
(1969) 04 OHC CK 0023

In the Orissa High Court

Case No : Civil Revisions No. 201, 202 and 203 of 1968

Achutananda Purohit and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-04-1969

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 124A, 125, 126
Civil Procedure Code, 1908 (CPC) — Section 100
Orissa Estates Abolition Act, 1951 — Section 24, 26, 26(2), 32, 32A
Orissa Estates Abolition Rules, 1952 — Rule 13(1)

Citation : (1969) 35 CLT 522

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : R.N. Misra, R. Mohanty, R.K. Kar and S.N. Kar, for the Appellant;
Addl. Standing Counsel, for the Respondent

Judgement

G.K. Misra, J.—The Petitioners are the intermediaries in respect of 3 Thikkadari villages in the district of Sambalpur. Those villages are Gargadbahal, Debijharan and Kansar. They are situated within the jurisdiction of the ex-State of Jujumura. These villages vested in the State of Orissa on 1-4-1960. The intermediaries are entitled to compensation. u/s 26 of the Orissa Estates Abolition Act, (sic) (hereinafter referred to as the Act) the gross asset of the estate is to be determined. One of the items of claim to be included in the gross asset was the gross income from the forests lying within the boundary of these three villages. The total forest land is about 2200 acres. The Compensation Officer held that the Petitioners were not entitled to any compensation in respect of forests. The Petitioners carried appeals to the Collector who dismissed the appeals on this head. Second Appeals to the Member, Board of Revenue were also dismissed. Against the order of the learned Member, Board of Revenue, the Civil Revisions have been filed. The learned Member, Board of Revenue held that the Petitioners were not the proprietors of the 3 villages, that the proprietary interest vested in the ex-zamindar of Jujumura, and accordingly the Petitioners were not entitled to

any compensation. He further examined some of the materials on record and came to the conclusion that no forest income was available from the entire 2200 acres of forest land for the year 1950-60. Thus, on both the grounds he dismissed all the three second appeals.

2. Mr. Misra for the Petitioners advanced two contentions-(1) The view of the learned Member, Board of Revenue that the Petitioners were not proprietors is contrary to law, and (2) his finding that the Petitioners are not entitled to any compensation in respect of forest land is also contrary to law, inasmuch as he did not take into consideration the most important pieces of evidence which would throw light on the question.

3. Both the contentions require careful examination. In order to understand the first contention, certain provisions of the Central Provinces Land Revenue Act., 1881 (hereinafter referred to as the 1881 Act), which throw light on the question, must be critically examined. Section 126 of the (sic) Act lays down that all persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsildar of the tahsil in which such land is situated. These three villages were taken by registered leases by the Petitioners from the ex-zamindar of Jujumura. Villages Kansar and Debijharan were taken by registered lease in the year 1925, and village Gargadbahal was taken by registered lease in the year 1932. The Petitioners who were the Thikkadars have acquired proprietary right as would be found from the following note appended to Section 126 of the 1881 Act. The note runs thus:

The right of an ordinary thikadar in the Sambalpur district has been declared to be a proprietary right within the meaning of this section. (Government of Bihar and Orissa Revenue Department, memo No. 1457-IVL-87-Com. R., dated 30th September 1926).

Section 125 of the 1881 Act Jays down that "all transfers of property occurring amongst the proprietors, cosharers or malikmakbuzas of a mahal shall be recorded in a register in the following form (to be caned the "register of proprietary mutations"), which shall be maintained by the kanungo of the tahsil". The proclamation is to be issued in the following form:

It is hereby notified that a notice has been received that the proprietary rights noted below have been transferred by....from....

That the Petitioners have been recorded as the proprietors in the register of proprietary mutations is to be found out from a note in the order sheet of the Compensation Officer. A note has been made to that effect by the Kanungo after verification. The Petitioners are the 16 annas owner of the thikkadari villages. The fact that the Petitioners are recorded in the register of proprietary mutations means recognition by the State that they are the proprietors after getting the lease-hold interest from the ex-zamindar of Jujumura in 1925 and 1932. On the aforesaid discussion, conclusion is irresistible that the Petitioners are the

proprietors of the 3 disputed thikkadari villages.

4. The learned Member, Board of Revenue took the view that the Petitioners have no right in those villages on the basis of Section 124-A of the 1881 Act. This section makes provision regarding exercise of powers by the Government relating to control and management of forests. The section throws no light that the thikkadars have no proprietary interest in the forest. The Deputy Commissioner is to exercise certain control. Even where the thikkadars or the proprietors disobey the injunction, they are not to be deprived of the property. They can be deprived of the possession of the forest for a temporary period during which it would be under the direct management of the Deputy Commissioner. Sub-section (5) makes it clear that the profits of such forest land while under direct management shall be paid to the proprietor, or to the superior and inferior proprietors in the proportions in which the costs of management are borne by them. Sub-section (6) also indicates that no leases, liens incumbrances or contracts created or made by the proprietor or by any person through or under whom he claims, of, upon or with respect to the forest land held under direct management, shall be binding upon the Deputy Commissioner during such management. In other words, those leases and contracts have their validity only during the period of management, and not beyond that.

It is thus clear that the Government gets no proprietary interest in the forest belonging to the zamindar or the thikkadar. The view of the learned Member, Board of Revenue that the Petitioners have no proprietary right in the disputed forest is contrary to law and cannot be supported.

5. The next question for consideration is whether the view of the learned Member, Board of Revenue on the question of fact can be upheld. The power of the Board of Revenue in Second Appeal is given in Section 32-A of the Act. It says that any person aggrieved by any order passed by the Collector u/s 32 may, within one month from the date of the order, prefer an appeal before the Board of Revenue. The section does not say as to the power that should be exercised while hearing the appeal. Thus, though the Board of Revenue is the second appellate authority, its powers are not restricted as u/s 100 Code of Civil Procedure. It can go into any question in respect of the order passed by the Collector. The power of this Court in revision is somewhat restricted. Section 32-B of the Act enumerates the revisional power. It lays down that any person aggrieved by an appellate order passed u/s 32-A may, within one month from the date of the order, file an application before the High Court for revision of such order on the ground that the decision is not in conformity with the law. The revisional power of this Court u/s 32-B corresponds to its power u/s 100 Code of Civil Procedure.

6. It is now necessary to examine if the finding of the Member, Board of Revenue that the Petitioners are not entitled to any compensation, is in conformity with the law. To arrive at that conclusion, it is necessary to examine certain relevant provisions of the Act. Section 24 says that the compensation shall be determined

for the estate as a whole in accordance with the provisions of this Act, and not separately for each of the shares therein. Section 26 defines "previous agricultural year" and "gross asset". Section 26, Sub-section (2)(b), Sub-clause (v) runs thus:

26. (2). "gross asset" when used with reference to an estate means the aggregate of the rents, including all cesses, which were payable in respect of the estate for the previous agricultural year

... ..

(b) by the raiyats or any other persons cultivating the land other than the land settled with the Intermediary or Intermediaries under Sub-section (1) of Section 7 and includes

... ..

(v) gross income from forests calculated on the basis of the appraisalment made of annual yield of the forests on the date of vesting by a Forest Officer subject to the approval of the Chief Conservator of Forests, such Forest Officer being not below the rank of a Divisional Forest Officer to be appointed in this behalf by the State Government.

It would thus be seen that the gross income from the forest of an estate is to be included within the gross asset of the estate. This gross income constitutes the annual yield of the forest on the date of vesting. In other words, the yield of the forest of the year preceding the date of vesting would constitute the gross income from the forest. The machinery for calculation of such gross income is the Divisional Forest Officer who will make an appraisalment of such gross income. It is accepted that the State Government have appointed Divisional Forest Officers for different zones for the purpose of making appraisalment. In this case no Divisional Forest Officer was deputed to make the appraisalment of the gross income from the forest for the year preceding the date of vesting. It is the State Government which, by virtue of the legislation, has taken away the property of the Petitioners. The statute has therefore made it incumbent upon the State authorities to get the appraisalment done. There was therefore gross dereliction of duty on the part of the Compensation Officer in not asking the Divisional Forest Officer to make the appraisalment. In view of this lacuna on the part of the State authorities who have taken away the property of the Petitioners, the evidence given on behalf of the Petitioners are entitled to great weight. The revenue authorities have perfunctorily discharged their duties in not referring to the various relevant documents exhibited in this case. Exts. 1 to 3 dated 8-11-1963 are the reports of 3 witnesses, examined on behalf of the Petitioners, who counted the number of trees inside the forest. The reports say that in one village there were 211899 trees, in another village there were 193283 trees, while in the third villages there were 7751 trees, inside the forest area. Ext. 7 dated 15-1-1964 is report given by a retired forester making appraisalment of the trees. No reliance has been placed on the reports as they do not relate to the

year 1959.60 which is relevant with reference to Section 26 (2)(b)(v). I find difficulty in appreciating the views of the revenue authorities. Doubtless, these reports speak of trees standing 3 years after the relevant year. But trees cannot grow all of a sudden and within 3 years they cannot attain astounding size, height and girth. By backward calculation even by scientific means it was open to the Divisional Forest Officer and also to the Compensation Officer to say what would be the age, girth and height of those trees in the relevant year. These pieces of evidence cannot therefore be said to be wholly inadmissible, and more so when the State authorities are at fault in not asking a Divisional Forest Officer for making the necessary appraisal as required u/s 26 of the Act. Rule 13(1-c) of the Orissa Estates Abolition Rules, 1952 prescribes thus:

After expiry of the period specified in sub-Rule 1 or (1-a), as the case may be, the Compensation Officer shall proceed to fix the compensation on the basis of materials, if any, furnished by the Intermediary and such materials as may otherwise be ascertained by him.

This sub-rule deals with the rule of evidence. There is absolutely no evidence on behalf of the State as to what would be the compensation. If the Petitioners are entitled to any compensation for forest products, it is difficult to imagine that they were not even entitled to a single rupee out of 2200 acres. One of the Petitioners Shri A.N. Purohit gave evidence and filed an affidavit. These pieces of evidence have not been countermanded by any contrary evidence on behalf of the State. Not only that, the Tahsildar of Sambalpur in his objection to the claim admitted that there was existence of 4500 trees and the Petitioners derived about Rs. 350/- annually as income from kendu leaves. On 1-5-1964 the Compensation Officer by an order said that it was necessary to ask the Tahsildar to clarify how he reported the number of trees to be 2000 only when the intermediaries claim is Over 211899. This relates to village Kansar. The Tahsildar reported on 14-1-1965 that the R.I. was asked to enquire and report. The R.I. said that he was busy in collection of land revenue. He further reported that he would take 2 or 3 months' time for counting the actual number of trees standing. That obviously shows that the number of trees must be very large. He accordingly found it impossible to report the actual number of trees standing on the forest land. He wanted time for verification after 31-3-1965. On 15-1-1965 the Compensation Officer allowed time to the Tahsildar and made a reference to the Divisional Forest Officer to make a proper appraisal u/s 26(2)(b)(v). The Divisional Forest Officer thwarted the order of the Compensation Officer. 12 dates intervened. Ultimately the Divisional Forest Officer wrote certain letter, which is not on the record, as appears from the order dated 30-12-1965. All of a sudden, the Compensation Officer gave a somersault and said, "There is no need to wait for his report as I think the intermediary will not be entitled to any forest income, as such he being a thikkadar. Orders will be passed on the evidence adduced by the intermediary only."

7. The aforesaid narration of the facts would indicate a sad state of affairs in the

administration of justice in respect of estates taken away by the State. The Petitioners were deprived of the property and for over 9 years the matter is hanging on and ultimately the executive authorities have arrived at an absurd conclusion that 2200 acres of forest land give no yield and therefore would not constitute a part of the gross asset of the estate. I feel somewhat surprised that justice is meted out in this manner. All this has happened, because the law has been thrown to the winds. Coercive steps have not been taken against the Divisional Forest Officer refusing to make appraisement, and admissible evidence was thrown out without there being any contrary evidence on behalf of the State. An of these make out that the findings of the different authorities under the Estates Abolition Act are not in conformity with the law. The findings must accordingly be set aside.

8. The case must be remanded to the Compensation Officer. He would immediately call-upon the Divisional Forest Officer to make appraisement within three months from the receipt of the record. The appraisement can be scientifically done by looking to the age of the trees as they stand now. It is open to the Petitioners to give evidence that from after the date of vesting many of the trees and forest produce have been removed. Besides, the evidence already on record would be taken into consideration. The Divisional Forest Officer who would make the appraisement will be examined as a witness for the Compensation Officer and would be subjected to cross-examination. No other evidence would be permissible as the State has not chosen to give any other evidence. Under Rule 13(1-0) of the Orissa Estates Abolition Rules 1952 the Compensation Officer may rely upon such other materials as may otherwise be ascertained by him. But in such a case the materials must be brought to the notice of the Petitioners who would be entitled to cross-examine the witnesses connected therewith and may give rebutting evidence. The compensation case is to be disposed of by the Compensation Officer within six months from today with intimation to this Court.

9. In the result, the impugned order is set aside and the Civil Revisions are allowed with costs. Consolidated hearing fee Rs. 200/. The cases are remanded to be disposed of in accordance with Jaw and the observations made above.