

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7821 of 2006

***Sri Sri Raghunath Jew Bijee at
Jaunli Pokhari Matha, Dhenkanal*** ***Petitioner***
Mr. H.N. Mohapatra, Advocate

-Versus-

State of Odisha and others ***....*** ***Opp. Parties***
Mr. D.K. Mohanty, AGA
Mr. Srinivas Mishra-2, Advocate for OP Nos.6 and 7

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

DATE OF JUDGMENT :21.05.2022

R.K. Pattanaik, J

1. Present writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 is at the instance of the Petitioner, namely, the deity challenging the impugned order dated 14th October, 2001 passed in OEA Case No.14 of 1991 by the Tahasilar, Kamakhyanagar (OP No.4) on the grounds *inter alia* that the settlement of the schedule land in favour of OP Nos.6 and 7 is not sustainable as it was not made a party therein and such settlement was accomplished illegally with an intention to grab the property in question.

2. According to the Petitioner, the deity is managed by the local trustee under the supervision of the Executive Officer appointed by the Commissioner of Endowments, Orissa, Bhubaneswar. The contention of the Petitioner is that Plot Nos.1503 and 1504 under

Khata No.8 measuring Ac.13.15 decimals under Kamakhyanagar Tahasil, Dist. Dhenkanal was recorded with the deity in Sabik RoR of 1923-24 and subsequently under Hal Khata No.199 of Plot Nos.1332, 1333, 1347, 2517 and 2518 measuring an area of Ac.12.77 decimals and the status of the land was *bebandobasti* since rent had not been fixed. The Petitioner claimed that it had filed an application vide OEA Case No.117 of 1980 before the court of OEA Tribunal-cum-Additional Sub-Judge, Dhenkanal to declare the land in question as a trust estate and by order dated 28th February, 1988, the same was so declared, however, OP Nos.6 and 7 by fraudulent means managed to obtain the record of right in respect of the schedule land vide Khata No.179/49. In fact, as is contended by the Petitioner, OP Nos.6 and 7 filed OEA Case No.14 of 1991 and obtained the settlement with a favourable report of the R.I., namely, OP No.5 and without general notice, it was stage managed, which was again in its absence and therefore, considering the above facts and the fact that pendency of OEA Case No.218 of 2001 was not informed to OP No.3 which finally resulted in approval of the land settled, the impugned order dated 14th October, 2001 is required to be interfered with.

3. OP Nos.6 and 7 justified the settlement of the schedule land by OP No.3 in OEA Case No.14 of 2001 on the ground that it was made under the circular of the Government of Orissa in Revenue Department dated 6th December, 2000 since the same was in *bebandobasti* status and hence, it calls for no interference as due process was followed.

4. Heard Mr. H.N. Mohapatra, learned counsel for the Petitioner; Mr. D.K. Mohanty, learned AGA for OP Nos.1 to 5 and Mr. Srinivas Mishra-2, learned counsel for OP Nos.6 and 7.

5. The Petitioner relied upon copies of the Sabik and Hal RORs as Annexure-1 and 2 respectively and order dated 26th February, 1988 (Annexure-3) passed in OEA Case No.117 of 1980 whereby the schedule land and other properties of the deity have been declared as trust estate. The Petitioner's contention is that OP Nos.6 and 7 fraudulently managed to obtain the record of right jointly in their names in respect of the schedule land, which on inquiry, was ascertained that the settlement was managed in connivance with OP Nos.4 and 5. It is further contended that there was no public notice though it was shown on record to be so and that apart, the Petitioner was not made a party besides the fact that pendency of OEA Case No.218 of 2001 was not brought to the notice of OP No.3, who approved the settlement at last. Hence, it is urged by the Petitioner that the impugned order dated 14th October, 2001 by OP No.4 in OEA Case No.14 of 1991 deserves to be set aside.

6. In fact, the Petitioner filed an appeal under Section 9 of the OEA Act against the settlement made in favour of OP Nos.6 and 7 vide OEA Appeal No.6 of 2002, in which, a preliminary objection was raised regarding its maintainability with reference to the circular of the Government dated 6th December, 2000. The said objection was rejected by the Additional District Magistrate, Dhenkanal by order dated 9th March, 2004 which was challenged

by OP Nos.6 and 7 in W.P.(C) No.6554 of 2004 which was allowed with a conclusion that though Clause XXIII of the above Government's circular 2000 was not applicable nevertheless the appeal would not be maintainable and such a finding was with reference to proviso of Section 8(3) of the OEA Act carrying a direction that the aggrieved party may challenge the settlement as per the remedy available under law.

7. In that connection, this Court referred to a decision in the case of *Smt. Basanta Kumari Dei v. Smt. Krushnapriya Devi & others (2007) 103 CLT 183*, wherein, it was held that appeal under Section 9 of the OEA Act would not lie against an order in a *suo motu bebandobasti* proceeding initiated on the basis of a Government circular in respect of a land covered under the proviso to Section 8(3) of the OEA Act. In the decision (supra), due to absence of public notice, the Court set aside the settlement thereby restoring the case for a fresh decision with a direction that any person aggrieved by the order passed by therein shall be at liberty to approach the common law forum seeking appropriate remedy.

8. As to the present case, the Petitioner alleged that the settlement of the schedule land to be a product of fraud managed by OP Nos.6 and 7 in connivance of the local revenue authorities. It is also alleged that no public notice was issued and pendency of OEA Case No.218 of 2001 was not even informed to OP No.3, who finally approved the settlement on 22nd October, 2002 and therefore, the impugned order dated 14th October, 2001 in OEA Case No.14 of 1991 is indefensible. It is alleged that the RI
W.P.(C) No.7821 of 2006

report was illegally obtained and thereafter, the settlement was managed in respect of the schedule land and consequently, OEA Case No.14 of 1991 was disposed of which was without the knowledge of the Petitioner, who is indeed a necessary party.

9. Having regard to the decision in W.P.(C) No.6554 of 2004 disposed of on 20th May, 2022 and considering the fact that in OEA Case No.14 of 1991, the Petitioner was not made a party before the schedule land was settled with OP Nos.6 and 7, the Court is of the considered view that the matter should be remanded for a fresh adjudication by OP No.3. In the considered view of the Court, such a decision would really serve the purpose and meet the ends of justice having regard to the fact that the Petitioner's interest would otherwise be affected, if it is not provided an opportunity of hearing. Though from the impugned order dated 14th August, 2001, it is made to suggest that there was a local enquiry and report submitted by the RI dated 10th October, 2000, the question of having invited public objection or otherwise before settlement was allowed requires an enquiry. Not only that, OP No.3 would also have to examine, whether, such settlement is permitted in terms of the Government's circular dated 6th December, 2000, as the real purpose and objective of the settlement was to collect rent from the lands recorded in *bebandobasti* status by settling it in favour of the persons of the categories mentioned therein who are found to be in possession of the lands since the date of vesting. In view of the above, the Court is inclined to set aside the settlement made in favour of OP Nos.6 and 7 and accordingly, it is ordered.

10. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order dated 14th August, 2001 passed in OEA Case No.14 of 1991 is hereby set aside and the matter is remanded back to OP No.3 to freshly examine it by providing opportunity of hearing to the parties, who are to submit their respective claims with all documents in support thereof, considering which, it shall be disposed of as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of the above order and in any case not later than 31st August, 2022 and in the event of anyone being aggrieved of the decision, it would be open to the party concerned to seek appropriate remedy in accordance with law.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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