

(2009) 07 OHC CK 0094
In the Orissa High Court
Case No : Writ Petition (C) No. 4271 of 2003

Chandramani Gour @ Goud

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 37A, 37B, 39, 52, 59(1)

Citation : (2009) CLT 54 Supp : (2009) 2 OLR 348 Supp : (2009) OLR 54 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : N.C. Panigrahi, G.S. Dash, N.K. Tripathy and S.R. Panigrahi, for the Appellant; Addl. Standing Counsel and A.P. Bose and S.K. Mohanty for Intervener, for the Respondent

Judgement

Sanju Panda, J.—Challenge has been made in this writ petition to the order dated 4.3.2003 passed by Addl. District Magistrate, Kalahandi u/s 59(1) of Orissa Land Reforms Act (for short, "the Act") in OLR Ceiling Revision Case No. 3 of 1990/ OLR Ceiling Revision Case No. 10 of 1994.

2. The brief facts of the case as narrated in the writ petition are as follows:

In a ceiling proceeding initiated against the Petitioner-Chandramani Gour @ Goud, 10 standard acres equivalent to Ac.30.04 decimals of Class-III & IV land was allowed to be retained and Ac.37.70 decimals of land equivalent to 8.97 standard acres were declared as surplus land and to vest with the State Government. The draft statement was made final on 2.2.1990 by the Revenue Officer and Tahasildar, Kalahandi in Ceiling Case No. 9 of 1989. The Petitioner challenging the said order filed OLR Ceiling Appeal No. 4 of 1990 before the Sub-Collector, Bhawanipatna who by order dated 26.6.1990 confirmed the order passed by the Revenue Officer and Tahasildar, Kalahandi. Against the said order, the Petitioner filed a revision which was dismissed on 19.12.1990 on the ground of limitation. But the dismissal order was set aside by this Court in OJC No. 4954 of 1991 by order dated 6.9.1994 and the matter was remitted to the revisional

authority for disposal on merits. After remand, the Addl. District Magistrate again dismissed the revision by order dated 6.4.1999 against which OJC No. 6702 of 2000 was filed. This Court on 17.8.2000 again remitted the matter to the Addl. District Magistrate for disposal and directed that until disposal of the revision, no coercive action for distribution of surplus land would be taken. After the said remand, the Addl. District Magistrate by his order dated 4.3.2003 dismissed the revision without considering the points raised by the Petitioner properly and confirmed the order passed by the Revenue Officer and the appellate authority against which the present writ petition has been filed.

3. Learned Counsel appearing for the Petitioner submitted that on the date of initiation of ceiling surplus proceeding, the Petitioner had a family of 8 members. Petitioner's son Ramesh Goud who was aged about 17 years was born in the year 1972 before the cut-off date, i.e., 2.10.1973. Therefore, the authorities were bound to allow 12 standard acres to the Petitioner but they allowed only 10 standard acres to him. Therefore, having a family of 8 members on the date of publication of the final statement, the Petitioner should have been allotted 16 standard acres to be retained instead of 10 standard acres and the balance was to be vested with the State Government. As the record-of-right was published in the name of two sons of the Petitioner, i.e., Ramesh Goud and Bedabara Goud, separately, they should have been treated as separate land holders but the same has not been considered by the authorities. As per Section 39(a) of the Act, homestead land or tanks or both to the extent of 3 acres is to be allowed to a land holder in addition to the ceiling limit of agricultural land. However, the authorities did not allow the Petitioner to retain a tank to an extent of Ac.0.54 decs, appertaining to plot No. 159 on the ground that the tank has been recorded as "Kachhar" in the record-of-right of 1955-1956 Settlement. The learned Counsel further submitted that the tank was excavated after 1955-1956 Settlement. Hence, the status of the land as tank on the date of initiation of the ceiling proceeding in the year 1989 should have been taken into consideration by the authorities while determining the ceiling surplus land of the Petitioner. As the authorities did not consider those facts, the impugned order is liable to be set aside.

4. Learned Counsel appearing for the opposite party No. 5 submitted that opposite party No. 5 purchased Ac.2.50 decs, from the Petitioner from Plot No. 1563/2207 and Plot No. 1564/2208 in village Brahmani and from the date of purchase till date opposite party No. 5 is in Khas possession and cultivating over the said land. Accordingly, ROR was published in his name and he has paid rent of the said land regularly till 2000, The Tahasildar did not accept the rent from opposite party No. 5 thereafter as the said land had vested with the State Government in a ceiling proceeding as the surplus land of the Petitioner which fact came to the knowledge of opposite party No. 5 on 15.7.2003 when this Court stayed the distribution of surplus land. It was further submitted that as he is a bona fide purchaser, he has nothing to say regarding ceiling surplus land of the Petitioner. However, his purchased land need be included within the land

retained by the Petitioner so that his purchased land need not be treated as ceiling surplus land and his interest is to be protected to meet the ends of justice as he has validly purchased the land from the Petitioner.

5. Learned Addl. Standing Counsel, on the other hand, submitted that on the cut-off date, i.e., 2.10.1973, when the Orisa Land Reforms (Amendment) Act, 1973 (Act 17 of 1973) came into operation, the eldest son of the land holder, namely, Ramesh Goud was born while his second son Bedabar Goud and youngest daughter Tarulata Goud were not born. So, the family as constituted on that date cannot include his second son and the youngest daughter and the sisters are not members of the family. Therefore, the Revenue Officer rightly the land to the extent of Ac.26.23 decimals as recorded in separate khata in the name of the sister of the land holders. As regards the contention of partition between the Petitioner and his sons Ramesh and Bedabar, he submitted that two sons of the land holder were not born on the appointed date, i.e., 26.9.1970. Therefore, the land holder is not entitled to claim exemption u/s 37B of the Act which provides for allotment of separate ceilings for major married son who had separated himself by partition or otherwise before the cut-off date. Therefore, they cannot be treated as individuals to get separate ceilings. On the basis of field enquiry held by the Revenue Officer on 21.12.1989 Ramesh was 17 ears, Bedabar was 15 years and Tarulata Goud was 12 years. The Orissa Land Reforms (Amendment) Act, 1973 (Act 17 of 1973) came into force on 2.10.1973 and by that time Ramesh was born. Therefore, he is entitled to get two more standard acres of land. He submitted that in the field enquiry dated 21.12.1989 in course of the proceeding of original Ceiling Case No. 9/89, the Revenue Officer did not find anytank as claimed by the Petitioner to have been excavated. So, the Petitioner is not entitled to exclude the area of Ac.0.54 decimals from the purview of the ceiling. He further submitted that Ramesh Goud, the eldest son of the land holder alone is eligible to be the sixth member of the family as constituted on 2.10.1973. Therefore, the land holder is entitled to retain 2 standard acres over and above the 10 standard acres already allowed to be retained by him according to the draft statement. The Petitioner is not entitled to any further relief except the above variation.

6. This Court, after considering the submissions of the learned Counsel and after going through the records, finds that the Revenue Officer enquired into the matter and prepared a final draft statement taking into consideration the evidence in presence of the local committee, objection filed by the land holder and the statement of the land holder during field enquiry. From the statement of the land holder, the Petitioner, it appears that on 21.12.1989 his sos Ramesh Goud was aged about 17 years, Bedabara Goud was aged about 15 years. Therefore, they were born in the years 1972 and 1974 respectively and his daughter Tarulata was born after 1974. Hence, by no stretch of imagination it can be said that while determining the ceiling surplus land of the land holder, there were "5" members in his family. Rather, they were more than that. Therefore, the land holder was eligible to get two standard acres of land more for

each member born subsequent to the cut-off date.

7. This Court in the case of Puni Bewa and Ors. v. State of Orissa represented by the Secretary, Revenue Department and Ors. reported in 1998 (XI) OLR 610 has held as follows:

The aforesaid provision (Section 52) is an answer to the contention that there cannot be any ceiling proceeding with reference to any date subsequent to 2.10.1973.

We may further explain the position which is as follows:

Section 37-A of the Act provides that in respect of a person the ceiling area shall be ten standard acres provided that where the person is family consisting of more than five members the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, but the same shall not exceed 18 standard acres. Section 37-B prohibits a person either as land-holder or as raiyat or as both, from holding any land in excess of the ceiling area. "Person" has been defined in Section 37(a) to include a "family". "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 26.9.1970 [vide Section 37(b)]. The provision of Section 37-A has come into force with effect from 2.10.1973. The combined reading of Sections 37-A and 37-B would show that in given point of time after 2.10.1973, a person cannot hold any land in excess of the ceiling area applicable on that given date. Ceiling area is required to be determined with reference to the position prevailing as on 2.10.1973. The question is: Whether after such determination is made, subsequent change in the composition of further addition or acquisition of land would call for subsequent initiation of ceiling proceeding in respect of such person ? The answer is in the affirmative. In other words, after ceiling area is determined as on 2.10.1973 in respect of a person subsequent change in the composition of the family or future acquisition of lands will attract the ceiling law necessitating fresh determination according to the provisions contained in Chapter IV of the Act. As already indicated, Section 52 of the Act permits redetermination of ceiling basing on future acquisition i.e., lands acquired subsequent to 2.10.1973.

For the reasons stated above, we are of the considered opinion that the observations of this Court in Mahendra Pradhan (supra) that question of allotting the number of units or the extent of area to a "person" has got to be determined with reference to the date on which the 1973 Amending Act came into force (2.10.1973) and any subsequent change in the constitution of "family" thereafter is not to be of any consequence and the ceiling area would not fluctuate with the subsequent increase or decrease in the number of the family members should not be construed to mean that once ceiling is determined in respect of family as on 2.10.1973, subsequent change in the composition of family or subsequent

acquisition of land will not attract the ceiling law enacted for equitable distribution of agricultural lands and in particular to provide land to landless persons for personal cultivation. If the observations of Mahendra Prahdan's case are read or construed in the manner in which the learned Counsel for the Petitioner wants us to read, it will frustrate the aim and purpose for which the ceiling law has been enacted.

8. In view of the above position of law, in the present case, the OLR authorities have not taken into consideration the composition of the family of the land holder in accordance with Section 52 of the Act. Since there is no finding in respect of composition of family, this Court remits the matter to the Addl. District Magistrate, Kalahandi for re-determination of the ceiling surplus land of the land holder bearing in mind observations made in the foregoing paragraphs.