

(2005) 09 OHC CK 0014

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3422 of 1995

Prafulla Chandra Muduli and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 5(9), 6, 7, 8, 8A(1)

Orissa Survey and Settlement Act, 1958 — Section 21, 21(1), 22, 22(2)

Citation : (2005) 09 OHC CK 0014

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

Bench : Single Bench

Advocate : S. Misra, for Petitioner 2, for the Appellant; Additional Government Advocate and D. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.

1. Whether an authority under the Orissa Survey and Settlement Act, 1958 has jurisdiction to set aside and/or ignore an order of settlement of land passed by a competent authority under the provisions of the Orissa Estate Abolition Act; is the point that needs to be answered in the present case.

2. The Petitioners assert that they are the legal heirs and successors of an ex intermediary in respect of the property in question. After vesting of the Estate in consonance with a Notification issued under the Orissa Estates Abolition Act, the ex intermediary, i.e. their predecessor-in-interest, filed applications u/s 8-A(4) of the Orissa Estates Abolition Act, 1951 before the O.E.A. Collector, Nimapara which were registered as O.E.A. Case Nos. 447, 454 and 461 of 1958-59. After issuing notice and observing all paraphernalia, and on being satisfied that the lands in question could be settled with the ex intermediary, the O.E.A. Collector passed orders on 13.8.1959 settling the said lands with the Petitioners as occupancy raiyats under the State. In consonance with the said order the Revenue records were corrected and the lands were recorded in the names of the

Petitioners, Rent/land revenue as settled was paid by the Petitioners from the year 1958-59 up to 1981-82, i.e. for a period of twenty-eight years to the State through the Tahasildar, Nimapara. Thereafter without any rhyme or reason the Tahasildar refused to accept rent from the Petitioners. Being aggrieved by the said action, the Petitioners filed OJC Nos. 535 of 1992 before this Court which was allowed to be withdrawn as there were some changed circumstances granting liberty to the Petitioners to file a fresh Writ application with all relevant documents.

3. According to the Petitioners, the Settlement Officer of Nimapara on the basis of a petition filed by the Tahasildar, Nimapara initiated cases u/s 22(2)(a) of the Orissa Survey and Settlement Act, 1958, registered as Suit Nos. 6108/87 and 6096/87. After issuing notice to the Petitioners and hearing them the Tahasildar by the impugned orders dated 19.1.95 and 2.2.95, Annexure-4 and 4/A, respectively, held that as the lands were "Anabadi" the O.E.A. Collector concerned had acted without jurisdiction and beyond authority in settling the lands in question with the present Petitioners and that as per the established principle of law an order without jurisdiction confers no right and can be ignored. On the basis of such conclusion he ignored the order passed by the O.E.A. Collector, Nimapara in Nizdakhal Case Nos. 454, 461 and 447 of the 1958-59 and directed that the lands in question should be recorded in Government Khata. Being aggrieved by the said orders the Petitioners have once again filed this Writ application.

4. After receiving notice, a counter affidavit has been filed on behalf of the Addl. Settlement Officer, Puri, opposite party No. 4 taking the stand that the lands settled by the O.E.A. Collector with the intermediary being "ANABADI", i.e. waste lands, the order settling the same with the Petitioners was illegal. It is stated that in consonance with Section 5(9) of the O.E.A. Act, all waste lands are to vest absolutely with the State free from encumbrances and an intermediary had no interest on such lands. Further an "Anabadi" land can not be settled with an intermediary under Sections 6, 7 and 8 of the O.E.A. Act and, as such, by virtue of the order passed by the O.E.A. Collector, no right was conferred on the Petitioners and the said order being vulnerable has been rightly ignored by the Settlement authorities concerned.

5. To countenance such facts, it was submitted by Mr. Misra, the learned Counsel for the Petitioners, that in the record-of-rights of 1928, the lands in question were recorded as ANABADI (waste lands), but then by efflux of time, the said lands were made cultivable and prior to vesting, and in fact on the date of vesting, the same were in cultivable possession of the Ex-Intermediary. This aspect was not kept in mind by the Settlement authorities. According to Mr. Mishra, a right is conferred as per the Statute on the O.E.A. Collector to cause such enquiry as necessary before settling a land under Sections 6, 7 or 8 of the O.E.A. Act. In the present case, in fact the O.E.A. Collector, Nimapara had invited objections, complied with all the paraphernalia stipulated under the O.E.A. Act

and on being satisfied that the lands were cultivable and that the ex intermediary was in khas cultivable possession of the same allowed the petitions filed and directed settlement with the Petitioners as raiyats under the State. It was further submitted that the O.E.A. Act is a self-contained Act providing Appeals and Revisions against the orders passed by the O.E.A. Collector. Though the order settling the lands with the Petitioners was passed in the year 1959 and rent was received from the Petitioners till 1982, i.e. for twenty-eight years, no steps were taken to challenge the said order of settlement passed by the O.E.A. Collector and thus the order of settlement of the lands with the Petitioners became final and binding and cannot be interfered with or ignored by the Settlement authorities.

6. In the present case as would be evident from the materials on record, the order of settlement passed was ignored by the Settlement officer in exercise of the power conferred upon him u/s 22 of the Orissa Survey and Settlement Act, 1958. For the sake of brevity and better understanding it would be prudent to quote the relevant portion of Section 22 of the said Act.

22. Sanction of settled rent and modification of orders passed on objections.

(1) When all such objections have been disposed of the Assistant Settlement Officer shall submit the Settlement Rent Roll to the Settlement Officer with a full statement of the grounds of his proposals and a summary of the objections, if any, received by him.

(2) The Settlement Officer -

(a) of his own motion; or

(b) on application within thirty days from the order passed on an objection preferred under Sub-section (1) of Section 21;

7. A reading of the provisions quoted above makes it clear that an order passed or an objection preferred under Sub-section (1) of Section 21 only can be varied by the Settlement Officer u/s 22. Section 21 deals with preliminary publication and amendment of settlement rent roll. In the present case, the Settlement Officer has invoked jurisdiction u/s 22 on the basis of an application filed by the Tahasildar. Such a procedure is not stipulated under the Survey and Settlement Act. Thus by invoking the provisions of Section 22, a Settlement Officer cannot sit in appeal and nullify an order passed by the O.E.A. Collector, and that too more than two decades after. The Settlement Officer has also committed an error apparent on the face of the record while holding that the order passed by the O.E.A. Collector in the year 1959 was without jurisdiction. In fact after vesting of the estate applications were filed u/s 8-A(1). The O.E.A. Collector, Nimapara had the right, authority and jurisdiction to entertain such applications and pass orders. The orders might be right or wrong. In the event a wrong order was passed, statute provides the procedure to rectify the same. Under such circumstances, the observations made by the Settlement Officer that the O.E.A.

Collector lacked jurisdiction was misconceived.

8. Law is well settled that an order passed under a statute which provides a remedy, the said remedy can only be invoked for modifying, rectifying or challenging the order by any person aggrieved. An order passed under one statute by a superior authority can under no stretch of imagination be varied or held to be without jurisdiction by an authority exercising power under Anr. independent statute. Thus, the Settlement Officer lacked initial authority and jurisdiction to examine the propriety or otherwise of the order passed by the O.E.A. Collector two decades after. The Settlement Officer lost sight of the cardinal principle that orders passed by the said authority can neither create nor extinguish a title. At the other hand, the authorities under the O.E.A. Act are empowered to settle lands in consonance with Sections 6, 7 and 8 of the said Act, thereby creating right, title and interest in respect of the lands settled.

9. In the case at hand, the O.E.A. Collector, Nimapara settled the lands with raiyati status with the Petitioners as long back as in the year 1959. The order has worked out. The Petitioners were not only accepted as raiyats under the State, but they also paid rent (land revenue) right from the year 1958-59 till 1981-82. Such a right could not be extinguished by the authorities under the Orissa Survey and Settlement Act. In such circumstances this Court has no hesitation to quash the impugned orders Annexures-4 and 4/A, and directs accordingly.

10. The Writ Petition is thus allowed.