(1977) 08 OHC CK 0039

In the Orissa High Court

Case No : O.L.R. Case No. 82 of 1973

Gangaram Singh alias Beldar APPELLANT

Vs

Mayadhar Mund and Another RESPONDENT

Date of Decision : 29-08-1977

Acts Referred:
Orissa Land Reforms Act, 1960 — Section 2(14), 2(4), 22, 22(1), 23

Citation : (1977) 44 CLT 332

Hon'ble Judges : K.S. Raghupathi, Member

Bench : Single Bench

Advocate : Srinivas Misra, for the Appellant; R.K. Rath, for the Respondent

Final Decision : Allowed

Judgement

K.S. Raghupathi, Member

1. Mayadhar Mund, acquired 97 decimals of land situated within the municipal area of Bhawanipatna in the district of Kalahandi from Abhimanyu Singh for a consideration of Rs. 8,000/-. The sale was registered on 29 November 1969.

2. Gangaram Singh filed an objection, on 14 February 1972, before the Subdivisional Officer. Bhawanipatna to say that he has a residential house on the land and his possession was being disturbed by Mayadhar Mund, the transferee. He asked the Sub-divisional Officer to declare the transfer void on the ground that he and the transferor are cosharers of the land and are both members of a scheduled caste whereas the transferee is not a member of a scheduled caste and that no previous permission of the Revenue Officer had been obtained before the sale.

3. The Sub-divisional Officer declared the transfer void but in so doing he observed that the record-of-rights had been verified ; the land was recorded exclusively in the name of Abhimanyu Singh and that it had not been proved that Gangaram Singh had any share in the property.

4. In his order in appeal, the Collector of Kalahandi set aside the order of the Sub-divisional Officer on the ground that the plot of land did not come within the definition of "land" under the Orissa Land Reforms Act and that in any case as it was within the urban area of Bhawanipatana it would attract the provisions of Clause (c) of Section 73.

5. 1 he order of the appellate authority was set aside by the Board of Revenue on the ground that no notification bad been issued in the official gazette reserving the lands within the municipal limits of Bhawanipatna for urban, non-agricultural or industrial development or for any other specific purpose.

6. A writ petition in the High Court of Orissa has been allowed and the case asked to be reheard.

7. In the fresh hearing before the Board of Revenue, there are four points urged:

(i) that the applicant has no locus standi to carry a revision to the Board of Revenue.

(ii) that there was a notification issued on 1 May 1953 declaring the Bhawanipatna municipal area to be a town for purposes of the Orissa State Urban Land Settlement Rules, and that it would bring it within the scope of Clause (c) of Section 73.

(iii) that the holding does not come within the definition of land u/s 2(14) of the Orissa Land Reforms Act.

(iv) that the transferor was not a raiyat in respect of the land.

8. I would agree that it is only a person aggrieved by an order passed u/s 22(1) or u/s 23(2) who can avail of the provisions of Section 58 and 59 to appeal or to seek revision. The present case is one arising out of an order passed u/s 23(2). The transfer of the holding of a raiyat belonging to a scheduled caste to a person who does not belong to a scheduled caste requires the previous permission of the Revenue Officer in writing. If there is no such previous permission the transfer would be void and as had been observed in Laxman Saraf v. Artatran Bag (1976) C.L.T. 664, there is no talisman under any provisions of the Orissa Land Reforms Act which can validate the transfer. Before granting permission the Revenue Officer has to satisfy himself that the interests of the raiyat will not be affected adversely. There is, however, a distinction drawn when the proposed transfer is by way of sale and when it is by way of mortgage, lease or gift. In the case of a transfer by gift, the Revenue Officer has "to satisfy himself about the bonafides thereof ". In the case of a transfer by mortgage or lease he has to satisfy himself not only that the transfer is bonafide but that the terms are not usurious of detrimental to the interest of the raiyat. In the case of a transfer by a sale it is necessary for a Revenue Officer to satisfy himself that there is no person belonging to a scheduled caste willing to pay the market price and purchase the land. Thus, in the case of a transfer by sale any person belonging to a scheduled caste would be an interested person in proceedings u/s 23 of the

Act, provided that person is willing to purchase the land at the market price. It is asserted in a petition filed before the Board of Revenue by Mr. Srinivas Misra, the learned Counsel appearing for the Petitioner, that Gangaram Singh is willing to purchase the land at market price. The Petitioner Gangaram Singh would accordingly be a person who had a locus standi to move the Board of Revenue in revision.

9. The question next is whether the notification published on 1 May 1953 would be a notification for purposes of Clause (c) of Section 73 of the Orissa Land Reforms Act.

10. The notification issued on 1 May 1953 was under the Urban Land Settlement Rules and it merely declared the Bhawanipatna municipal area to be a town for the purposes of those rules. It does not follow that all lands within the municipal area reserved for urban development and are thereby excluded from the purview of the Orissa Land Reforms Act. What is necessary is a specific notification under Clause (c) of Section 73 of the Orissa Land Reforms Act reserving specific areas for urban development. It has been argued that if the legislative intent was not to exclude land in urban areas it would not have been necessary to have the Urban Land (Ceiling and Regulation) Act 1976. I am afraid, specious as this argument is, it overlooks the fact that the Urban Land (Ceiling and Regulation) Act, designed to impose a ceiling on a vacant land in specified urban agglomerations and to regulate the construction of buildings on such land, specifically excludes "land mainly used for the purposes of agriculture" in those urban areas. Thus, even in territories regulated by the Central Act, land used for agriculture will be governed by the provisions of the Orissa Land Reforms Act.

11. In the absence of specific notification u/s 73(c), the land in dispute would come within the purview of Sections 22 and 23 unless it is shown

(a) that the transferor was not a raiyat in respect of the holding,

(b) and if he were, that the holding does not come within the definition of land u/s 2(14) of the Orissa Land Reforms Act.

Section 4 of the Act explains who are raiyats. If a person does not come within any of the categories enumerated in Section 4 then he would not be a raiyat. Mr. R. K. Rath, relies on Ajit Prasad Narayan Singh Vs. Smt. Nandini Satpathy, , to contend that the initial burden of proving that the transferor is a raiyat in respect of the holding is on the Petitioner and there is not even a mere assertion that the transferor is a raiyat. It is only after prima facie evidence is led by the Petitioner would the burden shift on to the shoulder of the transferee. In a petition filed before the Bard of Revenue, it is asserted on behalf of Gangaram Singh that Abhimanyu Singh and Gangaram Singh are cousins and that Abhimanyu Singh has been shown in the record-of-rights as a raiyat in respect of the land in dispute and that he holds it on behalf of the entire joint family.

12. In the absence of any evidence to the contrary the Revenue Officer has to be

guided by the record-of-rights to decide whether the transferor is a raiyat. If as would appear Abhimanyu Singh had been recorded as a raiyat it is for the transferee to prove that he is not a raiyat.

13. Land as defined in Sub-section (14) of Section 2 means "land of different classes used or capable of being used for agricultural purposes and includes homestead"

Subsection (12) defines homestead to mean

any land, whether or not recorded as such, ordinarily used as house-site, ancillary or incidental to agriculture.

14. It follows from the definition of "homestead" that the land ordinarily used as housesite must be subordinate or subservient to agriculture. A dwelling house in an urban area with a garden and cow shed appurtenant to it will not come within the definition of homestead unless it is found that it is subordinate or subservient to agriculture. In the original petition the land is described as a residential plot. In the order of the learned Collector it is stated that during her inspection of the land, in the presence of the parties, she found that houses constructed on it are used as dwelling houses. She has also observed that there was a small kitchen garden which appeared to have been raised after notice was given of her visit.

15. One would have disallowed the application for revision on the ground that the holding does not come within the definition of land contained in Section 2(4). But the size of it and the price for which it has been sold cast doubts on the likelihood of its being used exclusively for nonagricultural purpose. Obviously, such part of the holding as has been built up and no longer used or capable of being used for agricultural purposes has to be excluded except to the extent any such built up area comes in the definition of a "homestead" but one has to be satisfied that the rest of the holding does not come within the definition of "land" either. More so in a case like the present one where is a member of the transferor''s joint family and answer an affidavit that the holding is mainly an agricultural one in respect of which the transferor is a raiyat.

16. I would accordingly remit the case to the learned Collector with the direction that the appeal be heard afresh and disposed of according to law. Any fresh oral evidence at this stage is likely to be perjurious and must be avoided.

Case remanded.

