
(1977) 07 OHC CK 0014
In the Orissa High Court
Case No : O.P.L.E. Case No. 23 of 1975

Chaitanya Mohapatra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-07-1977

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(2), 3, 4, 7, 7(1)

Citation : (1977) 44 CLT 224

Hon'ble Judges : K.S. Raghupathi, Member

Bench : Single Bench

Advocate : J.B. Patnaik, for the Appellant; D.C. Sahu, for the Respondent

Judgement

K.S. Raghupathi, Member

1. This is an application which has been made u/s 12(2) of the Orissa Prevention of Land Encroachment Act 1972 seeking revision of the order of the Additional District Magistrate, Puri, passed on 22 July 1975 in his Revision Case No. 17 of 1974.

2. The applicant Chaitanya Mohapatra is, on his own admission, in unauthorised occupation of 34 decimals of land out of Plots Nos. 282 and 1293 (370) of Khata No. 385 in Mouza sinduria in Ranpur tahsil. Rent was assessed in terms of Section 4 of the Orissa Prevention of Land Encroachment Act and an order of eviction passed u/s 12(2) of the Act. The order of the Tahsildar was upheld in first revision. The order in appeal is incoherent and hardly judicial.

3. The prayer in the application for second revision is that the applicant should not be evicted and the land settled with him under Sub-section (2) of Section 7 of the Act. It is conceded during the hearing that the grounds in the reply to the Section 9 notice and in the appeal were different to those in the application for revision and but settlement is sought, on grounds of justice, in the spirit of the amended Act.

4. In the Act as it was before the amendment, the Board of Revenue could revise any decision or order made under the Act by the Collector.

5. In the Act as now amended the relevant provision reads-

12(3). The Board of Revenue may call for and examine the records of any proceedings under this Act before any officer in which no appeal or revision lies and if such officer appears-

(a) to have exercised a jurisdiction not vested in him by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) while acting in the exercise of his jurisdiction, to have contravened some express provision of law affecting the decision on the merits, where such contravention has resulted in serious miscarriage of justice, it may, after giving the parties concerned a reasonable opportunity of being heard, pass such order as it deems fit.

6. While the expression "in which no appeal or revision lies" is somewhat misleading the intention is that the Board of Revenue will exercise the power only after the opportunities of appeal or revision under Sub-sections (1) and (2) have been exhausted. Jurisdiction can be exercised within the confines of the circumstances enumerated in Clauses (a), (b) or (c).

7. Section 4 of the Act makes it mandatory for any person unauthorisedly occupying any land which is the property of Government to pay rent. Equally Section 7(1) makes it mandatory for any person unauthorisedly occupying land which is the property of Government to be summarily evicted. Discretion had been given to the Collector by Sub-section (2) of Section 7 not to take action to evict a person in unauthorised occupation-

(a) does not amount to an objectionable encroachment u/s 3, or

(b) while amounting to an objectionable encroachment as aforesaid, does not or is not likely to prejudice or adversely affect:

(i) any development scheme, programme or work specified by general or special order made in that behalf by the State Government or the prescribed authority; or

(ii) the interests of the general public or of the village community.

8. Section 7 has been amended. The Tahsildar has taken the place of the Collector. The discretion vested under Sub-section (2) has been severely curtailed. Sub-section 7(2) as amended reads

(2) Notwithstanding anything contained in Sub-section (1), where any land is in the unauthorised occupation of a person who does not own any land, other than homestead, or who-

(i) being a member of the Scheduled Tribes or Scheduled Castes, owns lands (excluding homestead) measuring, less than five acres; or

(ii) not being a member of the aforesaid Tribes or Castes, owns land's (excluding homestead) measuring less than the acres.

the Tahasildar may, instead of evicting such person from the land in his unauthorised occupation, settle the same with him so however that the land so settled with him together with the land (excluding homestead), if any, owned by him, shall on no account exceed

(a) five acres, if he is a member of the Scheduled Tribes or Scheduled Castes, and

(b) two acres, if he is not a member of the aforesaid Tribes or Castes.

Provided that no such settlement shall be made if the land belongs to any of the following categories, namely

(a) lands recorded as Gochar. Rakshit or Sarbasadharan in any record-of-rights prepared under any law;

(b) lands which are -

(i) set apart for the common use of villagers;

(ii) used as house-site, back-yard or temple-site, whether or not record-of-rights ;

(iii) likely to be required for any development scheme and are declared as such by the State Government by a notification; and

(c) lands belonging to an establishment or undertaking owned, controlled or managed by -

(i) any State Government or a Department of such Government;

(ii) any company in which not less than fifteen percent of the share capital is held by one or more State Governments; or

(iii) a corporation established by law which is owned, controlled or managed by any State Government:

Provided further that where the land in the unauthorised occupation of a person is suitable within a Municipality or a Notified Area constituted under the Orissa Municipal Act, 1950. not more than one twentieth of an acre shall be settled with such person and that such settlement shall be made only where

(a) neither the person nor any member of his family living with him in common mess owns a house or house-site in that Municipality or Notified Area; or

(b) the land, being adjacent to the holding owned by the person, is necessary for the beneficial enjoyment of such holding or for the residential purposes of the person and is not reserved for the purposes of any Government or for any

developmental purpose.

9. The plea that the encroacher applicant is a person who owns lands measuring less than two acres has not been disputed. The tahasildar has declined to settle the land in unauthorised occupation on the ground that the two plots have been recorded as Gharbari - Rayayat and reserved an such. This is contested by the applicant.

10. An uncertified copy of the order in Reservation Proceedings Case No. 129 of 1965 has been produced during the hearing in the Board of Revenue in support of the contention that plots 262 and 1293 have not been included in the lands which have been reserved.

11. It has also been contended that the learned Additional District Magistrate erred in concluding from the petitions of the villagers filed on 6 November and 20 November 1973 that the interest of the village community would be adversely effected. It is pointed out that the objectors are not residents of the village and that it has not been shown what exactly is the interest of the village community which would be prejudiced or adversely effected.

12. These are matters of fact which cannot be decided by the Board of Revenue from the evidence available on the records of the case. I would accordingly remand the case to the learned Subdivisional Officer, Nayagarh, with the direction that he might hear the appeal afresh and decide in the light of the law as now amended whether the 34 decimals of land may be settled with Chaitatanya Mohapatra.

Case remanded.