(2013) 09 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12430 of 2001

Smt. Krushna Priya Panda APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 09 OHC CK 0028

Hon'ble Judges : S. Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : S. Mishra, S. Mohanty, A.K. Mishra, A.K. Sharma, M.K. Dash and R.N. Prusty, for the Appellant; A.R. Dash, R.N. Behera, L. Lenka, N. Das and S.K. Mohanty for O.P. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Sarangi, J.—The petitioner in this writ application seeks to quash the order dated 31.1.1994 passed by the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar in Suo-motu Bebondabasta Case No. 65 of 1991 under Annexure-5, where he was inclined to settle the land in favour of Lord Lingaraj Mahaprabhu Bije, Bhubaneswar Marfat Trust Board, as occupancy rights with effect from the date of vesting, i.e. 18.3.1974 with rent, cess etc. in respect of the land mentioned in the land schedule and the tenant will continue as such till the rendering of service to the deity and further directed the Executive Officer, Lord Lingaraj Mahaprabhu Bije, Bhubaneswar to deposit the arrear amount, back rent, cess and salami after appeal period is over. The fact of the case is that Sabik Khata Nos. 1614, 1615 and 1616 of mouza-Bhubaneswar were recorded in the name of Jagatmohan Praharaj and others with specific shares on Chirathayee Tanki Madhyasatwadhikari status under the Zamindar Lord Lingaraj Mahaprabhu under Khewat No. 1. Accordingly, the Praharaj family were paying rent to the Zamindar. In an amicable partition by metes and bounds among the co-sharers of the family, the share of Brajamohan and his widow Padmabati was gifted to the petitioner vide registered deed dated 29.9.1973 and thereafter, she is in possession of the land mentioned in the Schedule and she became the rightful owner. The petitioner being a lady was ignorant of the consequences of vesting and settlement of the land u/s 7 of the O.E.A. Act and for that reason, the record of rights published in the year 1989, her lands were recorded in Khata No. 632 of mouza Bhubaneswar Sahar Unit-34, under Bebandobasta status. The additional Tahasildar, Bhubaneswar initiated a suo-motu bebandobasta case as per the executive instruction of the Government against the petitioner over Khata No. 632 and with least reference to the Sabik R.O.R. under misconception of law and facts, he treated the land belonging to the Lord Lingaraj Mahaprabhu Bije, Bhubaneswar with Madhyasatwadhikari interest, though Lord Lingaraj was the proprietor having no interest in the land excepting collecting rent. He could not have also treated the case land as the Niz Dakhal land of the proprietor, passed orders on dated 31.1.1995 to change the name of the petitioner recorded as tenants and substituting Lord Lingaraj in her place, thereby he inducted a third story with a wind fall gain to Lord Lingaraj, specially when it nobody''s case nor there is any document to support in respect of the case land.

2. The petitioner assailed the order of the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar in appeal bearing O.E.A. Appeal No. 1 of 1999 before the Sub-Collector on the ground that he has erroneously treated Lord Lingaraj as in possession of the property through Praharaj family, as tenant and went on doing wrong for the family in holding the land for rendering service to the deity. The reduced rent does not mean that the land was given for personal service to the deity and it was for supply of certain articles towards rent in kind and reduced amount of rent in cash. Her further ground was that the Addl. Tahasildar reached at an unreasonable conclusion by holding the land as Jagir under the deity, which is not on record. Therefore, the petitioner prayed to modify the impugned order passed by the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar suitably in settling the land of Bebandobasta Khata No. 632 in favour of the petitioner with fare and equitable rent as directed u/s 7 of the O.E.A. Act.

3. Lord Lingaraj Mahaprabhu Bije, Bhubaneswar contested the appeal and submitted that the case land originally belongs to him. As per 1962 R.O.R. it was Lakhraj Bahal Debottar land, which was exclusively used for the benefit of the deity having note of the "Seva" condition and as such, the vendors of the petitioner was enjoying the case land in lieu of their personal services with Lord Lingaraj. Such personal service shall not be discharged at the time of the vesting of estate in view of the proviso to Section 8(3) of the O.E.A. Act. The vendor of the petitioner was otherwise known as Chirathayee Tanki Madhyasatwadhikari and primarily enjoying the land free of rent or that rent for personal service to the deity. The disputed land is burdened with service and the same was granted for support of the religious institution and so, the same cannot be settled in favour of the vendor of the petitioner exclusively, but can be settled in favour of Lord Lingaraj with the note of personal service condition of the vendor. He has also submitted that the gift to the petitioner is violative u/s 19 of the Orissa

Hindu Religious Endowment Act. Accordingly, prayer was made to reject the appeal by relying upon the order of the Government in Revenue Department dated 14.3.1991 in Annexure-4 and 11.1.1995 and paragraph 311 of Settlement Report of S.L. Madax I.C.S.

4. After hearing the parties, the appellate court considering the materials available on record have specifically stated that the disputed land is burdened with service and the petitioner admits the proprietorship of the deity and its vesting on 18.3.1974. Therefore, the proviso to Section 8(3) of the O.E.A. Act read with paragraph 4-VII of the circular is applicable and the land is liable to be settled in favour of Lord Lingaraj Mahaprabhu Bije, Bhubaneswar, thereby refused to interfere with the order of settlement made by the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar vide order dated 22.6.2001 under Annexure-6.

5. To the above contention of the rival parties, the following questions arise for consideration in this writ petition:

(i) Whether the petitioner has got any right to settle the land in question in her favour?

(ii) Whether the order of the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar in Annexure-5 and confirmed by the sub-Collector in Annexure-6 is justified or not? and

(iii) To what order?

6. On perusal of the record, more particularly, Annexure-1, it is found that the property involved in the writ application belongs to Lord Lingaraj Mahaprabhu Bije, Bhubaneswar with incident of service duly reflected as "DEBA MAUSUFA NKA MODAKA DEUTHIBARU TNKI JAMA ADAYA DIANTI". In the subsequent settlement, the said land has been recorded in Bebandobasti status by virtue of the Govt. Circular No. 3491 dated 14.03.1991 (Annexure-4) and the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar initiated Suo-motu Bebondabasta Case No. 65 of 1991 and on consideration of the materials available on record, passed the impugned order in Annexure-5, which has been duly confirmed by the Sub-Collector in Annexure-6.

7. The admitted fact is that the estate vested to the Government on 18.3.1974 and the estate is a trust estate and the land in question is a part of the Trust Estate since the land involved under Khewat No. 1 of Lord Lingaraj Mahaprabhu Bije, Bhubaneswar, Thana No. 65 was declared as Trust Estate in M.B. Case No. 1105 of 1963, which has been ratified in the Orissa Gazette on 4.9.1963 wherein the District Magistrate, Puri referred to the estate of Lord Lingaraj u/s 13 of the O.E.A. Act, 1951 as designated Tribunal and declared the estates as Trust estates.

8. The property under the R.O.R. vide Annexure-1 comes under Sections 6 & 7 of the O.E.A. Act, but not being the Nijdakhala land of intermediary nor also comes under the ambit of Sections 8(1), 8(2), 8(3) of the OEA Act, but comes under the

umbrella of the proviso to Section 8(3) of the O.E.A. Act, 1951. Thus, in the subsequent settlement recorded in Bebandobasti status the Tahasildar initiated Bebandobasti case suo motu. The Government of Orissa vide circular No. A II-401/94-368/R dated 11.01.1995 directed to record the land of Lord Lingaraj, which comes under the proviso of Section 8(3) of the O.E.A. Act in its name. But the fact remains, Suo-motu Bebondabasta Case No. 65 of 1991 has been instituted on 1.10.1991 basing on the report of the Court Amin as per the Revenue Department circular in Annexure-4 against the name of the petitioner. Notice to Lord Lingaraj was issued to appear on 10.10.1991, but the same could not have been served. On 13.11.1993, the petitioner appeared and the R.I. was asked to report about the possession of the case land with Sabik and Hal co-relation of records. The general notice was also ordered to be served on 30.11.1993 and after receipt of the R.I. report Lord Lingaraj was also asked to appear on 9.12.1993 on which date the petitioner was present and filed an affidavit along with copy of the gift deed and copy of unregistered partition deed. From the case record, it is found that Istahar has been served on 31.12.1993. However, the case record does not indicate issuance of notice to Lord Lingaraj. But the record indicates that the land in question vested with the Govt. on 18.3.1974 and the same is recorded in the name of Lord Lingaraj marfat Trust Board.

9. As per 1962 ROR, it further reveals that Sri Jagat Mohan Praharaj son of Dinabandhu Praharaj has been recorded as tenant and enjoying the land and its usufructs as they are rendering service to the deity Lord Lingaraj Mahaprabhu Bije, Bhubaneswar. It is found that he has settled the land in favour of the deity following para-7 of the circular in Annexure-4. Reliance has been placed on the circular issued by the Revenue Department on 14.3.1991 in Annexure-4, more particularly sub-para (VII) of Para-4 as mentioned as follows:

If after conducting enquiry in accordance with the above the claim is established then the land can be settled with him in Raiyati status (except the cases of personal service to the deity of Trust estate) from the date of vesting of the State on fixation of fare and equitable rent.

10. With the aforesaid recording in the R.O.R. under Annexure-1, it is stated by the petitioner that since she is in possession prior to the date of vesting and there was no favourable term for personal service to any Intermediary and as such, the proviso to Section 8(3) of the O.E.A. Act is not applicable. Such contention of the petitioner is based on primarily (i) the R.O.R. published in the year 1962 which had been published under the provisions of Tenancy Act, (ii) the settlement final report of 1952-62 of Khurda Khasmahal Khewats have been prepared in three parts, Part-I for lands of State Government, Part-II for the lands coming under the Revenue proprietary or Lakharaj Baheldar and Part-III for recording the names and interest of the tenure holders and under tenure holders, mostly paying quit rent. This includes various Madhyasatwadhikari and Jagirs. The entries in settlement records prepared under the Orissa Tenancy Act

have a greater evidentiary value since they carry a presumption of correctness in settled principle. Referring to paragraph 311 of the final report on the survey and settlement of the province of Orissa 1890-1900 AD by S.L. Madax I.C.S., it is stated that:

The Tanki Baheldars whose tenures were confirmed hold and will hold at the quitrent they are found to be paying at the time of conquest. They are permanent tenure holders having a heritable and transferable rights and can sell or mortgage the whole or any part of their tenure and exercise over it. All other proprietary right subject to the general limitations to the treatment of Trust land where the land was granted for the support of a religious or charitable Institution. The status Chirathayee Tanki Madhyasatwadhikari denotes his under tenure status with payment of concessional rent in perpetuity to the proprietor, i.e. Lord Lingaraj Mahaprabhu Bije, Bhubaneswar for which Khata No. 1616 has been opened.

11. In view of the above mentioned facts and circumstances, it appears that the petitioner has failed to establish her claim though the incidence column speaks that the concessional or quit rent was paid to the proprietor for supplying Modak for the deity, which is a specific endowment. Among the seva puja Modak Seva is one of the Seva for which the article is to be supplied by certain individuals, thereby supply of modak for Modak Seva of the deity are inter-related failing which seva puja of the deity could not be performed and for that purpose as it transpires from the record that the land has been given to Praharaj family, thereby the land has been burdened with service. Apart from the same, the petitioner admits proprietorship of the deity and its vesting on 18.3.1974.

12. In view of such position of fact and law, we are of the view that the provisions of Section 8(3) of the O.E.A. Act read with para IV and VII under Annexure-4 is applicable and the land is liable to be settled in favour of Lord Lingaraj Mahaprabhu Bije, Bhubaneswar, thereby learned Revenue Officer-cum-Additional Tahasildar, Bhubaneswar has not committed any illegality or irregularity. Accordingly, we confirm the order dated 31.1.1994 passed by the Revenue Officer-cum-Additional Tahasildar, Bhubaneswar under Annexure-5, which has been upheld by the Sub-Collector in Appeal vide order dated 22.6.2001 under Annexure-6. In view of the foregoing discussions, the writ petition fails and the same is dismissed.

S. Panda, J.

I agree.

