
(2010) 11 OHC CK 0007
In the Orissa High Court
Case No : Writ Petition (C) No. 789 of 2005

Debaranjan Das and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 OLR 951 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—The petitioners are aggrieved by the orders passed by the Tahasildar, Bhubaneswar in Mutation Case No. 5701 of 2001 and Collector, Bhubaneswar in Mutation Appeal Case No. 52 of 2003 by which the Tahasildar refused to mutate the name of the petitioners in respect of Plot No. 3 measuring Ac. 20.190 decs., Kissam-Urnnata Yojaja Yogya, pertaining to Khata No. 619 of village-Chandrasekharapur, Bhubaneswar. The said land has been recorded in the name of the General Administration Department in the Record of Rights published in the year 1988.

2. It appears from the facts as disclosed that the petitioners claimed to have inherited a portion of the aforesaid property from their ancestor, late Lokanath Das on the basis that he was declared to be the owner of the said land by the then Tahasildar, Cuttack on 04.03.1963.

3. The case of the petitioners is that some of the villagers of Patia and Chandrasekharapur filed a Title Suit, being T.S. No. 49 of 1971 in representative capacity praying for a declaration that the suit land is a communal land and the villagers have an indefeasible right to graze their cattle and collect minor forest produces from the suit land and to further declare that the defendant No. 1 in the suit has no right, title, interest or possession in respect of the suit property

and the tenancy certificate issued in favour of the defendant No. 1 is a void certificate. They also prayed for a decree for permanent injunction against the defendants from interfering in exercising their communal right over the suit property. The original defendant No. 1 was the said late Lokanath Das, who after his death was substituted by the defendant Nos. 1 (a) to 1 (d). The said defendants pleaded that they are in possession over the property after the death of late Lokanath Dash on the basis of lease deed and the tenancy certificate granted in favour of the said Lokanath Das. Defendant Nos. 2, 3 and 4 in the suit are the State of Orissa, the Collector, Cuttack and the Collector, Puri. The learned trial Court decreed the suit in favour of the plaintiffs-villagers against which the defendant Nos. 1(a) to 1(d) preferred Title Appeal No. 9 of 1997 before the appellate Court. The appellate Court reversed the decree and dismissed the suit filed by the villagers holding that a tenancy certificate has been issued in favour of late Lokanath Das and further holding that the plaintiffs have no right of their own over the suit land. But such right has been created by recording the land as Rakhit, which vested in the State. Thus, the plaintiffs had not only no communal right over the suit land from generation to generation, but any such right subsequently created by the land holder as vested in the State. The appellate Court has further held that even if the defendants have no right over the suit land, the plaintiffs having no communal right over the suit land have no locus standi to challenge the right or title of the defendants. Of course, the tenancy certificate has not been filed. But it appears from Ext-F that the Tahasildar has endorsed in Form No. 2 which was an application for removal of timber from one's own recorded holding.

4. On the above reasons, the decree passed by the learned trial Court was reversed and the suit was dismissed. The villagers, who were plaintiffs, preferred Second Appeal No. 261 of 1990 before this Court. On 13.04.1995, three Misc. Cases were filed, being Misc. Case No. 156 of 1995 for recording a compromise, Misc. Case No. 157 of 1995 for deletion of parties, namely, defendants 2 to 4 in the suit and Misc. Case No. 158 of 1995 for amending the land schedule in the plaint to describe the suit land in accordance with the Hal Settlement Record. All the Misc. Cases were disposed of on 08.08.1995 with the following orders :

M.C. No. 158/95

14.8.8.1995. Heard.

For the reasons indicated in the application, prayer for amendment is allowed.

The misc case is disposed of.

Sd/-

A. Pasayat, J.

M.C. No. 157/93

15.8.8.1995 Heard.

Prayer for deletion of names of respondents 2 to 7 and defendants 2 to 4 is accepted.

The Misc. Case is disposed of.

Sd/-

A. Pasayat, J.

M.C. No. 156/95

16. 8.8.1995 Heard.

Prayer for compromise is accepted. The Misc. Case is disposed of.

Sd/-

A. Pasayat, J.

On recording the above orders, an order was passed in the Second Appeal No. 261 of 1990 to the following effect :-

S.A. No. 261 of 1990

17. 8.8.1995 Heard learned counsel for parties.

The Second Appeal is disposed of in terms of compromise petition. The compromise petition do form part of the decree.

Sd/-

A. Pasayat, J.

5. Basing on the aforesaid order and the compromise entered into, the Mutation Case was filed, which having been rejected and the rejection order confirmed in appeal, the petitioners have preferred the present writ application.

6. Mr. Sambhunath Singh, learned senior counsel appearing for the petitioners strenuously urged that it was incumbent upon the Tahasildar to mutate the land in favour of the petitioners accordance with the compromise decree which was passed as per the order of this Court in the Second Appeal directing that the suit is decreed in terms of the compromise and the compromise shall form a part of the decree. He further submitted that the Tahasildar has acted wholly without jurisdiction in not mutating the property, in question, in favour of the petitioners on extraneous consideration and the finding of the Tahasildar as well as the appellate authority that the State is not bound by the compromise decree is unsustainable.

7. Admittedly, the disputed properties belonged to the ex-inter mediatory. After the Orissa Estate Abolition Act, 1951 came into operation, the property vested in the State free from all encumbrances. Further, it is also an admitted case that the land has been recorded in the name of the General Administration Department in the settlement of the year 1988 under the Kisam-Urnnat Yojana

Yogya. The General Administration Department was never made a party in the suit, though, no doubt, the State of Orissa, Collector, Cuttack and Collector, Puri were defendants in the suit.

8. Mr. Goutam Mishra, learned counsel appearing on behalf of the State opposed the claim of the petitioners on the ground that the General Administration Department, Government of Orissa, which is the recorded owner having not been impleaded as a party in the suit, the suit, itself, was incompetent. Further, deleting the names of the State of Orissa, Collector, Cuttack and Collector, Puri from the array of respondents in the Second Appeal and, thereafter, getting the compromise recorded amounts to playing fraud on the Court, inasmuch as, once the said respondents were deleted from the Second Appeal as respondents, any compromise entered into is not binding on them. It is needless to mention that in an application for mutation, the documents showing the source from which the applicant has derived title is required to be produced before the Tahasildar. The recorded owner as per the settlement Record of Rights is required to be impleaded as a necessary party in the Mutation Case and given an opportunity of hearing.

9. In the present case, it is also an admitted position that the Record of Rights published in 1988 by the Settlement Authority under the Orissa Survey and Settlement Act, 1958 has not been challenged by any of the parties. The compromise in the Second Appeal having been recorded after deletion of the State and its authorities from the array of respondents the said compromise decree is not binding on the State.

10. All these aspects have been taken into consideration by the Tahasildar in the impugned order passed in Mutation Case No. 5701 of 2001, which has been confirmed in Mutation Appeal Case No. 52 of 2010. I, therefore, find absolutely no error apparent on the face of the impugned order nor find the same to have been passed without jurisdiction.

11. In view of the above, I am not inclined to exercise the jurisdiction of this Court under Article 226 of the Constitution by issuing a writ of certiorari quashing the impugned orders.

12. Therefore, the writ application, being devoid of merit, is dismissed.