(2010) 12 OHC CK 0047

In the Orissa High Court

Case No : O.J.C. No. 15822 of 2001

Gobinda Prasad Pattanaik and Another APPELLANT

Vs

Collector, Cuttack and Others RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7
Orissa Municipal Act, 1950 — Section 252, 253

Citation : (2011) 1 OLR 216 Supp

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—This writ application has been filed with a prayer to quash Annexure-1, the order dated 26.9.2001 passed by the Collector, Cuttack (O.P.1) in Revenue Misc. Case No.4 /1998 initiated by the Executive Officer, Cuttack Municipal Corporation (O.P.4).

2. The brief facts leading to this writ application are as follows:-

According to the petitioners, they had purchased Ac.0.081 decs. of land appertaining to Hal Plot No. 282 and Ac.0.136 decs. and Ac.0.040 decs. appertaining to Hal Plot Nos. 283(P) and 286 by registered sale deeds dated 20.4.1987 after obtaining Urban Land Ceiling permission on 19.3.1987 in Permission Case No. 966/86. Petitioner no.1 had also acquired Ac.0.059 decs. out of aforesaid Hal Plot No. 283(P) in T.S. No. 345/1987. Accordingly, the petitioners'' total area of land is Ac.0.276 decs. + Ac.0.040 decs. in the aforesaid Hal plots, which correspond to the Sabik Plot No. 1135/3776 under Sabak Khata No. 917, in respect of which the petitioners'' Vendor-Naba Kumar Acharya, Ex-landlord was a tenant under the State vide order in O.E.A. Case No. 369.9/76.

The further case of the petitioners is that Naba Kumar Acharya, who was the Ex-Intermediary had acquired his rights by virtue of his Nijdakhal on the date of vesting on 9.2.1952 under Sections 6 and 7 of the O.E.A. Act and he had been recognized as a tenant under the State by order dated 7.1.1978 (Annexure-3) and his right had been settled as per G.O. No. 14399 dtd.2.3.1964. The petitioners were assigned Holding No. 423/B/3 on 3.9.1989 and payment of holding tax was up-to-date till 31.3.2002. On 10.7.1990 the petitioners'' holding tax was re-assessed and enhanced which was payable from 10.8.1990. The Cuttack Development Authority approved the petitioners'' building plan on 10.9.1990. At that juncture, O.P.4 issued an encroachment notice vide no. 144-E/90-91 to petitioner no.1 said to have been issued under Sections 252 and 253 of the Orissa Municipal Act, 1950, to which the petitioners gave reply on 19.12.1990 and thereafter, O.P.4 took no action and the petitioners proceed with construction of their houses and after lapse of four years, O.P.4 issued another notice on 1.2.1994 to petitioner no.1 to stop further construction of their houses, to which the petitioners on 21.2.1994 replied that construction of their house was over and O.P.4 did take no action thereafter.

The petitioners applied to the C.D.A. on 25.4.1994 for approval of plan for extention of their building, to which Cuttack Municipal Corporation, O.P.4 filed an objection, which led petitioner no.1 to approach the Director of Municipal Administration on 7.9.1994. The Director called for the views of Cuttack Municipal Corporation-O.P.4 and ultimately passed an order on 17.6.95 restraining Cuttack Municipal Corporation-O.P.4 to interfere in petitioners'' right of construction/extention of their building, due to which the C.D.A. accorded necessary permission on 14.8.95. Thereafter, the petitioners filed Mutation Cases on 20.10.95, which were allowed.

Being aggrieved, O.P.4 challenged the said order passed in the Mutation Cases in Appeals before the Sub-Collector, O.P.3 and made a false representation before O.P.3 that the petitioners'' holding no. 423/B/3 granted in 1989 was cancelled prior to the Mutation Appeals were filed. But according to the petitioners, the same was cancelled illegally on 12.9.1996, against which order they had preferred appeal bearing no.2/96 before the A.D.M. (Urban Land Ceiling), Cuttack on 16.10.96, which was allowed on 27.10.99. The petitioners'' Appeal being allowed, the Mutation Appeals of O.P.4 were dismissed on 28.3.98. Thereafter, the Tahasildar, Cuttack, O.P.2, issued R.O.R. on 28.5.98 and revenue rent was collected from the petitioners till 31.3.2002. The petitioners paid holding tax till 31.5.2001, vide Annexure-6.

The further case of the petitioners is that their purchased/occupied area is Ac.0.316 decs. out of Sabak Plot nos. 1135/3776 and Ac.0.606 decs. out of Sabak khata no. 917. Their area of Ac.0.316 decs. was bounded by the Badambadi-River Kathajori road on the West at a distance of about 40 feet from the petitioners'' building, Municipality road on the East, house of the Ex-Intermediaries on the North and rest portion of the Sabak plot no. 1135/3776 on the South along with other house sites. The petitioners'' house was thickly surrounded by house sites of others and houses lie on both sides of the intervening public road.

The lands in question were of ex-proprietary status which vested in the State in 1953-54 and the ex-landlord, who was the petitioners'' Vendor, protected the said lands from vesting and on being tenants under the State and their title/ occupancy right on and from the date of vesting. Annexure-3, which is the order of settlement dated 7.1.78 passed under the O.E.A. Act was never assailed by anybody including the Municipal Corporation and it is final with retrospective operation from the date of vesting in 1953-54. Before purchasing the lends on 20.4.87, petitioner no.1 had acquired certified copies of the D-Register maintained by the Collector, the order passed under the O.E.A. Act (Annexure-3), Rent Schedule issued to the Vendor of the petitioners on 27.3.81 by the Tahasildar vide Annexure-12, the documents of their Vendor with regard to rent receipts obtained by their Vendor from the Tahasildar, Sadar, Cuttack since 1953-54 up to 1992-93 and the order of the Assistant Settlement Officer, Rent Camp, in Rent Objection Case No. 3654/1981 recording the name of the petitioners'' Vendor, Naba Kumar Acharya, and assessing rent in respect of the lands in question.

3. So far as the title to the land in question of the petitioners'' Vendor, the Ex-landlord is concerned, according to the petitioners, one Gajendra Acharya was the recorded Proprietor/Intermediary and the petitioners'' Vendor, Naba Kumar Acharya was the son of said Gajendra Acharya, Smt. Premalata Acharya was the wife of the petitioners'' Vendors brother Sasanka Acharya and Smt. Radharani Panda was the sister of Naba Kumar Acharya. The above said persons were residing on the lands in question prior to vesting and had their residential houses.

The petitioners'' two Vendors, namely, Naba Kumar Acharya and Smt. Premalata Acharya, were assigned Municipal holding numbers in respect of their houses on the lands in question before they transferred their lands to the petitioners on 20.4.87 by registered sale deed and on 11.7.88 pursuant to compromise decree in T.S. No. 345/87. Holding number of the said Naba Kumar Acharya was 423/B in Ward No. 23 which was assigned to him since 30.9.63. Naba Kumar Acharya was paying holding tax to O.P.4 since 19.11.1963. Holding number of Smt. Premalata Acharya was 423/B/1 in Ward NO. 23 assigned to her on 28.8.70 and she was paying holding tax to O.P.4. Holding number assigned by O.P.4 to Smt. Radharani Panda ws 423/B/2 and she was paying the holding tax regularly. O.P.4 had approved the building plan with permission for construction of septic tank and latrine of the Ex-landlord, Naba Kumar Acharya on 17.11.64 and also permitted Naba Kumar Acharya to take electricity connection to his residential building. O.P.4 also granted permission to Lingaraj Acharya, son of Naba Kumar Acharya, for construction of a body building unit on sabak plot no. 1135/3776, a part of the land which the petitioners purchased on 20.4.87. O.P.4 had also granted approval of the water connection plan of Naba Kumar Acharya on 17.9.85.

According to the petitioners, the Cuttack Municipal Corporation having never assailed Annexure-3, the order passed under O.E.A. Act, now comes with a proposition that the said order was fraud as it was held in C.M.C. Appeal Case No. 1/73. According to them, initiation of different proceedings before the revenue authorities does not take away the effect of the order passed by the O.E.A. Collector and the Collector had no jurisdiction to set at naught a position statutorily settled. It is submitted that there was no scope for initiation of the proceeding by filing Revenue Misc. Case No. 4/98.

4. After looking at the case of O.P.4, first I will have to look at the contents of the petition registered as Revenue Misc. Case No. 4/98 under Annexure-2. The case of the said O.P.4, who was the petitioner in that case, was that after the lands were settled (Ac.0.606 decs.), the Assistant Settlement Officer directed to record a portion of the land in favour of Naba Kumar Acharya in a separate sthitiban khata because according to the Municipal Corporation, Sabak khata no. 917 pertaining to mouza-Baharbisinabar had been recorded in favour of Cuttack Municipal corporation in 1931 R.O.R. under "Bharat Samrat 1st part Khe. No. 32". As such suit plot no. 1135/3776-Ac.0.606 decs. pertaining to Sabak Khata No. 917 of mouza-Bahar Bisinabar had never vested in the Government under the O.E.A. Act and the order dated 7.1.1978 of the Additional Tahasildar to settle the Municipal land in favour of Naba Kumar Acharya under Sections 6 & 7 of the O.E.A. Act was not within his jurisdiction. This order was passed in O.E.A. Case No. 3699/76 on the basis of an R.1''s report and not on the basis of facts. So, according to the Municipal Corporation, the settlement order passed behind the back of the recorded owner, i.e., Cuttack Municipal, is void and inoperative. Accordingly, Tauzi No. 2499 vested in the Government, vide no. 2291/EA dtd.14.9.1953 and the same did not include the suit khata no. 917 belonging to the Municipality and as such settlement of Municipal land in Sabak plot no. 1135/ 3776 under the O.E.A. Act is nothing but a nullity. The O.E.A. case record was not available for perusal. Thus the claim of the petitioners on the basis of documents showing their purchase from Naba Kumar Acharya was absurd and baseless. The creation of other documents/ orders pursuant to O.E.A. order did not hold good after the O.E.A. order was found as fraud by the Collector, Cuttack in R.M.C.No. 4/ 1998.

5. It is further submitted by the learned counsel for O.P.4 that the Mutation Cases, which were allowed by the Tahasildar in 1996, are non est in the eye of law because the same were allowed basing on the order passed in the OEA case, and that too, though the petitioners filed mutation cases in respect of total area measuring Ac.0.316 decs., the Tahasildar had illegally allowed the mutation in respect of Ac.0.438 decs. without giving any reference to the sale deeds in favour of the petitioners and their vendor in separate khata. According to him, the claim of the petitioners that they have purchased the aforesaid extent of land from the vendor is void and the alleged OEA settlement order cannot be relied upon. So also the grant of patta creating separate stitiban khata in favour of the petitioners is also illegal. It is further indicated in the additional counter affidavit of O.P.4 that the CMC preferring MRC Case Nos. 20/98, 21/98 and 22/ 98 before

the Board of Revenue against the impugned orders passed by the Sub-Collector, which are sub juice.

6. In the counter affidavit filed on behalf of O.P.1-Collector, Cuttack, it is stated that the CMC preferred Revenue Misc. Case No. 4/98 against the order of the Sub-Collector, Cuttack Sadar vide Mutation Appeal Nos. 87/96 to 89/96 and no irregularity can be attached to the order of the Collector as he was competent to pass the said order. They have also denied the contention of the petitioners that the case land was under possession and occupation of the vendor of the petitioners. So far as passing of the order by the Collector in the aforesaid Revenue Misc. Case No. 4/98 in absence of the petitioners, stand has been taken and so also it was argued by the learned counsel for the State that the petitioners were not impleaded as opposite parties in the aforesaid Revenue Misc. Case and there was no legal necessity to issue notice to the petitioners to appear before the Collector. So it cannot be said to be an ex parte order.

7. The question now arises before this Court whether the order dated 26.9.2001 passed by the Collector, Cuttack in Revenue Misc. Case No. 4/98 under Annexure-1 is correct and whether the Collector had jurisdiction to pass the said order.

8. Admittedly, the order has been passed by the Collector on the application of the Executive Officer of the CMC. The Collector prima facie came to the conclusion that fraud was committed in the OEA Case No. 3699/1976 and has issued the following directions:-

1) The Cuttack Municipal Corporation is directed to file Mutation Appeal before the Sub-Collector, Sadar, Cuttack against the Mutation Case Nos. 1749/1995, 1750/1995 and 1751/1995, if it is already done so and if the Sub-Collector, has disposed of the cases, the Municipality shall take the next steps of filing revenue cases in the Court of the Collector, Cuttack against the Mutation Appeals.

2) Sri Baishnab Charan Parida, Jr. Clerk is hereby placed under suspension with immediate effect. The Addl. District Magistrate, Revenue, shall submit draft charges within three days.

9. In my considered opinion, the order in the aforesaid Revenue Misc. Case passed by the Collector, was admittedly without giving any opportunity of hearing to the petitioners. Though various questions of right, title and interest have been raised before this Court, this Court is not to go into those aspects. Looking at the facts and circumstances, this Court concludes that as Revenue Misc. Case No. 4/1998 was heard without giving an opportunity of hearing to the petitioners and therefore, this Court sets aside the order dated 26.9.2001 passed by the Collector, Cuttack in said Revenue Misc. Case and directs the Collector, Cuttack to issue notice to the petitioners, hear the parties and pass orders afresh as would be deemed fit and proper in accordance with law.

The writ application is allowed accordingly. No costs.

