

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.38819 OF 2020

***Bishnu Charan Senapati and
another***

....

Petitioners

Mr. Soumya Mishra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Sarojananda Mishra,

Additional Government Advocate

CORAM:

JUSTICE K.R.MOHAPATRA

ORDER

21.03.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to challenge the order dated 4th October, 2018 (Annexure-5) passed in Revision Petition No. 377 of 2015 filed by the Petitioners under Section 15 (b) of the Odisha Survey and Settlement Act, 1958 (for short, 'the OSS Act'), wherein learned Commissioner, Land Records and Settlement, Odisha, Cuttack dismissed the revision relying upon the case law in *State of Orissa –vrs.- Brundaban Sharma and another*, reported in (1995) *Suppl.3 SCC 249*.
3. Mr. Mishra, learned counsel for the Petitioners submits that the Petitioners are the owners in possession of the land pertaining to Hal Plot No.1431 to an extent of Ac.0.10 decimals and Plot No.1431/6427 to an extent of Ac.0.02 decimals under Hal Khata No.1453 situated in Mouza Ramadaspur under Darpan Tahasil in the district of Jajpur, which corresponds to Sabik Plot No.1755 under Sabik Khata No. 964/136 (for convenience referred to as 'the case land').
4. It is the case of the Petitioners that the case land originally belonged to one Iswar Prasad Das, the ex-landlord of Darpani

Estate. By virtue of a Chirastai Hata Patta executed by the ex-intermediary in favour of father of the Petitioners, namely, Banchhu Senapati, he came in possession over the case land. After vesting of the estate, the ex-intermediary submitted Ek-padia in favour of Banchhu and tenant's ledger was opened in his name recognizing his tenancy over the case land. He was also obtaining rent receipts by paying rent. After the death of Banchhu, the case land was recorded in the name of the Petitioners in the settlement R.O.R. published in the year, 2002 on the basis of said Hata Patta. During Hal Settlement operation, the Petitioners filed objection before the Assistant Settlement Officer for recording of the case land in their name. Ultimately, the case land was directed to be recorded in Government Khata under 'Rakhita' status pursuant to order dated 15th February, 2001 passed in Appeal Case No. 890 of 1998. As the final ROR was published in the name of Government of Odisha, the Petitioners preferred a revision under Section 15(b) of the OSS Act before the Member, Board of Revenue, Odisha, Cuttack for correction of ROR in R.P. Case No.9 of 2009, which was transferred to the court of Commissioner, Land Records and Settlement, Odisha, Cuttack and renumbered as R.P. Case No.377 of 2015. The Petitioners had also moved this Court in W.P.(C) No. 16555 of 2015 for early disposal of the revision petition, which was disposed of on 11th September, 2015 directing the Commissioner to dispose of the revision petition within six months from the date of production of certified copy of the said order. Accordingly, the Commissioner took up the matter for hearing and most erroneously observing that collection of rent is an administrative act and it does not operate as recognition of pre-existing right as held in **Brundaban Sharma**

(supra) dismissed the revision vide order dated 4th October, 2018. Hence, this writ petition has been filed.

5. Mr. Mishra, learned counsel for the Petitioners assailing the same submits that on vesting of the estate, the ex-intermediary had submitted ek-padia in favour of the father of the Petitioners. Accordingly, tenants' ledger was opened and rent was accepted from him in respect of the case land. Thus, the OEA authorities have recognized the father of the Petitioners as tenant. Considering the same, the settlement authority published the final R.O.R. in respect of the case land in the name of the Petitioners in the year 2002. The Settlement authority exercising power under provisions of the Act cannot interpret an action taken by the OEA authorities. Thus, the law laid down in the case of ***State of Orissa and others –vrs.- Brundaban Sharma and another***, reported in 1995 Supp. (3) SCC 249 has no application to this case. He further submits that the legality and propriety of the settlement made in favour of the father of the Petitioners under the O.E.A. Act can only be assailed in a properly constituted proceeding under the O.E.A. Act. The Settlement Authority exercising power either under Section 22 or Section 15(b) of the Act cannot sit over the settlement made by the O.E.A. Collector and hold it to be illegal. In support of his contention, he relied upon a Division Bench decision of this Court in the case of ***Trilochan Singh and another –v- Commissioner of Land Records and Settlement, Orissa and others***, reported in 1995 (I) OLR 537, the relevant paragraphs of which are quoted hereunder:

“4. Order of settlement in favour of petitioners could be set at naught in a proceeding under the Estates Act. The settlement having created a right in favour of petitioners, the same is presumed to be valid unless declared otherwise. It is, therefore, for the person assailing its validity to get such a

declaration from a proper forum in a proper proceeding. Unless that is done, order remains enforceable. The duty was, therefore, clearly on the opp. party No. 3 to raise the plea of illegality of the order of settlement before an appropriate authority under the Estates Act. Unless the order is declared invalid at its instance, enforceability of the order cannot be doubted. Similar view was expressed by apex Court in Shiv Chander Kapoor v. Amar Bose, (1990) 1 SCC 234 : A.I.R. 1990 S.C. 325. The position was also elaborated by one of us (Pasayat, J.) in Hiradhar Patel v. Lalindra Gand @ Naik and another, 1993 (1) O.L.R. 4.

5. In the words of Lord Diplock, “the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue”. In Wade's Administrative Law, 6th Edition, there is an illuminating discussion of this topic. It has been pointed out that ‘Void’ is meaningless in an absolute sense, and unless necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset it will remain as effective for its ostensible purpose as the most impeccable of orders. The order of settlement has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, (1956) A.C. 736 at page 769 Lord Redcliffs observed.....”

The ratio decided in the aforesaid case (supra) has been followed in the case of ***Prafulla Chandra Muduli and others -v- State of Orissa and others*** reported in 2005 (Supp.) OLR 950.

6. It is further submitted that the order of the O.E.A. Collector has never been challenged and hence, attained its finality. The only scope to set aside the said order was by filing a revision under Section 38(B) of the O.E.A. Act. Admittedly, no such revision being filed, the Commissioner, Land Records and Settlement, Cuttack has to respect the same. He, therefore, submits that the Commissioner has usurped his jurisdiction by sitting over the order of settlement made by the O.E.A. Collector. He further submits that a void order needs to be declared as such as held in the case of ***State of Kerala –***

v- **M.K. Kunhikannan Nambiar Manjeri Manikoth**, reported in (1996) 1 SCC 435, wherein it has been held at paragraphs-7 and 8 as follows:

“7. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word ‘void’ is not determinative of its legal impact. The word ‘void’ has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo motu proceedings by the Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.

8. *In Halsbury's Laws of England, 4th Edn., (Re-issue) Vol. 1(1) in para 26, p. 31, it is stated, thus:*

“If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved.”

In the Judicial Review of Administrative Action, De Smith, Woolf and Jowell, 1995 Edn., at pp. 259-60 the law is stated thus:

“The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction."

Similarly, Wade and Forsyth in Administrative Law, Seventh Edn., 1994, have stated the law thus at pp. 341-342:

".... every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said:

'An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

He also relied upon the decision in the case of ***Inderjit Singh Grewal –v- State of Punjab***, reported in (2011) 12 SCC 588, wherein it is held that *"even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings."*

He, therefore, submits that the impugned order is not sustainable in the eyes of law and the same is liable to be set aside.

7. Mr. Mishra, learned Additional Government Advocate refuting the same submitted that initiation of the proceeding by the O.E.A. Collector entertaining ek-padia submitted by the ex-intermediary in favour of father of the Petitioners is illegal as he had

no jurisdiction to entertain the same under the provisions of the O.E.A. Act. Thus, the impugned order suffers from fundamental infirmity and it requires no such declaration. The Settlement Authority can ignore such settlement and pass an order on the basis of the materials available on record. In view of the ratio decided in the case of **Brundaban Sharma** (supra), acceptance of rent cannot operate as recognition of any pre-existing right, title or interest of the father of the Petitioners in respect of the case land. Further, the Hat Patta submitted by the Petitioners is an unregistered document. Thus, it confers no title on him in view of ratio in the case of **Sita Maharani –vrs.- Chedi Maheto**, reported in **AIR 1955 SC 328**. Thus, the Commissioner has committed no error in dismissing the revision. He, therefore, submitted that the writ petition merits no consideration and the same is liable to be dismissed.

8. Heard learned counsel for the parties and perused the materials on record including the case laws relied upon by the learned counsel for the parties.

9. There is no dispute to the fact that the ex-intermediary granted Hat Patta in favour of the father of the Petitioners. On vesting of the estate, the ex-intermediary also submitted ek-padia in favour of the father of the Petitioners. Accordingly, tenants' ledger was opened in his name and rent was accepted from the father of the Petitioners. As such, he was recognized as a tenant under the State. The action of recognizing the father of the Petitioners as a tenant by opening tenants' ledger and accepting rent from him is an administrative action. It can only be nullified by filing a revision under section 38(B) of the OEA Act. The settlement authority cannot sit over the same to test its legality. The ratio decided in the case of **Trilochan Singh** squarely applies to this case.

9.1. As held by Hon'ble Supreme Court in the case of ***Inderjit Singh Grewal*** (supra), a void order also requires declaration by the competent court to make it ineffective and unenforceable. In the case of ***M.K.Kunhikannan*** (supra), Hon'ble Supreme Court has clarified that the word 'void' is not determinative of its legal impact. It has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. Hence, it can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise. From the materials on record, it can never be said that the order passed by O.E.A. Collector was fundamentally invalid. Since the OEA Collector had jurisdiction to consider the ek-padia submitted by the ex-intermediary and open tenants' ledger on that basis, such action cannot be said to be void. Hence, the submission of learned State counsel merits no consideration.

9.2. The applicability and impact of the ratio in the case of ***Sita Maharani*** (supra), ***Harapriya Bisoi*** (supra) and ***Brundaban Sharma*** (supra) to the action of the OEA Collector recognizing the father of the Petitioners as tenant under the State, could only be questioned before the competent court in an appropriate proceeding, i.e., by filing a revision under Section 38(B) of the O.E.A. Act. Certainly the validity of such action/orders cannot be questioned in a proceeding initiated under Section 15(b) of the OSS Act. Thus, the Settlement Authority should have respected the action taken/order passed by the O.E.A. Collector having jurisdiction to do so. Further, the settlement authority considering the same had published the final R.O.R. in respect of the case land in favour of the Petitioners in the year 2002.

10. In view of the above, the observations basing upon which the impugned order under Annexure-5 has been passed are not sustainable in the eyes of law. Accordingly, the impugned order under Annexure-5 is set aside and the matter is remitted back to the Commissioner, Land Records and Settlement, Odisha, Cuttack to consider the matter afresh in accordance with law keeping in mind the observations made hereinabove and giving opportunity of hearing to the parties concerned.

11. In order to avoid further delay in the matter, parties are directed to appear before the Commissioner, Land Records and Settlement, Odisha, Cuttack on 18th April, 2022 along with certified copy of this order to receive further instruction in the matter.

12. The writ petition is allowed to the aforesaid extent.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks/ms