

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No.4222 of 1998

Narayan Behera and others ***Petitioners***

-versus-

Commissioner, Land Records and Settlement, Odisha, Cuttack and others ***Opp. Parties***

For Petitioners : Mr.Bibhuti Keshari Biswal,
Advocate

For Opposite Parties: Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

JUDGMENT
7th June, 2022

K.R.Mohapatra, J

1. This matter was heard through Hybrid mode.
2. Order dated 24th February, 1997 (Annexure-3) in RP No.4100 of 1994 filed by the Petitioners under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short, 'the Settlement Act') is under challenge in this writ, whereby the Commissioner, Land Records and Settlement, Odisha, Cuttack-Opposite Party No.1 refused to record the land in Hal Khata No.2 comprising 1292 plots to an extent of Ac.238.81 decimal situated in mouza Bhagadharia under Narsinghpur tahasil in the district of Cuttack (for short, 'the case land') in the name of the Petitioners as under-raiyats under deity Sri Raghunath Jew Bije at Paikapadapatna under the said tahasil.
3. Case of the Petitioners as revealed from the case record is that Sabik ROR in respect of the case land was published on

01.01.1919 in which deity Sri Raghunath Jew-Opposite Party No.4 (for short, 'the deity') was recorded as tenant under landlord 'Rajsarkar', i.e., the erstwhile Narsinghpur Fiduciary Estate. The status of the case land was Debottar Niskar (rent free endowment). In the remarks column of the said ROR, one Baisahnab Subudhi, was reflected as 'Chasi'. The Petitioners are successor-in-interest of said Baishnab Subudhi. In the R.K.Ramadhanyani's report of land tenure, there is mention of revenue history and settlement of Narsinghpur Estate. The report on '*Completion of the Settlement of Land Tenure of the Narsinghpur Feudatory State*', at page-18 on the subject '*Raiati Tenure*' stipulates that "*No Sakim is allowed. All the tenants are direct tenants. In such cases only where Sakim right has been acknowledged in previous settlement or by long possession that has been allowed to stand. Now Sakim is allowed in case of Devotar land, Service Jaigir and of lands of aboriginals. Brahmotar tenures have larger number of Sakim tenants. In all there are 475 Sakim holdings of which 211 under Brahmotar tenure. The original royats cannot claim more than 50 percent over the settlement rent from the Sakim tenant nor can evict them from their lands without the orders of the Court.*" The predecessor-in-interest of the Petitioners was recorded as a 'Chasi' in the previous settlement in the year 1919. Narsinghpur Tenancy and Revenue Rules (for short, 'Tenancy Rules') came into force with effect from 1st August, 1938. Sub-rule 4(d)(i) of Rule 5 of the said Rules states that Sakim tenant, Chasi and Sakim Chasi should be a under-raiyat. Further, as per Rule 27(1), the holding of an under-raiyat shall be descended in the same manner as other immovable property unless there is anything to the contrary in the agreement between the under raiyat and his superior raiyat. As such,

the predecessor-in-interest of the Petitioners, namely, Baishnab Subudhi being recorded as a ‘*Chasi*’ in the ROR published in the year 1919, he had acquired occupancy right over the case land. After his death, the Petitioners have inherited the said right. In the case of ***Utchhab Narendra Vs. Gopinath Dev***, reported in 36 (1970) CLT 218, it is held that Sikimi tenants of Devotar land have occupancy right in Badamba, a neighbouring State of Narasinghpur estate. They are deemed raiyats within the meaning Section 4(1)(d) of Odisha Land Reforms Act, 1960 (for short, ‘the OLR Act’).

4. After coming into force of the OLR Act, ROR published under Annexure-1 stood validated as per Section 38 of the Settlement Act after it came into force with effect from 24th January, 1959. As such, the entry made therein has presumptive value as per Section 13 of the said Act. Rule 21 (1) of Odisha Survey and Settlement Rules, 1962 (for short, ‘the Settlement Rules’) provides that the name of each tenant or occupant shall be recorded in the ROR. In the case of Smt. ***Sarala Kumari Rath Vs. Khati Rout and others***, reported in 2000 (II) OLR 363, it is held that the person in personal cultivation of any land recorded as sub-tenant or under-raiyat in the ROR under law in force in any part of the State and their successor-in-interest, shall be deemed to be raiyat in respect of cultivable land having heritable and transferable right even if no such application under Section-4(5) of the OLR Act for declaration has been made. The said decision has been upheld by the Full Bench of this Court in the case of ***Daitary Swain Vs. Kartik Swain and others***, reported in 2019 (1) ILR Cuttack 659. The case of the Petitioners is squarely covered by the ratio in the case of ***Smt. Sarala Kumari Rath (supra)*** as well as ***Daitary Swain (supra)***. In view of the above, the predecessor-in-

interest of the Petitioners being recorded as under-raiyat under the deity, his name and after his death, the name of the Petitioners should have been recorded in the finally published ROR under Annexure-2, which was published on 9th September, 1993 in the name of the deity under raiyati status. But, the authority published the ROR without reflecting the Petitioners as under-raiyats in the remarks column.

5. Mr. Biswal, learned counsel for the Petitioners further relied upon the ratio in the case of *Jagabandhu Sahoo and others Vs. Commissioner of Land Records and Settlement, Odisha, Cuttack*, reported in 1996 (I) OLR 393, wherein, it is held that even in case of a trespasser having no right, can be shown to be in possession in the remarks column of the ROR. The deity (raiyat) has never disputed the status of the Petitioners as under-raiyat and even before the revisional authority no such objection was raised by the deity. However, the revisional Court delving into the issue not raised by either of the parties, erroneously refused to entertain the claim of the Petitioners.

6. It is the admitted case of the parties that the case land was being held by the deity as a rent free raiyat at the relevant time. In the Devotar Vesting Case No.136 of 1977 disposed of on 18th January, 1984, the deity was declared as raiyat by fixing rent in respect of the case land. The declaration of deity as 'raiyat' was only a recognition by the competent authority to fix fair and equitable rent. But, by such declaration, the status of predecessor-in-interest the Petitioners does not get extinguished in view of the case laws referred to above. It is more so, in view of Rule-7 of Tenancy Rules, which stipulates as under:

“Notwithstanding anything herein before, every Bajyatptiadar, every Lakhrajdar, every Brahmottar raiyat and rent free raiyat, which is recorded as such in any record of right published by the State under Rules

for the time being in force and his successor-in-interest shall be deemed to be a raiyat for all purposes of these Rules.”

6.1 The Administration of Odisha State Order, 1948 clearly stipulates in Clause 4(b) that all laws in force in the State of Odisha, whether substantive or procedural and whether based on customs and usages, shall continue to remain in force till it is altered. Thus, the Narsinghpur Tenancy and Revenue Rules, 1938 continued to remain valid till enactment of OLR Act, i.e., till 01.10.1965. The Commissioner, without taking into consideration the aforesaid statutory provisions and case laws, erroneously held that if the Petitioners **claimed** (claims) to be ‘Chasi’, a declaration to that effect ought to have been obtained from the Revenue Officer under Section 15(1) of the Land Reforms Act. Section 15(1) of the OLR Act deals with dispute between ‘landlord’ and the ‘tenant’. Since the deity has never raised any objection with regard to status of predecessor-in-interest the Petitioners, provision under Section 15(1) of the OLR Act has no application to the case at hand.

7. The Commissioner further erroneously held that the Petitioners, if claim to be the successors of the Sikimi tenant, they should have asserted their right under Section 4(1)(i) of the Land Reforms Act before the Revenue Officer as the Sikimi right was not heritable and not transferrable before coming into force of OLR (2nd Amendment) Rules, 1975. In the case of ***Smt. Sarala Kumari Rath (supra)***, it is categorically held that OLR (2nd Amendment) Rules, 1975 is retrospective in nature and the said analogy has been upheld by the Full Bench of this Court in the case of ***Daitary Swain (supra)***. There is no provision in the OLR Act to seek for declaration as Sikimi tenant. Rather provision under Section 4(1)(i) makes it

abundantly clear that a person who is under personal cultivation of any land and is recorded as sub-tenant or under raiyat under any law for the time being in force in any part of the State can make an application for declaring him as a raiyat. In ***Smt. Sarala Kumari Rath (supra)***, it is clearly held that even if a sub-tenant or under-raiyat has not filed any application as envisaged under Section 4(1)(i) of the OLR Act for being declared as such, yet the right of a sub-tenant or under-raiyat will not extinguish. However, if he is declared as raiyat under the provisions of the Land Reforms Act, such right will be enlarged. Hence, the Petitioners ought to have been recorded as under-raiyat in respect of the ROR under Annexure-2.

8. The observation of the revisional Court that the deity being privileged raiyat, the benefits granted to an under-raiyat under the OLR Act, will not be available to the Petitioners, is erroneous and contrary to law. Proviso to Clause (i) of Section 4(1) clearly provides that the benefits under Sub-sections 5 to 8 of Section 4 will not apply to the persons, who are sub-tenants or under-raiyats or to their successor-in-interest prior to 30th September, 1965, even if the land in question in respect of which they have been so recorded belongs to a person of disability or to a privileged raiyat. Since the predecessor-in-interest of the Petitioners was an under-raiyat (Chasi) since 1919, the aforesaid restrictions shall not apply to the instant case. The observation of the revisional Court to the effect that, had the Petitioners been under actual possession over the land, the deity could not have been recorded as raiyat, is totally misconceived, as the land in question was a rent free land and after vesting of the Devotar State, Devotar Vesting Case was initiated for fixation of rent only. A raiyat's right never vested in the State on commencement of the

Odisha Estate Abolition Act, 1951 (for short 'the OEA Act'). Only intermediary right vested in the State and not the raiyati right, so also the right of an under-raiyat. Thus, the predecessor-in-interest of the Petitioners ought to have been recorded as under-raiyats in the ROR under Annexure-2. Revisional Court has completely lost sight of this material aspect and passed the impugned order delving into unnecessary intricacies, which was not the case of either of the parties. Hence, the impugned order under Annexure-3 is not sustainable in the eyes of law and liable to be set aside. A direction should be made to the authorities under the Settlement Act to record the case land in the name of the Petitioners as '*Chasi*' (under-raiyat) in the ROR under Annexure-2.

9. Mr. Mishra, learned ASC defending the impugned order, submitted that by virtue of the order passed in Devottar Vesting Case No.136 of 1977, the deity was declared as raiyat. As such, by virtue of said order, a fresh right is created in favour of the deity. No claim or objection whatsoever was filed by the predecessor-in-interest of the Petitioners in Devottar Vesting Case No.136 of 1977 to declare him as a raiyat. Had the predecessor-in-interest of the Petitioners been in possession over the land they would have certainly raised objection for recording of the land in their name. The Settlement authority has to respect the order passed in Devottar Vesting Case No.136 of 1977. The Petitioners had not produced a single scrap of paper to take a view contrary to the order passed in the said Devottar Vesting Case. The Settlement authority cannot go into the intricate question of law of tenancy. Since the Petitioners essentially claim to be raiyat or under-raiyat in respect of the case land, they should have approached the competent authority in accordance with law for such a declaration.

The deeming provision under Section 4(1) of the OLR Act is of no assistance to the case of the Petitioners. Relying upon the ratio in the case of *V.Krishna Rao Dora and others, Vs. Kotini Sitaram Dora and others*, reported in (39) 1973 CLT 975, Mr. Mishra, learned ASC submitted that when in respect of the claim for fixation of fair and equitable rent by the intermediary on the basis of his Khas possession of agricultural or horticultural land is made, any person interested to oppose such a claim must appear before the Collector in response to the public notice and establish his case to repel the claim. In case the intermediary's claim is not resisted, the same is to be recognized and the decision is binding on the occupancy tenant who did not appear in response to the public notice and did not establish his case of being in possession. He further relied upon the ratio in the case of *Binayak Mohapatro and others Vs. Jagilli Nayak and others*, reported in 44 (1977) CLT 650, wherein it is held that where in an estate, there is an ex-intermediary and an occupancy tenant under him, an application under Section 8-A of the OEA Act would be entertainable and the Collector would have jurisdiction to deal with the matter. When the Collector comes to be in *seisin* of the application of the ex-intermediary and issues notice, law obliges the person claiming occupancy tenancy under him to enter into contest by filing an objection under Section 8-A (4) of the said Act. If there has been valid notice of the claim and there has been no resistance by the alleged occupancy tenant, he would be bound by the final order of settlement and as a consequence of the decision his occupancy right may come to terminate. In the instant case, the Petitioners have never raised any objection with regard to insufficiency of notice in the Devottar Vesting Case. On the other hand, it has been pleaded by the Petitioners all

throughout that the Devottar Vesting Case was initiated only for fixation of fair and equitable rent. In view of the fact that the predecessor-in-interest of the Petitioners had never raised any objection to the claim of the deity, who claimed to have right over the case land, the same stands extinguished. He therefore, submits that the revisional Court has committed no error in dismissing the revision under Section 15(b) of the Settlement Act. As such, the impugned order warrants no interference.

10. Taking into consideration the submission of Mr. Biswal, learned counsel for the Petitioners as well as pleadings in the writ petition, it is manifest that the claim of the Petitioners is that they were the successor-in-interest of the under-raiyat under the deity. Although the land for which the Petitioners made an endeavour to equate their status with that of Sakimi tenant, but the law is well-settled that a Sakimi tenant is an under-raiyat, but all under-raiyats are not Sakimi tenants. The status of the predecessor-in-interest of the Petitioners was never recognized as a Sakimi tenant. He was described as a 'Chasi' in the ROR under Annexure-1 published in the year 1919. It is also not disputed that the land in question was the rent free land and the name of the deity was recorded as a raiyat in the said ROR. It is clear from the materials on record that neither the predecessor-in-interest of the Petitioners nor the Petitioners themselves, had ever made any claim to be declared as raiyat/under-raiyat under the provisions of the OLR Act. All Devottar estates vested in the State by a general notification dated 18th March, 1974. Accordingly, Devottar Vesting Case No.136 of 1977 was initiated by the OEA Collector in which the deity filed an application to be recognized as raiyat and also to fix fair and equitable rent. In the said

Devottar Vesting Case, the predecessor-in-interest of the Petitioners had never filed any objection nor raised any claim to be recognized as raiyat in respect of the case land. Neither the predecessor-in-interest of the Petitioners nor the Petitioners had also challenged the settlement of the case land in favour of the deity by fixing fair and equitable rent. In view of the above, this Court finds force in the submission of learned ASC to the effect that the right, if any of the predecessor-in-interest of the Petitioners stands extinguished by order dated 18th January, 1984 passed by OEA Collector in Devottar Vesting Case No.136 of 1977, in view of the ratio decided in *V. Krishna Rao Dora (supra)* and *Binayak Mohapatra (supra)*. The predecessor-in-interest of the Petitioners or his successor-in-interest had also an occasion to file an application under Section 4(5) of the OLR Act before the Revenue Officer in the prescribed form within the prescribed period to declare him/them to be raiyat in respect of the case land. But admittedly, no such endeavour has been made by them within the prescribed period.

11. Settlement authority cannot go into disputed question of status of the parties under provision of a special statute. The Petitioners claim to be under-raiyat under the deity and solely on the basis of recording of the name of their predecessor-in-interest in the ROR published in the year 1919 as 'Chasi'. It is contended by Mr. Biswal, learned counsel for the Petitioners that the status of the under-raiyat never gets extinguished even if no declaration under the OLR Act is sought for. He also relied upon the case law in the case of *Smt. Sarala Kumari Rath (supra)* and *Daitary Swain (supra)*. There cannot be any dispute with regard to the settled position of law, as laid down supra. Even if it is assumed that the predecessor-in-interest of the Petitioners was an under-raiyat and had an

occupancy right over the case land, the same got extinguished after 18th January, 1984, when the deity was declared as raiyat in respect of the case land fixing fair and equitable rent. The order passed in Devottar Vesting Case was never challenged and thus attained its finality. The Settlement authority cannot go behind the declaration made by the OEA Collector and has to respect the same unless it is established otherwise. In the instant case, the Petitioners have accepted the verdict in the Devottar Vesting Case No.136 of 1977. Thus, they cannot therefore raise any further claim in respect of the case land as '*under-raiyat*' or '*raiyat*' before the Settlement authority. The Commissioner has elaborately discussed the provisions of law as well as law laid down by this Court in the field and passed the impugned order under Annexure-3. Thus, I find no infirmity in the order under Annexure-3.

12. Accordingly, the writ petition being devoid of any merit stands dismissed. But in the circumstances, there shall be no order as to costs.

Issue urgent certified copy of the judgment on proper application.

(K.R. Mohapatra)
Judge

Orissa High Court, Cuttack
On this the 7th day of June, 2022/s.s.satapathy