
(2023) 02 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No.2443 Of 2023

Somanath Mohapatra & Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Odisha Estates Abolition Act, 1951 — Section 7, 8, 9

Citation : (2023) 02 OHC CK 0053

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : H. Mohapatra, G.N. Rout

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mohapatra, learned advocate appears on behalf of petitioners. He submits, his clients are heirs of the recorded tenant. He draws attention to annexure 1 being extract of the RoR showing his clients' grandfather as recorded tenant.
2. He submits, the OEA Collector-cum-Tahsildar purported to initiate a Bebandobasta case on 9th July, 2016. He demonstrates the case was initiated in respect of plot no.2031 being kissam gharabari. Furthermore, the case was registered under sections 7/9 of Odisha Estates Abolition Act, 1951 and, inter alia, circulars dated 6th December, 2000 and 11th January, 2016. He submits, section 7 is not applicable as it is in respect of land used for agricultural and horticultural purposes. So far as section 8 is concerned he submits, it provides continuity of tenure of tenants. He reiterates, his clients' grandfather was the recorded tenant.
3. He submits, impugned is order dated 30th October, 2018 made in the suo motu case. He refers to aforesaid circular dated 6th December, 2000 to submit, it was for purpose of fixation of rent. He hands up also aforesaid circular dated 11th January, 2016 to submit, there was made thereby, continuity of said

purpose for fixation of rent in respect of land having Bebandobasta status. He points out from impugned order that it was made in respect of plot 2035. Said plot is under his clients' possession and occupation. He submits, parallelly there was mutation case and in it, in respect of plot 2031 recorded in name of the grandfather, his clients came to be recorded in respect of renumbered plot 2035. The only thing that could be done was fixation of fair and equitable rent but by impugned order, there was direction to record case land under the Abada Jogya Anabadi Khata and initiate encroachment case against his clients. He submits, there be interference.

4. Mr. Rout, learned advocate, Additional Standing Counsel appears on behalf of State. He draws attention to said circular dated 6th December, 2000, clause 3 (viii) (c) to submit, the Collector duly acted in terms of the clause. The Collector committed no illegality in seeking satisfaction regarding settlement. It is only after such satisfaction obtained, fixation of rent is to be done. The Collector was not satisfied regarding settlement. There should be no interference.

5. We do not find there is any dispute of facts. We had ascertained from Mr. Rout regarding dealing with the writ petition, whether to be on counter filed. No necessity thereof was the submission.

6. We reproduce below clause 3 (viii) (c) from circular dated 6th December, 2000.

"3 (viii)(c) Homestead land of ex-intermediaries and lands in khas possession of the ex-intermediaries.

All homestead lands comprised in an estate in possession of the ex-intermediaries including buildings, structures existing thereon (except the land or premises used as Kacheries etc.) were deemed as settled with the intermediaries subject to payment of fair and equitable rent by the Collector in the prescribed manner, provided they were used for such homestead purposes prior to 1.1.1946. Similarly, agricultural and horticultural lands in khas possession of the ex-intermediaries were allowed for settlement and determination of rent under section 7 of the O.E.A. Act. In such cases the test for deciding whether any such vested land in Bebandobasti status can be settled with the occupier is to find out if the present occupier was the ex-intermediary or his successor or valid pre-25.8.1983 transferee. Here again the presumptive value of the R.O.Rs that the land in question is vested land or that the persons recorded in the R.R.Os were in possession of the land on the date of final publication of the R.O.R. should not be questioned by the Tahsildar. He should be satisfied if evidence is available from the local enquiry and hearing that the person presently possessing is the ex-intermediary or his successor or pre-25.8.1983 transferee. If his finding on this is in alternative he should settle the land with the person concerned and by assessing fair and equitable rent without any hesitation."

(emphasis supplied.)

7. As aforesaid, there is no dispute on facts. Land in possession of petitioners

and referred to as case land in impugned order bears kissam gharabari. Such lands were deemed to have been settled with the intermediaries subject to payment of fair and equitable rent by the Collector in the prescribed manner, provided they were used for such homestead purposes prior to 1st January, 1946. This appears to be the case since, there is reference in impugned order to petitioners' ancestor as being recorded tenant, borne out by annexure 1 (RoR). Petitioners have obtained mutation. It is only in respect of agricultural and horticultural lands that in proceeding with Bebandobasta cases suo motu there can first be question of settlement and thereafter fixation of rent. Even in respect of settlement of agricultural land in Bebandobasta status, the Tahsildar should not question the finally published RoR.

8. We are convinced neither section 7 nor 8 nor aforesaid circulars were properly applied for the authority to obtain jurisdiction to have made impugned order. It is set aside and quashed.

9. The writ petition is allowed and disposed of.

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