

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No.16502 of 2001

Umakanta Barik & others

Petitioners

Mr. D.Chhotray, Advocate

-Versus-

***Member, Board of Revenue and
others***

Opp. Parties

Mr. S.N.Das, ASC

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

**ORDER
28.02.2022**

Order No.

R.K.Pattanaik, J

22. 1. Instant writ petition is filed by the Petitioners under Article(s) 226 & 227 of the Constitution of India challenging the impugned order dated 31st December, 1996 (Annexure-2) passed in O.E.A Appeal No. 52 of 1981 by O.P.No.2 which has been confirmed by O.P.No.1 with a declaration that the issue relating to Plot No. 354 was not the subject matter in an earlier proceeding initiated under Section 5(i) of the Orissa Estates Abolition Act, 1951(here-in-after referred to as 'the OEA Act').
2. According to the Petitioners, Sabik Plot No. 354 measuring an Area of Ac.0.35 decimals classified as *Gadia* is

the property in question which was originally recorded in the name of one Manmath Nath Dey and others under Sabik Khata No. 106 under Khewat No. 1, inasmuch as, the ex-intermediary had executed an unregistered *patta* in favour of on Kamal Lochan Jena, the predecessor-in-interest of O.P. Nos. 3 to 5 and later, on account of some dispute, as a fake *patta* was issued in favour of one Birabhadra Barik in whose favour Plot No. 91 measuring Ac.0.73 decimals of land was leased out and challenged in a proceeding under Section 5 (i) of the OEA Act but at no point of time, Sabik Plot No. 354 was ever a part of such proceeding and in spite of an order dated 7th September, 1989 in OJC No. 103 of 1982, O.P. No.2 unauthorizably embarked upon an enquiry and passed the impugned order under Annexure-2 which was also confirmed by O.P.No.1 which is unsustainable in law and therefore, deserves to be quashed.

3. Heard Mr. D.Chhottaray, learned counsel for the Petitioners and Mr. S.N.Das, learned ASC appearing for the State.

4. Mr. D.Chhottaray contended that the ex-intermediary had issued a *Hukumnama* to the predecessor-in-interest of O.P. Nos. 3 to 5 in respect of the alleged tank which was after the cutoff date i.e. 1st January, 1946, where after, on 20.1.1955, some villagers filed two separate applications to cancel both the leases in respect of Plot No. 91 and Plot No. 354 which is

relating to the tank in question as both the lands were communal in nature, consequent upon which, an enquiry was conducted and report was received which suggested that alleged lease to be void as it was without permission of the Collector as per Section 4(1) of the Orissa Communal Forests and Private Lands (Prohibition of Alienation) Act, 1948 and since was obtained fraudulently, for action under Section 5(h) of the OEA Act basing upon which proceeding under Section 5(i) of the OEA Act vide M.C. No. 49 of 1955-56 was initiated only against Plot No.91 but the same was dropped, however, despite the fact that the so-called lease under a *Hukumnama* stated to be of 5th July, 1950 which was after the cutoff date i.e. 1st January, 1946, no proceeding under Section 5(i) of the OEA Act was taken up vis-à-vis the Plot No. 354 (Tank). It is further contended that against the order passed in M.C. No. 49 of 1955-56, Appeal Case No. 9 of 1956 was filed before O.P.No.1 under Section 9 of the OEA Act and by order dated 1st May, 1956, it was disposed of with the conclusion that there is no illegality in so far as Plot No. 91 is concerned without any whisper of Plot No. 354 which was claimed to have been leased out in favour of the predecessor-in-interest of O.P. Nos. 3 to 5 purportedly through the *Hukumnama* dated 5th July, 1950.

5. It is made to suggest that in the year 1978, the Petitioners and other villagers filed objections for recording Plot No. 354 (Tank) in the name of private parties which was

registered as Misc. Case No. 58/78 and in that, a report was submitted by Amin stating that the subject to be a village tank. The Petitioners contend that the Tahasildar, Balasore and thereafter, the SDO, Balasore in Revenue Misc. Case No. 3 of 1979 filed by the State arrived at a conclusion that the *Hukumnama* not to be a lease and held that Plot No. 354 was not a subject of previous proceeding and Appeal Case No. 9 of 1956 against which O.P. Nos. 3 to 5, the L.Rs. of the original lessee challenged it and initiation of proceeding under Section 5(i) of the OEA Act in O.J.C. No. 103 of 1982 on the ground of *res judicata* which was disposed of on 7th September, 1989 with a direction for them to establish the claim before the concerned authority in respect of Plot No. 354. It is lastly contended that vide Annexure-2, the proceeding was dropped with a finding that the lease in respect of the case land was held to be genuine which was also confirmed by the O.P.No.1.

6. O.P.No.2 and O.P. Nos. 3 to 5 filed counters responding to which the rejoinders by the Petitioners. The contention of O.P.No.2 is that since M.C. No. 49 of 1955-56 under Section 5(i) of the OEA Act covered Plot No. 354 and it was confirmed by O.P.No.1 and the lease in question was held to be genuine, the proceeding was rightly dropped and thereafter, it was placed before O.P. No. 1 for confirmation which was accordingly allowed and in such view of the matter, no wrong has been committed as a result. O.P. Nos. 3 to 5 raised objection to the claim of the Petitioners and would

contend that Plot No. 354 was also subject matter of the earlier OEA proceeding and therefore, the latter proceeding for the self same purpose was rightly terminated.

7. Mr. S.N.Das, learned ASC, on the other hand, contends that Annexure-2 is absolutely justified and in accordance with law which needs no interference and furthermore, it has been confirmed by O.P.No.1.

8. In O.J.C. No. 103 of 1982, this Court albeit declined to interfere with the proceeding under Section 5(i) of the OEA Act but with an observation that the orders under challenge and on a bare reading of the same, nothing could be elicited therefrom to show that the earlier proceeding was also in respect of the tank situated over Plot No. 354. In fact, O.J.C. No. 103 of 1982 was filed at the behest of O.P. Nos. 3 to 5 against initiation of proceeding in respect of Plot No. 354 under Section 5(i) of the OEA Act. As to the impugned order i.e. Annexure-2, O.P. No. 2 considered the claim of the Petitioners and finally reached at a conclusion that Plot No. 354 was actually covered under M.C. No. 49 of 1955-56 which is evident from the record though not mentioned in the final order passed in Appeal No.9/56. In other words, on examination of the record, it transpired that Plot No. 354 was also a subject of adjudication in the earlier OEA proceeding. It has further been concluded that Amin report dated 22.07.1978 tagged to Misc. Case No.58/78 indicating the fact about

possession of Plot No.354 by O.P.No.3 to 5 with the opening of the Tenancy Ledger in their favour. In Annexure-2, it is also reflected that partition of Touzi No.4497 merits consideration as in Misc. Case No.3/79, it was clearly mentioned that Touzi was partitioned, where after, the *kisam* of the plot was changed from 'Padia' to 'Gadia' and the fact that at the time of partition of Touzi, if any Zamindar makes any appreciable improvement of any tank, by being in exclusive possession of it, the property is assessed to rent and the same not to vest in the State but deemed as a tenanted subject and therefore, the ex-intermediary had every right to lease it out which cannot be questioned as it stands subscribed by Section(s) 65 and 66 of the Estate Partition Act, 1897.

9. In such view of the matter, having regard to the above facts that O.P. No.2 examined and reached at a logical decision that Plot No.354 was indeed a subject duly covered in the earlier OEA proceeding and although in Appeal No. 9 of 1956, the tank in question was not specifically mentioned, for which, the Court was concerned, while disposing of O.J.C.No.103 of 1982, it is deemed that the concerned appellate authority was not inclined to interfere and hence, for all intent and purpose, it had to be taken as granted and subsequent thereto, it received confirmation from O.P. No.1, for such concurrent findings, this Court is not persuaded to quash Annexure-2 especially when in Misc. Case No.49/1955-56, the villagers and the State contested the claim of O.P.Nos.3 to 5 and also

for the fact that the lease was found not to be tainted. With so much of exercise, no compelling circumstances really exist for any kind of intervention vis-à-vis Annexure-2.

10. Accordingly, it is ordered.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice



kabita