State of Orissa and Others

Vs

Brundaban Sharma and Another

Civil Appeals Nos. 827-828 of 1994 (Arising out of SLPs (C) Nos. 2838 and 15486 of 1993)

(K. Ramaswamy, B. L. Hansaria JJ)

28.01.1994

ORDER

1. Special leave granted.

2. Since common questions of law and facts arise for decision in the cases, they are disposed of together. Ekatali village in Jharsuguda District in Orissa State was part of the erstwhile Sambalpur District To lay the road from Jharsuguda to Belpahar a notification was published on 25-9-1962 under Section 4(1) of the Land Acquisition Act excluding 4.19 acres in Plot No. 121, Khata No. 93 of the said village as that the land belongs to the Government. When the road was being laid, Respondent 1, hereinafter the respondent, had objected to and represented on 7-4-1982 to the Government that he is a tenant in that land having a patta from Gokulanand Lambardar Gountia on 12-10-1944 and ever since he had been in its possession and enjoyment. The Additional District Magistrate in his letter dated 6-10-1982 sent his report and the Board of Revenue issued a notice to the respondent in O.E.A. Revision Case No. 37 of 1989 to show cause for cancellation of patta granted to him by the Tehsildar. After considering his objections and giving an opportunity of hearing, by order dated 2-12-1992, set aside the patta granted to the respondent as a tenant by Gokulanand Gountia and recognised by the Tehsildar under Section 8(1) of the Orissa Estates Abolition Act, 1951, Act 1/52, for short 'the Act'. In O.J.C. No. 781/1993, the Division Bench of Orissa High Court by order dated 10-5-1993 quashed the order of Board of Revenue finding that the revisional power under Section 38-B of the Act was illegally exercised after a lapse of 27 years. The appeal out of SLP No. 15486/1993 thus arises. Preceding thereto despite the respondent's objections, when the road was being laid across his lands, the respondent filed O.J.C. No. 2761/1992 and the Division Bench by its order dated 20-10-1992 held that the respondent was in possession of the lands as a tenant under the ex-intermediary, the Lambardar Gountia, as recognised by the Tehsildar and, therefore, his right to the lands cannot be interfered with in any manner by the State without acquiring the land by due process of law. Since the road had already been laid, no direction was issued to the appellants to restitute the lands to the respondent : but the Bench directed the Revenue Department to the lands to pay him compensation according to law. When the pendency of revision under Section 38-B was brought to the notice of the High Court, it opined that the exercise of revisional power was debatable. Thus the other appeal.

3. Sri Altaf Ahmed, learned Additional Solicitor General appearing for the State contended that Gokulanand Gountia (sic Patel) was never a Lambardar Gountia. The patta said to have been granted by him to the respondent on a plain paper was obviously fabricated one only some time after the Act had come into force with antedate of 1946. The Tehsildar has no jurisdiction to recognise the respondent as a tenant under Section 8(1) of the Act unless he obtains prior confirmation from the Board of Revenue. After this fact was brought to the notice of the authorities

in the representation of the respondent dated 24-12-1982, immediate action was initiated and no delay, much less appreciable delay, had occurred to correct the order under Section 38-B of the Act. Even otherwise, the order of the Tehsildar being without jurisdiction is void and non est. The delay does not stand in the way and the invalidity of the patta propounded by the respondent could be set up in any proceedings at any stage. Therefore, the interference by the High Court on the ground that power under Section 38-B was exercised after lapse of 27 years was not warranted is clearly erroneous. The entitlement for compensation by the respondent, on the basis of void patta, is untenable. The Government, therefore, is not obliged to acquire its own land nor liable to pay compensation to the person in wrongful possession of Government land without any right, title and interest in the land. Thereby the decision in O.J.C. No. 2761/1992 is also illegal.

4. Sri A.K. Sen, learned Senior Counsel for the respondent, contended that the Government had accepted the rent from the respondent without any protest and continued to accept the same ill initiation of the acquisition proceeding in the year 1962 before which the Government admitted the title of the respondent. Having recognised the respondent as owner of the lands, it was no longer open to the Government to contend that the patta obtained by his client from Gokulanand Patel was invalid. He also contended that the Tehsildar having had jurisdiction, rightly recognised the respondent as a tenant and continuous acceptance of rent fortifies the respondent's right, title and interest in the land which would be divested only in accordance with law, i.e. acquisition under Land Acquisition Act and payment of compensation. He attacked the exercise of the power under Section 38-B on two-fold contentions. According to the learned counsel, the Tehsildar's order is only an administrative order recognising the tenancy rights of the tenant under Section 8(1) of the Act and administrative order cannot be set aside after lapse of 27 years. As a second limb of his arguments, he contended that Section 38-B was brought on statute for the first time on 1-11-1973. Therefore, retrospective effect cannot be given to Section 38-B to unsettle the vested rights of the tenant.

5. In view of the diverse contentions, the first question that arises for consideration is whether the appellants are bound to acquire the land in question. In the Collector of Bombay v. Nusserwanji Rattanji Mistri [(1955) 1 SCR 1311, 1323 : AIR 1955 SC 298] this Court while approving the ratio of Madras High Court in Dy. Collector, Calicut Division v. Aiyeru Pillay [(1911) 9 IC 341 : (1911) 2 MWN 367] that the Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition, but only it acquires such interest in the land as does not already belong to the Government held that :

> "When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition."

This principle was followed in catena of decisions, viz. Special Land Acquisition & Rehabilitation Officer v. M.S. Seshagiri Rao [(1968) 2 SCR 892 : AIR 1968 SC 1045]; Ram Narain Singh v. State of Bihar [(1972) 2 SCC 532 : 1972 SCC (Cri) 870 : AIR 1972 SC 2225]; Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] etc. Therefore, it is settled law that the Government, being an owner of the land, need not acquire its own land merely because on an earlier occasion proceedings were mistakenly resorted to acquired the land and latter on while realising its mistake obviously withdrew the same and published a fresh notification in

which admittedly the land was omitted for acquisition and thereafter proceeded to lay the road on its land. However, the High Court found that the respondent as a tenant under the Act and Government unauthorisedly took possession from him and directed the Government to pay compensation.

6. The immediate question, therefore, is whether the respondent had acquired any tenancy rights under the Act. Section 3 of the Act empowers the State Government to declare by a notification abolition of the estate specified therein, and on the same being issued, the estate gets vested in the State free from all encumbrances. Section 5 enumerates the consequences of such notification. It states that notwithstanding anything contained in any law for the time being in force or in any contract, on the publication of the notification in the Gazette in sub-section (1) of Section 3 or 3-A or from the date of acquisition or the agreement under Section 4, as the case may be, the consequences enumerated therein would ensue. Subject to the provisions in Chapter II, the entire estate including all communal lands, and porambokes, other non-raiyati lands, etc. etc. would vest absolutely in the State Government free from all encumbrances and an intermediary would cease to have any interest in such estate, other than the interests expressly saved by or under the provisions of the Act. Thereby, "except the interests of the raiyat, the other interests held by the intermediary, before the date of vesting, shall stand ceased" and the lands shall stand vested absolutely in the State Government free from all encumbrances. Clause (i) of Section 5 gives power to the Collector, in respect of any settlement or a lease of any land granted prior to the date of vesting, to be satisfied that the transfer made before 1-1-1946 was with the object of defeating any of the provisions of the Act or to obtain higher compensation thereunder; he has power to make enquiries in respect of such settlement or lease or transfer etc. etc. In cases where the Collector decides not to set aside any such settlement, lease or transfer, "he shall refer the case to the Board of Revenue for confirmation of the settlement, lease or transfer and the orders passed by the Board of Revenue in this behalf shall be final". Under Section 2(d) the Collector means any officer appointed by the State Government to discharge all or any of the functions of the Collector under the Act. By exercising their power, the Government by notifications dated 23-8-1956 and 17-12-1956 which were latter amended on 4-2-1958, appointed the Tehsildar to discharge the functions of the Collector under Sections 6, 7, 8(3) and 8-A of the Act. Thereby it is clear that when a claim was laid by the respondent setting up a lease said to have been given to him by the intermediary, the Tehsildar had no power under Section 5(i) read with Section 8(1) to inquire into its correctness. Even in case he himself is competent and decides not to set aside the lease, he should have referred the case for confirmation to the Board of Revenue. The object of conferment of such power on the Board of Revenue appears to be to prevent collusive or fraudulent acts or actions on the part of the intermediaries and lower level officers to defeat the object of the Act.

7. The lease was said to have been granted to the first respondent by Gokulanand Patel as Lambardar Gountia. We would deal latter whether Gokulanand was a Lambardar Gountia at the relevant time and was competent to grant patta. Suffice to state that when Tehsildar acting as the Collector decided that lease was not liable to be set aside, he should have referred the matter to the Board of Revenue for confirmation of the lease. Admittedly, no such reference nor confirmation was made. Thereby it had not acquired finality, though such lease was purported to have been granted before 1-1-1946.

8. The question is whether the lease of the respondent was valid and whether the Board of Revenue was justified to exercise its jurisdiction under Section 38-B of the Act. Section 38-B of the Act reads thus:

> "Section 38-B. - (1) The Board of Revenue may, on its own motion or on a report

from the Collector call for and examine the record of any proceeding in which any authority subordinate to the Board of Revenue has made any decision or passed an order under this Act (not being a decision against which an appeal has been preferred to the High Court or District Judge under Section 22) for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of such decision or order and if in any case it appears to the Board of Revenue that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass orders accordingly.

(2) The Board of Revenue shall not -

#(i) * * *##

(ii) revise only decision or order under this section without giving the parties concerned an opportunity of being heard in the matter."

A reading thereof clearly indicates that the Board of Revenue, either on its own motion or on a report from the Collector, call for and examine the record of any proceeding in which, any authority subordinate to the Board, has made any decision or passed an order under the Act to satisfy itself as to the regularity of such proceeding or to the correctness, legality or propriety of such decision or proceeding or order and, if in any case it appears to the Board that such a decision is not correct or illegal or improper, it has been empowered to modify, annul, reverse or remit the case to the authority for decision according to law. Before taking any such decision or passing an order, it is enjoined to give an opportunity of being heard in the matter to the affected party. In Basanti Kumar Sahu v. State of Orissa [(1992) 1 OLR 41 (Ori HC) (FB)], the Full Bench of the Orissa High Court had to deal with the effect of the steps taken by the Tehsildar in collecting the rent after settlement of the land in favour of a raiyat and whether it is an administrative order or quasi-judicial order. It was held by the Bench that the Tehsildar has no jurisdiction to settle any land under Section 5(1) and if he acts as such that amounts to usurping jurisdiction not vested in him. But any rent collected after the settlement is only an administrative act and not quasi-judicial. The action taken by the Tehsildar in recognising the tenancy rights of the respondent by his proceedings dated 24-12-1962, is thus without jurisdiction. Collection of revenue or rent thereafter is only administrative in nature. Therefore, conferment of tenancy right under Section 5(1) read with Section 8(1) by the Tehsildar is without jurisdiction and does not bind the Government. The collection of land revenue or rent otherwise is in regular course of duty. It does not operate as recognition of pre-existing rights, title or interest in the land by the respondent. In this situation, when the report was submitted to the Board of Revenue by the Collector in his proceedings dated 6-10-1982, the Board had to examine whether the respondent had obtained the patta validly according to law.

9. In the paper book in the appeal arising out of SLP No. 15486/1993, the revenue records have been placed as part of the record. The records related to the year 1943-44. In the heading Inspector Sri Chandi Charan Satpathy was mentioned as Revenue Inspector. He made entries relating to Sikmi Raiyats and one Chidananda had signed as Gountia. Same was the position for the year 1945-46. Thus it is clear from the revenue record that Gokulanand Patel was not Gountia at the relevant time. Indisputable patta was given only on a white paper. The record discloses that from the years 1994 to 1947 no revenue receipts had been produced and revenue receipts were admittedly produced from the year 1948 onwards. The cut-off date was 1-1-1946. In Annexure 'B', page 39 onwards, we find a Wajib-ul-arz for Gaontiahi villages of Sambalpur District. The village records for the relevant period shows that Lambardar's name was one Rajendra Singh. He was entitled to act as Gountia.

There appears to be divergence of opinion as to whether a Mukaddam is also entitled to grant patta to the third parties.

10. Be it as it may, it is not necessary for us to go into the controversy, but suffice to state that patta granted to the respondent by Gokulanand purported to be in the year 1944 was on a white plain paper without any approval by any competent authority. Lambardar Gountia could be appointed by the Deputy Commissioner in accordance with the provisions of Section 137 of the Central Provinces Land Revenue Act of 1881 and the rules framed thereunder. Thereunder in Clause 3 the Lambardar alone was entitled to dispose of the waste lands and not the cultivable lands etc. which would be under his management subject to the provisions thereunder. When the revenue records thus discloses that the grantee of the patta had no title to grant patta and it being only on a white paper, the question emerges whether the Tehsildar was right in recognising the respondent as tenant under Section 5(1) read with Section 8(1) of the Act. It is seen that admittedly the lands in question along with other lands in the village stood vested in the State on 1-3-1960, the Tehsildar made settlement to the respondent as a tenant on 24-12-1962 i.e. long after the date of vesting. It is already held that it was without jurisdiction. Even otherwise unless patta was confirmed by the Board of Revenue, the first respondent acquired no rights or title therein. the settlement by Tehsildar is clearly without jurisdiction.

11. Thus the question looms large whether the Board of Revenue was justified in exercising its power under Section 38-B of the Act. It is already held that the power of the Board of Revenue is very wide and it can to into any legality, propriety or correctness of any decision taken, order passed or proceedings taken by any authority under the Act. If it is satisfied that the order is vitiated on any one of the specified grounds, it is open to the Board of Revenue to pass appropriate order suitable to the circumstances. The Board of Revenue held that the claim of the respondent for tenancy was not corroborated by any records, much less unimpeachable evidence given by Lambardar prior to the notified date of the estate. Under the Act it is not open to the Tehsildar to enquire into the claim of the respondent to be a tenant, in view of the clear law laid down by the Full Bench. No revenue entry was produced between 1944-48 to prove the genuineness of the lease. Apart from the fact that the land had been used for the Jharsuguda Belpahar road, the land is very near to the town. There is no possibility of converting the entire land as settled by the Tehsildar into agricultural land. This was an attempt to grab Government land with collusion of the officers. Accordingly, the Board of Revenue held that "the order of the Tehsildar under Section 5(1) read with Section 8(1) settling the land with the opposite party was without jurisdiction and the order of the Tehsildar without obtaining the confirmation from the Board of Revenue was non est in the eye of law". The question, therefore, is whether the Board of Revenue was justified in exercising the jurisdiction to set aside the proceedings of the Tehsildar dated 24-12-1962. It is the case of the respondent that he had brought to the notice of the authorities of his rights as tenant as early as 1960 and when action was sought to be taken in 1967 the Government directed not to proceed with suo motu inquiry sought to be made. Therefore, they had acknowledged the patta as early as in 1960 and that, therefore, they were not justified to initiate proceeding afresh under Section 38-B of the Act.

12. It is true that the suo motu revisional powers under the Act were brought on the statute on 7-11-1973 by the Amendment Act, 1973. Earlier, under Section 38-A to exercise review power, limitation prescribed was one year that too on an application made by an aggrieved party. Thereby, the legislature realised the need to confer power on the Board of Revenue to take suo motu action to examine the proceeding of any authority and if need be to correct its illegality, impropriety or incorrectness of the order passed, decision made or proceedings taken under the Act. Otherwise miscarriage of justice would ensue. Accordingly, it brought on statute Section 38-B and conferred

suo motu revisional jurisdiction and power on the Board of Revenue. It is not right to contend that Section 38-B has been given retrospective effect. The Board of Revenue was empowered to initiate action only after Section 38-B had come into force. Obviously it has to exercise revisional power with reference to the orders, decisions made or proceedings taken under the Act earlier thereto. Otherwise it bears no significance to confer suo motu power. That apart, Section 38-A gives only the power of review but not a general power of revision. In this view Section 38-B gives power of revision to the Board to correct orders passed or decisions made or proceedings taken by any authority under the Act prior to Section 38-B came into force. But initiation of revisional power must be from and after Section 38-B came into force. In other words, its operation is prospective only. When and under what circumstances the suo motu inquiry would be initiated and orders passed is left to the discretion of the Board of Revenue depending on the facts and circumstances of each case.

13. In State of Gujarat v. Patel Raghav Natha [(1969) 2 SCC 187, 194 : (1970) 1 SCR 335, 343] this Court held that Section 65 itself does not indicate any length of reasonable time within which the Commissioner mush have acted under Section 211. Under Section 65 if the Collector does not inform the applicant of his own decision on the application within a period of three months the permission applied for shall be deemed to have been granted. Power under Section 211 of the Code must be exercised within reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. On the facts in that case it was held that the Commissioner also should exercise revisional power under Section 211 within three months as the owner would spend money to construct house and hardship would ensue if belated orders were to be passed. The same ratio was reiterated in State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396 : 1977 SCC (L&S) 424] and Mansaram v. S.P. Pathak [(1984) 1 SCC 125].

14. In State of Maharashtra v. Rattanlal [(1993) 3 SCC 326 : JT 1992 Supp SC 746], the respondent along with his mother succeeded to the estate of his father. Instead of making a declaration under the land Reforms Act of the extent of the lands inherited from his father, he submitted the declaration of his land. The land he inherited from his father, on the other hand, was got mutated in the names of spurious third parties. His declaration was accepted and was held to be within ceiling limit. But in 1977 when the Additional Commissioner came to know of the suppression of those facts, exercising suo motu power under Section 45 of the Maharashtra Land Reforms Act, issued notice, after giving reasonable opportunity he reopened the computation and held that the respondent was in excess of the ceiling limit. It was confirmed on appeal. On further revision, the High Court allowed the writ petition holding that the exercise of the power under Section 45 was unreasonable and illegal. On appeal this Court set aside the order of the High Court. It was contended therein that the Act provides a period of 3 years' limitation to exercise review jurisdiction under Section 38-A at the instance of the aggrieved parties. For the exercise of the suo motu power also the same limitation should be construed. The exercise of the power after a long lapse of time thereafter would be illegal. While negating the contention this Court held that it would be open to the State Government to correct any illegality in the proceedings. The obvious intendment in conferring suo motu power was to prevent suppression of the agricultural land, liable to be included, or held by the declarant and he cannot plead in his defence his own fraud or suppression and seek shelter thereunder. When the original order was vitiated by illegality or impropriety committed by officer or authority or was passed due to suppression of the material facts or fraud, it was open to the tribunal to reopen the same. The limitation would start running from the date of the discovery of the fraud or suppression of material or relevant fact or omission thereof and an order under Section 17 in that Act was not a bar to exercise suo motu revisional power. Accordingly the appeal was

allowed. The order of the High Court was set aside and that of the Additional Commissioner initiating suo motu proceedings and its order was held to be valid.

15. In Laxminarayan Sahu v. State of Orissa [AIR 1991 Ori 139] a Full Bench of the Orissa High Court held that even though there is no period of limitation in Section 59(2) of Orissa Land Reforms Act, 1960, it must be exercised in a reasonable manner which necessarily stipulates that it should be in reasonable time. What would be a reasonable time so as to be immune from the attack that the power has been exercised in an unreasonable manner would depend upon the facts and circumstances of the case.

16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right ? The answers would be no.

17. It is already seen that the proceedings for settlement of the tenure is a quasi-judicial order and it should be guided by authentic and genuine documentary evidence preceding the cut-off date and the date of vesting of the lands under the Act. Since the Act creates a right and interest in the holder of the land as tenant, pursuant to an order making the settlement by the competent authority, the Tehsildar is enjoined to conduct an inquiry in that behalf. It is seen that under first proviso to Section 5(1), if the Collector concludes that the lease, transfer or settlement is not to be set aside, he should obtain prior confirmation from the Board of Revenue. No such approval was, in fact, obtained by the Tehsildar. Though in the first instance, when the respondent had brought it to the notice of the Government of his claim, in 1967 proceedings initiated were got dropped by the Government obviously at the instance of the respondent. Later on the instructions of the Government itself, inquiry was got done; and on receipt of the report from the Additional District Collector on 4-10-1982, proceedings were initiated by the Board and the respondent was given reasonable opportunity of hearing. The order was passed within a reasonable time thereafter.

18. Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit ? Who was responsible for it ? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage.

19. So, we hold that the High Court is not right or justified in opining that the exercise of the power under Section 38-B is not warranted. It committed illegality in quashing the order of the Board of Revenue. The order of the High Court is set aside. The order of the Board of Revenue is restored.

Consequently we hold that the Government, being the owner, need not acquire its own land and need not pay compensation to an illegal or wrongful occupant of the Government land. The direction or mandamus to acquire the land and to pay the compensation to the respondent is set aside.

20. The appeals are accordingly allowed. But in the circumstances, the parties are directed to bear their own costs.

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