

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.358 of 2005

Smt. Banashree Mahakud ..... Appellant  
Mr. R.K. Mohanty, Advocate

-Versus-

Executive Engineer (R & B), ..... Respondents  
Bhadrak & Others  
Mr. YSP Babu, AGA

CORAM:  
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:04.12.2023

1. The appellant has filed the instant appeal under Section 100 of the Civil Procedure Code, 1908 questioning the correctness of the impugned judgment in Title Appeal No.38 of 1999, whereby, the judgment and decree in Title Suit No.90 of 1996 stands set aside on the grounds inter alia that the same is against the weight of evidence and not in accordance with law.
2. The plaintiff as appellant instituted the suit for declaration of her occupancy right over the suit schedule land and permanent injunction against the respondents. The State contested the suit with a joint WS filed by the respondents. The case of the plaintiff is that C.S. Khata No.69 stood recorded in the name of the then District Board, Balasore with status 'Jamadharjya Jogya' and later, it was leased out in favour of her grandfather, who possessed the same by constructing a thatched house over it. It also pleaded that in the year 1984, the plaintiff applied for rent fixation in respect of the suit land registered as R.F. Case No.3105 of 1984, wherein,

respondent No.3 settled the suit land by order dated 30<sup>th</sup> October, 1985 and issued rent schedule declaring her as a raiyat. With the above pleading, the occupancy right was claimed by the plaintiff, considering which, the court of 1<sup>st</sup> instance decreed the suit. In other words, objection of the defendants was rejected declaring the plaintiff's occupancy right over the suit land.

3. The respondents challenged the findings of the court in appeal. The learned Lower Appellate Court overruled the decision in Title Suit No.90 of 1996 and allowed the appeal with the conclusion that such a direction to record the suit land in favour of the plaintiff in Misc. Case No.2899 of 1988 is impermissible under law and against the provisions of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the Act'). It has been further concluded that the plaintiff could manage to settle the suit land in her favour in connivance with the local revenue authority, who did not have the power to do so and also while dealing with a suo motu resumption proceeding. Being aggrieved of, the plaintiff filed the instant appeal on the ground that the learned Lower Appellate Court could not have ignored recognition of her occupancy status and when acceptance of rent stands proved and never challenged at any point of time.

4. Heard Mr. Mohanty, learned counsel for the appellant and Mr. Babu, learned AGA for the State appearing for the respondents.

5. Mr. Mohanty, learned counsel for the appellant submits that during 1928 settlement, Sabik RoR in respect of suit land under Khata No.69 was published in the name of District Board, Balasore liable to fixation of fair and equitable rent which was leased out in favour of the appellant's grandfather. It is contended that all the District Boards were abolished by virtue of Odisha Act

7 of 1960 with effect from 26<sup>th</sup> January, 1961 and accordingly, the land with District Board at Balasore stood vested with the Government in Revenue Department free from all encumbrances except the tenancy right in view of Section 8(1) of the OEA Act, inasmuch as, all the tenants under the intermediary continued to hold the lands under the State Government. According to Mr. Mohanty, R.F. Case No.3105 of 1984 was initiated by respondent No.3 under the OEA Act for fixation of rent in respect of the suit land measuring an area Ac.0.27 decimal, wherein, the original lease deed and rent receipts prior to 1960 were filed and by order dated 30<sup>th</sup> October, 1985 rent was fixed and rent schedule (Ext.2) was prepared leading to the collection of arrear rent and salami vide Ext.3 with the tenancy ledger (Ext.4) prepared. In so far as the suit land is concerned, it relates to Plot No.1547 in respect of which arrear rent was realized from the plaintiff and it is contended that during 1989-90 major settlement, RoR in respect of C.S. Plot Nos.1547 and 1566 stood recorded in the name of the State Government. After such recording, it is further pleaded that suo motu resumption proceeding was initiated with an order passed therein vide Annexure-6 with a direction for correction of the revenue record, however, in 1990, encroachment proceeding in L.E. Case No.268 of 1990 was initiated for eviction of the appellant in respect M.S. Plot Nos.1918 and 1891 under M.S. Khata No.1014 and finally, eviction order under Ext.7 was passed. It is lastly submitted that despite an order in Misc. Case No.2899 of 1988 i.e. Ext.6, no rent was accepted nor any correction was made to the RoR, as a result of which, the appellant filed the suit for a declaration that she has acquired right of occupancy vis-à-vis the schedule land and also to restrain the respondents from entering into the land and disturbing her peaceful possession. With the above facts on record not being disputed, Mr. Mohanty contends that the suit was rightly decreed in favour of the RSA No.358 of 2005

appellant but without any justifiable reason, it was set aside by the court in appeal.

6. Mr. Babu, learned AGA for the State appearing for the respondents would submit that the decision of the learned Lower Appellate Court is perfectly justified and in accordance with law since the suit land could not have been settled with the appellant in R.F. Case No.3105 of 1984 and Misc. Case No.2899 of 1988. The reason assigned by the court below, as according to Mr. Babu, learned AGA for the State, is in confirmity with Section 8(1) of the OEA Act. In other words, it is contended that such settlement in favour of the appellant could not have been permitted as the OEA, Collector-cum-Tahasildar, Bhadrak is not competent and legally authorized. The learned Lower Appellate Court in view of the fraud noticed, as finally submitted, rightly interfered with the decree and hence, impugned decision calls for no interference.

7. Considering the pleadings on record, the following substantial questions of law are formulated:

(i) Whether the learned lower appellate court was correct in ignoring the rent schedule i.e. Annexure-2 issued under the provisions of the OEA Act while dismissing the suit?

(ii) Whether the learned court below was justified in not taking cognizance of recognition of the occupancy status of the plaintiff under Section 8(1) of the OEA Act so declared by the authority concerned?

(iii) Whether it was correct to interfere with the decree of the suit when resumption proceeding and order passed therein have not been challenged and when such challenge is barred under Section 39 of the OEA Act?

8. The suit land corresponds to Plot Nos.1547 and 1566 under CS Khata No.69 appertains to Plot Nos.1892, 1892/2362 and 1918 of M.S. Khata No.1014. The C.S. plots stood recorded with the District Board, Balasore and subsequently settled in the name of PWD Department as made to reveal from Exts.9 and 1 respectively. The learned civil court declared occupancy right in favour of the plaintiff in respect of both the C.S. plots. Considering the order in R.F. Case No.3105 of 1984 and order dated 15<sup>th</sup> May, 1989 in Misc. Case No.2899 of 1988, whereby, correction to the MS RoR was directed confirming the possession of the plots, the occupancy right was declared in favour of the appellant. The learned Lower Appellate Court, however, overruled it with a view and conclusion that fraud was perpetuated to ensure the plots settled with the appellant and in so far as the above proceedings are concerned, the same are nonest in the eye of law since defendant No.3 did not have the authority to do so.

9. As regards the lease, the contention of the plaintiff is that it was in favour her grandfather in respect of C.S. Khata No.69. Not a scrap of document was produced before the courts below in support of the alleged lease. The plaintiff did not bother to cause production of any such record regarding the lease on the strength of which the occupancy right was demanded. The plaintiff heavily relied on Ext.6 and the order in R.F. Case No.3105 of 1984 and other documents, such as, Exts.2, 4, 5 and 5/a, which are the Rent Schedule, Tenant Ledger and rent receipts respectively. It is claimed that the lease document was produced before defendant No.3 which led to the settlement of the plot in R.F. Case No.3105 of 1984 followed by the order in Misc. Case No.2899 of 1988. The details of the lease could not be elicited by the plaintiff nor did she make any attempt to call for record while demanding

the occupancy right in respect of Plot Nos.1547 and 1566. In fact, Plot No.1566 stood included with a direction to correct the M.S. RoR after order in Mis. Case No.2899 of 1988 was passed. In absence of any evidence regard the lease and particular details brought on record, in the considered view of the Court, it was therefore rightly not given any weightage and importance. In other words, the learned Lower Appellate Court did not commit any illegality in not accepting the plea of tenancy of the plaintiff.

10. As to the orders in R.F. Case No.3105 of 1984 and Misc. Case No.2899 of 1988, the learned Lower Appellate Court further held that defendant No.3 had no authority to settle the plots in favour of the appellant which is not permissible. The occupancy right has been declared in exercise of jurisdiction under Section 8(1) of the OEA Act which is challenged by the State. If the above provision is read and understood, it relates to confirmation of tenancy by a deeming effect when the tenant is treated so under the State Government after vesting provided he had been inducted as such by the ex-intermediary and the OEA authority is only to undertake an administrative exercise. In other words, no adjudicatory process is contemplated with any application received from any one claiming himself as a tenant under the ex-proprietor except an enquiry necessary to ascertain existence of such tenancy, which is by virtue of Section 8(1) of the OEA Act.

11. Regarding the effect of Section 8(1) of the OEA Act, this Court in **Radhamani Dibya and Others Vrs. Braja Mohan Biswal and Others AIR 1984 Ori 77** held and observed that Section 8(1) of the OEA Act makes no provision for any such application to be entertained and for the said purpose, no enquiry is contemplated, the same being merely declaratory of the continuity of the tenure of tenancy as it was immediately before the date of vesting. The said view stands reiterated in **Basanti Kumari Sahu Vrs. State of RSA No.358 of 2005**

**Orissa and Others 1992 (I) OLR 41**, wherein, it is concluded that the State being the owner is entitled to receive rent from its tenants including persons deemed to be tenants under Section 8(1) of the OEA Act as such rights are akin to a landlord. It has been further held and observed therein that the statutory authority has been vested with power to collect rent on behalf of the State from its tenants and where the revenue records indicate a person as a tenant and the Government has been receiving rent from such person, there is no difficulty for the OEA authority to accept the same but where there is no record that a person is a tenant but nevertheless comes forward and offers rent for acceptance, the authority is under obligation to satisfy himself that the claim in that regard is justified and for such limited purpose, an enquiry is necessary and that performance has to be administrative in nature and its mode and nature would have to be determined by the facts and circumstances of a particular case. So, therefore, in the decision (supra), it was held that though an enquiry is contemplated and the decision may partake the trapping of an adjudication, it is not one in exercise of powers under Section 8(1) of the OEA Act which does not authorize a proceeding and adjudication but the enquiry is akin to an enquiry necessitate to be an undertaken by any agent of a landlord and where in exercise of such authority, land is settled in course of a proceeding conferring the tenancy right, it would be without jurisdiction. Having regard to the facts of the present case, in absence of any evidence on lease and manner of enquiry held on earlier tenancy vis-à-vis the plaintiff's grandfather, the adjudicatory exercise which was undertaken by defendant No.3 in R.F. Case No.3105 of 1984 in respect of one of the plots and thereafter, by order under Ext.6 in Misc. Case No.2899 of 1988 shall have to be held as beyond jurisdiction not conceived of and contemplated under the OEA Act as Section 8(1) thereof is declaratory in nature, the RSA No.358 of 2005

fact and position of law which was lost sight of by the court of 1<sup>st</sup> instance but was duly corrected by the learned Lower Appellate Court.

12. Regarding the fraud alleged by the State, it is to be held that due to want of evidence in support of the alleged lease, the Court does not find any reason to interfere with the finding of the Lower Appellate Court which is to the effect that the appellant stage managed the orders in R.F. Case No.3105 of 1984 and Misc. Case No.2899 of 1988. It is reiterated that absence of credible evidence on the alleged lease and other details regarding the possession ever since such lease, the Court is having no other option except to conclude that the tenancy could not have been declared in favour of the plaintiff, furthermore when, there is no clarity on record that defendant No.3 had exercised the jurisdiction with an administrative enquiry. Consequently, the substantial questions of law stand answered against the appellant.

13. Hence, it is ordered.

14. In the result, the appeal is hereby dismissed, however, in the circumstances, there is no order as to cost.

(R.K. Pattanaik)  
Judge