

(2015) 06 OHC CK 0038
In the Orissa High Court
Case No : O.J.C. No. 8956 of 1993

Gorakhnath Pandey and Others

APPELLANT

Vs

Budhi Gond and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 22-A, 23-A

Citation : (2015) 06 OHC CK 0038

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : P.V. Balakrishna Rao, for the Appellant; P.K. Mohanty, Senior Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.K. Nayak, J—Orders under Annexures-1, 2 and 3 passed by the original, appellate and revisional authorities in a proceeding under Section 22-A of the OLR Act are assailed in this writ petition by the petitioners.

2. The disputed land measures Ac. 4.65 dec. under khata No. 65 of mouza-Kalyanpur, corresponding to previous settlement khata No. 36, 44, 8 within the Sub-division of Nuapada, which admittedly originally belonged to one Chandu Gond. After his death, his wife Manjara Bewa sold the said land in favour of Habilal Pandey, the ancestor of the present petitioners by registered sale deed No. 329 dated 20.03.1963 for a consideration of Rs. 800/-. It transpires that the present opposite party No. 1 claiming to be the heir of the original owner initiated a proceeding under Section 23-A of the OLR Act for recovery of possession from the petitioners before the S.D.O., Nuapada, which was registered as Revenue Misc. Case No. 2 of 1982. Notices having been sent to the ancestors of the petitioners and they having failed to appear, ex-parte order was passed against them by the S.D.O. on 21.07.1982 directing for restoration of possession of the land appertaining to plot Nos. 1016, 1048, 1050, 1059, 1166 and 1169 under khata No. 65. The said order was challenged by the ancestors of

the petitioners before the Additional District Magistrate, Land Reforms, Kalahandi in OLR Appeal No. 10 of 1982. Before the appellate authority, the appellants produced the registered sale deed dated 20.03.1963 and contended that they purchased the land for a consideration by way of registered sale deed and they were not evictable. By his order dated 15.4.1983 under Annexure-2 the Additional District Magistrate, Kalahandi found that there was no prior permission of the competent authority for purchase of the case land belonging to the scheduled tribe as required under the proviso to clause (b) of sub-section (1) of Section 12 of the Central Provinces Tenancy Act, 1920 as amended by the Central Provinces Tenancy (Orissa Amendment) Act 1953 (Act XV 1953) in its applicability to the State of Orissa and, therefore, the possession of the appellants under the registered sale deed was unauthorized and they are evictable in accordance with the provision of Section 23-A of the OLR Act. Accordingly, the appellate authority confirmed the order passed by the Sub-Divisional Officer, Nuapada.

3. Aggrieved by the original and appellate orders, the appellants filed OLR Revision No. 3 of 1983 before the Collector, Kalahandi. By his order dated 13.09.1985, the Collector confirmed the appellate order passed by the Additional District Magistrate (LR), Kalahandi and dismissed the revision.

4. It is contended by the learned counsel for the petitioners that the sale in violation of the proviso to Section 12(1)(b) of the C.P. Tenancy Act is not void ab initio and that it can be declared void only in an appropriate proceeding initiated suo motu or on an application by an interested party under sub-section (4) of Section 12 of the said Act as amended by the State of Orissa and that there being no such declaration, the sale must be held to be valid and possession thereunder cannot be said to be unauthorized so as to attract the provisions of Section 23-A of the OLR Act. It is his further submission that the proviso to sub-section (4) of Section 12 of Act clearly bars initiation of any proceeding and for eviction of the transferee after 12 years from the date the transferee entered into possession and that undisputedly no proceeding having been initiated or taken up in terms of the proviso within the stipulated period, the sale in favour of the petitioners' ancestors must be held to be valid and the petitioners are not liable for eviction under Section 23-A of the OLR Act.

5. Learned Senior Counsel for opposite party No. 1 on the other hand contends that a transfer without the permission of the competent authority as required under the proviso to Clause-(b) of sub-section (1) of Section 12 of C.P. Tenancy (Orissa Amendment) Act renders the transfer invalid like that of a transfer in violation of Section 22 of the OLR Act and therefore, the possession of the purchaser must be held to be unauthorised.

6. Sub-section (1) and sub-section (4) of Section 12 of C.P. Tenancy Act as amended by Orissa Act XV of 1953 are quoted hereunder:

"(1) An occupancy tenant shall not transfer his holding or any portion thereof

except to the extent and in the manner hereinafter provided, namely-

a) He may sublet his right in his holding or any portion thereof for one agricultural year; provided that no contract for such lease shall be made more than four months before the year to which it relates, or shall contain a clause for renewal;

b) An occupancy tenant shall have the right to transfer his holding or any portion thereof either by sale or mortgage or gift or bequest or otherwise to a bona fide Agriculturist;

Provided that if he is a member of a Scheduled Tribe, he shall not so transfer to any person who is not a member of the same or different Scheduled Tribe except with the previous permission in writing of the Deputy Commissioner.

Explanation - An agriculturist is a person who holds land for the purpose of cultivating it by himself or by members or his family or by hired servants and includes an agricultural labourer.

(c) All such transfers except in case of a bequest or a lease as contemplated under clause (a) shall be by a registered document".

xxx xxx xxx

(4) If any transfer is made in contravention of the provisions of this section, the Deputy Commissioner may, either on his own motion or on application by the transferor or his successor-in-interest, declare the transfer void and evict the transferee from the holding or a part of the holding, as the case may be;

Provided that no such transfer shall be declared void or such transferee liable to eviction after the expiry of twelve years from the date of his coming into possession of the holding or a part of the holding in pursuance of such transfer."

7. Section 22 of the OLR Act requires permission of the competent revenue authority for transfer of any land belonging to S.C. or S.T. in favour of a person not belonging to such S.C. or S.T. Sub-Section(1) of Section 22 of OLR. Act explicitly makes a declaration that any transfer of a holding or part thereof by a S.C. or S.T. to a non-S.C. or non-S.T. shall be void, meaning thereby that the sale shall be invalid ab initio.

However, in Section 12 of the C.P. Tenancy (Orissa Amendment) Act there is no such provision that the sale in contravention of the proviso to Section 12(1)(b) shall be void. The consequence of a transfer in violation of the proviso as aforesaid is envisaged under Sub-section (4) of Section 12, which is to the effect that in a proceeding initiated before the Deputy Commissioner either suo motu or on application of a transferee or his successor-in-interest, the sale can be declared void. The proviso to sub-section (4) further stipulates that no transfer shall be declared void or such transferee be liable for eviction after expiry of 12 years from the date of his coming into possession of the holder. Therefore, it is quite evident that a transfer without permission of the competent authority

under the proviso to Section 12(1)(b) of the Act does not ipso facto become void unless and until it is so declared in an appropriate proceeding initiated under sub-section (4) of Section 12. In other words, it means that the sale shall continue to be valid unless it is declared void in an appropriate proceeding.

8. Admittedly no proceeding in terms of sub-section (4) of Section 12 of C.P. Tenancy (Orissa Amendment) Act has been initiated. Even such proceeding could not have been initiated after March, 1975 since such proceeding would have been barred under the proviso to sub-section (4) and therefore the petitioners are not liable to be evicted.

9. The authorities under the OLR Act have gone wrong in holding that the possession of the petitioners or their ancestors in pursuance of the sale is unauthorized under section 23-A of the OLR Act and therefore, the impugned orders cannot be sustained.

The writ petition is accordingly allowed and the impugned orders under Annexures-1, 2 and 3 are quashed.