PETITIONER:
RAGHUNATHE JEW AT BHAPUR

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 09/12/1998

BENCH:
Sujata V.Manohar, G.B.Pattanaik

JUDGMENT:

Pattanaik.J.

The appellant is a public deity and in this appeal the Judgment dated 13.11.92 of the Orissa High Court in Original Jurisdiction Case No. 2030 of 1987 is being challenged. The deity and the properties attached to it situate in the District of Dhenkanal, which was earlier a princely state and it became a part of State of Orissa after its merger in 1948. Under the provisions of Orissa Estates Abolition Act, 1952 (hereinafter referred to as the Act) a notification was issued by the Govt. of Orissa in Revenue Department on 27.2.68, declaring that the intermediary interests of Debottar Lakhraj's land in the District of Dhenkanal became vested in the State free from all encumbrances. In accordance with the provisions contained in the Act, it is the case of the appellant that on behalf of the deity an application was made before the tribunal and the tribunal declared the deity as a 'trust estate'. On 18th of March, 1974, in exercise of powers conferred under sub-section (1) of Section 3-A of the Act, the State Govt. issued another notification, declaring that (i) the intermediary interests of all intermediaries whose estate have been declared as trust estate under Chapter IIA of the said Act and (ii) those in respect of which claims and references made under the said Chapter were pending on the date of commencement of the Orissa Estate Abolition (Amendment) Act, 1970 (Orissa Act 33 of 1970 and (iii) the intermediary interests of all intermediaries in respect of all estates other than those which have already vested in the State have passed to and become vested in the State free from all encumbrances. The appellant thereafter through the Executive Officer of the deity filed an application under Section 6,7 and 8 of the Act for the settlement of land with the deity. The private respondents filed their objections pursuant to the notice issued in the aforesaid proceeding inviting objections from the public and the respondents claimed their tenancy right in respect of the lands belonging to the deity. The said proceeding which was registered as OEA Case No. 454/74 stood disposed of by the Order of the Estate Abolition Collector dated 23.9.77. The said Collector rejected the objection filed on behalf of the private respondents and rejected the claim of tenancy over the land and further directed that the lands in question be settled with the deity on fair and equitable rent. Pursuant to the said order, equitable rent was assessed and 'gutta'

was issued to the appellant. Though appeal is provided under the Act, the respondents did not prefer any appeal. However, after expiry of seven years the said respondents invoked the suo motto revisional jurisdiction of the Member Board of Revenue, under Section 38B of the Act. The said revision application which was registered as OEA. Revision Case No. 86 OF 1984 stood disposed of by the Order passed by the Member, Board of Revenue dated 5.5.1987. The Revisional Authority came to hold that the claim of the respondents about their occupancy rights cannot be sustained and the institution being a public temple and in view of the order of the Assistant Commissioner of Endowments dated 17.1.53, deciding the nature of the institution the Estate Abolition Collector rightly directed the settlement of land in favour of the deity. The said revision case having been dismissed, the respondents approached the High Court invoking the jurisdiction under Articles 226 and 227 of the Constitution. The High Court by the impugned Judgment allowed the said writ petition having held that the respondents have acquired an occupancy right over the land in question. The High Court by the impugned Order set aside the order of the Collector dated 23.9.77 and held that the respondents have occupancy right in the land and would be entitled to remain in possession of the land in accordance with law.

Mr. Misra, the learned Senior Counsel, appearing for the appellant contends that the High Court exceeded its supervisory jurisdiction under Article 226 of the Constitution by making a roving inquiry and by recording a finding that the lands attached to the deity could not be vested under the notification dated 18.3.74. Mr. Misra further contended that the private respondents having appeared in the Estate Abolition Collector and having claimed a eight of occupancy over the land which claim was rejected and the order of the Estate Abolition Collector became final is not entitled to approach the High Court in a writ petition taking new stand which was not there before the Estate Abolition collector. Consequently, the High Court committed error in entertaining the said contention and in answering the same by making a roving inquiry. Mr. Misra also contended that the High Court committed serious error in granting occupancy rights over the land in question, without an iota of material in support of the said claim of the respondents. Mr.J.R.Das, learned counsel appearing for the private respondents on the other hand contended that the question which was urged and answered by the High Court in the impugned Judgment was a pure question of law and, therefore, there was no bar for deciding the said question and granting relief to the respondents even if the respondents had not raised those questions either before the Estate Abolition Collector or before the Member, Board of Revenue. Mr. Das also further submitted that the appellant having granted the opportunity of producing the relevant order declaring the deity as a 'trust estate', the High Court was justified in drawing adverse inference and in recording a finding that after the vesting notification issued in the year 1968, there has been no declaration made in favour of the deity and therefore the Estate stood vested in the State and in that view of the matter, question of fresh vesting under the notification of 18.3.74 does not arise.

We have carefully considered the rival submissions at the bar and examined the provisions of the Orissa Estates

Abolition Act. We have also scrutinised the order of the Estate Abolition Collector dated 23.3.77, rejecting the claims of the private respondents that they have occupancy tenancy over the land in question and settling the land with the deity-intermediary on fair and equitable rent as well as the order of the Member, Board of Revenue dated 5.5.87, refusing to interfere with the order of the Estate Abolition Collector in exercise of his suo motto revisional jurisdiction under Section 38B of the Act. The short question that arises for consideration is whether the High Court was justified in interfering with such decision of the Estate Abolition Collector and affirmed by the Member, Board of Revenue in exercise of its supervisory jurisdiction under Article 226 of the Constitution. It is well settled that in exercise of such supervisory jurisdiction, High Court would be entitled to interfere with the conclusions of an inferior tribunal, if such tribunal considers any inadmissible pieces of evidence in arriving at its conclusion or ignores material piece of evidence from the purview of consideration or the conclusion is based upon any error of law or the tribunal itself has no jurisdiction at all or that the conclusion is based on no evidence. This being the parameters for exercise of power under Article 226 of the Constitution and if we examine the impugned judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conclusions arrived at by the Estate Abolition Collector and affirmed by the Member, Board of Revenue. It is apparent that after the vesting notification dated 18.3.74, the appellant filed an application under Section 6 & 7 of the Orissa Estate Abolition Act claiming settlement of the land with the deity. In that proceeding, public notice was given inviting objections and the private respondents had filed their objections, claiming a right of occupancy over the land and the Estate Abolition Collector decided that proceeding in favour of the appellant and negatived the claim of the respondents. In that proceedings the respondents never took the stand that the intermediary estate in question did not vest under the notification of 1974 as it had already vested pursuance to earlier notification of 1968 and it has not been declared as a 'trust estate'. No appeal has been preferred against that decision but a suo motto revision had been moved before the Member, Board of Revenue and the Member, Board of Revenue also dismissed the said revision. None of the parties raised the question about the vesting of the estate under notification of 1968 and the estate was not declared as a 'trust estate' pursuant to the aforesaid vesting of 1968. On the other hand, parties approached the Estate Abolition Collector, claiming rights on the basis that the intermediary estate stood vested by the notification dated 18.3.74. The High Court, therefore, was not justified in embarking upon an inquiry as to the state of things that happened on the basis of the notification of the year 1968. That apart, the High Court itself recorded a finding in the impugned judgment that under 1968 notification the "Debottar Lakhraji Bahel's land did not vest and there is definite distinction between the two class of Debottar property. All the same the High Court went on examining the question of vesting under earlier notification and recorded a finding because of non production of the relevant records that there was no declaration of 'trust estate' on 26.9.70. When the respondents did not raise this question before the Estates Abolition Collector in the present proceedings out of which

the impugned order emanates, it was not open for the High Court to go in that question at all. Then again without any material to substantiate a claim of occupancy tenancy over the land in question the High Court came to the conclusion that the respondents had acquired occupancy right in the land and such a conclusion cannot be sustained in law. In the aforesaid premises, we are of the considered opinion that the High Court committed gross error in interfering with the conclusions arrived at by the Estate Abolition Collector and affirmed by the Member, Board of Revenue. We, therefore set aside the impugned judgment of the High Court in Original Jurisdiction Case No. 2030 of 1987 and hold that the said case stands dismissed. Necessarily, therefore, the order of the Estate Abolition Collector dated 23.9.77, directing the settlement of land with the appellant deity is affirmed. This appeal is allowed, but in the circumstances, there will be no order as to costs.

JUDIS