

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6262 of 2009

(In the matter of an application under Articles 226 and 227 of the
Constitution of India.)

Biswanath Khuntia

....

Petitioner

-versus-

***Member, Board of Revenue, Orissa,
Cuttack & Others***

....

Opposite Parties

Appeared in this case:-

For Petitioner

:

Mr. Trilochan Barik
and N.P. Pati

For Opp. Parties

:

Mr. D.K. Mohanty,
Learned Addl. Govt. Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA**

JUDGMENT

03.03.2022

A.K. Mohapatra, J.

1. Assailing the order dated 18.10.2008 passed in O.E.A. Revision Case No.289 of 2006 by the Member, Board of Revenue, Orissa, the present writ petition has been filed with a prayer to quash the order dated 18th October, 2008 under Annexure-4 and further the petitioner has also challenged the entire proceeding in O.E.A. Revision Case No.289 of 2006.

2. Shorn of unnecessary details, the factual back drop of the case, is that the Petitioner has filed the present writ petition claiming himself as the real owner in the Khas possession of land measuring an area Ac.0.20 decimals under Khata No.52 over Plot No.404 in mouza-Rampur in the district of Jajpur prior to vesting i.e. since 1940 and accordingly, applied for settlement in O.E.A. Lease Case No.36 of 1982. The O.E.A. Collector-cum-Tahasildar, Sukinda (Opposite Party No.3) vide his order dated 28th April, 1982 settled the land in question in the name of the Petitioner on the ground that the Petitioner was the real tenant prior to vesting of the estates. As such, Opposite Party No.3 had issued RoR by taking into consideration the rights of the Petitioner prior to vesting of the case land in O.E.A Lease Case No.36 of 1982. It has also been contended by the Petitioner that he had constructed his dwelling house over Plot No.404 and was living therein peacefully with his other family members for more than 40 years by paying rent to the competent authority.

3. It has also been stated on behalf of the Petitioner that after lapse of almost 25 years from the date of settlement of case land in favour of the Petitioner by Opposite Party No.3, the Collector, Jajpur entertained the revision under Section 38-B of the O.E.A. Act where it was brought to the notice of the Collector, Jajpur that illegalities have been committed by the O.E.A. Collector, Sukinda while settling the case land in favour of the Petitioner in O.E.A. Lease Case No.36 of 1982. Thereafter, the Member, Board of Revenue passed an order under Section 38-B setting aside the order dated 28th April, 1982 passed by the O.E.A. Collector-cum-Tahasildar, Sukinda.

4. Upon a careful scrutiny of the pleadings and averments in the writ petition, it is seen that the order of settlement dated 28th April, 1982 in O.E.A. Lease Case has been assailed after a long gap of time and such delay in challenging the settlement order is the principal ground of challenge in the present writ petition. It is apt to mention here that the O.E.A. Revision Case No.289 of 2006 had been preferred under Section 38-B of the O.E.A. Act in the year 2006 and as such, the Petitioner while challenging the order in revision case has taken the ground that the revision petition has been filed beyond reasonable time and as such, the entire proceeding under Section 38-B is liable to be quashed.

5. It has also been pleaded in the writ petition that O.E.A. Collector-cum-Tahasildar (Opposite Party No.3) while disposing of the O.E.A. case No.36 of 1982 has rightly recognized the tenancy right of the Petitioner under Section 8(1) of the O.E.A. Act. As the Petitioner is in Khas possession of the said land before the same was vested in the State and after abolition of intermediary right, it has also been stated that prior to the present Petitioner, his father was occupying the case land since 1938 and together they were possessing the case land for more than 60 years. In such view of the matter, the Petitioner has also taken a ground that he has perfected right, title and interest over the suit land by way of adverse possession and that the order dated 18th December, 2008 passed in O.E.A. Revision Case No.289 of 2006 setting aside the order dated 28th April, 1998 in O.E.A. Lease Case No.38 of 1982 is illegal, arbitrary and non-est in the eye of law.

6. The Opposite Parties, on the other hand, have filed a joint counter affidavit through the Tahasildar, Danagadi, Jajpur (Opposite Party No.3) wherein it is stated that the Petitioner permanently resides in village-

Rampas, P.O./P.S.-Jajpur Road, Dist-Jajpur and not in village Rampur as stated in the writ petition. Further it has been stated that the O.E.A. Collector-cum-Tahasildar, Sukinda had not settled the case land in respect of Plot No.404 case No.52, Mouza-Rampur measuring an area Ac.0.20 decimals in Lease Case No.38 of 1982 as there is no such village under the jurisdiction of the Tahasildar, Sukinda/ Vyasanagar/ Dangadi. It has also been pleaded that on verification, it was found that O.E.A. Case No.36 of 1982 relates to village Rampas under Jajpur Road Police Station. It is further submitted by the Opposite Party No.3 in his counter affidavit that O.E.A. Revision Case No.289 of 2006 had been filed under Section 38-B of the O.E.A. Act by the Collector, Jajpur well within time and in a reasonable manner. Further by referring to the impugned revisional order dated 18th August, 2008 in Paragraph-26 it has been stated in the counter affidavit that by settling the Ex-intermediary land, the O.E.A. Collector-cum-Tahasildar, Sukinda has exercised jurisdiction which is not vested in him under the provisions of the O.E.A. Act and as such, the final order passed by O.E.A. Collector-cum-Tahasildar, Sukinda settling the land in favour of the Petitioner is without jurisdiction and non-est in the eye of law. Therefore, the impugned order of settlement passed by the OA Collector cum Tahasildar does not confer any right, title and interest on the present Petitioner.

7. The Opposite Party No.3 has also stated in his counter affidavit, by referring to Paragraph-19 of the order dated 18th October, 2008, that the dispute involved in the present case can only be resolved by the competent Civil court having jurisdiction over the matter and not by O.E.A. Collector-cum-Tahasildar, Sukinda. Accordingly, the Petitioner should have approached the competent Civil court to establish the right,

title and interest over the case land. Further referring to the impugned order dated 18th October, 2008, the Opposite Parties have also stated that there is no period of limitation prescribed for exercising the power conferred by Section 38-B of the O.E.A. Act. As such, the order passed by the learned Member, Board of Revenue, Orissa is legal, valid, proper and the same is in larger public interest.

8. Heard learned counsel for the Petitioner as well as learned Additional Government Advocate for the Opposite Parties. Perused the pleadings of the respective parties and carefully examined the documents relied upon by both sides.

9. It is submitted by Mr. T. Barik, learned counsel for the Petitioner that it is admitted by the Opposite Parties that the Petitioner has acquired tenancy right over the case land by virtue of long possession prior to vesting of the case land in the State. Accordingly, learned counsel for the Petitioner vehemently argues that the settlement of the case land in favour of the Petitioner is legal, valid and proper. He further submits that the Petitioner was possessing the case land by paying rent / cess in respect of the Plot No.404 measuring an area of Ac.0.020 decimals under Khata No.52. He further submits that the case land is leased out in favour of the Petitioner by O.E.A. Collector-cum-Tahasildar, Sukinda not under the provision of O.E.A. Act, therefore, the learned Member, Board of Revenue, Orissa should not have entertained the application under Section 38-B of the O.E.A. Act because provisions of the O.E.A. are not applicable to the fact of the present case and as such, he further argues that the order setting aside the order of settlement by the Tahasildar is without jurisdiction. Moreover, it has been stated on behalf of the Petitioner that the impugned order is an appealable order and since no

appeal was preferred against the impugned order, the Member, Board of Revenue should not have exercised the revisional power under Section 38-B of the O.E.A. Act.

10. Learned counsel for the Petitioner further submits that in the impugned order, the Member, Board of Revenue, Orissa in Paragraph-19 of the order has stated that the dispute can only be resolved by a competent Civil court and not by O.E.A. Collector-cum-Tahasildar and accordingly, he had suggested that the Petitioner should have approached the competent Civil court to establish the right, title and interest over the case land. Referring to the aforesaid observation, learned counsel for the Petitioner submits that the Revisional Authority has passed the impugned order without applying judicial mind and in the process he has unsettled the settled position of law.

11. It has also been submitted by learned counsel for the Petitioner that O.E.A. Collector-cum-Tahasildar, Sukinda (Opposite Party No.3) has recognized the tenancy right of the Petitioner, under Section 8(1) of the O.E.A. Act after going through the report of the R.I. and further taking into consideration the long possession of the tenant over the case land and he further supported the order of the O.E.A. Collector on the ground that the Petitioner was in Khas possession of the case land at the time vesting took place and further referring to the RoR issued in the year 1982, learned counsel for the Petitioner submits that the Petitioner had right, title and interest and possession over the case land.

12. The most important plank of argument of learned counsel for the Petitioner is that the Revisional authority under Section 38-B, the Member, Board of Revenue has not only entertained the Revision

petition but also interfered with the settlement order after a gap of almost 26 years to dispossess the petitioner from the case land and as such, the same is liable to be quashed on that ground alone. In the context of delay, it was submitted that the Collector (Opposite Party No.2) i.e. revision petitioner has failed to give a reasonable explanation for delay in filing said revision petition. As such, it is submitted by learned counsel for the petitioner that the revision petition under Section 38-B should have been thrown out at the thresh hold on the ground of limitation alone.

13. Mr. D.K. Mohanty, learned Additional Government Advocate, on the other hand, submits that the notice was duly served on the Petitioner in O.E.A. Revision Case No.289 of 2006 by the learned Member, Board of Revenue, Orissa. He further submits that pursuant to notice, the Petitioner appeared before the learned Member, Board of Revenue on 25.04.2008 through his Advocate. After several adjournments at the behest of the Advocate for the Petitioner, the matter was finally heard by the Member, Board of Revenue on 05.07.2008. Further, time was allowed to learned counsel for the Petitioner before the Revisional court to file the original documents in support of the Petitioner's claim, written note of submissions, and citations relied upon by the petitioner, however, learned counsel for the Petitioner did not file anything before the Revisional Court despite getting such opportunity.

14. Learned Additional Government Advocate further submits that the petitioner had initially filed an undated petition addressed to the Tahasildar, Sukinda inter alia stating therein that he had obtained "Hata Patta" of the case land from Raja Saheb, Sukinda (the ex-Intermediary of Sukinda Estate vested on 27.11.1952) and that he was possessing the

case land since 1952-53. Since Revenue Inspector, Dangadi did not receive “Ekpadia”, therefore, he was not accepting the rent from the Petitioner in respect of the case land. As such, the Petitioner had prayed for recording the case land in his favour and for a direction to the Revenue Inspector, Dangadi for acceptance of rent in respect of the case land. He further submits that the report of the Revenue Inspector, Dangadi in favour of the Petitioner, is a collusive one because the Petitioner himself had not claimed the possession of suit land from the year 1942-43 as reported by the Revenue Inspector in his report.

15. Further relying upon the observation of the Member, Board of Revenue in the impugned order, the learned Additional Government Advocate submitted that the order of settlement dated 28th April, 1982 passed in O.E.A. Lease Case No.36 of 1982 is a carbon copy impression in which a few blank spaces have been filled up in ink with the specific details of the present Petitioner. Therefore, the same gives an obvious impression that the impugned order is only a copy of mass order in which blank spaces have been filled up incorporating specific details of different beneficiaries concerned. Moreover, the settlement order is silent about the provisions of O.E.A. Act under which the land is being settled in favour of the Petitioner. He further submits that a careful scrutiny of the record reveals that no ‘Ekpadia’ or ‘Zamabandi’ had been filed by the Ex-Intermediary and that the Tahasildar, Sukinda had also not examined as to why tenancy records of the case land had not been filed by the Ex-Intermediary. Further status of the case land as revealed from the record is ‘Anabadi’. It is further submitted by learned Additional Government Advocate that the Tahasildar has mentioned in the settlement order that the case does not attract Section 5(j) of the

O.E.A. Act. Such observation has been given to avoid confirmation of the settlement by the Member, Board of Revenue. However, recording of the name of the Petitioner as Raiyat in respect of the case land has also been seriously disputed by the learned counsel for the State.

16. Referring to Section 5(j) of the O.E.A. Act, leaned State Counsel submits that upon vesting of the Ex-Intermediary land in the State, the necessary records for administration and the management of the State be either handed over to the O.E.A. Collector or same may be seized in the manner as prescribed under Section 5(j) of the O.E.A. Act. The legislative intention behind such a provision is that the Raiyats under the Ex-Intermediary were also continuing as Raiyat after the vesting and as such, they would continue in possession of the land in their Khas possession and to pay the rent as would be fixed by the State. The records as referred to hereinabove would also contain the names of the tenants, who were also the tenants of the Ex-Intermediary. Such a provision has been incorporated in the statute, as in the absence of such records particularly tenants ledger, it would be impossible on the part of the State to administer / manage the properties after vesting. Therefore, the failure on the part of the Ex-Intermediary to submit 'Ekpadia' / tenant ledger clearly indicates that there was no such register in existence at the time of vesting and that the Petitioner was not a tenant/raiayat under the Ex-Intermediary and the existence of a 'Hata patta' as claimed by the Petitioner is a false and frivolous one. Once a 'Hata patta' is issued by the Ex-Intermediary, the same is recorded either in the 'Ekpadia' or tenant ledger maintained by the Ex-Intermediary. In such view of the matter, no provision has been made in the O.E.A. Act to call for any application from the tenants to recognize their tenancy or to adjudicate

their right under Section 8(1) of the O.E.A. Act. Therefore, the settlement as provided under Section 8(1) of the O.E.A. Act, is automatic and without any application at the instance of the tenants. Therefore, the pre-vesting rights of the genuine tenants would find place in the record of rights prepared by the Tahasildar after receiving the records like Ekpadia / Tenant Ledger once those were transferred by the Ex-Intermediary to the concerned Tahasildar soon after the vesting of the case land.

17. So far the delay in preferring the revision petition before the Member, Board of Revenue, Orissa is concerned, learned counsel for the State referring to the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.827 and 828 of 1994 (in the matter ***State of Orissa & Ors*** ***vs. Brundaban Sharma & Ors*** : reported in (1995) Supp. 3 SCC 249 submitted that under the O.E.A. Act Revisional Power was conferred upon the Member, Board of Revenue, Orissa for effective adjudication of disputes. The revisional power so conferred has to be exercised carefully and cautiously and within a reasonable time. Further, the absence of any limitation for exercising of such revisional power makes it abundantly clear that by incorporating such a provision in the O.E.A. Act the legislatures had intended to confer a revisional power on the Member, Board of Revenue for preventing miscarriage of justice or violation of any of the provisions of the act by the sub-ordinate authorities and to prevent fraud and suppression. Such power has to be exercised with a lot of caution and circumspection. Notwithstanding any delay in assailing any order by the sub-ordinate authority, further reasonable time within which the revision has to be preferred depends on facts and circumstances of each case. Moreover, the issue of limitation

will not stand in the way to exercise the revisional power under Section 38-B of the O.E.A. Act. Whenever the Member, Board of Revenue comes to a conclusion that an order has been obtained by practicing fraud or by suppressing material fact, he could always exercise the Revisional power conferred on him by the statute to rectify the mistake and unearth the fraud.

18. In the above case of *State of Orissa vrs. Brundaban Sharma* (supra), the Hon'ble Supreme Court of India while deciding a similar issue has observed that the length of time depends on factual scenario in a given case where patta was obtained fraudulently in collusion with the officers, and once it comes to the notice of the authorities after long lapse of time; Can a party who is a direct beneficiary of fraud or suppression of fact take the ground of limitation to get away with the order? Is lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answer to the aforesaid questions would be no.

19. Having heard the learned counsels for the parties, this Court is of the considered view that Member, Board of Revenue i.e. revisional authority has not committed any illegality in dismissing the revision petition of the Petitioner. The learned Member, Board of Revenue, Odisha while dismissing the revision petition has observed that so far as the case land is concerned, the rent was not assessed prior to vesting. Accordingly, the Petitioner was not paying the rent, Ex-Intermediary had not submitted 'Ekpadia' or tenant ledger to the State at the time of vesting or after vesting of the case land to the State. Moreover, the Tahasildar had no authority to assess the rent afresh in respect of the tenants of the ex-estate. However, the Tahasildar-cum-OEA Collector, Sukinda had

assessed rent in respect of the case land illegally without authority and further the same goes a long way to prove the fact that rent was not assessed earlier. Moreover, the fact of such non-assessment of rent prior to vesting of Ex-Intermediary land is supported by the fact that no 'Ekpadia' or tenant ledger in respect of the case land had been submitted by the Ex-Intermediary. Such ground realities brings the 'Hata patta' produced by the Petitioner under a cloud of doubt/suspicion. In other words, in the absence of 'Ekpadia' or tenant ledger prepared and submitted by the Ex-Intermediary, 'Hata patta' produced at the instance of the Petitioner is a false and frivolous one. Therefore, no legal sanctity is attached to such a document.

20. The learned Member, Board of Revenue has rightly come to a conclusion that the finding of the O.E.A. Collector-cum-Tahasildar, Sukinda to the effect that the rent was paid and that the Opposite Party was in possession of the case land are collusive and mala fide. Moreover, if any tenant is aggrieved by non-acceptance of rent from him, then he should have made a representation or approached the authority immediately after vesting of Ex-Intermediary land and should have immediately after vesting sought for correction of record of right. In the case in hand, the Petitioner having not done that, it can be safely presumed that he did not have any tenancy right nor he was in occupation of the case land on the date of vesting.

21. Further the conduct of the Petitioner in approaching O.E.A. Collector-cum-Tahasildar for fixation of rent and for recognition of his possessory title over the case land after lapse of almost 29 years from the date of vesting itself speaks volumes about the intent and design of the Petitioner. Authenticity or veracity of records like 'Hata patta',

‘Ekpadia’, rent receipt produced by a interested party at a belated stage are bound to be viewed with suspicion. The Petitioner slept over the matter for almost 29 years and did not even bother to pay the rent in respect of the case land and then suddenly appeared before the Tahasildar with a request to accept the rent from him. Such conduct of the Petitioner further clarifies the evil design and intent of the Petitioner to grab valuable Government land at a belated stage in collusion with the Tahasil employees. Moreover, the person who had approached the OEA Collector after a long delay is estopped to take such a plea in his favour.

22. It is a well settled position of law that the Tahasildars have no authority to either decide the title or to confer title on a person in respect of a Government land. The only duty, the Tahasildars are vested with by law is to enforce and collect land revenue or rent from a person, who has been recognized by the Government as a tenant under the State. Therefore, if a person is not recognized as a tenant by the State Government, a Tahasildar cannot create record and accept rent from him. Moreover, it is a well known fact that any rent collected in respect of any land in Tahasil Office is without prejudice to the rights of the Government over the land in question.

23. The observations of the Member, Board of Revenue, Orissa in Paragraph-18 of the judgment are perfectly legal, valid and goes a long way to safeguard the interest of the State. In the said paragraph, it has been observed that the O.E.A. Collector-cum-Tahasildar, Sukinda had obtained an undated petition of the Petitioner and had called for a report from Revenue Inspector, Dangadi and further entertained an undated report of Revenue Inspector, Dangadi. Further he has issued general proclamation inviting objections for settlement of land under Sections 6,

7 and 8(3) of the O.E.A. Act. He had, therefore, adjudicated the claim of Biswanath Khuntia over the case land and had clearly settled the land afresh because he had assessed afresh the rent, cess and 'salami' in respect of the case land. He had further in his order dated 28th April, 1982 accepted the Petitioner as a pre-vesting tenant under Section 8(1) of the O.E.A Act. A pre-vesting tenant under this section can be accepted only on the basis of documents of the Ex-Intermediary which has been mandatorily transferred under Section 5(j) of the O.E.A. Act, 1951. It has also been observed that none of these documents were cited in his order dated 28th April, 1982. The legislature while enacting the O.E.A. Act had never intended to confer power on the O.E.A. Collector, who would recognize the right, title and possession of a person without verifying the records prepared by Ex-Intermediary prior to vesting as provided under Section 5(j) of the O.E.A. Act.

24. In the case at hand, the O.E.A. Collector-cum-Tahasildar has recognized the pre-vesting tenancy right of the Petitioner on the basis of the documents submitted by the interested party i.e. Petitioner and on the reports collected from their sub-ordinates. If such a procedure would be permitted, then the same would have a terrible consequence and in such eventuality the provisions of O.E.A. Act would be rendered otiose. Further, it would be apt to mention here that this Court would be flooded with litigations where tenants on the basis of fake and baseless 'Hata patta' would claim settlement of the land in their favour. In this regard, it would be fruitful to refer to the judgment of the Hon'ble Supreme Court of India in **Vijayabai and Ors. v. Shriram Tukaram and Ors.**: reported in (1999) 1 SCC 693, the relevant para is quoted here in below;

“9. The Tahsildar while exercising his suo motu power Under Section 49-B has to initiate on the basis of the materials before him not arbitrarily. Every exercise of suo motu power explicitly or implicitly reveals to correct an error crept in under a statute, what ought to have been done was not done or which escaped the attention of any statutory authority, or error or deliberate omission or commission by the subject concerned requires correction, of course, within the limitation of any such statute. This has to be based on some relevant material on record, it is not an omnipower to be exercised on the likes and dislikes of such an authority. Though such a power is a wide power but it has to be exercised with circumspection within the limitations of such statute. Wider the power, the greater circumspection has to be exercised.”

25. As regards the issue of rights of a tenant under the “Hata Patta” is concerned, the same engaged the attention of the Hon’ble Supreme Court of India that too under the O.E.A. Act on more than one occasion. In **State of Orissa & Ors vrs. Burndaban Sharma & Ors** reported in (1995) Supp. 3 SCC 249 in paragraph 16 of the judgment it has been observed as follows;

“16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does

lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be No.”

Further in paragraph 19 and 20, the Hon’ble Supreme Court of India went on to observe as follows;

“19. Under these circumstances, it cannot be said that the Board of Revenue exercised the power Under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit that was responsible for it? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power Under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage.

20. So, we hold that the High Court is not right or justified in opining that the exercise of the power Under Section 38-B is not warranted. It committed illegality in quashing the order of the Board of Revenue. The order of the High Court is set aside. The order of the Board of Revenue is restored. Consequently we hold that the Government, being the owner, need not acquire its own land and need not pay compensation to an illegal or wrongful occupant of the Government land. The direction or mandamus to acquire the land and to pay the compensation to the Respondent is set aside.”

The above noted observation has been quoted with approval by the Hon'ble Supreme Court of India in a subsequent judgment in the matter of **The Inspector General of Registration, Tamil Nadu and Ors. vs. K. Baskaran** reported in **(2020) 14 SCC 345**.

26. The above referred judgment in **Brundaban Sharma's** case (Supra) has also been followed by the Hon'ble Supreme Court of India while dealing with identical issues and examining the validity of "Hata Pattas" relied upon by the tenant to establish his tenancy rights after vesting of the ex intermediary land in the State in **State of Orissa vrs. Harapriya Bisoi** reported in **(2009) 12 SCC 378** and **State of Orissa vrs. Fakir Charan Sethi** reported in **(2015) 1 SCC 466**.

27. In **Fakir Charan Sethi's case (Supra)** the Hon'ble Supreme Court while setting aside the judgment of this court holding the settlement of land under the OEA Act to be valid and legal, has observed as follows;

"15. The Appellant-State in its written statement before the learned trial court as well as in the appeal before the High Court had raised a specific plea of forgery and fabrication of the documents relied upon by the Plaintiffs. The affidavits of the Tehsildar, Cuttack and Bhubaneswar Circle filed before the High Court specifically deal with aforesaid issue. The Appellant State had filed an application under Order 41 Rule 27 of the Code of Civil Procedure for leave to bring the same on record. The said application was rejected and all objections brushed aside by holding that the burden to prove the forgery alleged has not been satisfactorily discharged by the State. It is our considered view that the matter required a deeper probe and investigation and did not call for a summary rejection. That apart in State of Orissa and Ors. v. Harapriya Bisoi (supra) the issue with regard to validity of a Hatapatta similar to Ext. 1 was found to be the subject matter of an ongoing criminal investigation. All these required the

elimination of even slightest of doubt with regard to the authenticity of the relied upon documents. The effect of fraud on judicial orders has also been exhaustively considered in State of Orissa and Ors. v. Harapriya Bisoi (supra) and it will not be necessary to reiterate the views expressed therein except to say that on the slightest of doubt or even prima facie proof of fraud, the matter must be thoroughly investigated by the court to arrive at the truth. Judicial order must be based on strong foundational facts free from any doubt as regards the correctness and authenticity thereof. In the light of the facts noticed by us the High Court, in our considered view, ought to have investigated the matter a little further instead of summarily holding the objections of the State to be mere claims or assertions of fraud without legal proof.”

28. In the aforesaid judgments rendered by the Hon'ble Supreme Court of India, it has deprecated the practice of settling land in favour of the so-called tenants on the basis of 'Hata patta', which is unregistered document and whereunder the beneficiaries have claimed transfer of right, title and interest in their favour by the Ex-Intermediary. Further considering the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments, this Court is of the considered view that the tenancy right of raiyat can be recognized statutorily only basing upon the records, documents submitted/ transferred/ received from Ex-Intermediary as provided under Section 5(j) of the Orissa Estate Abolition Act, 1951 (in short 'the O.E.A. Act'). Further if the tenants want to establish their right, title and interest in a manner other than as has been stated hereinabove, it is open for them to approach common law forum by filing a suit to establish such right, title, interest and possession by establishing the foundational facts supported by cogent/ trust worthy evidence in favour of their claims.

29. This Court is particularly astonished by the procedure adopted by the O.E.A. Collector-cum-Tahasildar, Sukinda in settling the land in favour of the Petitioner and further, the method and the trick adopted by the Petitioner in submitting the application for fixation of rent/settlement of land after a lapse of almost 29 years from the date of vesting of the case land with the Government. This Court is of the further considered view that the O.E.A. Collector-cum-Tahasildar, Sukinda should not have entertained the application of the Petitioner at the first place. Moreover, the O.E.A. Collector-cum-Tahasildar, Sukinda had committed a gross illegality in passing order dated 28th April, 1982 settling the land in favour of the Petitioner on the basis of undated report submitted by the Revenue Inspector. We would not hesitate to hold that this is nothing but illegal grabbing of Government land in a collusive manner by practicing fraud.

30. In the present case, it is an admitted fact that Ex-Intermediary had not submitted any document/records as prescribed under Section 5(j) of the O.E.A. Act at the time of vesting of the estate. Therefore, the Petitioner should have approached the Civil court by filing a suit to establish his right, if any, over the case land.

31. With regard to the plea of limitation, this Court is of the considered view that in the absence of any specific period of limitation under Section 38-B of the O.E.A. Act, the power under Section 38-B can only be exercised by the Member, Board of Revenue within a reasonable time. What is reasonable time, has been interpreted by this Court as well as Hon'ble Apex Court in **Brundaban Sharma's** case (Supra). Reasonable time depends on the given facts of a particular case. Further, it is also the settled position of law that where there is fraud perpetrated upon Court and the party has resorted to suppression of material fact, the

party who has been benefitted under such fraud, mis-representation and suppression cannot take advantage of the plea of limitation. Rather the Court is duty bound to unearth such fraud in public interest and every endeavour must be made by the court/tribunal to reach out wherever there is injustice.

32. In such view of the matter, this Court found no illegality with the order passed by the Revisional authority, which is impugned in the present writ petition. Moreover, the views of the Hon'ble Supreme Court in the case of *State of Orissa vs. Burndaban Sharma* reported in (1995) Suppl-3 SCC 249 fully supports the view taken by this Court on the plea of limitation taken by the Petitioner in the present writ petition.

33. Resultantly, the order dated 28th April, 1982 passed in O.E.A. Lease Case No.36 of 1982 by the O.E.A. Collector-cum-Tahasildar, Sukinda is non-est in the eye of law and accordingly, the same is liable to be set aside and is hereby set aside. Therefore, the present writ petition challenging the impugned order dated 18th October, 2008 passed by the Member, Board of Revenue in O.E.A. Revision case no.289 of 2006 is devoid of any merit and as such the same is hereby dismissed. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge

(S. Muralidhar)
Chief Justice