

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.9615 of 2011*****Manjulata Das and others* *Petitioners******-versus-******State of Odisha and others* *Opposite Parties*****Appeared in this case:*****For the Petitioners* : Mr. N. K. Sahu, Advocate*****For the Opposite Parties* : Mr. Debakanta Mohanty,
Additional Government Advocate****CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK****JUDGMENT
11.05.2022****Dr. S. Muralidhar, CJ.**

1. The challenge in the present petition is to an order dated 17th August, 2009 passed by the Member, Board of Revenue (BoR), Orissa, Cuttack in OEA Revision Case No.11 of 2005 whereby orders dated 2nd January, 1985 of the Assistant Consolidation Officer-cum-Additional Tahasildar, Nimapara in OEA (L) Case No.367/1984-85 were quashed and it was directed that the suit land i.e. Ac.0.75 of Sabik Plot No.3217 of Sabik Khata No.67 of Mouza-Andhia should be recorded in favour of the State of Odisha free from all encumbrances. It was further directed that the

subsequent revision settlement Record of Rights (RoR) and thereafter the consolidation RoR, since published, should be corrected without any further proceeding and opening of any case record by the Tahasildar, Nimapara for bringing the land in question in the 'Anabadi Khata' of the State of Odisha.

2. It may be mentioned at the outset that while issuing notice in the present petition on 5th March 2012, status quo in respect of the property in question was asked to be maintained.

3. The ten Petitioners were Opposite Party Nos.2 to 11 in OEA Revision Case No.11 of 2005. Opposite Party No.6 i.e. Prakash Chandra Mohanty was Opposite Party No.12 before the BoR. Opposite Party No.7 i.e. Nabin Kumar Singhdeo was Opposite Party No.1 before the BoR.

4. The background facts are that the Sabik RoR of Mouza-Andhia was published in the year 1927-28. The Sabik Khata No.67 had land admeasuring Ac.13.07 in 57 plots. It was recorded in the name of Radha Prasad Bhagat, the ex-Intermediary of Kothadesi Estate and Babu Nalinikanta Mukharjee was the landlord. The land of Sabik Khata No.67 was recorded in favour of Laxmi Janardan Birasingha Mandhata on 'Stitiban Babat Nijjot' status.

5. One of the 57 Plots recorded in Sabik RoR of Khata No.67 was Plot No.3217 (Ac.0.75). The entire land of Sabik Khata No.67

was vested in the State of Orissa on 24th August, 1953 on abolition of the ex-Estate. Laxmi Janardan Birasingha Mandhata expired much before the date of vesting itself.

6. The claim of the Petitioners is that a rent was fixed at the rate of Rs.25 and 13 annas towards cess. It is claimed that in view of the fixation of rent and cess by the intermediary, the character of the property was that of a Stitiban private property of Laxmi Janardan Birasingha Mandhata from its inception. The absolute vesting of the above land in the State was under Sections 3 and 3(a) of the Orissa Estates Abolition Act, 1951 ('OEA Act').

7. Prakash Chandra Mohanty, Opposite Party No.6 filed a petition on 27th November, 1982 under the Orissa Government Land Settlement Act ('OGLS Act'), which was registered as Lease Case No.208 of 1982. This was objected to by Nabin Kumar Singhdeo, Opposite Party No.7 and came to be rejected by the Collector, Puri. However, in separate proceeding under the Orissa Land Reforms Act ('OLR Act') being OLR case No.57 of 1985 in the Court of Revenue Officer, Nimapara under Section 4(2) of the OLR Act, Opposite Party No.6 was declared as 'raiyat' of the land in question.

8. Meanwhile, Nabin Kumar Singhdeo, Opposite Party No.7 filed an undated claim petition in Court of the OEA Collector, Nimapara in Form-H under Rule 6 of the OEA Rules, 1952 for

settling the land of Ac.0.75 in Sabik Plot No.3217 in his favour under Sections 6 and 7 of the OEA Act.

Impugned order of the BoR

9. In the impugned order, the Member BoR noted that although Opposite Party No.7 Nabin Kumar Singhdeo was to submit information in Annexures-A and B, both of Form-H, he submitted the information in Annexure-A only. Annexure-B, which was meant for giving details of the land held by the claimant ex-Intermediary within the State of Orissa was to be provided in terms of Section 5(5) of the Orissa Tenancy Act, 1913 ('OT Act') read with Section 2(h) of the OEA Act, 1951. The land held by the ex-Intermediary and those to be settled should not exceed 33 acres. The Member, BoR inferred that Annexure-B was therefore deliberately not supplied by Opposite Party No.7 along with his claim to avoid the facts regarding the land held by him from emerging.

10. Nabin Kumar Singhdeo claimed that he was the successor-in-interest of Laxmi Janardan Birasingha Mandhata. The Member, BoR inferred that Nabin had gained over Pravakar Sahoo, the then Additional Tahasildar and on 2nd January, 1985 got orders in OEA (L) Case No.367 of 1984-85. He quickly sold the suit land in smaller pieces to the present Petitioners 1 to 10.

11. The Member, BoR in the impugned order noted that the statutory period for filing claims, after vesting of the land in the State of Odisha expired in 1977 itself. The OEA Collector thereafter had no authority to entertain any claim petition from the ex-Intermediaries. Nevertheless, not only was the above claim by Opposite Party No.7 entertained by the Tahasildar, but a favourable order was also passed on 2nd January, 1985.

Submissions of counsel for the Petitioners

12. Relying on a family tree, it is claimed by the Petitioners that Nabin Kumar Singhdeo was the sole successor of late Laxmi Janardan Birasingha Mandhata; that the land of Sabik Khata No.67 was recorded in favour of Laxmi Janardan Birasingha Mandhata on Stitiban Babat Nijjot in Sabik RoR. It was argued both before the Member, BoR as well as in this Court by Mr. N. K. Sahu, learned counsel for the Petitioners that the status of ‘Stitiban Babat Nijjot’ meant that the tenancy right acquired was of a permanent nature as laid down under Section 55 (a) of the OT Act. Reliance is placed on the following passage appearing in W.W. Dalziel’s Settlement Report in support of the proposition that a settled raiyat acquires an occupancy right that cannot be taken away by a subsequent vesting:

“When settled *raiyats* were found in occupation of *nijjote* lands and were not holding them on temporary leases they were recorded as having occupancy rights in those lands, as laid down in section 55(a). The status is *Sthitiban babat nijjote*, or if the tenant is not a settled *raiyat*, *dakhal satwa bisishtha babat nijjote*.”

13. Reference is made to Section 23 (1) of the OT Act, which defines the term ‘settled raiyat’ as under:

“(1) Every person who, for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, where under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.”

14. Reference is made also to Section 24 of the OT Act regarding settled raiyats having occupancy right. The said provision reads as under:

“Section 24-Settled raiyats to have occupancy right. –

(1) Every person who is a settled raiyat of a village within the meaning of Section 23 shall have a right of occupancy in all land for the time being held by him as a raiyat in that village;

(2) Every person who, being a settled raiyat of a village within the meaning of Section 23 held land as a raiyat in that village at any time between the tenth day of September, 1891 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in the subsection shall effect any decree or order passed by a Court before the commencement of this Act.”

15. The Petitioners’ claim is that their vendor was the *stitiban* tenant, who kept paying rent to the State till he sold the property to the Petitioners. The Petitioners in turn now claim to be paying rent to the State.

16. One of the main submissions of Mr. Sahu, learned counsel for the Petitioners, is that occupancy right once created is heritable in accordance with general rule of succession. In the present case, it is submitted that after Laxmi Janardan Birasingha Mandhata, who died issueless, it was Nabin Kumar Singhdeo, who was the surviving heir and had a right to succeed as a *stitiban* tenant. It is further contended that the land in question cannot be termed as 'Communal land' in terms of Section 2 of the Orissa Communal Forests and Private Lands (Prohibition of Alienation) Act, 1948.

17. It is submitted that the order passed by the Consolidation Authority exercising powers of the Civil Court declaring the occupancy rights to the Petitioners over the land in question cannot be upset by the Member, BoR, who has no jurisdiction to touch that order. Reliance is placed on the decision of this Court in *Krupasindhu Mishra v. Gobinda Chandra Misra, Vol.50, (1980) CLT 393*. It is further claimed that in view of the fixation of rent and cess by the Intermediary, the character of the property was undoubtedly *stitiban* property of Laxmi Janardan Birasingha Mandhata from the very inception.

Submissions of counsel for the Opposite Parties

18. On the other hand, it has been pointed out by Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) for the State that as rightly noted by the Member, BoR, the RoR of the Sabik Khata No.67 recorded as 'Stitiban Babat Nijjot' was the

private land of the ex-Intermediary. On vesting of the land on abolition of the ex-Estate, the concerned ex-Intermediary was required to file claims for settlement of such land either under Section 6 or Section 7 of the OEA Act within the statutory period prescribed thereunder. This period had been extended from time to time till 1977. However, within that period, no such claim was filed by the ex-Intermediary and definitely not in respect of the Sabik Plot No.3217 (Ac.0.75).

Analysis and reasons

19. The above submissions have been considered. The entire claim of the Petitioners that their vendor was a successor-in-interest of late Laxmi Janardan Birasingha Mandhata, has not been supported by any document whatsoever. Such a claim could have been decided only by the Civil Court.

20. In the present case, no such attempt has been made by the vendor of the Petitioners to get his status vis-à-vis Laxmi Janardan Birasingha Mandhata declared by a Civil Court. The above submission of the Petitioners stems from the claim that after the branch of Dhanurjaya Birsingh Mandhata became extinct, the property left that branch devolved upon the immediate survivors i.e. the branch of Abhiram Rayatsingh by operation of the Section 6 of the Hindu Succession Act, 1956. All such claims could have been settled only in a Civil Court and not before Consolidation Officer. To that extent, no fault can be found with

the Member, BoR in concluding that the succession question could have been decided only by a Civil Court.

21. It is in fact surprising that the successor of Laxmi Janardan Birasingha Mandhata did not claim the entire Ac.13.07 of land of the Sabik Khata No.67, but only a small portion of Ac.0.75 in Sabik Plot No.3217. This has not been able to be satisfactorily explained by the Petitioners.

22. The validity of the order dated 2nd January, 1985 of the Additional Tahasildar, Nimapara in OEA (L) Case No.367 of 1984-85 has also not been able to be justified by the Petitioners. How could the Additional Tahasildar have entertained such a claim, eight years after 1977, is not clear.

23. The answer to the Petitioners repeated claim that the impugned order seeks to reopen a settled position nearly 20 years after the order of the Additional Tahasildar has been correctly answered by the Member, BoR by pointing out that under Section 5 of the OEA Act, the vesting of the State Government of lands of all ex-Intermediaries was absolute. The detailed procedure as a consequence of the application of Section 5 (j) of the OEA Act has been explained in very clear terms by the Member, BoR. A Tenants' Ledger had to be opened which would record the list of tenants, the details of the land held and the annual rent payable by each under the ex-Estate. Even that does not appear to be

happened in the instant case. With this procedure already envisaged under Section 5 (j) of the OEA Act, there was no occasion to call for or collect applications from tenants for recognizing their tenancy or adjudicating their rights under Section 8 (1) of the OEA Act. The entire exercise undertaken by the Tahasildar in the present case appears to have been without jurisdiction.

24. In this context, the following passage in the impugned order of the Member, BoR correctly captures the legal position:

“19. There is no need to entertain any application claiming the tenancy rights on ex-Estate land or having received such an application to adjudicate on it by inviting objections from others. Or call for or entertain the report of R.I. or Amin. Any action by the OEA Collector-cum-Tahasildar to entertain such an application or report for recognizing or incorporating the tenancy rights on a piece of ex-Estate land and inviting the objection or seeking/collecting the field enquiry report of Revenue Inspector or Amin or himself conducting an enquiry by recording oral evidences or otherwise, would amount to adjudicating the matter. OEA Collector-cum-Tahasildars are not vested under the OEA Act any jurisdiction to do so. The settlement or consolidation authorities too do not have such jurisdiction.”

25. In the present case, no *Ekpadia* of the suit land was submitted by the ex-Intermediary. This only meant that he had not settled a lease or transferred the land in favour of anyone. The Member, BoR has correctly questioned Opposite Party No.7 in staking a claim 56 years after the vesting of the land and not doing anything

prior thereto. As pointed out by the Member, BoR in the impugned order, Section 55 (a) of the OT Act makes it clear that no occupancy rights can be acquired in the land recorded as 'Nijot'.

26. The commentary by W.W.Dalziel explained 'Stitiban Babata Nijot' as a long-term occupancy right granted by an ex-Intermediary on his personal land. If the ex-Estate itself stood abolished on being vested in the State clearly the status of 'Stitiban Babat Nijot' would also come to an end since the vesting is free from all encumbrances. If indeed the occupancy right survives such vesting, then the only procedure envisaged was opening of the Tenants' Ledger by submitting *Ekpadia* to the Government by the ex-Intermediary. This was not shown to have happened. The facts remains that no Tenants' Ledger was opened in the Tahasildar Office in favour of anyone.

27. Here again, the Member, BoR has correctly summarized the entire legal position as under:

"24. The occupancy and the "occupancy rights" of Laxmi Janardan Birasingh Manadhata, both, had terminated on the date of his death. Due to which, the status of the entire land of Sabik Khata No.67, including the suit land, got changed from "Stitiban Babat Nijot" to "Nijjot". It had become the unencumbered personal property of the ex-Intermediary. This change in status had occurred on the date of death of Laxmi Janardan Birsingh Manadhata. Which was prior to the vesting of the ex-Estate. Therefore, the entire land of Sabik Khata No.67 (which included the suit land) had vested in the State of Orissa free from all the

encumbrances. Only the ex-Intermediary was entitled, on filing the claim in time, for the settlement of suit land under section 7 of the OEA Act, subject to his 'khas possession' on the date of vesting, and subject to the holding of the ex-Intermediary not exceeding 33 acres of land after the settlement. The "occupancy rights" in the land of Sabik khata No.67 were lost on the death of Laxmi Janardan Birasingh Mandhata. It can not be inherited. It can not be claimed by any body at this stage. No such claim can be allowed also.”

28. The Court now proposes to discuss the case law cited by Mr. Sahu. What was decided in ***Krupasindhu Mishra*** (*supra*) by the Full Bench was essentially whether the service of notice in terms of the proviso to Section 8(A) of the OEA Act was mandatory or directory? It was held that if the statutory provision was not complied with, there was no bar for maintaining a civil suit to examine the validity of the decision of the OEA Collector. The facts in the present case are entirely different. There was no *Ekpadia* submitted by the ex-Intermediary as required under the OEA Act within the time stipulated for laying such claim. There was no civil suit filed for declaring the inheritance of the vendor of the present Petitioners. Consequently, the above decision is of no assistance whatsoever to the Petitioners.

29. On the question whether the decision of the authority under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 can be overturned by the Member, BoR, reliance was placed on the decision in ***Bhaskar Swain v. Commissioner of Consolidation, 1993 (I) OLR 153.***

Here again, the only question decided is when chakas land already settled by the OEA Collector, is re-allocated to another intermediary, a Civil Court can consider whether the occupancy right would remain unaffected? That was answered in the affirmative. That question does not arise here at all. The original order passed by the Additional Tahasildar under the OEA Act was itself without jurisdiction and was rightly interfered with by the Member, BoR.

30. The decision in *Jairam Samantray v. Baikuntha Samantaray, 1991 (I) OLR 29* was relied on by Mr. Sahu to contend that consolidation authorities can decide the question of status as well. In the present case, the consolidation authority's order does not deal with the issue of status of adoption of Narayan Chandra Singhdeo as claimed by the Petitioners. Consequently, that decision is also of no assistance to the Petitioners.

31. Likewise, the decision in *Motwali Sk. Kausar v. State of Orissa, 63 (1987) C.L.T. 526* is also of no assistance. There, it was held on facts that the order of the Tahasildar was under the lease principles and not under the OEA Act and, therefore, Section 38-B of the OEA Act would have no application. In the present case, however, the order of the Additional Tahasildar was in fact under the OEA Act and therefore, there was no question of lack of jurisdiction as far as the Member, BoR is concerned. The said decision is also, therefore, of no assistance.

32. A careful perusal of the order passed by the Consolidation Officer in favour of the vendor of the present Petitioners i.e. Nabin Kumar Singhdeo (Opposite Party No.7) reveals that the objector had prayed for recording the suit land in his favour “on the strength of the result of the OEA (L) Case No.367 of 1984-85.” Therefore, there was a direct linkage between the proceedings under the Consolidation Act and the order passed by the Additional Tahasildar in OEA (L) Case No.367 of 1984-85. It is futile therefore to contend that the order of the Tahasildar was not under the OEA Act. If that order was itself of doubtful validity, then no advantage can be taken by the Petitioners of the subsequent order of the Consolidation Officer.

33. For all of the aforementioned reasons, the Court finds no error having been committed by the Member, BoR in passing the impugned order. The petition is without merit and it is dismissed as such. The interim order passed earlier stands vacated.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda