

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31305 of 2021

Binapani Samantray and others *Petitioners*

Mr. A. Mohanty, Senior Advocate

-versus-

Commissioner of Endowments, ... *Opposite Parties*
Odisha and others

Ms. P. Naidu, Advocate
(for the Commissioner)

Mr. S. Kar, Advocate
(for opposite party nos.3 and 4)

CORAM:
JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA

ORDER
11.07.2023

Order No.

- 08.
1. Mr. Mohanty, learned senior advocate appears on behalf of petitioners and submits with reference to observations made in paragraph 5 of our order dated 9th May, 2023, persons not prosecuting their contention and having had acquiesced in accepting demand for arrear rents cannot stand in the way of his clients challenging the same. In event his clients are successful in obtaining relief, those who have acquiesced cannot claim the same.
 2. He submits, none of the agreements, earlier or present, have been registered. In the circumstances, the ground of registration or omission to do so cannot be used against his clients. Fact is all are tenants. His clients had agreements with the managing trustee for occupation as tenants up to 31st March, 2016. They had requested

for extension. It was granted up to 31st March, 2021. They paid agreed rents up to that date. His clients then paid revised rent pursuant to interim order.

3. His clients are opposed to fixation of higher rent with retrospective effect. Order dated 31st May, 2019 was made by the Commissioner requiring the Assistant Commissioner on fixation of fair rent. The function was delegated to the Executive Officer and purported fair rent fixed. His clients having had paid rent as per their agreements up to 31st March, 2021, there cannot be demand of arrear rents at the rate fixed, in the retrospective period. Furthermore, the measurements of areas under occupation of his clients were also incorrectly taken.

4. Miss Naidu, learned advocate appears on behalf of the Commissioner and Mr. Kar, learned advocate, for opposite party nos.3 and 4.

5. Miss Naidu submits, none of the agreements having had been duly registered, even otherwise there could not have been lease granted for period in excess of five years without prior permission obtained from the Commissioner. All the agreements therefore are non est in the eye of law. In the circumstances, pursuant to the fixation of fair rent there was just demand made for arrears, calculated at the enhanced rate from 1st March, 2017. She points out, the government through General Administration Department vide office order dated 26th November, 2016 had made an assessment of rent. In applying that assessment there was revenue loss calculated for period 1st March, 2017 to 31st October, 2019. Hence, 1st March, 2017 was taken as the date, from which the enhanced arrear rents were reckoned.

6. On appreciation of submissions as above made by the

parties, we have made our observations. Mr. Mohanty prays for adjournment.

7. List on 18th July, 2023.

(Arindam Sinha)
Judge

P.Pradhan

(S.K. Mishra)
Judge



Signature Not Verified

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Date: 11-Jul-2023 19:31:01

