
(2005) 07 OHC CK 0028
In the Orissa High Court
Case No : Writ Petition (C) No. 12717 of 2003

Dukhishyam Panda

APPELLANT

Vs

Land Reform Commissioner and Others

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 23, 59(2), 73

Citation : (2005) 2 OLR 694

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Ras Bihari Mohapatra and R.K. Mahanta, for the Appellant; S.P. Mishra, Sk. Q. Ahmed, S. Dash, S. Mishra and S. Nanda, for the Respondent

Judgement

A.S. Naidu, J.—The dispute in the present Writ Petition arises out of the proceedings under Sections 22 and 23 of the Orissa Land Reforms Act (for short OLR Act). The lands involved appertaining to Darpatadar Khata No. 38, Plot No. 1939 measuring Ac. 0.19 decs, and are situated, in Cuttack Town Unit No. 12 (Sutahat). The same are homestead lands and the house standing thereon is assigned Holding No. 200 by the then Cuttack Municipality. Opposite party No. 5, it is alleged, executed an agreement for Decided on 12th July, 2005. sale of the property in favour of the petitioner for a consideration money of Rs. 1,00,000/- (Rupees one lakh). In consonance with the said agreement, it is further alleged, possession of the land along with the house was handed over to the petitioner in the year 1999. In the year 2000, however, opposite party Nos. 5 and 6 filed an application U/Ss.22 and 23 of the OLR Act, 1960 before the Sub-Collector, Cuttack (Sadar) with a prayer to declare the agreement to be void and to cause restoration of the property to the aforesaid opposite parties on the ground that they being "Chamar" by caste are scheduled caste persons and the transaction has been taken place without obtaining prior permission as mandatorily required u/s 22 of the OLR Act. The said petition was registered as OLR Misc. Case No. 15/2001. The Sub-Collector arrived at a conclusion that the transaction has taken place without obtaining prior permission as required u/s 22 of the OLR Act

and the same being void, the lands should be restored in favour of the original owners, who are scheduled caste persons. The said order, it is alleged, was passed ex parte without affording an opportunity of hearing to the petitioner. Being aggrieved the petitioner preferred OLR Appeal No. 8/2001 before learned Addl. District Magistrate, Cuttack. The Appellate authority being satisfied that the order had been passed ex parte set aside the same and remanded OLR Misc. Case No. 15/2001 for fresh disposal to the Sub-Collector. The order passed by the Appellate authority was challenged by opposite parties 5 and 6 before the Collector, Cuttack in OLR Revision Case No. 26/ 2002. The Revisional authority allowed the Revision, set aside the order passed by the A.D.M. and confirmed the order passed by the Sub-Collector in OLR Misc. Case No. 15/2001. The petitioner, thereafter approached the Land Reforms Commissioner by filing an application u/s 59(2) of the OLR Act, the said petition was registered as Revision No. 5/2003. The Land Reforms Commissioner dismissed the said revision. The aforesaid orders are impugned in this writ petition.

2. The moot question which needs to be determined is, as to whether the provisions of the OLR Act are applicable to the lands situated in urban areas and more so to Homestead lands. Admittedly, the disputed land, in the present case, is situated in Cuttack Town, the nature and character of the land is homestead and the same is assigned with a holding number by the Cuttack Municipality. Section 73 of the Orissa Land Reforms Act specifies the lands to which the said Act shall not apply. Relevant portion of the said Section is quoted herein below: . . .

Section 73. Act not to apply to certain lands - Nothing contained in this Act, shall apply;

(a) xxx xxx xxx xxx xxx (b) xxx xxx xxx xxx xxx (c) to any area which the Government may, from time to time by notification in the Official Gazette specify as being reserved for urban, non-agricultural or industrial development or for any other specific purposes.

The aforesaid provision makes it abundantly clear that if (he Government by notification in the Official Gazette reserves certain area for urban, non-agriculture or industrial development or for any other specific purpose, the provisions contained in the OLR Act shall not apply to those lands. According to learned counsel for the petitioner, the lands in dispute are situated in urban area, they are homestead in character and as such the OLR Act is not applicable. It is further submitted that a petition filed u/s 22 of the OLR Act in respect of the lands situated in the same area i.e., Unit-12, Sutahat, Cuttack, was rejected by the Sub-Collector (Sadar), Cuttack, vide Annexure-10, on the ground that the said lands are situated within Cuttack Municipality jurisdiction and there is nothing to show that the said lands are ancillary to agriculture and as such the provisions of OLR Act shall not be attracted. According to the petitioner the lands in dispute being situated in the same Unit, the same principle should have also been made applicable.

3. Mr. Mishra, learned counsel appearing for opposite parties 5 and 6, however strongly repudiated the submissions made by Mr. Mohapatra, learned counsel appearing for the petitioner. According to him the petitioner totally failed to produce any document before the authorities to reveal that the lands in dispute are situated in urban area. It is further submitted that being the petitioner, it was incumbent upon him to produce and prove the notification, if any, published in Orissa Gazette notifying the locality to be in urban area. According to Mr. Mishra, simply because the lands are situated within the Cuttack Municipal Corporation would not ipso facto exempt the lands from the purview of the "OLR" Act unless the same are notified to be shown.

Relying upon the decision of the Supreme Court in the case of *Om Prakash Agarwal and Ors. v. Batarra Behera and Ors.* reported in 1999 (II) OLR 182 Mr. Mishra forcefully submitted that only because the area is covered under the master plan or within the Municipal Corporation limits, the same cannot be exempted from the obligation of the OLR Act, in the absence of a notification issued in the Orissa Gazette of the Government within the ambit of Section 73(c) of the Act.

4. I have heard learned counsel for the parties at length and perused the materials available meticulously. The orders passed by the Sub-Collector and the Land Reforms Commissioner, who are high ranking Officers under the Revenue Department are completely silent with regard to issuance of any notification u/s 73(c) of the OLR Act in respect of the area where the disputed lands are situated. The Land Reforms Commissioner being the senior most Officer in the Revenue Department should have examined as to whether the lands which are situated in Unit-12 of Cuttack Municipal Corporation in Sutaht have been declared as urban lands by notification issued by the Government. Unfortunately, none of the Officers took the pain to either exempt and/or to determine the question of fact with regard to issuance of any notification by the Government in consonance with Section 73(c) of the OLR Act. Law is well settled that justice should not only be done, but it must appear to have been done. In the present case, the sole contention of the petitioner is that the lands being situated in the middle of Cuttack Town and the same being homestead in character, are exempted from the purview of the OLR Act in consonance with Section 73(c) of the Act. This question of fact can only be answered by the Revenue Authorities..

5. In the aforesaid scenario, this Court has no hesitation to set aside the order dated 16th October, 2003, vide Annexure-8, passed by the Land Reforms Commissioner, Cuttack and remand the Revision Case No. 5/2003 to the said authority for de novo disposal, with a direction that the said authority on scrutiny of materials shall give a finding as to whether Unit-12 of Cuttack Town in Sutaht is declared as an urban area by notification issued by the Government and published in Orissa Official Gazette in consonance with Section 73(c) of the OLR Act and as to whether the lands used for non-agricultural purpose. It is needless to say that if such a notification has been published, the provisions of OLR Act shall not be applicable, in the contrary, the transactions shall be hit by the

provisions of OLR Act and the petitioner would be liable to be evicted. With the aforesaid observation, the Writ Petition is disposed of.