
(2015) 01 OHC CK 0054
In the Orissa High Court
Case No : Writ Petition (C) No. 15237 of 2013

D. Bhakta Priyamba

APPELLANT

Vs

Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 2(13), 2(5-A), 59(2)

Citation : (2015) 01 OHC CK 0054

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Nayak, J—Order dated 16.07.2012 (Annexure-2) passed by the Member, Board of Revenue, Odisha, Cuttack in OLR Revision Case No. 2 of 2007 on a motion made by the Collector, Rayagada under Section 59(2) of the OLR Act, has been assailed in this writ petition.

2. The background of the case is that OLR Case No. 10 of 1974 was initiated against the petitioner by the Revenue Officer-cum-Tahasildar, Rayagada. The Tahasildar disposed of the case on 26.02.1976 classifying all the lands of the petitioner except Ac. 3.415 in Khata No. 6/9 of village-Jayaramguda as Class-II lands on the ground that the lands were having irrigation facilities from the Rayagada Gedda Lift Irrigation Society and allowed 12.00 standard acres of land to be retained by the petitioner and directed vesting an extent of Ac. 18.91 dec. of village-Balijhola as surplus. The petitioner's appeal and revision filed against the order of the Tahasildar were dismissed. Aggrieved by the same, the petitioner filed OJC No. 2165 of 1981 before this Court. By order dated 28.08.1991, this Court remanded the Revision Case No. 7 of 1992 to the Additional District Magistrate, Rayagada with direction for fresh enquiry and disposal in accordance with the observation and direction given in an identical writ petition bearing OJC No. 2163 of 1981 filed by another person. The observation in OJC No. 2163 of 1981 made by this Court was to investigate if the

lands were irrigated land as defined in OLR Act since the statements of the Nagabali Lift Irrigation Co-operative Society, which took over the Irrigation Project concerned, was confusing. Therefore, the direction was given to find out on verification of the records of the society, if the lands of the petitioner were being provided with water for the purpose of irrigation by the Society. The parties were also allowed to adduce further evidence in support of their cases, if they chose.

3. As per the R.O.R. the case lands are recorded as "Dry" land. The Additional District Magistrate after such remand made efforts to obtain the records of the Nagabali Lift Irrigation Co-operative Society and the Ex-President of the Society reported that all records were in a mutilated condition, had been eaten away by white-ants and the damaged records were burnt. The A.R.C.S., Rayagada reported that till 1993 the Society was being managed by M/s. J.S. Co., Rayagada and on formation of new Board of the Society, the records were transferred to the President of the Society, but no charge list of transfer of records could be produced. It was also reported by the A.R.C.S. that the Board of the Society had also been wound-up. Having failed to get any assistance from the President of the Society and the A.R.C.S. and due to non-availability of society's records, the Additional District Magistrate directed the Tahasildar, Rayagada and the Assistant Engineer, OLIC, Rayagada to enquire and intimate about the classification of the case lands. The Assistant Engineer, OLIC reported that there was no Lift Irrigation Project in village-Barijholla and the case lands were not getting irrigation facilities, but the lands in Plot Nos. 32/1 and 32/3 in village-Jayaramguda with an extent of Ac. 1.45 dec. were getting irrigation facilities from the Lift Irrigation Corporation. The Tahasildar, Rayagada on field visit reported that crops like Kandul, Mandia and Bailo are grown over the case lands, but did not indicate as to whether the lands were irrigated or not. The Additional District Magistrate also made a field visit personally with the Tahasildar and his staff and found that in village-Barijholla crop like Kandul has been grown as "Dry" crop in most of the plots leaving some fallow land and that there was no trace of irrigation facilities to those lands. Similarly, lands of Khaliguda were also lying fallow having no irrigation facilities. Therefore, the Additional District Magistrate ultimately came to the conclusion that only Ac. 1.45 dec. of land of the petitioner in village-Jayaramguda was Class-II land and the rest being non-irrigated lands were Class-IV lands. On a computation as per classification of land found on enquiry, the Additional District Magistrate held by his decision in OLR Revision Case No. 7 of 1992 under Annexure-1 that the petitioner had no ceiling surplus lands.

4. More than nine years thereafter, the Collector, Rayagada made a motion to the Member, Board of Revenue, Orissa under Section 59(2) of the OLR Act challenging the order of the Additional District Magistrate in Annexure-1 on which OLR Revision No. 2 of 2007 was initiated before the Member, Board of Revenue. By the impugned order (Annexure-2) the Member, Board of Revenue allowed the revision and set aside the order of the Additional District Magistrate as at

Annexure-1.

5. Learned counsel for the petitioner submits that after remand by the High Court in earlier writ petition, the Additional District Magistrate conducted enquiry as per direction of the High Court and came to the conclusion that the lands were not having irrigation facility and, therefore, they are non-irrigated lands. But, the Member, Board of Revenue having only referred to some scattered and incomplete statements made by the petitioner in her objection and on the basis of surmises and conjectures held that the lands were irrigated land and as such they were Class-II lands, which is based on no materials. It is further his submission that in a subsequent writ petition bearing OJC No. 1050 of 1993, this Court on similar ground set aside the order of the Member, Board of Revenue and restored the revisional order of the Additional District Magistrate and, therefore, this writ petition is to be disposed of accordingly.

6. Learned State Counsel, on the other hand, submits that on the date of initiation of ceiling case there was irrigation facility and, therefore, the finding by the Additional District Magistrate on enquiry after remand by this Court in the previous writ petition, that there was no irrigation facility, is of no consequence. It is also his submission that the Member, Board of Revenue has rightly relied upon by the admission of the petitioner in her objection filed in the proceeding for coming to the conclusion that the lands were irrigated land.

7. Section 2(5-A) of the OLR Act defines classes of land as Class-I, Class-II, Class-III and Class-IV.

Class-II land, as per the definition is irrigated land in which not more than one crop was, in any year within a period of three years before the commencement of the Orissa Land Reforms (Amendment) Act, 1973, grown or can be grown in a year.

It is thus clear that unless the land is irrigated land, it cannot be classified as Class-II.

8. Irrigated land has been defined in Section 2(13) of the Act, which is extracted hereunder:

"(13) "Irrigated land" means land which is assured of irrigation from an irrigation project constructed or maintained or improved or controlled by the Central Government or the State Government or by a body corporate established under any law for the time being in force and includes land which is assured of irrigation from any private source by means of lift irrigation from any perennial water source operated by diesel or electric power, but does not include continually water-logged lands or sand cast lands;"

It is apparent from the above definition that in order to be "irrigated land", the land must be assured of irrigation from an irrigation project constructed or maintained or controlled by the Government or a body corporate.

A Division Bench of this Court in the case of Bhikari Sahu and others v. State of Orissa and Others ILR 1975 Cuttack 843 considering the meaning of the term "assured" appearing in Section 2(13) of the Act have held that an assured irrigation source suggests a source of somewhat permanent character.

9. It is apparent from the impugned order that the Member, Board of Revenue has much relied upon the objection filed by the petitioner in the OLR proceeding in order to come to the conclusion that the lands were irrigated land. This is apparent from paragraph-10 of the impugned order where the Member has observed as under:

"10. The decision of Hon"ble High Court of Orissa passed on 13.08.1993 in a similar matter in OJC No. 1050/1993 (Smt. Sarada Devi vrs. Member, Board of Revenue & Others) is seen to have been relied upon by the opposite party. In this context it is observed that the aforesaid decision of Hon"ble High Court shall not be applicable in the present case since the opposite party had herself admitted in her written objections in OLR Case No. 10 of 1974 that she was getting irrigation facilities to her land for which she was paying water charges. She had also admitted therein that for the water charge dues against her a certificate case was instituted and sale proclamation had been issued by the Certificate Officer."

It was also held by the learned Member that in her objection the petitioner admitted that the land was not getting sufficient irrigation for the healthy sugarcane crop. From such statement, the Additional District Magistrate presumed or made a presumptive observation that sugarcane never grows up without irrigation facility.

10. I have gone through the objection of the petitioner filed in the proceeding, which is available in the lower court records. In her objection the petitioner has stated that from the Irrigation Project then existing there was difficulty of flow of water through the channel to the lands and even 30% of the lands intended to be irrigated under the scheme could not be irrigated, and there was no sufficient irrigation, as a result of which the land was not yielding normal crop. It was specifically stated in the objection that there was no assured water supply by the project for raising annual crop on land of the petitioner. No paddy crop could be grown with the scanty water and only sugarcane is to be grown depending on rain water and that there were only three crop cuttings during the period of four years and that even the lands were lying fallow during the next year. It is further stated that a certificate case had been started against her for arrear water rates, but she disputed the claim on the ground that there was scant supply of water from the Project and that her contention was accepted by the District Collector in the appeal filed by her.

It is seen from the objection of the petitioner that the manner in which irrigation to the lands had been supplied would not be sufficient to hold that there was assured irrigation facility from the irrigation project. Merely admitting that the

land comes within the ayacut of the irrigation project area would not justify to hold that there was assured irrigation facility, if the supply of water to the land from the irrigation project is scanty and insufficient even for one crop a year. Therefore, it cannot be said that the nature of admission of petitioner justified to hold that the disputed lands were irrigated land so as to be classified as Class-II land.

The proceeding has been continuing since 1974 and during enquiry by the Additional District Magistrate after remand by this Court in the earlier writ petition, it was found that there was totally no irrigation facility for the lands in question. In other words, whatever facility was available at the time of initiation of the proceeding has become defunct. Therefore, it cannot be said that the land in question has assured irrigation facility from an irrigation project.

11. It is apparent that the learned Member, Board of Revenue picked and chose those statements from the objection of the petitioner and overlooked which are indicative of the fact that there was no assured irrigation facility. Besides, the Member has presumed certain things, for which there is no basis.

12. In the identical writ petition bearing OJC No. 1050 of 1993 filed at the instance of one Smt. G. Sarada Devi in respect of the lands in the vicinity and supposed to be having irrigation facility from the same irrigation project, this Court set aside the order of Member, Board of Revenue passed in a revision under Section 59(2) of the OLR Act and restored the order of the Additional District Magistrate passed in revision.

13. For the reasons aforesaid, the impugned order under Annexure-2 passed by the learned Member, Board of Revenue cannot be sustained and accordingly I quash the same and restore the order dated 24.01.1998 passed by the Additional District Magistrate, Rayagada in Revision Case No. 7 of 1992.

The writ petition is thus allowed. No costs.