

(1982) 09 OHC CK 0019

In the Orissa High Court

Case No : Original Jurn. Case No. 515 of 1977

Bhubaneswar Prasad Singh Deo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-09-1982

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 37, 42

Citation : AIR 1983 Ori 159 : (1983) 55 CLT 31

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

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

R.N. Misra, C.J.—This is an application under Article 226 of the Constitution for quashing the decisions of the different authorities under the Orissa Land Reforms Act (hereinafter referred to as the "Act") in the matter of fixation of ceiling surplus lands by issue of a writ of certiorari.

2. Initially there were two separate ceiling surplus proceedings u/s 42 of the Act-- one against petitioner's mother Smt. Soubhagya Manjari Devi and the other against the petitioner, but later, the Revenue Officer dropped the proceeding so far as the petitioner is concerned and in a single proceeding, the entire property belonging to the petitioner and his mother was taken into consideration. By his order dated 11-11-1976 (Annexure 1), the Revenue Officer stated:--

"..... But I hold that Bhubaneswar Prasad Singh Deo (petitioner) being unmarried (though living in separate mess) should be included as a member of his mother Smt. Soubhagya Manjari Devi's family. Soubhagya Manjari Devi is entitled to retain sixteen standard acres"

Petitioner's stand that he was entitled to a separate ceiling area has been uniformly rejected in appeal and revision,

3. There is no dispute that the petitioner was separated both in mess and by metes and bounds from his mother in 1982. In the record-of-rights finally published on 26-8-1965 petitioner has been shown to be completely separate and there is a separate record published in his name. Since challenge by the petitioner in this writ application is on the footing that he is entitled to be treated as a landholder on his own right, separate from his mother and, therefore, he was entitled to a separate ceiling unit, we have to examine whether in law on the facts found petitioner could be treated as a separate ceiling holder.

4. It is contended before us that petitioner had throughout maintained that once he had become separate prior to the commencement of the Orissa Land Reforms Act of 1960, he should not be treated as a member of the family of the mother, merely because he had not been married. The Act, it has been further contended, did not intend to unsettle settled positions. Right, title and interest in land which existed on the date of commencement of the Act were not intended to be disturbed or whittled down in any manner. If as a fact, parties had become separate prior to the enforcement of the Act, relying upon the artificial definition of "Family" in Section 37 (b) of the Act, different families or persons no longer belonging to one family, could not be treated as a "family". It has been further submitted that the properties of which petitioner was owner came to him in his own right under the law. His mother succeeded to the properties recorded in her name from her husband after his death or by grant. There is no provision in the Act which requires the Revenue Officer in a case of this type to treat the mother as the propositus and overlook the male holder like the petitioner. In case the petitioner was taken as the appropriate person, for determining his family, the mother was not to be taken into account.

5. The definition of the term "Family" occurs in Section 37 (b) and runs thus:--

" "Family", in relation to an individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970."

The definition is indeed an artificial one very different from the concept of "family" in personal law. The validity of the definition has already been upheld in this Court in the case of Bhikari Sahu v. State of Orissa ILR (1975) Cut 843.

Where a joint family according to Hindu Law is divided by partition, each co-sharer entitled to a share becomes full owner of his separated interest. The rights and obligations of a co-sharer in a joint family are somewhat peculiar. Over every inch of land belonging to the joint family, every co-sharer has title, but that title is an integrated one, inasmuch as every co-sharer has the same title to the very property. Only when there is a division that an exclusive title vests in the properties given to the, different co-sharers.

Ordinarily, every Act is prospective in operation. There can be no dispute that the paramount Legislature has plenary power to make retroactive and retrospective

legislation and even affect vested rights. Where, however, the Legislature does not clearly intend or the provisions by necessary implication do not give retrospective operation to the legislation, the Courts are unanimous in giving prospective operation to the law. (See, Keshavan Madhava Menon Vs. The State of Bombay, : Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, and Arjan Singh and Another Vs. The State of Punjab and Others, .

The Act received Presidential assent on 17th of October, 1960 and was first published in an extraordinary issue of the Orissa Gazette on 11th of Nov., 1960. Section 1 (3) of the Act provides:--

"It shall come into force in whole or in part, on such date or dates as the Government may from time to time by notification appoint: and different dates may be appointed for different provisions of this Act."

As pointed out by a Bench of this Court in the case of Chandrasekhar Singh Bhoi v. State of Orissa (1967) 33 CLT 263 (at page 281), until the 25th of Sept., 1965, there was no notification made by the State Government appointing any date for the coming into force of the principal Act either in whole or in part.

Before the Act was brought into force, by Orissa Act 13 of 1965, Chapter IV of the Act was substituted and the Amending Act received presidential assent on 11th Aug., 1965 and was first published in the Orissa Gazette on 17th Aug., 1965. With effect from 25th of Sept., 1965, the Act came into force excepting Chapters III and IV. From 9th Dec., 1965, Chapter III was brought into force, while Chapter IV was brought into force with effect from 7th of Jan., 1972. The definition of "Family" had occurred in the form of an explanation in original Section 39 of the Act. In 1965, the amendment dropped the definition and the explanation to Section 37 stated that a person includes a joint Hindu mitakshara family; but in its present form it came into the statute book by amendment by President's Act 17 of 1973. Thus, it is clear that long before the Act had come into force, there had been partition by metes and bounds and even separate revenue records had been prepared and finally published.

6. Though the present definition of "Family" was inserted into the Act with effect from Sept. 29, 1973, 26th of Sept. 1970 has been provided as the relevant date with a view to not permitting manipulations or arrangements by which the purpose of the Act would be defeated. This is a well-known device. We may refer to the Orissa Estates Abolition Act of 1951. Though the law came into existence in 1951, the relevant date for several purposes has been taken as January, 1946. Obviously the legislative intention seems to be that partition beyond 26th of Sept., 1970, would not be acted upon. We are of the opinion that in the absence of any express provision or indication of intention by necessary intendment that the definition would be so construed as to take away existing rights, it should be so interpreted that it would not operate prior to the Act came into force and partitions which had taken effect earlier than the Act have to be accepted and given effect to; otherwise, the consequences would be serious and far-reaching;

for instance, a man of the age of sixty who had chosen to remain a bachelor, and had separated from the family four scores of years back, would be brought into the fold of "family" and land held by him would be put into the hotchpot for determining the ceiling in the hands of his father or mother who may be living. Such a position could not have been contemplated by the legislature. We find support for our view from an unreported judgment of this Court in the case of Jayakrishna Singh Rai v. State of Orissa (O.J.Cs. No. 1050 and No. 1087 of 1976, disposed of on 20-9-1978). We also agree with the contention of the petitioner that the Revenue Officer is not entitled to initiate a proceeding against the mother and take into account the properties of the separated son when both are independent landholders prior to the Act.

7. In view of what we have stated above, the writ application must succeed and the impugned orders must be vacated. The Revenue Officer shall now proceed to determine a separate unit of ceiling area for the petitioner and dispose of the same in accordance with law.

We make no order as to costs.

J.K. Mohanty. J.

I agree.