(1987) 06 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1199 of 1919

Mukteswar Mahadev and Jayachandi Thakurani Bije Diba — APPELLANT

Vs

Maheswar Sahu and Others — RESPONDENT

Date of Decision : 30-06-1987

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 13A, 13K, 2, 3, 3A

Citation : (1987) 64 CLT 509

Hon'ble Judges : K.P. Mohapatra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S. Misra-I, for the Appellant; S. Misra-II, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The deities, Mukteswar Mahadev and Jayachandi Thakurani Bije at Diba Balarampur, P. S. Patakura, in the district of Cuttack through the Trustee Muralidhar Barik ate the Petitioners challenging the order of the Orissa Estates Abolition Tribunal dated 13th of April. 1977 in O. E. A. Misc. Case No. 38 of 1977, by which order the learned Tribunal has held that the petition filed by the Petitioner on 10-4-1975, is barred by limitation and is, therefore, not maintaipable. The Petitioners case, briefly stated, is that on 15-4-1975., an application was filed purporting to be one u/s 8-A (5) of the Orissa Estates Abolition Act claiming that the estate is a ?trust estate? and requiring the Collector to refer the matter to the Tribunal (opposite party No. 5). The application was forwarded by the Collector to the Tribunal and before the Tribunal, opposite parties 1 to 4 filed objection. After hearing parties the Tribunal has rejected the application which is being impugned in .this writ petition.

2. Mr. S. Misra-I, the learned Counsel for the Petitioners, raises a contention that Section 8-A (5) of the Orissa Estates Abolition Act does not prescribe any period of limitation for making an application and in that view of the matter, the Tribunal committed an error in rejecting the Petitioners application on the ground of, limitation.

Mr. S. Misra-II, the learned Counsel for the opposite parties, on the other hand, contends that Section 8-A (5) of the Act has no application to the Petitioner?s case since the estate in the present case vested in 1963 and there had been no claim for exclusion of the estate from the-vesting notification u/s 13-D (1) of the Act, and therefore, the question of filing a fresh application subsequent to the notification dated 18-3-1974 does not arise.

3. In order to examine the correctness of the rival submissions, it is necessary to trace the history of legislation regarding ?trust estate?, The Orissa Estates Abolition Act (Orissa Act 1 of -1952) (hereinafter referred to as the ?Act?) came into force with effect from 9-2-1952. A special chapter containing provisions for ? public trusts? was inserted by Amendment Act 5 of] 963 with effect from 11-4-1963 and the said Chapter was Chapter 11-A of the Act. This Chapter contained 11 Section from Section 13-A to Section 13-K; and was a complete Code by itself dealing with the ?trust estates? as defined in Section 13-A (e). This entire Chapter was repealed by Orissa Act 33 of 1970 with Effect from 21-12-1970. The Repealing Act, however, contained a saving clause to the effect that all estates in respect of which claims and references were made under the pre-existing Chapter were pending on the date of coming into force of the Repealing Act shall be deemed to have been excluded from the operation of the vesting notification. It was also stated that notwithstanding such exclusion from the operation of vesting notification, the State Government would not be debarred from vesting such estate by issue of a fresh notification u/s 3 or Section 3-A of the Act. The Estates Abolition Act was further amended in the year 1974 by President?s Act 3 of 1974 which came into force with effect from 26th. February, 1974. Under this amendment, the definition of ?trust estate? was added in Section 2 (00). In Section 8-A of the principal Act, Sub-section (5) was added and after Section 8-C of the principal Act, Sections 8-D and 8-E were added. Certain other amendments were also made, but we are not concerned with those in the present case. These a mended provisions which were introduced by President?s Act 3 of 1974 are similar to the provisions which were in Chapter II-A of the Act and which stood repealed by Orissa Act 33 of 1970 and it became necessary because of the saving provision in Orissa Act 33 of 1970. Section 8-A (5) which was also introduced by the aforesaid Amendment Act of 1974 has to be interpreted in the aforesaid context of the history of legislation.

4. Section 8-A (5) is extracted hereinbelow in extenso for proper appreciation of the issue involved:

(5) Without prejudice to the provisions contained in Sub-section (4) where a claim in respect of any estate is made by the Intermediary on the ground that it is a trust estate, the Collector shall, whether or not any objection is filed under the said Sub-section, make a reference to the Tribunal constituted u/s 8-D for determining whether the estate is a trust estate .or not and shall act according to the orders passed by the said Tribunal:

Provided that in the case of any estate referred to in the proviso to Clause (oo) of Section 2, no such reference shall be necessary:

There cannot be any manner of doubt that Section 8-A (5) is prospective in nature. A combined reading of all the aforesaid provisions as well as the history of legislation, as narrated above would indicate that there was no distinction between an "estate? and ?trust estate? between the period 9;.2-1952 and 12-4-1963 and it is only on 12-4-1963, the legislature introduced a special Chapter for ?trust estates? and if such ?trust estate? vested under a notification issued u/s 3-A of the Act then the Procedures for making a claim, reference and adjudication by a tribunal were all provided for in that special Chapter. It is only when the tribunal declares as estate to be a trust estate, the said estate gets excluded from the operation of vesting. Therefore, those trust estates which were notified u/s 8-A of the Act and in respect of which no claim or reference had been made under Chapter 11-A had stood vested in the State of Orissa ana those in respect of which claims had been made and the tribunal declared them as trust estates, had stood excluded from the operation of the vesting notification, This was the position till Chapter 11-A was repealed by Orissa Act 33 of 1.970. The Repealing Act contained a saving clause in Section 7 thereof. Under the saving clause, estates in respect of which claims and references had been made under Chapter II-A and were pending on the date the Repealing Act came into force, i.e. on 21-12-1970, were deemed to have been excluded from the operation of the vesting notification and in respect of those, power was retained for a fresh vesting by issue of a fresh notification u/s 3 or u/s 3-A of the Act. Then came the further amendment by President?s Act 3 of 1974 under which. Section 8-A was radically amended by adding Sub-section (5) to Section 8-A as well as by adding Section 8-0 and Section 8-E apart from several other amendments with which we are not concerned. Mr. S. Misra-I, the learned Counsel for the Petitioners, contends that Section 8-A (5) is wide enough without any restriction or limitation and, therefore, in respect of a trust estate which might have vested in 1963 pursuant to a notification issued u/s 3-A of the Act, if an application is made subsequent to Section 8-A (5) coming into the statute book, then the said application has to be disposed of by the tribunal? constituted u/s 8-D of the Act and the tribunal, therefore, in the present case illegally rejected the said application. It is difficult to accept the aforesaid contention of the learned Counsel for the Petitioners. Section 8-A (5) as also Sections 8-D and 8-E which are introduced into the Act in 1974 by President?s Act 3 of 1974 obviously intended for claims or references which may be made after notification dated 18-3-1974 issued u/s 3-A of the Act. The said notification is extracted hereinbelow in extenso:

Revenue Department Notification The 18th March, 1974 S. R. O. No. 184/74. - In exercise of the powers conferred by Sub-section (1) of Section 3-A of the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952) the State Government do hereby declare that (i) the intermediary interests of all intermediaries whose estates have been declared as trust estates under Chapter II-A of the said Act and; (ii) those in respect of which claims and references made under the said

Chapter were pending on the date of commencement of the Orissa Estates Abolition (Amendment) Act, 1970 (Orissa Act 33 of 1970) and, (iii) the intermediary interests of all intermediaries in respect of all estates other than those which have already vested in the State have passed to and become vested in the State free from all encumbrances.

(No. 13699-EA-I-ND. 1/74-R)

Under the aforesaid notification, the intermediary interests of all intermediaries whose estates have been declared as trust estates under Chapter II-A, interests in respect of which claims and references were made under Chapter II-A and were pending on the date of commencement of Orissa Act 33 of 1970 and intermediary interests in respect of estates other than those which have already vested, passed to and became vested in the State free from all encumbrances. In essence with effect from 18th of March, 1974, pursuant to the aforesaid notification the intermediary interests in the whole of the State of Orissa stood abolished. So far as the trust estates are concerned, those trust estates which were declared as trust estates under Chapter II-A and thereby stood excluded from the vesting as well as those in respect of which claims and references had been made to the tribunal under Chapter II-A, but were pending and, therefore, stood excluded from vesting, in accordance with the saving provision of the Repealing Act (Orissa Act 33 of 1970), who were vested pursuant to the notification dated 18th of March, 1974 and it is in respect of those vested ? states, the amended provision of Section 8-A (5) as well as Section 8-0 and 8-E would apply. But for an estate which had been vested earlier and in respect of which neither any order had been passed declaring it as a trust estate under Chapter II-A nor any claim or reference was pending on the date Chapter II-A was repealed the amended provisions of Section 8-A (5) or Section 8-D or Section 8-E can have no application. The contention of Mr. S. Misra-I, the learned Counsel for the Petitioners on this score must, therefore, be rejected, since admittedly, the trust estate of Petitioners stood vested on 29-4-1963 and no application had been made by the Petitioners claiming it to be a trust estate under, Chapter II-A nor any order had been passed by the tribunal under Chapter II-A declaring the same as a trust estate, nor was there any application pending on the day Orissa Act 33 of 1970 came into force. Section 8-A (5) of the Act cannot have application to the pres en tease.

5. Mr. S. Misra-I, the learned Counsel, then contends that an application had been filed earlier on behalf of the villagers on 15.10.1963 and that application could be treated as an application under Chapter II-A and since the same had not been disposed of when Orissa Act 33 of 1970 came into force, it must be held that the ?trust estate? stood excluded from the vesting notification and, therefore, on notification being issued on 18.3-1974, the fresh application u/s 8-A (5) would be maintainable. It is difficult to accept the aforesaid contention of the learned Counsel. We have carefully examined the application dated 15-10-1963 which has been annexed as Annexure-6 to the writ application and it

is difficult for us to hold that it was an application claiming the estate to be a trust estate within the meaning of Chapter II-A of the Act. It was neither in the prescribed form nor in the manner as provided under the Act, nor had it been made within three months from the date of the notification as contemplated under. Section 13-D of Chapter II-A of the Act. There has been no publication of the said claim as contained in Section 13-E and even the prayer of that application is not one for declaring the estate as a trust estate. Accordingly, we would reject the said submission of the learned Counsel for the Petitioners.

6. In the result, therefore, we do not find any merits in this application which is accordingly dismissed, but in the circumstances, there would be no order as to costs.

K.P. Mohapatra, J.

7. I agree.

