
(1971) 01 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 1 of 1968

Bansidhar Malik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-01-1971

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 8(1)

Citation : AIR 1971 Ori 271 : (1971) 37 CLT 389

Hon'ble Judges : G.K. Misra, C.J;A. Misra, J

Bench : Division Bench

Advocate : P.K. Dhal, for the Appellant; A.G. and L. Rath, for the Respondent

Final Decision : Allowed

Judgement

G.K. Miska, C.J.—The petitioner's case is that he was the tenant in respect of the disputed land prior to the vesting, he continued to hold the land as a tenant after the vesting and went on paying rent from the year of vesting, 1954, till the end of 1966. Opposite party No. 3 filed an application before the Tahasildar (opposite party No. 2) u/s 8 (1) of the Orissa Estates Abolition Act (hereinafter to be referred to as the Act) claiming that he was the tenant in respect of the disputed land. The petitioner raised objection. The Tahasildar took evidence, oral and documentary, including rent receipts, and ultimately came to the conclusion that opposite party No. 3 was a tenant on the date of vesting and would continue as such thereafter and rent is acceptable from him. It is against this order that the petitioner has filed this writ application under Articles 226 and 227 for issue of a writ of certiorari.

2. Section 8 (1) of the Act runs thus:

"8. Continuity of tenure of tenants: (1) Any person who immediately before the date of vesting of an estate in the State Government was in possession of any holding as a tenant under an intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State Government and such person shall hold

the land in the same rights and subject to the same restrictions and liabilities as he was entitled or subject to, immediately before the date of vesting."

It would be clear from the aforesaid provision that a person who immediately before the date of vesting of an estate was in possession of any holding as a tenant shall be deemed to be a tenant of the State Government from the date of vesting and would continue as such thereafter. There is no provision in the Act to determine the rival claims. Opposite party No. 2 exercised a jurisdiction which he had not. His order is therefore liable to be quashed.

3. Mr. Rath, however, contends that though there is no specific provision for determining the tenancy rights of the parties u/s 8 (1) of the Act, it is open to the landlord to find out as to who was the tenant and from whom rent would be accepted. We do not express any opinion on this matter. We would, however, make it clear that under the garb of exercise of an administrative power opposite party No. 2 cannot be allowed to exercise a judicial power to determine the tenancy right. If opposite party No. 2 would not have recognised the real tenant and would have accepted rent from a person having no claim, it would have been open to the real tenant to establish his claim in the Civil Court. In such a case no writ would lie. But here the position is different. A public functionary purported to exercise jurisdiction vested in him under law though in fact he had no such power and jurisdiction. Such an order should not be allowed to stand to the prejudice of the petitioner. We, however, make it clear that in this proceeding the inter se title of the petitioner and opposite party No. 3 is not being determined. We make it further clear that the impugned order was not an order under Chapter II of the Act and Section 39 is not a bar to file a civil suit against that order.

4. In the result, the impugned order is quashed and the application filed by opposite party No. 3 before the Tahasildar is dismissed. In the circumstances there will be no order as to costs.

A. Misra, J.

5. I agree.