

(1985) 12 OHC CK 0003
In the Orissa High Court
Case No : O. J. C. No. 2129 of 1980

Arjuna Naik

APPELLANT

Vs

Smt. Gangamani Patrani and Others

RESPONDENT

Date of Decision : 10-12-1985

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 36A

Citation : (1986) 61 CLT 6 : (1986) 1 OLR 1

Hon'ble Judges : D. Pathak, C.J.; S.C. Mohapatra, J

Bench : Division Bench

Advocate : K.T. Rao, for Y.S.N. Murty, for the Appellant; P.K. Mohanty, A.S.C. for Opposite Parties Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

D. Pathak, C.J.—This writ petition has arisen out of a proceeding u/s 36-A of the Orissa Land Reforms Act, 1960 (Orissa Act 16 of 1960) (hereinafter referred to as "the Act").

2. The petitioner filed an application u/s 36-A in Form No. 19 of the Rules framed under the Act for a declaration that the land under his possession as a bhag-tenant is non-resumable and for issuance of a certificate u/s 36-A of the Act. The Revenue Officer-cum-Tahasildar, Nowrangour (Opposite Party No. 2), after hearing the parties, rejected the application and the petitioner being aggrieved by the said order referred an appeal before the appellate authority which was registered as O. L. R. Appeal No. 91 of 1977, in the Court of the Additional District magistrate (Land Reforms), Koraput. The appellate authority, after hearing the parties, set aside the order of rejection passed by the Revenue Officer and remitted back the case to him for allowing the petitioner to adduce evidence in support of his case and dispose of the same in accordance with law.

3. On remand, the Revenue Officer by an order dated 22.1.1979 rejected the application of the petitioner. The petitioner was thus, aggrieved and took up the

matter before the appellate authority and the appeal was registered as O. L. R. Appeal No. 13 of 1979. The learned Addl. District Magistrate, (Land Reforms), Koraput, who heard the appeal, passed an order dated 27.2.1979 dismissing the appeal. The petitioner being undaunted by the order of the appellate authority took up the matter before the Collector, Koraput, who exercises the revisional jurisdiction under the Act and the revision petition was registered as O. L. R. Revision Case No. 16 of 1979. The learned Collector rejected the revision petition by an order dated 24.11.1980. Hence the present writ petition.

4. Mr. Rao, the learned counsel appearing on behalf of the petitioner, submitted that all the authorities below, viz, the Revenue Officer (O. P. No. 2), the appellate authority (O. P. No. 3) as well as the Revisional Authority (O. P. No. 4), failed to consider the relevant material in the evidence on record. The learned counsel for the petitioner has particularly brought to our notice that in the case the landlady was examined before the Revenue Officer as witness on her behalf. This witness has specifically stated that the petitioner was possessing the land given by her on bhag to him. The learned counsel for the petitioner further submitted that this categorical statement of the landlady has been blissfully ignored by all the authorities. It has also been brought to our notice that a document marked as Ext. 1 was before the Revenue officer, which is the agreement for the land on bhag to the petitioner. The petitioner also produced certain rent receipts to show that he was paying the rent to the landlady. We have perused the order passed by the learned Revenue Officer in O. L. R. Case No 16 of 1977 passed on 22.1.1979 (Annexure-2) where he has found that the landlady in her deposition admitted the claim of the petitioner. However, while discussing the other materials he has come to the conclusion that the petitioner was never a bhag tenant under the landlady. It has been held by the Revenue Officer that the father of the petitioner was working as a Behera during his life time as a paid servant and was looking after the lands including the case lands and after his death the petitioner is only looking after the lands of the landlady. We have ourselves gone through the evidence of the landlady which has been annexed to this writ petition as Annexure-6. In her statement the landlady has stated that the petitioner was given her land on bhag and he was cultivating the same. It is also in her evidence that the petitioner was paying at the rate of four garissa of paddy to her annually against which she was granting the receipts on plain paper. Thus, we find that the relevant material available in the evidence of the landlady was not properly considered by the Revenue Officer. We have also gone through the order of the appellate authority as well as the revisional authority. There is no whisper of the above material evidence given by the landlady either in the order of the appellate authority or in the order of the revisional authority. None of these two authorities have discussed that there was some evidence given by the landlady on behalf of the petitioner. We are of the firm opinion that when there is some evidence on record the same should have been considered in its entirety. What would be the impact of such evidence is a different matter which can be taken into consideration by the authorities concerned. But non-

consideration of the evidence on record is clearly a failure of exercise of jurisdiction on the part of the authorities.

5. Upon hearing the learned counsel for the petitioner and Mr. P.K. Mohanty, the learned Addl. Standing Counsel for the State, we think that this is a fit case which should be remitted back to the Revenue Officer for disposal in accordance with law, after considering the evidence on record-both oral and documentary and giving adequate opportunity to the parties of being heard.

6. For the reasons indicated above we find that none of the orders passed by the authorities below is sustainable in law. Accordingly the orders of the Revenue Officer, the appellate authority and the revisional authority contained in annexures-2,4 and 7 respectively are set aside.

7. In the result, this writ petition is allowed and the case is remanded to the Revenue Officer-cum-Tahasildar, Nowrangpur (O. P. No. 2), for disposal in accordance with law. The petitioner shall appear before the Revenue Officer-cum-Tahasildar, Nowrangpur, on 15.1.1986 to take necessary orders. No costs.

S.C. Mohapatra, J.

8. I agree.