

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.15345 of 2009

Golakha Chandra Behura

....

Petitioner

Mr. A.K. Sarangi, Advocate

-Versus-

State of Odisha and others

....

Opp. Parties

Mr. D.K. Mohanty, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

08.03.2022

Order No.

R.K. Pattanaik, J

09.

1. The Petitioner has invoked the writ jurisdiction under Article(s) 226 and 227 of the Constitution of India, 1950 questioning the correctness, legality and judicial propriety of impugned order dated 7th November, 2008 passed in OEA Revision Case No.19 of 2008 by O.P.No.4 on the ground that it is bad in law and therefore, liable to be quashed with consequential order/direction as deemed just and proper in the facts and circumstances of the case.

2. The Petitioner contended that he was a raiyat under the ex-ruler of Sukinda estate, who had handed him over Ac.0.92 dec. of land for the purpose of cultivation and since then, he continued to cultivate it paying the annual rent and in the meanwhile, the estate vested in the Government in 1953-55 under provisions of the Orissa Estates Abolition Act, 1951 (hereinafter referred as 'the OEA Act') by which only the

intermediary rights were abolished but the local revenue authority did not take any step to receive rent from him for which, he approached O.P.No.3, who vide OEA Misc. Case No.256 of 1983 treated him a raiyat under the ex-landlord and as such recognized the tenancy right as per Section 8(1) of the OEA Act and directed payment of arrear rent dues from the date of vesting under Annexure-1 and in recognition of tenancy issued a rent schedule i.e. Annexure-2. It is further contended that while matter stood thus, O.P.No.2 initiated a proceeding under Section 38-B of the OEA Act before O.P.No.4 almost after 25 years which ultimately resulted in the passing of the impugned order under Annexure-4. It is lastly contended that when the tenancy was recognized by O.P.No.3, it could not have been revised by O.P.No.4 exercising power under Section 38-B of the OEA Act and that too, after about 25 years without even recording any reasons.

3. Heard Mr. A.K. Sarangi, learned counsel appearing for the Petitioner and Mr. D.K. Mohanty, learned AGA for the State.

4. Mr. Sarangi, learned counsel for the Petitioner contends that when by an administrative decision, the raiyat right was recognized by O.P.No.3, almost after 25 years, O.P.No.4 ought not to have exercised revisional jurisdiction under Section 38-B of the OEA Act without stating any reason and therefore, the impugned order under Annexure-4 is required to be interfered with.

5. Mr. D.K. Mohanty, learned AGA appearing for the Opposite Parties contended that O.P.No.4 did not commit any wrong in

passing the impugned order under Annexure-4 after setting aside the order 18th November, 1983 passed in OEA Misc. Case No.256 of 1983 and rightly directed the land to be recorded as *anabadi* deleting the note of possession of the Petitioner. Hence, it is contended that the impugned under Annexure-4, since suffers from no legal infirmity, it calls for no interference.

6.The Petitioner relied upon a copy of the rent schedule i.e. Annexure-2 and couple of receipts i.e. Annexure-3 covering the entire period to lay claim over the land in question stating that he was a tenant under ex-ruler and was recognized by O.P.No.3 by order under Annexure-1. It is claimed that a *patta* was granted in respect of the case land in favour of the Petitioner, who has been in possession over the same ever since 1952. In fact, O.P.No.4 held that the ex-ruler did not submit any *ekpadia* or *Jamabandi* which is the normal course in the process of recognizing the tenancy post vesting of the estate. In fact, there was no evidence on record to show as to if the *patta* was granted before or after 1st January, 1946. That apart, as a consequence of vesting, the ex-intermediary was also required to submit *ekpadia*. It is settled law that if a tenancy is created by the ex-ruler prior to the vesting, it was to be reflected and carried forward by filing of *ekpadia* or *Jamabandi* so as to further recognize the tenancy under the State which is accomplished by an administrative action in view of Section 8(1) of the OEA Act. Law is also well settled that a land cannot be settled by resorting to a quasi-judicial proceeding as the tenancy is recognized by an administrative decision as contemplated in the OEA Act. A tenant under the ex-

intermediary duly recognized is deemed to be a tenant under the State after vesting of the estate by a legal fiction as per Section 8(1) of the OEA Act. In the instant case, O.P.No.4 rightly interfered with the settlement of the case land by O.P.No.3, when the Petitioner could not be recognized as a tenant immediately later to its vesting, rather, obtained the order under Annexure-1 almost after 30 years thereafter. In absence of any such evidence recognizing the tenancy right subsequent to the vesting of the estate, O.P.No.3 did not have the authority to settle the case land in favour of the Petitioner which was correctly noticed by O.P.No.4 and rightly therefore, directed it to be recorded in *anabadi* Khata of the State Government by deleting his note of possession. This Court, in view of the above discussions and being alive to the facts on record and the authority exercisable under Section 38-B of the OEA Act without any limitation being prescribed and with the conclusion that grounds really existed to intervene, is not inclined to disturb the impugned order under Annexure-4.

7. Accordingly, it is ordered.

8. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice