

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7424 of 2010

Biswanath Sahoo

....

Petitioner

Mr. S. K. Mishra, Advocate

-Versus-

***Member, Board of Revenue,
Cuttack and others***

....

Opposite Parties

Mr. D.K. Mohanty, AGA

Ms. Pami Rath, Advocate

Mr. A.K. Nath, Advocate

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

**ORDER
05.07.2022**

Order No.

R.K.Pattanaik, J

19. 1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioner questioning the correctness, legality and judicial propriety of the impugned order dated 3rd August, 2009 (Annexure-1) passed in OEA Revision Case No.60 of 2003 by the Member, Board of Revenue, Orissa (OP No.1) confirming the orders of OP Nos.2&3 on the grounds *inter alia* that the same is not tenable in law and therefore, liable to be quashed.

2. The schedule property as a part of the estate was originally recorded with OP No.1 and was leased out by its Marfatdar in favour of one Giridhari Sahoo on 17th December, 1930 through a registered lease deed for a period of 30 years which was then sold out on 9th June, 1932 by the lessee to one Chemei Sahoo, who in turn alienated the same in favour of the mother of the Petitioner on 12th January, 1942 and since then, it is claimed to be in their peaceful possession. As per the Petitioner, the estate stood vested in the Government by a notification dated 29th April, 1960 issued under Section 3-A of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the OEA Act') but the Collector, Puri referred the matter vis-à-vis the property to the Tribunal for a declaration that the same is a trust estate vide Reference Case No.93 of 1966, wherein, OP No.4 filed objection claiming it to be a private deity and the same was dismissed on 5th September, 1966. It is further contended that OP No.4 filed OEA Claim Case No.7751 of 1963-64 before the OEA Collector-cum-Tahasildar, Puri under Sections 6&7 of the OEA Act seeking settlement of the property in its favour which was allowed by order dated 20th April, 1967 and the said order was challenged in Appeal Case No.64 of 1967 but initially, it was disposed of on technical ground, however, after amendment to Section 9 of the OEA Act, the prayer was renewed and in that proceeding, the ADM, Puri (OP No.2) by order dated 17th March, 2003 dismissed the appeal against which revision was filed. The Petitioner

contends that OP No.1 without properly appreciating the materials on record, dismissed the revision by the impugned order under Annexure-1, inasmuch as, the property was never a homestead and in the khas possession of the intermediary and therefore, could not have been settled in terms of Section 6 of the OEA Act. Furthermore, it is challenged by the Petitioner that reference to the Tribunal under Section 13(i)(2) of the OEA Act since was pending, the property was excluded from the purview of the vesting and can only be said to have vested on and from 5th September, 1966, the date on which the Tribunal disposed it of and in such view of the matter, the claim case filed by OP No.4 was premature and therefore, the consequential orders of the OEA authorities shall have to be held as without jurisdiction.

3. OP Nos.2&3 as well as OP No.4 filed separate counter affidavits justifying the impugned decision of OP No.1 on the ground that rightly the property was settled with OP No.4 as per Section 6 of the OEA Act. In fact, OP No.4 claimed that the Petitioner does not have any *locus standi* rather an interloper. It is pleaded by OP No.4 that the lessee possessed the property under the deity and therefore, could not have any better rights than the lessor and his possession would enure to the benefit of the deity. The contention that the claim case to be premature was responded by OP No.4 by stating that it was hardly anything to do with the vesting. The above is the sum and substance of the pleading of OP No.4. Likewise, OP

Nos.2&3 while supporting the claim of OP No.4 pleaded that the impugned order under Annexure-1 is just and according to law and that dismissal of the reference in 1966 does not make any difference to the date of vesting of the estate.

4. Heard Mr. S.K. Mishra, learned counsel for the Petitioner; Mr. D.K. Mohanty, learned AGA for OP Nos.1 to 3; Ms. Pami Rath, learned counsel for OP No.4; and Mr. A.K. Nath, learned counsel for OP No.5.

5. Mr. Mishra contends that the possession of the property is still with the Petitioner which stands fortified by the fact that OP No.4 had filed a suit in O.S. Case No.56/42 of 1963 against them for eviction which although was decreed but was set aside in Title Appeal No.57/111 of 1964 and hence, the Petitioner being the immediate successor is having a lawful right which cannot be taken away. Mr. Mishra would further contend that the claim case filed by OP No.4 was premature, since by then, the reference had not been disposed of by the Tribunal and therefore, its vesting shall have to be treated as from 5th September, 1966 and not 29th April, 1963, the date on which the notification under Section 3-A of the OEA Act was published. Under the above circumstances, Mr. Mishra lastly submits that the OEA Collector-cum-Tahasildar, Puri could not have entertained the claim case filed by OP No.4 ignoring the fact of possession of the property by the Petitioner.

6. On the other hand, learned AGA Mr. Mohanty contends that disposal of the property by the lessee was without any authority and prejudicial to the interest of OP No.4, who is a perpetual minor. It is further contended that the possession by the lessee was deemed to be the possession of the deity and therefore, any such possession by the Petitioner succeeded through a lawful purchase cannot have any rights unless the title has been perfected by adverse possession. The pendency and disposal of reference in 1966, according to Mr. Mohanty, does not improve the case of the Petitioner, inasmuch as, the vesting cannot be deferred which has to be w.e.f. 29th April, 1963 only.

7. The question is, whether, the impugned order under Annexure-1 passed by OP No.1 is in accordance with law? Admittedly, the property was leased out by the Marfatdar of the deity and thereafter, the lessee disposed it of by a sale and ultimately, it reached in the hands of the Petitioner's mother. The lease was for a period of 30 years which stood expired in 1960. In such view of the matter, the sale by the lessee vis-à-vis the property cannot have any legal basis. The Petitioner claimed possession of the property ever since 1942. As earlier mentioned, it is further contended that the settlement of the property with O.P.No.4 could not have been allowed for the fact that the estate had not vested by then since the reference was dismissed by the Tribunal on 5th September, 1966. In fact, reference by the Collector for declaration that the property as

trust estate was rejected after accepting the plea that it belongs to a private deity. In the considered view of the Court, when the vesting was with effect from 29th April, 1963, disposal of the reference in 1966 could not have deferred or postponed the vesting vis-à-vis the property. As per Section 2(f) of the OEA Act, the date of vesting of any estate in the Government is the date on which Gazette notification to that effect is published. In the instant case, the vesting of the estate was notified under Section 3-A of the OEA Act on 29th April, 1963 which could not have been deferred due to the pendency of the reference. The Tribunal dismissed the reference by which the position stands relegated to the date of vesting. Therefore, the contention of Mr. Mishra that the claim case filed by OP No.4 was premature for the stated reason cannot be accepted. In any case, the claim case though was filed in 1963-64 but stood disposed of by the OEA Collector-cum-Tahasildar, Puri later to the order passed by the Tribunal disposing of the reference. The Court therefore reaches a decision that the contention of Mr. Mishra on the maintainability of the claim case to be misconceived.

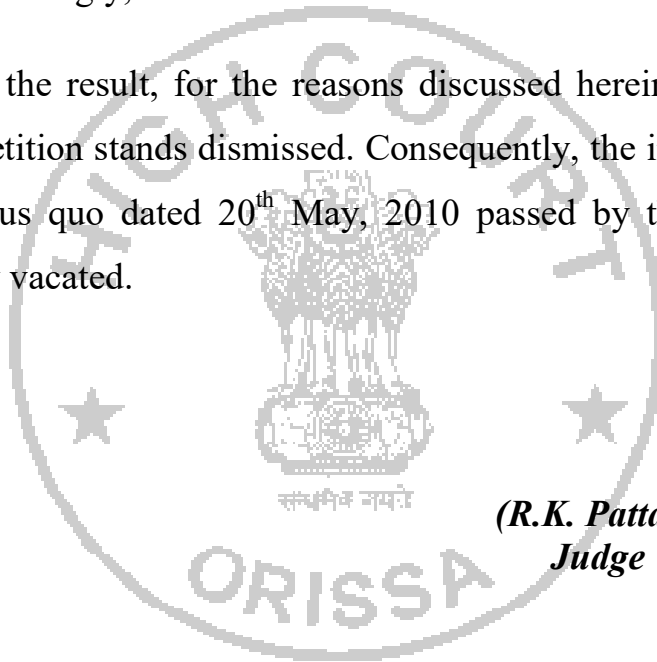
8. Initially, the appeal against the claim case was filed which was held as not maintainable by order dated 21st March, 1973 but as it appears, the Petitioner almost after 18 years challenged the settlement subsequent to the amendment to Section 9 of the OEA Act but then, the same was not dismissed by OP No.2 on the ground of delay and laches.

However, the revision was disposed of by OP No.1 on merit examining the claim of Petitioner. In the opinion of the Court, OP No.1 discussed and examined all the aspects of the case and rightly reached at a conclusion that the case land was correctly settled with OP No.4 being the intermediary. Mr. Mishra contends that such settlement of the case land could not have been allowed under Section 6 of the OEA Act as it was not a homestead and under the khas possession of OP No.4. In so far as the claim of OP No.4 is concerned, it was considered under Sections 6 of the OEA Act which is in relation to settlement in respect of homestead under the khas possession of the intermediary. The OEA authorities rendered a fact based finding that the property was under the khas possession of OP No.4 and therefore, it had to be settled under Section 6 of the OEA Act which is not to be disturbed in absence of any contrary evidence of unimpeachable character. Whether, the homestead was raised by the Petitioner's mother or their vendor cannot be gone into and examined in view of the concurrent findings of the OEA authorities which finally stood confirmed by OP No.1. Furthermore, the Petitioner does not appear to have any *locus standi* to question the settlement of the property for having not derived a rightful title in respect thereof. To reiterate, the lessee in whose favour the property was leased out has had no authority to alienate the same and therefore, the source of title by which the right is claimed by the Petitioner cannot be justified in law. That apart, though

possession is asserted over the property, adverse title in respect thereof having not been acknowledged, the Petitioner cannot have any legitimate right to lay claim over it. Thus, the Court holds that there remains no ground or any justifiable reason for it to interfere with the order of settlement. In other words, the impugned decision of OP No.1 cannot be said to suffer from any legal infirmity.

9. Accordingly, it is ordered.

10. In the result, for the reasons discussed herein above, the writ petition stands dismissed. Consequently, the interim order of status quo dated 20th May, 2010 passed by this Court is hereby vacated.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

KC Bisoi/Secretary