(1985) 07 OHC CK 0026

In the Orissa High Court

Case No : O.J.C. No. 768 of 1979

Biranchi Mahakud and Others — APPELLANT

Vs

Revenue Officer and Others — RESPONDENT

Date of Decision : 02-07-1985

Acts Referred:
Orissa Land Reforms Act, 1960 — Section 37

Citation : (1985) 60 CLT 184 : (1985) 2 OLR 152

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

Bench : Division Bench

Advocate : B. Patnaik, for the Appellant; N.C. Panigrahi, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pathak, C.J.—This writ application arises out of a ceiling surplus proceeding under the Orissa Land Reforms Act (hereinafter called the ''Act'').

2. Daitari, Dinabandhu, Dirju alias Duryodhan and Damodar are the four sons of Baiju Mahakud. Daitari, one of the brothers of the first branch, filed a return u/s 40-A of the Act and a proceeding under the Act was initiated. The draft statement was prepared. In that proceeding, the land owner Biranchi Mahakud, petitioner No. 1 (son of Daitari), Basanti, petitioner No. 3 (wife of Dinabandhu of the 2nd branch), and Duryodhan, petitioner No. 5, of the 3rd branch were present and they filed their objection claiming that they were separate and aged persons. That fact has been noticed by the Revenue Officer in his order dated 30th August, 1975 in O.L.R. Case No. 18 of 1973. It appears that the learned Revenue Officer has not properly considered the contentions raised on behalf of Dinabandhu and Duryodhan''s branches, On 7. 12. 1975, as if by way of a summary order, the Revenue Officer held that they are one family in association and not a family although a contention had been raised that all the lands are , irrigated and irrigation certificates in support of that fact had been produced. We fail to understand what is the meaning sought to be given to ''family'' by the

Revenue Officer.

''Family'' is defined in Clause (b) of Section 37. In Clause (a) of Section 37, ''person* has been defined to mean :

"Person1 includes a company, family association or other body of individuals, whether incorporated or not, and any institution capable of owning or holding property."

The learned Revenue Officer has not considered the definition given in Sec, 37 in proper perspective. In Section 37(b) there is nothing like ''family in association'' as has been recorded by the'' Revenue Officer in his order dated 7. 12. 1975. From the order dated 9. 1.1976 passed by the Revenue Officer, it transpires that the petitioners filed objection cotending that the brothers had partitioned about 31 years earlier. The learned Revenue Officer did not give any credence to the claim made by the petitioners solely on the ground that there was no valid partition in accordance with Section 19 of the Act. He has failed to consider the definition contained in Clause (b) of Section 37 where it has been provided that there may be separation by partition or otherwise before the 26th day of Sept. 1970. That there may he separation otherwise than partition has been interpreted by this Court in a number of decisions. We may notice one of them, namely, (Sankarsan Misra v. State of Orissa and others), reported in 55 (1983) C. L. T. 463 while construing the provision of Clause (b) of Section 37, it has been held :

"There can be separation in status by a mere unequivocal declaration to separate."

In I. L. R. 1979 Cutt 22 (Arda Murari and another v. State of Orissa and others), it has been held that while examining the matter, the Revenue Officer should take into consideration the words ''separated by partition or otherwise, appearing in the definition of ''Family'' given in Section 37(b) of the Act and should not be wholly guided by Section 19(1) of the Act,

In the present case, the Revenue Officer has not addressed his mind to this aspect of the matter while passing the order dated 19. 1.1976 We are satisfied that the Revenue Officer passed the order holding the lands of all the brothers to be included in the ceiling proceeding without properly considering the contentions of the parties with regard to separation-.

The petitioners being aggrieved preferred an appeal in O. L. R. Appeal No. 11 of 1976. The appellate authority dismissed the appeal. We have perused the appellate order, bat we find that the appellate authority also did not consider the aspect of separation as should have been done according to law. In that view of the matter, the orders passed by the appellate authority as the well as the Revenue Officer ate liable to be quashed which we accordingly do.

3. The writ application is allowed. The matter shall now go back to the Revenue Officer who shall dispose of it afresh in accordance with law on the basis of the

materials on record. The petitioners shall appear before the Revenue Officer on 1. 8.1985 to take further orders in in the proceeding.

No costs.

S.C. Mohapatra, J.

I agree.

