(2001) 09 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No. 4610 of 1993

Nrusingha Charan Biswal and Others APPELLANT

Vs

Member, Board of Revenue, Orissa and Others RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:
Orissa Estates Abolition Act, 1951 — Section 22, 3, 3(1), 38B, 5

Citation : (2002) 93 CLT 217

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : P.K. Routray, P.K. Mohanty and P.K. Patra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The legal heirs of a tenant have filed this writ application challenging the initiation of a suo-motu proceeding u/s 38-B of the Orissa Estate Abolition Act by the Member, Board of Revenue and annulling the settlement by the order dated 2.6.1987 (Annexure-8).

2. The matter was admitted by this Court by order dated 11.1.1995 and notice was issued. No counter affidavit has been filed by the opposite parties.

3. Heard Mr. Routray, learned counsel for the petitioner and learned counsel for the State.

4. Admittedly, the disputed land measuring Ac.9.35 dec. appertaining to Plot No. 2830, Sabik Khata No. 964 situated in Mouza Taradipal, P. S. Pattamundai in the undivided district of Cuttack, now in the district of Kendrapara was part and parcel of the intermediary estate of Govinda Jew Thakur. The estate of Govinda Jew Thakur vested with the State Government in accordance with the provisions of the Orissa Estate Abolition Act, hereinafter referred to as "O.E.A. Act" free from all encumbrances, it is asserted by the petitioner that Jagabandhu Biswal, the ancestor of the petitioners was a Tenant in respect of the disputed lands and

was in possession on the date of vesting. The ex-intermediary prior to vesting regularly accepted rent from the tenant Brajabandhu Biswal. However, after vesting the State authorities did not accept the rent but the properties remained under the cultivating possession of Jagabandhu all through.

5. While matter stood thus, in the year 1976 the adjacent tenant Brajabandhu Biswal filed an application praying for settlement of Ac.2.64 dec. in his favour. The said application was registered as Lease Case No. 133/76. The Tahasildar directed the Revenue Supervisor, Pattamundai to conduct field enquiry and report. The report submitted by the Revenue Supervisor, copy of which is filed as Annexure-1, reveals that in course of enquiry Jagabandhu Biswal had produced a "hatapatta" in respect of his tenancy right and had also produced the rent receipt issued by the ex-intermediary revealing that he was inducted as a tenant in respect of the disputed lands. The Additional Tahasildar by order dated 11.8.1977 on perusal of the application filed by the tenants and on the basis of the report of the Revenue Supervisor came to a conclusion that the aforesaid lands cannot be settled under Sections 6 & 7 of the O.E.A. Act. However, in view of the fact that Jagabandhu was in occupation of the land prior to vesting and was in possession of the land on the date of vesting and claimed that he is a tenant inducted by the ex-intermediary held that his tenancy right is protected u/s 8(1) of the O.E.A. Act. It was further directed that he should continue as a tenant under the State subject to the condition that he shall pay the arrear back rent and salami in respect of the disputed land. The order of the Additional Tahasildar dated 11.8.1977 is annexed as Annexure-2 to the writ application. In consonance with the aforesaid order, Brajabandhu deposited the back rent and also fulfilled all other paraphernalia and thereafter, rent was regularly received from Jagabandhu, accepting him as tenant under the State. The said order was annulled in the year 1985, in a suo motu proceeding by the impugned order.

6. For better appreciation of the correct legal position, it would be just and proper to enunciate the rights and liabilities of a tenant who was possessing the lands on the date of vesting, Law is well settled that by virtue of a notification issued under Sections 3 and 5 of the O.E.A. Act, all lands situated in an intermediary estate vests with the State Government free from all encumbrances.

Section 3 of the O.E.A. Act reads as follows :

"3. Notification, vesting an estate in the State-(1) The State Government may, from time to time by notification, declare that the estate specified in the notification has passed to and become vested in the State free from all encumbrances.

(2) The notification referred to in Sub-section (1) shall contain particulars of the estate including tauzi number, if any and the name and the address of the intermediary as recorded in the registers maintained by the Collector, or as far as is otherwise ascertainable by him and shall be published in the Gazette and shall be affixed in a conspicuous place for a period of not less than fifteen clear days in

the office of the Collector.

(3) Such publication shall be conclusive evidence of the notice of the declaration to everybody whose interest is affected by it."

7. Section 5 of the Orissa Estate Abolition Act stipulates the consequences of such vesting of an estate. A close reading of the aforesaid two Sections as well as Section 8 (1) of the O.E.A. Act reveals that the rights of a tenant who was inducted by the intermediary before the vesting and was in cultivating possession on the date of vesting is not affected by the vesting notification, The tenant under the intermediary shall be deemed to be a tenant under the State. The sole purpose of enacting the Orissa Estate Abolition Act was to abolish all "intermediary" rights and to confer or to create direct relationship between the State and the tiller of the soil who is in possession of the land. Thus, royati rights and tenancy rights are not abolished by virtue of the Orissa Estate Abolition Act. At the other hand the rights of a tenant inducted by the intermediary who was continuing in possession on the date of vesting are protected and they are deemed to be tenants under the State Government. For the sake of brevity Section 8 of the O.E.A. Act, is quoted herein below.

"8. Continuity of tenure of tenants-(1) Any person who immediately before the date of the vesting of an estate in the State Government was in possession of any building as a tenant under an intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State Government and such person shall hold the land in the same rights and subject to the same restrictions and liabilities as he was entitled or subject to, immediately before the date of vesting.

(2) Any person who immediately before the date of coming into force of the Orissa Estates Abolition (Amendment) Act, 13 of 1986 held land under Government for rendering service as a village servant by whatever name called shall form the date of coming into force of the said Act be discharged from the conditions of such service and the land shall be settled with him with occupancy right in such rent as may be determined by the Collector in the prescribed manner.

(3) Any person who immediately before the date of vesting held land under an intermediary on favourable terms for personal service rendered by him to such intermediary shall from the date of vesting be discharged from the conditions of such service and the land may be settled with him in such manner and under terms and conditions as may be prescribed."

8. A cumulative reading of the provisions leads to an irresistible conclusion that no proceeding is contemplated under the O.E.A Act for vesting or settlement of land with tenancy rights, at the other hand such rights are protected and the tenants in possession on the date of vesting are deemed to be tenants under the State Government -- Kumar Bimal Chandra Sinha Vs. State of Orissa, .

The view expressed by me is fortified from a decision of this Court in the case of

Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, .

9. Be that as it may, in the present case admittedly Jagabandhu the ancestor of the petitioner, was inducted as a tenant by virtue of "hatapatta" and was in possession of the lands on the date of vesting and thereafter. Enough materials were produced before the Additional Tahasildar to reveal that he was paying rent to the intermediary before vesting. The Additional Thahasildar has rightly held that the tenancy right of Jagabandhu should be protected and he should be deemed to be a tenant under the State. This decision of the Additional Tahasildar is purely an administrative decision and is not a decision under the provisions of the O.E.A. Act.

10. Further, admittedly in the year, 1985 a suo motu proceeding was initiated by the Board of Revenue on the basis of a report submitted by the Collector. The proceeding was initiated against Jagabandhu Biswal who had expired in the year 1983. In course of hearing of the said suo motu proceeding, as order-sheet dated 5.11.1985 would reveal, it came to the notice of the Member, Board of Revenue that Jagabandhu Biswal had in fact died about 2 years prior to the intiation of the case. Surprisingly, the petitioners were substituted and the sou motu proceeding proceeded. In the strict sense of law, the proceeding intiated against dead person is a nullity in the eye of law and the principle of substitution cannot be made applicable. Thus, the substitution of the names of the petitioners is an irregularity. Section 38-B of the OEA Act confers the power upon the Board of Revenue to review any decision or order passed under the OEA Act for the purpose of satisfying itself as to the regularity of such proceeding or correctness and legality of the decision. For the sake of brevity, Section 38-B is quoted hereinbelow :

"38-B. Revision (1) The Board of Revenue may, on its own motion or on a report from the Collector, call for and examine the record of any proceeding in which any authority subordinate to the Board of Revenue has made any decision or passed an order under this Act (not being a decision against which an appeal has been preferred to the High Court or the District Judge under (Section 22) for the purpose of satisfying itself as to the regularity of such proceeding or the correctness legality or properiety of such decision or order and if in any case it appears to the Board of revenue that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass order accordingly. *****

In the present case, as has been stated earlier, Additional Tahasildar has accepted Jagabandhu as tenant under the ex-intermediary basing upon the rent receipts granted by the intermediary, Hatapatta coupled with possession and the report of the Revenue Supervisor. In view of the clear provisions of Section 8(1) of the OEA the Addl. Tahasildar held that he shall be deemed to be a tenant under the State and his tenancy right is protected.

Law is well settled that no proceeding is contemplated u/s 8(1) of the OEA Act. Therefore, no power to confer tenancy right is vested upon any of the revenue authorities. The order passed u/s 8(1) of the OEA Act is purely an administrative one and by the said order, a tenant whose rights are protected, is only accepted and he is deemed to be a tenant under the State Govt. Any person disputing such tenancy right has to approach the civil court. If a dispute arises before the Additional Tahasildar and/or there are more than one persons claiming tenancy rights in respect of the same land, the authorities cannot resolve such dispute and can only direct the persons to establish their rights in a competent civil court. But here is a case where except Jagabandhu there is no other person claiming tenancy rights over the disputed lands. In support of his claim, Jagabandhu produced "hatapatta" and rent receipts granted by the ex-intermediary. He was in possession of the lands as a tenant on the date of vesting. The report of the Revenue Supervisor fortifies the claim putforth. The Additional Tahasildar rightly accepted the rent (land revenue) from Jagabandhu inconsonance with the provisions of Section 8(1), which unerringly protects the rights of a tenant of an ex-intermediary, who are in khas possession of the lands as tgenant on the date of vesting.

The position would be however different if the Tahasildar initiates a proceeding and adjudicates tenancy rights inter se between the parties and thereafter settles the land. Such a proceeding, may invoke jurisdiction of Section 38-B.

On the basis of the analysis made in the preceding paragraphs, I hold that the satisfaction arrived at by the Addl. Tahasildar under Annexure-2 dated August 8, 1977 is strictly in consonance with Section (1) of the OEA Act. The Board of Revenue exercised its sou motu power u/s 38-B to scrutinise the administrative decision of the Tahasildar to settle the lands in favour of Jagabandhu, the predecessor in interest of the petitioners in the year 1985. The proceeding was initiated against a dead person and thus was a nullity in the eye of law.

Even otherwise, scrutiny of the impugned judgments reveal that the member, Board of Revenue has not appreciated the facts in proper perspective The Revisional Court has set aside the order recognising the tenancy of the petitioners father u/s 8(1) of the OEA Act mainly on the ground (i) that no "ekpadia" was filed by the ex-intermediary and (ii) that though the estate vested in 1953, the tenant did not make any effort to claim his tenancy.

It is no more res integra that non-filing of "ekpadia" by the ex-intermediary will not strip the tenancy right conferred by means of "hatapatta". If a tenant can otherwise satisfy his induction as a tenant by adducing cogent evidence like payment of rent to the intermediary and "hatapatta" executed, which are collateral evidence, to prove his tenancy, the said claim, in the absence of any other contrary materials and/or claims cannot be ignored. Non-inclcusion of the lands in the statement filed under Sections 6 and 7 of the OEA Act by the ex-intermediary, also fortifies the claim of the tenant that the intermediary was not in khas possession on the date of vesting. In the present case, the spot enquiry conducted by the Revenue Supervisor also reveals that Jagabandhu was in cultivating possession of the lands since prior to the vesting of the Estate.

The revisional court has also committed error of law in as much as under the provisions of Section 8(1) of the OEA Act, quoted supra, rights of a tenant is protected from the rigor of vesting and he is deemed to be a tenant under the State on the same terms and conditions. Within the four corners of the OEA Act, there is no provision for a tenant to apply or make any claim to settle the lands in his favour. Thus, the reasoning that the tenant did not putforth any claim though the estate vested in 1953, is not just and proper. Therefore, I have no hesitation to hold that the impugned order is not sustainable in the eye of law.

Accordingly, the writ application is allowed. However, there shall be no order as to costs.

11. Application allowed.

