
(1974) 03 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No"s. 444 and 445 of 1972

Giridhari Mohapatra and Others

APPELLANT

Vs

Raghunath Jew and Others

RESPONDENT

Date of Decision : 04-03-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1975 Ori 60

Hon'ble Judges : S. Acharya, J;B.K. Patra, J

Bench : Division Bench

Advocate : R. Mohaty, for the Appellant; S. Mohanty, S. Misra, B. Das, K.N. Sinha, S.K. Mohanty and R. K. Patra, for the Respondent

Judgement

Acharya, J.—Being aggrieved by exactly similar orders passed in O.E.A. Appeals Nos. 68 and 69 of 1967 (Annex-ure-4 in both the writ petitions) the petitioners have filed these two writ applications under Articles 226 and 227 of the Constitution of India praying for issue of writs in the nature of certiorari quashing the said order as per Annexure-4. The questions involved in both the writ petitions being the same they were taken up together for hearing and one set of argument was advanced by counsel appearing for all the parties. Accordingly this judgment will govern both the writ petitions.

2. The petitioners" case in both the writ petitions in short is that the lands in respect of which the impugned order (An-nexure-4) has been passed were a part of an estate and the ancestors of the petitioners purchased the same by a registered sale deed dated 11-7-1868 from the then intermediary, and ever since that time the petitioners" ancestors continued in possession of the said lands generation after generation and the petitioners now ere in peaceful possession of the same. The petitioners" ancestors having purchased the intermediary interest in the said lands became intermediaries in respect of these lands and thereafter the petitioners as intermediaries in possession of the lands made applications u/s 8-A (1) of the Orissa Estates Abolition Act (Act 1 of 1962) (hereinafter referred

to as the Act) before the Estates Abolition Collector (hereinafter referred to as the Collector) and their applications were registered as Case No. 2929 of 1963-64 and Case No. 2930 of 1963-64. The Collector u/s 8-A (2) duly invited objections u/s 8-A (4) of the Act, and as no objection was received by him he passed the order dated 18-8-1964 (Annexure-1) settling the said lands with the petitioners under Sections 6 and 7 of the Act on fair and equitable rent, thereby treating the petitioners as occupancy ryots in respect of the said lands. The petitioners continued in possession of the said lands and in course of time they sold the same to the pro forma opposite parties. It is also averred that the compensation payable under the Act for the abolition of the intermediary interest in respect of the lands in question was paid to the petitioners 3 years 4 months after the passing of the aforesaid order of the Collector (Annex-ure-1), the petitioners received appeal notices concerning Orissa Estates Abolition Appeals Nos. 68 and 69 of 1967 filed by opposite party No. 1. The said appeals were filed before opposite party No. 2 on 26-12-1967. It is stated that opposite party No. 1, not having filed any objection u/s 8-A (4) within the time prescribed thereunder, was not entitled to file the said appeals as it was not a party to the original proceeding before the Collector in which the order as per Annexure-1 was passed in favour of the petitioners. Apart from urging that opposite party No. 1 had no locus standi to file the aforesaid appeals it is also contended that the appeals having been filed by opposite party No. 1 after 3 years and 4 months of the passing of the Collector's order are barred by limitation as they were not filed within the time prescribed u/s 9 of the Act. The petitioners after receipt of the appeal notices raised questions against the maintainability of the appeals on several grounds and canvassed the question of limitation as a preliminary point before opp. party No. 2, but opposite party No. 2 disposed of the appeals on merits. Thereafter the petitioners filed a writ petition being O.J.C. No. 1762 of 1968, in this Court to quash the said appellate order of opposite party No. 2 in which the aforesaid order of opposite party No. 2 was quashed as the question of limitation had not been taken into consideration, and opposite party No. 2 was directed to dispose of the appeals in accordance with law. According to the said direction of this Court, opposite party No. 2 heard the parties and without discussing the scope and ambit of Section 5 of the Limitation Act and without proper assessment of the evidence on record and by misdirecting itself on the proper questions at issue passed the impugned order which is erroneous both in fact and in law.

3. In the counter affidavit filed on behalf of opposite party No. 1 in both the aforesaid writ petitions it is inter alia stated that the lands in question were never a part of any other estate as alleged by the petitioners and their ancestors never purchased the intermediary right in the said lands in the year 1868 or at any other time and they and/or the petitioners never acquired the intermediary right in the said lands: that the petitioners having admitted to have sold away the lands in dispute have no personal interest to maintain these applications against the opposite parties; that the Collector has illegally settled the said lands with

the petitioners; that in fact the deity opposite party No. 1, through its Marfatdars and Sebayats is in possession of the said lands; that the petitioners not being the intermediaries in respect of the lands in question and not being in possession of the same, illegally filed an application u/s 8A (1) of the Act, with the mala fide purpose of defeating the lawful right and interest of opposite party No. 1 in the lands in question; that the Collector did not invite any objection in accordance with law on the aforesaid petitions filed before him and so the Collector had no jurisdiction to pass the order annexure-1 settling the lands in favour of the persons who in fact are not intermediaries in respect of the lands in question and accordingly the persons on whom the lands were settled by Annex-ure-1 cannot be said to have acquired occupancy right in respect of the said lands end mutation, if any, in their names in respect of the said lands on the basis of that order cannot confer any right in respect of the said lands. In paragraph 10 of the counter it has been specifically asserted that the persons in whose favour the said lands were settled by the Collector as per Annexure-1 falsely and with a mala fide intention and motive suppressed the material facts and by manipulation obtained the said ex parte order in their favour. Opposite party No. 1 came to know about the said illegal order and the surreptitious and fraudulent move of the petitioners in that direction only when the petitioners started disposing of the said lands in favour of outsiders. Thereafter on obtaining the certified copy of the said order opposite party No. 1 preferred the said appeals. It is specifically asserted that opposite party No. 1, the deity, who is actually the intermediary in respect of the said lands, is only entitled to the settlement of the said lands u/s 7 of the Act, and the deity being the sole intermediary in respect of the said lands was vitally affected by the said illegal and surreptitious order (Annex. 1) passed by the Collector; and so, opposite party No. 1 was entitled to carry an appeal against the Collector's order after coming to know about that illegal order and accordingly its appeal was maintainable before the appellate court and the said court had jurisdiction to pass the impugned order. It is also contended that as the appellate court has now passed the impugned order after condoning the delay in filing the appeal, the petitioners in this writ petition cannot question the correctness and propriety of the order condoning the delay, as that court had the jurisdiction to decide that question one way or the other nor can they question the correctness of the decision on the other aspects of the matter as the same have been arrived at on taking a correct view of those matters on the documentary evidence on record; and the decisions on all the abovementioned questions are not vitiated by any illegality patent on the face of the record.

4. The decision on the question of limitation, as we find from the impugned order, has been arrived at on a consideration of the various facts and circumstances presented before the court below by both the parties. In fact this court quashed the previous order of the appellate court as the question of limitation had not been expressly decided by that court and the said court was directed to dispose of the appeal afresh in accordance with law on giving its

decision on the question of limitation as well as on other aspects of the matter. The learned Additional District Magistrate therefore on a consideration of the materials before him and on hearing the counsel for both the parties has decided the question of limitation amongst other things in his impugned order. It is not for us to assess the correctness and propriety of the factual aspects of the said order, as we in exercise of our writ jurisdiction, do not act as an appellate court over the decisions of the Court below in such matters.

5. Mr. Mohanty, however, questions the jurisdiction of the appellate court to decide the question of limitation and the other matters decided in the impugned order, on the ground that the appeal filed by opposite party No. 1 was not legally maintainable and so the learned Additional District Magistrate was not competent at all to decide the question involved in the same. In this connection it is urged that opposite party No. 1, not having filed any application u/s 8-A (1) of the Act, nor having preferred any objection before the Collector u/s 8-A (4) against the claim preferred by the petitioners u/s 8-A (1) of the Act and not being a party to the lis before the Collector in any other capacity, was legally not entitled to file the appeal, and is not entitled to any order in its favour under the provisions of the Act. It is further urged that the lands having been settled with the petitioners on their claim petition u/s 8-A (1) of the Act and opposite party No. 1 and/or its Marfatdars not having preferred any application u/s 8-A of the Act, the said lands are not available for settlement with opposite party No. 1 as provided u/s 8-A (3) of the Act and on this ground also the appeal is incompetent and no relief can be granted to the opposite party in this appeal.

Patently the order in Annexure-1 was passed by the Collector ex parte. Therein it is stated that "the ex-intermediary was in actual khas possession of the land claimed on the date of vesting and no communal and reserve lands are involved". The appellate order (Annexure-4) shows that the settlement records filed in the case reveal that the recorded intermediary is Sri Raghunath Jew (Opp. party No. 1). Under Sections 6 and 7 of the Act the ex intermediary is given the privilege of retaining the properties with right of occupancy in the same on payment of fair and equitable rent. provided that he was in khas possession of the proper at at the time of vesting and a timely application u/s 8-A (1) is made. So opposite party No. 1 only was entitled to the said privilege under Sections 6 and 7 of the Act in respect of the lands in question if it would have made a timely application u/s 6-A (1). The learned Additional District Magistrate specifically finds that a perusal of the lower court records reveals that the learned Collector under the O.E.A. Act did not examine as to who was the recorded intermediary in respect of the lands in question even though the record of rights was with him, but passed the order Annexure-1 merely on the averments In the petition filed before him. In the writ petitions the petitioners base their claim to the said lands on the basis of their allegation that their ancestors purchased the intermediary right in the lands in question in 1868 from the then intermediary and ever since that time the petitioners" ancestors remained in possession of the said estate generation after generation and now

the petitioners are in peaceful possession of the same. Their above allegation is patently incorrect as the same is belied by the record of rights, as found by the court below, and as we also find from the copy of the record of rights (Annexure-A) appended to the counter filed by opposite party No. 1. On the above facts it is quite evident that the petitioners were not entitled to any order under Sections 6 and 7 of the Act on the basis of their aforesaid claim to the said lands.

6. The above facts show that the petitioners suppressed relevant facts from the Collector and managed somehow to get in their favour the ex parte order as per Annexure-1. The Additional District Magistrate in the impugned order finds that notice was not served on the Mahanta of the deity -- opposite party No. 1, even though the record of rights reveals that he is one of the Marfatdars. In these writ petitions also the petitioners have not come with clean hands as they have not stated therein the true and correct facts regarding the lands in question. It is well settled that a person who invokes the jurisdiction of this Court under Article 226 of the Constitution must come with clean hands and is under an obligation to the court to make a full disclosure of all material facts within his knowledge, and if it is found that he has deliberately suppressed any material facts then he disentitles himself to get any relief. Suppression of a material fact in the writ petition justifies rejection of the same. Moreover if the court comes to the conclusion that an application under Article 226 of the Constitution on affidavit was not candid and did not fairly state the facts but stated them in such a way as to mislead the court as to the true facts, the Court ought, for its own protection and to prevent the abuse of its process, to refuse to proceed any further with the examination of the matter on merits. In this connection the decisions in *Narain Dass and Another Vs. State of Punjab and Others*, may be seen.

7. In the present case we are satisfied that the petitioners have suppressed material facts in the writ petitions and have not made a full disclosure of the actual facts relating to the lands in question. Certain facts alleged in the writ petitions do not represent the correct state of affairs and have been stated in such a way as would mislead the court as to the true facts of the case, It is also quite evident that the petitioners obtained the order Annexure-1 from the Collector by suppression of material facts. On the above view of the matter the petitioners have disentitled themselves to get any relief from us in these writ petitions. We, therefore, refuse to proceed any further to examine the merits of these writ petitions.

8. It has however, to be stated that opposite party No. 1 did not make any application u/s 8-A (1) of the Act at the proper time. The application of the petitioners before the Collector was not on behalf of the deity-ex-intermediary, but was on the basis of their own alleged independent right as mentioned above. So no application u/s 8-A (1) of the Act was made by anybody on behalf of opposite party No. 1 at the proper time. Accordingly, the lands in question vested absolutely in the State Government free from all encumbrances, and the intermediary (Opp. party No. 1) ceased to have any interest in the said lands. So

opposite party No. 1 is not entitled to claim any right under Sections 6 and 7 of the Act in respect of the said lands. It is of course left to the State Government to settle the lands with the deity (opp. party No. 1) on the consideration of the fact that the said deity was actually the ex-intermediary in respect of the said lands. The order of the Additional District Magistrate in Annexure-4, settling the lands "in the names of all the trustees (both the Mahant and the Sebayats) as trustees of Sri Raghunath Jew, the deity, ex-intermediary" not being in strict accord with the provisions of the Act cannot be allowed to stand. The order of the Collector (Annexure-1) in favour of the petitioners is also not in accordance with law, as the Collector passed that order in favour of persons who in fact were not the recorded intermediaries in respect of the lands in question. That being so that order also is to be set aside. Accordingly, the order as per Annexure-1 passed in favour of the petitioners and the impugned order (Annexure-4) are both set aside and it is now left to the State authorities to consider the question of settling the lands in question in favour of the ex-intermediary and/or any other suitable person as they deem fit and proper. Suitable writs quashing Annexures 1 and 4 be issued. The writ petitions are disposed of accordingly.

In the circumstances there will be no order as to costs.

Patra, J.

9. I agree.