

(2000) 09 OHC CK 0043

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7659 of 1993

Dibakar Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 4(4)

Orissa Estates Abolition Act, 1951 — Section 8(1)

Citation : (2000) 90 CLT 781 : (2000) 2 OLR 577

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

Bench : Single Bench

Advocate : G.C. Patnaik, N.P. Parija, B.M. Kar, S.R. Patnaik, K.K. Jena and L. Mishra, for the Appellant; Addl. Standing Counsel for O.Ps 1 to 3, Sarat Ku. Mohanty, S.P. Mohanty and P.K. Lenka for O.Ps. 4, 5, 6, 8, 9, 10, 11, 15-17, 19-23, 25, 27-29 and 31-34, for the Respondent

Judgement

P.K. Misra, J

1. Heard Mr. G. C. Patnaik for the petitioner, learned Addl. Standing Counsel for opposite parties 1 to 3 and learned counsel appearing for some other opposite parties:

2. During consolidation proceeding, the disputed land was recorded in the name of the State. The present petitioner filed objection claiming that the disputed land had been given on lease by the ex-intermediary to the vendor of the petitioner and subsequently purchased by the present petitioner. By the time the matter was taken up by the Consolidation Officer, Second Appeal No. 203/78 relating to the very same land involving the very same question was pending in the High Court. Keeping in view the aforesaid aspect, the Consolidation Officer directed :

".....Hence I am inclined to hold the view that unless a final order is passed by the Hon'ble Orissa High Court, no final decision can be taken by the

Consolidation authorities....."

On the aforesaid premises, he passed an order disallowing the claim. Subsequently, the Second Appeal was abated in accordance with the provisions contained in Section 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act as per order dated 30.3.1984. In view of such subsequent development, the present petitioner filed Consolidation Revision No. 560 of 1984 claiming that the property should be recorded in the name of the petitioner. The revisional authority observed that the petition had been rejected by the Consolidation Officer and such order having not been challenged in appeal had become final. It was also observed that sufficient materials were not produced to establish the right of the present petitioner. Accordingly, the revision was rejected. It was further observed that neither the vendor of the petitioner, nor the petitioner had taken any step to get the disputed plot settled in their favour before the appropriate authority.

3. If the petitioner succeeds in establishing that his predecessor-in-interest was a lessee under the ex-intermediary, upon vesting of the estate such lessee would continue on the same terms and conditions in view of the provisions in Section 8(1) of the Orissa Estates Abolition Act and the right of any person claiming to be a deemed tenant u/s 8(1) is to be determined by the competent Court and not by any of the authorities prescribed under the Orissa Estates Abolition Act. Therefore, the observation of the Commissioner that neither the vendor nor the petitioner had taken any steps to get the disputed land settled in their favour before the appropriate authority is misconceived.

4. In the present case, the Consolidation Officer had not determined the rights of the parties on merit, but merely because the Second Appeal was pending in the High Court, he had declined to accept the claim of the present petitioner. It is, of course, true that the revisional authority had observed that sufficient materials have not been produced to establish the right. In normal course, the revisional authority should have remanded the matter for decision by the original authority so that all parties could have got the opportunity of leading evidence in support of their respective cases. Since the Consolidation Officer had not decided the matter on merit, I think interest of justice would be served by setting aside the order passed by the revisional authority and directing the Consolidation Officer, or the Tahsildar if there has been notification u/s 41 of the Consolidation Act in the meantime, to decide the matter in accordance with law by giving opportunity of hearing to the present petitioner as well as opposite parties. It is made clear that no opinion has been expressed regarding the merits of the contentions raised by any of the parties.

5. The writ application is accordingly disposed of with the above direction. This order shall be communicated to opposite parties 1 and 2 as well as the Consolidation Officer (opp. party No. 3). Requisites shall be filed within seven days.