

(1972) 08 OHC CK 0019

In the Orissa High Court

Case No : Original Jur. Case No. 1060 of 1969

Bauri Bessoyi and Another

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 04-08-1972

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 25

Citation : AIR 1973 Ori 106

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : B.B. Mohanty, for the Appellant; S. Mohanty and Y.S.N. Murty, for the Respondent

Judgement

R.N. Misra, J.—The petitioners challenge the order of the Commissioner of Endowments made u/s 25 of the Hindu Religious Endowments Act (2 of 1952) (hereinafter referred to as the Act) directing the issue of a requisition to the Collector of the district to deliver possession of the disputed property to the trustee, the opposite party No. 3. on behalf of the deity the opposite party No. 2. According to the petitioners they were inducted into the land (46.126 acres) long before vesting of the estate under the Orissa Estates Abolition Act (1 of 1952) which took place on 15-7-1955. In 1952 when the record-of-rights were finally published the petitioners were given a Patta for the land wherein they have been shown to be the occupancy tenants of the property. After the final record was published a suit was filed in the Court of the Subordinate Judge. Berhampur (T. S. No. 6 of 1955) for a declaration that the defendants had not acquired the occupancy right. That suit was compromised on 17-11-1959. The opposite parties 2 and 3 recognised the petitioners to be occupancy raiyats and the property in question to be their raiyati lands. The right of the petitioners to own and enjoy the property in perpetuity with full rights of alienation was also accepted. The petitioners paid the entire costs of the litigation amounting to Rs. 2,000/- to the opposite parties 2 and 3. In 1967, the opposite party No. 3 made an application u/s 25 of the Act alleging that there had been an alienation in

respect of this property contrary to "law that is without sanction of the Commissioner as provided for u/s 19 of the Act; as such the alienations may be set aside and a requisition be sent to the Collector for putting the deity in possession thereof. That petition was allowed by the Commissioner of Endowments by order dated 24-7-1969. The petitioners have come up before this Court asking for a writ of certiorari to quash that order.

2. The record-of-rights carries statutory presumption of correctness of facts stated therein. It must, therefore, be assumed that by 1952 the petitioners were occupancy tenants in regard to the property in question. In the title suit the very opposite parties who applied u/s 25 of the Act admitted the occupancy status of the petitioners and agreed that the lands were raiyati and the petitioners were entitled to enjoy the same in perpetuity with absolute rights of transfer. There has been a decree of the Court drawn up upon such I compromise. The presumption of correctness of the record-of-rights has thus been affirmed by the decree of the Court. Until the compromise decree is set aside upon some ground available in law and the presumption of correctness arising out of the final record is rebutted, it is difficult in a summary proceeding u/s 25 of the Act to negative their effect. Again the very applicants u/s 25 of the Act not only compromised conceding that the property was raiyati in character in the hands of the petitioners, but also received Rs. 2,000/-by way of costs in the litigation. Prima facie they are estopped from raising the present plea. It is not necessary for us to examine whether in recognising actual cultivators to be tenants with subsisting rights there is an element of alienation within the meaning of the Act which as a condition precedent might require sanction of the Commissioner. The other outstanding features are sufficient to lead us to hold that the Commissioner of Endowments exercised his jurisdiction patently in an illegal manner. We would accordingly allow the writ petition with costs and quash the impugned order made u/s 25 of the Act, Hearing fee is assessed at Rs. 200/- (Two hundred).

B.K. Ray. J.

3. I agree.