

(1990) 03 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 1772 of 1982

Purusottam Kar and Others

APPELLANT

Vs

Jagannath Mahaprabhu and Others

RESPONDENT

Date of Decision : 27-03-1990

Acts Referred:

Constitution of India, 1950 — Article 221, 226
Orissa Estates Abolition Act, 1951 — Section 3, 3A, 7, 8(2), 8A
Orissa Land Reforms Act, 1960 — Section 15(1)

Citation : (1990) 70 CLT 462

Hon'ble Judges : B.L. Hansaria, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : R.K. Mahapatra, U.C. Panda, B. Routray and K.B. Kar, for the Appellant; Brajamohan Patnaik, D. Pattanayak, Y.S.N. Murty, K.T. Rao and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik. J.

1. The Petitioners have assailed in this writ application under Articles 226 and 221 of the Constitution of India the settlement made in favour of opposite party No. 1 under the provisions of Section 7 read with Section 8-A of the Orissa Estates Abolition Act, by order dated 28-5-1981 passed by the Estates Abolition, Collector in O.E.A. Case No. 168 of 1975, vide Annexure-1, sustained his appeal and in revision; vide Annexure-2 and 3.

2. The property in dispute is 4 decimals in extent appertaining to plot Nos. 902 and 796 under Khata No. 344 in mouza Mirzapur in the district of Cuttack. In the settlement records of rights of the year 1930, Lord Jagannath Mahaprabhu Bije Puri was recorded as the intermediary the status was shown as Bajyapti Madhya Satwadhikary Babaji Charan Mohanty and others were shown as marfatdars. It is alleged by the Petitioners that land was being cultivated by their father during his lifetime and by them after his demise, as bhag tenants. They were paying bhag

dues to the intermediary and obtaining receipts. In pursuance of the blanket notification dated 27-4-1963 issued u/s 3-A of the Orissa Estates Abolition Act (for short, "the Act"), intermediary interests of all intermediaries other than those which had already vested in the State situated within the limits of the districts of Cuttack, Puri and Balasore vested in the State Government. No step was taken to file claims u/s 8-A within the prescribed time. Assuming that the property was "trust estate" no step was taken either by the trustee or by the Collector under Chapter II-A (since repealed by Orissa Act 33 of 1970) for declaration that it was a trust estate. Hence, Chapter II-A did not save the property from vesting and it vested. Despite the aforesaid event, the property in question was allotted under registered partition deed dated 5-8-1967 to the share of Babaji Charan Mohanty, who continued to collect raj bhag from the Petitioners and the Petitioners under a misconception of law, continued to pay raj bhag to him. Babaji made a gift of plot No. 902 to Nirupama Dei alias Patnaik by registered gift deed dated 20-9-1968. By registered sale deed dated 21-2-1975. Babaji and Nirupama Dei sold the property in dispute to Nirupama Jena who filed an application on 30-9-1975 u/s 7 read with Section 8-A of the Act for settlement of the land with her. The application was registered as O.E.A. Case No; 168 of 1975. At a later stage, she modified her claim and sought settlement of the land with Lord Jagannath Mahaprabhu Bije Puri who was stated to be the intermediary. During the pendency of the said proceeding, Nirupama Jena by registered sale deeds dated 26-3-1980 sold plot No. 902 to Bhagaban Kar and Jogendra Kar and plot No. 796 to Dhruva Charan Kar and Ghanashyam Kar. The application of the transferees u/s 7 read with Section 8-A was registered as O.E.A. Case No. 78 of 1980.

3. The Petitioners have alleged that during pendency of the proceedings under the Orissa Estates Abolition Act, they instituted proceedings u/s 15(1) of the Orissa Land Reforms Act, registered as O.L.R. Case Nos. 101 and 102 of 1980, seeking relief against Lord Jagannath Mahaprabhu Bije Puri, which were dismissed by the Revenue Officer on the holding that the Act had no application to land which had become Government land on its vesting under the provisions of the Orissa Estates Abolition Act. Resuming the course of events in the proceeding under the Orissa Estates Abolition Act, it may be stated that, despite objection by the Petitioners that they were being bhag tenants and hence the intermediary was not in khas possession and the application for settlement was not maintainable having been filed beyond the prescribed period and that the land did not constitute a trust estate coming within the purview of the Orissa Estates Abolition (Amendment) Act, 1978, the Estates Abolition Collector directed settlement with opposite party No. 1, vide Annexure-I. The application filed by the transferees from Nirupama Jena which was registered as O.E.A. Case No. 78 of 1980 was rejected. Objections raised before the original authority were reiterated before the appellate and revisional authorities but neither of them could be persuaded to take a different view and annul the settlement. The settlement in favour of opposite party No. 1 through marfatdar Nirupama Jena

was sustained by both the higher forums, vide Annexures 2 and 3.

4. During the pendency of the writ application in this Court, an application was filed by the transferees from Nirupama Jena whose application u/s 7 read with Section 8A registered as O.E.A. Case No. 78 of 1980 was rejected by the Estates Abolition Collector, to get themselves impleaded as parties. The same was directed to be considered along with the writ application. They were permitted to file counter affidavit and their counsel was permitted to address us at the hearing Nirupama Jena and the Petitioners entered into a settlement transferring her rights in favour of the Petitioners for a consideration and filed an application to dispose of the writ application in accordance with the terms contained therein. The legality and effect of this application for compromise would hinge on the outcome of the writ application.

5. Though the counsel for the parties have made strenuous and lengthy submissions before us, the matter in controversy can be set at rest on resolution of a simple question. Did the estate in question vest pursuant to the notification dated 27-4-1963 or, any time later enabling opposite party No. 1 to make the application for settlement within the time prescribed?

Mr. R.K. Mohapatra, the learned Counsel for the Petitioners, has urged that assuming that the estate was a "trust estate", its vesting was not saved under Chapter II-A since no step was taken either by the trustee or by the Collector under the provisions contained therein. Hence, unless the estate was declared by the Tribunal constituted under Chapter II-A as a trust estate or a reference was pending before it, on the date of repeal of Chapter II-A by Orissa Act 33 of 1970, its vesting was not saved from the operation of the vesting notification.

6. There is no dispute that neither was any claim made by the trustee u/s 13-D(1) nor did the Collector make any reference u/s 13-D(2). The consequence was that the estate vested in the State Government and was not saved from vesting either by a declaration by the Tribunal under Chapter II-A as a trust estate or as a pending reference when Chapter II-A was repealed.

7. The next consideration is if the application u/s 8 -A for settlement of the land was filed by the intermediary within the time prescribed. It has not been disputed that the application u/s 8-A was not filed within the time prescribed under Sub-section (2) of Section 8-A. Reliance was placed, however, on an order made by the State Government under the proviso to Sub-section (3) of Section 8-A and it was urged that the application was filed within the time contemplated by the order. Notification No. EA-II-37/81-45186/R. dated. 24-8-1981 issued by the Government of Orissa in the Revenue Department reads as under:

Whereas the validity of the notification of the State Government in the Revenue Department No. 13699/R. dated the 18th March, 1974, issued u/s 3-A of the Orissa Estates Abolition Act, 1951 (Orissa Act 1 of 1952), vesting the remaining estates belonging to the temple of Lord Jagannath at Puri was in dispute in a writ petition filed in the Hon'ble High Court of Orissa.

And whereas the said writ petition was dismissed by the Court on the 24th February, 1981.

And whereas the time limit for filing of claims u/s 8-A of the said Act had expired by the date of disposal of the said writ petition.

Now, therefore, in exercise of the powers conferred by the proviso to Sub-section (3) of the said Section 8-A, the State Government do hereby extend the period for filing of claims in respect of the aforesaid estates till the 24th February, 1982.

(underlining supplied)

Sub-section (3) of Section 8-A provides that on the failure of filing claims within the period specified, right to possession of the land, buildings, structures would vest in the State Government and the right to make any claim would stand extinguished. However, with a view to relieving intermediaries from the aforesaid drastic consequences, when their failure was due to circumstances beyond their control and contingencies which were not foreseen, exception. was carved out in a proviso that when the failure was due to pendency of proceedings in a Court of law in which validity of the vesting notification was in dispute the State Government might by an order extend the period for filing of the claim. The proviso to Sub-section (3) of Section 8-A reads as under:

Provided that when such failure is due to the pendency of proceedings in a Court of law in which the validity of any notification u/s 3 or 3A is in dispute, the State Government may by order specially made in that behalf extend the period for filing of the claim.

The intermediary as well as the transferees from Nirupama Jena "have sought shelter behind the aforesaid Government notification issued order the proviso to Sub-section (3) and have contended that inasmuch as their application was pending on the date of the notification, the same Was filed within the time prescribed. In our opinion I the aforesaid notification has no application to the facts of this case. The estates referred to in that notification were the estates belonging to the temple of Lord Jagannath at Puri vesting of which was assailed by certain Sevaka under Article 226 of the Constitution of India in this Court (O.J.C. No. 233 of 1977). The writ petition was dismissed on 24-2-1981. Since steps were not taken for filing claims u/s 8-A, because of the order of stay granted by this Court and the pendency of the matter, time was specifically extended in regard to such estates belonging to the temple of Lord Jagannath at Puri. The estate in dispute did not belong to the temple of Lord Jagannath at Puri. Hence, the notification could not come to the aid of opposite party No. 1 for filing of the claim beyond the time prescribed. As no claim was made within the time prescribed in Sub-section (2) of Section 8, the consequences as provided in Sub-section (3) of Section 8-A followed, namely, the property vested in the Government and the right to possession stood extinguished. The settlement of the property on an application filed by the intermediary beyond the prescribed time is without jurisdiction and invalid. Our aforesaid holding has rendered the

questions: if-the transfer of the marfatdari rights for a consideration was valid or if the objections by the Petitioners, who claimed to be in possession as bhag tenants, were filed within the time prescribed, or if they have been able to establish their bhag tenancy or the consequence in law of the compromise entered into between the Petitioners and opposite party No. 1, irrelevant.

8. In the result, we annul the settlement made under Annexure-I, and the orders in appeal and revision as per Annexures-2 and 3 which upheld the same and allow the writ application. There would be no order/as to costs.

B.L. Hansaria, C.J.

I agree.

Writ application allowed.