

(1982) 09 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 954 of 1977

N.P. Singh Deo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Estates Abolition Act, 1951 — Section 2, 6, 7

Citation : AIR 1983 Ori 39 : (1982) 54 CLT 577

Hon'ble Judges : R.N. Misra, C.J.;J.K. Mohanty, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—The petitioner in this application under Article 226 of the Constitution challenges the appellate decision of the Additional District Magistrate, opposite party No. 3, dated 27-8-77 upholding the rejection of a claim for settlement u/s 6 of the Orissa Estates Abolition Act (hereinafter referred to as the "Act").

2. The petitioner made an application on 29-6-73 purporting to be under Sections 6 and 7 of the Act for settlement of 30.39 acres of land covering tanks, homestead with building, road and orchards, all located within mouza Jatannagar of Sadar Police Station of District Dhenkanal. The claim was duly published u/s 8-A of the Act in compliance of order dated 4-1-74. No objection was, however, filed on 28-4-75 the Collector under the Act recorded the following order:--

"The claim petition relates to the lands held under Nijchas of the applicant in respect of which rent has been assessed under the O. P. L. R. (Assessment of Rent) Act, 1958. As per Revenue Department clarification issued in letter No. 81272/R. dated 8-12-73 the lands held by the applicant in his khas possession do not form an estate and as such he cannot be taken as an intermediary as

defined in the O. E. A. Act. Consequently--the case is dropped."

On 21-7-76 the Collector recorded another order to the following effect:--

"Sri J. Mohapatra, Authorised Agent of Sri N. P. Singh, Dhenkanal is present.

This is a claim filed by Sri N. P. Singh Deo under Sections 6 and 7 of the O. E. A. Act in respect of the Holding Nos. 1, 7, 12, 13, 20, 24, 25, 26, 32, 33 and 34 of the village Jatannagar consequent on abolition of his estate in Revenue Department Notification No. 17804/R. dated 13-3-73.

This case was dropped on 24-4-75 for wrong interpretation of Government letter No. 81272/R dated 8-12-73 in which Government have issued certain clarification regarding estate. I have gone through the said Circular of the Government which says that the private lands of Ruler in occupation of permanent tenant or an occupancy tenant is subject to abolition as the Ruler comes in between the State and tenant. Since Government order is clear and there are occupancy tenants in his estate, I revive the claim of the petitioner.

General notice inviting objection was issued. The notice was served on 27-1-74 and period of 90 days for filing objection has been over. No objection petition has been filed.

The Authorised Agent filed one supplementary memo today.

Amin to conduct field enquiry and report by 5-8-76."

The Amin furnished a report after spot verification. Thereafter the Collector visited the spot. He appears to have recorded statements of some persons said to be occupying the premises. On 9-9-76 he passed the final order in the proceeding. He took the view that the petitioner was entitled to settlement of 29.75 acres of land. He found that one of the items of claim was 56 decimals relating to plot No. 177 which had a double-storied building. In regard to the claim for this plot, he held:--

"So far as the area of Ac. Order 56 out of plot No. 177 in Khata No. 1 is concerned, it stands recorded as "Jungle" in the Settlement records. However, now a building stands on this plot. As revealed from my spot enquiry report dated 27-8-76, the building is a completely deserted one and has been abandoned since long. Though the plot on which the building stands is recorded in the name of ex-intermediary, he has never used or occupied it in any manner. The building is a very big one. It is not in a fit state for occupation. Therefore, in the strict sense it cannot be called a dwelling house. It has never been used by the ex-intermediary. Therefore, it can at best marginally come within the definition of the term "homestead" as defined in Section 2 (i).

It is clear that the building or the structure has been never used or occupied by the ex-intermediary. He has employed a part-time worker to look to his Khamar house but he has not engaged anybody to watch this massive structure. There is no evidence of any effective physical or manual control over the premises on

which the structure stands. There is no outward act to support any such contention. The fact that nobody is engaged to keep a casual watch over such a structure also indicate that there is no intention to use or occupy it. Trespassers and even animals like cows etc. have freely used the premises and have spoiled the walls, roofs at many places.

The above finds corroboration from the District Gazetteer of Dhenkanal by Sri N. Senapati, I.C.S. and Sri P. Tripathy, I.A.S., 1972 Edition. It has been mentioned in the said District Gazetteer that this building was constructed by forced labour during Durbar administration. It stands as a ghostly monument of the past and remains deserted and uncared for. The owner, a former prince of the ruling family, was banished for certain misdeeds during war period. He had named the palace after his wife. He never returned to Dhenkanal. While living at Cuttack, he sold the doors and windows and other fixtures of the palace. The forsaken walls now stand like a haunted house.

It is revealed from the report of the Amin that the following portions of plot No. 177 is in possession of the ex-intermediary.

Pokhari Adi Ac.1.86

Taila Ac.4.31

Bagayat Ac.1.56

Homestead Ac.0.56

Ac.8.29.

The above area does not include the entire hillock which immediately surrounds the Ac. 0.56 area of land on which the structure stands. It is significant that though the entire area stands recorded in the name, of the ex-intermediary, he has not preferred any claim for any area immediately surrounding the structure. This also goes to show that he is not to possession of this surrounding area. It is difficult to concede that he is in possession of the structure without being in possession of the surrounding area.

It is, therefore, clear that the ex-intermediary was not in possession of the building or structure in any manner on or immediately before the date of vesting. The Amin's report on this part of the claim has not taken into account all these aspects and therefore this part of the Amin's report cannot be accepted. I, therefore, hold that the area of Ac.0.56 in plot No. 177 on which the double-storeyed building stands does not come within the purview of Section 6 (1) of O. E. A. Act for settlement with the ex-intermediary. In the result, his claim for this area is disallowed."

The settlement in favour of the petitioner of 29.75 acres of land became final. The petitioner preferred an appeal u/s 9 of the Act challenging the rejection of his claim u/s 6 of the Act in regard to settlement of the 56 decimals of land. The appellate authority has dismissed the appeal on 27-8-1977.

3. Several contentions were raised in the writ application. At the hearing, however, two contentions were pressed by the petitioner's counsel, namely:--

(1) The authorities under the Act have not kept the requirements of Section 6 in view and have, therefore, been misled and

(2) In view of the fact that the lands had been settled with the petitioner and rent had been assessed under Orissa Act 13 of 1958, the petitioner was already a tenant under the State Government as has been held by this Court in *Pratap Kesari Deo Vs. The State of Orissa and Others*, . There could, therefore, be no vesting of the property as decided by the Supreme Court in the case of *Kumar Bimal Chandra Sinha Vs. State of Orissa*, and the rejection of the claim cannot be sustained.

4. So far as the second, aspect is concerned, admittedly there was a vesting notification in 1973. The petitioner by accepting the said notification and by treating himself as the ex-intermediary made the application under Sections 6 and 7 of the Act. He has received settlement in regard to 29.75 acres of land. In this background, it would not at all be appropriate to allow him for the first time to go back upon his own actions and permit him to contend that the property in regard to which claim is confined in the writ application was not an estate. We shall, therefore, not permit him to raise this point and the second contention would not be entertained.

5. So far as the first contention is concerned, we must hold that the distinction maintained by the Act in regard to a claim for settlement u/s 6 from a claim u/s 7 of the Act has been completely lost sight of. This Court on several occasions has emphasised on this distinction. Section 7 requires Khas possession while Section 6 requires possession. Khas possession has been defined in Section 2 (j) and the definition clearly confines it to lands used for agricultural or horticultural purposes. In regard to a claim u/s 6, all that is necessary to be established is possession. Such possession need not be personal occupation. Law is settled that an owner would be deemed to be in possession if the property is in possession of his lessees, licensees, permissive occupants and even trespassers until they have perfected their title by adverse possession. That being the position, the approach to the matter by the Collector as also the appellate authority has not been proper. Some statements were recorded by the Collector during spot verification and such statements which were recorded in the absence of the petitioner indicated permissive occupation. Admittedly, there is a construction. The materials on the record show that the construction was complete though at present the door leaves have been removed and the structure does not seem to be very much habitable. Section 6 is not confined to a claim for settlement of a building only. It also refers to settlement of homestead. Admittedly, the area of 56 decimals, though once recorded as "Jungle", has become homestead. Whether it is a building fit for human occupation or not the claim would certainly be covered only u/s 6 of the Act and the enquiry has, therefore, to be confined to possession and not khas possession. We are of the view that the enquiry has

been vitiated as the basic requirement of law has not been kept in view and come materials appear to have been collected which have not been allowed to be tested. In these circumstances, we would vacate the orders of the Collector and the appellate authority in regard to the petitioner's claim relating to settlement of 56 decimals in Plot No. 177 and call upon the Estates Abolition Collector to dispose of this claim by instituting appropriate enquiries and giving reasonable opportunity to the petitioner of supporting his claim. We do not interfere with that, part of the settlement which has become final.

There would be no order for costs.

J.K. Mohanty, J.

I agree.