(1989) 01 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No''s. 1047 and 1048 of 1984

Premananda Das APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 13-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Estates Abolition Act, 1951 — Section 22, 38B, 8, 8(1)

Citation : (1989) 67 CLT 548

Hon'ble Judges : V. Gopala Swamy, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—These two writ petitions by the sa me Petitioner are directed against the order of the Member, Board of Revenue, Orissa, Cuttack, in suo motu proceedings u/s 38-B of the Orissa Estates Abolition Act, the proceedings having been initiated on the basis of the statement of facts submitted by the Collector. As common questions of fact and law are involved, they were beard together and are being disposed of by this common judgment.

2. The Petitioner claiming to be a tenant under the ex-intermediary and to be in possession of the land in question on the date of vesting approached the Collector under the Orissa Estates Abolition Act (hereinafter referred to as the "Act") for being recognised as a tenant under the State and the Estate Abolition Collector in fact settled the land in question with him by order dated 1-10-1982 in exercise of his powers u/s 8(1) of the Act. On receipt of a report from the Collector with regard to the illegalities committed by the Estate Abolition Collector in settling the land with the Petitioners the. Member, Board of Revenue, in purported exercise of his power u/s 38-B of the Act issued notice to the Petitioner to show cause as to why the said order of the Estate Abolition Collector

would not be annulled. The Petitioner did not his show cause pursuant to the said notice and thereafter the Member, Board of Revenue, by the impugned order dated 28th of March, 1984 (Annexure-3 in each of the writ applications) has set aside the order of the Estate Abolition Collector dated 1-10-1982. The Petitioner has approached this Court invoking the jurisdiction under Articles 226 and 227 of the Constitution of India with the prayer that the order of the Member, Board of Revenue, be cancelled.

3. Mr. Misra, the learned Counsel for the Petitioner vehemently contends that Section 38-B of the Act has no application, inasmuch as the order passed by the Estate Abolition Collector cannot be construed to be an order passed under the Act. The earned counsel accordingly contends that the Member. Board of Revenue, had no jurisdiction to set aside the so-called order of the Estate Abolition Collector dated. 1-10-1982 in purported exercise of his power u/s 38-B of the Act. We do not find any force in the aforesaid contention of the learned Counsel for the Petitioner.

4. For proper appreciation of the points urged Section 38-B of the Act is extracted here under in extenso:

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 u/s 22 for the purpose of satisfying itself as to the regularity of such proceeding or the correctness. legality or propriety 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 orders accordingly.

(2) The Board of Revenue shall not revise any decision or order without giving the parties concerned, an opportunity of being heard in the matter.

Section 38-B confers a supervisory jurisdiction on the Member. Board of Revenue, who either on his own motion or on a report from the Collector can call for and examine the record of any proceeding in which any authority subordinate to the Board has made any decision or passed an order under the Act for the purpose of satisfying himself as to the regularity of such proceeding or the correctness legality or propriety of such decision or order and thereafter may exercise such power to modify annul or reverse the same.

Mr. Misra''s contention is that Section 8 is a deeming provision and it merely transforms the tenants of the intermediary as tenants of the State. It is not an adjudicating order as it does not conceive of any application to the filed nor any decision thereon to be made and in that view of the matter, the order passed recognising the Petitioner as a tenant under the State cannot be construed to be an order under the Act so as to be amenable to the revisional jurisdiction of the Board u/s 38-B. Though the argument is prima facie attractive yet it does not stand the scrutiny. Section 38-B centers a very wide power on the Board which is undoubtedly the highest revenue authority and has the duty of seeing that the subordinate authorities act in accordance with law. The said Board can exercise suo motu power and in exercise of such power can correct the illegalities committed by any authority subordinate to it while exercising powers under the Act. It is no doubt true that u/s 8(1) a tenant is not required to file an application. But even for permitting continuity of the tenure of tenants, the appropriate authority has to be satisfied that the person concerned was really in possession of any holding as a tenant under the intermediary before the date of vesting so that he can be recognised as a tenant under the State. Though the order to be passed u/s 8(1) is a declaratory one, yet it involves some adjudication. In fact, in the present case, by order dated 1-10-1982, the Estate Abolition Collector has settled the land with the Petitioner. In this view of the matter, it is not possible for us to hold that an order passed by the Estate Abolition Collector in purported exercise of his power u/s 8(1) of the Act is not amenable to the jurisdiction of the Member, Board of Revenue u/s 38-B of the Act. In our considered opinion, any order passed by any authority in purported exercise of the power under any provisions of the Act would be amenable to the jurisdiction of the Board u/s 38-B of the Act and at any rate, the order of the competent authority u/s 8(1) like the present one, is certainly amenable to the jurisdiction of the Board u/s 38-B of the Act. Accordingly, we would reject the contention of Mr. Misra, the learned Counsel for the Petitioner, that the Member, Board of Revenue, had no jurisdiction to exercise his suo motu revisional power u/s 38-B of the Act.

5. Mr. Misra, the learned Counsel for the Petitioner, then contends that the Member, Board of Revenue, in fact has not made any discussion or given any finding and after stating the rival contentions abruptly came to the conclusion that the lease in question in favour of the Petitioner is an after thought and concocted. There is absolutely no material to come to the aforesaid conclusion and such a conclusion must be corrected in a writ of certiorari. We find ample force in the aforesaid contention. The Board has undoubtedly power to annul, modify reverse or remit any order if it comes to the conclusion that the said order is illegal, irregular or improper. But there must be necessary materials for the Board to come to the said conclusion and there must have been finding to that effect. As we find from the impugned orders, the learned Member, Board of Revenue, has merely noted the contentions of the counsel for the State and the counsel for the alleged tenant in paragraphs 1 to 16 of the order and then abruptly came to his conclusions in paragraph 18 without any findings to that effect. While on the one hand, the Board has the duty of exercising supervision in respect of orders passed under the Act and must effectively exercise the said jurisdiction so that subordinate authorities will not commit any error or illegally settle lands with the claimants, but at the same time when the right of the claimants are being infringed, the Board must discuss the entire materials and come to its own findings whereafter the ultimate conclusion should be arrived at.

Having applied our mind to the orders passed by the Member, Board of Revenue we are satisfied that there has been no proper discussion of the materials and no findings of the learned "Member, Board of Revenue, to sustain the ultimate conclusion of the Board and, therefore, in our opinion, this is a fit case where the impugned orders should be set aside. While therefore, rejecting the Petitioner''s contention with regard to the jurisdiction of the Board u/s 38-B of the Act we set aside the order passed by the Member, Board of Revenue, as per Annexure-3 in each of the writ petitions and remit the matter to the Member, Board of Revenue (opposite party No. 2), for re-consideration and re-disposal of the same in accordance with law. It is needless to mention that the Petitioner will have an opportunity of hearing before the Member, Board of Revenue.

6. The writ applications are accordingly allowed with the aforesaid directions, but there would be no order as to costs.

V. Gopalaswamy, J.

I agree.

Applications allowed.

