

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6509 of 2008

Gobinda Chandra Rout (Dead) ***Petitioners***
and others

Mr. P.K. Khuntia, Advocate

-Versus-

State of Odisha and others ***Opposite Parties***
Mr. D.K. Mohanty, AGA

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

ORDER
09.02.2022

Order No.

R.K.PATTANAİK, J

I.A. No.13656 of 2021

1. This is an application for substitution.
2. For the reasons stated therein, the application for substitution is allowed. The legal heirs of Petitioner No.2 as morefully described in the schedule be brought on record.

3. The I.A. is disposed of.

I.A. No. 13657 of 2021

4. The interim order has continued till date and therefore, this application does not survive.

5. The I.A. is disposed of.

W.P.(C) No.6509 of 2008

1. The Petitioners by invoking writ jurisdiction of this Court under Article(s) 226 and 227 of the Constitution of India

have sought to challenge the impugned order dated 5th November, 2007 (Annexure-5) passed in OEA Revision Case No.86 of 2000 by the learned Member, Board of Revenue (O.P.No.3) for having confirmed order dated 25.11.1985 (Annexure-2) passed by the learned Additional Tahasildar, Bhubaneswar in Vesting Misc. Case No.122 of 1981 as not being sustainable in law and further seeking for a direction to the learned Tahasildar, Bhubaneswar (O.P.No.7) to accept the arrear rent from them and to correct the record of rights in their favour vis-à-vis the schedule land.

2. It is contended that the Petitioners' grandfather, namely, late Bhima Rout was the tenant of the schedule land which originally belonged to the ex-intermediary, Kanika Raja, who executed an unregistered permanent lease deed dated 31.03.1937 in his favour and being inducted as such, he cleared the jungle and developed the same to make it fit for cultivation and thereafter, cultivated the same on payment of rent to the above named ex-intermediary from time to time and after his demise, their father being the sole successor continued to possess it and thereafter, by them remaining in continuous possession, which has been more than 65 years. It is further contended that the Petitioners reclaimed their occupancy right by filing an application accompanied with documents before the OEA Collector-cum-Additional Tahasildar, Bhubaneswar which was registered as Vesting Misc. Case No.122 of 1981, wherein, the RI, Kalarahanga without verifying documents and making inquiry submitted an adverse report in contrast to a report prepared by the learned

Tahasildar, Bhubaneswar dated 10.09.1981 (Annexure-1), which ultimately resulted in passing of the order dated 25.11.1985 (Annexure-2) and its confirmation under Annexure-5 and such a decision to be in contravention of the provisions of the Orissa Estate Abolition Act, 1951 (here-in-after referred to as 'the OEA Act'), more fully when, they are being still in *khas* possession of the schedule land and therefore, should have been declared as tenants and rent ought to have been accepted from them with necessary correction of record of rights in the light of Section 8(1) of the OEA Act but then, the authorities concerned did not acknowledge the tenancy leading thereby dismissal of the revision filed under Section 38-B of the OEA Act.

3. Heard Mr. P.K. Khuntia, learned counsel for the Petitioners; Mr. S. Palit, learned Senior counsel for O.P.No.2; and Mr. D. Mohanty, learned Additional Government Advocate appearing for the State.

4. Mr. P.K. Khuntia, learned counsel for the Petitioners submits that not only the learned Additional Tahasildar, Bhubaneswar but also O.P.No.3 fell into grave error and resultantly, committed gross illegality in not believing the claim of tenancy under the ex-intermediary and acknowledging the same notwithstanding the fact that the Petitioners are in exclusive possession of the schedule land till date.

5. Mr. D. Mohanty, learned Additional Government Advocate for the State, on the other hand, would contend that

the impugned order i.e. Annexure-5, a decision in exercise of jurisdiction under Section 38-B of the OEA Act confirming the findings of the learned Additional Tahasildar, Bhubaneswar under Annexure-2 is absolutely justified and in accordance with law and therefore, it requires no intervention.

6. Mr. S. Palit, learned Senior counsel for O.P.No.2 strenuously urged that the decision of O.P. No.3 vide Annexure-5 is in conformity with law since because the learned Additional Tahasildar, Bhubaneswar could not have settled the schedule land in favour of the Petitioners under the OEA Act and that apart, such tenancy vis-a-vis the so called original tenant under the ex-intermediary could not be established, when the alleged claim was advanced on the strength of an unregistered lease deed dated 31st March, 1937. Furthermore, it is contended that the learned Additional Tahasildar, Bhubaneswar could not have settled the schedule land in favour of the Petitioners under Section 8(1) of the OEA Act and as such, a conclusion so arrived at vide Annexure-2 was rightly confirmed by O.P.No.3, which is, therefore, defensible and unassailable. While contending so, Mr. S. Palit, learned Senior counsel for O.P.No.2 cited the following decisions of the Supreme Court, such as, *State of Orissa and others Vs. Brundaban Sharma and another: (1995) Supp (3) SCC 249; State of Orissa and others Vs. Harapriya Bisoi: (2009) 12 SCC 378; State of Orissa and another Vs. Fakir Charan Sethi and others: (2015) 1 SCC 466; and State of Orissa Vs. Nityanand Satpathy and others: (2003) 7 SCC 146.*

7. In fact, the consequences of vesting of estateship stand described in Section 5 of the OEA Act. The consequences as enumerated under clause (a) to (k) of Section 5 of the OEA Act shall ensue post publication of a notification under Section 3(1) or Section 3-A(1) or from the date of execution of agreement under Section 4, as the case may be. In so far as continuity of tenure of tenants immediately before the date of vesting is concerned, it has been dealt with in Section 8 of the OEA Act, according to which, any person before such vesting of an estate in the State Government, if he was in possession of any holding as a tenant under an ex-intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State and such person shall hold the land with the same rights and subject to the same restrictions and liabilities, as he was entitled or subject to, immediately before the vesting. On a sincere reading of the aforesaid provisions of the OEA Act, it conveys that there is no such provision for initiation of a proceeding for settlement so far as tenants are concerned, rather, any such person, who was inducted as a tenant by an ex-intermediary before vesting and was in possession of the land on the date of vesting and even thereafter, by a legal fiction, shall be deemed to be a tenant under the State in view of Section 8(1) of the OEA Act and in such a case, the authority concerned is not bound to accept the claim of tenancy without verifying the revenue records and for that purpose, an inquiry to be conducted which would be an administrative action and not a quasi-judicial adjudication which has, in fact, been reiterated in umpteen number of cases,

couple of which have been referred to and relied upon by Mr. S. Palit, learned Senior counsel for O.P.No.2.

8. No doubt, under Annexure-1, the learned Tahasildar, Bhubaneswar furnished a report observing that the schedule land to be under the possession of the Petitioners since the time of their predecessor with some old houses standing thereon. However, the learned Additional Tahasildar, Bhubaneswar referring to the report of an RI with a finding that no *Jamabandi* to be available in support of the claim of the Petitioners concluded that it was difficult to believe the tenancy under the ex-intermediary and in any case, the schedule land cannot be settled in their favour under the OEA Act. The claim of the Petitioners was elaborately examined by O.P.No.3, who vide Annexure-5, confirmed the order under Annexure-2 concluding that the records of tenancy could have endorsed the claim of the Petitioners which is based on an unregistered permanent lease deed and that too when, it has been advanced almost after 29 years. In that connection, O.P. No.3 did refer to Section 5(j) and Section 8 (1) of the OEA Act and reached at a conclusion that either the ex-intermediary would have furnished the tenancy details recognizing such a right or the tenancy record so maintained by the revenue authorities would have revealed such pre-vesting tenancy, where after, the original tenant could have been treated as a tenant under the State but in absence of any such material, barely by referring to an unregistered lease deed, such right cannot be acknowledged. It is established law that the OEA Authority shall only conduct an administrative inquiry and not

usurp any jurisdiction of quasi-judicial nature to settle lands under Section 8(1) of the OEA Act which simply recognizes the pre-vesting rights of tenancy and treat the tenants under the ex-intermediary as the tenants under the State with all existing rights and liabilities being carried forward. In other words, a pre-vesting tenant is deemed as a tenant under the State by virtue of Section 8(1) of the OEA Act on the basis of the records produced by or acquired from the ex-intermediary in accordance with Section 5(j) thereof. Inasmuch as, settlement of lands under Section 8(1) of the OEA Act is not designed and conceived of under law which merely recognizes an existing tenancy right under an ex-intermediary as revealed from the tenancy records maintained by the revenue authorities. In the case at hand, no such revenue records could satisfactorily justify the contention of the Petitioners and therefore, the learned Additional Tahasildar, Bhubaneswar vide Annexure-2 and thereafter, O.P. No.3 under Annexure-5 rightly declined to entertain their claim and settle the schedule land, which, in any view of the matter, held that it could not have been accomplished under Section 8(1) of the OEA Act and thus, in the considered view of this Court, it deserves no interference for having been correctly decided and adjudicated upon.

9. In view of the discussions, as aforesaid, this Court arrives at an inescapable conclusion that the impugned order under Annexure-5 suffers from no legal infirmity and therefore, it is not liable to be quashed.

10. Accordingly, it is ordered.
11. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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