
(2010) 10 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No's. 677, 678, 679, 680, 681, 682, 683, 684 and 685 of 1990

Dasarathi Panda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 4(2), 59(2), 73
Orissa Tenancy Act, 1913 — Section 55

Citation : (2011) 1 OLR 842 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—Since these writ applications involve common questions and arise out of common order, they were heard together and are being disposed of by this common judgment.

In these writ applications, the petitioners have challenged the order dated 15.11.1989 passed by the Member, Board of Revenue, Orissa, Cuttack in OLR Revision Nos. 596, 600, 599, 5980, 483, 602, 601, 597 and 595 of 1986 confirming the order passed by the OLR authorities in respect of the disputed land contravening the provisions of Orissa Land Reforms Act (hereinafter referred to as "the Act") and misinterpreting the provisions of the Orissa Tenancy Act and orissa Estates Abolition Act.

2. The facts as narrated in these writ applications are as follows:

As the suit property vested with the State Government in the year 1956, opposite party nos. 5 and 6 in OJC No. 677 and 679 of 1990, opposite party party No. 5 in OJC Nos. 678, 680, 683, 684 & 685 of 1990, Opposite party nos. 5 to 7 in OJC No. 681 of 1990 and opposite party nos. 5(a) and 5(b) in OJC No. 682 of 1990 filed applications u/s 4(2) of the Act before the Revenue Officer Nimapara for acquisition of right in respect of a portion of the suit property that they were the tenants under the State Government. On 31.3.1969, the Revenue Officer after hearing the parties disposed of the applications and held that the

Civil Court had appointed a receiver in respect of the suit property. Since the receivership was continuing, the claim of the applicant was not maintainable in view of the provision u/s 73(d) of the Act. The said order was challenged before the Sub-Divisional officer, puri in OLR Appeal Nos. 11, 8, 6, 9, 12, 13, 10 & 38 of 1969. The Sub-Divisional Officer disposed of the appeal on 12.3.1970 and remanded the matter to the Revenue Officer for fresh disposal and also for further enquiry regarding possession and receivership of the property.

3. On remand, the Revenue Officer Nimapara heard the matter afresh in OLR Case Nos. 386, 388, 389, 392, 393, 394, 395, 396 and 668 of 1965-66 and disposed of the same on 2.9.1972. After enquiry, he held that the claimants were entitled to get relief u/s 4(2) of the Act and declared that they were occupancy raiyats in respect of the suit lands with description.

4. While the matter stood thus, the present writ petitioners got possession over the suit properties in pursuance of the litigation in the Civil Court after obtaining a sale deed in their favour. After taking possession, they moved the Land Reforms Commissioner u/s 59(2) of the Act to make a reference to the Member, Board of Revenue for setting aside the order passed by the Revenue Officer as the same was illegal and not sustainable in law. The Commissioner being satisfied that the order passed by the Revenue Officer was illegal and not sustainable in law, made a reference to the Member, Board of Revenue. On reference, the Member, Board of Revenue heard the matters in OLR Revision Nos. 596, 600, 599, 5980, 483, 602, 601, 597 and 595 of 1986 and disallowed the same by his order dated 15.11.1989 which is impugned in this writ application.

5. The record reveals that these are the following admitted facts.

The present petitioners filed a suit for specific performance of contract before the learned Sub-Judge puri in T.S. No. 33 of 1945 in respect of the disputed land. The suit was dismissed on 30.8.1947. The judgment and decree was challenged in FA No. 32 of 1947 before the first appellate Court. The first appellate Court allowed the appeal on 11.11.54 by reversing the judgment and decree passed by the trial Court. Challenging the said order, Civil Appeal No. 6 of 1962 was filed before the apex Court which was dismissed on 14.8.1967.

6. In the meantime, in pursuance of the order passed by this Court in MA No. 47 of 1961, the receiver was appointed by the Court below in respect of the disputed land. Annexure-5 reveals that the receiver-commissioner submitted a report before the executing Court in Execution Case No. 9 of 1969 that in pursuance of the order of the Court to deliver possession of the land to the decree holder he delivered the possession of the properties to the decree holder with the help of police. He also mentioned the portions of the land possession of which could not be delivered by him to the decree holder as he was not in possession of the said lands.

7. Learned counsel for the petitioners submitted that the Member, Board of Revenue did not consider the matter on its proper prospective and also did not

consider the provisions of the Orissa Tenancy Act, Orissa Estates Abolition Act and the Orissa Land Reforms Act. Therefore, the impugned order is liable to be set aside.

8. learned counsel for the opposite parties supported the impugned order and stated that the authorities have taken into consideration all the facts. Therefore, the impugned order need not be interfered with by this Court.

9. The land was recorded in the final publication Settlement ROR as Nijot, Nichas and Nijdakhal lands which are the proprietor's private lands. As per Section 55 of the Orissa Tenancy Act, there is prohibition of induction of tenancy over the said recorded lands.

10. These admitted facts have not been taken into consideration by the Member, Board of Revenue while disposing of the revisions.

11. Section 73(d) of the Act provides that the Act shall not apply to any land which was under the management of any Civil, Revenue or Criminal Court immediately prior to the 26th day of September, 1970, for so long as such management continues. Admittedly, as the record reveals, the receiver was appointed by the Court in respect of the disputed lands in question and he was in possession of those lands on behalf of the Court. Therefore, the lands were under the management of the Civil Court. The Revenue Authority has not considered the said fact at all.

12. The Member, Board of Revenue has also not considered that these lands are Nichas or private lands of the ex-intermediary and there is a bar u/s 55 of the Orissa Tenancy Act in respect of proprietor's private land (Nijat or Nichas) land to acquire occupancy right in respect of those lands. Therefore, this Court remands the matter to the Member, Board of Revenue to consider afresh the above aspects after hearing the parties.

The writ applications are accordingly disposed of.