
(2005) 08 OHC CK 0024
In the Orissa High Court
Case No : OJC No. 3767 of 1993

Daitary Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Estates Abolition Act, 1951 — Section 38(B), 8(1)

Citation : (2005) 100 CLT 329

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : R.C. Mohanty, R.K. Mohanty, D. Mohanty, N. Behuria and P.C. Acharya, for the Appellant; P.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. In this application under Article 226 of the Constitution of India, the petitioner has called in question the order dated 16.2.1993 passed by the Member, Board of Revenue, Orissa, Cuttack in O.E.A. Revision case No. 13 of 1992 by exercising the power of revision u/s 38(B) of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as "the Act").

2. The ex-intermediary, the Raja of Kanika accepting the petitioner as a tenant over the land appertaining to Hal Plot No. 431 under Hal Khata No. 493 in mouza Pattia accepted rent from him and granted rent receipts. It is the case of the petitioner that upon vesting of intermediary interest under the Act "Ekpadia" was submitted by the Raja of Kanika being the ex-intermediary in which the name of the petitioner was shown as tenant in respect of the aforesaid land. In Misc. Case No. 36 of 1981, the O.E.A. Collector after calling for a report from the Revenue inspector settled the land u/s 8(1) of the Act in favour of the petitioner and the petitioner continued to possess the said land. Subsequently, the Collector-Opp. Party No. 3 on certain allegations referred the matter to the Member, Board of

Revenue-Opp. Party No. 2 and the said Opp. Party No. 2 by the impugned order set aside the settlement made in favour of the petitioner by the O.E.A. Collector.

3. We have heard Mr. R. K. Mohanty, Learned Counsel for the petitioner and Mr. P. K. Mohanty, Learned Addl. Government Advocate.

4. Mr. R. K. Mohanty submits that the order passed by the O.E.A. Collector u/s 8(1) of the Act being an administrative order, the Board of Revenue has acted without jurisdiction in exercising its power u/s 38(B) of the Act and setting aside the order of settlement passed in favour of the petitioner by the impugned order under Annexure-1 to the Writ Petition.

5. In a Full Bench decision of this Court in the case of Smt. Basanti Kumari Sahu Vs. State of Orissa and Others, it was held that where a person comes forward and offers rent for acceptance, the Tahasildar is under obligation to satisfy himself that the claim put forward by that person for acceptance of rent as a tenant is justified and that person as a tenant is entitled to offer rent and the Government is under obligation to accept the same from him. In order to satisfy himself, like an agent of Landlord, he has to make an enquiry. Such enquiry perforce has to be administrative in nature. It was, therefore, held that though no enquiry is contemplated and the decision may partake the trappings of adjudication, it is not one in exercise of power u/s 8(1) of the Act, which does not authorise a proceeding or adjudication, but the enquiry is akin to an enquiry necessitated to be undertaken by an agent of Landlord. In the context of the facts of the said case before the Full Bench which are similar to the facts of the present case, this Court came to the conclusion that there is no manner of doubt that the officer disposed of the matter as the O.E.A. Collector purporting to exercise jurisdiction u/s 8(1) of the Act which he did not possess. On such finding, it was further held that the misconceived application filed by the tenant did not absolve the Tahasildar from proceeding in a right manner and the application of the petitioner should be treated as such and not as one u/s 8(1) of the Act for settlement of the land. On this background, it was held in the said case that having regard to the provisions contained in Section 8(1) of the Act the same is a decision on the administrative side and not an order passed u/s 8(1) of the Act so as to be liable to be revised by the Board of Revenue u/s 38(B) of the Act. Relying on the decision in the case of Chandra Sekhar Rath v. The Collector, Dhenkanal and Ors. 67 (1989) CLT 493 the Full Bench came to the conclusion that the Board of Revenue has no jurisdiction u/s 38(B) to revise an administrative decision because such decision is not a decision in any proceeding under the Act.

6. Applying the above settled position of law to the facts of the present case, we find the contentions of Mr. R. K. Mohanty, Learned Counsel for the petitioner to be correct and acceptable which we, accordingly, do. We, therefore, of the view that the order u/s 8(1) of the Act passed by the O.E.A. Collector cannot be construed to be an order creating any right in favour of the petitioner for the first time and therefore, cannot be subjected to the revisional jurisdiction of the

Board of Revenue u/s 38(B) of the Act. We, therefore, have no hesitation to quash the impugned order dated 16.2.1993 passed in O.E.A. Revision Case 13 of 1992 by the Member, Board of Revenue, Orissa, Cuttack under Annexure-1 and we, accordingly, quash the same.

7. The Writ Application is allowed.