
(2005) 09 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 15578 of 1997

Gobardhan Pradhan and Others

APPELLANT

Vs

Sidheswar Das and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Citation : (2005) 2 OLR 790

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Manoj Mishra, for the Appellant; S.K. Das, for O.P. No. 1, for the Respondent

Judgement

L. Mohapatra, J.—The petitioners in this writ application challenge the legality of the orders passed by the Consolidation authorities in Annexures-7, 8 and 9.

2. The case of the petitioners is that their father late Chandramani Pradhan was a Bhag Tenant under the father of opposite party No. 1 prior to vesting. The interest of ex-intermediary vested with the State Government after coming into force the Orissa Estate Abolition Act and the disputed properties belonging to the ex-intermediary vested in the State Government in the year 1951. After vesting, the father of the petitioners, who had been inducted as a tenant by the ex-intermediary claimed settlement of the land on the basis of Ekpadia issued by the ex-intermediary. The name of the father of the petitioners was recorded in the Tenant Ledger and the rent was realized from him. After death of Chandramani Pradhan, the present petitioners succeeded to the properties. During the last settlement operation, after verification of the records, the authorities recorded the name of the father of the petitioners in the settlement record and at that stage no objection was raised by the opposite party No. 1. Out of the total lands so settled, Ac. 2.42 decimals of land were acquired by the Irrigation Department for public purpose and in the Land Acquisition Proceeding the petitioners also got compensation having been found in exclusive possession of the same. After consolidation operation started in the village, the opposite

party No. 5 filed an Objection Case vide No. 1643 of 1993 before the Assistant Consolidation Officer for recording the acquired land including a portion of the suit land in favour of the Irrigation Department and the said Objection Case was allowed on 20th December, 1993. In the said Objection Case, the Amin also gave a report stating that the acquired portion of the land belonged to the petitioners. It is also the case of the petitioners that the father of opposite party No. 1 had filed a suit in the Court of the learned Civil Judge (Senior Division), Puri against the mother of the present petitioners for declaration that the mother of the petitioners is not entitled to receive compensation in the Land Acquisition Proceeding on the ground that the father of opposite party No. 1 had purchased the suit properties in Court auction on 8.7.1954 and took delivery of possession on 1.5.1958. During pendency of the aforesaid suit, the father of opposite party No. 1 died and the mother of opposite party No. 1 was substituted. The suit was contested and the same was dismissed. The trial Court held that the mother of the petitioners was in possession of the suit land for a long time and the father of the opposite party No. 1 though purchased the land in Court auction, it remained a paper transaction and the actual possession remained with the mother of the petitioners. The said judgment was challenged in appeal before the learned District Judge, Puri in Title Appeal No. 35 of 1973 and the same was also dismissed. It is further case of the petitioners that they having remained in possession for long time, the land should have been recorded in their name.

3. A counter affidavit has been filed by the contesting opposite party No. 1 stating therein that the opposite party No. 1 filed Objection Case No. 1570 of 1993 before the Consolidation Officer for recording the suit land in his favour on the basis of Digirijari Case No. 633 of 1953-54 in which father of the opposite party No. 1 had taken possession of the disputed land through Court. The further case of the opposite party No. 1 is that the father of the petitioners having not paid rent. Digirijari Case No. 5968 of 1949-50 was initiated and in the said case the father of opposite party No. 1 had purchased the suit land in Court auction and remained in possession thereof. At the time of hearing of the writ application much reliance was placed by the learned Counsel appearing for the petitioners on the findings of the Civil Court in the suit filed by the father of the opposite party No. 1 as well as appeal. On the basis of the aforesaid findings, it was contended by Shri Mishra, the learned Counsel appearing for the petitioners that the land was in possession of the petitioners and such possession having been confirmed by the Civil Court, the same should have been accepted by the consolidation authorities instead of relying on claim of the opposite party No. 1 that his father had purchased the suit land in Court auction.

Shri Das, the learned Counsel appearing for the opposite party No. 1, on the other hand, submitted that before the consolidation authorities at no point of time the petitioners filed copies of the judgment and decree passed by the Civil Court and accordingly, the same were not considered by the consolidation authorities. There being clear evidence to show that in a Digirijari Rent Suit the father of the opposite party No. 1 had purchased the suit properties, the

consolidation authorities had rightly decided that the disputed land should be recorded in the name of the opposite party No. 1. Shri Das also contended that the petitioners having failed to produce the certified copies of the judgment and decree passed by the Civil Court before the consolidation authorities, they cannot take help of the same for the first time in the writ application.

4. On perusal of the orders passed by the consolidation authorities, it appears that the claim of the opposite party No. 1 that his father had purchased the suit properties in a Digrijari Rent Suit was accepted by all the three Courts and direction was also issued to record the suit land in the name of the opposite party No. 1. However, there is no dispute that after a portion of the land was acquired by the State Government, the father of the opposite party No. 1 filed the suit for declaration that he was the owner of the properties and that he is entitled to receive the compensation. There is also no dispute that the said suit was dismissed and appeal preferred against the judgment of the trial Court was also dismissed holding that the father of the petitioners was all through in possession of the suit properties and accordingly, the father of opposite party No. 1 was not entitled to receive compensation. True it is. the judgments of the Civil Courts were not brought to the notice of the consolidation authorities and for the first time reliance was placed on such judgments before this Court. Considering the findings arrived at by the Civil Court in the said suit, I am of the view that in order to impart substantial justice to both the parties, the judgment and decree passed by the Civil Courts should be considered by the consolidation authorities.

5. I, therefore, dispose of this writ application by quashing Annexure-9, the revisional order, and direct the Commissioner, Consolidation, Bhubaneswar to rehear the revision afresh. The petitioners shall produce the certified copies of the judgment and decree passed by the trial Court as well as the appellate Court before the learned Commissioner on the first date of appearance and the learned Commissioner shall consider the findings in the said two judgments while disposing of the revision.

There shall be no order as to costs.