

(1976) 10 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 881 of 1974

Shakuntala Devi

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 29-10-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Orissa Estates Abolition Act, 1951 — Section 5, 5(1), 50, 9(1)
Orissa Estates Abolition Rules, 1952 — Rule 8

Citation : (1977) 43 CLT 156

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

Bench : Division Bench

Advocate : N.K. Mishra, for the Appellant; Government Advocate, for the Respondent

Judgement

R.N. Misra, J.—Petitioner, a lessee from an ex-intermediary, has asked for quashing of the appellate decision rendered under the Orissa Estates Abolition Act in a proceeding u/s 5(i) thereof by which the appellate authority has upheld the cancellation of the lease. Petitioner claimed to have obtained a permanent lease for agricultural purposes of certain lands appertaining to Touzi No. 2543 on 20th of March, 1933, from the predecessor-in-interest of opposite party No. 4. The lands in question were recorded in the Current Settlement Record-of-Rights as Abadajogya Anabadi (waste land fit for cultivation). Petitioner claims that she was put into possession by the lessor and continued to enjoy the property by payment of taxes to the local Panchayat and rent to the ex-intermediary. The estate vested under the provisions of the Estates Abolition Act on 1-5-1954. The ex-proprietor in the Tenants' Ledger furnished to the revenue authorities indicated the Petitioner to be in possession of the property as a lessee. Petitioner also claims that in the claim laid by the ex-intermediary before the Compensation Officer, Petitioner's name was also shown as a tenant in possession in the statutory return. After vesting, Petitioner approached the Revenue Officers to receive rent from her on the basis of the Tenants' Ledger. Rent was, however,

not accepted and a proceeding u/s 5(i) of the Estates Abolition Act was initiated by the Sub-Divisional Officer, Cuttack. Several other persons had also taken leases from the ex-proprietor of the Touzi and similar proceedings were initiated against them.

Petitioner showed cause and in course of the enquiry evidence was received from the lessee and her witnesses. The Sub-Divisional Officer caned upon the Tahsildar of Cuttack to produce the returns filed by the ex-proprietor. The Tahsildar, however, intimated that the records were not available. Subsequently a Jamabandi was produced before the Sub-Divisional Officer which, however, did not bear the signature" of the ex-intermediary. Before the enquiry was completed, the areas comprising the leasehold were transferred to the district of Puri. The proceedings were, therefore, also transferred to the Sub-Divisional Officer, Bhubaneswar. The transferee Officer ultimately found against the Petitioner and cancelled the lease. Similar orders were passed in several other cases. Each of the lessees appealed u/s 9(1) of the Estates Abolition Act and the Additional District Magistrate by a common judgment in all the nine appeals upheld the cancellation of the leases and dismissed the appeals. Petitioner challenges the cancellation of lease and the appellate order upholding the cancellation.

2. At the instance of the Petitioner, the records of the proceedings were called for and we had the advantage of perusing the records during hearing of the application.

3. On a reference to the records, it is clear that the proceedings have not been properly conducted. In a proceeding u/s 5(1) of the Estates Abolition Act, the statute requires that reasonable notice must be given to the parties and parties mean the lessor and the lessee. The record does not show that the lessor was ever noticed when the proceeding was initiated. The order dated 20th of July, 1967, runs thus;

Perused the report of the Tahsildar, Sadar, vide Memo No. 2333 dated 14-7-1967. Start a case u/s 5(i) of the O.E.A. Act. Notice party to 25-7-1967.

A copy at the notice available at page 10 of the records shows that it was issued to the Petitioner alone. There is no material on the record to show that any notice was issued to the lessor-ex-intermediary. It is true that opposite party No. 4 an heir of the lessor - has been examined as a witness for the lessee. That, however, does not satisfy the requirement of law.

4. As already indicated, the proceedings were initiated by the Sub-Divisional Officer at Cuttack and the records were transferred to the Estate Abolition Collector at Bhubaneswar when the area covering the lease was transferred to the district of Puri. There is considerable amount of dispute as to the genuineness of the Tenants" Ledger. Reports furnished by the Tahsildar of Cuttack which have been extracted in the writ application and correctness whereof has not been disputed in the counter affidavit, cast a lot of doubt on the

genuineness of the Tenants" Ledger. Appropriate investigation has not been made about the genuineness and the same has been accepted as correct and the dispute has been resolved against the Petitioner mainly relying on such a document.

The rent receipts and tax receipts produced by the lessee have been discarded without offering any cogent reason. Undoubtedly after the estates vested and before the revenue records were regularised, there Intervened a period when some amount of confusion prevailed and if an appropriate investigation had been made, doubts could be resolved and truth ascertained. There does not seem to have been any appropriate attempt to get at the truth. There is some force in the contention of the Petitioner that the Jamabandi filed by the ex-intermediary cannot be the sale basis for determining the genuineness of the lease and it has been rightly claimed that if that be the manner of determination, an ex-intermediary who had actually granted a lease but had fallen out with the lessee on some account could prejudice the lessee by not mentioning about his lease in the return.

5. Admittedly in regard to an enquiry u/s 5(i) of the Act, the jurisdiction of the Civil Court has been ousted and subject to an appeal u/s 9, the decision u/s 5(1) has been made final. As title to property is involved and the common law jurisdiction has been ousted and a separate Tribunal has been set up, an adequate investigation with full opportunity to parties to establish their claims is required to be provided and in fact the Legislature has made appropriate provision for it in requiring the Tribunal exercising powers u/s 50) of the Act to give reasonable notice to parties concerned to appear and be heard. The records show that oral evidence was led and documents were exhibited. There is, however, no systematic record at all of any exhibit and though we gave full opportunity to learned Government Advocate to see the record and indicate to us the documents said to have been exhibited, he was at a loss to find that no such record had been properly maintained. Even a list of exhibits is not forthcoming from the records. Some documents bear marks of having been exhibited, but the Collector under the Act has not cared to put his signature on the documents. In these circumstances, it is difficult for us to hold that there has been an appropriate enquiry and the requirements of the procedure set down by law have been satisfied.

6. To an appeal against an order u/s 50 (i) filed u/s 9 of the Act, Rule 8 of the rules made under the Act applies and in terms of the said rule, the appeal has to be dealt in accordance with Order 41, Code of Civil Procedure. Additional evidence seems to have been received by the appellate authority, inasmuch as he has exhibited some documents as would appear from the appellate order. We have not been able to find out any order anywhere in terms of Rule 27 of Order 41 of the CPC to support receipt of additional evidence. What is more surprising is that when we looked for the documents received as additional evidence, the same were not available on the record. We adjourned the proceedings to

facilitate receipt of the documents which had been accepted as additional evidence, but the same also were not available. What was sent to us in compliance of the Court's requisition appears verily to be a different document because it does not bear any mark of having been exhibited.

7. As already indicated, several cases had been initiated u/s 50) of the Act against lessees from the same or near-about area and nine appeals had been filed before the Additional District Magistrate. The appellate authority attempted to dispose of all the appeals by a common judgment. The facts were not very much the same. The dates of leases varied; different witnesses have been examined and the reports in regard to the leases were also different. A common disposal of the appeals has indeed added further confusion to the matter. If each of the appeals had been separately dealt with, it is possible that some of the confusion which had crept into the original record could have been clarified and removed. Even learned Government Advocate appearing for the Estate Abolition authorities felt embarrassed during hearing of the case and suggested to us that the appellate order should be vacated.

8. The counter affidavit shows that there were some relevant documents on the record which were not exhibited. We have a feeling that the investigation has not been appropriate and injustice has resulted on account of these and several other defects which have crept into the enquiry.

9. In these circumstances, we think it appropriate to vacate both the original as also the appellate orders. The leaseholders are extensive and as the revenue authorities have been of the prima facie view that the leases were in violation of the statute, we cannot, accepting Petitioner's contention, close the matter by mere quashing of the orders. It is appropriate to require the proceeding to be taken up afresh so that interests of the State may not suffer. We would accordingly require the Estate Abolition Collector, Bhubaneswar, to examine the matter afresh and dispose of the proceedings u/s 5(i) of the Act in accordance with law. We are sure that the Collector under the Act would conclude the enquiry with an open mind and at an early date being alive to the fact that for defects brought into the record by his predecessor, he is being called upon to handle a 10-year old proceeding.

We make no direction for costs.

K.B. Panda, J.

10. I agree.