
(1995) 05 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 5256 of 1995

Lord Lingaraj Bijee, Bhubaneswar and Another

APPELLANT

Vs

Nityananda Mishra and Others

RESPONDENT

Date of Decision : 02-05-1995

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7

Orissa Hindu Religious Endowments Act, 1951 — Section 25, 68

Citation : (1998) 4 JT 399 : (1995) 3 SCALE 268 : (1995) 2 SCC 719 Supp : (1995) 3 SCR 1046

Hon'ble Judges : R. M. Sahai, J;G. T. Nanavati, J

Bench : Division Bench

Advocate : Rajinder Sachar and A.K. Panda, for the Appellant; P.P. Rao and P.N. Misra for the Respondent in No. 1-3, R.K. Mahapatra, P.N. Misra, S. Misra, S. Kumar, A.C. Pradhan and Kirti Misra for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.

1. This appeal is directed against order passed by the High Court in exercise of its writ jurisdiction quashing the order passed by the Commissioner of Endowments u/s 25 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as 'the Act').

2. Facts in brief are that the land, originally, belonged to Lord Lingaraj, the appellant. It was let out, in 1937 before coming into force of the Act by the Trust Board, in favour of one Dr. Ramendu Ray. The land was agricultural waste land which was reclaimed by Dr. Ray and he continued in possession till his death. After his death his widow Bhibhati succeeded to the estate and paid rent to the Board. In 1970 an application was filed on behalf of the appellant u/s 68 of the Act for recovery of possession. It was allowed. The order was, however, set aside by the Commissioner on 7.5.1971 and it was held that she became occupancy tenant. She appears to have transferred the land in dispute in favour of

respondents. They approached the Tahsildar under Sections 6 and 7 of the Orissa Estate Abolition Act (referred as 'Abolition Act') for being regarded as occupancy tenant. The application was rejected. In further appeal it was held that their application was not maintainable as provisions of Sections 6 and 7 could be invoked only by a person with whom land has been settled as intermediate. The appellant thereafter filed another application u/s 25 of the Act for recovery of the property. It was alleged that after the enforcement of Abolition Act, land was settled with the intermediary that is, the appellant who leased it out to Bhibhati who alienated it in favour of the respondent in contravention of Section 19 of the Act, therefore, the respondents were liable to ejectment. The application was allowed. The order was challenged by way of a writ petition in the High Court. The High Court did not examine the question whether the proceedings under Sections 6 and 7 of the Abolition Act were in accordance with law and whether the procedure provided u/s 8A was observed. The High Court felt that although different aspects of the case had not been examined and it would have been advisable to remand the matter to the Commissioner but the litigation having gone for number of years and the claim of the respondent having been firmly established it was not necessary to prolong it further. The High Court held that the lease was given in favour of Dr. Ray even before the Orissa Hindu Religious Endowments Act, 1939 had come into force. It was further held that in the earlier proceeding for eviction initiated by the appellant u/s 68 of the Act it was clearly held that Dr. Ray and after him his widow had acquired occupancy tenancy rights and this decision having become final as the appellant did not challenge it the possession of Bhibhati was not unauthorised and she having been an occupancy tenant the entire proceedings by which the land was settled with appellant as intermediary was contrary to law.

3. Section 25 of the Act permits the trustee to file an application against a person who was otherwise in unauthorised occupation. The application filed by the appellant, therefore, was maintainable. But the respondent was not precluded in these proceedings from claiming that he had acquired rights and he was not in unauthorised occupation. It was also open to him to claim that his predecessor had a better title than the appellant and, therefore, no order u/s 25 could have been passed. It is not necessary to say anything further as even though the High Court has held the earlier order passed by the Commissioner u/s 68 to be *res judicata* and the appellant is claiming that the respondents' predecessor in interest lost her right and title once Abolition Act was enforced and the property was settled with the appellant under notification issued in 1974 u/s 7 of the Abolition Act, as the proceedings u/s 25 of the Act for eviction of the respondent are summary in nature. That is clear from Sub-section (3) of Section 25 which permits an aggrieved party to approach the Civil Court. Sri Sachar, learned senior counsel, however, vehemently argued that in view of the provisions in Abolition Act no suit could be filed in the Civil Court as these matters were covered by Chapter II of the Abolition Act. On the other hand Sri Rao, learned senior counsel for the respondent urged that the remand to the

Commissioner would be delaying the matter as in view of the provisions of Sub-section (3) of Section 25 the aggrieved party would still have a remedy to go to Civil Court, He, therefore, urged that the litigation having gone for quite long it was appropriate and expedient either to direct the Civil Court to decide the dispute or to dismiss the appeal and direct the appellant to approach the appropriate court if he was aggrieved by the order.

4. We have considered the rival submissions on the question of forum. There is undoubtedly difficulty in remanding the matter to the Commissioner as he might be faced with an order passed in 1971 in favour of the respondent. Further the order passed by the appropriate authorities under the Abolition Act may preclude him from entering into the question whether the respondent had acquired occupancy rights. But it cannot be disputed that the right of the respondent and his predecessor about the claim of occupancy rights had to be determined and adjudicated by some competent authority. It is not possible to shut out the respondent only because his application under Sections 6 and 7 was rejected. There was no adjudication on merits by the appellate authority. The only reason for dismissing the application was that the respondent being not an intermediary was not entitled to approach for settlement under Sections 6 and 7 of the Act. If this be so and the respondent can establish that they or their predecessors acquired rights of occupancy tenant then Section 8 of the Abolition Act and even the notification issued in 1974 may not be of any avail. Considering these facts it appears expedient to direct the appellant to approach the Civil Court for appropriate relief.

5. In the result, this appeal fails and is dismissed. Even though it is not necessary to make any observation as the law itself is clear, however, in order to obviate any technical defect, the appellant is permitted to approach the Civil Court which shall decide the dispute between the parties unhindered by any observation made in this order or the order passed by the Commissioner in earlier proceedings u/s 68 of the Act or the proceedings under Sections 6 and 7 of the Abolition Act. There shall be no order as to costs.