

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.13395 of 2009

Sadasiv Deo

....

Petitioner

Mr. A.K. Sarangi, Advocate

-Versus-

State of Orissa and others

....

Opposite Parties

Mr. D.K. Mohanty, AGA

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

**ORDER
23.02.2022**

Order No.

R.K. Pattanaik, J

05. 1. Writ petition under Article(s) 226 and 227 of the Constitution of India is filed by the Petitioner questioning the correctness of the impugned order dated 6th December, 2008 (Annexure-5) passed in OEA Revision Case No.3 of 2008 under Section 38-B of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the OEA Act') on the ground that it is without jurisdiction and therefore, deserves to be quashed.
2. It is claimed by the Petitioner that his late father, namely, Nabaghan Deo was a *raiyat* under the ex-Ruler of Sukinda estate who had given him Ac.2.00 dec. of land for the purpose of cultivation in the year 1945 and accepted the annual rent and granted receipts thereof and in the meantime, the estate was vested in the Government in 1952-53 under the OEA Act but the *raiyati* rights did not vest, however, the concerned

revenue authority did not accept and collect rent from them. It is stated that the father of the Petitioner then approached O.P. No.3 who vide OEA Misc. Case No.404 of 1983 to get the land in question settled on the premise that being a tenant under the ex-intermediary, tenancy right is only to be recognized and accordingly, order dated 31.12.1983 was passed purportedly under Section 8(1) of the OEA Act which was thereafter unsettled in OEA Revision Case No. 3 of 2008 by O.P.No.4 exercising power under Section 38-B of the OEA Act. According to the Petitioner, the above action of O.P. No.4 invoking *suo motu* revisional jurisdiction to be bad in law notwithstanding the fact that a tenancy had been recognized in favour of his father way back in 1983.

3. Heard Mr. A.K. Sarangi, learned counsel for the Petitioner and Mr. D. Mohanty, learned Additional Government Advocate for the State.

4. Mr. A.K. Sarangi contends that O.P. No.3 correctly passed the order settling the case land under Section 8(1) of the OEA Act which was apparently by an administrative decision, but O.P. No.4 ought not to have nullified it exercising power under Section 38-B thereof almost after 25 years. Mr. D. Mohanty, on the contrary, submits that impugned order under Annexure-5 is absolutely justified and according to law and therefore, it needs no interference as there was no material to support the claim that the Petitioner's father was a tenant under the ex-intermediary, inasmuch as, no *ekpadia* was

produced nor anything to show that Tenancy Ledger was opened indicating any such pre-vesting rights over the land in question.

5. Admittedly, the case land was settled by O.P.No.3 in favour of the father of the Petitioner vide OEA Misc. Case No.404 of 1983. There is no denial to the fact that O.P.No.4 interfered with it after 25 years exercising revisional jurisdiction. Indeed, no time limit has been prescribed for exercising such a power by the Member, Board of Revenue. The claim of the Petitioner stands on a copy of the rent schedule (Annexure-2) and rent receipts (Annexure-3 & 4) issued by O.P.No.3. In fact, O.P. No.4 on a detailed examination found the Petitioner's father though claimed to be a *raiyyat* but it was not supported and confirmed by the ex-intermediary as required under Section 5(j) of the OEA Act. It was revealed that non-assessment was corroborated by the fact that no *ekpadia* in respect of the case land was submitted by the ex-intermediary and therefore, according to O.P.No.4 the claim based on a *Hata Patta* and payment of rent and salami to be falsehood.

6. It is settled law that tenancy under the ex-intermediary is recognized in terms of Section 8(1) of the OEA Act after vesting by an administrative enquiry of the OEA authority and it is not settled as has been accomplished under Annexure-1. Since O.P.No.4 did not find any material in confirmation of any such tenancy post vesting, in the considered view of the Court, rightly exercised the jurisdiction under Section 38-B of

the OEA Act setting aside Annexure-1. In other words, O.P.No.4 does not appear to have exercised the revisional jurisdiction illegally.

7. Accordingly, it is ordered.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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