

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6120 of 2009

Sashibhusan Das

....

Petitioner

Mr. A.K. Mishra, Advocate

-Versus-

***Lord Lingaraj Mahaprabhu and
another***

....

Opposite Parties

Mr. A. Mohanta, Advocate (OP No.1)

Mr. A.K. Nath, Advocate (OP No.2)

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

DATE OF JUDGMENT :20.05.2022

R.K. Pattanaik, J

1. Aggrieved by the order dated 18th March, 2009 (Annexure-9) passed in O.A. No.125 of 1996 under Section 25 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as 'the OHRE Act') by the Commissioner of Endowments, Orissa, Bhubaneswar (OP No.2), the Petitioner has filed the instant writ petition on the grounds *inter alia* that the impugned decision is bad in law for having treated his possession as unauthorized by applying the law which is prospective in nature.

2. The Petitioner contends that OP No.2 without considering the scope of the expression 'unauthorized occupation' as appearing in Section 25 of the OHRE Act which was introduced by the Act 2 of 1981 with effect from 2nd March, 1981 having prospective

in operation held the possession as unlawful and directed eviction by exercising jurisdiction under Section 25 of the OHRE Act despite the fact that his vendor's vendor had obtained sanction in as per Section 19 thereof. It is further contended that the original tenant had the occupancy right and thereafter, the possession was continued till it reached in the hands of the Petitioner by way of a purchase and for the fact that the occupation has been continuous and that too, with the sanction of OP No.2, the eviction could not have been directed. In the alternative, according to the Petitioner assuming the possession to be unauthorized, such continuous and peaceful occupation vis-à-vis the schedule land has led to the acquisition of adverse title in respect thereof. Thus, as per the claim of the Petitioner, the impugned order under Annexure-9 is unsustainable and therefore, deserves to be quashed.

3. On the contrary, OP Nos.1 and 2 justified the decision and action of OP No.2 with regard to eviction of the Petitioner from the schedule land which was under his unauthorized possession. It is contended that the possession was still unauthorized by the time the Act 2 of 1981 came into force and therefore, OP No.2 committed no illegality directing eviction. It is also contended that the sanction which is claimed by the Petitioner to be in favour of the vendor's vendor was not in accordance with law then prevailing and otherwise also, it was not worked out inter se parties since no lease deed was executed as a result thereof.

Hence, the contention of both OP Nos.1 and 2 is that the impugned order under Annexure-9 is in accordance with law.

4. Heard Mr. A.K. Mishra, learned counsel for the Petitioner; Mr. A. Mohanta and Mr. A.K. Nath, learned counsel appearing for OP Nos.1 and 2 respectively.

5. In fact, OP No.1 filed a counter affidavit which was responded by a rejoinder by the Petitioner. In the counter affidavit, OP No.1 while justifying the action under Section 25 of the OHRE Act pleaded that the possession was unauthorized in so far as the schedule land is concerned and therefore, the Petitioner could not have any right to occupy the same and rightly, therefore, OP No.2 directed his eviction. In the rejoinder, the Petitioner replied that the sanction under Section 19 of the OHRE Act was obtained from OP No.2 and the possession cannot therefore be held as unauthorized, inasmuch as, the settlement of the land with OP No.1 to be per se illegal and invalid.

6. At the instance of OP No.1, a proceeding under Section 25 of the OHRE Act in respect of the schedule land and against the Petitioner was initiated. In the said proceeding, the Petitioner challenged the action on the ground that the possession was unauthorized and in so far as the land settled with OP No.1 is concerned, it was out rightly an illegality. The parties led evidence before OP No.2, who finally reached at a conclusion that OP No.1 is a perpetual minor and therefore, the deity's

rights cannot be taken away and in any case, the settlement was never challenged by the Petitioner. With the above finding, OP No.2 allowed eviction of the Petitioner exercising power under Section 25 of the OHRE Act.

7. As to the proceeding under Section 25 of the OHRE Act, it is summery in nature and therefore, OP No. 2 shall have no authority or jurisdiction to adjudicate upon title vis-à-vis the subject matter in question, the purpose being only to ensure eviction of the unauthorized occupants and restoration of the lands with OP No.1. The Petitioner contended that the eviction under Section 25 of the OHRE Act could not have been initiated since the possession is much prior to 2nd March, 1981, the date on which, the amended Act came into force. In support of such a contention, Mr. Mishra, learned counsel for the Petitioner cited a decision of this Court in *Duryodhan Samal v. Uma Dei and others 60 (1985) CLT 360*. According to Mr. Mishra, the amended Act is prospective in nature as it came into force in 1981 and thus, cannot be applied retrospectively considering the fact that the possession of the Petitioner was prior to it. According to the Court, the possession of the Petitioner has to be lawful so as to lay claim over the schedule land with a plea that such occupation as on the date when the proceeding was initiated not to be unlawful for opposing eviction under Section 25 of the OHRE Act. The Petitioner contended that sanction under Section 19 of the OHRE Act was obtained but the admitted fact is that no lease deed was executed between the

parties and therefore, according to OP No.1, it was never worked out. It is claimed by the Petitioner that no lease deed was required to be executed and mere sanction of OP No.2 is sufficient. The lease was required to be followed by a deed pursuant to the sanction under Section 19 of the OHRE Act which has admittedly not been executed between the parties. In absence of any such document later to the sanction under Section 19 of the OHRE Act, it can well be said that the lease in question was never acted upon.

8. As to the possession prior to the commencement of the amended Act, it is contended by the Petitioner that the eviction proceeding under Section 25 of the OHRE Act was not maintainable as it could not be applied retrospectively. A lawful right is always protected and cannot be taken away by an amendment brought into force at a later point of time. However, it does not mean that an unlawful possession which does not convey any right can still be defended on the ground that the Act to be prospective in nature. Unless, a possession is shown to be lawful, it has to be treated as unlawful as on the date when the amended Act came into force. Furthermore, it has to be treated as continuous wrong so long as the possession is unauthorized. Therefore, in the instant case, notwithstanding the possession of the Petitioner to be from an anterior date prior to the commencement of the Act 2 of 1981, it cannot and could not have prevented OP No.1 seeking eviction of the Petitioner from over the schedule land. In other words, it can be held that the

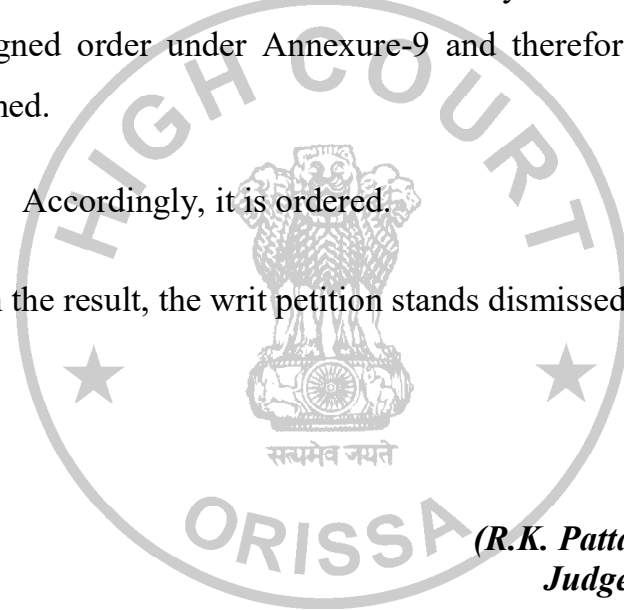
proceeding under Section 25 of the OHRE Act before OP No.2 was perfectly maintainable and the same could not have been set at naught on the ground that the amended law to be applied prospectively only without having a retrospective effect.

9. Mr. Mishra placed reliance on a decision of this Court in ***Chandra Sekhar Rath v. The Collector, Dhenkanal and others (1989) 67 CLT 493*** contending that the schedule land could not have been settled with OP No.1 since the Petitioner's vendor's vendor was in possession as a tenant prior to and as on the date of vesting. In other words, referring to the decision (supra), it is contended that application for settlement of the schedule land by OP No.1 as an ex-intermediary was not maintainable considering the fact that the original tenant was in possession by the time it vested in the Government. Such a question could not have been adjudicated upon by OP No.2 in a proceeding under Section 25 of the OHRE Act, which is primarily aimed and directed at restoring possession of lands of the deities evicting the unauthorized occupants therefrom. The settlement in favour of OP No.1 stood unchallenged at the instance of the Petitioner or any of his predecessors. That apart, OP No.2 is not possessed of any power to examine the legality of the orders of the OEA authority and any such question vis-à-vis the settlement of the schedule land with OP No.1 would not be within its competence. In fact, OP No.2 relied upon a decision of this Court in ***Hazari v. Gopinath Dev 34(1992) OJD 100 (civil)*** while holding that it does not have the jurisdiction and competency to examine the

validity of the settlement under the OEA Act. As to the plea of adverse title being acquired by the Petitioner, OP No.2 was not authorized entertained and examined the same which lies within the domain of a competent civil court. Having said that, the inevitable conclusion is that when the possession of the Petitioner could not be established as lawful by the time the proceeding under Section 25 of the OHRE Act was initiated and therefore, it had to be visited with eviction. Consequently, the Court hold that OP No.2 did not err in any manner in passing the impugned order under Annexure-9 and therefore, it has to be affirmed.

10. Accordingly, it is ordered.

11. In the result, the writ petition stands dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice