

(1969) 09 OHC CK 0040
In the Orissa High Court
Case No : O.J.C. No. 347 of 1966

Dayanidhi Sahu and Others

APPELLANT

Vs

Uday Pratap Singh Deo and Others

RESPONDENT

Date of Decision : 12-09-1969

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 7(1)

Citation : (1970) 36 CLT 226

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; A.G. for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—36.50 acres of land under survey Nos. 60, 107 and 115 of village Brahmahatya in the district of Ganjam are in dispute. Admittedly they were the Heta lands of the ex-zamindar of Sheragada and were a part of the Sheragada estate which vested in the State of Orissa on 31-3-1953. On 17-1-1954, opposite party No. 1 (the intermediary) filed an application u/s 7(1) (a) of the Orissa Estates Abolition Act 1951 (hereinafter referred to as the Act) for settlement of fair and equitable rent. This was rejected. On 5-3-1958, the Orissa Estates Abolition (Second Amendment) Act, 1957 (Act 3 of 1958) came into force. Opposite party No. 1 filed a claim petition on 16-11-1958 u/s a-A(1) of the Act for settlement of the land with him. The Petitioners opposed the claim saying that they themselves were in khas possession of the disputed lands. There was an enquiry. Opposite party No. 1 declined to lead evidence in proof of his khas possession on the date of vesting. The Petitioners adduced some evidence. After analysis of the evidence the Estates Abolition Collector, the original authority, held that the Petitioners were in khas possession of the disputed lands on the date of vesting. He accordingly rejected the application of opposite party No. 1 for settling the lands with him. Against that order passed on

20-6-1963, Orissa Estates Abolition Appeal No. 41 of 1963 was filed by opposite party No. 1. The Additional District Magistrate, Ganjam, who is the appellate authority, by his order dated 27-4-1964 held that opposite party No. 1 shall be deemed to be a raiyat in respect of the disputed lands. Against this order the Petitioners filed a second appeal before the Board of Revenue. The Board of Revenue allowed the second appeal and remanded the case to the original authority. Against the order of remand O.J.C. No. 180 of 1965 was filed by opposite party No. 1. In that O.J.C. we quashed the order of the Board of Revenue holding that no second appeal lay and as such the order passed by the Board of Revenue was without jurisdiction. This O.J.C. was filed by the Petitioners against the order of the Additional District Magistrate holding that the lands should be settled with opposite party No. 1.

2. As has already been stated, there is no controversy that the disputed lands were the Heta lands of the intermediary. Opposite party No. 1 advanced a contention that the Heta lands were the ancient Heta lands in which he has raiyati right. Even accepting opposite party No. 1's contention as valid in law, his claim cannot be upheld unless it was further found that he was in Khas possession of the lands on the date of vesting.

3. That apart, by Section 3(16) of the Madras Estates Land Act, 1908, Heta lands (private lands) are excluded from the definition of raiyati land. Clearly the contention urged by opposite party No. 1 that the disputed lands are raiyati lands was untenable.

4. The application of opposite party No. 1 was u/s 7(1)(81) of the Act which runs thus:

7(1) On and from the date of vesting:

(a) All lands used for agricultural or horticultural purposes which were in Khas possession of an Intermediary on the date of such vesting,

x x x x

shall notwithstanding anything contained in this Act be deemed to be settled by the State Government with such Intermediary and with all the shareholders owning the estate and such Intermediary with all the shareholders shall be entitled to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner. The intermediary cannot have the benefit of this provision on the finding that he was not in khas possession of the disputed lands on the date of vesting. His application was rightly dismissed by the original authority exercised its jurisdiction illegally without paying due consideration to the relevant provisions of law.

6. In the result, the writ application succeeds. We quash the impugned order dated 27.4.1964 by issuing a writ of certiorari. As there is no appearance on

behalf of opposite party No. 1, we make no order as to costs.

R.N. Misra, J.

7. I agree.