

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.12026 of 2010

M/s. Maruti Estate India (P) Ltd. ***Petitioner***
Mr. N.P. Parija, Advocate

-Versus-

State of Odisha and others ***Opposite Parties***
Mr.D.K. Mohanty, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT :20.06.2022

R.K. Pattanaik, J

1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioner questioning the correctness, legality and judicial propriety of the impugned order dated 17th August, 2009 (Annexure-6) passed in OEA Revision Case No.21 of 1998 by the Member, Board of Revenue (OP No.2) under Section 38-B of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'OEA Act') on the grounds *inter alia* that the jurisdiction was exercised arbitrarily and with considerable delay and therefore, deserves to be set aside in order to do substantial justice.

2. By order under Annexure-6, jurisdiction under Section 38-B of the OEA Act, which according to the Petitioner, was exercised after 56 years despite the fact that in Nijdakhal Case No.480 of 1959-60, the schedule land was settled with the intermediary, who, thereafter, sold it to the vendees under RSD No.3534 dated

19th March, 1962, whereafter, there was an amicable partition held between the purchasers and even part of the mortgaged property was disposed of by an auction in E.P. Case No.1683 of 1984-85 for clearing a loan with the Land Development Bank, Puri and in so far as Ac.10.2 decimals of land in the share of Annapurna Suar is concerned, the same was settled with the raiyats under Section 36A of the OLR Act, 1960 in OLR Case Nos.1221 of 1976 and 572 of 1997 and thereafter, the raiyats further sold it to Petitioner under Annexures-3,4&5, inasmuch as, the aforesaid facts were not duly taken cognizance of by OP No.2, who straightaway directed correction of ROR, which is not at all tenable in law.

3. Heard Mr. N.P. Parija, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned AGA for the State.

4. Mr. Parija contends that OP No.2 arbitrarily unsettled the order of the OEA Collector in OEA Nijdakhal Case No.480 of 1959-60 notwithstanding the fact that the schedule land, after several transfers by sale, reached in the hands of the Petitioner through Annexure-3, 4 & 5. The decision of OP No.2 is that the status of the land was *anabadi* which could not have been settled with intermediaries, who, thereafter, inducted tenants but on its vesting, the same became the subject of the State. In response, Mr. Parija contends that the land was made *abadi* by the intermediaries and while being in their *khas* possession was settled in OEA Nijdakhal Case No.480 of 1959-60. It is further contended that OP No.2 could not have ignored the decisions of the OLR authorities, consolidation record of rights as well as the execution and sale of mortgaged property vide E.P. Case ***W.P.(C) No.12026 of 2010***

No.1683 of 1984-85 and that too exercising the jurisdiction with so much of delay and therefore, the impugned order under Annexure-6 is susceptible and thus, liable to be interfered with.

5. Per contra, Mr. Mohanty, learned AGA would submit that the schedule land was *anabadi* in status and remained with the State post vesting and therefore, could not have been settled with the intermediaries. While contending so, a decision of the Apex Court in *State of Orissa v. Nityanand Satpathy and others (2003) 7 SCC 146* is placed reliance on. One more decision in *State of Orissa and others v. Harapriya Bisoi 2009 (1) OLR SC 1100* is cited by Mr. Mohanty which is with reference to Section 5(i) of the OEA Act and further contended that since the claim of the Petitioner is not genuine, it cannot hold good even under a sale vide RSD No.902 dated 13th January, 1994 and therefore, the impugned order (Annexure-6) is unassailable.

6. Admittedly, the settlement was made vide Nijdakhal Case No.480 of 1959-60. The circumstances under which the settlement was carried out were elaborately dealt with by OP No.2 in Annexure-6. It was noticed by OP No.2 that initially the intermediaries executed lease deeds but subsequently the settlement was stage managed in Nijdakhal Case No.480 of 1959-60; furthermore, the intermediaries were held not entitled to the settlement of *anabadi* land notwithstanding any claim to the effect that they had converted it to *abadi* by plantation or otherwise. Of course, in *Nityanand Satpathy* (supra), the Apex Court held that *anabadi* land is to vest in the State free from all encumbrances and the intermediary even though not physically

dispossessed would be deemed to have gone out of possession entitling the State to take control of it and further held that the land not in *khas* possession of the intermediary cannot be settled under Section 7 of the OEA Act. In the instant case, according to the State, if the schedule land was converted to *abadi*, the intermediary should have moved the authority concerned for carrying out correction in the record of rights and if permitted, then, it would have been recorded in his favour either as *nizjot* or *nijchas* or *nijdakhal*. Admittedly, the record of rights remained as such with the status of the land *anabadi*, which obviously mean that the intermediary was not allowed to acquire any interest over the same. Indeed, the settlement of the year 1959-60 is under challenge after 56 years, which is one of the grounds challenging the decision of OP No.2. There is no denial to the fact that the lands suffered settlement under the OLR Act, 1960 and even a part thereof had been auctioned in E.P. Case No.1683 of 1984-85. Notwithstanding the fact that there has been a settlement in respect of *anabadi* land which has been challenged by the Petitioner for being made a party by the intermediaries and the fact that the joint claim petition exceeded the combined ceiling, the question is, whether, under the facts and circumstances narrated herein above, OP No.2 could have exercised jurisdiction under Section 38-B of the OEA Act?

7. Further the Court is to examine, if initiation of proceeding by OP No.2 stands vitiated on account of delay. In fact, there is no limitation prescribed for the exercise of revisional jurisdiction. It is settled law that the power which is to be exercised under Section 38-B of the OEA Act should be in a manner within a

reasonable time and ought not to be arbitrary. In this regard, a decision of the Supreme Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu AIR 2014 SC 1141*** may be referred to, wherein, it has been held and observed that doctrine of delay and laches should not be lightly brushed aside, inasmuch as, a writ court is required to examine the explanation offered and acceptability of the same. It has been further held therein that the Court should bear in mind that it is exercising an extra-ordinary and equitable jurisdiction; and as a constitutional Court, it has a duty to protect the rights of the citizens but at the same time to keep itself alive to the principle that when an aggrieved person without adequate reason approaches the Court at his own leisure or pleasure, the Court could be under legal obligation to scrutinize it. In ***Jt. Collector, Ranga Reddy Dist. and another v. D. Narasingh Rao and others AIR 2015 SC 1021***, the Supreme Court held that delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it would mean avoidable and endless uncertainty in human affairs which is not the policy of law; even when there is no period of limitation prescribed, for exercise of such powers, the intervening delay may have led to the creation of third party rights which cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight; Rule of law, it is said, must run closely with the rule of life; even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of discovery of fraud; simply describing an act or transaction to be fraudulent would not extend ***W.P.(C) No.12026 of 2010***

time for its correction to infinity; and finally concluded that, for otherwise, the exercise of revisional power would itself tantamount to a fraud upon the statute that vests such power in an authority.

8. The same view is expressed in ***Nityanand Satpathy and others v. Member, Board of Revenue and others 1996 (II) OLR 262***, wherein, it has been held that no time limit is fixed for a proceeding under Section 38-B of the OEA Act but power should be exercised in a reasonable manner which should depend on the facts of each particular case and similarly in ***Labanyabati Devi and other v. Member, Board of Revenue and others 1993 (III) OLR 365*** and ***Smt. Parbati Mohapatra and another v. State of Orissa and others 2014(I) OLR 825***. In fact, in ***T.T. Murali Babu*** (supra), the Apex Court observed that delay does bring in hazard and causes injuries to the litigants and may have impact on others' ripened rights and could unnecessary drag persons to litigation which, in acceptable realm of probability, may have been treated to have attained finality. As is understood, on a sincere reading of the above decisions, revisional power conferred under Section 38-B of the OEA Act should be exercised in a reasonable manner which inheres the concept of exercise of power not arbitrarily and rather, absence of limitation is an assurance to exercise the power with caution and circumspection to effectuate the purpose of the Act. The aforesaid principle enunciated by the Supreme Court appears not to have been appreciated by O.P.No.2 in its proper perspective. There is no denial to the fact that the revisional jurisdiction has been exercised by OP No.2 after considerable delay since the

settlement is of the year 1959-60. A question of fact regarding the status of land as *anabadi* alleged to have been settled with the intermediaries was raised before O.P.No.2 after such a long lapse of time. The intermediaries sold the schedule land in 1962 and as pleaded, the vendees have had a partition among themselves and thereafter, it changed hands and finally reached to the Petitioner, who purchased the same vide Annexure-3,4 & 5. Not only that, in respect of the land to the tune of Ac.10.2 dec., proceedings under Section 36A of the OLR Act, 1960 were initiated in OLR Case No.1221 of 1976 and OLR Case No.572 of 1997, where after, the raiyats sold and taking into account the above facts and that the property mortgaged with the Land Development Bank, Puri was subsequently auctioned to different persons in E.P. Case No.1683 of 1984-85, the Court is of the considered view that the revisional jurisdiction after about 56 years ought not to have been exercised by O.P.No.2. As a writ court, it is required to consider the explanation offered for exercising such a jurisdiction. This Court is exercising an equitable jurisdiction, so to say. As a constitutional Court, it has a duty and obligation to protect the rights of the litigants and to strike a balance to ensure that injustice does not result. In the impugned order (Annexure-6), no satisfactory explanation has been indicated by O.P.No.2 for exercising the jurisdiction under Section 38-B of the OEA Act except by alleging that there has been illegality committed by the authority concerned in settling the land vide Nijdakhal Case No.480 of 1959-60 in favour of the intermediaries and according to the Court, that by itself cannot be treated as a just ground to interfere with the settlement. Apart from the above, the interests and rights of the Petitioner which have ripened ever since the ***W.P.(C) No.12026 of 2010***

purchases made vide Annexure-3,4&5 having derived it from a settlement of the year 1959-60 should have been taken note of by O.P.No.2 while taking a decision in respect thereof. In absence of any such consideration by O.P.No.2, the inevitable conclusion of the Court is that the impugned order under Annexure-6 vis-à-vis the Petitioner cannot be sustained.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order dated 17th August, 2009 (Annexure-6) passed in OEA Revision Case No.21 of 1998 by O.P.No.2 in exercise of jurisdiction under Section 38-B of the OEA Act is hereby set aside as against the Petitioner. Consequently, the order of status quo dated 3rd August, 2010 passed by this Court in M.C. No.11276 of 2010 is vacated.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

KC Bisoi/ Secretary