

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.13544 of 2007

Abadhuta Rout

Petitioner

Mr. D. P. Mohanty, Advocate

-versus-

Collector, Jajpur and another

Opposite Parties

Mr. Debakanta Mohanty, AGA

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

Order No.

**ORDER
17.02.2022**

08. 1. The challenge in the present petition is to an order dated 18th August, 2007 passed by the Member, Board of Revenue (BoR), Orissa, Cuttack in OEA Revision Case No.73 of 2003 under Section 38-B of the Orissa Estates Abolition Act, 1951 (OEA Act).
2. By the said impugned order, the Member, BoR held that the order dated 8th August, 1980 passed by the OEA Collector-cum-Additional Tahasildar, Darpan in Fresh Lease Case No.537 of 1979 was without jurisdiction and that the OEA Collector-cum-Additional Tahasildar had exercised powers which had not been vested with him under the OEA Act. It was further ordered that the suit land i.e. land in Khata No.38, Plot Nos.4, 9 and 10 at measuring Ac.2.19, which had been settled in favour of Baishnab Charan Rout with raiyati status was non-est in law. A direction was issued that

the land should now be recorded with Anabadi Khata in favour of the State Government and possession should be resumed by Tahasildar, Dharmasala with immediate effect. The RoR was also directed to be corrected accordingly.

3. While directing notice to issue in the present petition on 25th June, 2012, this Court directed status quo to be maintained. That interim order is continued since.

4. This Court has heard the submissions of Mr. D.P. Mohanty, learned counsel for the Petitioner and Mr. Debakanta Mohanty, learned Additional Government Advocate for the State-Opposite Parties.

5. At the outset, Mr. Mohanty, learned counsel for the Petitioner submitted that the predecessors of the Petitioner were engaged as Paiks to keep watch on the royal palace and in lieu of their service, they were enjoying 'Jagir'. According to him, the Paik Jagir is with the Petitioner's family from several generations now. According to him, in the settlement of 1910, two of the ancestors of the Petitioner i.e. Sri Laxman Rout and Sri Bhikari Rout were recorded as Paik Jagirdars. The lineage was then sought to be traced to one Sri Baishnab Rout and then his son, the present Petitioner i.e. Abadhuta Rout. Mr. Mohanty also referred to the fact that pursuant to the Tahasildar's order dated 8th August, 1980, he has been continuous possession of the land in question. According to him, 23 years thereafter, on the recommendation of the Collector, Jajpur, the

Board of Revenue started suo motu revision case No.73 of 2003 under Section 38-B of the OEA Act for reviewing the order. He referred to the fact that the Government of Orissa had been issuing circulars and instructions from time to time and how such case should be dealt with particularly since the RoRs in respect of many such lands were never updated and there was difficulty for the parties in demonstrating their inherited rights as Jagirs. He referred to one such instruction dated 6th December, 2000 issued by the Revenue Department, Government of Orissa. He submitted that these instructions have not been followed and that the Member, BoR was in error in disbelieving the entries in the RoR that was produced before him.

6. Mr. Debakanta Mohanty, learned Additional Government Advocate, on the other hand, pointed out that the Petitioner has not produced any document to trace the lineage and to link his father, Sri Baishnab Charan Rout, and to show that he was the original Jagir holder who was functioning as such during the time of the ex-Intermediary in respect of the suit land. He submitted that the practice was for the ex-Intermediary to place before the Government, in terms of the OEA Act, a complete list of the Jagir holders for whom a register would then be opened for the purposes of collection of rent by the Government. In the present case, there was no such document placed before the Member, BoR and, therefore, he rightly proceeded to set aside the order of the Tahasildar.

7. Mr. Mohanty produced before this Court the original of an RoR dating back to 1910, which according to him, had certain entries that might support the case of the Petitioner. This was examined by one of us (R.K. Pattanaik, J.) familiar with the language as well as Mr. Debakanta Mohanty, learned Additional Government Advocate. There is no entry in the said RoR that directly links either the Petitioner or his predecessor in interest, Sri Baishnab Charan Rout, to demonstrate his status as Jagir holder. The entries therein in fact do not support the claim of the Petitioner. While it is possible that the RoR may not have been updated, if indeed the Petitioner is to demonstrate that his predecessor in interest, Sri Baishnab Charan Rout was in fact as service Jagir holder, there has to be some other documentation to support the claim. The recording of Sri Baishnab Charan Rout as a service Jagir holder was not based on any document except certain rent receipts, which by themselves could not have established the case of Sri Baishnab Charan Rout.

8. Even in terms of later instructions of the Government there has to be some documentation to establish the very fundamental fact of the claimant belonging to a family of 'Jagir holders.' With the Petitioner not having discharge that burden, no fault can be found with the impugned order of the Member, BoR.

9. The difficulty in the Petitioner's case is two-fold: (i) he is not able to produce documents to trace his lineage back to the original service Jagir holders; (ii) there is no entry in the RoR that can support his claim.

10. Consequently, the Court is not persuaded that the Member, BoR has committed any legal or factual error in reversing the order dated 8th August, 1980 of the Tahasildar. In other words, the Court finds no error having been committed by the Member, BoR in setting aside the order dated 8th August, 1980 of the Tahasildar.

11. For the aforementioned reasons, the Court finds no merit in the writ petition. It is dismissed as such. The interim order passed earlier stands vacated.

M. Panda

