

(1971) 04 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 817 of 1968

Raghunath Jew Thakur

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-04-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Estates Abolition Act — Section 5, 5(1), 9

Citation : (1971) 37 CLT 558

Hon'ble Judges : R.N. Misra, J;B.K. Patra, J

Bench : Division Bench

Advocate : D. Mohanty and B. Patnaik, for the Appellant; Government Advocate and R. Sharma, for R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Petitioner, a deity, obtained lease of extensive lands from the ex-intermediary of touzi No. 1536 for agricultural purposes under an unregistered lease deed dated 21-1-1938. The estate vested on 1-5-1954. Subsequent to the vesting of the estate a proceeding u/s 5(i) of the Estates Abolition Act (I of 1952) (hereinafter referred to as the Act) was initiated. Ultimately the Collector directed the lease to be set aside. An appeal was taken u/s 9 of the Act to the Board of Revenue and the Board by its decision dated 1-3-1961 (Annexure-A set aside the order of the Collector and remitted the matter to him for a fresh disposal. In the order of the Board it was indicated that the subject matter of the lease consisted of communal as well as non-communal waste lands. In respect of communal lands there could be no lease. The direction was in the following terms:

It is therefore necessary for the lower Court to demarcate between these two types and give a clear declaration that the portions falling under Clause (a) of Section 5 are to be removed from the lease. For the rest of the land action under Clause (i) of Section 5 of the Act does not appear to be proper unless there are

other grounds that will fall under this clause. The lower Court has not paid much attention to the details of this problem.

The Collector thereafter enquired into the matter and ultimately found that out of the leasehold 73. 10 acres appertaining to khata No. 270 were communal lands. In respect of the remainder under the lease the Collector was satisfied that the action u/s 5(1) was not necessary. He accordingly took steps under the first proviso to that sub-section and sent the case to the Board of Revenue for confirmation of the lease. The Member Board of Revenue, held:

The lease alleged to have been of 1938 is written though not registered. The Collector came to a conclusion that the leases were after 1-1-1946. Obviously, they were in possession after 1946. The Estates Abolition Act was in vogue. The observations of the Board in judgment of 1961 were, therefore, that these have to be post 1946 leases. The Sub-divisional Officer has reported that 73. 10 acres of land under khata No. 270 in the village Kaina which are used as communal lands have to be excluded from the lease. In any case, those areas cannot be given on lease and have been objected to. In view of the fact that thus lands are used for communal purposes, the lease is not confirmed. As the party does not show two separate leases and as there is no evidence of any separate lease and cannot be separated, the entire lease is, therefore, set aside;

The present writ application under Article 226 and 227 of the Constitution of India is directed against this order of the Board of Revenue.

2. In paragraph 7 of the writ petition it has been clearly averred that the Additional District Magistrate (Collector under the Act) recommended to the Board of Revenue that 73. 10 acres of land as per the details shown in column 10 and 11 of the Amin's report to be excluded from the lease deed and the lease to be confirmed in respect of the rest of the lands. There is no challenge to this assertion. The State of Orissa has not tiled any counter affidavit before us. During the hearing of this petition the learned Government Advocate conceded that the assertion in paragraph 7 of the writ petition is correct.

3. Section 5(i) of the Act provides:

Where the collector is satisfied in respect of the settlement or lease of any land ... made or created at any time after the 1st day of January 1945, that such settlement, lease or transfer was made with the object of defeating any provisions of the Act or obtaining higher compensation thereunder, he shall have power to make enquiries in respect of such settlement, lease or transfer and may, after giving reasonable notice to the parties concerned to appear and be heard set aside any such settlement, lease or transfer, dispossess the person claiming under it and take possession of such property in the manner provided in Clause (h) on such terms as may appear to him to be fair and equitable:

Provided that in case where the Collector decides not to set aside any such settlement, lease of transfer he shall refer the case to the Board of Revenue for

confirmation of the settlement, lease or transfer and the orders passed by the Board of Revenue in this behalf shall be final:

x x x

As we find the Collector was of the view that the lease was not to be set aside. He had, therefore, recommended the matter to the Board of Revenue under the aforesaid proviso. On the earlier occasion the Board of Revenue had indicated that the communal lands are to be removed from the lease and in respect of the remaining lands it was to be found out whether any action u/s 5(1) of the Act was necessary. Pursuant to the said direction the Collector had found that no action for setting aside the entire lease was necessary and had, therefore, recommended confirmation, in respect of only a part of the lands covered by the lease deed.

4. The Board of Revenue seems to be of the view that a lease cannot be upheld or confirmed in respect of a part of the lands covered by it when in respect of the other part confirmation was not being granted. We find it difficult to agree with that view. When a lease is in respect of many items of property it is open to the authorities to find out and scrutinise with reference to the provisions of the Act whether the lease can be affirmed in regard to all the items of property covered by the lease and if they are satisfied that the lease as a whole is to be confirmed such confirmation can be granted. But there may be cases where the lease may be found to be in order in respect of certain items of property while in respect of other items there could be no confirmation on account of any special provisions in the statute. It would not follow that the Board of Revenue would have no powers to confirm the lease in respect of specific items only. In fact the recommendation was to confirm the lease only in respect of a part. That is, after deleting 72.10 acres out of the lease. We are satisfied that the Board acted under a misconception of the legal position and therefore, set aside the entire lease. We are of the view that the reasoning given by the Board of Revenue cannot be sustained and is liable to be quashed. We would accordingly allow the petition. A writ of certiorari shall issue quashing the impugned order of the Board of Revenue. The Board shall take steps to confirm the lease in respect of the properties excluding 73.10 acres of land as detailed in the report of the Collector. There would be no order as to costs.

B.K. Patra, J.

5. I agree.