IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11768 of 2008

Gayadhar Patra and Others .... ***Petitioners***

Mr. S.K. Nayak-2, Advocate

-versus-

Member, Board of Revenue, Odisha, Cuttack and Others .... ***Opposite Parties***

Mr. Debakanta Mohanty, Addl. Govt. Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
17.02.2022

Order No.

04. 1. The challenge in the present petition is to an order dated 26th April, 2008 passed by the Board of Revenue, Odisha in OEA Revision Case No.227 of 2006. By the said order, the Board of Revenue decided the aforementioned Revision case instituted under Section 38-B of the Orissa Estates Abolition Act, 1951 (OEA Act) which had been commenced suo moto to question the order dated 28th October, 1983 of the OEA Collector-cum-Tahasildar, Sukinda in OEA Misc. Case No.209 of 1983 of Sukinda Tahasil. By the said order the OEA Collector-cum-Tahasildar, Sukinda has settled raiyati status of the land admeasuring Ac.0.69 of Mouza Dhuligarh in favour of the present Petitioners, all of whom are the residents of the village Dhuligarh, PS- Jajpur Road.

2. There are two major grounds of challenge raised by the learned counsel for the Petitioners. One was that the case was sought to be reopened 23 years after the order in their favour by the OEA

Collector-cum-Tahasildar, Sukinda. Relying on the Judgment in ***Nityananda Satpathy v. Member, Board of Revenue, Orissa, Cuttack 1996 (II) OLR-262***, it is contented that the inordinate delay in the Board of Revenue exercising suo motu powers under Section 38-B of the OEA Act renders the action bad in law. Secondly, it was submitted that there are documents in favour of the Petitioners in support of their claim and therefore, no error was committed by the OEA Collector-cum-Tahasildar in settling raiyati status in respect of the land in question in their favour.

3. The Court has perused the decision in ***Nityananda Satpathy (supra)*** where the suo motu power under Section 38-B of the OEA Act was sought to be exercised 25 years after the initial order of settling of raiyati status in favour of the Petitioners. It was observed by this Court that on the facts of the said case the proceedings were liable to be quashed since the revisional authority failed to exercise the power within a reasonable time. It was nevertheless observed that "no hard and fast rule can be laid down as to what should be the reasonable time on the facts and circumstances peculiar to it." As far as the facts of the said case was concerned, the lands with plantations were restored to the ex-intermediaries on payment of maintenance charges. The land in question in those cases was followed by ceiling proceedings under the Odisha Land Ceiling Act initiated against the ex-intermediaries for determination of ceiling surplus lands, which vested in the State Government. The Government distributed the surplus lands to the landless persons. The Petitioners there had in fact purchased Ac. 201.00 from the ceiling holders.

4. In the present case, however, on merits the case is entirely different. As can be seen, the case of the Petitioners is based on a report of the Revenue Inspector (RI). On a joint petition by the Petitioners themselves, which was not even dated, and a report of the Revenue Inspector which too was undated, the Collector proceeded to confer raiyati status on the Petitioners. In the RI's report it was mentioned that the Petitioners had obtained the land from Raja Saheb, Sukinda on payment of salami and rent in the year 1952. This was despite the said Raja Saheb not submitting 'ekpadia' in their favour. The RI reported that the land had been recorded as 'Bebandobasta' in the name of Raja Saheb.

5. The Member Board of Revenue, who passed the impugned order noticed that the order dated 28th October, 1983 of the OEA Collector-cim-Tahasildar is a carbon copy in which two blanks have been filled up in ink with the details 'specific to the Petitioner'. It was obvious that this was the copy of a 'mass order' in which blank spaces have been left for writing details specific to the beneficiaries concerned. What was problematic was that there was no document placed on record to show that Ex-intermediary had transferred documents under Section 5(j) of the OEA Act. The order passed in favour of the present Petitioners was only on the basis of their own joint petition and the undated report of the RI. As rightly held in the impugned order 'pre-vesting of a tenant under Section 8(1) of the OEA Act can be accepted only on the basis of documents from the Ex-Intermediary who compulsory transferred them under Section 5(j) of the OEA Act.' None of the said documents was cited in the Collector's order. Further it was rightly observed by the Board of

Revenue that if pre-vesting tenancy rights are recognized on the basis of self-serving documents and the reports collected after such petition is believed "it will create terrible loophole in the administration of the provisions of the OEA Act." It was further observed and again rightly stated that "fabricated tenancy documents" may be produced by the interested parties.

6. As far as the present case is concerned, had the Petitioners been able to produce any documents by which the ex-intermediary had recognized their tenancy status, the Court might have been persuaded to remand the matter to the Board of Revenue for reconsideration. However, no such document has been able to be produced. Although the case has been reopened after 23 years it appears that that such reopening was justified in view of the fact that there is absolutely no document to support the claim of the Petitioners for settling the raiyati rights in respect of the land in question in their favour. The Court is not therefore, persuaded to interfere with the impugned order of the Board of Revenue.

7. The writ petition is dismissed. The interim order stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.