

(1958) 03 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 191 of 1956

Kumar Bimal Chandra Singha and Others	APPELLANT
Vs	
The State of Orissa and Others	RESPONDENT

Date of Decision : 27-03-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 31(2)
Orissa Estates Abolition Act, 1951 — Section 26, 26(2), 3, 5

Citation : (1958) 24 CLT 295

Hon'ble Judges : Narasimham, C.J.;Burman, J

Bench : Division Bench

Advocate : B.K. Pal and G.N. Sengupta, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—The Petitioners are the proprietors of an estate known as Paikpara Estate in the dist. of Puri bearing touzis Nos. 268, 269 and 270. Within the said touzis there were several tenures and sub proprietary interests known as Makadami, Padhani and Tanki Bahal tenures. The touzis vested in the State of Orissa by vir ate of a notification issued u/s 3 of the Orissa Estates Abolition Act on the 23rd August 1953. But it is admitted that till now the interests of the tenure-holders and sub-proprietors within the said touzis have not been taken over under the provisions of the said Act. It appears that under the said tenure-holders there were some occupancy holdings which had been purchased by the proprietors themselves long ago. Thus, they were mere occupancy ryots in respect of these holdings, their immediate landlord being either the tenure-holder or the sub-proprietor but they were also the proprietors of the entire touzis and In that sense, were superior landlords. It is conceded that in the last Settlement Khatians also their interests as occupancy ryots in respect of these holdings were recorded.

2. Within the said occupancy holdings there were several buildings which were

used as kutchery house by the proprietors for the administration of their estate. A question arose as to whether those buildings also would vest in the State Government by virtue of the notification issued u/s 3 of the Orissa Estate Abolition Act. On behalf of the Petitioners, it was contended that though the parent estate had ceased to exist by virtue of the notification u/s 3 of the Act, the subsidiary estates of the tenure-holders and sub proprietors still continued to subsist and consequently the ryoti holdings under the said subsidiary estates also remained Intact. The buildings being part of the ryoti holding would not therefore vest in the State Government merely because the parent estate had ceased to exist. In support of this contention Mr. Pal urged that Clause (a) of Section 5 of the Orissa Estate Abolition Act which vests in the State Government all buildings or structures within an estate would apply only in respect of those buildings which form part of the parent estate as such and not in respect of those buildings which form part of a ryoti holding or of any subsidiary estate which has not vested at all. This argument was negated by the Collector who hold that once it is established or admitted that some buildings are situated within the geographical ambit of an estate which is taken Over under the provisions of the Act and it is further established that the said buildings are used primarily as office or kutchery for the collection of rent of such estate, or as rest-houses for estate servants on duty or as well as for storing rent in kind, or part thereof, those buildings also would vest in the Government, irrespective of the fact whether those buildings formed a part of the parent estate that was taken over.

3. I think this question is practically concluded by the observations of the Supreme Court in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, which arose out of an appeal from a Bench decision of this Court in I. L. R. 1953, Cutt 71.

Their Lordships of the Supreme Court pointed out (at page 383):

Assuming that in India there is no absolute rule of law that whatever is affixed to or built on the soil becomes a part of it and is subject to the same rights of property as the soil itself, there is nothing in law which prevents the State legislature from providing, as a part of the estate abolition scheme, that buildings, lying within the ambit of an estate and used primarily for management and administration of the estate, would vest in the Government as appurtenances to the estate itself. This is merely ancillary to the acquisition of the estate and forms an Integral part of the abolition scheme. Such acquisition would come within Article 31(2) of the Constitution and if the conditions laid down in Clause (4) of that Article are complied with it would certainly attract the protection afforded by that clause. Compensation has been provided for those buildings in Section 26(2) (iii) of the Act and the annual rent of these buildings determined in the prescribed manner constitutes one of the elements for the computation of the gross assets of an estate.

This question was also discussed in the Division Bench decision of this Court in K.C.G. Narayau Deo v. State of Orissa ILR 1953 Cutt 71, where at page 129, Das

C.J. observed-without finally deciding the question, that prima facie the acquisition of such buildings would be valid and would not be open to any constitutional objection. What was held as a prima facie view in the Division Bench decision, was confirmed as the correct view by their Lordships of the Supreme Court.

4. From the aforesaid observations of the Supreme Court the following conclusion emerges. Once an estate is taken over by the Government under the provisions of the Estate Abolition Act, the question as to whether any of the buildings situated within the geographical ambit of the estate and in the possession of the proprietor would also vest in the Government, would depend on the purposes for which the building was used by the proprietor and not on whether it can also be said to form a part of the estate. If the building is used (1) primarily as office or kutchery for the collection of rent of such estate or (2) as rest-house for estate servants on duty or (3) as gola for storing rent in Kind or part thereof, then the purpose for which the building is used, is ancillary to the administration of the estate; and any law which provides for the acquisition of an estate may also provide for the acquisition of buildings ancillary for the administration of the estate. The quantum of compensation payable to the proprietor of the estate will undoubtedly be enhanced by taking into consideration its rental value of the building as provided in Section 26 (b) (iii) of the Act. It will not be open to the proprietor to claim compensation at market value for the building, on the ground that it did not form part of the estate. Nor can the competency of the Legislature to include acquisition of such building also in a piece of legislation dealing with acquisition of estates, be challenged.

5. I may now briefly refer to some of the important provisions of the Act dealing with acquisition of buildings. Clause (a) of Section 5 says that subject to the provisions of the Act, the entire estate including buildings or structures together with the lands on which they stand, shall vest absolutely in the State Government, free from all encumbrances, and the intermediary shall cease to have any interest in such estate, other than the interest expressly saved by or under the provisions of the Act. Doubtless, ryoti lands are excluded from the scope of this clause. But buildings and structures standing on ryoti lands, but in the possession of the proprietor are not expressly saved. Clause (i) of that Section says that where transfer of interest in any of the buildings used for any of the aforesaid three purposes, has been made after the 1st January 1946, such transfer may be and used by the Collector if he is satisfied on enquiry that the transfer was made to defeat the provisions of the Act or to obtain higher compensation there under. Thus, though under Clause (a) of Section 5 only those buildings which belonged to the proprietor and were in his possession on the date of the vesting of the estate u/s 3 were taken over by Government yet under Clause (1) even those buildings which were used for the purpose of administration and management of the estate and which had been transferred by the proprietor to some other person on or after the 1st January 1946, should pass over to the Government after a valid amusement of the transfer is made by

the Collector, as provided in that clause. This shows that the Legislature was very anxious to provide for the transfer to the Government, of all buildings situated within the ambit of the estate. Section () (1) saves for the intermediary all homestead and all buildings and structures other than those used for any of the aforesaid three purposes. Those buildings and structures are deemed to be settled with the intermediary on such terms as regards fair and equitable rent as the Collector may decide. But the buildings, though in the possession of the intermediary on the date of vesting and used for the administration and management of the estate were excluded from the scope of this Section because they vested absolutely in the Government when the estate itself vested. But in estimating the gross asset of the estate for the purpose of fixing compensation payable to the proprietor, the annual rental value of those buildings was taken in to consideration as provided in Section 26 (b) (iii) of the Act.

6. Mr. Pal tried to make a fine distinction between "a building composed in an estate and in the possession of an intermediary as an intermediary" on the one hand and "a building comprised in an estate and in the possession of an intermediary as an occupancy ryot" on the other. In my opinion, this distinction is immaterial. Even though the building might have been in possession of the intermediary in his capacity as an occupancy ryot, yet, If it Is used for any of the aforesaid purposes, the Act says that building also will vest in the Government. It is true that there is a slight distinction, on facts, between the present case and the case before their Lordships of the Supreme Court in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, . There, the proprietor though in possession of the buildings, did not hold it in his capacity as an occupancy ryot while here the admitted fact is that the buildings are situated within the occupancy holding of the proprietor under a tenure-holder. But I do not think this distinction on facts makes any difference so far as the principle is concerned. The lower courts rightly held that there were only two points to be considered: (1) Are the buildings situated within the geographical ambit of the estate that has been acquired? and (2) Are the buildings used for any of the purposes mentioned above? If both these conditions are fulfilled, the buildings also vest in the Government and the proprietor is entitled only to additional compensation as provided in Section 26 (b) (iii).

7. Lastly, Mr. Pal wanted to attack the finding of fact of the lower court as regards the purposes for "Which the buildings were used. On a perusal of the judgment of the Collector I do not find that this question was challenged at all. It was assumed by everybody that the buildings were used as kutchery house for the purpose of the management of the estate. Even in the annexure to the petition under Articles: 226 and 227, filed before this Court, the Petitioners have described the buildings as Satyabadi Kutchery and compound, Bamdeipur kutchery, Damodarpur Kutchery and Indipur kutchery. It may therefore be taken as unchallenged that the buildings were used as kutchery houses by the proprietor. The Petitioners wilt not be permitted to re-agitate this question of fact in this application.

8. The petition is dismissed with costs. Hearing fee Rs. 100/-(Rupees one hundred any).

Barman, J.

I agree.

Petition dismissed