

---

**(1971) 03 OHC CK 0008**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 110 of 1970**

Dhruba Charan Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

---

**Date of Decision :** 08-03-1971

**Acts Referred:**

Orissa Offices of Village Police (Abolition) Act, 1964 — Section 2, 3, 3(1), 3(6), 4

**Citation :** (1971) 37 CLT 379

**Hon'ble Judges :** R.N. Misra, J;B.K. Patra, J

**Bench :** Division Bench

**Advocate :** A.K. Padhi, for the Appellant; Government Advocate and D.C. Sahu, for the Respondent

**Final Decision :** Allowed

---

## Judgement

B.K. Patra, J.—The Orissa Offices of Village Police (Abolition) Act, 1964 (hereinafter referred to as the Act) which repealed the Orissa Offices of Village Police (Abolition) Ordinance, 1963, came into force in March, 1964. It is an Act to abolish the offices of Village Police in the State of Orissa. In Section 2 which deals with definitions, the expression "Village Police" is defined to include amongst others a Dafadar. Section 3 which deals with abolition of the offices of Village Police provides in Clause (e) of Sub-section (1) thereof that all Jagir lands held as emolument in respect of such offices shall stand resumed and vested absolutely in the State Government free from all encumbrancers. Section 4 provides for settlement of the lands so resumed with the Village Police Officer concerned order certain restrictions mentioned therein. Sub-section (6) thereof which is material for the purpose of this case may be quoted:

(6) Where the emolument in relation to any Village Police Officer consists only of remuneration in case such officer shall as soon as may be after the appointed date, be entitled to be paid as solatium a sum equivalent to the total emolument for the period of twelve months immediately preceding the said date and to the settlement of one acre of cultivable land with rights of occupancy therein, on a

fair and equitable rent to be determined in the prescribed manner.

The Petitioner had served as Dafadar for about 18 years till the enforcement of the Act. Obviously, he did not hold any Jagir Land towards his remuneration but was only in receipt of remuneration in cash. u/s 4(6) therefore he became entitled to be paid as solatium a sum equivalent to the total emolument for the period of twelve months and also to the settlement of one acre of cultivable land with rights of occupancy therein. Acting under the Ordinance, necessary proceeding was started by the Tahasildar, Sukinda for settlement of one acre of land with the Petitioner and an order dated 26-3-1963 at Annexure 'A' was issued by the Anchal Adhikari, Sukinda settling one acre of land with the Petitioner. The rent payable by him was also determined and mentioned in Annexure 'A' and he was put in possession of the land. Ever since then, the Petitioner is cultivating the land and has been paying rent for the same to the State. In the year 1967, opposite parties 6 to 10 filed a petition before the Tahasildar, Sukinda complaining that Government's proposal to lease out one acre of land to the Petitioner had not been published in the locality before the lease was granted to him and that consequently they had no opportunity to raise their objections, and contended that 43 decimals of land out of the lands released out to the Petitioner are situated on either side of a village tank, that this land served as a passage for water from the tank to their lands and that consequently this 43 decimals of land should be excluded from the lease granted to the Petitioner. The matter was duly enquired into by the Additional Tahasildar in the presence of both parties and he reported (Annexure-B) that there was no publication in the village before the lease was granted to the Petitioner, that the objections raised by opposite parties 5 to 10 had no merit in it and that it was the outcome of a family quarrel between the Petitioner and the objectors and that the villagers are not in any way interested in the dispute. Opposite parties 5 to 10 appear to have moved the Subdivisional Officer, Jajpur who decided that in exchange for the 43 decimal of land in respect of which opposite parties 5 to 10 were raising objections, the Petitioner should be given some other lands of equal extent. The Petitioner did not accept this proposal. The Revenue Officer then decided that the entire one acre of land leased out to the Petitioner under Annexure 'A' should be presumed and reserved in favour of the State and that he should be given Rs. 500/- as cash grant. In pursuance of this decision and under the directions of the Tahasildar of, Sukinda, the Revenue Supervisor, Korai dispossessed the Petitioner from the entire one acre of land (Annexure 'I'). The Petitioner thereupon filed this writ application for issue of a writ of certiorari to quash the proceeding relating to the cancellation of the lease and for issue of a writ of mandamus directing opposite parties 1 to 4 to restore possession of the one acre of land to him.

2. Opposite parties 1 to 4 who are State of Orissa and the Revenue Officers concerned did not file any counter affidavit to refute any of the allegations made by the Petitioner. Opposite parties 5 to 10 in their counter affidavit claim that 43 decimals of land out of the one acre of land leased out to the Petitioner is a

communal land and as such the name could not have been validly leased out to the Petitioner. No documents, however, have been filed in Court to establish the communal nature of any portion of the disputed land. In this case, the Government by their own order directed the settlement of the disputed land with the Petitioner. In pursuance thereof, the Petitioner entered into possession of the land, cultivated the same and has been paying rent to Government. Under the provisions of the Orissa Tenancy Act, the Petitioner acquired a tenant's right in the land, because, it is been settled that under the Orissa Tenancy Act, a tenant can be inducted to a holding by mere acceptance of rent in which case he acquires the status of a tenant. The fact that the land in question belonged to Government and that the landlord is the Government does not make any difference so far as the incidents of tenancy are concerned. That being the position, the Government cannot by a subsequent executive order extinguish the right which the Petitioner has acquired in the land and much less can they forcibly enter on the land. The decision in *Basiruddin v. State of Orissa* ILR 1961 Cuttack 595, supports this stand taken on behalf of the Petitioner. We, therefore, hold that the dispossession of the Petitioner from the disputed land by the revenue officers is clearly illegal. If opposite parties 5 to 10 feel that they have got any right to any portion of the disputed land, it is open to them to establish such right in a duly constituted suit.

3. We would accordingly allow this application and direct that a writ of mandamus be issued against the opposite parties directing them to restore possession of the disputed one acre of land to the Petitioner. The Petitioner shall be entitled to recover costs of the petition from opposite parties 1 to 4. Hearing fee Rs. 100/. (Rupees one hundred only).

R.N. Misra, J.

4. I agree.