

(1981) 09 OHC CK 0022
In the Orissa High Court
Case No : Original Jurn. Case No. 590 of 1977

Basudev Bissoi

APPELLANT

Vs

Revenue Officer, Berhampur and Others

RESPONDENT

Date of Decision : 21-09-1981

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 2, 37A

Citation : AIR 1982 Ori 19 : (1981) 52 CLT 498

Hon'ble Judges : R.N. Misra, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : R.C. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

R.N. Misra, C.J.—The petitioner is land-holder. The Revenue Officer, opposite party No. 1, initiated a suo motu proceeding u/s 42 of the Orissa Land Reforms Act (hereinafter referred to as the "Act") and published a draft statement fixing the ceiling surplus lands in the hands of the petitioner and called upon him to show cause why the said draft statement may not be confirmed. The petitioner filed objection before the Revenue Officer saying that there was no assured source of irrigation and the lands were mainly rainfed. He accordingly wanted the Revenue Officer to drop the proceeding. The Revenue Officer asked for a report from the Revenue Inspector. From the record, we find that the Revenue Inspector in his report only gave the particulars of the lands and their extent but did not classify the same. Overruling the objection of the petitioner, the Revenue Officer ultimately published a confirmed statement and found that the petitioner was possessed of surplus lands beyond the ceiling. An appeal was carried by the petitioner under the Act, and from the very commencement of the appeal the petitioner as appellant contended that there should be a spot verification to determine whether the classification made by the Revenue Officer was justified. No steps were taken for a spot verification though by two separate orders the prayer was noticed, and even on one occasion the appellate authority indicated that a date for spot inspection would be communicated to the petitioner. The

appeal was dismissed. A revision carried against the appellate order did not bring in any benefit.

2. In Section 2 of the Act "irrigated land" has been, defined in Clause (13) to mean -

"Land which is assured of irrigation from an irrigation project constructed or maintained or improved or controlled by the Central Government or the State Government or by a body corporate established under any law for the time being in force and includes land which is assured of irrigation from any private source by means of lift irrigation from any perennial water source operated by diesel or electric power

3. Reliance has been placed by counsel for the petitioner on the stand of the State Government which has been noticed in a reported decision of this Court that instructions have been issued by the State Government not to rely upon private sources referred to in the notification.

The Revenue Officer's order shows that there were two tanks located in the village. The petitioner has contended throughout that though there are two tanks in the village they are used for purposes other than irrigation. Reliance is also placed by the petitioner on an order of the Revenue Officer in Annexure 5 which is an order on a similar proceeding in another case with reference to lands located in the same village as that of the petitioner. Therein it has been found by the Revenue Officer that the very two tanks which have been taken as water source for the petitioner's lands were not available for irrigation purposes.

The report of the Revenue Inspector, as already noted, never indicated any classification. There is no material on the record of the Revenue Officer, which we had called for to see, as to what was the information which he had received regarding classification. The marking of classification put on the objection filed by the petitioner seems to have been an act of the Revenue Officer. There is therefore, admission by the petitioner as to classification. One of the items of property held by the petitioner has been classified as Class I though it is conceded before us that in Ganjam district where the petitioner's lands are located, in the absence of any irrigation sources of the type which would make lands Class I, no Class J lands exist. The fact that the Revenue Officer classified one of the items of property as, Class I goes to support the stand of the petitioner that there was no appropriate application of mind and no adequate enquiry for classifying the lands.

Very much inter-connected with the classification of land is the extent of the ceiling unit. If lands were classified as Class I, i.e. very acre to be a standard acre, the petitioner would have been entitled to 10 acres in his telling area. If all the lands were Class IV, the area would have been four times of it. In such circumstances, unless appropriate care is taken to classify the lands, the size of the ceiling area in terms of normal acreage (not being standard acres) would be different. As there has been no appropriate enquiry in this case, the petitioner's

claim has been negated without investigation and . he has been prejudiced.

4. We would accordingly set aside the appellate decision as also the order of the Revisional Authority and direct that the appeal be re-disposed of from the stage where local inspection had been decided to be undertaken and the date was to be notified to the petitioner.

5. No costs.

R.C. Patnaik, J.

I agree.