
(2013) 09 OHC CK 0010

In the Orissa High Court

Case No : Writ Petition (C) No"s. 4649 of 2005, 17155 of 2006 and 158 of 2010

State of Orissa and Others

APPELLANT

Vs

Baidyanath Jena (since dead) represented through his legal
heirs and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 116 CLT 805

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

Bench : Division Bench

Advocate : B. Bhuyan, A.G.A and Ors, for the Appellant; B.K. Dagara, P.K. Patnaik, S.K. Das (Caveator), N.N. Mohapatra, S. Swain, N. Jesty (Intervenor), Mr. P.K. Mohanty, D.N. Mohapatra, G.S. Satpathy, J. Mohanty (Intervenor), B. Pradhan, P. Mohanty and Ors., for the Respondent

Judgement

B.R. Sarangi, J.—State of Orissa being the Petitioner has filed W.P.(C). No. 4649 of 2005 assailing the Order Dated 21.08.2004 passed by the Member, Board of Revenue, Orissa, Cuttack in O.E.A. Revision Case No. 16 of 2004 leading to settlement of Government land measuring an area of Ac. 6.500 decimals in favour of the Baidyanath Jena in sthitiban status.

Petitioners in W.P.(C) No. 17155 of 2006 being the son & daughter of late Baidyanath Jena have challenged the correctness & legality of Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar, in O.E.A. Misc. Case No. 33 of 1997 rejecting the claim of their father as a tenant u/s 8(1) of the Orissa Estate Abolition Act, in short, "O.E.A. Act" in respect of the case land.

W.P.(C). No. 158 of 2010 has been filed by Sorojini Sahu, challenging the inaction of Opp. Party No. 4, the Tahasildar-cum-O.E.A. Collector, Bhubaneswar in not considering & disposing of the application dated 5.10.2009 filed by her for mutation of the land appertaining to Sabik plot No. 218, area Ac. 6.500 decimals, moza-Chandrashekharapur, Bhubaneswar as per Rule 34(c) of the Orissa Survey &

Settlement Rules, 1962 (hereinafter referred to as "the Rules") giving due regards to the Judgment dated 6.2.2008, decree dated 12.2.2008 passed by the Learned Civil Judge (Sr. Division), Bhubaneswar in Civil Suit No. 535 of 2005 & decision dated 21.8.2004 of the Member, Board of Revenue, Orissa, Cuttack passed in O.E.A. Revision Case No. 16 of 2004 u/s 38B of the Orissa Estates Abolition Act, 1951, which is under challenge by the State of Orissa in W.P.(C) No. 4649 of 2005 & no order of stay of operation of the said order has been passed by this Court. In view of such position, according to her, there is no impediment on the part of the Tahasildar, Bhubaneswar to consider the Petitioner's application for mutation of the land in her favour u/s 34(c) of the Orissa Survey & Settlement Rules, 1962.

The Order of the Tahasildar-cum-O.E.A. Collector, Bhubaneswar dated 27.1.1999 in O.E.A. Misc. Case No. 33 of 1997 refusing to accept rent has been challenged u/s 38B of the Orissa Estates Abolition Act, 1951, hereinafter to be referred to as "the Act", in short, before the Member, Board of Revenue, Orissa, Cuttack vide Order Dated 21.8.2004 in O.E.A. Revision Case No. 16 of 2004 has set aside the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar & directed to record the suit land measuring Ac. 6.500 in the name of Baidyanath Jena in sthitiban status & also to accept the rent from him on consideration of the application filed u/s 8(1) of the O.E.A. Act, & since common question of law & facts are involved in these matters, they are heard together & disposed of by this common Judgment.

2. The factual matrix of the case in hand is that Sabik Plot No. 218 under Sabik Khata No. 303/28 having an area of Ac. 6.500 decimals (corresponding to Hal plot No. 258 part of Khata No. 472, Kisam "Rakhit" of village Chandrashekharapur) was a part of the estate owned by Ex-ruler of Kanika (hereinafter referred to as, the "Ex-Intermediary"). The Ex-Intermediary under a "Hata Patta" granted on 28.7.1942 inducted one Baidyanath Jena as a tenant with rent of twenty seven rupees three annas & "Pathkar" of fifteen annas.

The lease was granted for agricultural purpose & from the date of lease, Baidyanath Jena remained in peaceful Possession & enjoyed the land & his name was recorded in the Estates records in "Jamabandi" Khata No. 303/28. Baidyanath was paying rent to the Ex-Intermediary from the year 1942 up to 1954 vide rent receipt Nos. 411/1 dated 28.7.42, 6343 dated 24.6.1945, 113 dated 25.5.1948, 6613 dated 8.5.1951 & 757 dated 5.2.1954. These rent receipts show that the tenant Baidyanath Jena was paying rent from the date of induction as a tenant, i.e., from 1942 till the vesting of the estate in the year 1954. The estate was vested to the State Government as per the provisions of the O.E.A. Act in the year 1954. On the vesting of the estate, the Ex-Intermediary submitted "Ekpadia" bearing Jamabandi No. 303/28 in favour of Baidyanath Jena before the Tahasildar, Sadar, Cuttack vide Sl. No. 364 as a proof of his induction as a tenant prior to vesting of the estate. The Tahasildar, Sadar, Cuttack prepared the Tenant's Ledger in favour of Baidyanath Jena & accepted

him as a Stitiban tenant under State & collected rent from him up to 1968.

After bifurcation of the Cuttack Tahasil in the year 1969, village Chandrashekharpur came under the jurisdiction of Bhubaneswar Tahasil. In the 1973-74 settlement record of rights, plot No. 258 including the suit land measuring Ac. 6.500 dec. was recorded in favour of the Government of Orissa with an area of Ac. 184.190 decimals under Rakhit Khata No. 472. In the 1988-89 settlement record of rights, plot No. 258 with a total area of Ac. 173.82 decimals including the suit land measuring Ac. 6.500 decimals was recorded in favour of G.A. Department, Government of Odisha with kisam "Unnata Yojana Yogya".

In the year 1995., Baidyanath Jena approached the Tahasildar-cum-O.E.A. Collector, Bhubaneswar under the O.E.A. Act to receive the rent u/s 8(1) of the O.E.A. Act but the latter refused to receive rent from him, consequence thereof, Baidyanath Jena filed O.E.A. Misc. Case No. 33 of 1997 u/s 8(1) of the O.E.A. Act for acceptance of rent. On 28.7.1998, Baidyanath produced original documents in support of his claim for recognition as a tenant, which was perused by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar. On the same day, by the order of the Tahasildar, one Amin, namely, Sri P.C. Pradhan was directed to make a spot visit & to submit a report regarding Baidyanath Jena's claim u/s 8(1) of the O.E.A. Act.

3. The Amin visited the spot & enquired from the local people & submitted his report on 27.1.1999 before the Tahasildar-cum-O.E.A. Collector, Bhubaneswar, wherein it has been clearly stated that Baidyanath Jena had uninterrupted possession of the suit land right from 1942 & he had fenced the suit land, constructed a house with stone wall & thatched roof & remained in possession & enjoyed the suit land continuously. The Tahasildar-cum-O.E.A. Collector, Bhubaneswar passed order on 27.1.1999 after perusing the details claim advanced by Baidyanath Jena on the basis of documentary evidences like "Hata Patta" dated 28.7.1942, rent receipts granted by the Ex-Intermediary, rent receipt granted by the Tahasildar, Sadar, Cuttack, the report of the Amin dated 27.1.1999 & sketch map of the suit land etc., in O.E.A. Misc. Case No. 33 of 1997, rejected the application filed u/s 8(1) of the O.E.A. Act on the ground that after completion of the settlement operation, the O.E.A. Collector has lost his jurisdiction to record the suit land in favour of Baidyanath Jena, the tenant. He further observed that the tenant might agitate his claim in appropriate Civil Court or Commissioner of Settlement to record the land in his favour. The said order of the Tahasildar-cum-O.E.A. Collector, Bhubaneswar dated 27.1.1999 is the subject matter of challenge by the legal heirs of Baidyanath Jena in W.P.(C) No. 17155 of 2006.

4. Being aggrieved by the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar in O.E.A. Misc. Case No. 33 of 1997, Baidyanath Jena filed O.E.A. Revision Case No. 16 of 2004 u/s 38B of the O.E.A. Act before the Learned Member, Board of Revenue, Orissa, Cuttack. The Learned Member,

Board of Revenue, Orissa, Cuttack heard the revision petition & called for a report from the Tahasildar, Bhubaneswar & directed him to furnish the Tenant's Ledger pertaining to the village Chandrashekharapur & also directed Baidyanath Jena to produce the original rent receipt, certified copy of R.O.R. prepared & issued by the Tahasildar, Sadar, Cuttack after he has been deemed to be a tenant on vesting of the estate to the State Government, After hearing, the Member, Board of Revenue, Orissa, Cuttack allowed the revision petition & set aside the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar & directed to record the suit land in the name of Baidyanath Jena with sthitiban status & also directed the Tahasildar, Bhubaneswar to accept the rent from Baidyanath Jena as a tenant as per Section 8(1) of the O.E.A. Act.

5. The State of Orissa, represented through the Special Secretary to Government, General Administration Department filed W.P.(C) No. 4649 of 2005 assailing the order passed by the Member, Board of Revenue u/s 38B of the O.E.A. Act stating that he could not have entertained the revision application filed by the private Opp. Party Baidyanath Jena. u/s 38B of the O.E.A. Act, such power is only available to the Member, Board of Revenue to be exercised either on its own motion or on report from the Collector to call for & examine the record of any proceeding in which any authority subordinate to him has made any decision or passed an order under the O.E.A. Act for the purpose of satisfying himself as to the regularity of such proceeding or correctness or legality or propriety of such decision or order & can modify, annul, remit the same & pass order accordingly.

6. The Member, Board of Revenue entertained the application filed by Baidyanath Jena, a private party in purported exercise of the power u/s 38B of the O.E.A. Act & proceeded on the basis of the documents without affording an opportunity of hearing to the Petitioner, as a result of which there is non-compliance of the principles of natural justice. In order to make an unlawful gain of valuable property of the State Government, Baidyanath Jena relied upon false, fabricated & forged documents whose genuineness & authenticity is doubted. The certified copy of ekpadia granted by P.K. Dalabehera & relied upon by Baidyanath Jena in the said revision case is not genuine one & the concerned copy application register of the Cuttack Tahasil being forged, Lalbag P.S. Case No. 27 of 1999 has been registered out of which trial in G.R. Case No. 196 of 1990 has been initiated & accused persons have been charge-sheeted.

7. On bare perusal of the certified copy of ekpadia, it can be easily ascertained that the same was copied from a register, which was not signed or submitted by ex-intermediary, i.e., Raja Sailendra Narayan Bhanjan Deo of Kanika Estate & authenticated by the concerned Tahasildar. Besides, the so-called certified copy of ekpadia shows the signature of the authorized officer, Sri Raj Kishore Das, who is also one of the accused & has been charge-sheeted in G.R. Case No. 196 of 1990. Though the original Jamabandi register in respect of the case village showing the list of tenants on the date of vesting submitted by the ex-

intermediary to the O.E.A. Collector was called for from Bhubaneswar Tahasil, but the same has not been perused. Without perusing the same, the Impugned order has been passed. Apart from the same, the Tahasildar, Bhubaneswar replied to the Member, Board of Revenue that the original ekpadia, tenant ledger is not available either in his office or in the Cuttack Sadar Tahasil before bifurcation of the Tahasil & on bare perusal of the certified copy of the ekpadia, it is found that the tenant of Khata No. 303/21 is Gandharba Naik, whereas the same Khata was once claimed by one Daitari Mohanty as seen from the Order Dated 29.7.1995 of the Member, Board of Revenue in O.E.A. Revision Case No. 18 of 1994 between Daitari Mohanty v. State & Ors. which will show that different certified copy of the fraudulent ekpadia register has been obtained by many unscrupulous persons to grab valuable property in the State capital of Bhubaneswar.

8. Apart from the same, Baidyanath Jena did not challenge the entry of two settlement record of rights in respect of the case land before any forum whatsoever which totally negatives his plea of possession including the so-called Amin's report of Bhubaneswar Tahasil office. The Amin, who has caused the enquiry as to the possession of the land in question during the year 1989, could trace the possession of Baidyanath Jena since 1942, which is not based on any materials whatsoever. The Hatpatta along with the rent receipts said to have been issued by the ex-intermediary are not genuine one. On perusal of the 1929-30 Revision Settlement R.O.R., it is ascertained that the case land at that time was a communal & forest land & the ex-intermediary was not entitled under any law or order or regulation in vogue, to lease out the said communal land, which were burdened with communal rights, Therefore, the so-called claim of tenancy by Baidyanath Jena said to have been created by the ex-intermediary in respect of the communal land should therefore be interpreted to be outside the proprietary rights of the ex-intermediary & therefore, cannot be accepted on their face value unless & until the contrary is proved by unimpeachable proof that the said documents are genuine & authentic. Assuming but not admitting that the ex-intermediary inducted Baidyanath Jena as genuine on the basis of the unregistered document, Hatpatta, which is inadmissible in evidence as per the decision reported in Sri 5 Sita Maharani and Others Vs. Chhedi Mahto and Others, & Ram Nath Mandal and Others Vs. Jojan Mandal and Others,) & as such, no documentary evidence is filed by Baidyanath Jena to show that the person, who signed the so-called unregistered lease deed including the rent receipts was/were specifically authorized to grant such lease or to receive rent for & on behalf of the ex-intermediary. Non-acceptance of rent is an administrative action/order not amenable to the revisional jurisdiction u/s 38B of the O.E.A. Act in view of the decision reported in Smt. Basanti Kumari Sahu Vs. State of Orissa and Others, confirmed by the Apex Court in State of Orissa v. Brindaban Sharma

9. Apart from the same, the vesting of estate has been done in the year 1954 & Baidyanath Jena claims settlement of land after 43 years of vesting of the estate in the year 1995 & no reasonable explanation is made available in the order

passed by the Member, Board of Revenue for such belated entertaining of application for settlement. Baidyanath Jena has claimed that he has got Hattapatta from the ex-intermediary on 28.7.1942. The said Hattapatta has neither been produced before the Tahasildar in O.E.A. Misc. Case No. 33 of 1997 nor before the Member, Board of Revenue in Revision Case No. 16 of 2004 nor before this Court. The genuineness of Hattapatta could have been proved, if it would have been produced as per the provisions contained in Section 17(1)(d) of the Registration Act, 1908 & Section 6(i) of the Transfer of Property Act, 1982. Therefore, Baidyanath Jena has failed to prove evidentiary value of such Hattapatta u/s 91 of the Evidence Act. It is settled law that any agricultural land for more than one year or from year to year basis with the fixed rate of rent must be compulsorily registered & if it is not registered under the Registration Act, no title passes. Therefore, no tenancy having been created, such land vested to the Government free from encumbrances since 1954. The tenancy ledger neither has been opened nor rent has been collected & the so-called rent receipt Desiring. No. 022771 k8 is completely forged one. Hence, the aforesaid Writ Petition filed by the State.

10. The Writ Petition filed by Sarojini Sahoo, who claims to be the purchaser from Baidyanath Jena by executing an agreement for sale of the land in question, borrowed funds from her. After settlement of total consideration money & advance of the funds, agreement for sale has been made in favour of Sarojini Sahoo. As per the agreement, when Baidyanath Jena failed to perform his part of contract for execution of the sale deed, Sarojini Sahoo filed Civil Suit No. 535 of 2005 before the Learned Civil Judge (Sr. Division), Bhubaneswar seeking a specific performance of contract & consequently for execution of sale-deed through the court order. Sarojini Sahoo having come to know that W.P.(C) No. 4649 of 2005 is pending before this Court, she sought for intervention in Misc. Case No. 7337 of 2006, which has been vehemently objected by Baidyanath Jena, consequence thereof, this Court passed an order on 5.9.2006 that the application for intervention in Misc. Case No. 7337 of 2006 would be considered at the time of hearing of the Writ Petition. During pendency of the civil suit, Baidyanath Jena died, who was Defendant No. 1 in the said suit & he has been substituted by his legal heirs as Defendant Nos. 1(a) to 1(d). Vide Judgment dated 6.2.2008 & decree dated 12.2.2008 the Civil Suit No. 535 of 2005 was disposed by the Learned Civil Judge (Sr. Division), Bhubaneswar allowing the prayer of Sarojini Sahoo for specific performance of contract directing the Defendants to execute the sale deed in favour of the Petitioner, Sarojini Sahoo, within a period of three months from the date of the decree, failing which the Petitioner was left with the liberty to execute the same through the process of the court.

11. The Defendants, the L.Rs. of Baidyanath Jena having failed to comply the direction passed by the Learned Civil Judge (Sr. Division), Bhubaneswar in the Judgment & decree, the court intervened in the matter & through the process of the court intimated to the District Sub-Registrar, Bhubaneswar vide letter No. 27

dated 23.3.2009 authorizing the Nazir of the Civil Court to present the sale deed on his behalf & directed the parties to pay registration fee at the time of registration & thereafter the sale deed has also been duly executed on 8.4.2009 & receipt has been issued to that effect, which can be presented through authorization in favour of the person to receive the documents of the said sale deed. Sarojini Sahoo states that she has already taken over the possession of land in question since the time of execution of the agreement for sale & thus, she has been continuing in possession.

12. By virtue of the Civil Court decree, there has been sale deed by transferring the land in favour of Sarojini Sahoo. On the basis of the aforesaid transfer of the land & on the basis of the decision of the Member, Board of Revenue, Orissa, Cuttack in terms of Rule 34(c) of the Orissa Survey & Settlement Rules, 1962 submitted documents before the Tahasildar-cum-O.E.A. Collector, Bhubaneswar on 5.10.2009 requesting to correct the entry in the R.O.R. & to allow the mutation & thereby to record her name in respect of the land in question as a sthitiban tenant. The said application was pending for consideration. Therefore, alleging inaction of the Tahasildar-cum-O.E.A. Collector, Bhubaneswar, she filed the Writ Petition bearing No. W.P. (C) No. 158 of 2010.

13. In order to substantiate the contention raised on behalf of the State, Mr. B. Bhuyan, Learned Addl. Government Advocate relies upon the Judgments in Smt. Basanti Kumari Sahu Vs. State of Orissa and Others, , Basanti Kumari Sahu (Smt) Vs. State of Orissa and Others, & State of Orissa v. Brindaban Sharma , Basanti Kumari Sahu (Smt) Vs. State of Orissa and Others, 347, Smt. Harapriya Bisoi Vs. State of Orissa and Others 1 State of Orissa and Others Vs. Harapriya Bisoi, . The "Hatpatta" relied upon being non-registered one, is inadmissible in view of the dictum of the Apex Court in Sri 5 Sri 5 Sita Maharani and Others Vs. Chhedi Mahto and Others, & in Ram Nath Mandal and Others Vs. Jojan Mandal and Others,

14. Per contra, Mr. P.K. Mohanty, Learned Senior Counsel appearing for Sarojini Sahoo relied upon the Judgments in Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, Manmohan Rout (and after him) Sundari Devi and Others Vs. State of Orissa and Others, Basanti Kumari Sahu (Smt) Vs. State of Orissa and Others, Sebati Dei alias Sebati Rautray Vs. Orissa State Housing Board and Others, Bhagaban Kar and Others Vs. State of Orissa and Others, Bijay Ketan Brahma and Others Vs. State of Orissa and Others, & State of Orissa and Others Vs. Harapriya Bisoi,

15. Consideration has to be made to the Judgment cited by Mr. B. Bhuyan, Learned Addl. Government Advocate. He relies upon Smt. Basanti Kumari Sahu (supra), where this Court referring to the Judgments of the Supreme Court in Kumar Bimal Chandra Sinha Vs. State of Orissa, ; & this Court in Radhamani Dibya (supra) has held that u/s 8(1) of the OEA Act, tenancy right did not vest in the State even after vesting a tenant continues as tenant. The State as landlord is entitled to collect rent. The Tahasildar collects rent as agent of the landlord-

Government & he has no right to settle the land with the tenant. In the event such settlement is made by the Tahasildar that will be without jurisdiction. Therefore, when the tenant applies to the Tahasildar with the application purported to be u/s 8(1) of the OEA Act, the Tahasildar may for his satisfaction make enquiry as to the records if he is tenant & the same is administrative in nature. Challenging the said Judgment Basanti Kumari Sahoo approached the Apex Court & on consideration the Apex Court in *Basanti Kumari Sahoo v. State of Orissa & Others*, 1995(1) OLR (SC) 587 held that the Board of Revenue had actually exercised the power u/s 38B of the O.E.A. Act & therefore the decision rendered by the High Court is not sustainable & accordingly remitted the matter back to this Court to hear the matter on merit on the premises that the Board of Revenue exercised the jurisdiction u/s 38B of the O.E.A. Act. On remitting the matter back to this Court when re-adjudication was made this Court held that the order passed by the Tahasildar u/s 8(1) of the O.E.A. Act being administrative one the Board of Revenue cannot in exercise of the power of revision u/s 38B of the O.E.A. Act. Therefore, the Apex Court in *Basanti Kumari Sahu (Smt) Vs. State of Orissa and Others*, held that the validity of the order of the Tahasildar is to be examined by the Board of Revenue in revision u/s 38B of the O.E.A. Act. The Tahasildar's finding is on administrative side whereas the power of Board- of Revenue is on quasi-judicial side. The Board has jurisdiction to examine the order of the Tahasildar. The question or power of the Tahasildar u/s 8(1) & Board of Revenue u/s 38(B) no more remains res-integra in view of the law laid down by the Apex Court in *State of Orissa v. Brindaban Sharma* which has been followed in *State of Orissa & others v. Harapriya Bisoi* (supra).

16. The Judgment in *Radhamani Dibya* (supra) cited by Mr. P.K. Mohanty, Learned Sr. Counsel has been considered time & again by this Court as well as the Apex Court in *Basanti Kumari Sahu* (supra), *State of Odisha & Others Vs. Brundaban Sharma & another* (supra), *State of Orissa & others v. Harapriya Bisoi* (supra) with regard to the interpretation of Section 8(1) of the O.E.A. Act.

17. In *Manmohan Rout* (supra) consideration was made in respect of Section 8(1) of the O.E.A. Act where it is held that agricultural land leased by ex-intermediary, name entered in the tenancy ledger by the revenue officer on the basis of *ekpadia* & the rent has been accepted, in that case, no document of lease is necessary for agricultural lease. Acceptance of rent creates a tenancy right, thereby held that the consolidation authorities are to accept him as a *royat* & give respect to the decision of the authorities u/s 8(1) of the O.E.A. Act. This Court in *Sebati Dei* (supra) while considering the application Section 8(1) of the O.E.A. Act has held that *patita* estate was settled with *Raja Kanika* whose name has been recorded in the ROR, thereafter, he has granted *Hatpatta*, which is found to be *ekpadia* in favour of the person being in possession by the time abolition of the estate. He has got tenancy right over the property & his name was also found place to be in possession in the R.O.R., thereby held that he is a deemed tenant as per the provisions u/s 8(1) of the O.E.A. Act.

18. In *Bhagaban Kar (supra)*, it is held that application filed u/s 7 read with Section 8A & 8(1) of the O.E.A. Act before the Tahasildar for recognition as tenant, on consideration of which the Tahasildar declared the parties as tenant under the State u/s 8(1) of the O.E.A. Act & settled the lands with the tenants under sthitiban status. This Court held that the Tahasildar committed error in directing to settle the land in sthitiban status reason being u/s 8(1), no power is available under the said provision to settle the land so far it relates to the tenants, reason being if a person was inducted as tenant by ex-intermediary before vesting & was in possession of the land on the date of vesting & thereafter, he should be deemed to be continuing as such in consonance with the provisions of Section 8(1) of the O.E.A. Act. If two rival persons claim to be tenants, the Tahasildar having no jurisdiction to decide the inter se dispute has to call upon the parties to get the right decided by civil court & as such, a tenant cannot claim settlement of land in his favour under the O.E.A. Act & he is only to be recognized as tenant under the State.

19. In *Bijay Ketan Brahma (supra)* this Court has held that u/s 8(1) of the O.E.A. Act no proceeding is required to be initiated & at the same time the Tahasildar is not always bound to accept the claim raised by a person to the effect that he is inducted as a tenant without verifying whether the claim is genuine or not. For arriving at such satisfaction, the Tahasildar had to conduct enquiry, which is more in the nature of administrative enquiry. The possession as on the date of vesting being the necessary ingredients for recognition as tenant u/s 8(1) of the O.E.A. Act, the Tahasildar has no jurisdiction to decide as to who was in possession on the date of vesting. The person aggrieved had to approach the civil court for such determination.

20. Before going to consider the rival contentions, it is profitable to state that the purpose behind for enactment of Orissa Estate Abolition Act is as follows:

An Act to provide for the abolition of all the rights, title & interest in land of Intermediaries by whatever name known, including the mortgages & Lessees of such interest, between the Raiyat & the State of Orissa, for vesting in the said State of the said rights, title & interest & to make provision for other matters connected therewith. Whereas in pursuance of the Directive Principles of State Policy laid down by the Constitution of India it is incumbent on the State to secure economic justice for all & to that end to secure the ownership & control of all material resources of the community so that they may best sub-serve the common good, & to prevent the concentration of wealth & means of production to the common detriment; & whereas in order to enable the state to discharge the above obligation, it is expedient to provide for, the abolition of all the rights, title & interest in land of Intermediaries by whatever name known, including the mortgagees & lessees of such interest, between the raiyat & the State of Orissa, for vesting in the said State of the said rights, title & interest.

21. The aforesaid being the purpose of enactment, to achieve some of the objectives of the Act, amendments have been made from time to time to enable

settlement of land in favour of the persons those who are in possession prior to vesting. In view of the factual backdrop of the case in hand, the following questions fall for consideration in the present case:

(i) Whether the order passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar is justified? &

(ii) Whether the order passed by the Member, Board of Revenue, Orissa, Cuttack u/s 38B of the O.E.A. Act rejecting the order of the Tahasildar-cum-O.E.A. Collector, Bhubaneswar is justified?

22. Admittedly, Baidyanath Jena filed an application u/s 8(1) of the O.E.A. Act, which was registered as O.E.A. Misc. Case No. 33 of 1997 for acceptance of rent declaring his tenancy right in respect of the suit land. For better appreciation, Section 8(1) of the O.E.A. Act is quoted below:-

8. Continuity of tenure of tenant:- (1) Any person who immediately before the date of vesting of an estate in the State Government was in possession of any holding as a tenant under the Intermediary shall on & from the date of vesting, be deemed to be a tenant of the State Government & such person shall hold the land in the same right & subject to the same restrictions & liabilities as he was entitled or subject to immediately before the date of vesting.

(2) Any person holding land in a village for service as a village servant by whatever name called shall be deemed to hold it under the State Government subject to such terms & conditions as he was entitled or subject to immediately before the date of vesting.

(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 & the land may be settled with him in such manner & under such terms & conditions as may be prescribed.

23. On perusal of above mentioned provisions, it is made clear that Section 8(1) of the O.E.A. Act makes no provision for application & no inquiry is contemplated in the said Section & the Section is merely a declaratory of continuity of tenure of the tenant as it was immediately before the date of vesting. Therefore, no application is entertainable for determining the rival claims u/s 8(1) of the O.E.A. Act & this question has been considered by the Full Bench of this Court in Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others,

24. Law is well settled by the Apex Court in the cases State of Orissa v. Brindaban Sharma State of Orissa and Others Vs. Harapriya Bisoi, & State of Orissa Vs. Nityanand Satpathy and Others, as well as by the Full Bench of this Court in the case of Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, that Section 8(1) of the O.E.A. Act makes no provision for an application to be filed & no enquiry is also contemplated under the said Section. The said Section is merely declaratory of the continuity of the tenure of tenants as it was

immediately before date of vesting. Therefore, an application u/s 8(1) of the O.E.A. Act by Baidyanath Jena is misconceived one.

25. So far as the decision cited by Mr. P.K. Mohanty, Learned Sr. Counsel appearing for Sarojini Sahoo, i.e., in the case of Jagannath Nanda Vs. Bishnu Dalei and Others, , this Court has taken into consideration that an application under Sections 7 & 8A of the O.E.A. Act totally different than that of an application u/s 8(1) of the O.E.A. Act.

Admittedly, immediately after vesting no step was taken to accept rent by the tenant on the basis of continuous possession over the land before vesting, rather an application was filed for the first time in the year 1997 to declare Baidyanath Jena as tenant & to accept rent. After forty-three years from the date of vesting there is no scope for any enquiry as to whether the tenant is a deemed tenant & continue in possession of the land as such. After vesting of the estate the tenants' ledger was submitted to the Tahasildar-cum-O.E.A. Collector to fix the fare & equitable rent in respect of tenants. In the case in hand, principle laid down in Jagannath Nanda (supra) is not applicable.

26. On the application filed by Baidyanath Jena u/s 8(1) of the O.E.A. Act, the Tahasildar-cum-O.E.A. Collector, Bhubaneswar considering the materials available on record, declined to exercise of his power & jurisdiction to record the suit land in favour of the so-called tenant (Baidyanath Jena) reason being the settlement operation under the Orissa Survey & Settlement Rules, 1962 was completed in the year 1973-74 & the suit land has been recorded in favour of Government of Orissa, khewat No. 1, village Chandrashekharapur, vide Rakhit khata No. 472, plot No. 258 an area of Ac. 184.190 decimals including Ac. 6.500 dec. & thereafter settlement operation was completed. In the 1988-89 settlement, the land was recorded in the name of G.A. Department, Govt. of Orissa, Unit-41 vide khata No. 6191 plot No. 258 measuring an area Ac. 173.82 decimals including Ac. 6.500 dec. In both the settlements, Baidyanath Jena, who claims to be a tenant, failed to submit any documentary evidence to record the said land in his favour.

From the materials available on record, it is found that it is the admitted case of Baidyanath Jena that he has paid rent to the Tahasildar, Sadar, Cuttack till the year 1968 in respect of the suit land & no documents is available after 1968 to substantiate his case that he is in possession after 1968 by paying rents, rather his case is that he wanted to pay rent in the year 1995 after a long lapse of 27 years & the same having not been accepted, finding no other way, he filed an application u/s 8(1) of the O.E.A. Act for a declaration as a tenant under intermediary. Though there is no provision u/s 8(1) of the O.E.A. Act for entertaining an application for declaration of any tenancy right, but the Tahasildar-cum-O.E.A. Collector Bhubaneswar considered such application filed by Baidyanath Jena & passed the order that after the settlement has been over in the years 1973-74 & 1988-89, the suit land has already been recorded in favour of Government of Orissa, G.A. Department & the Government is the absolute owner of the property. Therefore, he refused to make any declaration in

favour of Baidyanath Jena & directed to agitate his claim before the appropriate civil court or before the Commissioner of Settlement.

27. Against the said Order Dated 27.1.1999, application was filed by Baidyanath Jena before the Member, Board of Revenue, Orissa, Cuttack invoking the power u/s 38B of the O.E.A. Act in O.E.A. Revision Case No. 16 of 2004. The Member, Board of Revenue, Orissa, Cuttack under a mis-appreciation of fact & law, set aside the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar vide Order Dated 21.8.2004 & directed to record the name of Baidyanath Jena in stithiban status & receive rent in the locality within two months from the date of receipt of the said order. While issuing such direction, the Member, Board of Revenue, Orissa, Cuttack has committed gross error, which is apparent on the face of the record that in the meantime two settlement operations in the locality have already been over & the property has been recorded in the in favour of the G.A. Department Government of Orissa. In this backdrop, whether the Member, Board of Revenue was justified to exercise his jurisdiction u/s 38B of the O.E.A. Act is required to be considered.

28. Section 38B of the O.E.A. Act reads as follows:

Section 38B(1) The Board of Revenue may, on its own motion or on a report from the Collector call for & examine the record of any proceeding in which any authority subordinate to the Board of Revenue & made any decision or passed an order under this Act (not being a decision against which an appeal has been preferred to the High Court or District Judge u/s 22) for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of such decision or order & if in any case it appears to the Board of Revenue that any such decision or order & if in any case it appears to the Board of Revenue that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass orders accordingly.

(2) The Board of Revenue shall not-

(i) xx xx xx

(ii) revise only decision or order under this Section without giving the parties concerned an opportunity of being heard in the matter.

A reading of the aforesaid provision clearly indicates that the Board of Revenue, either on its own motion or on a report from the Collector, call for & examine the record of any proceeding in which, any authority subordinate to the Board, has made any decision or gassed any order under the O.E.A. Act to satisfy itself as to the regularity of such proceeding or to the correctness, legality or propriety of such decision or proceeding or order"s, if in any case it appears to the Board that such a decision is not correct or illegal or improper, it has been empowered to modify, annul, reverse or remit the case to the authority for decision according to law. Before taking any such decision or passing an order, it is required to give an opportunity of being heard in the matter to the affected party.

29. In view of the law laid down as discussed supra, a tenant only can be recognized u/s 8(1) of the O.E.A. Act if the intermediary was validly inducted with registered document as per Section 17 of the Indian Registration Act, Sections 105 & 107 of the Transfer of Properties Act, & followed by Ekpadia submitted by the intermediary with the approval of the Board of Revenue u/s 5 of the O.E.A. Act.

30. The power of the Board of Revenue u/s 38B of the Act remains no more res integra in view of decision of the Apex Court in Brundabari Sharma (supra). So far as the question of consideration of Section 8(1) of the Act is concerned, the Tahasildar has, power to enquire into the correctness of the claim made by the party & should have referred the case for confirmation to the Board of Revenue. The object of conferment of such power on the Board of Revenue appears to prevent collusive or fraudulent acts or actions on the part of the intermediary or lower level officers to defeat the object of the Act.

This being the objective of Section 8(1) read with Section 38B of the Act, the Member, Board of Revenue while considering the order passed by the Tahasildar has lost sight of the fact that in the meantime two settlement operations in the locality, i.e. in the years 1973-74 & 1988-89 have been over & the property in question has been recorded in the name of the Government. More so, if Baidyanath Jena is aggrieved by any of such settlement, he was free to approach the appropriate forum by filing a duly constituted application in due time either by filing civil suit before the appropriate civil court or revision before the Survey Settlement authorities under the provisions of the Survey Settlement Act. Instead of doing so, he approached the Member, Board of Revenue by filing an application u/s 38B of the O.E.A. Act.

31. The Member, Board of Revenue has directed for settlement of the property in favour of Baidyanath Jena in sthitiban status & acceptance of rent after long lapse of 36 years vide impugned Order Dated 21.8.2004, which is thoroughly misconceived one & no plausible explanation has been given by Baidyanath Jena in his so-called application filed in the year 1997 before the Tahasildar-cum-O.E.A. Collector, Bhubaneswar u/s 8(1) of the Act why he has approached the said Court after a long lapse of 27 years & more so, he has not impleaded the G.A. Department, Government of Orissa as a party to the said dispute in whose name the property has been recorded & this fact has not been considered by the Member, Board of Revenue while adjudicating the matter u/s 38B of the Act.

32. The Member, Board of Revenue should have followed the procedure in accordance with law since the order passed u/s 38B of the Act is quasi judicial in nature. Apart from the same, factually Baidyanath Jena while submitting the application enclosing the documents in support of his claim has enclosed the rent receipts till the date of vesting i.e. 1954 & after the date of vesting in the year 1954, he submitted-Epadia before the Tahasildar, Sadar, Cuttack in his name vide SI. No. 374 whereas before the Member, Board of Revenue, it is stated in paragraph 6(ii) that at the time of vesting of the estate, the ex-intermediary

submitted Ekpadia to the Tahasildar, Sadar, Cuttack vide "Jamabandi" No. 303/28 at Sl. No. 346 & in paragraph 4 of the impugned order, the Member, Board of Revenue while recording the contentions raised by the Counsel appearing for Baidyanath Jena, he has recorded that the ex- intermediary submitted Ekpadia bearing "Jamabandi" No. 303/28 in favour of the Petitioner at serial number 364. That itself creates a doubt with regard to the entry of the name of Baidyanath Jena in the Jamabandi register, thereby the Member, Board of Revenue has not applied his mind in proper perspective.

33. In view of the foregoing discussions, we have no, hesitation to quash the impugned Order Dated 21.8.2004 passed by the Member, Board of Revenue in OEA Revision No. 16 of 2004 & to confirm the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar O.E.A. Misc. Case No. 33 of 1997. Accordingly, we quash the Order Dated 21.8.2004 passed by the Member, Board of Revenue in OEA Revision No. 16 of 2004 by confirming the Order Dated 27.1.1999 passed by the Tahasildar-cum-O.E.A. Collector, Bhubaneswar in O.E.A. Misc. Case No. 33 of 1997. Accordingly, the Writ Petition filed by the State bearing W.P.(C) No. 4649 of 2005 is allowed & the Writ Petitions bearing W.P.(C) Nos. 17155 of 2006 & 158 of 2010 are dismissed. However, there shall be no order as to costs.

Sanju Panda , J.

I agree.