

(1972) 07 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 836 of 1969

Harchand Singh and Others

APPELLANT

Vs

Musamat Purnabasi Devi Ray and Others

RESPONDENT

Date of Decision : 21-07-1972

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 39, 6, 7, 8A, 8A(4)
Orissa Estates Abolition Rules, 1952 — Rule 78, 7B

Citation : (1972) 38 CLT 1032

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

Bench : Division Bench

Advocate : R.N. Sinha and S.N. Sinha, for the Appellant; Asok Das and A. Rath, for the Respondent

Judgement

R.N. Misra, J.—The Petitioners and other co-sharers possessed Sir lands under two holdings being holding No. 1 with an area of 69.55 decimals and holding No. 48 measuring 53 31 decimals located within the Jharsuguda area in the district of Sambalpur. With the abolition of bhogra tenancy with effect from 1-4-1960, the Sir lands vested in the State of Orissa. Several applications were made by the co-sharers under Sections 6 and 7 of the Orissa Estates Abolition Act (herein after referred to as the Act) for settlement of those lands and these cases were also separately registered. The Collie for under the Act by order dated 28-3-1962, clubbed the cases together (Case Nos. A/97, 99, 398, 667 and 785) and forwarded the several claims to the Naib Tahasildar for enquiry and report, under the Orissa Estates Abolition Roles (hereinafter referred to as the Roles). The report was to be received by 29-1-1963. As the report had not come, the cases were re-posted to 23rd of June 1963. Immediately after the report was received, the Collector under the Act disposed of the cases in terms of the report. There were some objections raised to the claims, but all were disposed of on the basis of the report without any opportunity being afforded to the claimants and the objectors. The Petitioners who laid claim for settlement of 24.72 acres of land found their case to have been disposed of in an arbitrary manner and without

notice to them. After knowing about the disposal of the case belatedly they preferred an appeal before the Appellate authority u/s 9 of the Act; but the Appellate authority refused to entertain the appeal on the ground of bar of limitation. This is a petition in certiorari against that Appellate order.

2. From the order sheet of the claim case it would appear that on 15.12.1962, the Collector under the Act forwarded the papers along with the objections for enquiry to the Naib Tahasildar and called upon him to report by 29-1-1963. On 30th of May 1963, the record was put up and the following order was recorded.

Record if put up today. Report not received.

Remind the R.I. and put up on 23.6.1963.

On the 23rd of June, 1963, the material portion of the order is as follows:

Seen report of the Revenue Supervisor showing all particulars of Sir lands held by the ex-thikadar and his co-sharers. Sri Brundaban Singh, was the ex. thikadar of the village. The village has Sir lands as follows:

Holding no Area Rent

1. 69. 55 50.50

48 53. 71 39.75

123. 26 90. 25

Istahar has been issued and published. Some objection petitions have been received and they were forwarded for report....

Having stated so he proceeded to dispose of the cases on the basis of the report.

3. Mr. Sinha for the Petitioners contends that the disposal of the cases was not in accordance with the mandator, requirements of the Rule 7-8 of the Orissa Estates Abolition Rules, provides:

The enquiry to be conducted by the Collector under Sub-section (4) of Section 8-A shall be of III summary nature. The collector shall issue notice to the parties to appear before him at a specified time and place with their witnesses and documents in support of their respective claims. In case any of the parties desired summons to be issued for the appearance of any witness or production of any document, the Collector shall summon accordingly, provided that necessary process fees and expenses of witnesses are deposited within a reasonable time to be fixed by the Collector. The Collector if he thinks fit may depute an officer to make local enquiry and the report of the officer so deputed shall form part of the records of the case.

Admittedly the Collector under the Act was in season of It proceeding u/s 8-A of the Act and the enquiry was to be made under Sub-section (4) thereof. The procedure laid down in the above Rule was, therefore, applicable. The Collector

has only got the enquiry made In terms of the last portion of the Rule, but he never fixed a date and place for hearing parties as laid down under Rule 7-B. Substantial rights of parties were a stake. Properties involved were also of substantial value. The common law remedy was barred u/s 39 of the Act. Therefore, even while saying that the enquiry would be of a summary nature, adequate safeguard have been provided for under the rules. It is not known why the Collector under the Act did not comply with Rule 7-B. of the rules even when there were claims and objections for consideration. There has been clear violation of the principles of natural justice as also breach of procedure laid down mandatorily under Rule 7-B of the rules.

4. Admittedly there is long delay In preferring the appeal under the Act, But the Appellate authority should not have overlooked the allegations made In the memorandum of appeal that the Petitioners had no knowledge of the disposal by the Collector under the Act. It is reasonable to assume that they were awaiting notice of a date of hearing as required under Rule 7-8 of the rules. Having preferred claim In respect of such a large extent of property, we cannot assume that the Petitioners were indifferent or callous as to what orders the Collector under the Act was going to pass regarding their claim. There is no material on record before the Appellate authority on the basis of which knowledge of disposal by the Collector under the Act can be imputed to the Petitioners at any earlier point of time than alleged by them. Even if we ignore the appeal proceedings, the circumstances of the case are such that we are prepared to exercise our jurisdiction in certiorari even against the original order. The defect is in the original proceeding and substantial prejudice would be caused to the parties if the order is made to stand, though it has been passed in contravention of statutory rules and in breach of principles of natural Justice. Again there is no statutory prescription of limitation for entertaining writ petitions though laches have always been taken into consideration while being cased upon to exercise extraordinary Jurisdiction.

5. We would accordingly quash the order made by the Collie for under the Act on 23.6.1963, as also the Appellate order dated 19-1-1968 and remit the proceeding to the Collector under the Act. We direct by issue of a writ of mandamus that the Collector or his successor in office shall proceed to dispose of the claim of the Petitioners afresh by complying with the requirements of the Rule 7-B, of the Orissa Estates Abolition Rules, 1952. In doing so if it is necessary to reopen the other cases illegally disposed of by him, be will necessarily have to reopen all the cases because the Petitioners cannot be made to suffer by raising the technical plea that the disposal of the other cases have become final. A fresh disposal would enure to the benefit of all. The writ petition succeeds. But we think it appropriate to call upon parties to bear their own costs, because the mistake is essentially one of the Collector under the Act and not of any of the parties.

6. We must express our grave concern about the high-handed disposal by the

Collector under the Act of claims raised under the statute. The common law remedy has been barred and wide powers have been vested in the Collector subject to only one appeal. Therefore, Government must impress upon these authorities of the need of compliance of the statutory provisions for disposal of the proceedings; otherwise grave injustice is bound to result.

K.B. Panda, J.

7. I Agree.