

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No.97 of 2012

State of Odisha and another

Petitioners

Mr. D. Nayak, AGA

-Versus-

Nilambar Patree

Opposite Party

Ms. S. Mohanty, Advocate

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

**ORDER
08.08.2022**

Order No.

R.K. Pattanaik, J

Misc. Case No.83 of 2018

18.

1.The application is filed for substitution of the legal representatives of the sole Opposite Party as per the schedule appended thereto.

2. For the reasons stated therein, the application for substitution is allowed.

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3. Present petition is filed by the Petitioners for review of the Court's order dated 22nd June, 2010 passed in OJC No.5494 of 2001 on the grounds *inter alia* that the decision in favour of the Opposite Party was on the premise of genuineness of the lease document and for the fact that the concerned Register and the rent receipt issued by the ex-intermediary had never been

doubted at any point of time which is otherwise an error apparent on the face of the record, inasmuch as, the basis of the claim vis-à-vis the land in question is on the strength of the document of lease allegedly obtained in a fraudulent manner.

4. Heard learned counsel for the parties.

5. The Petitioners contended that the Opposite Party challenged the order dated 25th September, 2000 passed in Revenue Misc. Case No.24 of 1975 by filing OJC No.5494 of 2001 when he was not accepted as a tenant and rent was not received from him over and in respect of the case land despite order dated 23rd March, 1979 of the Tahasildar, Kuanrmunda, wherein, judgment dated 22nd June, 2010 was passed. This Court in OJC No.5494 of 2001 held the Opposite Party as a tenant under the State in view of Section 8(1) of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the OEA Act') and consequently, the set aside the order dated 25th September, 2000 of the concerned Tahasildar with a direction to assess the rent after verifying the record of right of the corresponding Hal plot and corresponding Sabik plot and accept it from him. Against the above judgment, the Petitioners approached the Supreme Court in SLP (Civil) No(s). 32157 of 2010 which was, however, withdrawn with a liberty to file a review before this Court and the same was allowed by order dated 22nd June, 2010. Thereafter, the Petitioners filed the instant review petition in terms of Section 114 read with Order 47 of the Civil Procedure Code, 1908 on the ground that the judgment in OJC No.5494 of 2001 is not tenable

in law as it proceeded on the premise of genuineness of the *Hukumnama* which was allegedly obtained by the Opposite Party employing fraud.

6. Mr. D. Nayak, learned counsel for the State submits that the lease document was obtained fraudulently as the revenue records revealed that there was no such *Hukumnama* issued in favour of the Opposite Party and that apart, the Reclamation Register (Annexure-2) rather indicated the name of another individual as a tenant under the ex-intermediary on the date of vesting. It is further submitted that order dated 23rd March, 1979 was not a final order as there was a direction to the Opposite Party to produce Hal settlement records including the draft *khatian*. Mr. Nayak lastly contended that even assuming for the sake of argument that the *Hukumnama* was granted in favour of the Opposite Party but since it was issued after 1st January, 1946, the concerned Tahasildar was required to obtain confirmation from the Board of Revenue in view of Section 5(i) of the OEA Act. In that connection, Mr. Nayak relied upon the decision of the Apex Court in the case of *State of Orissa and others v. Brundaban Sharma and others* 1995 Supp. (3) SCC 249, wherein, it has been held that the Tahasildar is to obtain prior confirmation of the Board of Revenue when the lease, transfer or settlement created or made after 1st January, 1946 was not set aside by him.

7. Ms. S. Mohanty, learned counsel for the Opposite Party on the other hand contends that the judgment in OJC No.5494 of 2001 does not require any review since because the tenancy right was

correctly decided keeping in view Section 8(1) of the OEA Act which envisages an administrative enquiry to be conducted by the Tahasildar which has been done in the present case before passing the order dated 23rd March, 1979 which was unduly set aside by the subsequent order dated 25th September, 2000 which amounted to review of the decision which is not permitted in law.

8. Section 5 of the OEA Act deals with the consequences of vesting of an estate in the State during which the Collector shall take charge of such estate and of all interest vested in the State free from encumbrances and such intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of the said Act. According to Section 5(i) of the OEA Act, where the lease or settlement or transfer of any land in such estate created or made at any time after 1st January, 1946, the Collector shall have power to make enquiry in respect thereof and in case, it is found that such lease or settlement or transfer as the case may be was created or made with the object of defeating any provisions of the Act or for obtaining higher compensation thereunder set it aside and take possession of such property in the manner provided in Clause (h) on such terms as may appear to him to be fair and equitable but in case where he decides not to set aside such lease, settlement, or transfer shall refer the case to the Board of Revenue for its confirmation. In the present case, the lease was created in the year 1952-53 and in that respect, the alleged *Hukumnama* was granted and even though the concerned Tahasildar accepted the

same, he ought to have referred it to the Board of Revenue in view of the 1st proviso to Section 5(i) of the OEA Act which is what claimed by Mr. Nayak that the aforesaid procedure was not followed and complied with the fact which was lost sight of by this Court while disposing of OJC No.5494 of 2001 and setting aside the order of the Tahasildar dated 25th September, 2000.

9. In ***Brundaban Sharma*** (supra), the Supreme Court observed as under:

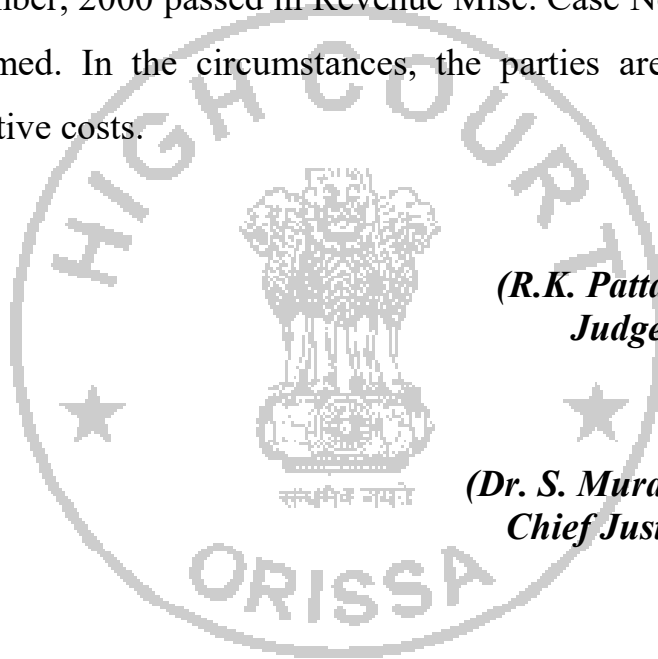
“the proceeding for settlement of the tenure is a quasi-judicial order and it should be guided by authentic and genuine documentary evidence preceding the cut-off date and the date of vesting of the lands under the Act. Since the Act creates a right and interest in the holder of the land as tenant, pursuant to an order making settlement by the competent authority, the Tahasildar is enjoined to conduct an enquiry in that behalf”

While conducting such an enquiry if the Tahasildar finds that the lease, settlement or transfer has been effected after 1st January, 1946, he shall have to enquire whether it was perpetuated with any oblique motive or intention to defeat the provisions of the Act and if not, then shall have to refer the case for confirmation by the Board of Revenue as has been held by the Supreme Court in the aforesaid decision.

10. Law is well settled that the Tahasildar is to hold an administrative enquiry with a view to satisfy himself if the person applying for confirmation of tenancy was really a tenant under the ex-intermediary so as to be a deemed tenant under the State by virtue of Section 8(1) of the OEA Act. In the present case, the claim of the Opposite Party was based on a *Hukumnama* which is alleged to be a fraudulent one as a certified copy of the Reclamation Register (Annexure-2) has been produced. Admittedly, the lease was created on 1st July, 1952 and before passing the order dated 23rd March, 1979, the Tahasildar was statutorily required to comply 1st proviso to Section 5(i) of the OEA Act for its confirmation by the Board of Revenue. Since there has been no such compliance, the Opposite Party could not have been treated as a tenant more so when from the revenue records on the tenancy vis-à-vis the case land stands in the name of another person as revealed from Annexure-2. The contention of Ms. Mohanty that Section 5(i) of the OEA Act does not apply is misconceived in view of the settled position of law as enunciated by the Apex Court in ***Brundaban Sharma*** (supra). Hence, the Court reaches at a conclusion that the impugned decision in OJC No.5494 of 2001 since based on the premise of a genuine lease document and that order dated 23rd March, 1979 had not attained finality and again for the fact that the lease did not receive confirmation of the Board of Revenue as mandated in 1st proviso to Section 5(i) of the OEA Act, it has to be recalled thereby confirming the order of the Tahasildar dated 25th September, 2000.

11. Accordingly, it is ordered.

12. In the result, the review petition stands allowed. Consequently, the impugned decision dated 22nd June, 2010 in OJC No.5494 of 2001 is hereby recalled. As a necessary corollary, OJC No.5494 of 2001 is restored to file. However, for the reasons discussed herein above, the writ petition is dismissed and as a consequence, the order of the Tahasildar dated 25th September, 2000 passed in Revenue Misc. Case No.24 of 1975 is confirmed. In the circumstances, the parties are to bear their respective costs.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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