
(1987) 07 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction case No. 418 of 1980

Aprati Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-07-1987

Acts Referred:

Citation : (1987) 64 CLT 644

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S.C. Dash and B.K. Patnaik, for the Appellant; Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—An appeal under the Orissa Public Demands Recovery Act before the Additional District Magistrate, Balasore having failed the Petitioner has moved this Court in this petition for redress.

2. The short facts leading to the case are that the Petitioner was a lessee in respect of the Sairat Fisheries on the shores of Bay of Bengal for the year 1967-68 which he had taken as the highest bidder for Rs. 2,6000/-. He had deposited Rs. 500/- as the earnest money and Rs. 650/- thereafter but did not deposit any further sum subsequently since according to him he was prevented from operating the fishery as his entry therein was prevented by the Proof and Experiment Establishment, Balasore, a defence establishment of the Government of India. A certificate case was started by the opposite party No. 3 for realisation of the balance amount which as aforesaid the Petitioner challenged in appeal but was unsuccessful.

3. Apart from the other contentions raised by the Petitioner, it appears that the proceeding under the Orissa Public Demands Recovery Act, 1962 was stillborn one since the demand against the Petitioner is not collectible as arrears of land revenue. It is the admitted case of the parties that the Petitioner had never

executed any registered agreement for taking the lease even though he had signed only a form of agreement. Neither a full-fledged agreement had come into existence nor was it registered. A right to catch fish is a right to profits a pendre and is unquestionably immoveable property requiring registration for its assignment as has been held by Ananda Behera and Another Vs. The State of Orissa and Another, and The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, . Under the provisions of paragraph (iii) of the Schedule I to the Orissa Public Demands Recovery Act, the demand arising out of a fishery amongst other things would become a public demand collectible as arrears of land revenue only if it is so stipulated under an agreement executed by the person concerned. An agreement would undoubtedly mean a valid agreement which in this case was to have been a registered one. Since there was no such agreement, the Petitioner had never agreed that the demand raised against him was to be collected under the provisions of the Orissa Public Demands Recovery Act, 1962 and hence no such proceeding could be started.

4. In the result, the writ petition succeeds and the certificate case No. 3715 of 1969-70 before the Certificate Officer, Soro against the Petitioner as also the appellate order in Annexure-2 are quashed. The petition is allowed with costs. Hearing fee is assessed at Rs. 100/-.

G.B. Patnaik, J.

5. I agree.