

(2009) 04 OHC CK 0017

In the Orissa High Court

Bijay Ketan Brahma and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 12, 19, 8(1)

Citation : (2009) 108 CLT 657

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The prayer made in this writ application is to quash Order Dated 7th December, 1983 passed by the Deputy Director, Consolidation in Appeal Case No. 49 of 1983 (Annexure-4) as well as the order passed by the Commissioner, Consolidation & Settlement dated 12th January, 1996 passed in Consolidation Revision No. KR- 89/93 (Annexure-5). The Deputy Director in his order (Annexure-4) had directed to record the disputed pond under "Sarbasadharana Khata". The said order was confirmed by the Commissioner, Consolidation in Annexure-5.

2. The dispute is in relation to a tank commonly known as "Dopati Pokhari" appertaining to Sabik Plot No. 2721 in Sabik Khata No. 50 having an area of Ac.0.54 dec. corresponding to Hal Plot No. 3702 with an area of Ac.0.47 dec. situated in village Garedipanchan & was classified as "Jalasaya-II". ,

3. The record of rights published in the year 1928 reveals that the aforesaid tank was recorded in the name of Lord Jagannath Bije, Puri under the marfet of Mohant of Emar Math. The Petitioners filed objection before the Consolidation Officer with a prayer to record the plot in their name on the basis of a registered permanent lease deed said to have been executed by the intermediary in favour of their father Late Satyabadi Ota. The said plea was strongly resisted by the villagers. The Consolidation Officer took a view that the registered lease deed

executed by the intermediary cannot be Ignored by the consolidation authorities, consequently the objection case filed by the villagers was disallowed & on the other hand, the objection case filed by the Petitioners was allowed.

4. Being aggrieved by such order, the villagers filed an appeal u/s 12 of the Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972, hereinafter to be referred to as "Consolidation Act", before the Deputy Director of Consolidation. The Deputy Director after vivid discussion of the materials available came to the conclusion that no permission having been obtained by the Marfatdar (Trustee) from the Commissioner of Endowments before executing registered tease deed in favour of the fattier of the Petitioners, the said deed is ab initio void & did not confer any tenancy right upon the Petitioners. On the basis of such conclusion, he directed that the tank should be recorded in Rakhit Anabadi Khata, so that the villagers would be benefited.

5. The order passed by the Deputy Director was assailed by the Petitioners before the Commissioner, Consolidation. The Commissioner erroneously relying upon the registered lease deed said to have been executed by the Mohant of Emar Math in favour of Satyabadi Ota, father of the Petitioners, directed to record the tank in the name of the Petitioners. The order passed by the Commissioner was assailed by the villagers before this Court in OJC No. 3039 of 1986. It was contended before this Court that the tank admittedly belonged to a religious endowment, i.e., Emar Math & as such, permanent lease deed executed & registered by Mohanta, who was the trustee, without obtaining prior permission of the Commissioner of Endowments u/s 19 of the O.H.R.E. Act was, ab initio void & did not confer any tenancy right on Satyabadi Ota. It was further contended that in OEA Case No. 128 of 1985, initiated on the basis of an application filed by the villagers, the Tahasildar, after conducting local enquiry, & on being satisfied that no Jamabandi was issued in favour of Satyabadi Ota & that The rent receipts produced by the Petitioners did not relate to the land inasmuch as discrepancies prevailed with regard to the plot numbers, recorded the land under "Sarbasadharana Khata". It is stated that the said order having not been assailed, the Commissioner, Consolidation acted illegally in directing to record the lands In favour of the Petitioners.

6. On the other hand, the sole plea of the Learned Counsel for the Petitioners was that their father having been inducted as a tenant in consonance with the provisions of Section 8(1) of the O.E.A. Act, such tenancy right would be protected & they are deemed to be tenants under the State.

7. After hearing Learned Counsel for the parties, this Court came to the conclusion that the Commissioner was not alive to the various objections raised & was pleased to set aside the decision of the Commissioner & remitted the matter for reconsideration with the observation that the Commissioner would consider the impact of the decision of the Full Bench in the case of Sundarmani Bewa and Anr. v. Dasarath Parida (dead) & after him Labanya Dei and Ors. 1998 (I) OLR 223 & disposed of the revision de novo. After remand, the Commissioner once

again took up hearing of the revision & after following the ratio of the Full Bench decision of this Court in the case of Sundarmani Bewa (supra), came to the conclusion that he had no jurisdiction to decide any dispute as the land in question was non-consolidable in nature. Consequently, the Commissioner did not enter into the controversy & disposed of the case once again.

8. The order passed by the Commissioner was again assailed before this Court in OJC No. 4146 of 1988. A Division Bench of this Court, after discussing the facts & point of law & relying upon the amended provision incorporated by Orissa Act 2 of 1989 as well as the Full Bench decision of this Court in the case of Sundarmani Bewa (supra) held that the Commissioner had jurisdiction to decide the questions with regard to the right, title & interest in respect of the non-consolidable land also in consonance with the amended provision. Consequently, the impugned order of the Commissioner was set aside & the matter was once again remitted to the Commissioner to rehear & dispose of the revision in accordance with law.

9. The Commissioner perused all the evidence on record including the documents filed before him by both the parties, & observed that the suit tank was originally recorded in the name of ex-intermediary Sri Jagannath Mahaprabhu Mft. Mahanta Gadadhara Ramanuj Das in 1927 settlement records. The said institution was declared as trust estate by the Tribunal in Misc Case No. 123 of 1963. In 1972 the successors of Mohant of Emar Math executed permanent lease deed in favour of the Petitioners. The recitals made in the lease deed did not reveal that any permission was granted by the Commissioner of Endowments to execute registered permanent lease. It was further observed that the lands have been recorded under "Rakhit Khata" with the classification "Jalasaya" after vesting of the estate in consonance with the order passed under the O.E.A. Act, which is binding upon the consolidation authorities. On the basis of such conclusions, the revision was dismissed.

10. Mr. Bose, Learned Counsel appearing for the Petitioners contended that as the father Petitioners was inducted as tenant by the ex-intermediary, the same should be construed to be an annual agricultural lease & after vesting in consonance with Section 8(1) of the O.E.A. Act, their tenancy right should be protected & the Petitioners should be deemed to be tenants under the State.

11. These contentions are strongly repudiated by Mr. Samantaray, Learned Counsel for the Opposite Parties-villagers. It is stated that the Petitioners were never inducted as tenants & had acquired no title or interest over the disputed tank. They were also never possessing the tank. According to Mr. Samantaray, the Deputy Director, Consolidation as well as the Commissioner, Consolidation had rightly appreciated the facts & the conclusions arrived at, being just & proper, may not be interfered with.

12. Heard Learned Counsel, for the parties, meticulously perused the pleadings & documents annexed. Admittedly the tank in question originally belonged to Sri Jagannath Mahaprabhu Mft. Gadadhar Ramanuja Das of Emar Math. Thus, it is

the property of a public religious endowment & was governed under the provisions of Orissa Hindu Religious Endowment Act. Section 19 of the said Act creates an embargo in transferring, alienating or leasing out any property for more than five years without the permission of the Commissioner. In the case in hand, according to the Petitioners, the ex-Mohanta had executed a permanent lease deed in favour of their father Satyabadi Ota. A perusal of the said deed, however, reveals that no recitals have been made with regard to obtaining permission u/s 19 of the O.H.R.E. Act. In course of hearing of this case also, no such document was produced. Consequently, the conclusions arrived at by the Commissioner that the lease was ab initio void is correct. That apart, Emar Math was declared as a trust estate in Misc. Case No. 12 of 1063. After vesting of the trust estate by issuance of a blanket notification, the properties of Emar Math also vested with the State Government, free from all encumbrances. The intermediary Mohanta had not applied for settlement of the property in question. On the other hand, it appears that in OEA Case No. 128 of 1985 the disputed tank was recorded under "Rakhit Khata" with a classification of "Jalasaya". The said order having not been assailed, had attained finality. Law is well settled that the consolidation authorities are bound by any order passed under any State Act. It is well settled that u/s 8(1) of the O.E.A. Act, no proceeding is required to be initiated, but then, the Tahasildar is not always bound to accept a claim raised by a person to the effect that he was inducted as a tenant, without verifying as to whether the claim is genuine or not. For arriving at such satisfaction, the Tahasildar had to conduct an enquiry, which is more in the nature of administrative enquiry. Even otherwise, to invoke any right u/s 8(1) of the O.E.A. Act, two basic requirements have to be fulfilled. (i) a person claiming to be a tenant on the date of vesting has to satisfy the authorities that he was in fact inducted as a tenant by the intermediary prior to vesting & (ii) he was in possession of the property on the date of vesting. In the case in hand, the Opposite Parties- villagers strongly dispute the claim of the Petitioners with regard to possession. According to them, the villagers were in possession of the tank all along. Possession on the date of vesting being a necessary ingredient for recognition as a tenant u/s 8(1) of the O.E.A. Act & as the Tahasildar has no jurisdiction to decide as to who was in possession on the date of vesting, the person aggrieved had to approach the Civil Court for such determination. The Petitioners have totally failed to establish/satisfy both the ingredients necessary to claim protection u/s 8(1) of the O.E.A. Act.

13. In view of the aforesaid facts & circumstances, this Court finds that the Commissioner has rightly appreciated the inter se dispute & the conclusions arrived at are just & proper & do not suffer from any infirmity, either factual or legal. This Court is, therefore, not inclined to interfere with the impugned orders. The writ application accordingly stands dismissed. Parties to bear their own costs.