
(2013) 08 OHC CK 0011
In the Orissa High Court
Case No : WP (C) No. 17207 of 2007

Bichitrananda Jena and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa Tenancy Act, 1913 — Section 91

Citation : (2013) 08 OHC CK 0011

Hon'ble Judges : Sanju Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : S.K. Samantaray, D.K. Pattanayak, R.K. Sahoo, R.P. Sahu and P.K. Behera, for the Appellant; Subir Palit, A.K. Mahana, H.K. Ratsingh and A. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Sanju Panda, J.—The petitioners have filed this writ petition challenging the order dated 28.5.2007 passed by the Member, Board of Revenue, Orissa, Cuttack in O.E.A Revision No. 48 of 2005. The facts leading to the present writ petition as contended by the learned counsel is that petitioner no. 1 and late Kunjabana Swain, predecessor-in-interest of petitioner nos. 2 to 5 claimed to be tenants under Raja of Kanika by virtue of written unregistered Patta dated 17.1.1941 in respect of Ac. 5.77 decimals of land appertaining to Sabik Plot No. 229 under Sabik Khata No. 303 corresponding to Hal Plot No. 241 under Hal Khata No. 472 of Mouza-Chandrasekharapur. They continued as tenants and paid rents to the said Raja till the date of vesting. After abolition of the Estate, they continued their peaceful possession by cultivating the land as tenants under the State of Orissa. Accordingly, on their application O.E.A Collector, after enquiring and verifying all the relevant records, in its order dated 20.5.1981 declared them as tenants in Misc. Case No. 20 of 1981 and directed to record the land in favour of the tenants on the basis of report of the concerned R.I though the land was recorded under Rakhit "Unnyata Jojana Jogya" in favour of the State Government

and finally R.O.R was published in the year 1973-74.

2. It is further contended by the learned counsel for the petitioners that after disposal of Misc. Case No. 20 of 1981, Patta was issued in their favour as per the sketch map. Rent was paid for the year 1981-82 vide rent receipt no. 326106 dated 24.9.1981.

3. While the matter stood thus, the Sub-Divisional Officer, Bhubaneswar, after scrutinizing the records, by order dated 2.3.1983 in OEA Case No. 4 of 1983 observed that the order passed by the O.E.A Collector on 20.5.1981 in Misc. Case No. 20 of 1981 was not in accordance with law and needed to be considered for further action. The present petitioners, being aggrieved by the said order dated 2.3.1983 of the S.D.O, Bhubaneswar, filed OJC No. 2503 of 1983, which was dismissed as premature since the impugned order was not final. Thereafter, one of the tenants, namely, late Kunjabana Swain died on 20.5.2001. The petitioners enquired into the matter from time to time but got no information. However, they obtained the certified copies of the entire order sheets on 12.1.2005 and came to know about the order dated 29.7.1988 passed by the Addl. Tahasildar, Bhubaneswar and also came to know about the fact that the order dated 20.5.1981 passed by the O.E.A Collector-cum-Tahasildar, Bhubaneswar was declared as without jurisdiction and void. Finding no other way, the petitioners approached the revisional authority in O.E.A Revision No. 48 of 2005 u/s 38-B of the O.E.A Act challenging the order dated 29.7.1988 passed by the Addl. Tahasildar, Bhubaneswar. However, the Member, Board of Revenue, after hearing the parties, held that nothing had been adjudicated in order dated 29.7.1988 by the Addl. Tahasildar, Bhubaneswar. He had simply followed the order dated 20.5.1981 passed in OJC No. 1058 of 1978 under the direction of the Addl. District Magistrate, Bhubaneswar. Since the order dated 29.7.1988 was an administrative order, he had no jurisdiction to interfere with the matter. Accordingly, the revision was dismissed by the impugned order dated 28.5.2007.

4. Learned counsel for the petitioners further contended that the petitioners are in possession of the property being the tenants and they have been declared as such. Therefore, the order passed by the O.E.A, Collector should not have been set aside without hearing the petitioners declaring the order dated 20.5.1981 as null and void. The petitioners acquired right by virtue of acceptance of rent from them by the Revenue Authority after declaring them as tenants u/s 8(1) of the O.E.A ACT. Therefore, the order passed by the Addl. Tahasildar, Bhubaneswar on 29.7.1988 was amenable u/s 38-B of the O.E.A Act. Hence, the impugned order passed by the Member, Board of Revenue on 28.5.2007 in the O.E.A Revision Case No. 48 of 2005 is liable to be set aside.

5. Separate counter affidavits have been filed by opposite party no. 2-General Administration Department and also opposite party no. 7-Tahasildar, Bhubaneswar. Opposite party no. 2, in its counter affidavit, taking a stand that the land has been recorded in favour of G.A. Department in the year 1988-89 Settlement. The total Sabik area is Ac. 44.770. The classification of the land is

"Unnat Yojana Yogya" under Hal Khata No. 619 of Mouza-Chandrasekharpur. The disputed land is a part of Hal Plot No. 241 measuring an area of Ac. 5.77 out of the total area of Ac. 47.770. The Sabik Khata No. 472 has been recorded in "Rakhit Khata" in 1973-74 Settlement in Mouza-Chandrasekharpur. The Pre-Sabik Plot No. 229 (Pt.), total Pre-Sabik area is Ac. 44.770. The land was recorded in Sabik Khata No. 303 which was recorded in Anabadi Khata under Jamindar Madhusudan Dev in the year 1930-31 R.O.R. The classification of the land is "Jhati Jungle" After vesting of the estate, the land was recorded in the name of the Government under successive settlements. Therefore, the alleged induction of tenancy over the disputed land in favour of the petitioners by the ex-intermediary in executing the unregistered patta dated 17.1.1941 is nothing but concoction of facts projected by the petitioners to grab the land. They claimed the same only in the year 1981 by filing an application u/s 8(1) of the OEA Act. It is further contended that the Kissam of the land is "Jhati Jungle" as reflected in the Sabik R.O.R and the land was meant for community for collection of fuel and house construction materials (See Section 91 of the Orissa Tenancy Act, 1913). As such, the ex-intermediary had no occupancy right to lease out the same in favour of the tenants (See State of Orissa Vs. Nityanand Satpathy and Others, . Therefore, the authorities have rightly set aside the order dated 20.5.1981 passed by the O.E.A Collector declaring the petitioners as tenants since there was no scope u/s 8(1) of the OEA Act to declare the persons as tenants. In the meantime, the G.A. Department has also allotted the land in favour of the Orissa State Housing Board for social housing scheme on 11.1.1983. Therefore, the action taken by the authorities is proper as the order dated 20.5.1981 has been declared as ab initio void and non est in the eye of law. After vesting of the estate, the disputed land was recorded in the name of the State Government in successive settlement. The State Government is a lawful owner of the property. On 25.11.1972, the entire area of Chandrasekharpur Mouza was notified as urban area and came under the administrative control of G.A Department pursuant to which the said property was recorded in the name of the G.A Department in the 1988-89 settlement which was published in the gazette on 27th November, 1972.

6. Opposite party no. 7 in its counter affidavit has taken a stand that the Estate in question was vested in the year 1954 and consequence upon such vesting, all intermediary Estate was vested with the Government free from all encumbrances. The petitioners had also not taken any step immediately after the vesting of the Estate to protect their interest, if any. They had only approached the O.E.A Collector twenty seven years after the vesting of estate for declaring them as tenants and fixing the rent. As unregistered Patta dated 17.1.1941 was inadmissible, no reliance can be placed on it since the same has not been proved. Accordingly, he prays for dismissal of the writ petition. The Sub-Divisional Officer, Bhubaneswar issued notice to the petitioners in O.E.A Case No. 4 of 1983 who appeared before him on 14.2.1983 and 28.2.1983. The Sub-Divisional Officer, after giving an opportunity of hearing, vide order dated

2.3.1983 set aside the order dated 20.5.1981. Therefore, the contentions of the petitioners that no opportunity of hearing was given to them was not sustainable in the eye of law and the same is liable to be dismissed.

7. The apex Court in the case of State of Orissa v. Brindaban Sharma and this Court in the cases of Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, and Basanti Kumari Sahu (Smt) Vs. State of Orissa and Others, has held that Section 8(1) of the O.E.A Act makes no provision to file an application for determination the rival claims.

8. In view of the above position of law, the application filed by the present petitioners u/s 8(1) of the Act in the year 1981 is misconceived and non est in the eye of law. Validity of non est order can be questioned in any proceeding at any stage and the authority has taken immediate steps to set aside the said order in the year 1983, i.e., within the statutory period. The petitioners also did not take any step after vesting of the estate to recognize their interest, if any, in the land. They filed an application u/s 8(1) of the Act in the year 1981, i.e., more than 25 years after. The Addl. Tahasildar on 29.7.1988 only carried out the said order in the administrative side and the Member, Board of Revenue taking into consideration all such aspects passed the impugned order dated 28.5.2007 in O.E.A Revision Case No. 48 of 2005. As there is no error apparent on the face of the impugned order passed by the Member, Board of Revenue, Orissa, Cuttack in O.E.A Revision Case No. 48 of 2005, this Court is not inclined to interfere with the same in exercise of the jurisdiction under Article 227 of the Constitution of India.

Accordingly, the writ petition is dismissed.