

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.10585 of 2004 & 3082 of 2005

Mohammad Abdus Samad

Petitioner
....
Mr. M.C. Jena, Advocate

-Versus-

***Member, Board of Revenue,
Orissa, Cuttack and others***

Opp. Parties
....

Mr. D. Mohanty, AGA

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

**ORDER
21.02.2022**

Order No.

R.K.Pattanaik, J

09. 1. In the instant case, the Petitioner has filed W.P.(C) No. 10585 of 2004 assailing the legality and juridical propriety of the impugned order dated 28th March, 2004 (Annexure-9) passed by O.P.No.1 in OEA Revision Case No.158 of 2000 under Section 38-B of the Orissa Estates Abolition Act, 1951 (here-in-after referred to as 'the OEA Act') on the grounds inter alia that it is illegal, arbitrary and without authority rendered by taking into account irrelevant and extraneous considerations and thus, liable to be quashed.
2. Whereas in W.P.(C) No. 3082 of 2005, the Petitioner has challenged the impugned order dated 6th January, 2005 (Annexure-14) passed in Settlement Revision Petition No.252 of 2004 by the Joint Commissioner of Settlement and

Consolidation, Sambalpur (O.P.No.2); consequential order dated 13th January, 2005 (Annexure-15) of the learned Additional Tahasildar, Sambalpur (O.P.No.4) pursuant to the direction in Settlement Revision Petition No.252 of 2004 filed under Section 15(b) of the Orissa Survey and Settlement Act, 1958; and the record of rights dated 09.02.2005(Anexure-16 series) on the ground that the jurisdiction was exercised by O.P. No. 2 arbitrarily without taking cognizance of the material facts.

3. In fact, W.P.(C) No. 3082 of 2005 is in relation to orders of the settlement authorities vis-à-vis the correction of record of rights in pursuance of order in Settlement Revision Petition No. 252 of 2004 filed at the instance of O.P.No.5 to 7, the outcome of which, shall be dependent on the result in W.P.(C) No. 10585 of 2004.

4. Jurisdiction under Section 38-B of the OEA Act was exercised by O.P.No.2 on account of irregularities noticed in the OEA records and as vital documents also required a detailed examination and consequently, a de novo enquiry was ordered with a remand which is being questioned by the Petitioner on the ground that the OEA proceedings, since reached its finality, such a direction could not have been made.

5. Briefly stated, the Petitioner claimed that the properties in question were initially leased out in 1904 and 1908 under two separate registered deeds in favour of his grandfather, who was, accordingly, recorded as the hereditary tenant in Hamid

settlement of 1925. It is further claimed that the Trustee appointed in respect of the deity (O.P.No.2) under the Orissa Hindu Religious Endowments Act, 1951 (in short 'the OHRE Act') moved the Assistant Endowment Commissioner, Orissa, Cuttack for restoration of the properties in terms of Section 68 of the OHRE Act but the same was dismissed on contest by order dated 6th August, 1962 (Annexure-1) and it was not challenged. Furthermore, as per the Petitioner, the properties vested in the State after notification under Section 3-A (1) of the OEA Act dated 1st October, 1964 and perpetual annuity was ordered in favour of the deity. In the meanwhile, according to the Petitioner, an application under Section 25 of the OHRE Act was moved before the Commissioner of Endowments for obtaining possession of disputed properties and soon thereafter, a claim under Section 13-D was submitted which was ultimately rejected as time barred by order dated 27.1.1967 (Annexure-2). As further made to reveal, in respect of *maufi* lands, proceeding in Revenue Case No. 136 of 1965-66 was initiated under Section(s) 6 & 7 of the OEA Act, however, the same stood terminated by order dated 25.06.1971(Annexure-3). It is further revealed that against the order of Commissioner of Endowments under Section 25 of the OHRE Act, the Petitioner approached this Court in OJC No. 421 of 1970, wherein, vide Annexure-4, order dated 18th April, 1970 passed in O.P. No. 662 of 1996 was quashed against which SLP (Civil) No.646 of 1973 was filed before the Supreme Court of India which was disposed of by order dated 6th September, 1973 leaving open the question as to the rights

of the deity whether to have been extinguished under the OHRE Act and as a consequence, the deity moved an application under Section 41(d) of the OHRE Act in O.A. No. 41 of 1978 for a declaration that the disputed properties belong to the deity but during its pendency, the record of rights (Annexure-6 series) were prepared and published in favour of the Petitioner and others as per the Orissa Survey and Settlement Act, 1958 and the Rules. As to O.A. No. 41 of 1978, it is made to suggest that the same was disposed of on 21.02.1983 and allowed in favour of the deity with a finding that the properties are religious endowments however being aggrieved, the Petitioner and others preferred appeal in F.A. No. 8 of 1983 which was allowed on the ground that after vesting since no application was filed on behalf of the deity, it was no longer open for the deity to assert any interest thereon as a *stitiban* raiyat and claim consequential benefits. The dispute was further carried in appeal in M.A. No. 92 of 1987 which was dismissed by order dated 10.02.1993 (Annexure-7) which was again assailed in SLP (C) No.8696 of 1994 before the Supreme Court of India but it too ended in dismissal vide Annexure-8. Against the above backdrop, the deity finally knocked the doors of OP No.1 under Section 38-B of the OEA Act which ultimately resulted in passing of the impugned order under Annexure-9. The Petitioner while questioning the correctness of the order under challenge contended that after so many rounds of litigation with results against the deity, OP No.1 could not have directed remand for a de novo enquiry without taking note of the relevant facts on record.

6. Heard Mr. M.C. Jena, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned AGA for the State.

7. Mr. M.C. Jena would contend that the leases were granted in the year 1904 and 1908 under validly executed registered deeds and after vesting, the deity since failed to get the disputed properties settled under Section(s) 6 & 7 of the OEA Act in its favour and as the orders of the OEA authorities received finality which was also taken note of in OJC No.421 of 1970, the fact which could not have been ignored and also the subsequent developments by OP No.1, while directing remand under Annexure-9.

8. Mr. D.K. Mohanty, learned AGA, on the other hand, contended that since the rights of the deity is involved, in the facts and circumstances of the case, the order of remand vide Annexure-9 for a detailed and fresh enquiry directed by OP No.1 cannot be said to be erroneous.

9. It is claimed that the leases are of 1904 and 1908, where under, the properties of the deity were disposed, later to which, occupancy right is stated to have been recognized and when, it subsequently vested in the State, rents were paid directly to the State. The Petitioner's contention is that as the disputed properties could not be settled with the deity as per Section(s) 6 & 7 of the OEA Act, the intermediary interest stood ceased. Further contention is that with regard to the rights of the Petitioner vis-à-vis the subject matter in question, it was acquired long back under the leases and his predecessor-

in-interest was recognized as a tenant in Hamid settlement and as the deity failed to have it settled under Section(s) 6 & 7 of the OEA Act, the tenants in succession became the tenants under the State and in the above circumstances, OP No.1 committed a serious error with a direction for a fresh enquiry under Annexure-9.

10. Mr. M.C. Jena, learned counsel for the Petitioner also contended that there was absolutely no reason much less convincing for OP No.1 to order remand vide Annexure-9 exercising jurisdiction under Section 38-B of the OEA Act morefully when the proceeding was set in motion almost after 29 years from the date of order in Annexure-3.

11. As such, Section 38-B of the OEA Act is a revisional power which may be exercised by the Board of Revenue for which no limitation is prescribed, the purpose being to satisfy as to the regularity of any such proceeding or correctness of any decision or order and consequently to modify, annul, reverse or remit. In the present case, no doubt after about 15 years of the appellate order, the revisional jurisdiction has been exercised by OP No.1 but in the peculiar facts and circumstances of the case, it may not be said to be unreasonable particularly considering the rights of the deity, a question which was left undetermined in Annexure-5.

12. In fact, on the strength of leases, the interest is said to have been acquired by the predecessor-in-interest of the Petitioner as against the fact that no any settlement of the

disputed properties under Section(s) 6 & 7 of the OEA Act could be achieved in favour of the deity. On a bare perusal of the impugned order i.e. Annexure-9, it is made to appear that the deity when had approached the OEA authority under Section(s) 6 & 7 of the OEA Act in OEA Case No.136 of 1965-66 after vesting pursuant to the notification under Section 3-A of the OEA Act by the then Trustee, the OEA Collector without an elaborate discussion and enquiry merely referring to a report of the R.I. dated 28th November, 1970 dropped the proceeding with an observation that the subject does not come within the purview of the OEA Act which was, thereafter, challenged in OEA Appeal No.86 of 1971 but it stood abated on the demise of the Trustee without any decision on merits, as no one was substituted to represent the interest of the deity. As to the order under Section 25 of the OHRE Act, though it was challenged at the behest of the deity but the attempt was unsuccessful in view of the fact that the disputed properties had not been settled with the deity under Section(s) 6 & 7 of the OEA Act and therefore, it was held that the Commissioner of Endowments could not have usurped the jurisdiction. As earlier mentioned, the interest of the deity vis-à-vis the disputed properties and its determination was left open under Annexure-5. Having narrated the major facts on record, it is realized that the rights of the Petitioner depends on the validity of the leases and also interest of the deity with respect to the disputed properties which was sought to be ensured under Section(s) 6&7 of the OEA Act and admittedly, no decision thereon could be rendered for the appeal having

untimely abated. The actions of the authorities under the OHRE Act were nullified at all levels since it was against the background of dropping of the proceeding initiated under Section(s) 6&7 of the OEA Act and abatement of appeal and obviously for want of authority to exercise under the OHRE Act. Essentially, the interest of the deity over and in respect of the disputed properties remained untouched and was apparently saved for a decision on merit in view of Annexure-5 which finally emerged for adjudication in the impugned proceeding, during which, O.P.No.1 since realized and noticed several irregularities in OEA records directed its remand for a de novo enquiry against the setting that the final RoR of 1925 was recorded in the name of the deity as '*Lambardar Gountia*' and since doubt loomed large as to the genuineness of the leases since it were executed by a *Marfatdar* and also against the claim that the properties had been exclusively recorded with the deity in Hamid settlement and the fact that the State Government recognized it as trust estate. Even though the OHRE Act was not in place by 1904 and 1908 when the alleged leases were executed but that by itself does not obviate the obligation to ensure disposal of disputed properties for the benefit of the deity and that too when, the leases were granted by a *Marfatdar*. So, for a proper and effective decision on the rival claims, O.P.No.2 did take a cautious approach considering the deity's interest over the properties in question which, in the opinion of the Court, cannot be said as unjustified.

13. In view of the above, the Court arrives at a logical conclusion that the impugned order under Annexure-9 does not suffer from any serious illegality and therefore, it calls for no interference. As to W.P.(C) No. 3082 of 2005, the Court is of the considered view that till the rights of the respective parties stand finally adjudicated upon and determined in the OEA proceeding restored on remand, the record of rights so corrected pursuant to the order in Annexure-14 keeping the subject under 'Bebandobast' status ought not to be disturbed and accordingly, it is directed.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

T.TUDU