A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
R.S.A. No.437 of 2005
(In the matter of an appeal under Section 100 of the Code of Civil Procedure)

Gopinath Sahu and others .... ***Appellants***

-versus-

State of Orissa and others .... ***Respondents***

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellants **-** Ms. Sumitra Mohanty, Advocate.

For Respondents - Mr. Suvashis Pattnaik, Addl. Govt. Advocate.

CORAM:
MR. JUSTICE A.C.BEHERA

Date of Hearing :03.01.2024 :: Date of Judgment :05.02.2024

A.C. Behera, J. This Second Appeal has been preferred by the Appellants against the reversing judgment.

2. The Appellants of this Second Appeal were the plaintiffs before the Trial Court in the suit vide T.S. No.473 of 1996 and they were the respondents before the First Appellate Court in T.A. No.20 of 2002.

The Respondents of this Second Appeal were the defendants before the Trial Court in the suit vide T.S. No.473 of 1996 and they were the appellants before the First Appellate Court in T.A. No.20 of 2002.

3. The suit of the plaintiffs vide T.S. No.473 of 1996 was a suit for declaration and permanent injunction.

4. As per the averments made by the plaintiffs in their plaint, they (plaintiffs) are the successors of three branches of their family i.e. the branches of Raghunath Sahu, Gobinda Sahu and Baidhar Sahu.

Raghunath Sahu and Gobinda Sahu were the sons of late Nanda Sahu. Baidhar Sahu was the son of Burundaban Sahu.

5. On 17.03.1944, Raghunath Sahu, Gobinda Sahu and Baidhar Sahu were inducted as tenants of the suit properties described in Schedule B, C and C-1 of the plaint for agricultural purpose by the ex-intermediaries of the suit area i.e. Chaitan Sahu, Nityananda Sahu and Aditya Chandra Sahu through a Hukumanama. But, as Raghunath Sahu was the Karta of their joint family, for which, that Hukumanama was executed by the ex-intermediaries only in the name of Raghunath Sahu on behalf of their entire family members. Accordingly, since 17.03.1944, the members of the aforesaid three branches i.e. Raghunath Sahu, Gobinda Sahu and Baidhar Sahu were possessing the suit properties for agricultural purposes on payment of annual rent to the ex-intermediaries and accordingly, all the family members of Raghunath Sahu, Gobinda Sahu and Baidhar Sahu were possessing the suit properties jointly by living in their joint mess. During the continuation of the possession over the suit

properties by the family members of Raghunath Sahu, Gobinda Sahu and Baidhar Sahu, the ex-intermediaries estates of the suit area were abolished in the year 1954. So, due to the abolition of the ex-intermediary estates, the suit properties were vested with the Government (State of Odisha) being free from all encumbrances. Even though, the suit properties were vested with the State Government due to the abolition of the ex-intermediary estates, but the family members of Raghunath Sahu, Gobinda Sahu and Baidhar Sahu continued their possession over the suit properties as before, for which, their tenancy rights over the suit properties were not affected and their tenancy rights over the suit properties were protected as per the provisions of law envisaged under Section 8(1) of the O.E.A. Act, 1951. So, after the abolition of the ex-intermediary estates in the suit area, the predecessors of the plaintiffs i.e. Raghunath Sahu, Gobinda Sahu and Baidhar Sahu possessed the suit properties on behalf of their entire family members on payment of annual rent of the suit properties to the Government. Because, after vesting of the ex-intermediary estates, Zamabandi of the suit properties was submitted in the name of Raghunath Sahu (one of the ancestor of the plaintiffs' family) by the ex-intermediaries indicating continuation of possession of the suit properties by the plaintiffs' family members before the abolition of the ex-intermediary estates and for

settlement of the suit properties in their favour. On the basis of Zamabandi submitted by the ex-intermediaries, the tenant's ledger of the suit properties vide Zamabandi No.44/5 was opened by the Revenue Authorities in the name of Raghunath Sahu on behalf of the entire family members of the plaintiffs and accordingly, the Government accepted rents of the suit properties regularly in each year from the predecessors of the plaintiffs as per Zamabandi No.44/5 after abolition of the ex-intermediary estates.

When in the year 1966, there was settlement operation in the suit area, during that time, the Settlement Authorities prepared the draft R.o.R. of the suit properties in favour of the ancestors of the plaintiffs. But, the said order of the Settlement Authorities regarding the preparation of draft R.o.R. of the suit properties in favour of the predecessors of the plaintiffs was challenged by the local Tahasildar, Nimapara (defendant No.3) by preferring an Appeal vide Appeal Case No.2324 of 1983 before the Settlement Officer. But, the said Appeal of the Tahasildar was dismissed. When, the Settlement Authorities prepared the R.o.R. of the properties described in Schedule-C-1 of the plaint in favour of the plaintiffs, to which, the State Government (defendant No.1) challenged by preferring a revision before the Commissioner of Land Records and Settlement.

Thereafter, the Tahasildar, Nimapara as per the direction of the Collector, Puri tried to evict the plaintiffs from the suit properties forcibly, for which, the plaintiffs approached the Hon'ble Courts by filing a writ vide O.J.C. No.5289/96 against the defendants, in which, there was a specific order by the Hon'ble Courts that, the plaintiffs cannot be evicted forcibly from the suit properties without due process of law.

Then, the defendants challenged that order of the Hon'ble Courts passed in O.J.C. No.5289/96 by filing an application to review that order. But, that prayer of the defendants in order to review the earlier order passed in O.J.C. No.5289/96 was refused by the Hon'ble Courts.

Thereafter, the local Tahasildar (defendant No.3) initiated a proceeding under the O.P.L.E. Act for eviction of the plaintiffs from the suit properties. So, without getting any way, the plaintiffs approached the Civil Court by filing the suit vide T.S. No.473 of 1996 against the defendants seeking leave under Section 80 (2) of the CPC, 1908 for exemption of the issuance of statutory notice under Section 80 (1) of the CPC, 1908 praying for declaration that, they (plaintiffs) are stithiban tenants in respect of the Schedule B, C and C-1 properties and for permanent injunction against the defendants along with other reliefs, to which, they (plaintiffs) are entitled for.

6. Having been noticed from the Court in T.S. No.473 of 1996, only the defendant No.3 contested the suit of the plaintiffs by filing its written statement denying the averments made by the plaintiffs in their plaint by taking his stands inter-alia therein that, in absence of notice under Section 80 (1) of the CPC and in view of the provisions of law envisaged under Section 16 of the O.P.L.E. Act, the suit of the plaintiffs against them (defendants) is not maintainable under law, because the plaintiffs have no cause of action to file the suit.

The specific case of the defendant No.3 in his written statement to defeat the suit of the plaintiffs was that, as per the settlement record, the suit properties are under the Anabadi khata of the Government and the Kissam thereof is "Gramya Jungle". The suit properties belong to the State. They (defendant Nos.3 & 4) are in-charge thereof for maintaining and preserving the same on behalf of the Government and they (defendant Nos.3 & 4) are the competent persons to take actions as per the provisions of the O.P.L.E. Act for eviction of the encroachers and trespassers of the suit properties, because the suit properties are Government properties.

The further case of the defendant No.3 was that, the intermediary interest in respect of the suit properties was vested with the State in the year 1953 due to the abolition of the ex-intermediary system and the suit

properties were vested with the State Government being free from all encumbrances. Therefore, the State has valid right, title, interest and possession over the suit properties. Neither the predecessors of the plaintiffs nor the plaintiffs were the tenants of the suit properties under the ex-intermediaries before the vesting of the ex-intermediary estates. The ex-intermediaries had not submitted any Zamabandi in respect of the suit properties in favour of any of the ancestors of the plaintiffs. The tenancy ledger in respect of the suit properties, which has been shown to have been opened in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu, the said tenancy ledger was opened in the R.I. office fraudulently without any basis. For which, no order of any Competent Authority has been reflected on the body of the said tenancy ledger. The rent receipts showing payment of rents in respect of the suit properties cannot create any right in favour of the plaintiffs. Because the suit properties have been recorded in Rakhit Anabadi khata with kissam "Gramya Jungle" under Hal Khata No.252 by the Settlement Authorities with illegal note of possession in favour of the plaintiffs in the remarks column of the Hal suit Plot No.94. When, it was found that, the plaintiffs have fraudulently managed to record their names in the draft R.o.R. during the settlement operation in respect of the suit properties, then the collection of the rent of the suit properties from the plaintiffs has been

stopped. A revision case was filed by the defendant No.3 before the charge officer, Puri for deletion of the illegal possession note of the plaintiffs from the remark column of the Hal suit Plot No.94. But, the same was disallowed. For which, the defendant No.2 i.e. the Collector, Puri filed a revision case before the Commissioner of the Land Records and Settlement, Cuttack. When the plaintiffs took step to install a petrol pump on some portions of Hal suit Plot No.94 for Nabakalebar festival of Lord Jagannath, Puri, then the defendants objected the same, for which, the plaintiffs filed O.J.C. No.5289/96 and Civil Revision No.67/96 before the Hon'ble Courts, in which, the Hon'ble Courts directed not to evict them (plaintiffs) from the suit properties without resorting to due process of law. Thereafter, they (defendants) started encroachment case No.1280/96 under the O.P.L.E. Act against the plaintiffs to evict them (plaintiffs) from the suit properties. Therefore, the claim of occupancy rights or tenancy rights of the plaintiffs over the suit properties is an afterthought. The initiation of encroachment proceeding to evict the plaintiffs from the suit properties by them (defendants) is properly legal and valid and the same is in accordance with law. Because the plaintiffs have no interest over the suit properties.

Therefore, the suit of the plaintiffs is liable to be dismissed against them (defendants) with costs.

7. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 8 (eight) numbers of issues were framed by the Trial Court and the said issues are:-

Issues

i. *Whether the suit is maintainable?*
ii. *Whether the plaintiffs have locus standie to file the suit?*
iii. *Whether there is cause of action for the suit?*
iv. *Whether the suit is grossly undervalued?*
v. *Whether the suit is hit U/s.16 of the O.P.L.E. Act?*
vi. *Whether the plaintiffs have acquired occupancy rights/sthitiban rights over the suit land?*
vii. *Whether the plaintiffs have acquired right, title, possession over the suit land by way of adverse possession?*
viii. *Whether the plaintiff are entitled to the relief sought for?*

8. In order to substantiate the aforesaid reliefs sought for by the plaintiffs in their plaint against the defendants, they (plaintiffs) examined six numbers of witnesses on their behalf including the defendant No.2 as P.W.3 and relied upon series of documents on their behalf vide Exts.1 to 22.

9. On the contrary, in order to nullify the suit of the plaintiffs, one witness was examined on behalf of the defendants i.e. the R.I. of the Konark, RI circle as D.W.1 and relied upon two documents vide Exts.A & B on their behalf.

10. After conclusion of hearing and on perusal of the materials, documents and evidence available in the Record, the Trial Court answered all the issues including the issue No.6 in favour of the

plaintiffs and against the defendants and basing upon the findings and observations made by the Trial Court in all the issues in favour of the plaintiffs and against the defendants, the Trial Court decreed the suit of the plaintiffs vide T.S. No.473 of 1996 as per its judgment and decree dated 28.11.2001 and 12.12.2001 respectively on contest and declared that, the plaintiffs have acquired their occupancy rights over the suit properties and injuncted the defendants from interfering into the possession of the plaintiffs over the suit properties and also injuncted the defendants to evict them (plaintiffs) from the suit properties without due process of law by assigning the reasons in issue No.6 that, due to the entry of the name of the ancestor (predecessor) of the plaintiffs i.e. Raghunath Sahu in the tenancy ledger of the suit properties and acceptance of rents of the suit properties by the Government from the predecessors of the plaintiffs and after them from the plaintiffs after the abolition of the ex-intermediary estate leads to the conclusion that, the Government has accepted the predecessors of the plaintiffs and after them to the plaintiffs as the tenants of the suit properties and the defendants have failed to establish their pleas i.e. about the creation of tenancy ledger of the suit properties fraudulently in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu by the ancestors of the plaintiffs. For which, the plaintiffs being the successors

of their ancestors, they are declared to have acquired their occupancy rights over the suit properties and they (plaintiffs) are in possession over the suit properties since the time of ex-intermediaries, for which, the defendants are injuncted from interfering into the possession of the plaintiffs over the suit properties.

11. On being dissatisfied with the aforesaid judgment and decree passed on dated 28.11.2001 and 12.12.2001 respectively in T.S. No.473 of 1996 by the Trial Court in favour of the plaintiffs and against the defendants, they (defendants) challenged the same by preferring the First Appeal vide T.A. No.20 of 2002 being the appellants against the plaintiffs by arraying them (plaintiffs) as respondents.

12. After hearing from both the sides, the First Appellate Court allowed the First Appeal vide T.A. No.20 of 2002 of the defendants on contest vide its judgment dated 31.08.2005 & 05.09.2005 respectively and set aside the above judgment and decree passed by the Trial Court in T.S. No.473 of 1996 in favour of the plaintiffs assigning the reasons that, the tenancy ledger vide Ext.21 in respect of the suit properties in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu is held to be forged one and the documents relied by the plaintiffs are not sufficient to establish the occupancy right of any of the ancestors of the plaintiffs as well as the plaintiffs over the suit properties and the

rent receipts of the suit properties relied by the plaintiffs cannot create their tenancy right over the suit properties. Because, the tenancy ledger vide Ext.21 is held to be forged one. Ext.2 (Hukumanama) issued by the ex-intermediaries in respect of the suit properties in favour of the ancestor of the plaintiffs is not admissible under law being unregistered one and the rent receipts vide Exts.3, 4, 5 & 6 might have been forged. For which, the exhibited documents relied by the plaintiffs cannot create the tenancy rights of the plaintiffs in the suit properties.

13. On being aggrieved with the aforesaid judgment and decree passed by the First Appellate Court on dated 31.08.2005 and 05.09.2005 respectively in T.A. No.20 of 2002 in favour of the defendants setting aside the judgment and decree passed by the Trial Court in T.S. No.473 of 1996 in favour of the plaintiffs, they (plaintiffs) challenged the same by preferring this Second Appeal being the Appellants against the defendants by arraying them (defendants) as Respondents.

14. This Second Appeal was admitted on formulation of the following substantial questions of law i.e.:-

> *i. whether the lower Appellate Court i.e. the First Appellate Court had jurisdiction to decide the genuineness of the tenancy ledger in absence of any action taken by the State Government under Section 5(1) of the O.E.A. Act challenging the agricultural lease in favour of the plaintiffs, which was prior to 01.01.1946 and to decide the tenancy of the plaintiffs in view of the bar under Section 39 of the O.E.A. Act?*

ii. Whether the plaintiffs are entitled to be statutorily recognized as deemed tenants under Section 8(1) of the O.E.A. Act?

15. I have already heard from the learned counsel for the Appellants and as well as the learned Additional Government Advocate for the Respondents including the State.

16. As per the plaintiffs' case, on the basis of Hukumanama (Ext.2), the ancestors of the plaintiffs were inducted as tenants over the suit properties on 17.03.1944 by the ex-intermediaries and on the basis of such induction as tenants under the ex-intermediaries, the ancestors of the plaintiffs were cultivating the suit properties and they were paying rent of the suit properties to the ex-intermediaries and after abolition of the ex-intermediary system, the ex-intermediaries submitted zamabandi in respect of the suit properties in favour of the ancestors of the plainiffs stating about the occupation/possession of the ancestors of the plaintiffs over the suit properties as tenants and accordingly, on the basis of the said zamabandi, tenancy ledger vide Ext.21 of the suit properties was prepared/opened in the R.I. office of the State Government in the name of one ancestor of the plaintiffs i.e. Raghunath Sahu (who was the Karta of their joint family) and thereafter, they (ancestors of the plaintiffs) continued to pay the rents of the suit properties to the Government by possessing the suit properties as before. After the death of the ancestors

of the plaintiffs, their ancestors' tenancy rights over the suit properties devolved upon them (plaintiffs) and they (plaintiffs) also continued to pay the rents of the suit properties to the State/Government by possessing the suit properties like their ancestors and they (plaintiffs) are also in possession over the suit properties.

The defendants have not denied/disputed about the opening of the tenancy ledger of the suit properties vide Ext.21 in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu after the abolition of the ex-intermediary system and as well as the acceptance of the rents of the suit properties by the Government from the ancestors of the plaintiffs and after them from the plaintiffs.

Undisputedly the suit properties are agricultural properties. The witness of the defendants i.e. D.W.1 (R.I., Konark) has deposed in paragraph No.4 of his deposition by answering the questions of the learned counsel of the plaintiffs that, "*as per the tenancy ledger vide Ext.21, the Zamabandi No.44/5 was recorded in the name of Raghunath Sahu (who is the one ancestor of the plaintiffs) and the rents of the suit properties have been collected from the ancestors of the plaintiffs on the basis of the tenancy ledger vide Ext.21 up to the year 1981. The tenancy ledger vide Ext.21 is being verified by the Collector and the A.D.M. in every alternative year.*"

17. So, in view of the aforesaid admissions made by the defendants through their witness i.e. D.W.1 (R.I. Konark, who is a public officer), on the basis of the tenancy ledger vide Ext.21 of the suit properties in the name of Raghunath Sahu (one of the ancestor of the plainiffs and who was the Karta of their joint family at that time), Zamabandi of the suit properties vide Zamabandi No.44/5 was recorded in the name of that ancestor of the plaintiffs i.e Raghunath Sahu and thereafter the rents of the suit properties were collected (as reflected in the tenancy ledger vide Ext.21) from the ancestors of the plaintiffs and after them from the plaintiffs up to the year 1981 and the said tenancy ledger vide Ext.21 was verified in every alternative year by the defendant No.2 (Collector, Puri) and the A.D.M., Puri.

18. It is the settled propositions of law that, the tenancy ledger like Ext.21 prepared by the public officer is a public document and there is presumption of regularity of all official acts performed by the public officers in due discharge of their official duties.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> ***(i) 2002 (II) O.L.R. (NOC)—19—Abhimanyu Senapati Vrs. Tahasildar, Marsaghai and another—***
>
> Tenancy ledger is a public document.

(ii) AIR 1979 (S.C.) 1303—Jai Dutt Vrs. State of UttarPradesh and others—Indian Evidence Act, 1872—Section 114 (e)—

There is presumption for regularity of official acts.

(iii) 2021 (1) Civ.C.C. 498 (S.C.)—Iqbal Basith and others Vrs. N. Subbalakshmi and others—Evidence Act, 1872—Section 114 (e)—(Para 12)—Presumption—Official Acts—

There shall be presumption that, all official acts have been regularly performed.

Onus lies on the person, who disputes the same to prove otherwise.

19. So, by applying the principles of law enunciated in the ratio of the aforesaid decisions coupled with the aforesaid evidence of the defendants through D.W.1 (who is a Government official), it cannot be held that, the tenancy ledger vide Ext.21 and Zamabandi No.44/5 of the suit properties (those were opened in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu) were forged and fabricated documents. Because, the said documents are public documents and that too, the said documents have been prepared by the public officials/authorities in due discharge of their official duties and the same were verified regularly by the defendant No.2 (Collector of the District) and A.D.M. Therefore, the findings and observations made by the First Appellate Court in the judgment and decree of T.A. No.20 of 2002 disregarding the findings and observations concerning the genuineness of the Ext.21 (Tenancy Ledger), Zamabandi No.44/5 and the rent

receipts in respect of the suit properties made by the Trial Court cannot be acceptable under law. For which, in other words, it can be held that, the tenancy ledger vide Ext.21 of the suit properties in the name of the ancestor of the plaintiffs i.e. in the name of Raghunath Sahu (who was the head of their joint family) was opened properly by the State Government after the abolition of ex-intermediary estates on the basis of clearance made by the ex-intermediaries and the rents thereof were accepted by the State/Government from the predecessors of the plaintiffs and thereafter from the plaintiffs properly/lawfully as per Exts.5 & 6. For which, on the basis of the documents vide Exts.1 to 22 relied by the plaintiffs, they (plaintiffs) were accepted by the State/Government as the tenants of the suit properties under the State/Government. Therefore, the defendants including the State (defendant No.1) are estopped under law to challenge the occupancy rights of the plaintiffs over the suit properties.

On this aspect the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-

> ***(i) 2001 (1) O.L.R.208—Nrusingha Charan Samal and anr. Vrs. Kuntala Kumari Samal and Ors.—(Para 8)***—Agrcicultural Land—Hata Patta—
>
> Agricultural land can be leased out orally by acceptance of rent and delivery of possession "Hata Patta" though not registered can be taken as evidencing oral lease.

(ii) 40 (1974) C.L.T. 888—Jagannath Nanda Vrs. Bishnu Dalei and Ors.—(Para 8)—

Clause 9 of Section 3 of the Orissa Tenancy Act says that the expression "Land Lord" includes Government. Consequently, for the purpose of the tenancy laws, Government is in the same position as an ordinary Private landlord. It is well settled that under the tenancy laws a formal document is not necessary to create an agricultural tenancy and a tenant can be inducted to an agricultural holding by mere acceptance of rent, where after he would acquire the status of a tenant.

(iii) 1973 (2) C.W.R. 987—Duryodhan Das Vrs. The Collector of Dhenkanal and ors.—(Para 3)—

Once a patta is granted and rent is collected, tenancy right is created in favour of the grantee and while Government is the landlord and the grantee becomes a tenant under the ordinary tenancy law, it is no more open to the Government in exercise of the powers of a grantor to withdraw from the lease.

(iv) 1992 (II) O.L.R.529—Manmohan Rout (and after him) Sundari Devi and others Vrs. State of Orissa and others—(Para 3)—

When undisputedly petitioners' names were included in the Tenant's Ledger by the revenue authorities and rent was accepted from them, there cannot be any manner of doubt that the petitioners were accepted as tenants under the State Government and that right cannot be taken away in any manner by any entry in the Record-of Rights. It is too well-settled that Record of Rights does not create or extinguish title and, therefore, the petitioners' right which they acquired by virtue of acceptance of rent from them by the revenue authority under 8(1) of the Orissa Estates Abolition Act cannot be whittled down in any manner.

(v) 37(1971)C.LT.379—Dhruba Charan Sahu Vrs. State of Orissa and Ors.—(Para 2)—

Under the provisions of the Orissa Tenancy Act, 1913, the petitioner acquired a tenant's right in the land, because, it is well settled that under the Orissa Tenancy Act, a tenant can be inducted to a holding by mere acceptance of rent, in which case he acquires the status of a tenant. The fact that the land in question belonged to Government and that, the landlord is the Government does not make any difference so far as the incidents of tenancy are concerned. That being the position, the Government cannot by a subsequent executive order extinguish the right which the petitioner has acquired in the land and much less can they forcibly enter on the land. (This decision finds support from the ratio of ***ILR 1961 Cuttack 595***; ***Basiruddin V. State of Orissa***).

(vi) 113 (2012) CLT—780—(Para 9)—Kalandi Jena Vrs. Smt. Basanti Sethi & others

1961 ILR (Cuttack) 595—Basiruddin & anr. Vrs. State of Orissa & Ors.

1964 ILR (Cuttack) 289—Bhikari Tripathy Vrs. Kashinath Mishra

1965 ILR (Cuttack) 22—State of Orissa and others Vrs. Bhakta Charan Naik & Ors.

35 (1969) CLT-552—The Collector of Puri Vrs. Budhinath Samantaray and anr.—Orissa Tenancy Act, 1913—Section 3(9)—Acquisition of Status of a Tenant—

Clause (9) of Section 3 of Orissa Tenancy Act, 1913 says that, the expression "land lord" includes Government. Consequently, for the purpose of the tenancy laws, Government is in the same position as an ordinary private land lord.

It is well settled that, under the tenancy laws, a formal document is not necessary to create an agricultural tenancy and a tenant can be inducted to an agricultural holding by mere acceptance of rent, where after he would acquire the status of a tenant.

(vii) 2014 (II) CLR—1217—Susanta Kumar Jena and anr. Vrs. Smt. Basanti Sethi and ors.—(Para 12)—Tenancy—Creation of—

Abadjogya Anabadi land recorded in the name of State of Orissa—Claim of lease by the ex-intermediary in favour of K—Tenants Ledger stood in the name of K and State accepted rent from him after vesting—K sold the land to G in 1966 and G sold a portion of it to F in 1978—A the widow of F sold the land purchased by her husband to O.P. No.1 (Respondent No.1) in 1983—Again G sold portions of his purchased land to O.P.No.1 and O.P. No.2 (Respondent Nos.1 & 2) in 1983—Dispute raised during the consolidation operation challenging the title of K and transferees.

Held, since Kameswar was paying rent from the date of preparation of Tenancy Ledger and thereafter the opposite party Nos.1 and 2 from the date of their purchase to the State Government after vesting, it clearly substantiated that, tenancy had been created in favour of Kameswar even in absence of any proof of any original lease. Once a tenancy was created in favour of Kameswar and the State after vesting recognized his tenancy, right accrued in favour of respondents (opposite party Nos.1 and 2) those are the purchasers from Kameswar to continue as recorded tenants and they were entitled to enjoy the disputed plot in question.

(viii) 2004(II) OLR—528—Choudhury Balaram Dash Vrs. The Commissioner, Consolidation, Orissa and others— (Paras 6 to 8)—O.E.A. Act, 1951—Sections 6 & 7—

Lands in dispute were part of an intermediary estate which vested with the State Government free from all encumbrances in

consonance with the O.E.A. Act. After vesting, the lands have been settled in favour of the petitioner under the O.E.A. Act and record of rights were prepared in his favour. That order not challenged by the O.P. and the same has attained finality. That order being a valid one, the Consolidation Authorities are bound by the said order.

(ix) 1986 (II) OLR—391—Dandapani Naik Vrs. State of Orissa represented by the Collector, Puri and another—Para 8—

After vesting of the estate in the year 1963, the plaintiff by virtue of his long continuous possession of the suit land since 1935 for more than 12 years became a settled raiyat within the meaning of Section 23 of the Orissa Tenancy Act, 1913 and acquired right of an occupancy raiyat under Section 24 of the Orissa Tenancy Act, 1913.

20. Here in this suit at hand, when the plaintiffs have been possessing the suit properties since the time of their ancestors i.e. since 17.03.1944 and when undisputedly the tenancy ledger of the suit properties vide Ext.21 has been opened by the Revenue Authorities of the State (defendant No.1) in favour of the plaintiffs and when the rents of the suit properties have been accepted from plaintiffs by the State/Government (defendants), since the time of the ancestors of the plaintiffs, then at this juncture, there cannot be any doubt about the acceptance to the occupancy rights of the plaintiffs over the suit properties by the State/ Government. For which, their occupancy rights over the suit properties cannot and shall not be taken away in any manner by the defendants from them (plaintiffs) by challenging the same subsequently.

When the suit properties were under ex-intermediary estates and when after abolition of ex-intermediary estates, the same vested with the Government being free from all encumbrances in consonance with the

O.E.A. Act and when after vesting of the suit properties with the State, the suit properties have been settled in favour of the plaintiffs under the O.E.A. Act on the basis of their possession prior to the abolition of ex-intermediary system i.e. since 17.03.1944 as per the clearance for the same by the ex-intermediaries and when after abolition of ex-intermediary estates, the Government/State has accepted the rents of the suit properties from the ancestors of the plaintiffs and thereafter from the plaintiffs by accepting/admitting their rights of occupancy over the suit properties, then, at this juncture, by applying the principles of law enunciated in the ratio of the above decisions, it is held that, the State/Government (defendant No.1) along with defendant Nos.2 & 3 are estopped under law to deny the occupancy rights of the plaintiffs over the suit properties. Because, such rights of the plaintiffs over the suit properties have already been created in favour of the plaintiffs on the basis of opening of the tenancy ledger and Zamabandi number in their favour and acceptance of rents from them.

21. As per the discussions and observations made above, when the findings and observations made by the First Appellate Court in its judgment and decree passed in T.A. No.20 of 2002 for setting aside the judgment and decree passed in T.S. No.473 of 1996 by the Trial Court have become inacceptable under law for the reasons assigned above and

when the reasons assigned by the Trial Court in T.S. No.473 of 1996 for passing the judgment and decree thereof in favour of the plaintiffs have become acceptable under law, then at this juncture, there is justification under law for making interference with judgment and decree dated 31.08.2005 and 05.09.2005 respectively passed by the First Appellate Court in T.A. No.20 of 2002 through this Second Appeal filed by the plaintiffs (Appellants).

Therefore, there is merit in the Appeal of the Appellants, the same must succeed.

22. In the result, this Second Appeal filed by the Appellants is allowed on contest, but without cost.

The judgment and decree dated 31.08.2005 and 05.09.2005 respectively passed by the First Appellate Court in T.A. No.20 of 2002 are set aside and the judgment and decree dated 28.11.2001 and 12.12.2001 respectively passed in T.S. No.473 of 1996 by the Trial Court in favour of the plaintiffs (Appellants) and against the defendants (Respondents) are confirmed.

(A.C. Behera),
Judge.

Orissa High Court, Cuttack.
5th February, 2024//Utkalika Nayak//
Junior Stenographer