

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. Nos.3778, 3779, 3780, 3781 & 3782 of 1997

***Gobinda Chandra Patra and
another***

....

Petitioners

Mr. P.K. Rath-1, Advocate

-Versus-

Sada Rout (dead) and others

....

Opp. Parties

Mr. M.K. Khuntia, AGA

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

**ORDER
28.02.2022**

Order No.

R.K.Pattanaik, J

17. 1. Above writ petitions under Article(s) 226 and 227 of the Constitution of India have been filed by the Petitioners questioning the correctness and legality of the impugned orders passed by O.P.Nos.4, 5 and 9 vis-à-vis the case land under the Orissa Government Land Settlement Act, 1962 (in short 'the OGLS Act') on the grounds inter alia that they are having tenancy rights over the same and to be in continuous possession since 1944 and therefore, the State had no authority to lease it out in favour of the private opposite parties vide Lease Case Nos.230, 231, 232, 233 and 234/82 which is untenable in law and therefore, are liable to be quashed.
2. The Petitioners claimed to be in possession of the case land as tenants but as it is made to understand, O.P.No.9

granted lease of the same in favour of private opposite parties involving Plot Nos.1689, 2306 and 2590 of Khata No.16. Briefly stated, the Petitioners contend that their late father was a settled raiyat and he was granted a permanent lease of Ac.2.74 dec. of land on 21st May, 1944 by the then ex-intermediary for agricultural purpose and accordingly, ROR was prepared and after vesting of the estate in the State in 1958 under OEA Act 1951, *ekpadia* was duly furnished, whereupon, *Jamabandi* was prepared and Tenancy Ledger was opened in recognition of his *raiya* right and ever since then, they have been in possession and paying rent to the State and while matter stood thus, the leases were granted by O.P.No.9 illegally taking into account extraneous considerations which was challenged under Section 7(3) of the OGLS Act vide Lease Appeal Case Nos.5 to 9 of 1983, however, the Sub-Collector, Puri (O.P.No.6) dismissed it, where after, OEA Revision Case Nos.2 to 6 of 1988 were filed. Further contended that as against the aforesaid decisions, the Petitioners approached O.P.No.4 under Section 38-B of the OEA Act to accept and recognize their tenancy rights challenging the leases granted by O.P.No.9 which, however, did not find favour with and resulted in dismissal on the solitary ground of jurisdiction.

3. Heard Mr. P.K. Rath-1, learned counsel for the Petitioners, Mr. D. Mohanty, learned AGA for the State and Mr. M.K. Mohanty, learned counsel for the private opposite parties.

4. Out of total Ac.2.74 dec. of land, only Ac.0.195 dec. stands recorded in the name of the Petitioners and rest Ac.0.80 dec. is the subject matter in dispute which is alleged to have been illegally lease out in favour of private opposite parties by O.P.No.9 under OGLS Act which was confirmed in appeals and revisions and finally by O.P.No.1 on the ground of lack of jurisdiction under Section 38-B of the OEA Act and according to the Petitioners, it was notwithstanding the fact that O.P.No.1 does have the authority as no bar lies nor limitation intervenes and since the jurisdiction of civil court stands clearly excluded to examine such matter and in view fact that consolidation authorities are bound by the orders passed under OLR Act and could not have entertained the dispute under Section 37 of Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972 for correction of the ROR, and therefore, O.P.No.1 ought not to have declined to exercise the jurisdiction to set aside the leases granted by O.P.No.9 which even did not receive the confirmation and approval as is required under law.

5. Mr. D. Mohanty, learned Additional Government Advocate contended that the records were perused by the authorities concerned and considering the claim of the Petitioners to be based on an unregistered *patta*, noticed some interpolations in the description of the case land and therefore, reliance was not placed with reference to the claim vis-à-vis Plot No.2590 measuring Ac.0.80 dec. which has therefore rightly been leased out in favour of the private opposite parties and hence, it calls for no interference.

6. Reference is made to Annexure-1 and 2 by contending that it has been prepared pursuant to the *patta* issued by the ex-intermediary and later to the submission of *ekpadia* indicating the Petitioner's father as the tenant based upon which Tenancy Ledger was opened as per Section 8 of the OEA Act. The aforesaid permanent lease, according to the learned counsel for the Petitioners, included Plot No.2590 but it was not duly examined by the concerned authorities even by O.P.No.4, who rather expressed inability to exercise the jurisdiction on the ground that it cannot be examined when the leases have been granted under the OGLS Act.

7. The claim of the Petitioners was not accepted by the fact-finding authorities. Admittedly, the leases granted in favour private opposite parties were challenged in Lease Appeal Nos.5 to 9 of 1983 and was confined to Plot No.2590 but then, it was found that there were some interpolations in the description of land in the *patta* which is essentially a question of fact for determination. There is no denial to the fact that the case land was leased out in favour of private opposite parties which was challenged on the premise that it was under Holding No.279 and part of the estate originally belonged to the ex-intermediary and others and subsequently vested in the State in 1958. The contention is that being a tenant under the ex-intermediary on account of a permanent lease granted in favour of the lessee which included Plot No.2590 and continuation of it even after vesting was disbelieved mainly for the reason that the *patta* in question was found to have some interpolations. Taking cognizance of

the aforesaid fact, the claim of the Petitioners was discarded and leases were upheld in appeals though later confirmed in revisions on a plea of want of jurisdiction.

8. Irrespective of the ground of rejection by O.P.No.4, and having regard to the fact that the decision is entirely based on the fact regarding inclusion of Plot No.2590 or otherwise which according to the appellate authority could not be disbelieved due to interpolations being noticed in the alleged *patta*, this Court is not inclined to take a different view to accept the contention of the Petitioners. In other words, without further deliberation, regard being had to the fact finding decision and leases being of the year 1983, the Court is unable to persuade itself to interfere with the findings reached at in Lease Appeal Nos. 5 to 9 of 1983.

9. Accordingly, it is ordered.

10. In the result, the writ petitions stand dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice