

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) Nos.16269, 16329 and 16316 of 2007

Rasananda Muduli (dead) and others* *Petitioners

Mr. P. K. Rath, Advocate along with Mr. S. Pattnaik, Advocate

-versus-

***Member, Board of Revenue, Orissa,* *Opposite Parties*
Cuttack and others**

Mr. Debakanta Mohanty, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

Order No.

**ORDER
17.02.2022**

I.A. Nos.2347, 2348 and 2349 of 2022 arising out of W.P.(C) No.16269 of 2007 and I.A. Nos.2353, 2354 and 2355 of 2022 arising out of W.P.(C) No.16329 of 2007 and I.A. Nos.2350, 2351 and 2352 of 2022 arising out of W.P.(C) No.16316 of 2007

- 04.
1. For the reasons stated therein, these applications for substitutions are allowed.
 2. The legal representatives of Petitioner Nos.1, 6 and 8 and the proforma Opposite Parties, as indicated in the schedule to the applications are brought on record.
 3. The consolidated cause titles incorporating the substitutions produced before the Court are taken on record.

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4. W.P.(C) No.16316 of 2007 is taken up by a separate notice.

5. Mr. P. K. Rath, Advocate enters appearance for the Petitioner and produces appearance memo. Mr. S. Pattnaik, Advocate enters appearance for the legal representatives of Petitioners 1 and 6 and produces Vakalatnama. The same be kept on record.

6. The challenge in these writ petitions is to orders passed by the Member, Board of Revenue (BoR), Orissa, Cuttack exercising suo motu powers under Section 38-B of the Orissa Estates Abolition Act, 1951 (OEA Act) in O.E.A. Revision Case Nos.9 of 2007, 10 of 2007 and 15 of 2005 respectively.

7. The net result of the impugned orders was that the Member, BoR has decided to exercise suo motu powers 46 years after the original grant of lease. The Member, BoR has by the impugned orders rejected the challenge mounted by the Petitioners on the ground of inordinate delay in exercising the suo motu powers. Further, the Petitioners pointed out that on issue of rent fixation that succeeded before the learned Single Judge of this Court by an order dated 23rd September, 2005 in OJC No.3422 of 1995 and that has not even been considered by the Member, BoR.

8. Mr. P. K. Rath, learned counsel for the Petitioners drew attention to the observation in the order dated 8th October, 2007 of the Member, BoR, where it was observed that there is no reason to recall the earlier decision dated 20th November, 2006 condoning the delay in exercising the suo motu powers. He pointed out that the order dated 20th November, 2006 in fact makes no reference to the issue of delay at all.

9. Mr. Debakanta Mohanty, learned Additional Government Advocate appearing for the Opposite Parties referred to paras 7 8 and 9 of the order dated 8th October, 2007 of the BoR. According to him, in cases where there was fraud vitiating the transactions and with Section 38-B of the OEA Act not specifying any particular period of limitation, it would be open to the Board of Revenue to reopen such cases suo motu despite several years having passed.

10. As far as the order dated 20th November, 2006 is concerned, the Court is unable to find any reference therein to the issue of the inordinate delay of 46 years in reopening the case. The said order in fact reads as under:

“Mr. L.K. Mishra, Standing Counsel is present. Heard him. Case is admitted. The counsel for the petitioner prayed for stay. Stay is granted on execution of Lower Court orders in OEA Niji dakhil case No. 447, 454 and 461 of 1958-59 till the disposal of this case or until further orders whichever is earlier. Issue notice to O.Ps. Call for LCRs.

Case to 29.01.2007 for further consideration.”

11. Mr. Rath is therefore right that at the time of suo motu power was exercised and the revision case was registered, the BoR did not consider it necessary to address the issue of delay at all.

12. Having perused paras 7, 8 and 9 of the order dated 8th October, 2007, the Court is not satisfied that it offers any convincing explanation for the inordinate delay. In fact, the observations in paras 7 and 8 are of general in nature. The relevant para as far as the present case is concerned is para 9, which reads as under:

“9. In this case, even as the order was passed by the OEA Collector as early as on 13.08.1959, it remained buried in the records of Tahasil Office, until after it was discovered in the revisional settlement operations that a huge tract of land, perceived to be as belonging to Government was getting recorded in favour of the opposite parties on the basis of the aforesaid order. This order seems to have never been looked into after the amendment of the statute as above. Because of its impact on the public interest and because of unusual settlement of “Anabadi” land with the ex-Intermediary (as opposed to Nizdakhal or Nijjot or Nijchas land), I am of the view that there is no need to recall or review the decision to condone the delay. In the facts and circumstances of this case, it is not unreasonable to have condoned the delay of 46 years. In fact, the delay is diluted to 31 years, if it is appreciate that the section 38-B was added to the statute after 15 years of the impugned order.”

13. The only stray observation in the above para is about the ‘unusual settlement of Anabadi land to the ex-Intermediary.’ This does not even remotely suggest that any fraud has been committed and that the Petitioner herein was in any way party to such fraud. Therefore, the Court is not satisfied that there were good reasons for condoning the delay of 46 years in exercising the suo motu power under Section 38-B of the OEA Act. In coming to such conclusion, the Court is supported by the observations in ***Joint Collector Ranga Reddy District v. D. Narsingh Rao, (2015) 3 SCC 695*** in which case there was unexplained inordinate delay of about 50 years in invocation of such power. According to the Supreme Court of India, such unexplained delay in exercising the power would amount to “fraud upon statute” and would be “opposed to rule of law.” The Court also notes that in an order dated 26th

August, 2021 in W.P.(C) No.11307 of 2010 (*Somanath Mishra v. Member, Board of Revenue*), this Court in similar circumstances, held that the delay of 26 years in initiating suo motu action would vitiate the proceedings.

14. For the aforementioned reasons, the Court sets aside the impugned orders dated 20th November, 2006 and 8th October, 2007 of the Member, Board of Revenue and this would result in the aforementioned O.E.A. Revision Case Nos.9 of 2007, 10 of 2007 and 15 of 2005 being dismissed.

15. The writ petitions are allowed in the above terms, but in the circumstances, with no order as to costs.

(*Dr. S. Muralidhar*)
Chief Justice

(*R. K. Pattanaik*)
Judge

M. Panda