

(2005) 10 OHC CK 0005
In the Orissa High Court
Case No : Writ Petition (C) No. 8282 of 2004

Smt. Harapriya Bisoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 3, 3(1), 4, 5, 8(1)

Citation : (2005) 10 OHC CK 0005

Hon'ble Judges : R.N. Biswal, J;L. Mohapatra, J

Bench : Division Bench

Advocate : Banshidhar Baug, S.C. Parija, B.R. Das and S.S. Ghosh, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This writ application has been filed for a direction to the opposite parties, specifically opposite party No. 3- The Tahasildar, Bhubaneswar, to declare the tenancy right of the Petitioner over the land in question and to accept rent in respect of the same and for a further declaration that the State - opposite parties or its functionaries have no right, title and interest over the land in question and for a further direction not to interfere with the right, title, interest and peaceful possession of the Petitioner over the land in question.

2. The case of the Petitioner is that the suit land is covered under Sabik Khata No. 918 and originally belonged to the ex-intermediaries Choudhury Chakradhar Mohapatra and Ors. . Choudhury Chakradhar Mohapatra and Ramakrushna Mohapatra were having 12 annas share and Anr. ex-intermediary Indramani Roul was having 4 annas share in the said holding. Choudhury Chakradhar Mohapatra and Ramakrishna Mohapatra, who were having 12 annas share, with consent of Indramani Roul granted lease of Ac. 15.00 decimals from Sabik Plot No. 4047, Ac. 13.30 decimals from out of Sabik Plot No. 1726 and Ac. 25.65 decimals from Sabik Plot No. 1036 from out of Sabik Khata No. 918 in favour of one Smt. Kamala Devi under an unregistered lease deed (Hata Patta) on 20th of March,

1933 and delivered possession thereof. Rent was also accepted from Smt. Kamala Devi in respect of the lease hold land. It is the further case of the Petitioner that in the year 1954 the estate of intermediary vested in the State u/s 3 of the Orissa Estates Abolition Act, 1951 (for short, "the Act"). On the date of vesting and prior to that, Smt. Kamala Devi was in peaceful possession of the disputed land as a tenant and as such, she became a deemed tenant under the State u/s 8(1) of the Act. The ex-intermediaries on vesting of the land submitted Ekpadia in favour of Smt. Kamala Devi in respect of the disputed lands as well as some other lands and accordingly, tenancy ledger was opened through the Tahasildar, Cuttack and rent was collected from Smt. Kamala Devi from 1954 to 1967. After vesting in 1954 till 1967, there was no dispute so far as the tenancy right of Smt. Kamala Devi is concerned. Mouza Gadkan under which the disputed land is located was transferred from Cuttack district to Puri district and accordingly came under the jurisdiction of the Tahasildar, Bhubaneswar. On 4.7.1967, the Tahasildar, Sadar, Cuttack reported to the S.D.O., Cuttack that the Hata Patta granted by the ex-intermediaries in favour of Smt. Kamala Devi had been antedated and is a fraudulent one. On the basis of such report, the S.D.O., Cuttack who is the O.E.A. Collector initiated a proceeding u/s 5(i) of the Act against Smt. Kamala Devi. After transfer of the mouza from Cuttack district to Puri district, the case was also transferred to the Court of the S.D.O.-cum-O.E.A. Collector, Bhubaneswar and was re-numbered as O.E.A Case No. 4 of 1970. In the said O.E.A. Case, the O.E.A. Collector after inquiry and collecting evidence directed for cancellation of the lease granted in favour of Smt. Kamala Devi by order passed in January, 1971. Said order of the O.E.A. Collector cancelling the lease was challenged by Smt. Kamala Devi in appeal and the appeal having been dismissed, she preferred a writ application before this Court in O.J.C. No. 882 of 1974. This Court disposed of the said writ application on the 29th of October, 1976 setting aside the order of the O.E.A. Collector and that of the appellate authority and remitted the matter back to the Court of the O.E.A. Collector for fresh hearing. After remand, the O.E.A. Collector disposed of the case on the 24th of April, 1989 holding that the deed of lease being prior to 1.1.1946 and it being a genuine document, Smt. Kamala Devi should be accepted as a tenant but she having remained in possession of only Ac. 7.00 decimals of land out of the total lease hold area, rent could be accepted in respect of the said Ac. 7.00 decimals of land. Holding thus, the O.E.A. Collector sent the records to the Member, Board of Revenue for concurrence. During pendency of the proceeding, Smt. Kamala Devi expired and was substituted by her son and legal heir Kishore Chandra Patnaik. Challenging the order dated 24th of April, 1989 passed by the O.E.A. Collector, aforesaid Kishore Chandra Patnaik filed a writ application before this Court in O.J.C. No. 2063 of 1992. Said writ application was disposed of on 2.11.1992 quashing the order of the O.E.A. Collector as well as the proceeding initiated before the O.E.A. Collector and before the Member, Board of Revenue on the finding that in course of inquiry the O.E.A. Collector having found that the lease was prior to 1.1.1946 and the deed is a genuine document, it had no jurisdiction to proceed with the inquiry any further and under the provisions of

the Act the proceeding should have been dropped. The aforesaid judgment of this Court was not challenged by the State and accordingly the same attained finality. According to the Petitioner in view of the aforesaid judgment of this Court, late Kamala Devi and thereafter her son Kishore Chandra Patnaik are deemed to be tenants under the State u/s 8(1) of the Act. It further appears from the writ application that during the pendency of the O.E.A. Case, G.A. Department of the State Government got the suit land recorded in its favour in the record-of-rights of 1974. In view of the above, in spite of the judgment delivered by this Court in O.J.C. No. 2063 of 1992, rent was not accepted from Kishore Chandra Patnaik. Finding no other way, Kishore Chandra Patnaik filed O.E.A. Misc. Case No. 35 of 1999 before the Tahasildar, Bhubaneswar for acceptance of rent, but the Tahasildar expressed his inability to accept the rent on the ground that the land stood recorded in the name of the State in the 1974 record-of-rights and he had no jurisdiction to correct the record-of-rights. While the matter stood thus, on 6.3.2000 Kishore Chandra Patnaik who was in possession of the disputed property and other tenanted lands sold the same to the Petitioner under a registered sale deed and delivered possession thereof to the Petitioner. After purchasing the property and taking possession thereof, the Petitioner filed an application before the Assistant Settlement Officer for recording the suit land in her favour on the basis of the sale deed and judgment of this Court dated 2.11.1992 delivered in O.J.C. No. 2063 of 1992. The Assistant Settlement Officer after inquiry and on perusal of documents prepared Parcha in favour of the Petitioner. The State Government through the G.A. Department filed a Rent Objection Case bearing No. 4013 praying for recording the suit land in its favour and to delete the name of the Petitioner therefor. The Assistant Settlement Officer, Rent Camp, by order dated 30th of December, 2000 allowed the Rent Objection Case and directed recording of the suit land in favour of the State. Said order of the Assistant Settlement Officer was challenged in appeal by the Petitioner vide Settlement Appeal No. 205 of 2003, but the same was again dismissed ignoring the judgment of this Court in the aforesaid case. Finding no other way, the Petitioner to protect her possession filed Title Suit No. 12 of 2004 in the Court of the Civil Judge (Senior Division), Bhubaneswar for declaration of title and permanent injunction, but later decided to withdraw the same as the claim of the Petitioner is to be decided only on the basis of the judgment of this Court delivered in O.J.C. No. 2063 of 1992. Though this writ application was filed during the pendency of the aforesaid suit, on the date of hearing of this writ application it was contended by the learned Counsel for the Petitioner that steps had already been taken for withdrawal of the suit and in the note of submission it is stated that the suit has been withdrawn on 1.10.2005. In view of the above, we entertained the writ application for hearing.

3. Learned Counsel appearing for the Petitioner submitted that the tenancy right of Kamala Devi and thereafter her son Kishore Chandra Patnaik having been confirmed by this Court in O.J.C. No. 2063 of 1992, the State has no option except accepting them as tenants and collect rent. The Petitioner having

purchased the suit land from Kishore Chandra Patnaik has stepped into his shoes and therefore she is to be treated as tenant in view of the aforesaid judgment and rent is to be collected from her. Shri Baug, learned Counsel for the Petitioner, referring to Section 8(1) of the Act, submitted that under the said provision Smt. Kamala Devi is deemed to be a tenant under the State and thereafter her son Kishore Chandra Patnaik and thereafter the Petitioner who purchased the land by a registered sale deed. Much reliance was also placed by the learned Counsel on the decision of this Court in the aforesaid case.

4. Counter-affidavit has been filed by the State in this writ application. It was contended by the learned Counsel for the State that the entire case of the Petitioner is based on the judgment of this Court in the aforesaid writ application and therefore basing on the counter, it is stated that this Court is only required to see as to whether the Petitioner can get any benefit from the said judgment as claimed by her. According to the learned Additional Government Advocate, the Rent Objection Case having been allowed in favour of the State and the appeal filed against the said order having been dismissed, the claim of the Petitioner cannot be allowed.

5. From the averments made in the writ application as well as from the submissions made by the learned Counsel appearing for both parties, it appears that the claim of the Petitioner for a declaration that she is the tenant under the State in respect of the disputed property and for a direction that rent should be collected from her for the aforesaid property entirely depend on the right of her vendor. There is no dispute that the vendor of the Petitioner, namely, Kishore Chandra Patnaik, was a Petitioner in O.J.C. No. 2063 of 1992. A copy of the judgment delivered in the aforesaid case is annexed to this writ application as Annexure-1. In paragraph 7 of the judgment, this Court has dealt with Section 5 (i) of the Act and formulated issues to be decided in the writ application in paragraph 8 of the said judgment. The first issue was as to whether the O.E.A. Collector having found the lease to have been executed prior to 1.1.1946 and also having found the deed of lease to be genuine, had any jurisdiction to proceed with the O.E.A. Case and as to whether the O.E.A. Collector had any jurisdiction to consider the question of actual possession by the lessee or her successors and recommend for concurrence to the Board of Revenue. In paragraphs 10 and 11 of the judgment, relying on certain decisions of this Court and interpreting Section 5(i) of the Act, this Court held that the lease having been executed prior to 1.1.1946 and the same having been found to be a genuine document, the O.E.A. Collector could not have proceeded with the case any further and he should have dropped the proceeding. In the subsequent paragraphs of the judgment, this Court also held that the O.E.A. Collector had no jurisdiction to decide the question of actual possession and make a recommendation to the Board of Revenue for concurrence. In the concluding paragraph, the Court held as follows:

15. On the analysis and discussions made in the foregoing paragraphs, the

ultimate position that emerges is that the orders of the O.E.A. Collector, Bhubaneswar directing settlement of portions of the leased property with the Petitioners and referring the case to the Board of Revenue for confirmation of the settlement are unsustainable and they are hereby quashed. The orders passed by the Board of Revenue in pursuance of the references of the case by the O.E.A. Collector shall be taken to be non est. The proceedings initiated u/s 5(i) of the O.E.A. Act shall be taken to have been dropped.

In view of the decision of this Court in the aforesaid case, late Kamala Devi and thereafter her successor Kishore Chandra Patnaik are deemed to be tenants under the State Government and therefore the Tahasildar, Bhubaneswar was duty bound to collect rent from them. Kishore Chandra Patnaik being deemed to be a tenant under the State Government, the Petitioner has stepped into his shoes after purchasing the land from him and consequently the Petitioner is to be treated as a tenant under the State and rent is to be collected from her. In this connection, it will be worthwhile to record Sections 5(i) and 8(1) of the Act which are quoted below:

5. Consequences of vesting of an estate in the State: Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification in the Gazette under Sub-section (1) of Section 3 or Sub-section (1) of Section 3-A or from the date of the execution of the agreement u/s 4, as the case may be, the following consequences shall ensue, namely:

(a) to (h) xx xx xx

(i) Where the Collector is satisfied in respect of the settlement or lease of any land or mines or minerals comprised in such estate or the transfer of any kind of interests in any building used primarily as office or cutchery for the collection of rent of such estate or as rest houses for estate servants on duty or as golas for storing rent in kind or part thereof, made or created at any time after the 1st day of January, 1946, that such settlement, lease or transfer was made with the object of defeating any provisions of this Act or obtaining higher compensation thereunder, he shall have power to make enquiries in respect of such settlement, lease or transfer and may after giving reasonable notice to the parties concerned to appear and be heard, set aside any such settlement, lease or transfer, dispossess the person claiming under it and take possession of such property in the manner provided in Clause (h) on such terms as may appear to him to be fair and equitable:

Provided that in case where the Collector decides not to set aside any such settlement, lease or transfer he shall refer the case to the Board of Revenue for confirmation of the settlement, lease or transfer and the orders passed by the Board of Revenue in this behalf shall be final:

Provided further that the period of limitation for the realization by the State Government of dues in respect of such of the leases, settlements, or transfers as

have been the subject-matter of any inquiry under this clause, shall, with respect to the period after the date of vesting, be three years from the date of the order setting aside or confirming the same, made by the Collector or by the Board of Revenue, as the case may be, unless a longer period of limitation is applicable in respect of such dues under any other law for the time being in force in relation to such lease, settlement or transfer.

8. Continuity of tenure of tenants: (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.

6. This Court while disposing of the earlier writ application taking note of Section 5(i) has held that late Kamala Devi was a tenant under the ex-intermediaries before vesting and on the date of vesting and was in possession of the entire disputed property. The lease deed having been found by the O.E.A. Collector to be a genuine one, this Court held that the O.E.A. Collector had no jurisdiction to proceed with the case and accordingly quashed the entire proceeding. In view of the aforesaid judgment, there cannot be any iota of doubt in mind that late Kamala Devi immediately before the date of vesting was in possession of the disputed properties as a tenant under the ex-intermediaries and as such, on and from the date of vesting she shall be deemed to be a tenant of the State Government and had the same rights and subject to the same restrictions and liabilities as she was entitled or subject to, immediately before the date of vesting. Accordingly, we have no hesitation to hold that late Kamala Devi was a deemed tenant u/s 8(1) of the Act and was succeeded by her son Kishore Chandra Patnaik and thereafter by the Petitioner who purchased the land under a registered sale deed. Having found that the Petitioner is to be treated as a tenant, we allow the prayer of the Petitioner and direct the Tahasildar, Bhubaneswar to accept the Petitioner as a tenant and collect rent from her in respect of the disputed land. In view of the findings arrived at by this Court in O.J.C. No. 2063 of 1992 as well as the directions issued in this case, the orders passed in the Rent Objection Case and the appellate Court in that regard become meaningless.

7. The Petitioner has also prayed for a declaration that the State-opposite parties or its functionaries have no right, title and interest over the land in question and for restraining them from interfering with the possession of the Petitioner over the suit land. In view of our finding that the Petitioner is to be accepted as a tenant and rent is to be collected from her, there is no need for a further declaration that the State Government - opposite parties or its functionaries have no right, title and interest over the land in question. Once the Petitioner is declared as a tenant, the State - opposite parties and its functionaries automatically lose their claim of title over the suit land and the record-of-right

prepared in favour of the State functionaries does not create any title in their favour. So far as the prayer for injunction is concerned, it goes without saying that the Petitioner having been declared to be a deemed tenant u/s 8(1) of the Act, her possession cannot be interfered with so long as her status as deemed tenant continues and as such the State - opposite parties are restrained from interfering with the possession of the Petitioner.

8. With the aforesaid directions the writ application is allowed, but in the circumstances there shall be no order as to costs.

R.N. Biswal, J.

9. I agree.