
(1991) 10 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 180 of 1986

Durga Thakurani and Others

APPELLANT

Vs

Balunki Bhoi and Others

RESPONDENT

Date of Decision : 29-10-1991

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 5(1)
Orissa Government Land Settlement Act, 1962 — Section 7A

Citation : (1992) 1 OLR 161

Hon'ble Judges : G.B. Pattnaik, J; D.M. Pattnaik, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; A.K. Bose and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—The petitioners have assailed the order of the Member, Board of Revenue dated 27th July. 1931, in G.L.S. Case No. 93 of 1979, annexed as Annexure-8, which the Board has passed in purported exercise of power under Section 7-A of the Orissa Government Land Settlement Act as well as the order of the said Member, Board of Revenue, under Annexure-9 rejecting the application for review filed by the petitioners.

2. The petitioners assert that the ex-intermediary had executed a lease in their favour on 5-9-1941 and subsequent to the vesting the intermediary submitted an Ekipadia and the State also accepted rent from the petitioners. In 1973, the Sub-Divisional Officer had initiated a proceeding u/s 5 (i) of the Orissa Estates Abolition Act, but on a finding that the lease in question was prior to the appointed date and the same was genuine, dropped the proceeding. The said order of the Sub-Divisional Officer has been annexed as Annexure-5. In the year 1975, the contesting opposite parties filed application u/s 36-A of the Orissa Land Reforms Act and the Revenue Officer dismissed that application by order dated 13-11-1975. In the meantime, some of the settled transferred parcels of

land in favour of different purchasers no filed suits being Title Suit Nos. 66, 2, 3, 4 and 5 of 81 and Title Suit No. 70 of 1973 and these suits were decreed and the decree has been annexed as Annexure-7. Having failed in their attempts to take possession of the land in question, the opposite parties moved the Member, Board of Revenue, by filing a petition u/s 7-A of the Orissa Government Land Settlement Act invoking his suo motu jurisdiction. The Member, Board of Revenue, disposed of that petition by the impugned order, annexed as Annexure-S, on a finding that the order of the Sub-Divisional Officer passed u/s 5 (i) of the Orissa Estates Abolition Act is illegal and accordingly cancelled the lease in question. The petitioners being aggrieved had moved the Member, Board of Revenue, in review and the said review application having been dismissed by order under Annexure-9, have moved this Court.

3. Mr. P. K. Misra, the learned counsel for the petitioners, assails the order of the Member, Board of Revenue, on the ground that the provisions of Section 7-A of the Orissa Government Land Settlement Act Cannot have application as the land in question has not been settled with the petitioners under the provisions of Orissa Government Land Settlement Act. He further contends that the finding of Sub-Divisional Officer that the lease in question is dated 5-9-1944 and, therefore, it was not created after 1-1-1946 and the same was genuine and was not for the purpose of defrauding the statute not having been reversed by the Member, Board of Revenue had no jurisdiction to pass the impugned order.

Mr. Bose appearing for the contesting opposite parties fairly states that the provisions of the Orissa Government Land Settlement Act cannot apply as the land in question had not been settled under the provisions of the said Act. He, however, submits that the Board could exercise its power u/s 38-B of the Orissa Estates Abolition Act and, therefore, there is no infirmity with the order of the Member, Board of Revenue, he having annulled the lease u/s 5 (i) of the Orissa Abolition Act.

4. In view of the rival submissions made at the Bar, the short question that arises for consideration is whether the Member, Board of Revenue, could be justified in annulling the order of the Sub-Divisional Officer passed in a proceeding u/s 5 (i) of the Orissa Estates Abolition Act by exercising his suo motu power u/s 38-B of the Orissa Estates Abolition Act, the matter being brought to his notice. Section 5 (i) of the Orissa Estates Abolition Act clearly indicates that only when the Collector would be satisfied that lease in question was made or created at any time after the first day of January, 1946 and that such settlement, lease or transfer was made with the object of defeating any provisions of the Act or for obtaining higher compensation there under, then only he will have the power to pass appropriate orders setting aside the settlement in question. Therefore, the pre-conditions for exercise of power u/s 5 (i) are that the Collector must be satisfied that the lease was created after 1-1-1946 and it was made with the object of defeating any provisions of the Act or for obtaining higher compensation there under. The Sub-Divisional Officer by his order,

annexed as Annexure-5 has come to a positive finding that the lease was created on 5-9-1944 and, therefore, was much prior to 1-1-1946 and that the same is genuine and was not intended for defeating the provisions of the Act or for obtaining any higher compensation. Even if the Member, Board of Revenue, could exercise his suo motu power u/s 38-B of the Orissa Estates Abolition Act in respect of an order passed by the Sub-Divisional Officer u/s 5 (i), but the pre-conditions for exercise of power u/s b(i) must be satisfied, A bare perusal of the order of the Member, Board of Revenue, under Annexure-3 would indicate that neither he has set aside the findings of the Sub-Divisional Officer nor has he come to any positive conclusion that the lease in question was created after 1-1-1946 and it was intended for defeating the provisions of the Act or for obtaining any higher compensation. Therefore, the necessary ancillary findings for e exercise of power u/s 5 (i) of the Orissa Estates Abolition Act are absent in the impugned order of the Member, Board of Revenue Consequently, the said order of the Member, Board of Revenue, must be held to be illegal, invalid and inoperative. Further, the Member Board of Revenue, committed error in not reviewing his earlier order on being moved by the petitioners. In that view of the matter, we quash the order passed by the Member, Board of Revenue, under Annexures-8 and 9 and confirm the order u/s 5 (i) of the Orissa Estates Abolition Act passed by the Sub-Divisional Officer under Annexure-6.

The writ application is allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.

5. I agree.