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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6568 of 2008

Sukumari Mohanty and others ***Petitioners***
Mr. S.S. Das, Senior Advocate

-Versus-

State of Odisha and others ***Opp. Parties***
Mr. D.K. Mohanty, AGA
Mr. S. Palit, Senior Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT :19.04.2022

R.K. Pattanaik, J.

1. Invoking the writ jurisdiction under Article(s) 226 and 227 of the Constitution of India, 1950, the Petitioners have knocked the portals of this Court assailing the impugned order dated 29th July, 1995 (Annexure-11) passed in O.E.A. Revision Case No.16 of 1994 by the learned Member, Board of Revenue, Orissa, Cuttack, namely, OP No.5 for having confirmed order dated 23rd November, 1983 (Annexure-4) passed by the OEA Collector-cum-Tahasildar, Bhubaneswar, namely, OP No.4 in OEA No.66 of 1993 rejecting their predecessor's claim for acceptance of rent as a tenant under the State Government on the ground that the decision is per se illegal, perverse and without jurisdiction.

2. The subject matter of the property is situate over Plot No.258, Khata No.472 corresponding to Sabik Plot No.218 and Khata No.303/21 measuring an area of Ac.5.00 decimals situated in Mouza-Chandrasekharpur in the district of Khurda.

3. The case of the Petitioners in brief is that the schedule property originally belonged to the Kanika State and its ex-Zamindar granted permanent lease in favour of the original tenant on 21st March 1944 and delivered possession to him, who, thereafter, reclaimed and cultivated it. Then, on estate abolition, the subject of Kanika State vested in the Government on 27th December 1952 and at that time, the ex-intermediary submitted an *ekpadia* recognizing the tenancy in respect of Khata No.302/21 to the office of the Tahasildar, Cuttack which entered the same in the tenant's ledger thereby accepting him as a tenant under the Government. According to the Petitioners, in view of Section 8 (1) of the Orissa Estates Abolition Act, 1951 (here-in-after referred to as 'the OEA Act'), the original tenant had become a tenant under the State Government but the Tahasildar, Cuttack on being moved declined to accept rent from him which led to the filing of OEA Case No.66 of 1983 before OP No.4 for fixation of rent in respect of the case land but it was rejected on the ground of absence jurisdiction to settle it in his favour since the property had by then been owned by G.A. Department, Government of Orissa. The original tenant after the disposal of OEA Case No.66 of 1983 approached the Additional Tahasildar, Bhubaneswar by filing Mutation Case No.242 of 1991 in respect of the case land

as a tenant but again it was rejected and thereafter, Mutation Appeal No.15 of 1992 was filed which also yielded no result. Finally, the original tenant moved OP No.5 challenging the order passed in OEA Case No.66 of 1983 which was though entertained despite delay but was dismissed on the grounds, such as, lease deed not to be admissible for being a non-registered document and that apart, the lease could not be proved and also possession over the property in absence of any note of remark in the settlement record and also due to want of evidence to show cultivation of the land immediately before the date of vesting. As per the Petitioners, when the original tenant produced materials in support of lease and acceptance of tenancy by the State Government after *ekpadia* was submitted by the ex-intermediary, the impugned decision of OP No.5 concurring the findings of OP No.4 dismissing such claim cannot be sustained.

4. Heard Mr. S.S. Das, learned Senior Advocate for the Petitioners, Mr. D.K. Mohanty, learned AGA for OP Nos.1, 2, 4 & 5 and Mr. S. Palit, learned Senior Advocate for OP No.3.

5. On the contrary, it is contended that OP No.5 did not commit any error or illegality and rightly held that the lease in favour of the original tenant could not be established nor the possession in respect of the schedule property immediately prior to the date of vesting. It is further contended that the material documents could not satisfy OP No.5 for the purpose of recognizing tenancy and

therefore, the impugned order under Annexure-11 suffers from no legal infirmity.

6. Similar is the stand of OP No.3 to the effect that there is no perversity in the impugned decision rendered in OEA Revision Case No.16 of 1994. It is contended that the lease deed dated 21st March, 1944 was not satisfactorily proved and established alleged to have been executed by the Tahasildar of Raja Kanika being authorized by the ex-Zamindar and that apart, the document since unregistered is not admissible in view of Section 49 of the Registration Act, 1908 nor any evidence could be tendered as it is precluded under Section 91 of the Indian Evidence Act, 1882. It is the further contention that the alleged tenant could not also produce rent receipts till the schedule land vested on 27th December 1952 and the rent receipts which were produced prima facie appeared to be manufactured documents, inasmuch as, one is of the year 1943 which is even prior to the execution of the alleged lease. The copy of *Jamabandi* khatian also found to be not genuine and that apart, the tenant's possession was under serious cloud in view of the settlement record of 1973-74 for the fact that the land was classified as *Rakhit* and recorded with the State Government. Lastly, on the ground of delay, OP No.3 contended that the schedule land being a part of the estate vested in the Government in 1952 and the alleged tenant having approached the revenue authority in 1983 almost after a gap of 30 years and for the same, when no

plausible explanation was offered, no any ground exists to disturb the impugned order under Annexure-11.

7. Mr. Das, learned senior counsel for the Petitioners contends that as per the scheme of the OEA Act and in view of Section 8(1) of the said Act, the original tenant, who was granted the lease by the ex-intermediary, was accepted as such by the revenue authority, which is revealed from the *Jamabandi* khatian of Kanika State (Annexure-1) and then the tenant ledger in respect of Khata No.303/21 (Annexure-3) and for he having been accepted as a tenant under the Government, OP No.4 was only to accept the rent but it was refused under Annexure-4 and subsequently confirmed vide Annexure-11 which is an illegality and thus, unsustainable in law.

8. In fact, OP No.5 stated to have examined the above documents and concluded that the evidence lacked reliability. Though the lease deed in original was produced, OP No.5 observed that whether the Tahasildar of Kanika Raja had the authority to execute the same in favour of the tenant could not be established. Since the authorization to execute the lease and to accept rent from the alleged tenant on behalf of the ex-intermediary was not clearly forthcoming, OP No.5 was compelled not to accept such a claim of tenancy and besides that refused to accept the lease deed for being unregistered. Except Annexure-1&3, no further evidence was adduced. As a matter of fact, there was considerable delay from the side of the alleged tenant in

approaching OP No.4 after about 30 years. Furthermore, no requisition was either made to call for any records for the purpose of satisfying OP No.4 about the lease executed on being duly authorized by ex-intermediary. Referring to Annexure-1&3, it was difficult on the part of OP No.4 and OP No.5 to reach at a conclusion regarding existence of any such lease executed in favour of the tenant. According to the Court, delay defeated the claim of any such lease being in existence. By a deeming fiction under Section 8(1) of the OEA Act, a tenant under the ex-intermediary is treated as one under the Government provided he is in cultivating possession of the demised land immediately prior to the vesting. Law is well settled that the process of confirming tenancy is merely an administrative decision of the OEA authority, inasmuch as, no jurisdiction can be exercised under Section 8(1) of the OEA Act for the purpose of settling any land. In the instant case, albeit a copy of the *Jamabandi* khatian published in the year 1944 was produced and also a portion of tenancy ledger under Annexure-3 but OP No.5 entertained serious doubt with respect to the claim of the tenancy, the details of which are clearly evident from Annexure-11. It was for the original tenant's behalf to cause production of such revenue records in support of the alleged lease but no such step was taken which forced OP No.5 to arrive at a decision to the contrary.

9. Mr. S. Palit placed reliance on a decision in the case of ***Ram Nath Mandal and others v. Jojan Mandal and others AIR 1964 Patna 1*** to contend that the alleged lease was not admissible as it

is unregistered. In the decision (supra), it is held that under Section 117 of the Transfer of Property Act, 1982 (in short 'the TP Act'), a lease for agricultural purposes is not necessary to be made by a written document as it may be effected orally but if the transaction of lease is reduced to writing, then, in case where, the lease is for a year to year, or for any term exceeding a year, or reserved by yearly rent, registration would be required under Section 17 of the Registration Act, 1908 and if it is unregistered, the same shall be inadmissible in evidence in view of Section 49 of the said Act and also evidence on the terms of the lease cannot be permitted to be adduced as it is prohibited in view Section 91 of the Indian Evidence Act, 1882. Mr. Das in response contends that Section 117 of the TP Act deals with agricultural lease and for that, the provisions of Chapter V thereof do not apply to it except in so far as the State Government may do so by a notification duly published in the official Gazette declaring all or any of such provisions to be applicable. The present case being an agricultural lease, according to Mr. Das, the lease was not required to be registered compulsorily as it is beyond the purview of Section 107 read with Section 117 of the TP Act. The decision in *Ram Nath Mandal* (supra) received confirmation by a judgment of the Supreme Court in *Sita Maharani v. Chedi Mahato AIR 1955 SC 328* which has also been cited by Mr. S. Palit. Irrespective of the above aspect of the matter, the fact remains, the original tenant did not approach the OEA authority immediately after vesting. If *ekpadia* was submitted and

Jamabandi khatian recognized tenancy of pre-vesting period, then what prevented the original tenant from approaching the OEA authority for accepting rent from him immediately after the vesting. The present situation, where the very admissibility of the lease deed is being questioned, would have been avoided, had the tenant been prompt in offering the rent. A due process is prescribed in the OEA Act by which the previous tenancy is confirmed by an enquiry which is taken up and rent is accepted at the rate being paid by the tenant to the ex-intermediary. The tenant for reasons best known to him maintained a stony silence for long and with an inordinate delay of about 30 years approached the authority which in turn weakened the prospect of the claim. For having not resorted to the means and mode prescribed in OEA Act to become a tenant under the State post-vesting, it would be quite obvious to doubt the veracity of such claim of the original tenant. Under the above circumstances, the State again questioned the admissibility of the lease deed which is normally raised in civil litigations. Anyhow, the Court in exercise of writ jurisdiction is not inclined to interfere with the decision of OP No.5 at this stage when the tenant did not exhaust the remedy available to him under the OEA Act and approached the authority with considerable and unexplained delay and that too by claiming tenancy based on documents credibility of which has seriously been doubted.

10. Mr. Das cited a decision of this Court in ***Rabindra Kumar Das and others v. the Commissioner, Settlement and W.P.(C) No.6568 of 2008***

Consolidation and others 109 (2010) CLT 639 while contending that Annexure-3 could not have been discarded by OP No.5 which was in respect of Khata No.303/21 of Mouza-Chandrasekharpur. In the above decision, it has been held that tenancy ledger if has been prepared, question of its manipulation cannot be accepted unless it is established by cogent evidence in a competent court more so when, the State is the custodian of such document. There is no quarrel with the above proposition of law as decided in ***Rabindra Kumar Das*** (supra) but as to the present case, only true copies of the documents were submitted without calling for the originals for the purpose of verification, the reliability of which was doubted. Apart from the fact that there was no further evidence from the side of the tenant in support of the authorization for executing lease of the land on behalf of the ex-intermediary. For having relied upon Annexure-1&3 and when doubt was entertained on its acceptability and furthermore, in absence of clear and unimpeachable evidence in proof of such lease and also the authority to execute it, in the considered view of the Court, OP No.5 cannot be said to have committed any error or faulted in any way in not accepting the claim of tenancy. If the tenancy ledger had been produced accompanied with the revenue records against the background of *ekpadia* being issued, it would have been impelled OP No.5 to believe and accept the execution of the alleged lease in 1944.

11. Mr. Das contends that the revenue authority mistakenly registered an OEA case when the tenant had submitted an

application for acceptance/fixation of rent. That apart, as further contended, it was for OP No.4 only to accept the rent since by then the tenant had already been recognized in view of Annexure-1&3. But, since the tenant failed to approach the OEA authority in time and that apart, when the creation of lease itself was doubted, under such circumstances, OP No.5 even without rejecting Annexure-1&3 and in absence any additional evidence could not have accepted the claim of tenancy vis-à-vis the original tenant.

12. Besides the above, the revenue records did not show the possession by the original tenant after vesting. Of course, record of right does not create or extinguish title or interest. But anyhow, the possession of the original tenant was not reflected in the record of right of 1973-74. There is also no evidence from the side of the alleged tenant that he was in cultivating possession of the land after the lease was executed and immediately before its vesting in the State Government.

13. As regards Annexure-3, Mr. Das further contends that OP NO.5 could not have discarded it as the same was maintained by the OEA authority which is a statutory body, inasmuch as, a presumption of its correctness is drawn in view of Section(s) 74 and 114 of the Indian Evidence Act, 1882. But, OP No.5, as it appears, seriously doubted the source from which the lease was created and also reliability of Annexure-1&3. Further, it is made to understand that the records of sabik settlement was not

available. In such view of the matter, OP No.5 had left with no option except to reject the tenancy claim. In the considered opinion of the Court, had the original tenant approached the OEA authority in time immediately after vesting, situation of the present would have been avoided.

14. Mr. Das cited a decision of this Court in ***Pramoda Kumar Sahu and others v. Baidyanath Mishra and others* 66 (1988) CLT 432** contending that Annexure-1&3 being more than 30 years old, could not have been discarded. The above decision is in respect of a sale deed and in that context, it was held that presumption under Section 90 of the Indian Evidence Act, 1882 extends to the execution of it and also the signatures and attestation found therein but not to the truth of the contents. The aforesaid decision is of no relevance in so far as the present case is concerned. Although, Annexure-3 was produced but then OP No.5 was not in a position to accept it for very many reasons. Nevertheless, the tenant except Annexure-1&3 did not submit any other material to substantiate the claim of tenancy with a proof of being in occupation of the property under his cultivating possession.

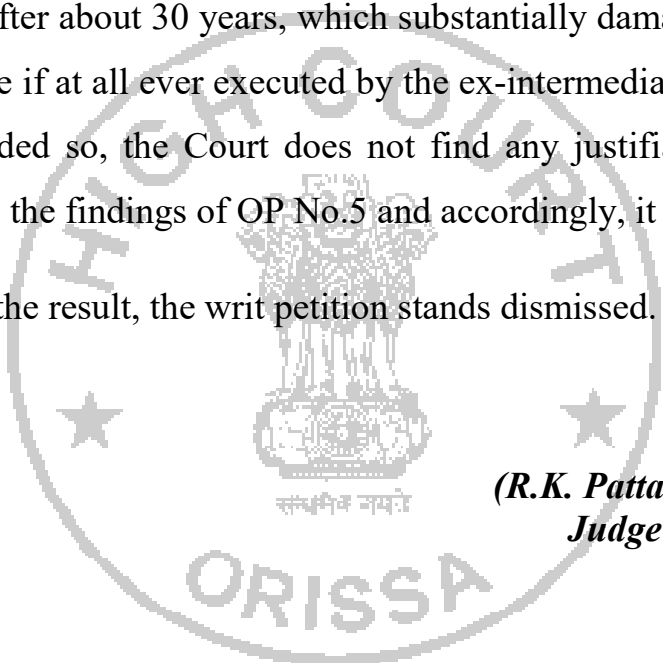
15. Mr. Palit cited one more decision of the Supreme Court in ***State of Orissa v. Fakir Sethi and others* (2015) 1 SCC 466** wherein one of its earlier decision in ***State of Orissa v. Harpriya Bisoi and others* AIR 2009 SC 2991** has been referred to and it is contended that the original tenant was not found to be in

cultivation of the land at the time of vesting of the estate which is one of the requirements of Section 8(1) of the OEA Act. In the aforesaid case, since the tenant, who claimed in possession was found not to be in cultivation of the case land, the desired relief was declined. In the instant case, there is absolutely no evidence of any kind to show and satisfy the Court that the original tenant after the lease, reclaimed the land for the purpose of cultivation and remained in possession of it till the vesting. In view of the settled position of law as laid down in ***Harpriya Bisoi*** (supra), proof of cultivation is essential while claiming tenancy over a property. In the above case, the Supreme Court further highlighted the aspect of obtaining fraudulent titles based on documents like unregistered lease deeds claimed to have been executed by ex-intermediaries. Similarly, in ***Fakir Charan Sethi*** (supra), the Supreme Court took judicial notice of rampant fraud having been perpetrated with unregistered lease deeds and also observed that unless after the lease at the time of vesting, there is no evidence of actual cultivation by the tenant, he cannot avail the benefit under Section 8(1) of the OEA Act. A decision of the Supreme Court in ***State of Orissa v. Nityanand Satpathy and others (2003) 7 SCC 146*** is also cited by Mr. Palit which was in respect of a land stated to be *Anabadi* having vested in the estate, it was held that the ex-intermediary even though not physically dispossessed on account of such vesting, would be deemed to have been out of possession entitling the State to exercise its right over the same and the land not in *khas* possession of the ex-

intermediary and the same not being used for cultivation or horticultural operation by himself or by his servants or hired labour, settlement under Section 7 of the OEA Act would not be maintainable. It was with respect to a settlement claimed under Section 7 of the OEA Act by the ex-intermediary which was rejected in absence of any proof of *khas* possession and cultivation of the land by him. As to the instant case, there is also no evidence or proof regarding possession as well cultivation of the case land by the original tenant immediately before the vesting, which is one of the conditions necessary for the purpose of acquiring interest under Section 8(1) of the OEA Act. That apart, no administrative enquiry could be held since the original tenant never approached the OEA authority after the vesting of the estate in 1952. If the tenant had approached asking the authority for acceptance of rent being a tenant under the ex-intermediary, it would have been enquired into administratively against the background that *ekpadia* had been submitted. As the law is well settled under Section 8(1) of the OEA Act, the OEA authority does not have any authority either to settle the land in favour of a tenant under the ex-intermediary or fix any rent for the purpose of its collection from him while exercising jurisdiction thereunder but shall have powers only for an enquiry to ascertain the existence of tenancy and accept the fixed rent. In the case of the Petitioners, when *ekpadia* was claimed to have been submitted and received by the authority from the ex-intermediary, the original tenant should have immediately after

vesting of the estate applied for acceptance of rent which he failed to do instead approached after nearly 30 years and therefore, the case also suffers from delay and laches on his part. The explanation for the delay which has been offered and brought on record does not inspire confidence of the Court. Having examined the case from any angle, the Court finds that creation and existence of tenancy could not be satisfactorily established vis-à-vis the original tenant, who approached OP No.4 after about 30 years, which substantially damaged the claim of lease if at all ever executed by the ex-intermediary. For having concluded so, the Court does not find any justifiable reason to disturb the findings of OP No.5 and accordingly, it is ordered.

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



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

KC Bisoi/Secretary