

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4843 of 2010

Tarun Kumar Rout

....

Petitioner

Mr. A.K. Sarangi, Advocate

-Versus-

State of Odisha and others

....

Opp. Parties

Mr. D.K. Mohanty, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:23.03.2022

R.K. Pattanaik, J

1. Impugned order dated 26th December, 2008 (Annexure-4) passed in OEA Revision Case No.110 of 2008 by the learned Member, Board of Revenue, Orissa, Cuttack (O.P.No.4) setting aside order (Annexure-1) of the learned OEA Collector-cum-Tahasildar, Sukinda (O.P.No.3) passed in OEA Misc. Case No.01 of 1983 has been questioned at the instance of the Petitioner on the grounds *inter alia* that it is untenable in law and therefore, liable to be quashed in exercise of extra-ordinary jurisdiction of this Court under Article(s) 226 and 227 of the Constitution of India, 1950.

2. As pleaded, the ex-Ruler of Sukinda estate had granted a lease in favour of the Petitioner's father of Ac.2.70 dec. of land in 1945 morefully described in the schedule for the purpose of cultivation. It is claimed that the father of the Petitioner possessed the schedule land and continued to cultivate it with payment of annual rent to the ex-Ruler. Then, it is further

pleaded that in the year 1952-53, the Sukinda estate stood vested in the State as per the provisions of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the OEA Act'). It is also claimed that after the death of father, the Petitioner resumed cultivation but later to the vesting, the revenue authority did not take any step to collect rent, but in the meanwhile, the OEA Collector-cum-Tahasildar, Sukinda in OEA Misc. Case No.01 of 1983 settled the tenancy in view of Section 8(1) of the OEA Act and consequently, passed an administrative order vide Annexure-1 and directed to realize all the arrear dues from him since the date of vesting. It has lastly been pleaded that O.P.No.4 without considering the rights of the Petitioner, who succeeded to the tenancy vis-à-vis the schedule land, set aside the above order by invoking revisional jurisdiction under Section 38-B of the OEA Act which is not at all sustainable in law.

3. Heard Mr. A.K. Sarangi, learned counsel for the petitioner and Mr. D.K. Mohanty, learned AGA appearing for the State.

4. Mr. A.K. Sarangi, learned counsel for the Petitioner would contend that O.P.No.4 miserably failed to examine and appreciate the material evidence in its proper perspective which ultimately led to the passing of the impugned order under Annexure-4. As per the contention, the raiyat interest was succeeded by the Petitioner, who continued to possess and cultivate the schedule land, the right, which was duly recognized by the O.P.No.3 under Annexure-1 by an administrative action and was never illegally settled. Mr. A.K. Sarangi placing reliance on copies of the rent receipts

(Annexure-2) contended that the Petitioner was in possession at the time of vesting of the estate in 1952-53 which simply received recognition vide Annexure-1 and it cannot therefore be treated as a settlement of the schedule land as has been erroneously concluded by O.P.No.4 under Annexure-4. It is at last contended that when creation of tenancy stands proved and also the possession by the raiyat and thereafter, the Petitioner being a tenant duly recognized in OEA Misc. Case No.01 of 1983, O.P.No.4 ought not to have unsettled it without properly appreciating the materials on record.

5. Per contra, Mr. D.K. Mohanty, learned AGA for the State justified the impugned order under Annexure-4 as in accordance with law by contending that O.P.No.4 did consider the circumstances leading to the unlawful settlement of the schedule land by O.P.No.3, who could not have usurped the jurisdiction, inasmuch as, the tenancy interest was only to be recognized by a legal fiction in the manner contemplated in Section 8(1) of the OEA Act.

6. O.P.No.3 is stated to have recognized tenancy with respect to the schedule land under Annexure-1, which, as per Mr. A.K. Sarangi, does not amount to any settlement but was merely declaring it so originally created in favour of the Petitioner's late father. The possession in respect of the schedule land is sought to be proved through Annexure-2. Mr. D.K. Mohanty, on the contrary, disputed the tenancy right for the reasons elaborately indicated in Annexure-4.

7. Pertinent question is, whether, O.P.No.4 rightly rejected the claim of the Petitioner in the facts and circumstances of the *W.P.(C) No.4843 of 2010*

case? In fact, O.P.No.4 entertained serious doubt regarding creation of tenancy by concluding that the report of the RI did not clearly reveal payment of rent in respect of the schedule land by the raiyat to the ex-intermediary continuously from the date of possession as against the fact that such payment was discontinued for about 30 years after the vesting. Again, according to O.P.No.4, no *ekpadia* or *Jamabandi* was filed by the ex-intermediary, as is mandated in order to recognize the tenancy rights in terms of Section 8(1) of the OEA Act.

8. Before delving into the subject matter in question, it is indeed profitable to quote the statement of object of the OEA Act which runs as follows:

“An act to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgages and leases such interest between the raiyat and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith.

Whereas in pursuance of the Directive Principles of State Policy laid down by the Constitution of India, it is incumbent on the State to secure economic justice for all and to that end, to secure the ownership and control of all material resources of the community so that they may best subserve the common good, and to prevent the concentration of wealth and means of production to the common detriment.

And whereas in order to enable the State to discharge the above obligation, it is expedient to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgages and leases of such interest, between the raiyat and the State of Orissa for vesting in the said State of the said rights, title and interest.”

The above is the intent and purpose of the OEA Act which was brought into force to achieve the stated objective.

9. Being conscious of the law and its objective reproduced herein above, this Court is to now requires to examine the legality and judicial propriety of the order under Annexure-1 passed by O.P.No.3 which has been nullified by OP No.4 vide Annexure-4.

10. Section 8(1) of the OEA Act deals with continuity of tenure of tenants, according to which, any person, who immediately before the vesting of an estate in the State Government was in possession of any holding as a tenant under the intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State Government and such person shall hold the land in the same right and subject to the same restrictions and liabilities as he was entitled or subject to immediately before the date of vesting. Sub-sections (2) and (3) of Section 8 of the OEA Act are in relation to the respective special rights vis-à-vis holdings possessed by persons as village servants and on account of personal service rendered by them.

11. On a bare reading of Section 8(1) of the OEA Act, it appears that there is no provision for application and any enquiry being contemplated which only by a deeming fiction declares the continuity of tenure of the tenant as it stood before the date of vesting. In other words, no application can be entertained for determination of tenancy rights under Section 8(1) of the OEA Act. Even, the OEA Collector does not have any jurisdiction to

adjudicate the competing claims under Section 8(1) of the OEA Act.

12. In *State of Orissa v. Brudaban Sharma 1995 Supp. (3) SCC 249*; *State of Orissa v. Harapriya Bisoi 2009 AIR SCW 4806*; and *State of Orissa v. Nityananda Satpathy and others 96 (2003) CLT 721*, it has been emphasized that Section 8(1) of the OEA Act makes no any provision for an application to be furnished and no enquiry is also contemplated which is a provision merely declaratory in nature on the continuity of the tenure of the tenants as it was held immediately before the date of vesting.

13. Admittedly, in the case at hand, after vesting, no rent was collected from the Petitioner, who claimed to possess the schedule land as a successor, he rather submitted an application in the year 1983 almost after 30 years since vesting of the estate for a declaration and settlement of tenancy right with a request to accept rent from him. In the considered opinion of the Court, after such a long lapse of time from the date of vesting, there was no scope for any inquiry by the OEA authority to determine, whether, the Petitioner's father and thereafter, himself were tenants, former being under the ex-intermediary and latter under the State post vesting. In fact, after vesting of the estate, the Tenants Ledger is opened to fix fair and equitable rent. The Petitioner has claimed that after vesting, the revenue authority did not take any attempt to collect rent which, therefore, compelled him to submit such an application under Section 8(1) of the OEA Act for realization of rent. Even though there is no such provision in Section 8(1) of the OEA

Act, application of the Petitioner was entertained and thereafter, O.P.No.3 apparently settled the schedule land under Annexure-1 which, according to this Court, was rightly set aside by OP No.4 exercising jurisdiction under Section 38-B of the OEA Act which empowers the authority either suo motu or on a report from the Collector to call for and examine the record of any proceeding in which the sub-ordinate authority made a decision or passed order under the said Act for the purpose of satisfying itself as to the regularity of such proceeding or correctness of such decision or order.

14. The estate of Sukinda was vested in 1952-53. In fact, the Petitioner was not required to make an application for recognizing their tenancy right. Rather, it was the duty of the OEA Collector-cum-Tahasildar, Sukinda to have the tenancy ledger prepared on the basis of records transferred by the ex-intermediary as per Section 5(j) of the OEA Act. According to OP No.4, all the tenanted lands of ex-estate were assessed to rent and in so far the Petitioner's case is concerned, it was held that the OEA authority did not have the authority to fix rent afresh which proved that it had not been assessed earlier. That apart, it was further held that such non-assessment is shown to have corroborated the fact that no *ekpadia* in respect of the schedule land was submitted by the ex-intermediary which again suggested that it had not been leased in favour of the Petitioner's father for any purpose of cultivation. Under the above circumstances, OP No.4 appears to have disbelieved the claim of obtaining a *Hatapatta* in respect of the case land and payment of *salami* to the ex-intermediary. The genuineness of the *Hatapatta* and claim of the Petitioner which was based

thereon was greatly doubted by OP No.4, besides, for the reason that almost after 30 years of vesting of the estate, the Petitioner approached the OEA authority. The authenticity and veracity of the documents, such as, *Hatapatta*, rent receipts etc. at such a belated stage, as according to OP No.4, was bound to be shrouded with suspicion. Apart from above, the OEA Collector-cum-Tahasildar, Sukinda is said to have received an undated application from the Petitioner who then called for an R.I. report and thereafter, issued general proclamation inviting objections and finally, settled the schedule land assessing rent, cess and *salami* recognizing him as a pre-vesting tenant which could have only been confirmed on the basis of the documents transferred by the ex-intermediary of the estate under Section 5(j) of the OEA Act and not otherwise, which finally prompted OP No.4 to hold that such settlement, if permitted to be accomplished would most likely to invite evil consequences and also not be in the public interest. It has also been concluded by OP No.4 that the Petitioner has had the only alternative to approach the civil court to establish his rights. In the aforesaid circumstances, it would not be incorrect to hold that the OEA Collector-cum-Tahasildar, Sukinda without being alive to the settled position of law entertained the application of the Petitioner and essentially settled the schedule land under Section 8(1) of the OEA Act which does not contemplate any such procedure, rather, it simply declares the continuity of tenure of the holdings by the tenants held immediately prior to the vesting duly confirmed by the OEA authority by taking up an administrative enquiry. In view of the above, the Court is not inclined to take a different view than the one expressed and

thus, arrives at a final conclusion that the impugned order under Annexure-4 does not deserve to be interfered with.

15. Accordingly, it is ordered.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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