

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.28125 of 2011 & W.P.(C) No.12277 of 2015

Rawel Barla

..... ***Petitioner***
Mr. Gautam Misra, Senior Advocate

-Versus-

State of Odisha and others

..... ***Opp. Parties***
Mr. S.N. Das, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

DATE OF JUDGMENT :20.06.2022

R.K. Pattanaik, J

1. Both the writ petitions have been filed by the Petitioner assailing the legality and judicial propriety of the impugned order dated 26th August, 2011 (Annexure-1) passed in O.E.A. R.C. Suo Motu Case No.101 of 2008 under Section 38-B of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'OEA Act') by the Member, Board of Revenue, Odisha, Cuttack (O.P.No.2) on the grounds *inter alia* that the decision is erroneous, arbitrary and beyond jurisdiction and therefore, liable to be interfered with and set aside.

2. The Petitioner contends that O.P.No.2 did not have any jurisdiction in interfering with an order recognizing a tenant's right in possession of a land on the date of vesting by the OEA authority which is by virtue of an administrative enquiry. It is further contended that the *Hukumnama*(Annexure-2 series), after due enquiry, having been found to be genuine by the authority

under the provisions of the OEA Act, O.P. No.2 acted in excess of jurisdiction in rejecting it without any material to the contrary. As per the Petitioner, the impugned order under Annexure-1 is wholly misconceived in law, inasmuch as, the provisions of Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 (shortly referred to as 'Act 1 of 1948') are totally inapplicable to the private estates. It is the further contention of the Petitioner that Section 5(i) of the OEA Act is not applicable since the possession on the strength of *Hukumnama* (Annexure-2 series) is neither a settlement nor a lease or a transfer. It is, thus, contended that O.P.No.2 could not have unsettled the tenancy right vis-à-vis the schedule land which was ensured in accordance with Section 8(1) of the OEA Act. On the above grounds, the impugned order under Annexure-1 is challenged by the Petitioner as bad in law.

3. Heard Mr. G. Misra, learned Senior Advocate and Mr. S.N. Das, learned ASC appearing for the State.

4. As per the claim of the Petitioner, an application in the *Darbar* of the Nagra Zamindar was moved by his late father in the year 1949-50 seeking permission to reclaim Ac.19.00 dec. of land in village-Brahmanitarang. On receipt of such a request, the then Zamindari Court directed the Amin to enquire into the matter and submit a report, which was accordingly furnished along with a trace map, where after, a general proclamation was published inviting objections and as no any objection was received, the *Hukumnama* dated 31st December, 1949 vide Annexure-2 series was issued in Reclamation Case No.453 of 1949-50 in respect of

the land in question and thereafter, the *kisam* was changed to *Mala* and *Goda-II* and was possessed. It has been contended that the Nagra Zamindar, who issued the *Hukumnama*, had the administrative authority to lease out waste lands in favour of the persons, who would become tenants under him. Further claimed that since the schedule land was settled in favour of the Petitioner's father and it was possessed till the vesting by a notification dated 27th November, 1952, he being a deemed tenant in view of Section 8(1) of the OEA Act, rightly the same was given effect to administratively which is in accordance with law but O.P.No.2 derecognized the tenancy, thus, thereby committed the illegality.

5. On the contrary, the contention of the State is that the schedule land was illegally settled with the father of the Petitioner in Revenue M.C. No.27 of 1978 with a direction by the Tahasildar, Kuanrmunda (O.P.No.4) for payment of rent which was without confirmation of the Board of Revenue as necessarily required in view of Section 5(i) of the OEA Act which was challenged in Revision Petition No.3 of 1998 before the Collector, Sundargarh (O.P.No.3) but the settlement was upheld by order dated 26th February, 1999 and since the above decision was without the statutory sanction, *suo motu* proceeding was initiated and as a result, the impugned order under Annexure-1 was passed which is absolutely justified and according to law.

6. With regard to the reclamation, O.P.No.2 entertained serious doubt about it since documents of the proceeding in photocopies were produced before O.P.No.3 and that no originals were filed

in Revenue M.C. No.27 of 1978 in the court of O.P.No.4. In fact, it was noticed that copies of the certified documents were produced before O.P.No.3 in Revenue Revision Case No. 3 of 1998 for which O.P.No.2 concluded that the entire process was a result of fraud. But, on a bare reading of the order dated 26th February, 1999 of Annexure-4 series in Revenue Revision Case No. 3 of 1998, it would appear that certified copies of the documents had been produced before O.P.No.4 in Revenue M.C. No. 27 of 1978. In fact, any such production of the certified documents in Reclamation Case No.453 of 1949-50 allows a presumption as to its genuineness in terms of Section 114 of the Indian Evidence Act, 1872. Even accepting the fact of reclamation vis-a-vis the schedule land, the question that remains to be answered is, whether, settlement in favour of the Petitioner's father so recognized vide Revenue M.C. No.27 of 1978 is sustainable in law?

7. Admittedly, the schedule land vested in the Government in the year 1952. On the premise that the reclamation in respect of the land in question was by the orders of the Nagra Zamindar, whether, before its acceptance by O.P.No.4, confirmation of the Board of Revenue was required in view of Section 5(i) of the OEA Act, since according to O.P.No.2, no such exercise was undertaken. As per Section 5(i) of the OEA Act, where the Collector is satisfied in respect of the settlement or lease of any land or mines or minerals comprised in such estate or the transfer of any kind of interests etc. made or created at any time after 1st day January, 1946, that such settlement, lease or transfer was made with the object of defeating any provisions of the Act or for

obtaining higher compensation, he shall have power to make enquiry in respect of settlement, lease or transfer, as the case may be and after issuing notice to the parties and providing an opportunity of hearing to them may set aside the same and take possession of such property in the manner and on such terms as may appear to him to be fair and equitable but in case, where such settlement, lease or transfer is not set aside, he shall have to refer the matter to the Board of Revenue for its confirmation. However, Mr. Misra contends that it was neither a settlement nor a lease in favour of the Petitioner's father, who was in possession of the schedule land on the date of vesting and therefore, by virtue of Section 8(1) of the OEA Act, he had become a deemed tenant and therefore, in Revenue M.C. No.27 of 1978, O.P.No.4 correctly assessed the rent payable by him. It is further contended that Section 5(i) of the OEA Act is not applicable to the case in hand for the fact that the schedule land was not a settlement in favour of the father of the Petitioner. Mr. Das, learned ASC submits that O.P.No.4 was required to obtain confirmation of the Board of Revenue in accordance with Section 5(i) of the OEA Act but instead directly settled the schedule land with the Petitioner's father which is an illegality. In fact, the land has been reclaimed by the Petitioner's father in the year 1949-50. A reclamation proceeding was initiated by the Nagra Zamindar. In course of such proceeding, a field inquiry was conducted and objection was invited by a public notice dated 29th November, 1949. But no objection was received from any quarter and thereafter, the *Hukumnama* was issued and the Petitioner's father was assessed to rent. As per O.P.No.3, the father of the Petitioner

was a deemed tenant in view of Section 8(1) of the OEA Act and no doubt was entertained regarding the *Hukumnama*. In fact, O.P.No.3 was satisfied that the ex-Zamindar of Nagar estate had the authority to grant the *Hukumnama* which was issued in favour of the Petitioner's father prior to 3rd March, 1950. In Revenue Revision No.3 of 1998, O.P.No.3 concluded that the Board of Revenue accepted such authority of the Zamindar to grant *Hukumnama* by orders in R.P. Case Nos.1209, 1211 of 1984 and referred to a letter No.7457/Rev. dated 4th December, 1978 issued from the office of the Collector, Sundargarh addressed to the Settlement Officer, Sambalpur with a request that the *Hukumnama* lands to be settled with rayati status and issue record of rights in favour of the holders in respect of grants prior to 3rd March, 1950. O.P.No.3 further noticed that the Petitioner produced certified copies of the reclamation Case Nos.451, 452, 454 & 455 of 1949-50 which proved the fact claimed by the Petitioner's father. Since the certified copies of the reclamation proceeding were produced before O.P.No.4, it was held by O.P.No.3 that a presumption as to its correctness would have to be drawn in favour of the father of the Petitioner. With so much of materials on record, there can be no denial to the fact that the reclamation proceeding vis-à-vis the Petitioner's father had taken place and the *Hukumnama* was issued in his favour relying upon which the Revenue M.C. No.27 of 1978 was initiated.

8. However, despite the fact that *Hukumnama* was granted, it is to be examined as to if the same was statutorily accomplished. In

fact, O.P.No.2 held that as per Section 3(1) of the Orissa Act 1 of 1948, previous sanction of the Collector was to be necessary for the purpose of conversion of a communal and a forest land or to create occupancy rights therein by a landlord and in the present case, no such permission was obtained and therefore, the *Hukumnama* granted in favour of Petitioner's father is void and inoperative according to Section 4(1) of the said Act. It was challenged by the Petitioner on the ground that Orissa Act 1 of 1948 does not apply in view of Section 2(b) thereof which defines 'estate' and 'private land' to carry the meaning respectively assigned to the expression either in the Madras Estate Land Act, 1908 or in the Orissa Tenancy Act, 1913. However, such contention was rejected with the conclusion that Orissa Act 1 of 1948 specifies that the Act to extend to the whole of province of Orissa except the district of Sambalpur and rightly so. As per Section 3(1) of Orissa Act 1 of 1948, there can be no sale, mortgage, lease, assignment, alienation or conversion of any forest or communal land without the previous sanction of the Collector. In the case at hand, no such claim is put forth with regard to any such permission being obtained from the Collector by the Zamindar before allowing reclamation and conversion of the schedule land which was recorded as '*badajangal* and *gochar*' as is revealed from Annexure-2 series itself.

9. As regards applicability of Section 5(i) of the OEA Act is concerned, Mr. Misra has contended that at the time of settling the schedule land with the Petitioner's father, he being a deemed tenant, no confirmation from the Board of Revenue was necessary. In other words, the contention is that the father of the
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Petitioner was a tenant under the ex-intermediary and was so treated under the State by virtue of Section 8(1) of the OEA Act and for that, the administrative exercise was carried out through Revenue M.C. No.27 of 1978. As it appears, the schedule land was settled by the ex-intermediary without the necessary sanction of the Collector as required under Orissa Act 1 of 1948 and hence, subsequent recognition of tenancy carries no meaning and the decision on the above question, therefore, needs no discussion. Further, as it is made to understand, the schedule land was settled with the Petitioner's father by a reclamation proceeding which was held with a field enquiry and ultimately the *Hukumnama* was granted which influenced O.P.No.2 to hold that confirmation of the Board of Revenue could have been obtained before disposal of Revenue M.C. No.27 of 1978.

10. One of the disturbing features is that after the order passed in Revenue M.C. No.27 of 1978 in the year 1979, the matter did not move further and remained idle for more than 12 years till the time the order dated 27th December, 1991 was passed by O.P.No.4. No explanation is coming forth as to why it was kept pending for such a long period despite the order dated 20th November, 1979. There is evidence to show that rent was paid from the side of the Petitioner but that by itself could not be held as sufficient to confer any interest or right vis-à-vis the schedule land since collection of revenue or rent is an administrative act. So the conclusion is that there was a reclamation proceeding in which *Hukumnama* was granted in favour of the Petitioner's father but then no previous sanction of the Collector was obtained in conformity with Section 3(1) of Orissa Act 1 of 1948.

No material has been placed on record to show that the case of the Petitioner was differently treated and was illegally rejected in juxtaposition to the other instances of reclamations. In any ways, the Petitioner was required to overcome the reason of O.P.No.2 with regard to application of provisions of the Orissa Act 1 of 1948 which applies to estate besides private lands owned by the landlords. For the above reasons, the Court does not find any error being committed by O.P.No.2 while arriving at such a conclusion.

11. If there is an illegality which is pointed out for initiating a proceeding under Section 38-B of the OEA Act, it can be enquired into by the Member, Board of Revenue even after some period of time. Purposefully, no limitation has been prescribed in Section 38-B of the OEA Act for exercising the revisional jurisdiction. In other words, there is no bar or any kind of prohibition as such prescribed in the exercise of power under Section 38-B of the OEA Act which is with a primary object to correct the illegalities committed by the authorities while exercising or purporting to exercise jurisdiction under the OEA Act. In the present case, no doubt the revisional jurisdiction was exercised by O.P.No.2 after 33 years. It depends on the facts and circumstances of a particular case to decide whether the jurisdiction under Section 38-B of the OEA Act may be exercised or not. In so far as the present case is concerned, a large chunk of land measuring Ac.19.00 dec. was settled. Having regard to the above facts, the Court is of the considered view that there exists no compelling ground to interfere with the impugned decision of O.P.No.2. In other words, the Court taking into

account the totality of the circumstances is not inclined to exercise its writ jurisdiction notwithstanding the fact that the revisional power under Section 38-B of the OEA Act was exercised nearly after 30 years more so when it was preceded by an action before O.P.No.3 which was initiated at the instance of the State.

12. Accordingly, it is ordered.

13. In the result, the writ petitions stand dismissed. Consequently, the order of status quo dated 6th September, 2012 directed by this Court in M.C. No.16134 of 2011 vis-a-vis W.P.(C) No.28125 of 2011 is hereby vacated.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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