
(2013) 08 OHC CK 0069
In the Orissa High Court
Case No : Writ Petition (C) No. 295 of 2009

Kishori Ranjan Dash

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 116 CLT 1123 : (2013) 2 OLR 780

Hon'ble Judges : S. Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : N.P. Parija, S.K. Rout, A.K. Mohanty and K.K. Mohapatra, for the Appellant;

Final Decision : Dismissed

Judgement

S. Panda, J.—This Writ Petition has been filed by the petitioner challenging the decision of the Member, Board of Revenue, Odisha, Cuttack dtd. 18.10.2008 passed in O.E.A. Revision Case No. 294 of 2006 u/s 38B of the Odisha Estates Abolition Act, 1951 (hereinafter referred to as "the Act"). The dispute is related to the land appertaining to Plot No. 1112 under Khata No. 352 measuring an area of Ac. 0.28 decimals situated in Village-Nizgarh, P.S. Sukinda in the district of Jajpur, which was recorded in the name of the Proprietor Gunanidhi Das of Sukinda Estate. The plea of the petitioner is as follows:

Gunanidhi Das executed "Hatapatta" of the land in favour of one Bimala Sundari Debi, W/o Padmanabha Das, who had paid rent to the Sukinda Estate and obtained rent receipts. The Estate was vested with the Government in the year 1952-53 by notification dtd. 27.11.1952. While matter stood thus, Bimala Sundari Debi filed an application before the O.E.A. Collector-cum-Tahsildar, Sukinda Tahsil for acceptance of tenancy and to fix fare and equitable rent, which was registered as O.E.A. Case No. 35 of 1980. The O.E.A. Collector-cum-Tahsildar, Sukinda Tahsil called for a report from the Revenue Inspector, Nizgarh and also issued general proclamation inviting objection to know whether anybody has any objection to the claim of Bimala Sundari Debi. No objection was received

by the Tahsildar within the statutory period. The Revenue Inspector also submitted report on 17.4.1980 stating that rent was paid by Bimala Sundari Debi to the ex-Estate on 17.11.1952 and she obtained Receipt No. 3951 from the ex-Estate of Sukinda and she was possessing the land. After receiving the report from the Revenue Inspector, Nizagarh, and on verifying the document, the O.E.A. Collector accepted her as tenant vide order dtd. 01.12 1980. Thereafter, she was paying rent regularly and has obtained rent receipts thereof. The present petitioner being the son of Bimala Sundari Debi is the only legal heir and in possession of the said land. During Hal Settlement the said land was recorded under Khata No. 89, Plot No. 1895 measuring an area of Ac. 0.17 decimals and Plot No. 1896 measuring an area of Ac. 0.22 decimals and Patta was issued in the name of the petitioner by the Settlement Authority. In the Hal Settlement R.O.R. published on 31.5.1992 the land was recorded under Khata No. 884, Plot No. 1895 measuring an area of Ac. 0.30 decimals in the name of the Government under Anabadi Khata with note of illegal possession reflecting the name of the petitioner. The petitioner filed a petition before the Commissioner, Land Records and Settlement Odisha, Cuttack u/s 15(b) of the Odisha Survey and Settlement Act, 1958, which was registered as R.P. Case No. 7751 of 1997 to correct the Records of Right in his name. The Commissioner by order dtd. 25.9.2002 while allowing the Revision Petition directed the Tahsildar, Sukinda to record the suit land in favour of the petitioner in a separate Khata in sthitiban status within four months from the date of receipt of the order. Thereafter, on the request of the Collector, Jajpur a Revision was filed before the Member, Board of Revenue, Odisha, Cuttack u/s 38B of the O.E.A. Act, 1951 challenging the order passed by the O.E.A. Collector in the year 2006, which was registered as O.E.A. Revision Case No. 294 of 2006. The Member, Board of Revenue, Odisha, Cuttack by the impugned order directed that the suit land shall be recorded in the "Anabadi" Khata of the State Government as it was prior to vesting and the possession be also resumed by Tahsildar, Sukinda with immediate effect.

2. Learned counsel appearing for the petitioner submits that the Revision was initiated after lapse of twenty-six years which is beyond the statutory period, therefore, the same shall be reversed. He further submits that the Member, Board of Revenue should not have interfered with the order passed by the O.E.A. Collector on the administrative side recognizing the tenant after accepting rent. In support of his contention he has cited a decision of this Court in the case of Gunduchi Bijaya Barik and others v. State of Odisha and others reported in 2008 (II) CLR 158, wherein this Court held that the order passed by the Tahsildar in purported exercise of jurisdiction u/s 8(1) being administrative in nature, Board of Revenue has no jurisdiction to revise an administrative decision, because such decision is not a decision in any proceeding under the Act. Learned counsel for the petitioner in support of his case further cited a decision of this Court in the case of Jagannath Nanda Vs. Bishnu Dalei and Others, , wherein this Court held that if it is established that after the abolition of the estate the ex-intermediary paid rent to the State in respect of the disputed properties and the State

accepted the rent, he acquired occupancy rights in the disputed properties. To acquire occupancy rights, therefore, it is not only necessary that the ex-intermediary should have been in Khas possession of the land but he should also have paid the fare and equitable rent as determined by the Collector. It is stated that as Bimala Sundari Debi was in possession of the land and paid rent on 17.11.1952, she acquired occupancy right.

3. Learned Addl. Government Advocate submits that the Hon"ble Apex Court has already settled the law that there is no scope for the tenant to file an application u/s 8(1) of the Act to declare him as tenant and to accept rent after lapse of long period from the date of vesting. In support of his contention learned Addl. Government Advocate has relied on the decisions of the Supreme Court as well as his Court reported in *State of Orissa v. Brindaban Sharma* .

3.1 In the case of *State of Orissa v. Brindaban Sharma* the Supreme Court held that the lease of land allegedly granted by the intermediary to the tenant prior to the date of vesting and conferment of tenancy rights by the Tahsildar without obtaining prior confirmation of the Board of Revenue is without jurisdiction. Collector of revenue or rent thereafter is an administrative act and it does not operate as recognition of pre-existing right, title or interest in the land of the tenant. The Board of Revenue can exercise revisional powers in respect of orders, decisions, etc. made prior to coming into force of Section 38B but initiation of revisional power must be from and after coming into force of the Section. No period of limitation prescribed under the Act for revision and validity of a non est order can be questioned in any proceeding at any stage. Since conferment of tenancy rights by the Tahsildar without obtaining prior confirmation of the Board of Revenue is void, the Board of Revenue justified in quashing the said order even though 27 years had elapsed since the grant of Patta by the Tahsildar.

3.2 In the case of *State of Orissa and Others Vs. Harapriya Bisoi*, the Supreme Court held that mere execution lease by intermediary in favour of a person would not confer status of "raiyat" on lessee nor would protect possession of such lessee u/s 8 of the Act. A "lease" would amount to a transfer of an interest of the intermediary in the land to the lessee. In such a situation, far from being a tenant protected u/s 8 of the Act, the lessee would in fact step into the shoes of the intermediary with his interest being liable for confiscation and his entitlement limited to compensation from the State. On the other hand, for protection u/s 8 of the Act one has to be a "raiyat" cultivating the land directly and having the rights of occupancy under the tenancy laws of the State. Thus a "lessee" who is not actually cultivating the land i.e. who is not a "raiyat" would not be within the protection of Sub-section 2(4) of Section 8 of the Act in its residuary part states that "intermediary" would cover all owners or holders of interest in land between the raiyat and the State. Lands in question lying fallow and were not in physical possession of any person, thus the lands being not cultivated by the claimant, lessee, cannot be considered as "raiyat". The Supreme Court also taken note of

large tract of uncultivated land lying in city and various claims made thereon on the basis of fraudulent title papers alleged issued by ex-intermediaries.

3.3 In the case of State of Orissa Vs. Nityanand Satpathy and Others, 1 this Court held that for the purpose of taking benefit of the provisions of Section 7(1) (a) of the Act, the intermediary must be in cultivating position of the said land either by himself, with his own stock or by his own servants or by hired labour or with hired stock. The nature and character of the land being non-agricultural, the same evidently was not in cultivating position of the intermediaries and, thus an application for settlement of such land by the intermediaries purported to be in terms of Section 7 of the Act was not maintainable. Furthermore, the land being not used either for cultivation or for horticulture purposes on the date of vesting did not attract the provisions of clause (a) of Sub-section (1) of Section 7 of the Act.

4. From the facts narrated above, it appears that the petitioner claims as a tenant on the basis of "Hatapatta" issued by the Proprietor Gunanidhi Das of Sukinda Estate. The "Hatapatta" was executed on 22.11.1952 and rent was paid prior to said date i.e. 17.11.1952 under Receipt No. 3951. It is also admitted fact that for induction of a tenant document is not necessary to be executed and even a tenant can be inducted orally. However, in the present case the predecessor-in-interest of the petitioner filed an application before the O.E.A. Collector-cum-Tahsildar to declare her as tenant and fix fare and equitable rent. The said application was filed on 08.4.1980 as reveals from the records produced by the learned Addl. Government Advocate. It appears from the said application that the land description was furnished and it was specifically stated that the applicant has applied before the Proprietor of Sukinda Estate for issuance of Patta and obtained Receipt No. 3944. For issuance of Patta she has paid the amount as fine. However, land was not settled on the basis of such receipt. In the said application she has not reflected anything about execution of "Hatapatta", which plea was subsequently taken before the Revisional Court. The proclamation was issued on 26.4.1980 calling for objections and the report was called for from the Revenue Inspector after the proclamation was issued, which was received on 12.6.1980. The husband of the applicant-Bimala Sundari Debi has filed an application stating that he has no objection, if the land will be settled in her favour. Basing on these documents the O.E.A. Collector settled the land in favour of Bimala Sundari Debi.

5. Law is well settled by the Apex Court in the case State of Orissa v. Brindaban Sharma , State of Orissa and Others Vs. Harapriya Bisoi, reported in State of Orissa and Others Vs. Harapriya Bisoi, and State of Orissa Vs. Nityanand Satpathy and Others, as well as by the Full Bench of this Court in the case of Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, that Section 8(1) of the Act makes no provision for an application to be filed and no enquiry is also contemplated under the said Section. The said Section is merely declaratory of the continuity of the tenure of tenants as it was immediately before the date

of vesting. Therefore an application u/s 8(1) of the Act is misconceived one. So far as the decision cited by learned counsel for the petitioner in the case of Jagannath Nanda Vs. Bishnu Dalei and Others, , this Court has taken into consideration that an application under Sections 7 and 8A of the Act totally different than that of an application u/s 8(1) of the Act. Admittedly, immediately after vesting no step was taken to accept rent by the tenant on the basis of continuous possession over the land before vesting, rather an application was filed for the first time in the year 1980 to declare the applicant as tenant and to accept rent. After twenty-eight years from the date of vesting there is no scope for any enquiry as to whether the tenant is a deemed tenant and continue in possession of the land as such. After vesting of the estate the tenants' ledger was submitted to the O.E.A. Collector, who has fixed the fare and equitable rent as per the tenant's ledger in respect of tenants. In the present case the predecessor-in-interest of the petitioner was not deemed tenant as per the tenants' ledger submitted by the ex-intermediary. Therefore, the decision in the case of Jagannath Nanda (supra) is not applicable to the present case where the application of the intermediary was considered.

6. This Court while deciding the case of Gunduchi Bijaya Barik and others v. State of Odisha and others reported in 2008 (II) CLR 158 has not taken into consideration the decisions of the Supreme Court as well as the decision of the Full Bench of this Court and only taken into consideration the decision in the case of Smt. Basanti Kumari Sahu Vs. State of Orissa and Others, , which was subsequently remanded by the Supreme Court in Civil Appeal No. 118 of 1995 arising out of SLP (C) No. 10014 of 1992 decided on 23.1.1995 reported in 1995 (1) O.L.R. (S.C.) 587 with a direction that the High Court should proceed to decide the matter on merits on the promise that the Board of Revenue had exercised the right of jurisdiction u/s 38B of the Act. On remand the Full Bench of this Court taking into consideration the ratio decided in the case of State of Odisha and others v. Brundaban Sharma and another (supra) disposed of O.J.C. No. 1722 of 1981 on 22.11.1996 (see State of Orissa v. Brindaban Sharma holding that the Board of Revenue either on its own motion or on a report from the Collector, may call for and examine the record of any proceeding in which any authority subordinate to the Board has made any decision or passed an order under the Act to satisfy itself as to the regularity of such proceeding or to the correctness, legality or propriety of such decision or proceeding or order, and if in any case it appears to the Board that such a decision is not correct or is illegal or improper, it has been empowered to modify, annual, reverse or remit the case to the authority for decision according to law. Therefore, the decision of the O.E.A. Collector is assailable u/s 38B of the Act and the decision rendered by this Court in the case of Gunduchi Bijaya Barik and others v. State of Odisha and others reported in 2008 (II) CLR 158 is per incuriam as the said decision has not taken into consideration the decisions of the Apex Court as well as by this Court. In view of the above settled position of law there is no scope for the tenant to file an application u/s 8(1) of the Act which is a deeming provision. Accordingly, this

Court is not inclined to interfere with the impugned order as there is no error apparent on the face of the record so as to warrant interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

The Writ Petition along with Misc. Case is dismissed. The interim order dtd. 30.1.2009 passed by this Court in Misc. Case No. 144 of 2009 stands vacated.

Dr. B.R. Sarangi, J.

I agree.