

(1980) 07 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 334 of 1977

Gourahari Mahanta and Others

APPELLANT

Vs

Tahsildar, Bonai and Others

RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Orissa Land Reforms (General) Rules, 1965 — Rule 30(1), 30(2)

Citation : AIR 1980 Ori 175 : (1980) 50 CLT 267

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Challenge in this application is to the order of the Revenue Officer (opposite party No. 1) determining the ceiling surplus lands in a suo motu proceeding under the provisions of the Orissa Land Reforms Act. An appeal against the order was not entertained and the revisional authority also refused to interfere in the matter.

2. One Gurucharan left behind three sons Malu, Laxmicharan and Shyamsundar. Malu is dead and Gourahari is his son, Gourahari, Laxmicharan and Shyamsundar are petitioners 1, 2 and 3 respectively. In the Settlement Record-of-Rights of 1940-41, Malu, Laxmicharan and Shyamsundar were recorded jointly and in the 1974 Settlement, their property was described to be 35.06 acres of land including the homestead. As early as 3-4-1945, there was an amicable partition by metes and bounds in the family and the property had been divided into three equal shares, each brother getting 10.50 acres. A memorandum of allotments was drawn up and the three branches began enjoying the property allotted to their respective shares exclusively. On 10th of March, 1974, Malu died. On 20th of December, 1975, the Revenue Officer started a suo motu proceeding u/s 42 of the Act against Malu and directed the Revenue Inspector to furnish a report

about the extent of properties and details thereof. Even though no report had been given by the Revenue Inspector, petitioners coming to know of the initiation of the proceeding appeared before the Revenue Officer on 20th of April, 1976, and relied upon the memorandum of partition and the fact of division by metes and bounds long before the relevant date and took the stand that none of the petitioners was in possession of more than the statutory ceiling limit. By order dated 24th of April, 1976, the Revenue Officer discarded the plea of partition by holding:--

" According to this document, the gentlemen effected the partition in the Grama Panchayat at the instance of Malu Mahanta the deceased brother of the landholders Laxmicharan and Shyamsundar Mahanta. It may be pertinent to mention here that Grama Panchayats were not constituted in 1945.

In course of their oral evidence, both Laxmicharan and Shyamsundar deposed before me that the alleged partition was effected during the Durbar administration when Raja Dharanidhar Indradeo Deb was the Ruling Chief of Bonai State. But they could not explain to me what prevented them from getting their separate R.O. Rs. covering their respective shares or at least in getting their dakhala recorded in the R.O. Rs. during the Durbar administration or at least during the recent Settlement operations. They also could not say before me their shares of lands,

In view of the facts discussed above, therefore, I hold that this plain paper partition deed was drawn up after the recent settlement operations were over, mainly to evade the ceiling law....."

On the same day, the ceiling surplus was determined, a draft statement was drawn up and signed and the Revenue Officer directed :--

"..... Publish the same in the Tahsil Office notice board and also publish another copy of the same in the concerned village in presence of the landholders. Put up on 25-5-1976 after objection period is over."

On 31-5-1976, he confirmed the draft statement in the absence of objection and directed the final statement to be published after the appeal period was over. On 1-6-1976, he dealt with the objection of the petitioners and rejected it as the draft statement had been confirmed on the previous day and as after the period allowed for objection was over.

3. Sub-rules (1) and (2) of Rule 30 of the Orissa Land Reforms (General) Rules, 1965, provide :

"(1) The draft statement shall be published by affixing a true copy of it to the notice-board of the Revenue Officer and keeping it open for inspection, free of charge, by any person interested during office hours on working days for a period of thirty days from the date on which the the copy is first affixed to his notice board.

(2) On the date of affixture on the notice-board under Sub-rule (1), a copy of the draft statement shall be communicated to the person to whom the statement relates by registered post to his address as appearing in the record, with a notice inviting objections, if any, to any entry in, or omission from, the draft statement to be filed within thirty days from the date of affixture in the notice-board." The direction of the Revenue Officer was in contravention of Sub-rule (2) and as a fact a copy of the draft statement was not communicated by him by registered post. Petitioners allege that on 22-5-1976, they received notice of publication of the draft statement and the objection filed on 31-5-1976 was in time. Since the default was of the Revenue Officer, petitioners' cause should not have been permitted to be prejudiced. The confirmation of the draft statement in the circumstances is contrary to law. Petitioners were entitled to reasonable opportunity of disputing the draft statement. On this analysis the confirmation of the draft statement must be vacated and petitioners should be afforded reasonable opportunity of challenging the correctness of the draft statement.

4. We are told that objections have already been filed and the Revenue Officer must now deal with the same after due notice to the petitioners. Petitioners, as already indicated, have taken the stand that they are completely divided. It is contended that the property belonged to three brothers and as such they could not be treated as members of one family keeping the definition of the term occurring in Section 37 (b) of the Act in view. It is also contended that the classification adopted by the Revenue Officer is wholly arbitrary and bereft of factual basis. These are matters which the Revenue Officer is bound to consider before he makes the draft final.

5. We would accordingly allow the writ application, quash the order of the Revenue Officer and the subsequent orders in appeal and revision and require the Revenue Officer by issuing a writ of mandamus to dispose of the proceeding afresh in accordance with law after affording reasonable opportunity of hearing to the petitioners. There will be no order for costs.

Das, J.

I agree.