Sri Jagannath Temple Mng. Committee vs Siddha Math & Ors on 16 December, 2015

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Bench: C. Nagappan, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7729 OF 2009

SRI JAGANNATH TEMPLE MANAGING COMMITTEE ……APPELLANT
Vs.
SIDDHA MATH & ORS. ……RESPONDENTS
WITH
CIVIL APPEAL NO.7730 OF 2009
CIVIL APPEAL NO.142 OF 2010
CIVIL APPEAL NO.221 OF 2010
CIVIL APPEAL NO.2981 OF 2010
CIVIL APPEAL NO.3414 OF 2010
CIVIL APPEAL NO.3415 OF 2010
CIVIL APPEAL NO.3446 OF 2010
CIVIL APPEAL NOS.14631-14632 OF 2015
(Arising Out of SLP (C) Nos.9167-9168 of 2010)
AND
CIVIL APPEAL NO.9627 OF 2010
J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in the Special Leave Petitions.

The present appeals arise out of the impugned judgment and order dated 07.07.2009 passed in Original Jurisdiction Case No. 2421 of 2000 and other Writ Petitions which were disposed of in terms of the judgment dated 07.07.2009 by the High Court of Orissa at Cuttack, whereby the High Court allowed the Writ Petitions filed by the respondents herein and held that as the disputed land was earlier settled in the name of Shri Jagannath Mahaprabhu Bije Puri, Marfat Siddha Brundaban Ramanuj Das and thus, the subsequent settlement made in favour of the Temple Managing Committee in OEA Claim Case No. 68/90 was without jurisdiction.

As the facts in all the appeals are common, for the sake of convenience, we refer to the facts of Civil Appeal No. 7729 of 2009, which are stated in brief hereunder:

> The present case revolves around the ancient temple of Lord Jagannath of Puri. The lands in question have been accorded the status of 'amrutamanohi' properties. On 18.03.1974, the State Government of Orissa issued a notification under Section 3-A of the Orissa Estate Abolition Act, 1951(hereinafter referred to as the "OEA Act, 1951"), whereby the estate of Lord Jagannath Mahaprabhu Bije, Puri vested in the State Government. The vesting notification was challenged by the Temple before the High Court of Orissa in Original Jurisdiction Case No. 233 of 1977. The High Court rejected the claim of the Temple. The same was upheld by this Court vide its judgment in the case of Lord Jagannath through Jagannath Singri Narasingh Das Mahapatra Sridhar Panda and Ors v. State of Orissa[1]. We will advert to this judgment in detail at a later part of this judgment. The State Government of Orissa subsequently issued a notification dated 18.04.1989 and extended the time for filing claims under Section 8-A of the OEA Act, within which the Temple filed Claim Case No. 68 of 1990 for recording the lands in question in favour of Shree Jagannath Mahaprabhu Bije, Puri, Marfat Shree Jagannath Temple Managing Committee. Vide order dated 30.11.1992, the OEA Collector and Tahsildar, Puri observed that the suit lands in question have been recorded in the name of Shri Jagannath Mahaprabhu Bije, Srikhetra, and accordingly settled the suit lands in favour of the Temple. In the year 2000, the respondent-Math filed a Writ Petition before the High Court of Orissa at Cuttack in Original Jurisdiction Case No. 2421 of 2000, challenging the order of the Tahsildar dated 30.11.1992 on the ground that the lands in question have been accorded the status of 'amrutamanohi' and that they were recorded as Trust Estate as defined under Section 2(oo) of the OEA Act, 1951 and that lands had wrongly been settled in favour of the Temple. The High Court by the impugned judgment dated 07.07.2009 set aside the order of the Tahsildar dated 30.11.1992 and held as under:
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> ".....it is seen in the instant case, the property has been dedicated as Amrutmonahi to Lord Sri Jagannath of Puri and the marfatdar of the property is Mahanta Siddha Brundaban Ramanuj Das. Thus, the property is attached with a charge of rendering service to Lord Jagannath by using the usufructs thereof as food offering to Lord Jagannath by using the usufructs threof as food offering to Lord Jagannath. It is further found that on the above analysis, the property cannot be held to be under the control of the administrator of Shri Jagannath Temple but is a trust property attached with a charge and the trustee has to fulfil the wish of the dedicator of the said property by offering the usufructs to Lord Jagannath as food offering. However, since the trustee/marfatdar is the Mahanta of Siddha Math, it cannot be said that the math has absolutely no interest over the said property just because it is recorded as Amrutmonohi. Applying the ratio of the decision in the case of Mahanta Shri Srinivas Ramanuj Das (supra) of the Supreme Court, it is seen that the Siddha Math is an institution, which comes within the definition of 'Math' as given in section 3 (vii) of the Orissa Hindu Religious Endowments Act, 1951. The property involved in this Writ

Petition comes within the definition of "Trust Estate" as defined in section 2(oo) of the O.E.A Act and vested in the State Government pursuant to the notification made under Section 3-A of the O.E.A Act issued on 18.03.1974. It is also an admitted position that upon such vesting, the intermediary had a right to make an application under sections 6 and 7 of the O.E.A Act. As a matter of fact, as stated earlier, such application was made by the marfatdar of the property, i.e Mahanta of Siddha Math and the land was settled in the name of Shri Jagannath Mohaprabhu Bije, Puri marfat Mahanta Siddha Brundaban Ramanuj Das. Hence there was no scope for the administrator of Shri Jagannath Temple to make a subsequent application under sections 6 and 7 of the O.E.A Act for re-settlement of the land and the impugned order dated 30.11.1992 having been passed without jurisdiction cannot be sustained and the said order is accordingly quashed." Hence, the present appeals have been filed by the appellant Temple and State Government and others.

We have heard the learned senior counsel for both the parties. We have also heard Mr. Vinoo Bhagat, the learned counsel appearing on behalf of the Math in the C.As. @ Special Leave Petition (Civil) Nos. 9167-9168 of 2010 and Ms. V.S. Lakshmi, learned counsel appearing on behalf of the Math in C.A. No. 9627 of 2010. On the basis of the factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, we have broadly framed the following points which require our attention and consideration:-

Whether the suit lands can vest in the respondent Math in the light of the provisions of the Shri Jagannath Temple Act, 1955?

Whether even otherwise, the Math had the right to prefer claim rights in respect of the Temple Lands and initiate the proceedings under the OEA Act, 1951 by virtue of being an intermediary?

What order?

Answer to Point No.1 At the outset, before we advert to the rival legal contentions of the learned senior counsel appearing on behalf of both the parties, it is important for us to examine the provisions of the relevant Acts, as well as the previous judgments of this Court on the issue. There are two important acts which operate in the instant case. The first is the Shri Jagannath Temple Act, 1955 (hereinafter referred to as the "Temple Act, 1955"). The long title of the Act reads as follows:

"An Act to provide for better administration and governance of Shri Jagannath Temple at Puri and its endowments." The Preamble of the Temple Act, 1955 states as under:

"Whereas the ancient Temple of Lord Jagannath of Puri has ever since its inception been an institution of unique national importance in which millions of Hindu

devotees from regions far and wide have reposed their faith and belief and have regarded it as the epitome of their tradition and culture.

And whereas by Regulation IV of 1809 passed by the Governor-General in Council on 28th April, 1809 and thereafter by other laws and regulations and in pursuance of arrangement entered into with the Raja of Khurda, later designated the Raja of Puri, the said Raja came to be entrusted hereditary with the management of the affairs of the Temple and its properties as Superintendent subject to the control and supervision of the ruling power; And whereas in view of grave and serious irregularities thereafter Government had to intervene on various occasions in the past; And whereas the administration under the Superintendent has further deteriorated and a situation has arisen rendering it expedient to reorganize the scheme of management of the affairs of the Temple and its properties and provide better administration and governance therefore in supersession of all previous laws, regulations and arrangements, having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the Record-of-Rights prepared under the Puri Shri Jagannath Temple (Administration) Act, 1952 (Orissa Act XIV of 1952)....." (emphasis laid by this Court) Section 2 of the Temple Act, 1955 bars the operation of the Orissa Hindu Religious Endowments Act, 1951 on the Temple, and reads as follows: "2 (1): The provisions of the Orissa Hindu Religious Endowments Act, 1951 (Orissa Act 2 of 1952) shall cease to apply to the said Temple except with respect to actions taken, things done and contributions levied and the same shall be deemed to have been validly taken, done and levied as if this Act had not been passed:

(2) All laws, regulations and other enactments passed for the purpose of providing for the management of the affairs of the Temple and its properties and all deeds executed in favour of and all arrangements entered into for the said purpose with the Raja of Khurda or the Raja of Puri, as the case may be, prior to the commencement of this Act, in so far as such enactments, deeds or arrangements are inconsistent with the provisions of this Act, shall cease to have any effect." Section 5 of the Temple Act, 1955 provides for the setting up of a Temple Managing Committee as under:

"5. Notwithstanding anything in any other law for the time being in force or custom, usage or contract, Sanad, deed or engagement, the administration and the governance of the Temple and its endowments shall vest in a Committee called the Shri Jagannath Temple Managing Committee constituted as such by the State Government, and it shall have the rights and privileges in respect thereof as provided in Section 33." Section 30 of the Temple Act, 1955 grants power of general superintendence of the Temple and its endowments to the State Government which may pass orders for the maintenance and administration of the temple, which reads as under:

"30. (1) Subject to the provisions of this Act the general superintendence of the Temple and its endowments shall vest in the State Government which may pass any orders that may be deemed necessary for the proper maintenance or administration of the Temple or its endowments or in the interest of the general public worshipping in the Temple." Section 33 of the Temple Act, 1955 empowers the Committee to be in possession of all the moveable and immoveable properties belonging to the Temple. It reads as under:

"33. (1) The Committee shall be entitled to take and be in possession of all movable and immovable properties including the Ratna Bhandar and funds and jewelries, records, documents and other assets belonging to Temple." A Constitution Bench of this Court had the occasion to examine the provisions of the Temple Act, 1955 in detail, while adjudicating upon its constitutional validity in the case of Raja Bira Kishore Deb v. State of Orissa[2]. Wanchoo, J., speaking for the bench observed as under: "This review of the provisions of the Act shows that broadly speaking the Act provides for the management of the secular affairs of the Temple and does not interfere, with the religious affairs thereof, which have to be performed according to the record of rights prepared under the Act of 1952 and where there is no such record of rights in accordance with custom and usage obtaining in the Temple. It is in this background that we have to consider the attack on the constitutionality of the Act." After adverting to the history of the administration of the Temple, it was also held:

"Finally the preamble says that the administration under the superintendent has further deteriorated and a situation has arisen rendering it expedient to reorganize the scheme of management of the affairs of the Temple and its properties and provide better administration and governance therefore in supersession of all previous laws, regulations and arrangements, having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the record of rights prepared under the 1952 Act. So for all these reasons the appellant was removed from the sole superintendence of the Temple and a committee was appointed by s. 6 of the Act for its management." (emphasis laid by this Court) A perusal of the provisions of the Act and the decision of this Court in the case of Raja Bira Kishore Deb referred to supra clearly shows that as far as Shri Jagannath Temple of Puri is concerned, the position of law is that all the endowments and properties belonging to the Temple vest in the Shri Jagannath Temple Managing Committee.

We now turn our attention to the OEA Act, 1951. The Act received the assent of the President on 23.01.1952. The long title of the Act reads as follows:

"An act to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgagees and lessees of such interest, between the raiyat and the state of Orissa, for vesting in the said state of the said right, title and interest and to make provision for other matter connected therewith……" All estates of the intermediaries were thus, abolished and by way of a

notification, stood vested in the State Government. Section 2(oo) of the OEA Act, 1951 (which was inserted by way of an Amendment in 1974) defines a Trust Estate as under:

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

Provided that all estates belonging to the Temple of Lord Jagannath at Puri within the meaning of the Shri Jagannath Temple Act, 1955 and all estates declared to be trust estates by a competent authority under this Act prior to the date of coming into force of the Orissa Estates Abolition (Amendment) Act, 1970 shall be deemed to be trust estates." (emphasis laid by this Court) Section 3 of the OEA Act, 1951 provides for vesting of an estate in the State by way of a notification as under:

"3. Notification vesting an estate in the State – (1) The State Government, may from time to time by notification, declare that the estate specified in the notification has passed to and become vested in the State free from all encumbrances." "(3) Such publication shall be conclusive evidence of the notice of the declaration to everybody whose interest is affected by it." Section 2(oo) was inserted by way of an amendment on 26.02.1974. On 18.03.1974, a notification was issued by the State Government under Section 3-A whereby the estate of Lord Jagannath vested with the State Government.

The validity of the notification was challenged, which came for consideration before a Division Bench of this Court in the case of Lord Jagannath referred to supra. This Court upheld the validity of the notification declaring the estate of Lord Jagannath as 'trust estate' after giving the reasons as follows:

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

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

It is manifest from the language of the Section that it saves a "trust estate" so declared under s. 13-G from the operation of a notification issued under s. 3 or 3-A, but does not extend the benefit any further The provisions do not confer protection from the Act itself and cannot be interpreted to

clothe it with a permanent immunity from being vested by a later notification issued under the Act Such an estate could be vested in the State of Orissa by a subsequent notification was made clear by clause (b) of s 13-K which reads as follows:

> '(a) . . .
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> (b)nothing in this Chapter shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification under Section
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> 3.' Sections 7-A, 8-A, 8-D and X-E of the Act include special provisions for a trust estate and unmistakably indicate that trust estates" are within the purview of the Act. The benefit they receive from a declaration under s.13-

G is limited and referable only to a vesting notification issued earlier. There is thus, no merit in the argument of the learned counsel for the appellant that the petitioner's estate could not be vested in the State by a notification issued subsequently." It is important to note at this stage that while upholding the validity of the notification, this Court did not advert to the provisions of the Temple Act, 1955 at all.

Another judgment of this Court which is important to be examined is the Constitution Bench decision in the case of Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das[3], which examined the nature of 'amrutamanohi' properties.

Mr. M.L. Varma, the learned senior counsel appearing on behalf of the respondent Math contends that the controversy in the instant case is squarely covered by two judgments of this Court, the Division Bench judgment in the case of Lord Jagannath and the Constitution Bench judgment in the case of Surjanarayan Das referred to supra. The learned senior counsel places strong reliance on the following paragraphs of the decision in the case of Surjanarayan Das (supra):

> "40. We may now consider the properties in schedule Kha said to be the Amruta Monohi properties of Lord Jagannath and held by the plaintiff as marfatdar. The plaintiff alleges that these properties were acquired either by purchase or 'krayadan' or by way of gift subject to a charge of some offering to Lord Jagannath which depended upon the individual judgment and discretion of the plaintiff, and that the public had no concern with the enjoyment or management of the usufruct thereof. The Gazetteer makes a reference to such properties and states:-
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> 'Both Saiva and Vaishnava Maths exist in Puri. The lands of the latter are known as Amruta Manohi (literally nectar food), because they were given with the intention that the proceeds thereof should be spent in offering bhoga before Jagannath and that the Mahaprasad thus obtained should be distributed among pilgrims, beggars and ascetics; they are distinct from the Amrut Manohi lands of the Temple itself which are under the superintendence of the Raja.' This statement makes it clear that lands endowed to the temple of Lord Jagannath are distinct from the lands or

property endowed to the Vaishnava Maths for the purpose of utilising the proceeds of those properties for offering bhoga before Lord Jagannath and the subsequent distribution of that Mahaprasad among pilgrims, beggars and ascetics, presumably visiting the Math, or approaching its authorities for a portion of the Maha Prasad. The mere fact that the proceeds of the properties were to be so used, would not justify the conclusion that these properties were not endowed to the Maths but were endowed to the temple of Lord Jagannath. Properties endowed to the temple of Lord Jagannath were, according to this statement, in the Gazetteer, not under the superintendence of any Math or Mahant but under the superintendence of the Raja of Puri himself.

41. As already stated, these Amrut Manohi properties are properties which are endowed to the Math by the devotees for a particular service, which is done to Lord Jagannath by the Mahant on behalf of the Math. The properties are therefore properties endowed to the Math and not merely gifted to the plaintiff or, as had been suggested, to Lord Jagannath." (emphasis laid by this Court) The learned senior counsel contends that since an earlier decision of this Court already covers the controversy in the instant case, the same is binding on the parties as well as this Court and this Court should respect the principle of stare decisis. He further contends that the judgments delivered in the case of Surjanarayan Das and Lord Jagannath have held field since 1967 and 1989, respectively. The learned senior counsel places reliance on a seven judges Bench decision of this Court in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat,[4] wherein, while examining the scope of the doctrine of stare decisis, it was held as under:

"111. Stare decisis is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudication". This principle is expressed in the maxim "stare decisis et non quieta movers"

which means to stand by decisions and not to disturb what is settled. This was aptly put by Lord Coke in his classic English version as "Those things which have been so often adjudged ought to rest in peace". However, according to Justice Frankfurter, the doctrine of stare decisis is not "an imprisonment of reason" (Advanced Law Lexicon, P. Ramanatha Aiyer, 3rd Edition 2005, Volume 4, p. 4456). The underlying logic of the doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

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119. Sir John Salmond, while dealing with precedents and illustrating instances of departure by the House of Lords from its own previous decisions, states it to be desirable as 'it would permit the House (of Lords) to abrogate previous decisions which were arrived at in different social conditions and which are no longer adequate

in present circumstances. This view has been succinctly advocated by Dr. Goodhart who said: "There is an obvious antithesis between rigidity and growth, and if all the emphasis is placed on absolutely binding cases then the law looses the capacity to adapt itself to the changing spirit of the times which has been described as the life of the law". This very principle has been well stated by William O' Douglas in the context of constitutional jurisprudence. He says: "So far as constitutional law is concerned, stare decisis must give way before the dynamic component of history. Once it does, the cycle starts again"." The learned senior counsel further places reliance on the judgment of this Court in the case of R. Unnikrishnan v. V.K. Mahanudevan[5], wherein it was held as under:

"19. It is trite that law favors finality to binding judicial decisions pronounced by Courts that are competent to deal with the subject matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of judgments pronounced by the Courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of Constitution Bench of this Court in the Daryao v. State of U.P. where the Court succinctly summed up the law in the following words:

'It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.'

20. That even erroneous decisions can operate as res-judicata is also fairly well settled by a long line of decisions rendered by this Court. In Mohanlal Goenka v. Benoy Kishna Mukherjee this Court observed:

'There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata.'

21. Similarly, in State of West Bengal v. Hemant Kumar Bhattacharjee this Court reiterated the above principles in the following words:

'A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides.'

22. The recent decision of this Court in Kalinga Mining Corporation v.

Union of India is a timely reminder of the very same principle. The following passage in this regard is apposite:

> 'In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision." The learned senior counsel contends that the decision rendered by this Court in the case of Lord Jagannath referred to supra cannot be wished away by branding it as per incuriam. It is an extremely serious matter to contend that a judgment is per incuriam. It is contended that in order to render a judgment per incuriam, it must be first shown that the oversight or inadvertence is a glaring and obtrusive omission.
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> Mr. Harin P. Raval, the learned senior counsel appearing on behalf of the appellant Temple Committee, on the other hand, contends that the decision of this Court in the case of Lord Jagannath referred to supra is per incuriam as it was passed in ignorance of the Temple Act, 1955. The learned senior counsel contends that the judgment does not even notice Section 5 of the Temple Act, 1955. The judgment was passed only on considering the provisions of the OEA Act, 1951. The judgment held that it cannot be said that the estate of Lord Jagannath could not be vested in the State government by a notification issued subsequently. The learned senior counsel contends that the OEA Act, 1951 is an Act which was principally enacted for the purpose of abolishing all rights in land of "intermediaries" between the Raiyats and the state by whatever name known and for the vesting of the same in the state. It could thus, only divest the intermediaries of its rights in land by vesting it in the State but cannot affect the statutory vesting of all endowments in the managing committee under Section 5 of the Temple Act, 1955. Thus, the provisions of the OEA Act, 1951 even by way of insertion of Section 3A and the issue of a subsequent notification cannot divest the absolute ownership of the endowments of the Temple. The learned senior counsel submits that the endowments vested in the managing committee and hence it ceased to be an intermediary interest and became the absolute vested property of Lord Jagannath. The learned senior counsel contends that a decision given in ignorance of a statute or a rule having the force of a statue can be held to be per incuriam, as was held by a three Judge Bench of this Court in the case of Muncipal Corporation of Delhi v. Gurnam Kaur[6]. The learned senior counsel further places reliance on another decision of this Court in the case of State of U.P v. Synthetics and Chemicals Ltd.,[7] wherein the principle of per incuriam was discussed as under:

"'Incuria literally means 'carelessness'. In practice per in curium appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority' (Young v. Bristol Aeroplane Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding." The learned senior counsel further places reliance on the decision of this Court in the case of Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.,[8] wherein this Court examined the prior decisions on the issue of per incuriam at length and arrived at the following conclusion: "23. A prior decision of this court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam'. It is also not shown that some part of the decision based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied....." The learned senior counsel contends that in the Lord Jagannath case, not only did the Court ignore the provisions of the Temple Act, 1955, it also ignored the decision of the Constitution Bench in the case of Raja Kishore Deb referred to supra, wherein this Court has held that the Lord Jagannath Temple occupies a unique position in the State of Odisha and is a temple of national importance and no other temple in that state can be compared with it. It stands in a class by itself and with respect to be a subject of special consideration by the State Government and thus requires special treatment.

We are unable to agree with the contention advanced by Mr. M.L. Varma, the learned senior counsel appearing on behalf of the respondent Math. The decision of this Court in the case of Lord Jagannath (supra) does not bar the present case by res judicata. The principle of res judicata, codified in Section 11 of the Code of Civil Procedure has been examined in a catena of cases by this Court. A Constitution Bench of this Court in Sheodan Singh v. Daryao Kunwar[9], held as under:

"A plain reading of s. 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely - (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit; (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim; (iii) The parties must have litigated under the same title in the former suit; (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit." The above legal principles laid down by this Court have been reiterated in the case of Syed Mohd. Salie Labbai & Ors. v. Mohd.Hanifa & Ors.[10], as under:

".....it may be necessary to mention that before a plea of res judicata can be given effect, the following conditions must be proved- (1) that the litigating parties must be the same; (2) that the subject-matter of the suit also must be identical; (3) that the matter must be finally decided between the parties; and (4) that the suit must be decided by a court of competent jurisdiction." In the Lord Jagannath case referred to supra, this Court was concerned only with the validity of the vesting notification dated 18.03.1974, whereas in the instant case, it is the validity of the order dated 30.11.1992 that is being examined, along with the question whether land once vested for a particular purpose, namely, as property of Lord Jagannath can be divested by operation of another legislation. Since the subject matter of the two cases is not identical, the bar of res judicata does not operate on the proceedings in the instant case. Further, it is well settled law that a question of law can be raised at any time during the proceedings. In the case of National Textile Corporation Ltd. v. Naresh Kumar Badrikumar Jagad[11], it was held as under:-

"19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings." We agree with the contention advanced by the learned senior counsel appearing on behalf of the appellant Temple Committee. Most respectfully, we opine that the decision of this Court in the case of Lord Jagannath referred to supra, wherein this Court upheld the validity of the notification dated 18.03.1974 in so far as it pertains to the estate of Lord Jagannath is per-incuriam for non-consideration of the provisions of Sections 5 and 30 of the Temple Act, 1955 and the law laid down by this Court as regards between the two State enactments, which one will be the Special Act over other. While the doctrine of stare decisis is crucial to maintain judicial discipline, what cannot be lost sight of the fact is that decisions which are rendered in ignorance of existing statutes and law laid down by this Court cannot bind subsequent Benches of this Court. In the case of Moti Kureshi Jamat referred to supra, it was held as under:

"112. The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience." It becomes clear from a perusal of the case law adverted to by the learned senior counsel appearing on behalf of the appellant Temple Committee that a judgment can be said to be per incuriam when it is passed in forgetfulness or ignorance of a statute operating in that field. The notification dated 18.03.1974 vested the estates of Lord Jagannath, Puri in

> the State Government in view of the amended provision of the proviso to Section 2(oo) of the OEA Act, 1951 inserted by way of an Amendment in the year 1974. The judgment in the case of Lord Jagannath was passed only on consideration of the OEA Act, 1951. The provisions of the Temple Act, 1955, which is the principal Act that applies to the Lord Jagannath Temple, Puri were not adverted to at all.
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> We now turn our attention to the validity of the vesting order dated 30.11.1992 passed by the Tahsildar of Puri in O.E.A Claim Case No. 68 of 1990, by which the suit lands were settled in favour of the Temple.

Mr. Harin P. Raval, the learned senior counsel appearing on behalf of the appellant Temple Committee contends that in view of Section 5 of the Temple Act, 1955 read with Sections 16 and 33 of the said Act, all endowments of the temple, including the properties belonging to or given or endowed for the support of the Temple or given or endowed for the performance of any service including the service of offerings to the deity or charity connected therewith vest in Temple Committee. The learned senior counsel contends that the Temple Act,1955 is a special legislation enacted by the State Government of Odisha and thus overrides any general law enacted. The learned senior counsel contends that by Section 5 of the said Act, the property vested in Temple Committee. The vesting of the property in the Temple Committee is statutory in nature by virtue of Section 5 of the Temple Act,1955. He further contends that once land has been vested with the State, the same is not available for vesting again merely on the application of the amended provisions inserted later in another Act. The learned senior counsel further contends that the Temple Act,1955 is a special law enacted by which the properties and endowments of Lord Jagannath Temple, Puri stood statutorily vested in the Temple Committee. The OEA Act, 1951, on the other hand, was enacted for the purpose of abolishing all rights of 'intermediaries' between the raiyats and the State by whatever name known and for the vesting of the same in the State. Thus, the provisions of the OEA Act, even by way of insertion of Section 3A and the issue of a subsequent notification cannot divest the absolute ownership of the endowments of the Temple. The learned senior counsel contends that the endowments vested in the Temple Committee, and thus, ceased to be an intermediary interest and became the absolute vested property of Lord Jagannath. The learned senior counsel places reliance on the judgment of this Court in the case of U.P State Electricity Board & Anr. v. Hari Shankar Jain & Ors.[12], wherein this Court while holding that the provisions of a special statute must prevail over those of a general statute held as under:

> "8. The maxim "Generalia Specialibus non derogant" is quite well known. The rule flowing from the maxim has been explained in Mary Seward v. The Owner of the "Vera Cruz" as follows:
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> Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

> 9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a Special Act, Parliament devotes its entire consideration to a particular subject. When a General Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament……." The learned senior counsel further places reliance on a more recent judgment of this Court, in the case of Commercial Tax Officer, Rajasthan v.

Binani Cements Ltd. & Anr.[13], wherein after adverting to a number of previous decisions on the aspect, it was held as under:

> "46. In Gobind Sugar Mills Ltd. v. State of Bihar this Court has observed that while determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. With this basic principle in mind, the provisions must be examined to find out whether it is possible to construe harmoniously the two provisions. If it is not possible then an effort will have to be made to ascertain whether the legislature had intended to accord a special treatment vis-à-vis the general entries and a further endeavour will have to be made to find out whether the specific provision excludes the applicability of the general ones. Once we come to the conclusion that intention of the legislation is to exclude the general provision then the rule "general provision should yield to special provision" is squarely attracted.
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> 47. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction.

This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject." Mr. M.L. Varma, the learned senior counsel appearing on behalf of the respondent Math, on the other hand, contends that Section 5 of the Temple Act, 1955 only pertains to the administration and governance of the Temple and its endowments that vest in the committee. The Temple Act, 1955 was enacted because of serious irregularities in the administration and governance of the Temple and its endowments and for reorganizing the scheme of management of the affairs of the temple and its properties. Only what was being managed by the Raja of Puri was taken over under the Temple Act, 1955. The learned senior counsel places reliance on B.K Mukherjea's 'The Hindu Law of Religious and Charitable Trust' and contends that the respondent Math is a Vaishnava Math of Puri. The Math and the Jagannath Temple have co existed for centuries. Each is a separate legal entity, holding its properties separately and performing its religious and other functions in accordance with religious customs and usage. The Math and the Temple hold their own properties separately. Acquisition of

property can be done only through transfer or succession. The learned senior counsel contends that the appellant Temple Committee has not produced any evidence on record through which it could claim the ownership over the property of the respondent Math. The learned senior counsel contends that the 'amrutamanohi' properties are endowed to two different legal entities- the Temple and the Math. Thus, it cannot be contended that the properties of the Math belong to the Temple.

The learned senior counsel further contends that Section 2(oo) of the OEA Act, 1951 which defines Trust Estate, was inserted in the year 1974. Under the proviso, all estates belonging to the temple of Lord Jagannath were deemed to be trust estates. Thus, the estate of Lord Jagannath came to be vested in the State Government vide notification dated 18.03.1974. The amendments to the OEA Act, 1951 were effected when the Temple Act, 1955 was in force. The learned senior counsel contends that it is a well settled principle of law that a subsequent legislation prevails over a prior legislation.

We accept the contentions advanced by the learned senior counsel appearing on behalf of the appellant Temple Committee and are unable to agree with the contentions advanced by the learned senior counsel appearing on behalf of the respondent Math. The Temple and the Math are two distinct legal entities. The OEA Act, 1951 was enacted to provide for the abolition of all rights, title and interest in the land of intermediaries and vesting the same in the State. The Act was thus meant to abolish the interest of the intermediaries in the land. A Constitution Bench of this Court, upholding the constitutional validity of the Act in the case of K.C Gajapati Narayan Deo & Ors. v. State of Orissa[14] held as under:

> "The primary purpose of the Act is to abolish all zamindari and other proprietary estates and interests in the State of Orissa and after eliminating all the intermediaries, to bring the ryots or the actual occupants of the lands in direct contact with the State Government. It may be convenient here to refer briefly to some of the provisions of the Act which are material for our present purpose. The object of the legislation is fully set out in the preamble to the Act which discloses the public purpose underlying it. Section 2(g) defines an "estate" as meaning any land held by an intermediary and included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a district. The expression "intermediary" with reference to any estate is then defined and it means a proprietor, sub-proprietor, landlord, land- holder... thikadar, tenure-holder, under-tenure-holder and includes the holder of inam estate, jagir and maufi tenures and all other interests of similar nature between the ryot and the State. Section 3 of the Act empowers the State Government to declare, by notification, that the estate described in the notification has vested in the State free from all encumbrances. Under section 4 it is open to the State Government, at any time before issuing such notification, to invite proposals from "intermediaries" for surrender of their estates and if such proposals are accepted, the surrendered estate shall vest in the Government as soon as the agreement embodying the terms of surrender is executed. The consequences of vesting either by issue of notification or as a result of surrender are described in detail in section 5 of the Act. It would be sufficient for our present

purpose to state that the primary consequence is that all lands comprised in the estate including communal lands, non-ryoti lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals, quarries rivers and streams, tanks, water channels, fisheries, ferries, hats and bazars, and buildings or structures together with the land on which they stand shall, subject to the other provisions of the Act, vest absolutely in the State Government free from all encumbrances and the intermediary shall cease to have any interest in them." (emphasis laid by this Court) On the other hand, keeping in view the growing irregularities in the management of the affairs of the temple, the Temple Act, 1955 was enacted by the state, which received the assent of the President on 15.10.1955. We agree with the contention advanced by Mr. Harin P. Raval, the learned senior counsel appearing on behalf of the appellant Temple Committee that as far as the Jagannath Temple of Puri and its endowments are concerned, the provisions of the Temple Act, 1955, being the special law, take priority over the provisions of any other legislation. Section 5 of the Temple Act, 1955 makes it clear that the properties and endowments of the Temple stand statutorily vested in the Temple Committee. The Constitution Bench judgment in the case of Surjanarayan Das referred to supra draws a distinction between the 'amrutamanohi' properties of the Math and the Temple in the following terms:

"40. The Gazetteer makes a reference to such properties and states:-

"Both Saiva and Vaishnava Maths exist in Puri. The lands of the latter are known as Amruta Manohi (literally nectar food), because they were given with the intention that the proceeds thereof should be spent in offering bhoga before Jagannath and that the Mahaprasad thus obtained should be distributed among pilgrims, beggars and ascetics; they are distinct from the Amruth Manohi lands of the Temple itself which are under the superintendence of the Raja".

This statement makes it clear that lands endowed to the temple of Lord Jagannath are distinct from the lands or property endowed to the Vaishnava Maths for the purpose of utilising the proceeds of those properties for offering bhoga before Lord Jagannath and the subsequent distribution of that Mahaprasad among pilgrims, beggars and ascetics, presumably visiting the Math, or approaching its authorities for a portion of the Maha Prasad. The mere fact that the proceeds of the properties were to be so used, would not justify the conclusion that these properties were not endowed to the Maths but were endowed to the temple of Lord Jagannath. Properties endowed to the temple of Lord Jagannath were, according to this statement, in the Gazetteer, not under the superintendence of any Math or Mahant but under the superintendence of the Raja of Puri himself." (emphasis laid by this Court) The OEA Act, 1951 was enacted with a view to abolish the rights, title and interest of intermediaries in the land in the State of Odisha. The Statement of Objects and Reasons of the OEA Act, 1951 reads as under:

"……in the interest of the cultivators of the soil and for the general, material and social advancement of the Province, it is necessary to remove all intermediaries between the Government and the ryots. The general consensus of opinion is that the zamindari system has perpetuated assessment which has no relation to the productive capacity of the land and has further led to loss of contact between the Government and the actual cultivator and has acted as a break in agricultural improvement……It seems without a social change in the existing system of land tenure no coordinated plan of agricultural reconstruction can be undertaken with a fair rent, fixity of tenure, proper maintenance of irrigation sources and consequent increases of crop yield and extension of cultivation……." (emphasis laid by this Court) The OEA Act, 1951 was thus enacted with a view to protecting the interest of the cultivators of the soil and to do away with the evils of the zamindari system. In the light of the same, it cannot be said that the provisions of the OEA Act, 1951 will apply to the land of the appellant Temple Committee over the provisions of the Temple Act, 1955, which is clearly the special legislation in the instant case. At this stage, it is also crucial to examine the statement of objects and reasons of the Amendment Act of 1974 by virtue of which Section 2(oo) was inserted in the OEA Act, 1951. It states as under:

"The Orissa Estates Abolition Act, 1951 provides for the abolition of temporarily and permanently settled zamindaris and other intermediary interests and tenures in the State of Orissa. All estates except trust estates have vested in the Government by virtue of notifications issued in that behalf by the Government under the Act. For carrying out the purposes of trusts efficiently and to ensure proper performance of traditional rites and rituals in the religious institutions when trust estates are vested in the Government……and that any land or building (being part of a trust estate) vested in the Government maybe settled in certain circumstances with the person who immediately before such vesting was an intermediary in respect of such land or building." (emphasis laid by this Court) A perusal of the aforementioned objects and reasons makes it clear that the said amendment clearly encroaches upon the field of the Temple Act, 1955.

The said amendment has been enacted with a view to ensuring the proper performance of traditional rites and rituals in the religious institutions. As far as the Lord Jagannath Temple at Puri is concerned, the State Legislature had already enacted the Temple Act, 1955 and vested the land belonging to the Temple in the Temple Management Committee by virtue of Sections 5 and 30 of the Act of 1955. The object of the said Act was to provide for better administration and governance of the affairs of the Temple and its properties. Thus, proviso to Section 2(oo) of the OEA Act, 1951, by which the estates belonging to the Temple of Lord Jagannath at Puri within the meaning of the Temple Act, 1955 are deemed to be Trust Estates is in direct contravention and subversion of the provisions of the Temple Act, 1955. Further, even the contention advanced on behalf of the respondent Math that a subsequent legislation takes precedence over a prior decision is liable to be rejected

as the same is not tenable in law. The same becomes clear from the decision of this Court in the case of U.P State Electricity Board referred to supra, wherein a three judge bench had to adjudicate the operation of a subsequent general legislation in the following terms: "We have already shown that the Industrial Employment (Standing orders) Act is a Special Act dealing with a Specific subject, namely the conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing orders) Act embodying as they do hard-won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Sec. 79(c) of the Electricity Supply Act. It is obvious that Parliament did not have before it the Standing orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing orders Act should stand protanto re pealed by Sec. 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing orders Act must prevail over S. 79(c) of the Electricity Supply Act, in regard to matters to which the Standing orders Act applies." Further, Justice Krishna Iyer in the case of LIC v. D.J. Bahadur[15], while examining the difference between general and special statutes held as under:

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the L.I.C. Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the L.I.C. Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to." Further, on the point of a subsequent legislation taking precedence over a prior legislation, he observed as under:

"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Seward v. Vera Cruz (1884) 10 AC 59 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so", "There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant-i.e. general provisions will not abrogate special provisions. "When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms." (emphasis laid by this Court) In the instant case, there is a clear conflict between the proviso of Section 2(oo) of the OEA Act, 1951 and Sections 5 and 30 of the Temple Act, 1955. It is also clear that both the above statutory provisions of the Acts cannot survive together. While the rule of harmonious construction must be given effect to as far as possible, when the provisions of two statutes are irreconcilable, it needs to be decided as to which provision must be given effect to. In the instant case, Section 2(oo) proviso in its entirety is not violative of the provisions of the Temple Act. At the cost of repetition, we reproduce the relevant part of Section 2(oo) of the OEA Act, 1951 as under:

"Provided that all estates belonging to the Temple of Lord Jagannath at Puri within the meaning of the Shri Jagannath Temple Act, 1955 and all estates declared to be trust estates by a competent authority under this Act prior to the date of coming into force of the Orissa Estate Abolition (Amendment) Act, 1970 shall be deemed to be trust estates." (emphasis laid by this Court) It is only the first part of the proviso which is in contravention of the Temple Act, 1955. If that part of the proviso continues to be given effect, Sections 5 and 30 of the Temple Act, 1955, by which the estates of Lord Jagannath Temple at Puri are vested in the Temple Committee will lose their meaning. By striking down Section 2(oo) proviso to that extent, both the provisions will be able to operate.

In Commercial Tax Officer v. Binani Cements Ltd.[16] this Court held as under:

"It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin

maxim of generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on same subject." (emphasis laid by this Court) In J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.[17], a three judge bench of this Court held as under: "9. ...We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (quoted in Craies on Statute Law at p.m. 206, 6th Edn.) Romilly, M.R., mentioned the rule thus:

The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: De Winton v. Brecon, Churchill v. Crease, United States v. Chase and Carroll v. Greenwich Ins. Co.

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Clause 5(a) has no application in a case where the special provisions of Clause 23 are applicable." (emphasis laid by this Court) It becomes clear from a perusal of the above mentioned two judgments of this Court that while provisions of different statutes must be harmoniously constructed as far as possible, in cases where it is not possible, the Court needs to examine as to which provision must be given effect to.

In the case in hand, the first part of the proviso of Section 2(oo) of the OEA Act, 1951 cannot be allowed to sustain. Clearly, the intention of the legislature could not have been to render virtually the entire Temple Act, enacted on the specific subject, meaningless, by way of enacting a proviso to Section 2(oo) of the OEA Act, 1951 as an amendment in 1974, which is the general legislation in the instant case. Section 2(oo) of the OEA Act, 1951, thus, to that extent requires to be struck down so that both the OEA Act, 1951 as well as the Temple Act, 1955 can be given due effect in their respective field of operation. In exercise of the powers conferred under Article 142 of the Constitution, this Court can pass any order as may be "necessary for doing complete justice" in a

case before it. In the instant case, great injustice will be caused to the appellant Temple if the rights conferred upon it by the Temple Act are allowed to be taken away by operation of the proviso to Section 2(oo) of the OEA Act. Therefore, we have to strike down the proviso to Section 2(oo) of the OEA Act and also quash the notification dated 18.03.1974 in so far as it relates to the property of Lord Jagannath Temple at Puri.

Further, it is a settled principle of law that once a property is vested by an Act of legislature, to achieve the laudable object, the same cannot be divested by the enactment of any subsequent general law and vest such property under such law. Similarly, if in the instant case, we were to accept the contentions advanced by the learned senior counsel appearing on behalf of the respondent Math, then Sections 5 and 30 of the Temple Act, 1955 will be rendered useless and nugatory and thereby the laudable object and intendment of the Temple Act will be defeated and the interest of the public at large will be affected. Thus, the notification dated 18.03.1974 issued by the State Government under Section 3-A of the OEA Act, 1951, whereby the estate of Lord Jagannath Mahaprabhu Bije, Puri vested in the State Government (in terms of Point (ii) of the notification), is liable to be quashed to that extent. As a consequence, the order dated 30.09.1981 passed by the OEA Tahsildar, who falls within the inclusive definition of Collector in terms of Section 2 (d) of the OEA Act, 1951, settling the land in favour of the Mahantas of various Maths as Marfatdars of the Shri Jagannath Mohaprabhu Bije, Puri is in violation of the provisions of the Temple Act, 1955 and is thus, liable to be set aside.

We will now examine whether even according to the provisions of the OEA Act, 1951, the respondent Math had the right to file an application for settlement of the suit lands in terms of Sections 6 and 7 of the OEA Act, 1951. There are certain provisions of the OEA Act, 1951 which need to be appreciated at this stage.

Section 2(hh) of the OEA Act, 1951 defines an intermediary interest as follows:

> "'Intermediary interest' means an estate or any rights or interest therein held or owned by or vested in an Intermediary and any reference to 'estate' in this Act shall be construed as including a reference to 'Intermediary Interest' also" Section 8-A provides for filing of claims under Section 6,7 and 8 of the OEA Act, 1951 which reads as under:
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> "8-A. Filing of claims under Section 6, 7 and 8 and dispute relating thereto – (1) The Intermediary shall file his claim in the prescribed manners for settlement of fair and equitable rent in respect of lands and building which are deemed to be settled with him under Section 6 or Section 7 before the Collector within 6 (six) months from the date of vesting." Mr. M.L. Varma, the learned senior counsel appearing on behalf of the respondent Math contends that Section 2(oo)of the OEA Act,1951 was amended in the year 1974, in terms of which all estates belonging to the temple of Lord Jagannath were deemed to be trust estates. Thus, the same vested in the State Government after notification of 18.03.1974. Thus, the provisions of Section 8A of the OEA Act, 1951 come into play, and accordingly an intermediary had the right to file

> its claim before the Collector within six months. The learned senior counsel contends that the lands of the respondent Math were recorded in the Record of Rights, and the Tahsildar issued an inquiry report which stated that the said respondents were in possession of the lands. The lands were accordingly settled in favour of the respondent Math vide order dated 30.09.1981. The learned senior counsel further contends that the application filed by the appellant Temple Committee under Section 8-A, in which an order dated 30.11.1992 settling the lands in their favour was passed was liable to be set aside, as the respondent Math herein was not a party to the same. It is further contended that the order was liable to be set aside, as the lands already settled by way of order dated 12.01.1982 in favour of the respondent Math, could not be re-settled as the same were not available for the Collector to do so in view of the earlier order, referred to supra.

Mr. Shibasis Mishra, the learned counsel appearing on behalf of the State of Odisha, the appellant in Civil Appeal No.142 of 2010 contends that after the decision of this Court in the case of Lord Jagannath referred to supra, the State Government vide notifications dated 18.04.1989 and 20.11.1990, extended the time period for filing of claims in respect of estates of Lord Jagannath. On 20.11.1990, the Temple Committee lodged its claim recording the estates of Lord Jagannath in favour of Shri Jagannath Mahaprabhu Bije, Puri, Marfat through Shri Jagannath Temple Managing Committee by filing Claim Case No. 68 of 1990. On 30.11.1992, the order was passed by the OEA Collector recording the properties in favour of the Temple Committee.

We cannot accept the contentions advanced by the learned senior counsel appearing on behalf of the respondent Math. The Form 'H' submitted in terms of the OEA Act, 1951 in Claim Case No. 58 of 1975 reveals that while Column 9 "[Whether with respect to the lands in possession of the applicant or his temporary lessee or mortagagee on the date of vesting]" is marked as 'Self Possession', and Column 11 "[If in the possession of a temporary lessee or mortgagee give full details of the lessee or mortgagee……]" has been left blank. Therefore, the claim of the respondent Math and the basis of its claim is not stated in the claim petition. In the absence of the same, its claim as intermediary to prefer claim under Sections 5, 6, 7, 8 of the OEA Act, 1951 before the Tahsildar is wholly untenable in law. Further, the order dated 12.01.1982, passed in OEA Claim Case No. 58 of 1975 filed by the respondent Math to settle the lands in their favour has been passed by the Tahsildar, Puri. Section 8-A of the Act clearly provides that the claims have to be filed before the Collector. Mr. L. Nageshwar Rao, the learned senior counsel appearing on behalf of the Tahsildar contends that the definition of Collector in the OEA Act, 1951 is an inclusive one, and therefore he had the authority to determine the rights of the respondent. We cannot agree with this legal contention advanced by the learned senior counsel. The proceedings under Section 8-A, OEA Act, 1951 are quasi judicial in nature. The Orissa High Court in the case of Bharat Bihari Mishra v. State of Orissa[18], has held as under:

> "All the above provisions of the Act and the Rules go to indicate that the proceeding under Section 8-A(1) is quasi judicial in nature. The procedure for conduct of the proceeding has been provided in the Act and the different Rules as noted above." It is well settled in law that a quasi judicial function cannot be delegated and therefore,

the inclusive reading of the definition of Collector under Section 2(d) of the OEA Act, 1951 to also include Tahsildar can be applied only as far as it pertains to the discharge of administrative powers of the Collector. In reference to the role of the Tahsildar under the OEA Act, 1951, this Court has held that the Tahsildar performs an administrative function and not a quasi judicial one. In the case of Basanti Kumar Sahu v. State of Orissa[19] a three judge bench of this Court has held as under:

"If it had been an order made on the quasi-judicial side, the High Court would have held that the Tribunal had jurisdiction under Section 38-B and there would have been no occasion to interfere with the order. The High Court justified the Board's order to the extent it annulled the Tahsildar's order dated 17-12-1977 but interfered with it solely on the ground that the Board had no jurisdiction since the Tahsildar's order was not a quasi- judicial order. In other words, according to the High Court, the Tahsildar's order was an administrative order. If that be so, one fails to understand why the matter should be remitted to the Tahsildar once again to take an administrative decision? The order of the High Court is, therefore, unsustainable." Since the Tahsildar performs only an administrative function under the OEA Act, 1951 and not a quasi judicial function, thus, he was not competent to pass the order of settlement of claim either under Section 6 or 7 or 8 of the OEA Act, 1951. For the reasons stated in answer to Point No.1 above, vesting of the suit lands in favour of the Math is bad in law. Further, as we have already held supra that once the land already vested in the Temple Committee under Sections 5 and 30 of the Temple Act, 1955 which is a special enactment to deal with the properties endowed to the appellant Temple Committee, the same could not have been divested by applying the provisions of the OEA Act, 1951 by way of an amendment to the Act by insertion of Sections 2(oo) and 3A in the OEA Act, 1951, as the operation of the said Act and the Temple Act, 1955 are in different fields and the objects and intendment of the abovementioned two Acts are entirely different. A constitution bench of this Court in the case of Calcutta Gas Company Ltd. v. State of West Bengal[20] held that in case of a conflict or overlap between different entries, the rule of harmonious construction must be applied to give effect to all the entries. This Court held as under:

"8. .....Before construing the said entries is would be useful to notice some of the well settled rules of interpretation laid down by the Federal Court and this Court in the matter of constructing the entries. The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different List or in the same List may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. When the question arose about reconciling entry 45 of List I, duties of excise, and entry 18 of List II, taxes on the sale of goods, of Government of India Act, 1935, Gwyer, C.J., in In re The Central Provinces and Berar

Act No. XIV of 1938, observed :

"A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act."

The learned Chief Justice proceeded to state :

"..... an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non-obstante clause operate and the federal power prevail." The Federal Court in that case held that the entry "taxes on the sale of goods" was not covered by the entry "duties of excise" and in coming to that conclusion, the learned Chief Justice observed : "Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power, that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the provinced only. It is not perhaps strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

The rule of construction adopted by that decision for the purpose of harmonizing the two apparently conflicting entries in the two Lists would equally apply to an apparent conflict between two entries in the same List. Patanjali Sastri, J., as he then was, held in State of Bombay v. Narothamdas Jethabai, that the words "administration of justice" and "constitution and organization of all courts" in item one of List II of the Seventh Schedule to the Government of India Act, 1935, must be understood in a restricted sense excluding from their scope "jurisdiction and powers of courts" specifically dealt with in item 2 of List II. In the words of the learned Judge, if such a construction was not given "the wider construction of entry 1 would deprive entry 2 of all its content and reduce it to useless lumber." This rule of construction has not been dissented from in any of the subsequent decisions of this Court. It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory." (emphasis laid by this Court) In the light

of the reasons assigned by us in answer to Point No.1 and held in favour of the Temple, there was no need for the Temple Committee to file claim proceedings under Section 8-A of the OEA Act, 1951, in respect of its own lands which were already vested in it under Section 5 of the Temple Act, 1955. The suit lands vest in the Temple Committee itself. Thus, in view of the provisions of the Temple Act, 1955, the settlement of the suit lands in favour of the respondent Math cannot be sustained, as it is bad in law.

In view of the findings and reasons recorded on Point Nos.1 and 2 in favour of the appellant Temple Committee, the impugned judgment and order dated 07.07.2009 passed in Original Jurisdiction Case No. 2421 of 2000 by the High Court of Orissa at Cuttack is liable to be set aside and accordingly, we set aside the same.

Since we have categorically recorded the finding both on facts and in law while answering Point No. 1 in favour of the appellant Temple Committee holding that the provisions of the OEA Act, 1951 have no application to the lands of the Lord Jagannath Temple at Puri, there is no need for us to pass an order in favour of the Temple under the OEA Act, 1951 as the suit lands were already vested in favour of the Lord Jagannath Temple at Puri by virtue of the provisions of the Temple Act, 1955.

For the foregoing reasons, we pass the following order :-

C.A. Nos.7729 of 2009, 7730 of 2009,142 of 2010, 221 of 2010, 2981 of 2010, 3414 of 2010,3415 of 2010 and 3446 of 2010 are allowed. The impugned judgment and order dated 07.07.2009 passed in Original Jurisdiction Case No. 2421 of 2000 by the High Court of Orissa at Cuttack is hereby set aside.

We strike down the first part of the proviso of Section 2(oo) of the OEA Act, 1951, which pertains to the properties of Lord Jagannath Temple at Puri.

The notification dated 18.03.1974 issued by the State Government under Section 3A of the OEA Act, 1951 in so far as point No. (ii) is concerned, is also quashed by this Court, to the extent, it applies to the lands and estate of Lord Jagannath Temple at Puri.

We make it very clear that the striking down of the first part of the proviso to Section 2(oo) of the OEA Act, 1951 as mentioned above and quashing of the notification referred to supra will be prospective and this judgment shall not be applicable to the settled claim of the claimants hitherto under the provisions of the OEA Act of 1951 in so far as the lands of the Lord Jagannath Temple at Puri are concerned.

In view of the disposal of appeals above-mentioned in favour of the Temple Managing Committee, C.A. Nos. @ SLP (C) Nos. 9167-9168 of 2010 (filed by Sri Raghab Das Math) and C.A. No. 9627 of 2010 (filed by Bauli Matha) are hereby dismissed.

No costs are awarded in these proceedings.

... ... J. [V. GOPALA GOWDA] .....J. [C. NAGAPPAN] New Delhi, December 16, 2015 ITEM NO.1A-For Judgment COURT NO.10 SECTION XIA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s). 7729/2009 SRI JAGANNATH TEMPLE MNG. COMMITTEE Appellant(s) VERSUS SIDDHA MATH & ORS. Respondent(s) WITH C.A. Nos.14631-14632 of 2015 @ SLP(C) No. 9167-9168/2010 Date : 16/12/2015 These matters were called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Swetaketu Mishra, Adv.

Mr. Sanjay R. Das, Adv.

Mr. V. K. Monga,Adv.

Mr. Shibashish Misra,Adv.

Mr. Radha Shyam Jena,Adv.

Mr. Vinoo Bhagat, Adv.

Mr. Rutwik Panda,Adv.

Ms. Anshu Malik, Adv.

Mr. A. Venayagam Balan,Adv.

For Respondent(s) Mr. Rajiv S. Roy, Adv.
Mr. Pranab Kumar Mullick, Adv.
Mr. Avrojyoti Chatterjee, Adv.
Mr. Sukumar, Adv.
Mrs. Soma Mullick, Adv.
Mr. Sebat Kumar Devria, Adv.
Mr. Abhijit S. Roy, Adv.

Mr. Satya Mitra,Adv.

Mr. S. K. Verma,Adv.
Mr. Atul Kumar, Adv.

CA 7730/09, 221/10 and 3414/2010 Mr. Vinoo Bhagat, Adv.
Mr. Rutwik Panda,Adv.
Ms. Anshu Malik, Adv.

Mr. Kunal Verma,Adv.

Mr. Sibo Sankar Mishra,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted in SLP(C) Nos. 9167-9168 of 2010.

C.A. Nos.7729 of 2009, 7730 of 2009,142 of 2010, 221 of 2010, 2981 of 2010, 3414 of 2010,3415 of 2010 and 3446 of 2010 are allowed and C.A. Nos.14631-14632 of 2015 @ SLP(C) Nos. 9167-9168 of 2010 and C.A. No.9627 of 2010 are dismissed in terms of the Signed Reportable Judgment.

(VINOD KUMAR) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER
(Signed Reportable Judgment is placed on the file)

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[1] 1989 (1) Suppl.SCC 553
[2] AIR 1964 SC 1501
[3] AIR 1967 SC 256
[4] (2005) 8 SCC 534
[5] (2014) 4 SCC 434
[6] (1989) 1 SCC 101
[7] (1991) 4 SCC 139
[8] (2001) 6 SCC 356
[9] AIR 1966 SC 1332
[10] AIR 1976 SC 1569
[11] (2011) 12 SCC 695
[12] (1978) 4 SCC 16
[13] (2014) 8 SCC 319
[14] AIR 1953 SC 375
[15] AIR 1980 SC 2181
[16] (2014) 8 SCC 319
[17] (1961) 3 SCR 185
[18] 2012 (II) OLR 968
[19] (1998) 8 SCC 722
[20] AIR 1962 SC 1044