

(2008) 07 OHC CK 0005
In the Orissa High Court
Case No : OJC No. 6126 of 1994

Shri Tareswar Dev and Others		APPELLANT
	Vs	
State of Orissa and Others		RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Orissa Estates Abolition (Amendment) Act, 1970 — Section 27, 32, 8, 8(1), 8(3)

Citation : (2008) 07 OHC CK 0005

Hon'ble Judges : B.P. Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Ashok Mukherjee, G. Mukherjee and P. Mukherjee, for the Appellant;
A.K. Rath, for Opp. Party No. 5, for the Respondent

Judgement

A.S. Naidu, J.—The Deities Shri Tareswar Dev and Shri Tarini Thakurani, Bijebankoi Desh in the district of Khurda, represented through their hereditary trustee have filed this Writ application seeking the following reliefs:

...appropriate writ/writs, direction and orders be passed declaring

(a) O.P. Nos. 6,7,8 and 9 as well as all the service tenures are liable to render the same services to Petitioner Nos. 1 and, 2 which they were rendering prior to the vesting of the State (sic).

(b) In the alternative the State Govt. should be directed to reassess the compensation/annuity payable to Petitioner Nos. 1 and 2 taking into account the money value of the services which the Sevaks and Nijogs were offering to Petitioner Nos. 1 and 2.

(c) Or in the alternative appropriate direction be issued to the State Govt. to provide to the Petitioners No. 1 and 2 the services which were being rendered to the ex-intermediary Petitioners land 2 by the Sevaks and Nijogs prior to vesting who have now been recorded as direct tenants under the State Government.

(d) Any other relief/reliefs the Petitioners may be found entitled to be granted to

them.

2. Admittedly the Petitioners-institution is a public religious endowment governed under the provisions of the Orissa Hindu Religious Endowments Act and is managed by hereditary trustees. The institution owned about 285 acres of landed properties and out of income from the said properties the Sevapuja and Nitikranti of the deities were carried on. The aforesaid landed properties, it is stated, provided the main source of income for subsistence and maintenance of the deities. On the basis of a Notification issued by the State Government In its Revenue Department in the year 1974, about 275 acres of landed properties of the deities vested in the State under the provisions of the Orissa Estates Abolition Act leaving about 10 acres of land. According to the Petitioners the lands of the institution which vested in the State were in possession of different tenants as service-tenures in lieu of their..performing Sevapuja and Nitikrantis of the deities, viz. offering. Puja, preparing Bhog (Suara), supplying Bhog articles (Mali Sevak), blowing conch (Sankha), blowing trumpets, playing drums, performing girdance, sweeping and cleaning premises, serving as torch-bearers, milk suppliers, potters, Biman carriers and Bhog suppliers on different occasions, etc. The grievance of the Petitioners is that after vesting of the estate the persons who were rendering personal services and in lieu thereof were possessing lands as tenants were recognised "as tenants under the State bereft of personal services which they were rendering to the duties, leaving only 10 acres of land and the Sevapuja, Nitikrantis and other necessities are to be met out of the income from that extent of land. The grievance.of the Petitioners is that after recognizing the Sevaks rendering Sevapuja as tenants under the State, the perpetual annuity has been assessed at the rate of Rs. 13.91 paise per year as compensation to the deities which is ridiculously low. Hence the Petitioners have approached this Court.

3. After receiving notice, in response a counteraffidavit has been filed by the Addl. Tahsildar, Khurda, opposite party No. 4 wherein most of the factual aspects have been admitted, but then the stand has been taken that in consonance with Section 8(3) of the OEA Act, the lands which were part of the intermediary State and were in possession of persons who were performing certain personal services to the intermediary are to be settled with those persons bereft of the personal services. In other words, they are no longer required to render any personal service to the intermediary on and from the date of vesting. Thus no illegality or irregularity whatsoever had been committed by the OEA Collector. It has been further averred that perpetual annuity has been assessed "at the rate of Rs. 13.91 paise per year by the Compensation Officer after observing due formalities prescribed under law and that the Petitioners having never challenged the quantum of annuity, the said assessment has attained finality.

4. Dr. Rath, learned Counsel appearing for the Commissioner of Endowments, opposite party No. 5, on the other hand submitted that the difference between an "ordinary intermediary" and a deity intermediary" was not kept" in mind by

the authorities. The deities being perpetual minors had to" depend on human agencies for performance of Sevapuja and Nitikranti. According to Dr. Rath, the properties were endowed to the deities with a charge on the same, i.e. for rendering different services to the Deities. A person who used to possess and enjoy the land was burdened with the charge of performing the Sevapuja in lieu of paying rent to the deities. Thus according to Dr. Rath, even though the estate vested in the State and the lands were settled in favour of different persons who were possessing the lands prior to vesting, the lands being charged with performance of certain religious services, the tenants ought to have been directed to perform the said services.

5. This Court heard the learned Counsel for the parties patiently, considered the submissions diligently and perused the pleadings meticulously. There is no dispute that the deities possessed Ac.287.845 dec. of land in different villages under Khewat No. 1-Ka. The said lands were recorded in the names of different tenants under different holdings and all such holdings were service tenures. In consonance with a blanket Notification issued by the State Government, the estate of the Petitioners vested in the State with effect from 18th March, 1974. After such vesting, the tenants in respect of different parcels of land have been recognised as tenants under the State and they are paying rent to the State directly. It is an admitted fact that the said tenants were rendering different services to the deities as indicated in the records-of-rights. After they were recognised as tenants under the State in consonance with Section 8(3) of the OEA Act, they are no longer required to render the services to the deities which they used to do prior to vesting of the estate. They are now paying rent to the State.

6. Section 8 of the OEA Act deals with rights of tenants who were tenants under the ex-intermediary on the date of vesting. Section 8(1) stipulates that a person who immediately before the date of vesting was in possession of any holding as a tenant under the ex-intermediary shall be held to be a tenant under the State and shall hold the land with the same rights but subject to the restrictions and liabilities cast on him before the vesting. Under the said provision, a temporary tenant under a private land owner has been transformed into a temporary tenant under the State. In the case at hand, admittedly the lands in question were possessed by different tenants who used to render personal services to the deities. Such tenants were a little different from others. Their rights and liabilities were governed under Sub-section (3) of Section 8. The said Sub-section specifies that any person who immediately before the date of vesting held land under the ex-intermediary on favourable terms for personal services rendered by him to the ex-intermediary, shall, from the date of vesting, be discharged from the conditions of such service and the land may be settled with him in such manner and under such terms and conditions as may be prescribed.

7. Learned Addl. Government Advocate; relying upon the aforesaid Sub-section submitted that in consonance with the Notification issued by the Government in

the year 1974 the trust estates including that of the Petitioner vested in the State. Thereafter the liabilities of the tenants who were rendering personal services to the deities were to be governed under the aforesaid Sub-section and they were no longer required to render such services. Thus no infirmity was committed by the OEA Collector in settling the lands with the tenants.

8. In the case of P.V. Bheemsena Rao Vs. Sirigiri Pedda Yella Reddi and Others, , the Supreme Court observed as follows:

.... The distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is well known in Hindu Law. The former is a case of a service grant and is resumable when the service is not performed. The latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed....

In the case of Balaram Rai and Ors. v. Mt. Ichhapitarani and Ors. reported in AIR 1960 Ori 225, it was observed as follows:

...Where a property can be held revenue-free only so long as the duties in the temple are regularly performed, the grant is one burdened with service and is a Debutter grant. The fact that proprietary rights are vested on a grantee is not inconsistent with the charge of a trust in favour of a deity.....

.....In the case of Dayanidhi Naik v. Mangala Thakurani and another reported in 1984(1) OLR 186, this Court has observed that on assessment of rent and payment thereof by the raiyat, his obligation to render service no longer subsists. His obligation was to render service in lieu of rent. Liability to pay rent having revived, the liability to render service vanishes.

9. In the case at hand, though several averments have been made, there is no averment as to what were the liabilities of the tenants or persons in possession of the deities' lands, i.e. as to whether they were performing the services in lieu of payment of rent or possessing the lands in lieu of their office. No materials have been produced from which it would reveal as to what would the consequences if a person burdened with a service does not discharge the same. Last but not the least, all the persons who were tenants are not parties to this case. Thus this Court feels that no effectual order can be passed with regard to the rights of the persons in whose favour the Deities' land has been settled vis-a-vis the charge on the property as well as their obligation to the Deities. But then before concluding the discussion on this issue, this Court observes that in the Dayanidhi Nayak case (supra) this Court did not consider the proviso to Sub-section (3) of Section 8 which is quoted below:

Provided that nothing in Sub-section (3) shall apply to a trust estate which is vested in the State on or after the date of coming into force of the Orissa Estates Abolition (Amendment) Act, 1970.

The said proviso makes it abundantly clear that nothing in Sub-section (3) shall apply to a trust estate which is vested in the State. In other words, a person who immediately" before the date of vesting possessed a land belonging to a trust estate for rendering personal service shall not be absolved of his liability. But then, as stated earlier, in absence of specific pleadings and all the necessary parties, this Court refrains from expressing any observation in that regard.

10. The only other point that needs consideration in this case is with regard to quantum of compensation paid to the ex-intermediary deities. Section 27 of the OEA Act deals with computation of net income. In the case at hand, it has been admitted in the counter-affidavit filed by the Tahsildar that out of Ac.287.845 dec. of land of the deities, only Ac.10.120 dec. has been settled with the deities after the vesting and the balance lands have been settled with different persons who were in possession thereof and were rendering personal services. Judicial notice can be taken of the fact that public religious endowment and the Deities are perpetual minors and are subjected to stringent financial difficulties, even for performance of the daily minimum rituals, after the vesting of their estates. It is fact, several religiousminded people had endowed their properties to such religious institutions for specific purposes, such as supply of Anna Bhog, supply of flowers, holding of Nitikranti, cleaning of temple, preparation of Bhog, etc. which are daily necessities and are indispensable services to the Duties. When the Legislature in its wisdom decided to vest the properties, it owed a duty to provide adeauate funds for performance of the daily rituals of the Deities etc. without which no religious institution could exist. Settling lands of only 1 0 acres and odd with the Petitioner Deities out of 287.845 acres owned by them was nothing but an eye-wash. The lands were charged with some burdens by the donors. Such charges could not be stripped off without compensation to the institutions for making alternative arrangement for performance of aforesaid services.

11. Mr. Mukherjee, learned Counsel for the Petitioners, forcefully submitted that the annuity assessed is only Rs. 13.91 paise per year. This Court observes that the said quantum is ridiculously low. But then Section 32 of the Act gives a right to the person aggrieved by the quantum of assessment to file an appeal. The submission of Mr. Mukherjee that compensation may be assessed by this Court cannot be accepted as the same involves disputed questions of fact which cannot be effectually adjudicated under Writ Jurisdiction.

12. For the aforesaid discussion, this Court feels that ends of justice and equity will be better served if the Petitioners are permitted to prefer an appeal before the competent authority for enhancement of compensation along with a petition for condonation of delay mainly on the ground that the present Writ application was pending since 1994. While ordering so, this Court observes that since injustice was meted out to the Petitioner-deities the said appellate authority shall do well" to dispose of the appeal by passing necessary orders on merit as expeditiously as possible.

The writ application is thus disposed of.