

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8325 of 2009

Sukadev Nayak and others

....

Petitioners

Mr. P.C. Pattanaik, Advocate

-Versus-

State of Odisha and others

....

Opposite Parties

Mr. D.K. Mohanty, AGA

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

**ORDER
09.02.2022**

Order No.

R.K.PATTANAIAK, J

04.

1. In the instant case, the Petitioners have approached this Court by invoking its writ jurisdiction under Article(s) 226 and 227 of the Constitution of India assailing the impugned order dated 28th February, 2009 passed in OEA Revision Case No.75 of 2003 (Annexure-6) on the grounds inter alia that it is liable to be quashed as not being sustainable in law.

2. According to the Petitioners, one late Upendra Chandra Das working under the then Raja of Madhupur as a domestic employee was granted a *patta* (Annexure-1) in respect of a land measuring Ac.2.50 dec. out of Ac.84.02 dec. from Sabik Plot No.84 under Sabik Khata No.40 in village Kumari and the estate clerk received land revenue from him and granted receipt (Annexure-2) and thereafter, the said land

vested in the year 1952-53 under Section 3 of the Orissa Estate Abolition Act, 1951 (here-in-after referred to as 'the OEA Act'). It is further contended that prior to said vesting, the possession of the land had been handed over to late Upendra Chandra Das, who carried on business there from and after his demise, was succeeded by son, namely, Himansu Sekhar Das, who became a tenant under the State Government. It is claimed that Raja of Madhupur had issued an *ekpadia* to the revenue authority as per the requirements of the OEA Act, which was not taken into consideration after vesting. Furthermore, it is contended that after the death of said tenant, namely, late Upendra Chandra Das and succeeded by his son, namely, Himansu Sekhar Das, who while being in possession of the schedule land as a tenant under the State, alienated Ac.1.00 dec. of land out of Ac.2.50 dec. from Sabik Plot No.84, Sabik Khata No.40 of village Kumari under a registered sale deed bearing RSD No.1134 dated 21.02.1981 (Annexure-3) in favour of one Doli Nayak, the predecessor-in-interest of the Petitioners, who thereafter filed M.C. No.641 of 1981 before the learned Tahasildar, Darpan under Section 8(1) of the OEA Act for fixation of rent and correction of revenue records, wherein, on completion of inquiry, an administrative order dated 16.07.1988 was passed for collection of rent and cess from them since the date of vesting after the appeal period was over. Lastly, it is contended that almost after 15 years from the date of order passed by the learned Tahasildar, Darpan, on an erroneous and misleading information, OEA Revision Case No.75 of 2003 was initiated under Section 38-B

of the OEA Act before O.P. No.2, who without considering the valid documents, such as, Annexure-1 & 2 set aside the order dated 16.07.1988 passed by the learned Tahasildar, Darpan under Annexure-6 which is an act of illegality and therefore, it has to be set aside.

3. Heard Mr. P.C, Pattnaik, learned counsel for the Petitioners and Mr. D. Mohanty, learned Additional Government Advocate for the State.

4. While seeking the relief, Mr. P.C. Pattnaik, learned counsel for the Petitioners contended that the learned Tahasildar, Darpan had rightly recorded the schedule land in a proceeding under Section 8(1) of the OEA Act after holding an inquiry with a conclusion as regards existence of tenancy right with late Upendra Chandra Das and thereafter, the possession by the Petitioners but unfortunately, O.P. No.2, in exercise of revisional jurisdiction under Section 38-B of the OEA Act, unsettled it which is clearly not tenable in law.

5. Mr. D. Mohanty, learned Additional Government Advocate, on the contrary, justified the impugned order under Annexure-6 by contending that the learned Tahasildar, Darpan had absolutely no authority to settle the schedule land recognizing pre-existing tenancy rights in favour of the Petitioners under Section 8(1) of the OEA Act which was duly corrected under Annexure-6.

6. As is known, a notification in terms of Section 3 of the OEA Act is published as to the vesting of an estate in the State

Government free from all encumbrances, where after, the consequences of vesting follow suit in accordance with Section 5 of the OEA Act. In so far as, the continuity of the tenure of tenants is concerned, it is guided and governed by Section 8 of the OEA Act which prescribes that a person being a pre-vesting tenant under the estate, who was in possession of a holding under the ex-intermediary, shall be deemed to be a tenant under the State and shall continue to hold it with the same rights and liabilities as he was entitled or subject to, immediately before the date of vesting.

7. In plethora decisions, this Court and Supreme Court have consistently held and observed that it is by way of a deeming fiction that the tenancy right is recognized preceded by an administrative action as per Section 8(1) of the OEA Act. In fact, there is no provision as such to initiate quasi-judicial proceedings to settle lands under Section 8(1) of the OEA Act and as earlier discussed, it would only be an inquiry of administrative nature by which a tenant under the ex-intermediary is recognized as a tenant under the State in respect of a land in possession as on the date of vesting subject to maintenance of revenue records and verification thereof. In other words, any settlement of land by the authority concerned taking refuge or under the guise of Section 8(1) of the OEA Act would be grossly illegal and beyond jurisdiction.

8. In the present case, on the strength of Annexure-1 and a receipt (Annexure-2), it has been claimed by the Petitioners that a tenancy had been created in favour of late Upendra

Chandra Das but then O.P.No.2 examined it in threadbare and ultimately, held that no materials could really be discernible from the revenue records to establish that the so-called original tenant, who claimed to have been issued with Annexure-1, was indeed a pre-vesting tenant duly recognized basing upon any records being produced by or acquired from the ex-intermediary. Rather, it was found that the learned Tahasildar, Darpan settled the land under Section 8(1) of the OEA Act which was without jurisdiction. In the considered view of the Court being alive and conscious to the settled position of law which has been reiterated by this Court and Supreme Court in number of decisions, some of which are to the following, namely, *State of Orissa and others Vs. Brundaban Sharma and another: (1995) Supp (3) SCC 249; State of Orissa and others Vs. Harapriya Bisoi: (2009) 12 SCC 378; State of Orissa and another Vs. Fakir Charan Sethi and others: (2015) 1 SCC 466*, wherein, besides dealing with other aspects of law, it has been emphasized that in view of Section 8(1) of the Act, the rights of tenants as on the date of vesting shall have to be simply recognized, where after, they are deemed to be tenants under the State with same rights and liabilities existing by then subject, however, to verification of the revenue records.

9. A reference is made to Annexure-4 contending that in view of G.O. No.55383 dated 25.07.1983 of Revenue Department, Government of Odisha, a decision is being taken to settle lands on fixation of rent, back rent and realization of

salami which is, rather, related to settlements of lands transferred by ex-intermediaries after vesting of estates which is, therefore, of no avail. As far as the schedule land settled with the Petitioners by the learned Tahasildar, Darpan is concerned, it is clearly an illegality and without jurisdiction, inasmuch as, Section 8(1) of the OEA Act does not deal with and envisage any such settlement but, by a legal fiction, it confirms and recognizes the pre-existing tenancy treating the tenants under the ex-intermediaries as tenants under the State, an error which was perpetuated, has rightly been remedied by O.P.No.2 exercising suo motu revisional power under Section 38-B of the OEA Act.

10. Lastly, it is contended that O.P.No.2 could not have exercised jurisdiction at such a distant point of time almost after 15 years from the date of order passed by the learned Tahasildar, Darpan based on misleading information and therefore, it is bad in law. In fact, the Supreme Court in ***Brundaban Sharma*** case (supra), while dealing with a matter of settlement of tenure in terms of Section 5(i) of the OEA Act vis-à-vis jurisdiction under Section 38-B thereof held and observed that when the revisional power is conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its invocation within a reasonable time as absence of limitation is an assurance to exercise the power with caution or circumspection only to advance the intent and purpose of the OEA Act or to prevent miscarriage of justice or violation of provisions of law or

misuse or abuse of power by the lower authorities (italicized to lay emphasis) or fraud or suppression and as such, length of time depends on the factual scenario in a given case and since in the case at hand, the learned Tahasildar, Darpan wrongly usurped jurisdiction and settled large chunk of land under Section 8(1) of OEA Act which is nothing but a sheer misuse or abuse of power, justifiably O.P.No.2 exercised jurisdiction under Section 38-B to set things right upsetting an order which is nonest and void, validity of which can be questioned or invalidity could have been set up at any stage and therefore, it would not be correct to suggest that the power was exercised after an inordinate delay. In fact, in the aforesaid case, on more or less similar ground, the Supreme Court condoned even a delay of 27 years in exercising revisional jurisdiction under Section 38-B of the OEA Act. Hence, the above contention on the plea of delay must have to fail.

11. To sum up, this Court reaches at a conclusion that in absence of any revenue records maintained after supposedly being received from ex-intermediary in terms of Section 5(j) of OEA Act, the tenancy could not have been held by referring to Annexure-1 & 2 and in any case, the settlement so allowed by the learned Tahasildar, Darpan under Section 8(1) thereof was out rightly beyond authority which was duly rectified by O.P.No.2 vide Annexure-6.

12. For the discussions, as aforesaid, it has to be concluded that the impugned order under Annexure-6 suffers from no legal infirmity and therefore, it cannot be interfered with.

13. Accordingly, it is ordered.
14. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice



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