

(2006) 10 OHC CK 0044
In the Orissa High Court

Smt. Basanta Kumari Dei

APPELLANT

Vs

Smt. Krushnapriya Devi and Others
 Lord Lingaraj
Mohaprabhu Vs Additional District Magistrate and Others

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

ORISSA ESTATES ABOLITION ACT, 1951 — Section 8(3), 9

Citation : (2007) 103 CLT 183 : (2007) 1 OLR 89

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Judgement

M.M. Das, J.—As both the writ petitions arise out of the same facts, they are heard together and are disposed of by this common judgment.

2. In both the writ petitions, the order dated 20.9.2000 passed by the Additional District Magistrate, Bhubaneswar in O.E.A. Appeal Case No. 3 of 2000 and subsequent consequential orders have been challenged and in O.J.C. No. 3690 of 2002 in addition to the above relief, the petitioner has also prayed for quashing the order dated 31.5.1993 passed in Suo Motu Bebandobasta Case No. 47 of 1991 by the Additional Tahasildar, Bhubaneswar, out of which the aforesaid O.E.A. Appeal Case No. 3 of 2000 arose. The fact of the case reveals that there is long drawn litigations between the petitioner Smt. Basanta Kumari Dei and the opp.parties 1 and 2, namely, Smt. Krushna Priya Devi and Sri Jayananda Tripathy (in O.J.C. No. 3690 of 2002), which commenced from the year 1984. The case involves various disputed question of facts which is not required to be gone into in the present writ petitions. However, for convenience as some facts are necessary to be referred to, they are stated hereunder.

3. The disputed property originally belonged to one Somanath Badu whose name was recorded in the Record of Rights published in the year 1962. In the year 1965, the said Somanath Badu sold Ac. 0.100 decimals of land each to one Gopinath Dash and one Gurubari Dibya by two registered sale deeds. The petitioner, Smt. Basanta Kumari Dei purchased the said Ac. 0.200 decimals of

land from the above two persons by two registered sale deeds in the year 1978. She claims to have got the property mutated and demarcated in Mutation Case No. 231 of 1981 and Demarcation Case No. 258 of 1981. She also claims to have obtained permission from the Municipal authorities for construction of temporary shed and residential building over her purchased land. The land originally was the property of Lord Lingaraj Mohaprabhu of Bhubaneswar who was the landlord. The intermediary interest of Lord Lingaraj Mohaprabhu vested in the State with effect from 18.3.1974 under the provisions of the Orissa Estates Abolition Act (hereinafter referred to as "the O.E.A. Act"). During the settlement operation, though the petitioner in O.J.C. No. 3690 of 2002 claims to have filed an objection, the Assistant Settlement Officer observing that the land has been recorded in Bebandobasta status and the sale-deeds were executed after the property vested in the State, the land cannot be recorded in the name of the said petitioner, prepared the record in the name of the legal heirs of the previous tenant, that is, late Somanath Badu, mentioning the name of the petitioner in the remarks column as "possession by way of illegal purchase". Again on 14.9.1988, by a Suo Motu Settlement Case, the Assistant Settlement Officer deleted the name of the said petitioner from the remark column and recorded the name of the opp. party No. 2 in the said column as "possession by way of illegal plain paper agreement for sale". The petitioner filed a revision before the Commissioner of Settlement and Land Records (hereinafter referred to as "the Commissioner") which was ultimately allowed in favour of the petitioner and the matter was remitted to the Assistant Settlement Officer. Against the aforesaid order of remand, the opp. party No. 1 filed O.J.C. No. 2338 of 1989 before this Court, which was dismissed for non-prosecution. However, the matter could not be proceeded after remained, as in the meantime, the final record of right was published. Hence, the petitioner filed a fresh revision before the Commissioner u/s 15(a) of the Orissa Survey and Settlement Act, 1962. In the writ petition filed by the opp. party No. 1 which was O.J.C. No. 2338 of 1989 and was dismissed for non-prosecution, the petitioner was not impleaded as a party. However, in the revision before the Commissioner, the opp. parties 1 and 2 submitted that the above writ petition was pending before this Court though by that date, the said writ petition was already dismissed. On the basis of such submission, the revision filed by the petitioner was dismissed.

4. The State of Orissa in its Revenue and Excise Department issued a circular addressed to the Land Reforms Commissioner, Orissa, Cuttack and the Secretary, Board of Revenue, Orissa, Cuttack prescribing therein the manner in which lands recorded in "Bebandobasta" status in the record of rights should be corrected by the respective Tahasildars. The said notification has been annexed as Annexure-8 to the writ petition (O.J.C. No. 3690/02). The said circular prescribes that for every such Bebandobasta khata the Tahasildar will start a case record and ask the concerned person to produce all documents/paper/evidence in support of his claim, within a definite time period. He shall also issue a public notice inviting objections. The matter should be disposed of within a maximum period of three

months. The onus of establishing the case and proving it to the complete satisfaction of the Tahasildar would lie squarely on the person in whose name Bebandobasta khata has been prepared. It was also prescribed that as the concerned person/persons is/are apparently in occupation of land for long period as because the last batch of subsisting intermediary interests were vested in the State in 1974 and the concerned person presumably raised claims before the settlement authorities, there cannot be any valid reason for giving time or adjournment beyond reasonable period to produce documents/papers/evidence. On the basis of the aforesaid circular, the suo motu Bebandobasta Case No. 47/1991 was initiated by the Addl. Tahasildar, Bhubaneswar in respect of the properties in dispute. The order sheet in the said case has been annexed as Annexure-11 in O.J.C. No. 3690 of 2002. It appears from the order sheet of the said Bebandobasta case, that, though direction was given for issuing public notice, but the orders do not reveal that such a public notice was, in fact, issued inviting objections. It also transpires that no notice whatsoever was issued to the petitioner in the writ petition, namely, Smt. Basanti Kumari Dei. However, it appears that notice was issued to the opp. party No. 2-Jayananda Tripathy. The Addl. Tahasildar in the said case finally directed by his order dated 31.5.1993 that the land should be recorded in the name of the Executive Officer, Lord Lingaraj Mahaprabhu, Bhubaneswar on payment of salami. This order was then sent for confirmation to the Sub-Collector which was accordingly done on 30.3.1995. O.E.A. Appeal case No. 3/2000 was preferred by the opp. parties 1 and 2 in O.J.C. No. 3690/2002, against the said order passed by the Addl. Tahasildar, before the Addl. District Magistrate, Bhubaneswar. By the impugned order, the said Addl. District Magistrate directed to record the property in dispute in the names of the opp. parties 1 and 2 and accordingly it was further directed to correct the record.

5. It is the admitted case of all the parties that pursuant to the said order, the record of rights has been corrected.

6. This Court in O.J.C No. 3690/2002 by orders dated 9.4.2002 and 2.5.2002 passed interim orders that the correction of land records made by the Tahasildar as per Annexure-12 will abide by the final result of the writ petition and there shall be ad interim injunction against the opp. parties 1 and 2 from alienating the disputed land. The interim orders were made absolute on 21.11.2002.

7. Mr. S.C. Dash, learned Counsel for the petitioner (in OJC No. 3692/02) submitted that a suo motu case in respect of lands recorded in Bebandobasta status initiated pursuant to the circular of Government under Annexure-8, is not an order which is appealable u/s 9 of the O.E.A. Act, and, therefore, the Addl. District Magistrate had no jurisdiction to entertain the appeal at the instance of opp. parties 1 and 2. He further contends that even if such an appeal is maintainable, the petitioner being not impleaded as a party in the said appeal the appeal was incompetent for non-joinder of necessary parties. It is also submitted by him that though the impugned order by the Additional Tahasildar

was passed in the year 1993 and the period prescribed for filing an appeal u/s 9 of the O.E.A. Act is sixty days, the appeal having been filed after about seven years, being hopelessly barred by time, should have been dismissed on the ground of limitation. With regard to the order passed by the Addl. Tahasildar in the Suo motu Bebandobasta case, learned Counsel for the petitioner submits that disposal of the said case is also vitiated, being not in conformity with the circular of the Government, on the strength of which the said case was registered. In this regard, he submits that though the circular prescribes for issuance of a public notice, it is manifest from the orders passed in the said case, that no such notice was published inasmuch as it being known to the Addl. Tahasildar from the previous litigations that the petitioner is the claimant in respect of the disputed land, no notice whatsoever was given to the petitioner in the said case and, therefore, the order passed therein also violates the principle of natural justice.

8. Mr. A.R. Dash, learned Counsel appearing for the Executive Officer of Lord Lingaraj Mahaprabhu also supports the submission made by Mr. S.C. Dash with regard to the impugned order passed by the Addl. District Magistrate in the appeal.

9. However, we find that in the said circular of the Government in its Revenue and Excise Department, it was specifically provided in Clause-3 thereof that Suo Motu cases should be initiated with regard to the lands recorded in Bebandobasta status belonging to the categories mentioned in the said clause. In Sub-clause (vii) of Clause-3, it has been provided that land held for rendering service to the intermediary which is a Trust Estate is one of such category. Admittedly, the land in dispute in the present case is of the above nature.

10. Section 9 of the O.E.A. Act provides for an appeal before the Collector of the district against the order passed u/s 8(3) of the O.E.A. Act by any officer other than the Collector.

Section 8(3) of the O.E.A. Act reads as follows:

8. Continuity of tenure of tenants-

(1) & (2) XXX XXX XXX (3) Any person who immediately before the date of vesting held land under an intermediary on favourable terms for personal service rendered by him to such 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.

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.

11. A reading of the above proviso to Sub-section (3) of Section 8 of the O.E.A. Act clearly shows that Sub-section (3) shall not apply to any Trust Estate which vested in the State on or after the date of coming into force of the Orissa Estates

Abolition (Amendment) Act, 1970. Admittedly the land in dispute vested in the State in the year, 1974. Therefore, Section 8(3) of the O.E.A. Act has no application to the land in question.

12. In view of the above analysis, we are of the opinion that no appeal u/s 9 of the O.E.A. Act would lie against any order passed in a suo motu Bebandobasta case initiated on the basis of the circular of the Government dated 14.3.1991 in respect of land covered under the proviso to Section 8(3) of the O.E.A. Act. Hence, in the instant case, the appeal before the Addl. District Magistrate was incompetent.

13. In view of our above conclusion, the said impugned order dated 20.9.2000 passed in O.E.A. Appeal Case No. 3 of 2000 passed by the Addl. District Magistrate, Bhubaneswar is unsustainable and is accordingly quashed.

14. The impugned order passed in the Suo Motu Bebandobasta case No. 47 of 1991 also cannot be sustained as we find that no public notice was issued, as prescribed in the circular, on the basis of which the said case was initiated. Further, the petitioner though a necessary party was not impleaded in the said case and be that as it may, had public notice been issued, the petitioner, namely, Smt. Basanti Kumari Dei could have filed her objection in the said case and could have availed the opportunity to prove her case. Thus the said order also is in clear violation of the principle of natural justice and, in our considered opinion, cannot be sustained. We, therefore, also quash the order dated 31.5.1993 passed in the said suo motu Bebandobasta Case No. 47 of 1991 by the Addl. Tahasildar, Bhubaneswar.

15. In the result, both the writ petitions are allowed, and the matters are remanded to the Addl. Tahasildar, Bhubaneswar to rehear the Suo Motu Bebandobasta Case No. 47 of 1991 after affording opportunity to all concerned including the petitioner and the opp. parties 1 and 2 (in O.J.C. No. 3690 of 2002) and the Executive Officer of Lord Lingaraj Mahaprabhu (petitioner in W.P.(C) No. 81 92 of 2004). The parties are directed to appear before the said Addl. Tahasildar, Bhubaneswar and file their respective claims on 15.11.2006. The petitioner (Smt. Basanti Kumari Dei) shall also produce a certified copy of this judgment before the said Addl. Tahasildar, on that date. All the parties -are directed to file their respective claims with all documents in support thereof, on the subsequent date to be fixed by the said Addl. Tahasildar, for that purpose. The Addl. Tahasildar, Bhubaneswar thereafter shall proceed with the matter by affording opportunity of hearing to the parties concerned and shall dispose of the same by the end of January, 2007. Any person aggrieved by the order to be passed by the Addl. Tahasildar, Bhubaneswar is/are at liberty to approach the common law forum for appropriate remedy.

There shall be no order as to costs.

S.B. Roy, C.J.

16. I agree.