
(2013) 08 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 296 of 2009

Rasika Chandra Tiria

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 116 CLT 704

Hon'ble Judges : Sanju Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : N.P. Parija, S.K. Rout, A.K. Mohanty and K.K. Mohapatra, for the Appellant;

Judgement

Sanju Panda, J.—This Writ Petition has been filed by the Petitioner challenging the decision of the Member, Board of Revenue, Odisha, Cuttack dtd. 01.11.2008 passed in O.E.A. Revision Case No. 141 of 2006 u/s 38B of the Odisha Estates Abolition Act, 1951 (hereinafter referred to as "the Act"). The dispute is related to the land appertaining to Plot No. 404 under Khata No. 52 measuring an area of Ac. 1.33 decimals situated in Village Rampas, P.S.: Jaipur Road in the district of Jaipur, which was recorded in the name of the Ex-Proprietor Raja Saheb, Sukinda of Sukinda Estate. It is contended by the Petitioner that the ex-intermediary of Sukinda Estate had given the aforesaid Land to the Petitioner as "Jagiri" for the purpose of rendering service of "Khamara Jaguali" to protect the property of the estate. The ex-intermediary had issued "Hatapatta" in favour of the Petitioner for the said land & the Petitioner paid rent to the Sukinda Estate & obtained rent receipts. The Estate was vested with the Government in the year 1952-53 by notification dtd. 27.11.1952. While matter stood thus, in the year 1983 the Petitioner filed an application before the O.E.A Collector-cum-Tahasildar, Sukinda Tahasil for acceptance of tenancy & to fix fare & equitable rent, which was registered as O.E.A Vesting. Misc. Case No. 585 of 1983. The O.E.A Collector-cum-Tahasildar, Sukinda Tahsil called for a report from the Revenue Inspector, Dangadi & also issued general proclamation inviting objections to know whether

anybody has any objection to the claim of the Petitioner. No objection was received by the Tahasildar within the statutory period. The Revenue Inspector also submitted report stating that the land was given by Raja Saheb, Sukinda as "Jagir" for the purpose of rendering service of "Jaguali" to protect the property of Estate. After receiving the report from the Revenue Inspector, Dangadi & on verifying the document, the O.E.A Collector accepted the Petitioner as tenant vide order dtd. 08.2.1984. Thereafter, the Petitioner was paying rent regularly & has obtained rent receipts thereof. After lapse of twenty-four years, the Collector, Jaipur filed application invoking jurisdiction u/s 38B of the Act before the Member, Board of Revenue, Odisha, Cuttack assailing the order dtd. 08.2.1984 passed by the O.E.A Collector-cum-Tahasildar, Sukinda in O.E.A Vesting Misc. Case No. 585 of 1983, which was registered as O.E.A Revision Case No. 141 of 2006. The Member, Board of Revenue; Odisha, Cuttack by the impugned order while setting aside the order dtd. 08.2.1984 passed by the O.E.A Collector-cum-Tahasildar, Sukinda directed that the suit land be recorded in the "Anabadi" Khata of the State Government as it was prior to vesting & the possession be also resumed by Tahasildar, Vyasnagar with immediate effect.

2. Learned Counsel appearing for the Petitioner submits that the Revision was initiated after lapse of twenty-four years which is beyond the statutory period, therefore, the impugned order is liable to be quashed. He further submits that the ex-intermediary had given the land to the Petitioner as "Jagir" for the purpose of rendering service of "Khamara Jaguali" to protect the property of the estate & Jagirdar & tenant are on a same footing after abolition of the estate. It is stated that the tenancy rights of the Petitioner are protected u/s 8(1) of the Act. It is further stated that the Member; Board of Revenue should not have interfered with the order passed by the O.E.A Collector on the administrative side recognizing the tenant after accepting rent. In support of his contention he has cited a decision of this Court in the case of Gunduchi Bijaya Barik & Others v. State of Odisha & Others reported in 2008 (II) CLR 158, wherein this Court held that the order passed by the Tahasildar in purported exercise of jurisdiction u/s 8(2) being administrative in nature, Board of Revenue has no jurisdiction to revise an administrative decision, because such decision is not a decision in any proceeding under the Act. Learned Counsel for the Petitioner in support of his case further cited a decision of this Court in the case of Jagannath Nanda Vs. Bishnu Dalei and Others, wherein this Court held that if it is established that after the abolition of the estate the ex-intermediary paid rent to the State in respect of the disputed properties & the State accepted the rent, he acquired occupancy rights in the disputed properties. It is stated that as the Petitioner was in possession of the land & paid rent, he acquired occupancy right.

3. Learned Addl. Government Advocate submits that the Hon"ble Apex Court has already settled the law that there is no scope for the tenant to file an application u/s 8(1) of the Act to declare him as tenant & to accept rent after lapse of long period from the date of vesting. He further submits that since the Petitioner claims the land as a service tenure (Jagir land) his claim is coming u/s 8(2) of

the Act & the said provision clearly provides that any person who is discharged from the conditions of village service may file an application before the Collector immediately after the vesting in the prescribed manner for settlement of the land held by him under the conditions of village service & the land shall be settled with him with occupancy right in such rent as may be determined by the Collector in the prescribed manner. The Petitioner claims the land as service tenure & no document has been filed by him to show that he was possessing the land/holding the land for the purpose of particular service. Service tenures are essentially of two categories. If the land was originally granted burdened with service, prima-facie that grant will not be resumable by the grantor. If the original grant was merely that of an office to be remunerated by the use of certain land, such a grant will be resumable when the incumbent ceases to perform the duties of that office. In respect of the former class of grants alt that the grantor would be entitled to is the performance of the service, but grantee's interest in the property could not be taken away. In the present case the Petitioner has not filed any document in support of his contention that he was possessing the land as "Jagir" for the purpose of rendering service of Jaguali to protect the property of Estate. Therefore, the Member, Board of Revenue, Odisha, Cuttack has rightly passed the impugned order & the same need not be interfered with. In support of his contention Learned Addl. Government Advocate has relied on the decisions of the Supreme Court as well as this Court reported in State of Orissa v. Brindaban Sharma

4. The Apex Court in the case of State of Orissa v. Brindaban Sharma held that the lease of land allegedly granted by the intermediary to the tenant prior to the date of vesting & conferment of tenancy rights by the Tahasildar without obtaining prior confirmation of the Board of Revenue is without jurisdiction. Collection of revenue or rent thereafter is an administrative act & it does not operate as recognition of pre-existing right, title or interest in the land of the tenant. The Board of Revenue can exercise revisional powers in respect of orders, decisions, etc. made prior to coming into force of Section 38B but initiation of revisional power must be from & after coming into force of the Section. No period of limitation prescribed under the Act for revision & validity of a non-est order can be questioned in any proceeding at any stage. Since conferment of tenancy rights by the Tahasildar without obtaining prior confirmation of the Board of Revenue is void, the Board of Revenue justified in quashing the said order even though 27 years had elapsed since the grant of Patta by the Tahasildar.

4.1 The Apex Court in the case of State of Orissa v. Brindaban Sharma held that mere execution lease by intermediary in favour of a person would not confer status of "raiyat" on lessee nor would protect possession of such lessee u/s 8 of the Act. A "lease" would amount to a transfer of an interest of the intermediary in the land to the lessee. In such a situation, far from being a tenant protected u/s 8 of the Act, the lessee would in fact step into the shoes of the intermediary with his interest being liable for confiscation & his entitlement limited to

compensation from the State. On the other hand, for protection u/s 8 of the Act one has to be a "raiyat" cultivating the land directly & having the rights of occupancy under the tenancy laws of the State. Thus, a "lessee" who is not actually cultivating the land i.e. who is not a "raiyat" would not be within the protection of Sub-section 2(4) of Section 8 of the Act in its residuary part states that "intermediary" would cover all owners or holders of interest in land between the raiyat & the State. Lands in question lying fallow & were not in physical possession of any person, thus the lands being not cultivated by the claimant lessee, cannot be considered as "raiyat". The Supreme Court also taken note of large tract of uncultivated land lying in city & various claims made thereon on the basis of fraudulent title papers alleged issued by ex-intermediaries.

4.2 This Court in the case of State of Orissa v. Brindaban Sharma held that for the purpose of taking benefit of the provisions of Section 7(1)(a) of the Act, the intermediary must be in cultivating possession of the said land either by himself, with his own stock or by his own servants or by hired labour or with hired stock. The nature & character of the land being non-agricultural, the same evidently was not in cultivating position of the intermediaries &, thus an application for settlement of such land by the intermediaries purported to be in terms of Section 7 of the Act was not maintainable. Furthermore, the land being not used either for cultivation or for horticulture purposes on the date of vesting did not attract the provisions of clause (a) of Sub-section (1) of Section 7 of the Act.

5. Law is when settled by the Apex Court in the cases State of Odisha & Others v. Brundaban Sharma & Anr. State of Odisha & Others v. Harapriya Bisoi & State of Odisha v. Nityanand Satpathy & others (supra) as well as by the Full Bench of this Court in the case of Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, that Section 8(1) of the Act makes no provision for an application to be filed & no enquiry is also contemplated under the said Section. The said Section is merely declaratory of the continuity of the tenure of tenants as it was immediately before the date of vesting. Therefore an application u/s 8(1) of the Act is misconceived one. So far as the decision cited by Learned Counsel for the Petitioner in the case of Jagannath Nanda Vs. Bishnu Dalei and Others, , this Court has taken into consideration that an application under Sections 7 & 8A of the Act totally different than that of an application u/s 8(1) or 8(2) of the Act. Admittedly, immediately after the vesting no step was taken by the so-called tenure holder to accept rent on the basis of continuous possession over the land before the vesting rather an application was filed by the Petitioner for the first time in the year 1983. In the said application, he claimed that the suit land was given to him on Jagir basis for rendering the service of Khamara Jaguali. He had not specified in his petition as to whom he was rendering the service. What does this service mean? Who had given him the suit land as "Jagir"? He also claimed that he had paid Patta Salami & obtained a receipt without mentioning whom he had paid such Salami & from whom he had obtained receipt. However, the Petitioner has prayed for permanent fixation of rent in his favour & for issuance of orders for acceptance of payment of arrears of rent. The O.E.A. Collector-cum-

Tahasildar called for a report from the Revenue Inspector on the above application. A report was submitted without any date which reveals that Raja Saheb, Sukinda (the Ex-intermediary) has given the land to the Petitioner as "Jagir" for rendering service of Jaguali at his residence & he has also recommended for acceptance of payment of back rent from the year 1952. It may also be noted here that the estate was vested on 27.11.1952 & proclamation was issued inviting objections to settle the land under Sections 6, 7 & 8(3) of the Act. Admittedly, Section 8(3) of the Act is meant for personal service rendered by the person to intermediary. From the above, it is crystal clear that the Petitioner has taken a stand that he was rendering service to the estate, which is coming u/s 8(2) of the Act. However, the O.E.A. Collector has treated the said application to be one u/s 8(3) of the Act. Section 8(2) of the Act mandates that any person holding land in a village for service as a village servant by whatever name called, shall be deemed to hold it under the State Government subject to such terms & conditions as he was entitled or subject to immediately before, the date of vesting. The application was filed by the Petitioner more than 30 years from the date of vesting. It appears that the Petitioner has not filed a scrap of paper to show that he was appointed/engaged as Jaguali & got the land for the said service rendered by him nor has he produced any document to show how the land was given to him by the intermediary. The Member, Board of Revenue vividly discussed the said facts & came to a just conclusion that no materials available on record to show that Petitioner was rendering service to ex-intermediary or rendering service to the estate or village. The O.E.A. Collector has also not given any finding regarding kind of service rendered by the Petitioner nor he has identified under which provision (i.e. u/s 8(2) or 8(3) of the Act) the land was settled with the" Petitioner by its order dtd. 2.2.1984. Therefore, the revisional authority held that the impugned order passed by the O.E.A., Collector is non-est & a void one. The O.E.A Collector has not obtained prior confirmation from the Board of Revenue, as provided under the provisions of the Act.

6. The Full Bench of this Court in the case reported in 81 (1996) CLT 571 (F.B.) taking into consideration the ratio decided in the case of State of Orissa v. Brindaban Sharma held that the Board of Revenue either on its own motion or on a report from the Collector, may call for & 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 to satisfy itself as to the regularity of such proceeding or to the correctness, legality or propriety of such decision or proceeding or order, & if in any case it appears to the Board that such a decision is not correct or is illegal or improper, it has been empowered to modify, annul, reverse or remit the case to the authority for decision according to law. Therefore, the decision of the O.E.A Collector is assailable u/s 38B of the Act. In view of the above settled position of law, this Court is not inclined to interfere with the impugned order dtd. 01.11.2008 passed by the Member, Board of Revenue, Odisha, Cuttack in O.E.A Revision Case No. 141 of 2006 as there is no error apparent on the face of

the record so as to warrant interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

The Writ Petition along with Misc. Case is dismissed. The interim order dtd. 30.1.2009 passed by this Court in Misc. Case No. 145 of 2009 stands vacated.

B.R. Sarangi, J.

I agree.