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**Arjun Panda and ors. Vs. Surendra Prasad Misra and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/533470](http://sooperkanoon.com/533470)**

**Court : Orissa**

**Decided On : May-17-1991**

**Reported in : 1991(II)OLR416**

**Judge : R.C. Patnaik and ;D.M. Patnaik, JJ.**

**Acts : [Constitution of India](#) - Articles 226 and 227; [Orissa Estates Abolition Act, 1951](#) - Sections 6, 7 and 8**

**Appeal No. : O.J.C. No. 2515 of 1984**

**Appellant : Arjun Panda and ors.**

**Respondent : Surendra Prasad Misra and ors.**

**Advocate for Def. : P.K. Bhuyan, Adv.**

**Advocate for Pet/Ap. : B.K. Nayak, Adv. on behalf of ;R.K. Rath, Adv.**

**Judgement :**

**D.M. Patnaik, J.**

1. This is a petition under Arts. 226 and 227 of the [Constitution of India](#) invoking the extraordinary jurisdiction of this Court for quashing the confirming order dated 7-3-1984 of the Commissioner of Consolidations, Orissa, In Con Revision Case No. 159 of 1984 and for issue of appropriate direction for declaring the right, title

and interest and granting other consequential benefits over the land in dispute in favour of the petitioners.

## 2. Facts In brief.

The disputed land measures Ac. 6. 41 decimals under Sabik plot Nos. 167, 168 and 207 under. Khata No. 28 of village Haripur Paitarl within the Aska Tahasil in the district of Ganjam. This land, according to the petitioners originally stood recorded in the name of one Krishna Bhatta, the then Inamdar. After his death, his son Bhagirathi Bhatta enjoyed the property as the Inamdar.

It is claimed that in the year 1939 Basudeba Pande, father of the writ petitioners was inducted as Bhag Chasi by Bhagirathi Bhatta, the Inamdar. After the death of their father, the writ petitioners, in their capacity as tenants possessed the land until the year 1953 when as claimed by them Sarat Chandra Bhatta one of the co-sharers of the Inamdar's family on the basis of a power of attorney sold to the writ petitioners with regard to a portion of the suit property. The rest of the portion was also sold by said Sarat Chandra Bhatta in the year 1954 for a consideration of Rs. 2800/-. It is their case that after the sale dated 19-11-1953 by said Sarat Chandra Bhatta, the writ petitioners stopped paying Raj Bhag to the Inamdars and possessed the land in their own right, title and interest as title holders. Their further case is a case of acquisition of title by adverse possession from the date of sale in case the sale is found to be invalid for any reason.

In the year 1955 the land vested in the State under the Orissa Estates Abolition Act (for short the 'O. E. A. Act'). In the year 1964 these petitioners along with Sarata Chandra Bhatta and Chandramani Bhatta, the Inamdars filed claim petitions before the Additional fahasildar-cum-O.E. A. Collector, Aska for settlement of the land on the basis of their respective claims and the proceedings were numbered as C P Case Nos. 1428, 196, 1480, 100, 1681 and L. C. P. 195 of 1964.

The O. E. A Collector by a common order dated 30-11-1966 rejected the claims of all the petitioners. The claim of the writ petitioners was rejected on the ground that though they were found to be in Khas possession of the land, since they were not

the intermediaries, they could not be settled with the land (vide Annexure-1).

The claim of the Inamdars was rejected on the ground that they were not found to be in Khas possession of the land.

3. In the year 1976 Pitabas Misra and five others of village Ramachandrapur Sasan applied to the O. E. A. Collector in C. P. Case No. 264 of 1976 in respect of the disputed land for being recorded on the ground that this land was Kotha land of village Ramachandrapur Sasan. They claimed ownership of the land as the representatives of the village.

The O. E. A. Collector by his order dated 27-12-1978 held that the claim of petitioners Pitabas Misra and others were essentially a claim for recording the land under the lease principles as provided Under Section 7 of the O. E. A. Act. He rejected the claim of the writ petitioners in C. P Case No, 1098 of 1976 on the ground that since they were not ex-intermediaries in respect of the disputed land but claimed to be Bhag Chasi, they could not be recorded in respect of the disputed land.

While dealing with the case of petitioner Pitabas Misra and others, it seems he made an enquiry and found that the said petitioners are successors of the recorded Inamdars and that too the land being the Kotha land, it could only be settled with Pitabas Misra and others in their capacity as the representative of the village of Ramachandrapur Sasan and accordingly he directed settlement of the land on payment of Salami of Rs. 50.40.

4. In the year 1983 this village Haripur Paitari and the land under dispute came under the consolidation operation.

Consolidation Objection Case No. 431 of 1983, Under Section 9(3)/18(2) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the 'Act' ) was registered at the instance of Surendra Misra, son of Pitabas Misra and other villagers and the present writ petitioners contested the case as opp. parties.

The Consolidation Officer by his order dated 21-6-1983 accepted the order of the O. E. A. Collector that the villagers were rightly recorded as owners and after having given due regard to the order of the O. E. A. Collector, he directed recording of the land in the name of Surendra Misra, son of Pitabas Misra and others and further directed deletion of the note of forcible possession in favour of the writ petitioners.

5. The petitioners filed Consolidation Appeal No. 101 of 1583 in the Court of the Deputy Director of Consolidations, Ganjam, which was rejected and thereafter they carried a revision before the Board of Revenue in Consolidation Revision No. 159 of 1984 which also went against them. The Consolidation Commissioner basing his decision on the findings of the O. E. A. Collector recorded under Annexure-2 and that of the consolidation authorities; dismissed the revision.

6. The writ petitioners, challenge the impugned orders dated 27-12-1 78 of the O. E. A. Collector as per Annexure 2 and also subsequent orders of the consolidation authorities including the revisional Court.

7. The principle for invoking the extraordinary jurisdiction of the High Court under Arts. 226 and 227 of the Constitution is well-settled.

The power of the High Court to correct the errors committed by the Tribunal in exercise of their statutory powers is not an appellate one. With regard to the finding of facts recorded by the inferior tribunals, a writ in the nature of certiorari can be issued only if in recording such a finding the tribunal has acted on evidence which is legally inadmissible, or refused to admit the admissible evidence or a finding with regard to such facts not supported by any evidence at all because, in such case the error is not of fact but an error of law. The writ jurisdiction is extended only to cases where orders are passed by the tribunals in excess of their jurisdiction or in case of refusal to exercise jurisdiction (vide the decision reported in AIR 1964 SC 477, Sayad Yakoob v. K. C. Radhakrishnan and Ors.; AIR 1975 SC 232, Swaran Singh and Anr. v. State of Punjab and Ors.; and AIR 1982 SC 756, Babu v. Deputy Director of Consolidation).

Following these principles it should be judged whether the impugned order (as per-Annexure 2 ) directing settlement of the land with opposite parties 1 to 3 and the orders confirming the same are legally tenable,

8. The present writ petitioners as well as the opposite parties were all contesting their respective cases before the said O.E. A. Collector. The O. E. A. Collector held that the applications were time-barred under the O. E. A. Act but, considered those applications as essential for settlement of land on payment of Salami under lease principles, the benefit of which was extended by government order to persons who though entitled for settlement of lands could not make the application in time. Six witnesses were examined and cross examined from the side of the parties as would appear from the order of the O. E. A. Collector On verification of the previous record-of-rights and examination of the evidence the O. E. A. Collector came to a finding that though the lands in question were recorded as private land of Bhagirathi Bhatta, the Inamdar, he was serving at Bhubaneswar for last several years and even on the date of vesting. Since the ex-intermediaries were not in Khas possession of the land, he refused settlement in their favour. He found that he had given a special power of attorney in favour of the co-sharer Sarat Chandra Bhatta in the year 1953 who was the son of his fathers brother. He gave much weight to the admission of the claimant Sarat Chandra Bhatta that since 1917 the land was under the cultivating possession of writ petitioner Arjuna Panda. Though upto one point of time this Sarat Chandra Bhatta, the power of attorney holder had decided to transfer the land in question to Arjuna Panda for a consideration of Rs. 2800/-, according to him, as the O. E. A. Collector observes, the sale could not be materialise for certain reasons. The claimant Ananda Misra also stated that the land was in possession of Arjuna Panda since 1989. The writ petitioner Arjuna Panda also stated before the O. E. A. Collector that he was in possession of the disputed land since 1952 after its sale by Sarat Chandra Bhatt. The O. E. A. Collector also considered certain documents (Exts. A to H) and accepted them to be the evidence of possession. His finding was that the writ petitioner Arjuna Panda was found to be in Khas possession of the land, but his claim was not considered on the ground that he was not an ex-intermediary. The O. E. A. Collector rightly rejected his claim for being settled in respect of the land. We are in absolute agreement with the approach of the O. E. A. Collector in

passing the order under Annexure-1.

9. The first order as mentioned above was passed by the O. E. A. Collector on 30-11-1966. The present opp. parties 1 to 3 came before the O. E. A. Collector in C.P. Case No. 264/76 that is, ten years after the above order of the O. E. A. Collector. This impugned order of the O. E. A. Collector shows as follows :

'My enquiry reveals that these lands were given to Bhagirathi Bhatta and other Brahmins of village Ramachandrapur Sasan near Mundamarai as a taken of royal patronage to the Brahmins of the said village. These lands are therefore the 'KOTHA' lands of village Ramachandrapur Sasan.

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On the facts of the case as narrated above the main issue before me is that whether the present petitioners in C.P. Case No. 264/76 are entitled to settlement of suit lands and whether the objector Sri Arjuna Panda (also the petitioner in C. P. Case No. 1098/76) has any right in respect of the said lands....'

Thus it is clear that in the subsequent proceeding before the O. E. A. Collector, the parties before this Court also claimed for being recorded in respect of the land. It is the legality of this order which is assailed in this writ petition.

10. A Division Bench of this Court in a case reported in 36(1970) CLT 226 : Dayanidhi Sahu and Ors. v. Udaya Pratap Singh Deo and Ors., following the decisions reported in AIR 1962 SC 1912, Kumar Bimal Chandra Singh (deceased and after him his legal representatives and Ors. v. State of Orissa and Ors., has held that an application Under Section 7(1)(a) of the [Orissa Estates Abolition Act, 1951](#), cannot succeed without a finding of applicant's possession on the date of vesting. It has been further held that the intermediary cannot have the benefit of the provision on the finding, that was not in Khas possession of the disputed lands on the date of vesting.

In the case referred to above, the land measuring 36\*50 acres were in dispute and the intermediary at the first instance moved the O. E. A. Collector for settlement of land on fair and equitable basis was rejected. After the second Amendment Act

came into force, he filed a claim petition Under Section 8-A of the Act for settlement of the land and the adversaries who claim to be in Khas possession of the land contested the case. The O. E. A. Collector, after analysis of the evidence came to a finding that the intermediaries were not in Khas possession of the lands and therefore he rejected the applications. This Court upheld the decision of the O. E. A. Collector.

11. Under Annexure-2 the O. E. A. Collector has directed settlement of land with the writ opposite parties on a finding that on enquiry it revealed that the lands were given to Bhagirathi Bhatta and other Brahmins of village Ramachandrapur Sasan as a token of royal patronage to the Brahmins of the said village and that these lands were therefore the 'KOTHA' lands of village Ramachandrapur Sasan. This finding of the O.E.A. Collector is not based on any evidence whatsoever on record, as the order- sheet itself shows. Annexure A/1 is a true copy of the memorandum of enquiry dated 15-9-1978 submitted by the O. E. A. Collector. This memorandum of enquiry does not show anything that the O. E. A. Collector recorded statements of any witnesses, He has merely stated that it was ascertained from the persons named therein that the disputed land had been given to the Brahmins of village Ramachandrapur Sasan as a token of royal patronage of ex-zamindars of Ramachandrapur Sasan. He had given the names of 8 persons in the memorandum. There was no material either documentary or otherwise before the Collector to come to such a conclusion. He came to such conclusion by merely asking the persons named In the memorandum.

12. The O. E. A. Collector on the earlier occasion after due analysis of the statements recorded by him (as the order-sheet shows) recorded a finding that the writ petitioners were in Khas possession and the ex-intermediaries were not in Khas possession. In our view, the second O. E. A. Collector who passed the order under Annexure-2 had absolutely no authority to go behind the order of the first O. E. A. Collector with regard to Khas possession. The matter would have been, different had he, after due enquiry, come to the conclusion that the opp. parties herein were found to be in Khas possession of the land. No doubt, the order under Annexure-2 by the O. E. A. Collector has been passed on the basis that he was considering the application on the basis of lease principles as provided Under

Section 7 of the O. E. A. Act along with the government instructions issued from time to time in that regard. The O. E. A. Collector was also conscious of these principles. The claim of the writ petitioners in C. P. Case No. 1098/76 was also before the said Collector.

Section 7 of the Act basically presupposes that the persons who are only the ex-intermediaries or the successors of the ex-intermediaries can file petitions under the lease principles for settlement of such lands. Secs. 6, 7, 8(a) of the Act prescribe that it is only the ex-intermediaries who are found to be in Khas possession of the land on the date of vesting can take the benefit of the lease principles and none else. Therefore, the order of the O. E. A. Collector under Annexure-2 settling the land with the writ opp. parties without a finding with regard to their Khas possession in respect of the land is illegal and without jurisdiction.

The subsequent authorities, that is, the authorities under the Act having been influenced by the finding of the revenue Court arrived at conclusions which are found to be erroneous. The order of the O. E. A. Collector under Annexure 2 being invalid on account of absence of jurisdiction it is found to be an illegal order and, therefore, liable to be quashed.

13. In the result, therefore, the order of the Addl. Tahasildar-cum- O. E. A. Collector (as per Annexure-2) is quashed. The case is remitted back to the O. E. A. Collector, Aska, to make a fresh enquiry and dispose of the case in accordance with law.

The order of the Consolidation Commissioner in Consolidation Revision No. 159 of 1984 as per Annexure 5 is set aside and the revision is remitted back for disposal to be taken up after the final disposal of the proceeding remitted to the O. E. A. Collector-cum-Addl. Tahasildar, Aska.

With the aforesaid observations, the writ petition is disposed of. No costs.