

A LORD LINGARAJ BIJE, BHUBANESWAR AND ANR.

v.

SH. NITYANANDA MISHRA AND ORS.

MAY 2, 1995

B [R.M. SAHAI AND G.T. NANAVATI, JJ.]

*Orissa Hindu Religious Endowments Act, 1939:*

*Orissa Hindu Religious Endowments Act, 1951: Sections 25 and 68.*

C *Orissa Estates Abolition Act, 1951 :*

*Land—Lease—Death of lessee—Successor-in-interest—Transfer of land by—Application filed by trustee for recovery of possession—Rejection of—Enforcement of Abolition Act—Application by occupants of land for being treated as occupancy tenants under Abolition Act—Rejection of—Fresh application by trustee for recovery of possession—Claim of occupancy right—Determination and adjudication by competent authority—Direction to approach Civil Court for appropriate relief.*

E The appellant let out his land to D before coming into force of the Orissa Hindu Religious Endowments Act, 1939. After the death of D his widow B succeeded to his estate and transferred the land in favour of the respondent. The appellants filed an application under Section 68 of the Orissa Hindu Religious Endowments Act, 1951 for recovery of possession which was allowed. However, the Commissioner set aside this order holding that B became the occupancy tenant. An application filed by the respondent under Sections 6 and 7 of the Orissa Estates Abolition Act, 1951 for being treated as occupancy tenants was held not maintainable on the ground that they were not intermediaries. Thereafter another application was filed by the appellant for recovery of possession under Section 25 stating that after the enforcement of Abolition Act the disputed land was settled with the appellant as intermediary and the same was leased out to B who alienated it in favour of the respondents in violation of section 19. Therefore, the respondents were liable to be ejected. The Commissioner of Endowment allowed the application. The High Court quashed the order holding that (i) the lease was given in favour of D even before the 1939 Act had come into force; and (ii) the order passed in eviction proceedings

under section 68 holding that B had acquired occupancy right had become final; the entire proceedings by which the land was settled by B with appellant as intermediary was contrary to law. Against the decision of the High Court an appeal was preferred before this Court. A

Dismissing the appeal, this Court B

HELD : Section 25 of the Orissa Hindu Religious Endowments Act, 1951 permits the trustee to file an application against a person who was otherwise in unauthorised occupation. The application filed by the appellant, therefore, was maintainable. But the respondent was not precluded in these proceedings from claiming that he had acquired rights and he was not in unauthorised occupation. It was also open to him to claim that his predecessor had a better title than the appellant, and, therefore, no order under Section 25 could have been passed. The right of the respondent and his predecessor about the claim of occupancy rights had to be determined and adjudicated by some competent authority. It is not possible to shut out the respondent only because his application under Sections 6 and 7 was rejected. There was no adjudication merits by the appellate authority. The appellant is, therefore, permitted to approach the Civil Court which shall decide the dispute between the parties unhindered by any observation made in this order or the order passed by the Commissioner in earlier proceedings under Section 68 of the Act or the proceedings under Sections 6 and 7 of the Abolition Act. [1049-B, H, 1050-A, D] C D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5256 of 1995.

From the Judgment and Order dated 26.8.91 of the Orissa High Court in O.J.C. No. 166 of 1984. F

Rajinder Sachar and A.K. Panda for the Appellant.

P.P. Rao and P.N. Misra for the Respondent in No. 1 - 3. G

R.K. Mahpatra, P.N. Misra, S. Misra, S. Kumar, A.C. Pradhan and Ms. Kirti Misra for the Respondent No. 4.

The Judgment of the Court was delivered by

R.M. SAHAI, J. This appeal is directed against order passed by the H

A High Court in exercise of its writ jurisdiction quashing the order passed by the Commissioner of Endowments under Section 25 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as 'the Act').

Facts in brief are that the land, originally, belonged to Lord Lingaraj, the appellant. It was let out, in 1937 before coming into force of the Act by the Trust Board, in favour of one Dr. Ramendu Ray. The land was agricultural waste land which was reclaimed by Dr. Ray and he continued in possession till his death. After his death his widow Bhibhati succeeded to the estate and paid rent to the Board. In 1970 an application was filed on behalf of the appellant under Section 68 of the Act for recovery of possession. It was allowed. The order was, however, set aside by the Commissioner on 7.5.1971 and it was held that she became occupancy tenant. She appears to have transferred the land in dispute in favour of respondents. They approached the Tahsildar under Sections 6 and 7 of the Orissa Estate Abolition Act (referred as 'Abolition Act') for being regarded as occupancy tenant. The application was rejected. In further appeal it was held that their application was not maintainable as provisions of Sections 6 and 7 could be invoked only by a person with whom land has been settled as intermediate. The appellant thereafter filed another application under Section 25 of the Act for recovery of the property. It was alleged that after the enforcement of Abolition Act, land was settled with the intermediary that is, the appellant who leased it out to Bhibhati who alienated it in favour of the respondent in contravention of Section 19 of the Act, therefore, the respondents were liable to ejection. The application was allowed. The order was challenged by way of a writ petition in the High Court. The High Court did not examine the question whether the proceedings under Sections 6 and 7 of the Abolition Act were in accordance with law and whether the procedure provided under Section 8A was observed. The High Court felt that although different aspects of the case had not been examined and it would have been advisable to remand the matter to the Commissioner but the litigation having gone for number of years and the claim of the respondent having been firmly established it was not necessary to prolong it further. The High Court held that the lease was given in favour of Dr. Ray even before the Orissa Hindu Religious Endowments Act, 1939 had come into force. It was further held that in the earlier proceeding for eviction initiated by the appellant under Section 68 of the Act it was clearly held that Dr. Ray and after him his widow had acquired occupancy tenancy rights and this decision having become final as the

appellant did not challenge it the possession of Bhibhati was not un- A  
 authorised and she having been an occupancy tenant the entire proceedings  
 by which the land was settled with appellant as intermediary was contrary  
 to law.

Section 25 of the Act permits the trustee to file an application against B  
 a person who was otherwise in unauthorised occupation. The application  
 filed by the appellant, therefore, was maintainable. But the respondent was  
 not precluded in these proceedings from claiming that he had acquired  
 rights and he was not in unauthorised occupation. It was also open to him  
 to claim that his predecessor had a better title than the appellant and, C  
 therefore, no order under Section 25 could have been passed. It is not  
 necessary to say anything further as even though the High Court has held  
 the earlier order passed by the Commissioner under Section 68 to be *res*  
*judicata* and the appellant is claiming that the respondents' predecessor in  
 interest lost her right and title once Abolition Act was enforced and the  
 property was settled with the appellant under notification issued in 1974 D  
 under Section 7 of the Abolition Act, as the proceedings under Section 25  
 of the Act for eviction of the respondent are summary in nature. That is  
 clear from sub-section (3) of Section 25 which permits an aggrieved party  
 to approach the Civil Court. Sri Sachar, learned senior counsel, however,  
 vehemently argued that in view of the provisions in Abolition Act no suit E  
 could be filed in the Civil Court as these matters were covered by Chapter  
 II of the Abolition Act. On the other hand Sri Rao, learned senior counsel  
 for the respondent urged that the remand to the Commissioner would be  
 delaying the matter as in view of the provisions of sub-section (3) of Section  
 25 the aggrieved party would still have a remedy to go to Civil Court. He,  
 therefore, urged that the litigation having gone for quite long it was F  
 appropriate and expedient either to direct the Civil Court to decide the  
 dispute or to dismiss the appeal and direct the appellant to approach the  
 appropriate court if he was aggrieved by the order.

We have considered the rival submissions on the question of forum. G  
 There is undoubtedly difficulty in remanding the matter to the Commis-  
 sioner as he might be faced with an order passed in 1971 in favour of the  
 respondent. Further the order passed by the appropriate authorities under  
 the Abolition Act may preclude him from entering into the question  
 whether the respondent had acquired occupancy rights. But it cannot be  
 disputed that the right of the respondent and his predecessor about the H

A claim of occupancy rights had to be determined and adjudicated by some competent authority. It is not possible to shut out the respondent only because his application under Sections 6 and 7 was rejected. There was no adjudication on merits by the appellate authority. The only reason for dismissing the application was that the respondent being not an intermediary was not entitled to approach for settlement under Sections 6 and 7 of the Act. If this be so and the respondent can establish that they or their predecessors acquired rights of occupancy tenant then Section 8 of the Abolition Act and even the notification issued in 1974 may not be of any avail. Considering these facts it appears expedient to direct the appellant to approach the Civil Court for appropriate relief.

C In the result, this appeal fails and is dismissed. Even though it is not necessary to make any observation as the law itself is clear, however, in order to obviate any technical defect, the appellant is permitted to approach the Civil Court which shall decide the dispute between the parties unhindered by any observation made in this order or the order passed by the Commissioner in earlier proceedings under Section 68 of the Act or the proceedings under Sections 6 and 7 of the Abolition Act. There shall be no order as to costs.

T.N.A.

Appeal dismissed.