

(1991) 10 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1722 of 1981

Smt. Basanti Kumari Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 38B, 8(1)

Citation : (1992) 73 CLT 868 : (1992) 1 OLR 41

Hon'ble Judges : R.C. Patnaik, J;P.C. Misra, J;G.B. Pattnaik, J

Bench : Full Bench

Advocate : B. Pal, N. Prusty and R. Behera, for the Appellant; A.G., Additional Government Advocate and M. Patra, M.R. Patra, D. Deo and Ashok Dash, for the Respondent

Judgement

R.C. Patnaik, J.—This is an application under Articles 226 and 227 of the Constitution of India for the quashing of the decision of the Board of Revenue dated 14-7-1981 as per Annexure-6 rendered in O. E. A. Revision Case No. 31 of 1978, by way of judicial review in exercise of our certiorari jurisdiction.

2. Lord Lingaraj Mahaprabhu, opp. party No. 3; was the intermediary of the disputed property--115 decimals in extent appertaining to plot No. 2223, under Khata No. 1 of mouza Bhubaneswar. The petitioner made an application for grant of permanent lease. The Trust Board of opp. party No. 3 decided to grant the lease and fixed the salami and rent payable. The petitioner paid Rs. 1200/- on 25-11-1972. She paid rent and ownership certificate was granted to her on 24-3-1973. She has alleged that by acceptance of rent, she acquired tenancy right in respect of the property and upon the vesting of the estate with effect from 18-3-1974 by operation of law, she held the land as a tenant under the State. Pursuant to the grant of ownership certificate to her in the year 1973, she had constructed a compound wall around the land and constructed two rooms over it.

3. In August, 1976, Vesting Case No. 11 of 1976 was started by the Tahasildar-

cum-Orissa Estates Abolition Collector, Bhubaneswar, on an application filed by her u/s 8(1) of the Orissa Estates Abolition Act, 1951 (for short, "the Act") for settlement of the land. No objection was filed from any quarter despite issue of notice to the members of the public and the Trust Board. On consideration of the report submitted by the Revenue Inspector, Bhubaneswar and the patta salami receipt, rent receipts and the ownership certificate granted by the Trust Board of opp. party No. 3, the Tahasildar-cum-O. E. A. Collector settled the land with the petitioner u/s 8(1) of the Act and she was directed to deposit the arrear land revenue and the usual salami. The petitioner deposited the salami, back rent and Amin's fee and rent schedule was issued to her and a direction was given for correction of the Record-of-Right, vide Annexures-1, 2 and 3. In 1973, on a motion made on behalf of opp. party No. 1, invoking the exercise of power of suo motu revision vested in the Board of Revenue u/s 38-B of the Act, as per Annexure-4(a), O. E. A. Revision Case No. 31 of 1978 was started. It was urged on behalf of opp. party No. 1 that the land was communal in nature having been recorded as Hatasthali in the Record-of-Rights, the lease was hit by Section 3 of Act 1 of 1948, the Tahasiladar had no jurisdiction to function as a Collector under the Orissa Estates Abolition Act and no enquiry was made by him if the sanction of the Commissioner of Endowments as required by Section 12 of the Orissa Hindu Religious Endowments Act, 1964 had been done. Pursuant to notice, the petitioner filed her reply as per Annexure-5 contending, inter alia, that tenancy right was created in her favour by the Trust Board by decision to grant lease, acceptance of salami and rent and by grant of the ownership certificate. Having been a tenant under the ex-intermediary, her tenancy right was protected by Section 8(1) and pursuant to her application for settlement of the land made under Sec 80), order dated 17-12-1977 was passed by the Estates Abolition Collector in Vesting Case No. 11 of 1976 and salami and arrears at rent were paid by her, as directed, and rent schedule was granted to her. She stated that suo motu revisional power was invoked under a misconception that the Tahasildar-cum-Estates Abolition Collector exercised powers u/s 6(i). After the vesting, settlement was made under the provisions of the Orissa Land Settlement Act, 1962 and under notification dated 29-11- 1974 all Tahasildars were authorised to settle land and dispose of applications. In exercise of the said power, the Tahasildar settled the land and fixed the rent taking into account the fact that the petitioner was a tenant under opp. party No. 3 before vesting and order dated 17-12-1977 and the patta issued pursuant thereto conferred on her fresh tenancy. The revision was not maintainable since no proceeding was contemplated u/s 8(1), the proceeding being declaratory in nature. The Board of Revenue by the impugned order dated 14-7-1981, as per Annexure-6, held that the petitioner having applied for recognition of her tenancy right u/s 8(1), the order passed by the Tahasildar under the provisions of the Orissa Estates Abolition Act was revisable by the Board of Revenue u/s 38-B. It further held that since no order sanctioning grant of permanent lease passed by the Commissioner of Endowments u/s 18 of the Orissa Hindu Religious Endowments Act was produced, the petitioner could not be treated as a tenant. The opposite party

(petitioner herein) had, therefore failed to establish her tenancy by grant of valid lease in her favour. It also further held that lease of land recorded as Hatasthali in the Record-of-Rights was communal in nature. Hence, lease thereof should not have been g. anted. On the aforesaid holdings, the Board of Revenue declared the lease invalid annulling order dated 17-12-1977 passed by the Tahasildar, Bhubaneswar, settling the land with the petitioner.

4. In course of hearing of the matter, it was contended that the holding in *Premananda Das v. State of Orissa and Ors.* 67 (1989) CLT 548, was in conflict with an earlier Bench decision of this Court in the case of *Motwali Sk. Kausar and Another Vs. State of Orissa and Others*, and was contrary to the principle decided by two Full Benches of this Court in the case of *Krupasindhu Misra v. Govinda Chandra Misra and Ors.* 50 (1984) CLT 393 and *Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others*, . With a view to resolving the conflict, if there be any, the matter was referred to a larger Bench and that is how the matter has come before us.

5. Mr. Pal, the learned counsel for the petitioner, has contended that the provision contained in Section 8(1) of the Act being declaratory in nature, no proceeding is contemplated. Tenancy right created by the intermediary by acceptance of rent was recognised and protected by Section 8(1), and the petitioner would hold the land under the State Government as a tenant with the same rights and subject to the same restrictions and liabilities as he was entitled or subject to, immediately before the date of vesting. The order of the Tahasildar was a mere recognition of her right. Therefore. Section 8(1) not having contemplated a proceeding and there having been no proceeding, exercise of suo motu jurisdiction by the Board of Revenue u/s 38-B was misconceived and without jurisdiction.

The learned Advocate-General, however, has urged that the petitioner having sought a settlement and the same having been made u/s 3(1), the Tahasildar-cum-Estates Abolition Collector exercised power not vested in him u/s 8(1) and, therefore, the Board of Revenue had jurisdiction to revise the decision passed in a proceeding in purported exercise of power u/s 8(1).

6. The Orissa Estates Abolition Act (Orissa Act 1 of 1951) was enacted with a view to providing for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgagees and lessees 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. The expression intermediary has been defined in Section 2(h) and "intermediary interest" in Section 2(hh) and "raiyat" has been defined in Section 2(n). It has been provided in Section 2(q) that all words and expressions used in the Act but not defined in it, shall have with reference to any part of the State of Orissa, the same meaning as downed in the tenancy laws and rules for the time being in force and in the absence of written laws and rules, as recognised in the custom for the time being obtained in that part of the State

of Orissa.

7. Having regard to the objects and reasons for the enactment it has been held that though the Act was intended to abolish all intermediaries and rent receivers and to establish direct relationship between the State, in which all such interest vest, after abolition under the Act, and the tillers of the soil, the interest of a raiyat was not at all touched by the Act (see *Kumar Bimal Chandra Sinha Vs. State of Orissa*,). The aforesaid principle declared in respect of raiyat would be equally applicable to tenancy rights inhering in persons prior to vesting. In short, like raiyati rights, tenancy rights did not vest in the State of Orissa and were, therefore, not affected. A tenant under an intermediary after vesting of the estate continued as a tenant under the State. That such was the intention of the Legislature is evident from the provisions contained in Section 8 (1) which reads as under:

"8(1) Any person who immediately before the date of the vesting, of an estate in the State Government was in possession of any building as a tenant under an intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State Government and such person shall hold the land in the same rights and subject to the same restrictions and liabilities; as he was entitled or subject to, immediately before the date of vesting."

Section 8(1) therefore, is declaratory in nature and it has been so held over the years in a long line of decisions of this Court, one of which is a decision of a Full Bench to which we need only refer. In *Radhamani Dibya and Ors. v. Braja Mohan Biswal and Ors.* (supra), it has been held :

"Section 8(1) of the Orissa Estates Abolition Act makes no provision for an application. No enquiry is contemplated under this section. The section is merely declaratory of the continuity of the tenure of tenants as it was immediately before date of vesting..."

8. Having regard to the provisions contained in Section 8(1) and interpretation given to the provision by this Court, it is clear that no proceeding is contemplated u/s 8(1). Therefore no power of adjudication of tenancy right is vested in any revenue authority. It does not envisage settlement of land belonging to the Government with tenancy right.

9. But at the same time we must state that the State being the owner of the land, i.e., landlord, is entitled to receive rent from its tenants including persons deemed to be tenants under it u/s 8(1). Its rights are akin to a landlord. The Tahasildar of a Tahasil has authority having been vested with powers to collect rent on behalf of the landlord - State from its tenants. Where the revenue records indicate a person as a tenant and the Government has been receiving rent from such person, there is no difficulty for the Tahasildar to accept rent from such person. But where there is no Government record that a person is a tenant under the State but nevertheless a person comes forward and offers rent for acceptance, the Tahasildar is under obligation to satisfy himself that the claim

put forward by the person for acceptance of rent as a tenant is justified and that person as a tenant is entitled to offer rent and the Government is under obligation to accept the same from him. In order to satisfy himself, like an agent of any landlord, he has to make an enquiry. That per force has to be administrative in nature. Its mode and nature would be warranted by the facts and circumstances and should be in the discretion of the Tahasildar. For example if two persons come forward claiming to have been tenants under an ex-intermediary and ask acceptance of rent from, the Tahasildar has to satisfy himself as to which of them is a tenant and shall be deemed to be tenant under the State so as to be entitled to offer rent. For that purpose he has to satisfy himself as to which of them was a tenant under the ex-intermediary and take a decision, which again would be an administrative decision. The aggrieved party has to seek redressal of his grievances before the appropriate forum. I, therefore, hold that though an enquiry is contemplated and the decision may partake the trapping of an adjudication, it is not one in exercise of powers u/s 8 (1) which does not authorise a proceeding or adjudication, but the enquiry is akin to an enquiry necessitated to be undertaken by any agent of any landlord.

10. Where, however, in exercise of powers u/s 8 (1), the officer settles the land with the applicant in course of a proceeding and confers tenancy right, the proceeding, the adjudication and the settlement are without jurisdiction. A proceeding in purported exercise of jurisdiction not vested, i. e., by usurpation of jurisdiction, is also a proceeding under the Act and Section 38-B would be attracted and the Board of Revenue in exercise of powers conferred by Section 33-B would be entitled to annul the same.

11. It is now settled law that where an authority usurps jurisdiction not vested in it, its decision is available to be annulled by a superior Court which has jurisdiction to annul the decision of the subordinate authority in exercise of jurisdiction. The learned Advocate, General, therefore, has submitted that the proceeding under the Act not only includes proceedings validly taken but also proceedings purported to have been taken under the Act though erroneously and without jurisdiction and referred to a passage in the decision in *Union of India (UOI) Vs. Ramdas Oil Mills*, where various decisions have been referred to and a synopsis has been made :

"Mr. Lalnarain Sinha argued, in the alternative, that even assuming that the provisions of the Arbitration Act applied to the arbitration in question, this appeal lies because the arbitrator has usurped the jurisdiction of the Court contemplated by the 1940 Act; and he relied on some decisions in support of this argument. In *Hurish Chandra Chowdhary v. Kali Sundri Debla* 1882 10 IndApp 4 it was held that if in such exercise of judicial discretion a Judge usurps jurisdiction, which he does not possess, that alone would be a valid ground of appeal. A bench of the Calcutta High Court said in *Gangadhar v. Shekharbasini* AIR 1917 Cal. 320 that where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction, an appeal against the

order cannot be defeated on the ground that the order was made without jurisdiction; and fort is proposition of law reliance was placed on several decisions, including the decision of the Judicial Committee in *Minakshi Naidu v. Subramanya Sastri* 1886 14 Ind. App 160.

A bench of the Madras High Court in *Abdul Rahiman Sahib v. Ganapati Bhatta* (1990) 10 MLJ 360 held that an appeal lay against an order by which the District Judge purported to issue an attachment and appoint a receiver under Sections 492 and 503 of the old Civil Procedure Code, in a proceeding under the Guardians and Wards Act, 1890, under which the Court has no power to issue such attachment or appoint a receiver. Their Lordships took this view as they treated the impugned order as having been really passed under the aforesaid sections of the Civil Procedure Code. In coming to this decision, their Lordships relied on the decision of the Privy Council in the aforesaid case of *Hurish Chander Chowdhary* 1982 10 Ind App 4 . In *Satish Chandra Roy v. Roy Banomali Rai* (1904) 14 MLJ 185, a compromise decree had been passed for partition, and one of the parties applied for the appointment of the Commissioner. This application was rejected on the ground that it was barred by limitation. Their Lordships of the Madras High Court took the view that this order was appealable u/s 244 of the old Civil Procedure, Code, and such appeal was not taken away by the fact that the Court rejecting the application wrongly assumed the existence of a decree to be executed. Here too, their Lordships relied on the Privy Council decision in the case of *Ind App 4 (PC)*. No decision to the contrary had been pointed out by Mr. Chatterji and, therefore, the contention of Mr. Sinha must prevail".

I agree with the aforesaid view and hold that the Board of Revenue u/s 38-B has jurisdiction to annul the decision of the subordinate authority in purported exercise of jurisdiction u/s 8 (1).

12. Having cleared the deck, the question is if the order dated 17-12-1977 as per Annexure-1 which was annulled by the Board of Revenue was passed in purported exercise of jurisdiction u/s 8 (1) or that order was an administrative order of the officer, in charge of collection of revenue of behalf of the State ?

13. The petitioner made an application u/s 8(1) seeking settlement of the land with her. Hence jurisdiction u/s 8(1) was invoked. But the question is despite the misconceived application did the officer take an administrative decision having regard to the provisions contained in Section 8 (1) or purported to exercise jurisdiction as Estates Abolition Collector u/s 8 (1) ? By the order the petitioner has been required to pay salami and the order clearly indicates that the application was filed u/s 8(1) and direction for payment of salami was given and the order was passed by the Officer as Estates Abolition Collector. These aspects leave no manner of doubt that the officer disposed of the matter as Estates Abolition Collector purporting to exercise jurisdiction u/s 8(1) which he did not possess. Hence, I am of the view that the Board of Revenue had jurisdiction u/s 38-B to revise the order passed by the Estates Abolition Collector, Bhubaneswar,

as per Annexure-1.

14. Though the petitioner may have misconceived the position in law and made application u/s 8(1), the officer, i.e. the Tahasildar, should have considered the same on the administrative side with a view to satisfying himself if the petitioner was a tenant under the State prior to vesting having regard to the provisions contained in Section 8(1) and the State was obliged to accept rent from her. The misconceived application did not absolve the Tahasildar from proceeding in the right manner hence, the application filed by the petitioner should be treated as such and not was one u/s 8(1) for settlement of land. Hence, while upholding the decision of the Board of Revenue annulling the order dated 17-12-1977 as per Annexure-6, I would vacate the findings recorded by it so that the Tahasildar would bring an independent mind to bear on the matter and act independently.

15. I would follow the view expressed by a Bench of this Court in *Premananda Das v. State of Orissa and Ors.* 67 (1989) CLT 548, where it has been observed :

"...It is no doubt true that u/s 8(1) tenant is not required to file an application. But even for permitting continuity of the tenure of tenants, the appropriate authority has to be satisfied that the person concerned was really in possession of any holding as a tenant under the intermediary before the date of vesting so that he can be recognised as a tenant under the State..."

But I hold that the satisfaction reached having regard to the provisions contained in Section 8(1) is a decision on the administrative side and not an order passed u/s 8(1) so as to be liable to be revised by the Board of Revenue u/s 38-B. If rent is not accepted by the Tahasildar or there are claimants more than one and rent is accepted on behalf of the State from one of them, it is open to the aggrieved party to move higher authorities on the administrative side or approach the Civil Court for adjudication and consequential relief, as was held by G.B. Pattnaik, J. in *Chandra Sekhar Rath v. The Collector, Dhenkanal and Ors.* 1989 (I) OLR 158, 67 (1989) CLT 493. But the Board of Revenue has no jurisdiction u/s 38-B to revise an administrative decision because such decision is not a decision in any proceeding under the Act.

16. I may, however, clarify that where the land has been settled, fresh tenancy right has been created in purported exercise of powers u/s 8(1), the Board of Revenue would be entitled to annul the decision or correct the error in exercise of powers conferred on it u/s 38-B.

17. In the result, while the decision of the Board of Revenue so far as it annulled the order dated 17-12-1977 is justified, I would vacate the findings and direct the Tahasildar to consider the application filed by the petitioner afresh on the administrative side and take his own decision. The writ application is accordingly allowed in part. There would be no order as to costs.

P.C. Misra, J.

18. I agree.

G.B. Pattnaik, J.

19. I agree.