

(1973) 12 OHC CK 0008

In the Orissa High Court

Case No : Original Jurdn. Case No. 688 of 1970

Shri Balunkeswar Mahesh and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-12-1973

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 13K, 2, 3(1), 3A

Citation : AIR 1974 Ori 141 : (1974) 40 CLT 301

Hon'ble Judges : G.K. Misra, C.J.;K.B. Panda, J;B.K. Patra, J

Bench : Full Bench

Advocate : S. Misra, 2 and S.K. Mohanty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—Petitioner No. 1 is Shri Balunkeswar Mahesh, a deity, the management of whose temple is, by an order issued by the Commissioner of Orissa Hindu Religious Endowments, vested in petitioner No. 2. Lands measuring 100.55 acres pertaining to Khewat No. 2 and Khata No. 14 in mouza Hatia Tangara and more fully described in para. 3 of the writ petition belong to petitioner No. 1 who has been recorded as a Malguzar in respect of those properties in the current settlement record-of-Rights. In exercise of the powers conferred by Section 13 (k) (b) and Sub-section (1) of Section 3 of the Orissa Estates Abolition Act, 1951 (hereinafter, referred to as the Act), the State, by issuing Notification No. S.R.O. 22/70 dated 3rd January, 1970 (Annexure 4) declared that the trust estate of Hatia Tangara of the deity Shri Balunkeswar Mahesh in the district of Keonjhar has passed to and become vested in the State free from all encumbrances. The petitioners have filed this application for quashing the impugned notification.

2. It is stated in para 3 of the petition that the lands mentioned in the schedule to the petition are in the nature of waste lands lying in the heart of Keonjhar town. It is, however, admitted in para. 10 of the petition that as the deity has intermediary interest in the lands, a notification was issued by opposite party No.

1 u/s 3-A of the Act for vesting the said lands in the State. Subsequent to this notification, the deity preferred a claim u/s 13-D of the Act before the Estates Abolition Tribunal for a declaration that the aforesaid lands of the deity form a trust estate. The Tribunal by its order Annexure 2 dated 3-2-1967 allowed the application and declared that it is a trust estate. The effect of the order of the Tribunal, as provided in Section 13-I of the Act is that the trust estate shall be deemed to have been excluded from the operation of the vesting notification and never to have vested : in the State in pursuance thereof. But under the powers reserved in the State by Section 13-K (b) of the Act, the State was not debarred from vesting any trust estate by issue of a notification u/s 3. It is in pursuance of this power that Government issued the impugned notification.

3. It is alleged in the petition that as the disputed lands are situated in the heart of Keonjhar town and are fit for being used as homestead lands, different Departments of Government had at different times constructed their buildings on parts of the lands without paying the price to the petitioners, and consequently, the petitioner No. 2 on behalf of the deity had issued notices calling upon the authorities concerned to pay the appropriate price. It is alleged that with a view to avoid such payment, the State Government mala fide issued the impugned notification. There are no rai-yats on the disputed lands. As the aim of this notification is to abolish the intermediary interest between the raiyat and the State, and as in the case of disputed properties there are no raiyats, the impugned notification under the circumstances has not been issued to achieve the aims and objects of the Act and consequently the impugned notification is invalid.

4. The State in its counter-affidavit does not deny the allegation of the petitioners that there are no raiyats in the disputed lands. But it is contended that the disputed properties constitute the Hatia Tangar estate and that the impugned notification has been validly issued in respect thereto.

5. This case came up originally for disposal before our learned brothers R. N. Misra and B. K. Ray, JJ. On the authority of a Bench decision of this Court in *Sm. A. Kameswaramma v. State of Orissa*. (1970) 36 CLT 1108, it was contended before the learned Judges that unless there be an intermediary between the tiller of the soil and the State, there can be no estate and no vesting order can be made in respect thereof. As the Bench thought that the question raised is of substantial importance and is not free from doubt having regard to the decision in (1970) 36 CLT 1108, this writ petition has been referred to a larger Bench and that is how the matter has come up before us for disposal.

6. The only point pressed by Mr. S. Misra (2) for the petitioner at the time of hearing is that the deity is not an "intermediary" within the meaning assigned to that term in the Act. The sole ground for such submission is that an intermediary comes between a raiyat and the State and as in respect of the disputed lands there are admittedly no raiyats, the deity would not be an intermediary,

7. To appreciate this contention it is necessary to notice how the two expressions "estate" and "intermediary" are defined in the Act. The expression "estate" is defined in Section 2 (g) of the Act and runs thus :

"2 (g) "estate" includes a part of an estate and means any land held by or vested in an intermediary and included under one entry in any revenue-roll or any of the general registers of revenue-paying lands and revenue free lands, prepared and maintained under the law relating to land revenue for the time being in force or under any rule, order, custom or usage having the force of law, and includes revenue-free lands not entered in any register or revenue-roll and all classes of tenures or under-tenures and any jagir, inam or maufi or other similar grant; Explanation I :-- Land revenue means all sums and payments in money or in kind, by whatever name designated or locally known, received or claimable by or on behalf of the State from an Intermediary on account of or in relation to any land held by or vested in such intermediary;

Explanation II :-- Revenue free land included land which is, or but for any special covenant, agreement, engagement or contract would have been liable to settlement and assessment of land revenue or with respect to which the State has power to make laws for settlement and assessment of land revenue :

Explanation III :-- In relation to merged territories "estate" as defined in this clause shall also include any mahal or village or collection of more than one such mahal or village held or vested in an intermediary which has been or is liable to be assessed as one unit to land revenue whether such land revenue be payable or has been released or compounded for or redeemed in whole or in part."

The expression "Intermediary" is defined in Section 2 (h) which runs thus :

"2 (h) "Intermediary" with reference to any estate means a proprietor, sub-proprietor, landlord, land-holder, malgu-zar, thikadar, gaontia, tenure-holder, under-tenure-holder and includes an inamdar, a jagirdar, zamindar, Illequdar, Khorposhdar, Parganddar, Sarbarakar and Maufidar including the Ruler of an Indian. State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the State : Explanation I :-- Any two or more intermediaries holding a joint interest in an estate which is borne either on the revenue roll or on the rent-roll of another intermediary shall be deemed to be one intermediary for the purposes of this Act;

Explanation II :-- The heirs and successors-in-interest of an intermediary and where an intermediary is a minor or of unsound mind or an idiot, his guardian, Committee or other legal curator shall be deemed to be an intermediary for the purposes of this Act. All acts done by an intermediary under this Act shall be deemed to have been done by his heirs and successors-in-interest and shall be binding on them."

Section 3 (1) provides that the State Government may from time to time by notification, declare that the estate specified in the notification has passed to and

become vested in the State free from all encumbrances. The Act was amended by Orissa Act 15 of 1956 and one of the amendments made is insertion of Section 3-A which provides that without prejudice to the powers u/s 3, the State Government may by notification declare that the intermediary interests of all intermediaries or a class or classes of intermediaries in the whole or a part of the State have passed to and become vested in the State free from all encumbrances.

8. It is admitted in para. 10 of the writ petition that the deity has intermediary interest in the disputed lands and that a notification was made by opposite party No. 1 u/s 3-A of the Act vesting the said lands in the State. In view of this admission made in para. 10 it is idle for the petitioners now to contend that the deity was not an intermediary.

9. By Orissa Act 5 of 1963, the Act was amended by inserting therein a new Chapter II A consisting of Section 13-A to 13-K making special arrangement for the management of religious and charitable endowments, and public trusts. Section 13-A (e) defined a trust estate to mean an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual. Section 13-D authorised the trustee in respect of a trust estate upon the issue of a notification u/s 3-A of the Act to make an application to the Tribunal constituted u/s 13-C claiming that the estate is a trust estate. Sections 13-H to 13-K dealt with proceeding before the Tribunal and Section 13-I provided that all estates declared under that chapter to be trust estates by the Tribunal shall be deemed to have been excluded from the operation of the vesting notification and never to have vested in the State in pursuance thereof. Section 13-K (b) provided that nothing in Chapter II-A shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification under Sec. 3.

10. After the issue of the notification u/s 3-A vesting the intermediary interest of the deity in the State, the petitioners filed a claim before the Tribunal u/s 13-B. The claim was allowed; the disputed properties were declared to be trust estate (Annexure 2). It is, therefore, not open to the petitioners to contend now that the disputed properties never constituted an "estate". Subsequent to the declaration made u/s 13-I, the State Government by issuing the impugned notification at Annexure 4 dated the 3rd January, 1970 u/s 13-K (b) and sub-section (1) of Section 3 of the Act declared that the disputed trust estate has passed to and become vested in the State free from all encumbrances.

11. It only remains to be examined whether despite the admitted position that the disputed property is an estate and the admission made by the petitioners in para. 10 of the petition that the deity had intermediary interest in the disputed lands, there is any merit in their present contention that the deity is not an intermediary merely because there are no raiyats in the disputed lands. In support of this contention, reference is made to the preamble of the Act which

is--

"to provide for the abolition of all the Rights, Title and Interest in Land of Intermediaries by whatever name known including the Mortgages and Leases of" such Interest, between the Raiyat and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith."

It is argued that the object of the abolition of the Zamindari tenure being the elimination of intermediaries and the improvement of the lot of the actual tillers of the soil, the Act cannot be made applicable in respect of lands lying waste such as the disputed lands in this case, because there being actually no tillers of the soil, there is no question of there being any intermediary between such tillers and the State. To strengthen this argument, reference is made to the expression "and all other holders or owners of interest in land between the raiyat and the State" appearing in the definition of the term "Intermediary", it has to be noticed that the definition in Section 2 (h) assigns to the word "intermediary" a primary meaning by specifying certain categories of persons whose connotation is well defined under the various tenancy laws, namely, proprietor, sub-proprietor, landlord, land-holder, malguzar, thikadar, gaontia, tenure-holder, under-tenure-holder. The further connotation of the word is brought in by an expansive clause which commences with the phrase "and includes". The use of the phrase "and includes" in the definition indicates only an extension of the primary meaning. When a definition states that a particular term "means" some things "and includes" some other things it is not necessary to assume that the first and the second category have invariably any particular common characteristic though they often do have it. In the present case, from the definition of intermediary it does not follow that what is stated in the latter clause is restrictive of what is stated in the earlier clause, nor is the phrase "all other holders of interest in land between the raiyats and the State" in the second clause any indication of a common characteristic between both categories on the principle of ejusdem generis (See K.C. Gajapati Narayana Deo and Others Vs. The State of Orissa, . It, therefore, appears to us that it is a mistake to equate the word intermediary" as defined, with a person who holds an intermediate status between the tiller and the State or to confine that connection only to such lands in respect of which such an intermediary position of the land-holder obtains. The observation by a Bench of this Court in (1970) 36 CLT 1108 (para. 9} that an intermediary would come between a raiyat and the State, of whatever class he may be, and that if below the petitioner there is no raiyat, then the petitioner would not be an intermediary is, in our opinion, expressed too widely and cannot be correct as an abstract proposition of law, although in the majority of cases, there would be tillers of soil below the inter-mediary.

12. In the present case, it is conceded by the petitioners that in the Re-cord-of-Rights the deity is recorded as a Malguzar in respect of the disputed property. As already pointed out, in para. 10 of the petition it is admitted that the deity had

intermediary interest in the disputed lands. Merely because the lands are lying waste and were not possessed by any tenant, the deity, who is a Mal-guzar and as such an intermediary in respect of the disputed property, would not cease to be so.

13. There is no merit in this application which we accordingly dismiss, but in the circumstances, without costs.

G.K. Misba, C.J.

14. I agree.

Panda, J.

15. I agree.