

(2000) 10 OHC CK 0014

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1051 of 1997

Dasarathi Swain and Another

APPELLANT

Vs

Additional District Magistrate (L.R.) and Others

RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 8(1)
Orissa Land Reforms Act, 1960 — Section 4(I)

Citation : (2000) 2 OLR 644

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Prasanna Kumar Bhuyan and P.K. Nayak, for the Appellant; S.K. Das and L.D. Dash for O.P. No. 4, for the Respondent

Judgement

P.K. Misra, J.—Opposite Party No. 4 filed Misc. Case No. 5010/81 before the Revenue Officer, Nimapara claiming that he was a tenant under the Ex-intermediary. The Tahsildar, after making some enquiry accepted the contention that opposite party No. 4 was a tenant under the Ex-intermediary in respect of Ac. 0.80 decimals of land out of Ac. 1.70 decimals of land and further directed that the land should be settled with opposite party No. 4 u/s 4 (I)(h) of the Orissa Land Reforms Act (in short, the "O.L.R. Act") subject to payment of premium of Rs. 214/-.

2. The present petitioners filed O.L.R. Appeal No. 103/82 before the Officer-on-Special Duty (Land Reforms), Puri. The appellate authority set aside the order of the original authority on the ground that there could not have been settlement u/s 4(1)(h) of the O.L.R. Act, as no such application was filed within the stipulated period. He also directed the Revenue Officer not to proceed further in implementing his order passed under the provisions of the O.L.R. Act.

3. The present opposite party No. 4 carried the matter to the Addl. District Magistrate, Puri, in O.L.R. Revision Case No. 15 of 1983. The Revisional Authority observed that the application can be taken to be one under the executive

instruction issued u/s 63(1) of the O.L.R. Act. The revisional authority further observed :

".....In that case there appears to be no provision for any appeal and also for any revision. As such both the appellate Court and the Revision Court would lack jurisdiction for any adjudication and thereby the order of Tahsildar may stand annulled by a Court of law having jurisdiction."

Ultimately, the revision was dismissed. Such order is being challenged in the present writ application.

4. The first application purported to be one u/s 8(1) of the Orissa Estates Abolition Act (in short, the "O.E.A. Act"). It has been repeatedly held that the provisions contained in Section 8(1) of the O.E.A. Act do not contemplate any judicial decision deciding about the alleged tenancy and right of a particular person. However, for the purpose of accepting rent, the authority may embark upon an administrative enquiry to find out the person in possession from whom rent may be accepted. It is also well settled that even if any such order is passed, it does not determine the right of any party and neither creates right in favour of the party from whom the rent is directed to be accepted nor does it extinguish the right of any party claiming to be the tenant of the land.

5. In the present case, the application of opposite party No. 4 did not purport to be one u/s 4(2) of the O.L.R. Act and, in fact, it was u/s 8(i) of the O.E.A. Act. Since it is now well settled that the rights of the parties are not finally determined in a proceeding u/s 8(1) of the O.E.A. Act, it is always open to the aggrieved party to establish his right before a competent Court. In the present case, the revisional authority has observed that the order of the Tahsildar may be taken to be on an application u/s 4(1)(h) of the O.L.R. Act. Similar observation has been made by the Tahsildar. Since no application had been filed u/s 4(1)(h) of the O.L.R. Act and the procedure contemplated therein had been followed, the observation of the Tahsildar as well as of the Revisional Authority would not confer any right on the present opposite party No. 4 u/s 4(1)(h) of the O.L.R. Act. In other words, it is made clear that it would be open to the present petitioner to establish his alleged right as a tenant of the disputed land by filing appropriate case in accordance with law and if any such case is instituted the order of the Tahsildar or the revisional authority recognising opposite party No. 4 as a raiyat u/s 4(1)(h) of the O.L.R. Act would be of no avail. However, till the right is finally decided, it would be open to the State Government to accept rent from the present opposite party No. 4 which would be without prejudice to the claim of others.

6. Subject to the aforesaid observation, the writ application is disposed of.