operate in its present form, 2012 (I) OLR 922 (Sumit Kumar Bose and others Vs. State of Orissa and others)*

Scope of the Section – A review of the order can be made if any mistake or error is apparent on the face of the record as pointed out. The provisions of Orissa Hindu Religious Endowment Act as well as Rule 43 of Orissa Hindu Religious Endowment Rules were held that in respect of proceeding U/s- 41 of the Act all the provisions of Code of Civil Procedure would apply, 71 (1991) CLT 115 (Kalandi Tiadi and others Vs. Ananda @ Ananda Chandra Das and Others)

77. Granting of Copies :– [1][The Commissioner] shall grant copies of proceedings or other records, of his Office on payment of such fees and subject to such conditions as may be prescribed. Copies shall be certified by [1][the Commissioner] or such Officer as may be authorised by him in this behalf in the manner provided under Section 76 of the Indian Evidence Act, 1872 (1 of 1872).

78. Suits pending in Courts :– (1) Notwithstanding anything in any other law for the time being in force all suits instituted under the provisions of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939) and pending on the date of commencement of this Act shall stand transferred to the Courts of the Sub-ordinate Judges having jurisdiction and be heard by them :

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1. Substituted *vide* Odisha Act No. 18 of 1954.

Provided that–

(a) while trying a suit any one or more suits relating to the same Religious institution may be heard together.

(b) an appeal shall lie to the High Court against the decision of the Sub-ordinate Judge irrespective of the value of such suits;

Provided further that the operation of the order of [1][the Commissioner] under Sub-Section (1) of Section 64 of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939) shall not be stayed pending the disposal of such suit.

(2) All proceedings other than suits which have been stayed in pursuance of the Odisha Hindu Religious Endowments (Amendment) Act, 1947 (Odisha Act XXXI of 1947) and pending on the date of the commencement of this Act shall be proceeded with in the Courts where they are so pending.

79. Repeal and affect of repeal of the Odisha Hindu Religious Endowments Act, 1939 :– (1) The Odisha Hindu Religious Endowments Act, 1939, (Odisha Act IV of 1939) is hereby repealed.

(2) Notwithstanding the repeal of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939) –

(a) all rules made, notification issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the State Government or [1][the Commissioner] under the said Act, shall in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall have effect accordingly;

(b) all schemes settled or modified by a Court of law under the said Act or under Section 92 of the Code of Civil Procedure,1908 (V of 1908) shall be deemed to have been settled or modified under this Act;

(c) all proceedings pending before the State Government or [1][the Commissioner] under the provisions of the said Act and the rules made thereunder at the commencement of this Act, may, in so far as they are not inconsistent with the provisions of this Act, or the rules made thereunder be continued by the appropriate authority under this Act;

(d) all costs, expenses, penalties and contributions payable to the fund of the endowments under the said Act immediately before the commencement of this Act, shall be payable to the State Government instead; and any assessment, levy or demand or such sums made before the commencement of this Act shall be

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1. Substituted *vide* Odisha Act No. 18 of 1954.

deemed to be valid and may be continued and shall be enforceable under this Act;

(e) any remedy by way of application, suit, or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

79-A. Saving of Schemes :– Notwithstanding anything contained in any of the other provisions of this Act or any judgment, decree or order of any Court all schemes purporting to have been settled in pursuance of Sections 38 and 39 of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1930) after the commencement of the Odisha Hindu Religious Endowments (Amendment) Ordinance, 1953 (Odisha Ordinance II of 1953) and before the commencement of this Act shall be deemed to have been settled under the provisions of this Act and any person aggrieved by any such scheme may within sixty days from the date of commencement of this Act prefer an appeal to the High Court and such appeal shall be dealt with and disposed of in the same manner as appeals provided for under Sub-Section (2) of Section 44.

80. Order to remove difficulties :– If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order anything which appears to them necessary for the purpose of removing the difficulty.

[1][SCHEDULE]

[See Section 71]

Court-fees payable for documents

Section	Description of document	Proper fee
(1)	(2)	(3)
		Rs.
9.	Application to [1][Commissioner] for revision	10
19.	Appeal to the State Government against order of [1][Commissioner] regarding alienation of properties	15
21. (i)	Application to the Assistant Commissioner for payment of expenses	2
(ii)	Appeal to [1][the Commissioner]	5
(iii)	Application to the Collector of the district for recovery of money	2
25.	Application to the Collector for resumption	2

1. Substituted *vide* Odisha Act No. 18 of 1954.

28.	(i)	Appeal to [1][the Commissioner] against the order of the Assistant Commissioner] under Sub-Section (1)	25
	(ii)	Appeal to the High Court against the order of [1][the Commissioner] under Sub-Section (5)	50
31.		Appeal to the Assistant Commissioner against the order of the Trustee under Sub-Section (3)	2
32.		Appeal to the Assistant Commissioner against the order of the Trustee	2
34.	(i)	Appeal to [1][Commissioner] against the order of the Assistant Commissioner regarding scale of expenditure	20
	(ii)	Appeal to [1][Commissioner] against the order of the Assistant Commissioner regarding scale of expenditure	20
35.		Appeal to High Court against order of [1][the Commissioner] under Sub-Section (2)	50
37.		Appeal to State Government against order of [1][Commissioner] under Sub-Section (3)	15
41.		Application for decision of dispute or matter under the section	15
42.	(i)	Application to Assistant Commissioner or [1][Commissioner] for settling a scheme	10
	(ii)	Application to Assistant Commissioner for modification of Scheme	10
43.	(i)	Application to Assistant Commissioner regarding application of funds	5
	(ii)	Application to Assistant Commissioner for modification or cancellation of the order passed under Sub-Section (1)	5
44.	(i)	Appeal to [1][the Commissioner] against the order of the Assistant Commissioner under Section 41	25
	(ii)	Appeal to [1][the Commissioner] against the order of the Assistant Commissioner under Section 42	25
	(iii)	App eal to [1][the Commissioner] against the order of the Assistant Commissioner under Section 43	15

1. Substituted *vide* Odisha Act No. 18 of 1954.

(iv)	Appeal to the High Court against the order of [1][the Commissioner] under Section 44(1) relating to matters arising out of Section 41 for the rest of other matters.	50
(v)	Appeal to the High Court against the order of [1][the Commissioner] under Section 42(1) (b) and 42(6)	50
57.	Appeal to [1][the Commissioner] against order of Assistant Commissioner on the Budget Estimate	
61.	Appeal to the State Government against order of [1][the Commissioner] under Sub-Section (3)	20
65.	Objection petition by the Trustee regarding assessment of income	2
68.	Application for putting Trustee in possession of properties all adjournment and miscellaneous petitions to [1][the Commissioner] and Assistant Commissioners]	1

1. Substituted *vide* Odisha Act No. 18 of 1954.

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EXTRAORDINARY

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LAW DEPARTMENT

NOTIFICATION

The 22nd June, 2012

S.R.O.No.321/2012—Whereas the draft of certain rules further to amend the Odisha Hindu Religious Endowment Rules, 1959 was published, as required under sub-section (3) of Section 76 of the Odisha Hindu Religious Act, 1951, (Odisha Act 11 of 1952), in the Extraordinary issue No.848, dated the 3rd May, 2012 of the *Odisha Gazette* issued under the notification of the Government of Odisha in the Law Department No.4585 End-I-30/12/L., dated the 3rd May, 2012 bearing S.R.O. No.224/2012 inviting objections and suggestions from all persons likely to affected thereby till expiry of a period of fifteen days from the date of publication of the same in the *Odisha Gazette*;

And whereas, objections and suggestions received during the period specified above have been duly considered by State Government ;

Now, therefore, in an exercise, of the power conferred by Section 76 of the said Act, the State Government do hereby make the following amendment to the Odisha Hindu Religious Endowment Rules, 1959, namely:—

1. (*1*) These rules may be called the Odisha Hindu Religious Endowment (Amendment) Rules, 2012.

(*2*) They shall be deemed to have come into force on the 28th day of March, 2012.

2. In the Odisha Hindu Religious Endowment Rules, 1959 (hereinafter referred to as the said rules), after Rule 4, the following rule shall be inserted, namely:—

"4A-Procedure for obtaining No Objection Certificate under section 19-A.—

(1) For the purpose of obtaining necessary No Objection Certificate from the Commissioner for production before the Registering Officer for registration of document purporting to evidence, transfer, exchange, sale or mortgage or lease for term exceeding 5 years, of any immovable property belonging to or give or endowed for the purpose of any religious institution on the ground that it is not public religious institution for which it does not require sanction U/s. 19 of the Act, an application shall have to be filed by the person/persons in control or charge over the immovable property and the institution in the manner prescribed in Rules 34 to 41 of these rules.

(2) On receiving such application, the Commissioner shall issue notice for information of general public together with copy of the application filed under sub-rule (1) to be published in a conspicuous place of the Office of the Urban or Rural local bodies as the case may be under whose jurisdiction the property is situated and at such other place as the Commissioner deems fit and proper, inviting objection to the said application to be received within one month from date of publication of such notice.

(3) On receiving the objection if any, within the stipulated period and after giving reasonable opportunity of hearing to the parties if the Commissioner is *Primafacie* 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 "No Objection Certificate" in Form AA to these rules".

(4) In the said rules, after Form A, the following form shall be inserted, namely:—

FORM-AA

No. Objection Certificate

[*See* rules 4A (3)

This is to certify that Sri.....Son/daughter/wife of.....address.....

.....owner/ in-charge of the property (description in detail).....recorded in the name of.....Math/Temple *primafacie* being not a public religious institution not required to obtain sanction U/s. 19 of the Act for the purpose of transfer by exchange/sale, mortgage or a lease for a period more than five years.

Commissioner of Endowment

Place:

Date :

[No.6456-End-I-30/12/L.]

By order of the Governor

D. DASH

Principal Secretary to Government

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