

CASE NO.:
Appeal (civil) 7670 of 1997

PETITIONER:
STATE OF ORISSA

RESPONDENT:
NITYANAND SATPATHY AND ORS.

DATE OF JUDGMENT: 31/07/2003

BENCH:
V.N. KHARE CJ & K.G. BALAKRISHNAN & S.B. SINHA

JUDGMENT:
JUDGMENT

2003 Supp(2) SCR 66

The following Order of the Court was delivered :

A large tract of land situate in Village Badagaon, Puri was part of the estate of one Manindra Chandra Sinha.

On 24.8.1953, the Orissa State Legislature enacted an Act known as the Orissa Estates Abolition Act (hereinafter referred to as "the Act"). The said Act came into force with effect from 24th August, 1953. Section 5 of the Act provided that all non-agricultural land shall vest in the State. Since the land undisputedly was non-agricultural land, the same vested in the State. It appears that after the death of Manindra Chandra Sinha, his sons executed certain leases. The Dy. Collector, Puri by an order dated 10.8.1957 revoked those leases. It may be mentioned that Manindra Chandra Sinha died in the year 1922 and by virtue of a will, his sons, namely, Bimal Chandra Sinha, Amresh Chandra Sinha and Brundaban Chandra Sinha succeeded to the aforesaid estate upon obtaining a probate. All the sons of Manindra Chandra Sinha applied in 1959 for settlement of the said land in their favour under Section 7 of the Act. Although two of the sons have already died during pendency of the application, the Collector by order dated 17.6.1964 settled the aforesaid land in favour of the sons of Manindra Chandra Sinha.

Thereafter certain proceedings under the Ceilings Act were initiated against the sons of Manindra Chandra Sinha but we are not concerned with those proceedings in the present case. Subsequently, the sons of Manindra Chandra Sinha by separate registered sale deeds dated 13.6.1983 sold the aforesaid land in favour of respondents herein. On 1.1.1992, the Board of Revenue under Section 38B of the Act exercising suo motu power revoked the settlement of the aforesaid land granted in favour of the sons of Manindra Chandra Sinha, Inter alia, on the ground that the land being Anabadi land, had already vested in the State and thus the said land could not have been settled in favour of the sons of intermediary. The respondent-transferées thereafter filed a petition under Section 226 of the Constitution before the High Court. The High Court by the impugned order allowed the writ petition and set aside the order passed by the Board of Revenue. Aggrieved the State of Orissa has filed this appeal by means of special leave petition.

Learned counsel appearing for the State of Orissa urged that the land admittedly being Anabadi land could not have been settled under Section 7 of the Act and the view taken by the High Court is erroneous.

The learned counsel appearing on behalf of the respondents, on the other hand, would urge that as in the instant case not only settlement had been granted upon making thorough inquiry in this behalf by the competent authority, but as such settlement was subject matter of ceiling proceedings

which went up to the Board of Revenue, the order of settlement could not have been cancelled after a long time. Section 5 and 7 of Orissa Estate Abolition Act, 1951 read as under:

"5. Consequences of vesting of an estate in the State - Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification in the Gazette under Sub-section (1) of Section 3 or Sub-section (1) of Section 3-A or from the date of the execution of the agreement under Section 4, as the case may be the following consequences shall ensue namely:

(a) Subject to the subsequent provisions of this Chapter the entire estate including all communal lands and porambokes, other non-raiyati lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals (whether discovered or inclusive of rights in respect of any lease of mines and minerals quarries, rivers and streams tanks and other irrigation works, water channels, fisheries, ferries, hats and bazars, and building or structures together with the land on which they stand shall vest absolutely in the State Government free from all encumbrances and such Intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of the Act;

Explanation - 'Encumbrance' means a mortgage of or a charge on any estate or part thereof and includes any right in land or other immovable property comprised in an estate, but does not includes an intermediary interest or the interest of a raiyat or an under-raiyat.

(b) All rents, cesses, royalties and other dues accruing in respect of lands comprised in such estate on or after the date of vesting shall be payable to the State Government and not to the outgoing intermediary and any payment made in contravention of this clause shall not be valid discharge, and all such rents, cesses, royalties and other dues shall be recoverable as arrears of land revenue. Provided that where the date of vesting falls within the period to which the dues relate only such proportion of the dues shall be payable as the period beginning with the said date and ending with the period aforesaid bears to the whole of that period:

Provided further that any part of such dues appropriated by the intermediary beyond what may be found due to him in accordance with the provisions of this clause may be recovered by the State Government as arrears of land revenue or by the deduction of the amount from the compensation payable to such Intermediary.

Provided also that the payment of any amount on account of any such rents, cesses, royalties and other dues made to the outgoing intermediary in pursuance of the orders of any Court of law shall constitute a valid discharge.

(c - k) xxxxxxxxxx"

7. Certain other lands in khas possession of Intermediaries to be retained by them on payment of rent as raiyats having occupancy D rights -

(1) On and from the date of vesting -

(a) all lands used for agricultural or horticultural purposes which were in khas possession of an intermediary on the date of such vesting;

(b) lands used for agricultural or horticultural purposes and held by a temporary lessee or lessees of an Intermediary who owns either as Intermediary or in any other capacity less than thirty-three acres of land in total extent situated within the State;

(c) lands used for agricultural or horticultural purposes and in

possession of a mortgagee, which immediately before the execution of the mortgage bond were khas possession of such Intermediary, shall notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and with all the share-holders owning the estate and such Intermediary with all the share-holders, shall be entitle to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner;

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XXX"

XXX

Once a Notification under Section 3 of the Act is issued, the lands of the intermediaries vested in the State of Orissa. Section 5 provides for the consequences of the vesting of an estate in the State in terms whereof all the rights of the nature specified therein shall stand transferred to the State. As vesting takes place free from all encumbrances, the intermediaries ceased to have any rights there under. The plot in question being admittedly 'Anabadi' land must be deemed to have vested in the State Government subject to any right which the intermediaries could have claimed thereupon. Under Section 5 of the Act, the intermediaries although might not have physically dispossessed, but they would be deemed to go out of possession and it was open to the State to exercise its right of possession.

Section 7 of the Act provides for an exception. It, thus, must be construed strictly. In terms of the afore-mentioned provision, only the lands specified therein can be retained by the intermediaries as a raiyat but such a right can be exercised only in the event an order is passed by the appropriate authority on an application filed in this behalf. In terms of sub-section (1) of Section 7, only the land used for cultivation and horticultural purposes which were in khas possession of an intermediary on the date of such vesting would be conceived. The expression 'khas possession' has been defined in Section 2 (j) which too means 'land used for agricultural or horticultural purposes'. The possession of an intermediary of any land used for agricultural or horticultural purposes means the possession of such intermediary by cultivating such land or carrying horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock. A bare perusal of the afore-mentioned provision show that for the purpose of taking benefit of the provisions of Section 7(1) (a) of the Act, the intermediary must be in cultivating possession of the said land either by himself, with his own stock or by his own servants or by hired labour or with hired stock. The nature and character of the land being non-agricultural, the same evidently was not in cultivating possession of the intermediaries and, thus, an application for settlement of such land by the intermediaries purported to be in terms of Section 7 of the Act was not maintainable. Furthermore, the land being not used either for cultivation or for horticulture purposes on the date of vesting did not attract the provisions of clause (a) of sub-section (1) of Section 7.

For the reasons afore-mentioned, it must be held that the settlement made in favour of ex-intermediary was bad in law. Furthermore, as admittedly two of the applicants being sons of the intermediary died in the years 1961 and 1963, no settlement could have been made in their favour. The order of settlement clearly depicts a total non-application of mind on the legal principles.

We, accordingly, set aside the order and judgment under challenge. The appeal is allowed. There shall be no order as to cost.