

(1989) 07 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 140 of 1982

Sudam Charan Kanungo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-07-1989

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 38B, 8(1)
Orissa Government Land Settlement Act, 1962 — Section 7A, 7A(3)
Orissa Hindu Religious Endowments Act, 1951 — Section 19, 68

Citation : (1990) 1 OLR 22

Hon'ble Judges : L. Rath, J; K.C. Jagadev Roy, J

Bench : Division Bench

Advocate : R. Mohanty, M. Patra, B. Dagara and D. Deo, for the Appellant; U.S. Pattanaik and G.H. Panda for O.P. 4 and Addl. Standing Counsel for O.Ps. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—An order passed by the Member, Board of Revenue, Orissa u/s 38-B of the Orissa Estates Abolition Act exercising suo motu revisional jurisdiction and setting aside settlement of the disputed land in favour of the Petitioner is challenged in this writ application. It is the Petitioner's case that on his application for settlement of the disputed land on the ground that he had been in possession at the same since long having constructed the boundary wall and pucca rooms thereon, the Tahasildar, after due enquiry settled the land with him on 4-3-1978 and in pursuance of that the patta, Ext. 2, was also issued in his favour. Prior to such settlement on 4-3-1978, a case had been started at the instance of opp party No. 4, Shri Lingaraj Mahaprabhu, u/s 68 of the Orissa Hindu Religious Endowments Act, 1951 registered as O.A. Case No. 139/81 before the Assistant Commissioner of Endowments in respect of the very same land which was however dismissed for default. A suit had also been filed by opp party No. 4 for declaration of its title and recovery of possession numbered as T.S. 58/71-1 in the Court of the Munsif, Bhubaneswar and the same was also

dismissed for default on 12-11-1973. After the settlement of the disputed land with the Petitioner by the Tahasildar, a petition was filed by the State before the Board of Revenue invoking its suo moto power u/s 38-B of the Orissa Estates Abolition Act, 1951 (for short, the O.E.A. Act) to set aside the settlement in favour of the Petitioner questioning the same on various grounds. In the petition, prayer was made for exercise of the power u/s 7-A of the Orissa Government land Settlement Act, 1962 and to revise the order of the Tahasildar. The Board of Revenue assumed jurisdiction u/s 38-B of the O.E.A. Act and being of the view that the Tahasildar had settled the land with the Petitioner under the provisions of Section 8(1) of the O.E.A. Act held that the land was not settleable with the Petitioner under the provisions of that Act, and that the Tahasildar having exercised his jurisdiction wrongly, it had power to revise the order u/s 38-B of the Act and set aside the settlement. It is this order which is under challenge before us.

2. As appears from Annexure-1, the order sheets of the Tahasildar settling the land with the Petitioner, the order was passed by him in Misc. Case No. 54/77 (Vesting) as the Orissa Estates Abolition Collector of Bhubaneswar. The petition made by the Petitioner for settlement however was not u/s 8(1) of the O.E.A. Act which contemplates an existing tenancy under the ex-intermediary before the date of the vesting. It was the specific case of the Petitioner that he wanted settlement to be made in his favour because of his long possession and his house having been constructed on the land in question with boundary wall. It is also the admitted fact that prior to the settlement, a proceeding under the Orissa Prevention of land Encroachment Act, 1972 had been started against the Petitioner in respect of the very same and by the Tahasildar and a fine had also been collected from him for unauthorised occupation. The order of settlement shows to have been passed not because the Petitioner was a tenant under the ex-intermediary and had become a tenant under the State, but because of his long peaceful possession over the land having constructed his house thereon. As a matter of fact, it is well settled that no petition u/s 8(1) of the O.E.A. Act is contemplated to be decided as a matter of fact by the Tahasildar between contesting parties. As the only power at the Tahasildar to settle the land with the Petitioner could be either under the Orissa Government land Settlement Act, 1962 or the Urban Land Settlement Rules, 1959 even though he purported to have passed orders as O.E.A. Collector, we are of the view that mere designation of the officer or his signing the order in a particular capacity would not change the nature of the order as long as he had power in another capacity to settle the Land. It might be that no such order was to have been passed in a vesting case but since the power was undoubtedly otherwise available to the Tahasildar who was also the O.E.A. Collector, the exercise of his power would be referable back to the authority vested in him under the proper statute or order.

3. Since we are reaching the conclusion that the land was in effect settled with the Petitioner under the provisions of the Orissa Government land Settlement Act; it goes without saying that a petition before the Board of Revenue u/s 38-B

of the O.E.A. Act; to set aside such settlement did not lie and the Board also could not have exercised any power under the said section for the purpose. But the question does not rest there. As appears from the petition made before the Board, though it was purported for be made u/s 38B of the O.E.A. Act yet the relief Sought for was u/s 7-A of the Orissa Government land Settlement Act. It is not disputed that at the relevant time the Board had the power to set aside a settlement in suo motu capacity u/s 7A of the Orissa Government land Settlement Act. Hence, in a case of settlement under the provisions of that Act, the power of revision though not available u/s 38-B of the O.E.A. Act, yet could be validly exercised u/s 7-A(3) of the Govt. land Settlement Act. Such exercise of power by the Board would be valid on the same logic for which the settlement of land is to be regarded as, having been made under the provisions of the Govt. land Settlement Act.

4. It is next to be seen whether even though the revisional power was exercised by the Board u/s 7-A(3) of the land Settlement Act, it was properly exercised under the provisions. Section 7-A(3) as it stood at the relevant time was as follows:

117-A(3). The Board of Revenue may of its Own motion or otherwise call for to examine the records of any proceedings in which any authority, subordinate to it has passed an order under this Act for the purpose of satisfying itself that any such order was not passed under mistake of fact or owing to fraud or misrepresentation and may pass such order thereon as it thinks fit:

Provided that no order shall be passed under this sub-section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter:

Provided further that no order shall be revised under this sub-section after the expiry of one year from the date of the order.

A reading of the section shows that before the power is exercised to cancel a settlement, satisfaction has to be reached that order was passed either under mistake of fact or owing to fraud or misrepresentation and before the order is passed the affected person is to be given reasonable opportunity to be heard. The notice issued to the Petitioner u/s 7-A(3) of the Act is not on record. In the petition filed before the Board of Revenue invoking its suo motu revisional powers the settlement was assailed urging that the Tahasildar had no jurisdiction to settle the land, the same being situated within the limits of the Capital and was otherwise settleable, if at all, under the urban land Settlement Rules; that the encroachment by opp party No. 1 of the Govt. land did not entitle him for a settlement and further that even if it was taken that the encroachment was prior to the vesting, yet the Petitioner did not acquire any right and title to possess the same without a valid lease granted by the ex-trustee intermediary with the permission of the Endowment Commissioner u/s 19 of the O.H.R.E. Act, 1951. The order of the Board cancelling the lease was on the footing that the land could

not have been settled with the Petitioner u/s 8(1) of the O.E.A Act, and that if the settlement was to be treated as one under the Orissa Government land Settlement Act, it was illegal since there was no statement that any publication by beat of drums was made or that the Gram Panchayat was consulted. To observe the feast, a settlement under the Govt. land Settlement Act is not available to be disturbed merely because of such reason, unless the ingredients of Section 7-A(3), namely, that it was made either due to mistake of fact or due to fraud or misrepresentation are present. No such specific allegations were brought to the notice of the Petitioner with opportunity to him to meet them or consideration or such factors was also made by the Board of Revenue. The order baving not been passed upon factors germane to Section 7-A(3), it has to be held that the revisional power was not properly exercised and hence the order is to be quashed.

5. In the result, the writ petition is allowed and the order passed by opp party No. 2 is quashed. There shall be no order as to costs.

K.C. Jagadeb Roy, J.

6. I agree.

Writ petition allowed.