(1978) 08 OHC CK 0001

In the Orissa High Court

Case No : O.J.Cs. No''s. 634 of 1977 and 131 of 1978

Ch. Seetharam Swamy, etc. APPELLANT

Vs

A. Satyanarayana and Others etc. RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Orissa Land Reforms (Amendment) Act, 1975 — Section 36A(3)
Orissa Land Reforms Act, 1960 — Section 15, 36A

Citation : AIR 1979 Ori 74 : (1978) 46 CLT 415

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : Y.S.N. Murty, R.K. Mohapatra and A.N. Misra, for the Appellant; C.V. Murty and Addl. Standing Counsel, for the Respondent

Judgement

B.N. Misra, J.—Petitioner in O. J. C. 634 of 1977 is opposite party No. 3 in the connected writ application. He is admittedly owner of about 71/2 acres of land in village Chakaguda of Rayagada area in the district of Koraput. Opposite party No. 1 in O. J. C. 634 of 1977 made an application purporting to be u/s 36-A of the Orissa Land Reforms Act (hereinafter referred to as the ''Act'') to the Revenue Officer of Rayagada which came to be registered as O. L. R. Case No. 10 of 1976. Therein an application was made on 5-4-1976 for appointment of a receiver. On behalf of the owner, it was contended that in a proceeding u/s 36-A of the Act there was no provision for appointment of a receiver. The Revenue Officer clearly indicated that there was no application u/s 15 of the Act and prayer for appointment of receiver by invoking Sub-section (7) of Section 15 thereof could not be made. He accordingly rejected the application. The applicant u/s 36-A of the Act carried an appeal to the Sub-Divisional Officer in O. L. R. Appeal No. 26 of 1976. He allowed the appeal and appointed a receiver relying upon the insertion of Sub-section (3) to Section 36-A of the Act by the Amending Act of 1975. Petitioner carried a further revision before the Revenue Divisional Commissioner who, however, dismissed the same and sustained the appellate order. The land-owner-petitioner, therefore, has filed O. J. C. No. 634 of 1977 challenging the appellate and the revisional orders.

2. Petitioner in O. J. C. No. 131 of 1978 is a mortgagee under a registered possessory mortgage deed dated 10-5-1970 in respect of a part of the disputed property. In Aug., 1970, opposite party No. 2 who is opposite party No. 1 in the connected writ petition and who had made the application u/s 36-A of the Act entered upon the property and claimed that he was a tenant under the original land-owner. A proceeding u/s 144 of the Cr. p. C. was initiated and the land came under attachment. That proceeding was converted into one u/s 145 of the Code and became the subject-matter of M. C. 23 of 1973. A receiver was appointed. On 25-2-1975, the proceeding terminated in favour of the mortgagee in respect of the lands which formed the subject-matter of mortgage. The receiver was directed to deliver possession to the party in whose favour possession was found. Petitioner of the second writ application alleges that he had grown cotton crop in 1976-77 season and plucked the same. In 1977-78 he had also grown cotton crop and the same was almost ready for harvest when the receiver was appointed. Petitioner was not aware of the proceeding u/s 36-A of the Act but on knowing of the pendency of the dispute from the stay order passed in the other writ application, petitioner came with the writ application.

3. Both the petitioners in the writ applications take the same stand and contend that there is no power to appoint a receiver in a proceeding u/s 36-A of the Act. It is not necessary to deal with the provisions of the Act at any length because there has already been a Bench decision of this Court in the case of Hema Chand Banarji v. Revenue Officer, Salipur, (1977) 19 OJD 214, where it has been held :

".........Order XL of the Civil P. C. is not made applicable to a proceeding before the Revenue Officer. It has always been held that appointing a receiver substantially affects the right of enjoyment of the property and a receiver would not be appointed unless adequate grounds are given and it is found absolutely necessary. Such an appointment would only be possible provided power is available under the Statute to appoint a receiver."

Section 36-A cannot be equated with a proceeding u/s 15 of the Act. Sub-section (3) of Section 36-A which was introduced by the Amending Act of 1975, authorises the Revenue Officer while disposing of a proceeding u/s 36-A of the Act to determine the dispute as regards the existence of relationship of landlord and tenant. That, however, does not make the proceeding u/s 36-A of the Act relatable to one u/s 15 thereof, nor does it confer the powers provided for u/s 15 to be exercised while disposing of a proceeding u/s 36-A of the Act. We are, therefore, satisfied that in a proceeding u/s 36-A of the Act, there is no provision for appointment of a receiver. The Revenue Officer, in our view, had taken the correct decision and the appellate authority fell into an error. The appointment of receiver has, therefore, got to be vacated as an act without authority of law. It is not necessary to examine any other question, as both the parties had come before this Court on account of the appellate authority making such an order.

4. Both the writ applications are accordingly allowed. So far as O. J. C. No. 634 of 1977 is concerned, the appointment of receiver is vacated and the application u/s 36-A of the Act has now to be disposed of in accordance with law. So far as O. J. C. No. 131 of 1978 is concerned, now that we have vacated the order of appointment of receiver, the order made in Annexure-8 by the Revenue Officer must stand quashed and petitioner in the said application should be free to be in possession of the property as a mortgagee. It is not necessary at this stage to indicate anything more in regard to his rights over the disputed property. Each of the petitioners shall have his costs which we assess at rupees fifty.

P.K. Mohanti, J.

5. I agree.

