

(1971) 05 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 642 of 1968

Gopinath Dev

APPELLANT

Vs

Additional District Magistrate and Another

RESPONDENT

Date of Decision : 14-05-1971

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 14, 15(1), 15(7), 2(28), 3
Orissa Tenancy Act, 1913 — Section 3(18), 79, 79(1)

Citation : (1971) 37 CLT 636

Hon'ble Judges : G.K. Misra, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; A.G., P. Palit, T.N. Patnaik, K.C. Panda and B.C. Ray, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The facts mentioned in the writ application may be stated in short. The properties of the Petitioner were declared as a trust estate by the Subordinate Judge, Bhubaneswar, acting as a Tribunal under the Orissa Estates Abolition Act. Consequently the estate did not vest in the State Government. Opposite Party No. 2 is a Bhag tenant under the Petitioner. He did not pay rent regularly. There was difficulty in managing the affairs of the deity and in making arrangement for the daily Bhog. The Petitioner filed an application u/s 79(1) of the Orissa Tenancy Act, 1913 (hereinafter to be referred to as the 1913 Act) before the Rent-suit Officer, Khurda, who is a Revenue Officer as defined in Section 3(18) of the 1913 Act, for appraisal and division of the crop.

By Annexure-A dated 27-12-1966 the Rent-Suit Officer passed the following order:

The relationship of landlord and tenant is not admitted. Make a reference to the Revenue Officer under the O.L.R. Act for a decision in the matter. Direct R.I. to keep the harvested paddy crop in safe custody until further orders.

The Petitioner did not file any appeal against this order and consequently so far as he is concerned the order passed in, Annexure-A ought to be treated as final. The tenant (Opposite party No. 2) filed an appeal before the Additional District Magistrate, Puri, against the order in Annexure-A. In Annexure-B, dated 15-5-1968 the Additional District Magistrate, Puri, passed the following order:

xx xx Fair and equitable rent u/s 4(9) of O.L.R. Act is payable in cash or 1/8th of the gross produce or the equivalent thereof. Since the steps necessary for declaring the Respondent as privileged ray at have not been taken, he cannot take the plea that he is the landlord and the Appellant is the bhag tenant under him. Moreover, Section 3 of the O.L.R. Act having overriding effect on Section 79 of the O.T. Act the question of appraisal as required under O.T. Rules is immaterial. The case is therefore, remanded to the lower Court for releasing the produced crop from an attachment and to decide the case on merits.

On the aforesaid observations he allowed the appeal. The writ application has been filed challenging the impugned- order (Annexure- B).

2. Before us the learned Advocate on either side conceded that both the revenue authorities below were confused in their legal conception. It is not questioned that the disputed properties have been declared as constituting a trust estate by the competent Tribunal under the Orissa Estates Abolition Act and that the estate has not vested in the State of Orissa. Consequently there is a relationship of landlord and tenant between the Petitioner and opposite party No. 2.

3. The Petitioner made an application u/s 79(1) of the 1913 Act which runs thus:

79.(1) Where rent is taken by appraisal or division of the produce or is a fixed quantity of the produce,

(a) if either the landlord or the tenant neglect to attend, either personally or by agent, at the proper time for making the appraisal or division, or

(b) if there is a dispute about the quantity, value or division of the produce, the collector may on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

In this case the Petitioner made an application for appraisal and division of the produce. He did not raise any dispute about the quantity, value or actual division of the produce. Section 79(1)(b) did not therefore arise for consideration before the Rent-suit officer. The application was confined to Section 79(1)(a). If Section 79(1)(a) is still in operation, then the Collector may make an order for appointing such officer as he thinks fit to appraise or divide the produce.

4. It was however contended on behalf of the opposite parties that as the same relief can be obtained u/s 15(7) of the Orissa Land Reforms Act, 1960 (Orissa Act 16 of 1960 hereinafter to be referred to 0.8 the 1960 Act). Section 79 of the 1913 Act is no longer in operation and the application of the Petitioner under that

section before the Rent-suit Officer is not maintainable. In other words, it was contended that the relief of appraisal and division of crop can be granted by the Revenue Officer as defined in Section 2(28) of the 1960 Act and not by the Rent-suit Officer exercising power under the 1913 Act.

5. The point for consideration is whether there is any provision in the 1960 Act for appraisal and division of the produce.

6. There is no dispute that if there is any provision in the 1913 Act which is contrary to a provision in the 1960 Act then the latter would prevail. Section 3 of the 1960 Act runs thus:

Save as otherwise provided the provisions of this Act shall have effect, notwithstanding anything to the contrary in any other law, custom or usage or agreement, decree or order of Court.

7. Sub-sections (1) and (7) of Section 15 of the 1960 Act are the provisions relied upon by the opposite parties in support of an argument that appraisal and division of the produce can be effected thereunder Section 15(1) and (7) may be extracted:

15(1) Any claim for recovery of arrears of rent by a landlord and any dispute between a landlord and his raiyat or tenant as the case may be as regards

(a) the quantum of the rent payable; or

(b) tenant's possession of the land and his rights to the benefits under this Act; or

(c) the right of the landlord to terminate the tenancy of a tenant u/s 14;

shall be decided by the Revenue Officer on an application to be filed by any party interested:

Provided that an application in respect of a claim for recovery of arrear of rent shall be filed before the Revenue Officer in the prescribed manner within one calendar year from the date on which such arrear falls due and in other cases within sixty days from the date on which the dispute arises.

(7) Pending final disposal of the dispute under this section, the Revenue Officer may pass such interim orders, relating to the appointment of Receivers, for taking charge of the crops, or getting the lands cultivated or for such other purposes as he may deem necessary or expedient.

8. On an analysis of the aforesaid provisions it will be clear that in order to obtain interim orders as prescribed in Sub-section (7) there must be a claim or dispute as envisaged in Section 15(1). The prayer for appraisal and division of produce is not a claim for recovery of arrears of rent by the landlord. It relates to rent of the current year. Similarly, no dispute has been raised by the Petitioner-landlord regarding the quantum of rent payable as referred to in Section 15(1)(a) of the 1960 Act. Section 15(1)(b) and (C) has no application to the present

application. Thus, the dispute raised regarding appraisement and division of produce does not come within the ambit of Section 15(1) of the 1960 Act. Section 15(7) cannot be construed to extend to an interim relief of the nature of appraisement and division of produce. Sub-section (7) must be construed in the context of Section 15(1).

9. On the aforesaid analysis it is clear that there is no provision in the 1960 Act relating to appraisement and division of produce and there is no inconsistency between Section 79(1) of the 1913 Act and Election 15(1) and (7) of the 1960 Act.

10. Section 74(1) of the 1960 Act lays down that on the coming into force of Character I of that Act the Orissa Tenant's Relief Act, 1955 shall be repealed. The 1913 Act has not been repealed by the 1960 Act and its provisions must apply with full force unless they are inconsistent with any provisions of the 1960 Act.

11. On the aforesaid analysis the application u/s 79(1) of the 1913 Act was maintainable.

12. The next question for consideration is whether we would allow the relief u/s 79(1) of the 1913 Act despite the Petitioner not having filed an appeal against the order (Annexure-A) which became final against him. As the legal position was not clear to the revenue authorities below, we consider that this is a fit case for interference despite absence of an appeal by the Petitioner against the order (Annexure A).

13. In the result, both Annexures A and B quashed by Issue of a writ of certiorari. A writ of mandamus be issued to the Rent-suit Officer to dispose of the application u/s 79(1) of the 1913 Act in accordance with law and the observations made in this judgment. The writ application is allowed but in the circumstances parties to bear their own costs."

S.K. Ray, J.

14. I agree.