
(1977) 09 OHC CK 0009
In the Orissa High Court
Case No : Second Appeal No. 203 of 1974

Binayak Mohapatro and Others	Vs	APPELLANT
Jagilal Nayak and Others		RESPONDENT

Date of Decision : 14-09-1977

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 39, 6, 7, 8, 8(1)

Citation : (1977) 44 CLT 650

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; Y.S.N. Murty, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Some of the Defendants .in a suit for declaration that the Plaintiff has occupancy right over the disputed property and for permanent injunction restraining the Defendants from interfering with such possession have carried the appeal against the affirming judgment and decree of the learned Subordinate Judge.

2. Plaintiff filed the suit on 13-3-1968 claiming that he and Defendants 12 and 13 were occupancy tenants in respect of the disputed property. Thee ancestors of the Zamindar of Sankhamundi Estate had granted half of the maleveram interest of the disputed property as Purohit Inam to the ancestor of Defendants 1 to 10 and the remaining half of the Maleveram had been collected by the ex-intermediary by Sanja through Revenue Officers, of the Estate. On 18-1-1936, Nandakishore Deo upon becoming Zamindar of the Estate granted a Patta to Jaya Mahapatra in respect of the half of the maleveram for performing Dwadasi Jatra of Lord Jagannath. According to the Plaintiff, ever since then, he became the occupancy raiyat of the property. In the preliminary record of 1940, the Plaintiff and Defendants 12 and 13 were recorded, but taking advantage of the fact that Plaintiff's father died in the record-of-rights, Defendants 1 to 10 by manipulation got their names recorded as the holder of both the rights. Some of the

Defendants have alienated their interest in favour of Defendant No. 11. It is alleged that the said document is a cham transaction.

3. Defendants 12 and 13 filed a written statement but did not contest at the trial. Defendants 1 to 11 filed a joint written statement and claimed that Defendants 1 to 10 had occupancy right in the property and Plaintiff had no right, title or interest therein. According to them, they have been duly recorded in the record-of-rights as occupancy tenants and it is maintained that by a valid registered sale deed dated 19th of March. 1967, for a consideration of Rs. 2,000/- the entire disputed property has been sold in favour of Defendant No. 11 who is now in possession.

4. Both sides led oral and documentary evidence to support their respective stands at the trial. The trial Court came to hold that Plaintiff and Defendants 12 and 13 were the occupancy tenants of the property from the time of their ancestors. It found that the Defendants had no occupancy right in the property and Defendant No. 11, therefore, acquired the right title and interest by the sale deed in his favour. It further held that Section 39 of the Estates Abolition Act was not bar to the maintainability of the suit in the Civil Court in spite of the order of settlement passed by the Estate Abolition Collector.

5. The present Appellants had carried an appeal to the lower appellate Court. The learned Appellate Judge upheld the findings of the trial Court and dismissed the appeal.

6. Mr. Pal for the Defendants-Appellants advances three contentions:

(1) The property vested in the state pursuant to an appropriate notification under the Orissa Estates Abolition Act and the settlement in favour of the Defendants under Chapter-II of that Act has conferred a new title in them;

(2) Even if the Plaintiff had occupancy right in the disputed property, in view of the fact that he had not raised any objection to the claim for settlement by the Defendants, the said occupancy right must be taken to have been extinguished; and

(3) Section 39 of the Estates Abolition Act operates as a bar to maintainability of the suit. The same, should, therefore, have been dismissed as not entertainable by the Civil Court.

7. It has been pointed out by the Supreme Court in the case of Kumar Bimal Chandra Sinha Vs. State of Orissa, , that the orissa Estates Abolition Act intended to abolish all proprietors, sub-proprietors tenure-holders and under-tenure-holders, with a variety of names, but did not touch the interest of the raiyat. To ensure this position Section 8(1) of the Act provides:

Any person who immediately before the date of vesting of an estate Government was in possession of any holding as a tenant under an intermediary shall, on and from the date of vesting, be deemed to be a tenant the state Government and

such person shall hold the land in the same rights and subject to the same restrictions and liabilities as he was entitled or subject to, immediately before the date of vesting.

Therefore, the interest of an occupancy tenant is not affected by vesting notwithstanding the fact that such occupancy tenant was not an intermediary and the intermediary interest has vested in the state under the Act.

Section 8-A of the Act provides the procedure for filing of claims under Sections 6, 7 and 8 of the Act. Section 6 deals with homesteads while Section 7 deals with agricultural and horticultural lands. Section 8(3) of the Act abolishes personal service to the ex-intermediary and provides settlement of the land held by the person rendering service under the intermediary with such person. With reference to these, Section 8-A of the Act contains the procedure for filing of claims. Sub-section (3) in the event of failure to apply, extinguishes the intermediary's right to claim settlement. Sub-section (4) deals with objections to claims for settlement. In a series of decisions of this Court it has now been authoritatively held that in a proceeding under Chapter II of the Act, if the occupancy tenant does not raise any objection and the Collector on the materials placed before him comes to hold that the claimant is entitled to settlement, the occupancy right gets extinguished. In the case of *Raghunath Panigrahi v. Udayanath sahu and Ors.* ILR 1969 Cutt 214, the question for consideration was as to whether the Defendant who claimed to be an occupancy tenant was entitled to dispute the settlement directed by the Collector. The learned ex-Chief Justice observed:

Under Sub-section (4) any person disputing the claim as to the extent or possession of such lands, buildings or structures, as the case may be, may file an objection before the Collector within six months from the public notice under Sub-section (2) of such claim and, the Collector shall, prior to the determination of rent under Sections 6, 7 and 8, enquire into the matter in the manner prescribed and pass such order as he deems just and proper. The Plaintiffs' case is that their claim u/s 8-A(1) has been upheld by the Estate Abolition Collector after giving due public notice and fair and equitable rent has been settled. As the Defendant did not appear in response to the issue of public notice, he is bound by this order

A Division Bench of this Court in the case of *v. Krishna Rao and Ors. v. Kotini Sitaram Dora and Ors.* 1973 (2) C.W.R. 1283, approved the ratio indicated in the aforesaid case and observed that the Collector under the Act has exclusive jurisdiction to determine the factum of khas possession of intermediary on the date of vesting. Such a fact is not a jurisdictional fact, but is the basis of the conclusion to be arrived at in the exercise of jurisdiction. The decision of the Collector is final subject to appeal and other remedies provided in the statute and cannot be questioned in the Civil Court.

In the two Single Judge decisions of mine, namely *Pitta Seethamma and Ors. v.*

Ramchandra Mohapatra 42 (1976) C.L.T. 148, and Narayan Chandra Mohanty (and after him) Kuni Bewa and Ors. 1976 (1) C.W.R. 127, following the ratio indicated in the aforesaid two cases, I have also taken the view that unless the occupancy tenant in possession objects to the claim, he is bound by the order of settlement and his occupancy tenancy would lapse in the event of a settlement of the land with ex-intermediary.

8. Possession on the date of vesting is certainly a question of fact and a dispute relating thereto is to be resolved in exercise of jurisdiction. When a property does not vest, the Collector under the Act has no jurisdiction to entertain a claim and make an order of settlement. Where, however, in an estate, there is an ex-intermediary and an occupancy tenant under him, an application u/s 8-A of the Act would be entertainable and the Collector would have jurisdiction to deal with the matter. When the Collector comes to be in seisin of the application of the ex-intermediary and he issues notice, law obliges the person claiming occupancy tenancy under him to enter contest by filing an objection u/s 8-A(4) of the Act. If there has been valid notice of the claim and there has been no resistances by the alleged occupancy tenant, he would be bound by the final order of settlement and as a consequence of the decision his occupancy right may come to terminate. There is absolutely no conflict between the ratio of the Supreme Court decision in Kumar Bimal Chandra Sinha (deceased) and after him his Kumar Bimal Chandra Sinha Vs. State of Orissa, , and the view taken in the aforesaid reported decisions of this Court. All that the Supreme Court said in Kumar Bimal Chandra Sinha Vs. State of Orissa, , is that the interest of the occupancy tenant is not touched by the Act. If the ex-intermediary's claim is allowed, his status is that of an occupancy tenant. There cannot be two different occupancy tenancies in respect of the same property. Necessarily, therefore, the two competing claims have got to be adjudicated together. It is in that view that this Court has indicated that if the occupancy tenant does not join issue and resist the claim of the ex-intermediary to a settlement, the settlement granted in favour of the ex-intermediary would wipe out the tenancy of the other person. Mr. Murty for the Respondent does not challenge this position.

9. In the instant case, according to Mr. Murty, the Defendants nowhere claimed that there had been a settlement by the Collector under the Estates Abolition Act with them. Reliance is placed on paragraph 7 of the written statement where it has been pleaded:

.... The Defendants 1 to 10 are not the intermediaries and no such right of theirs was abolished at the time of the abolition of Sanakhemedi estate. They have got subsisting right, title and after abolition they have been paying rent to the Government and the Government has recognised the Defendants 1 to 10 as occupancy raiyats of the suit lands. Defendants 1 to 10 are not the grantees of the malevaram interest over the suit lands.

It is contended by Mr. Murty that this plea runs counter to the case made out by the Defendants at the trial relying on Ext. F that they had obtained a settlement

under Chapter II of the Estates Abolition Act. Ext. F appears to be a regular settlement under Chapter II of the Estates Abolition Act. Mr. Pal maintains that the plea in the written statement was on the basis that by virtue of such a settlement the Defendants had become occupancy tenants. If the Defendants intended to raise such a plea, there was no justification for the statement that their right had not been abolished at the time of abolition of the estate or that they were not the grantees of the malevaram interest of the suit land. Nothing turns on the assertion that Defendants 1 to 10 were not the grantees of the malevaram interest. This might mean that the ex-intermediaries were in khas possession and even if they were so nothing stood in the way of obtaining settlement under the Act. It is a quite possible that the Defendants really meant that they have already obtained a settlement, because as a fact, under Ext. F, such a settlement has been obtained. There is force, however, in the stand of Mr. Murty for the Plaintiff Respondent that in the absence of a definite plea regarding the settlement under the Estates Abolition Act, the matter has not been properly agitated in the Courts below.

10. Both parties have agreed that the judgments of the Courts below may be vacated and the original suit may be sent back to the trial Court for a fresh disposal. Plaintiff and Defendants shall be permitted to amend their pleadings so as to raise the real controversy, which is Defendants claim that they have obtained settlement under the Estates Abolition Act and as such the settlement is in accordance with law; the Plaintiff's right if, any, as occupancy tenant has already been wiped out and the Civil Court's jurisdiction is barred u/s 39 of the Estates Abolition Act to entertain the present suit. Mr. Murty contends that in the event of such a plea definitely being there, Plaintiff's stand would be that there was no valid proceeding under the law and, therefore, the Plaintiff is not precluded from agitating the question in the Civil Court. The law is fairly settled that the Civil Court has jurisdiction to examine whether there has been a valid settlement in accordance with law. Even the decisions which I have referred to above take that view.

11. I would accordingly set aside the judgments of the two Courts below and remit the suit to the trial Court. Plaintiff as also Defendants would be at liberty to suitably amend their pleadings to raise a question indicated above. They would, therefore, be free to lead evidence in support of this stand. The trial Court is directed to dispose of the suit afresh in accordance with law. It may be made clear that in case the learned Trial Judge comes to the conclusion that there has been a valid proceeding under the Estates Abolition Act, the decision would certainly operate in wiping out the occupancy tenancy of the Plaintiff. If it is found that the proceeding was not in accordance with law, it would be for the Civil Court to decide the tenability of the rival claims of occupancy tenancy. Costs shall abide the event.

Ordered accordingly.