

**(1953) 04 OHC CK 0006**

**In the Orissa High Court**

**Case No :** Civil Revision No's. 301, 350 and 351 of 1949

Jagabandhu Das and Others

APPELLANT

Vs

Babaji Jena and Others

RESPONDENT

**Date of Decision :** 08-04-1953

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Constitution of India, 1950 — Article 227, 367(1)  
General Clauses Act, 1897 — Section 6  
Government of India Act, 1935 — Section 224  
Orissa Tenancy Act, 1913 — Section 204  
Orissa Tenants Protection Act, 1948 — Section 7(6)

**Citation :** AIR 1953 Ori 274

**Hon'ble Judges :** Panigrahi, C.J.;Narasimham, J

**Bench :** Division Bench

**Advocate :** A.S. Khan and H. Mohapatra, for the Appellant; B.N. Das and P.C. Chatterji, for the Respondent

**Final Decision :** Dismissed

## Judgement

Panigrahi, C.J.—These are three civil revision petitions filed u/s 15) Civil P. C., seeking to revise the orders passed in three cases by the Collector acting under the Orissa Tenants Protection Act (Orissa Act 3 of 1948). C. R. 301/1949 was presented on 12-10-49 against an order of the Additional District Magistrate, Cuttack, confirming the order passed by the Sub-divisional Magistrate, Jaipur allowing the opposite party tenants to cultivate the disputed lands. C. R. 350/1949 was filed on 10-12-49 challenging the correctness of an order passed by the Additional District Magistrate, Puri, in appeal, against an order of the Sub-Deputy Collector, Khurdha, permitting the tenant-opposite parties to cultivate the lands and imposing a fine of Rs. 100/- on the petitioners u/s 10 (1), Orissa Tenants Protection Act. The order imposing the fine was, however, set aside by the Additional District Magistrate, while the order directing the tenants to be put in possession was confirmed. C. R. 351/1949 was filed on 10-12-49 against the

appellate order of the Additional District Magistrate, Puri, confirming the order of the Deputy Collector u/s 7, Orissa Tenants Protection Act, allowing the opposite parties to cultivate the disputed lands.

2. In all those petitions the opposite parties are the tenants who have been put in possession of the disputed lands & the landlord-petitioners seek to revise these orders on the ground that they are either without jurisdiction or that the officers below have exceeded their jurisdiction in passing the impugned orders. When the matter came up before me, sitting as a single Judge, I felt some difficulty as to whether Section 115, C. P. C. was applicable to the orders passed by a Collector under the Orissa Tenants Protection Act, as obviously he is not a Court subordinate to this Court while so functioning. Learned counsel for the petitioners, however, desired that these applications may be treated as petitions under Article 227 of the Constitution and heard on merits as involving an important question of law, namely, whether orders passed under the Orissa Tenants Protection Act can be regarded as final and conclusive so as to bar the jurisdiction of this Court to deal with them. I permitted learned counsel to treat these applications, as those made u/s 227 of the Constitution and they have now come up before us for disposal.

3. A preliminary objection was raised to the maintainability of the petitions under Article 227 of the Constitution by learned counsel for the opposite parties. Section 11, Orissa Tenants Protection Act as it stood before it was amended in 1951, provided for an appeal against an order of the Collector to the prescribed superior revenue authority whose decision was made final; and the Section added, that it "shall not be subject to any further appeal or revision".

The amended Section 11 reads as follows :

"Any person aggrieved by an order of the Collector made under this Act may within thirty days from the date of such order, appeal to the prescribed superior Revenue Authority whose decision thereon shall be final subject to revision by the Board of Revenue. The decision so arrived at shall not be called in question in any Court."

The difference between the two provisions is that before the introduction of the amendment in 1951 (by Orissa Act 17 of 1951) there was only one appeal to the prescribed superior Revenue Authority, and the decision of that Authority was not liable to be questioned by way of further appeal or revision. The amendment however provides for a revision by the Board of Revenue whose decision is not liable to be called in question in any Court. The contention of Mr. Chatterji, learned counsel for the opposite parties, is that the orders passed by the appellate authority have become final and are not subject to any revision by this Court as the power of revision has been expressly taken away by the Legislature.

4. Learned counsel for the petitioners drew our attention to the case reported in -- Arjun Rautara Vs. Maharaja Krishna Chandra Gajpati Narayan Deo, , and argued that as, in accordance with the provision of Section 13, Orissa Tenants

Protection Act, that Act has to be read as a part of the Orissa Tenancy Act, the Collector deciding disputes under the former Act is liable to the jurisdiction of the High Court, as was held in the reported decision, notwithstanding the provision making the orders of the appellate authority final. We are unable to accede to this argument as we are satisfied that the Collector functioning under the Tenants Protection Act is not a "Court" while he acts as a Court while functioning under the Orissa Tenancy Act. It was next pointed out that the Orissa Tenancy Act contains no provision similar to Section 11, Orissa Tenants Protection Act which expressly provides that the decision of the revenue authority shall not be called in question in any Court. Section 204, Orissa Tenancy Act does not provide for appeals to the High Court except in restricted cases and the judgment of the Collector in respect of claims below Rs. 100/- is stated to be final. There is, therefore, a clear distinction between the provisions in the two Acts and the case reported in -- Arjun Rautara Vs. Maharaja Krishna Chandra Gajpati Narayan Deo, " is no authority for the position, taken by the petitioners.

5. The second objection raised by the opposite parties is fundamental and is enough to dispose of those applications. The constitution came into force on 26-1-1950 but the orders now under challenge became final long before that date. The question, therefore, is whether Article 227 can be invoked questioning the correctness of the orders retrospectively. Mr. Chatterji contends that Article 227 can by no means be regarded as retrospective in operation and any construction extending its operation to past events, would have the effect of depriving his clients of vested rights that had accrued long prior to the coming into force of the Constitution. The orders, now under challenge, had become final and his clients had been put in possession long before the Constitution came into force. They have therefore acquired the right to continue in possession and such right cannot be interfered with by giving retrospective effect to the operation of Article 227.

This contention appears to be well-founded. It may, however, be conceded at once that Article 227 gives power to the High Court to interfere even with the orders which are declared final by different Acts of the Legislature; and there can be no doubt that any Act of a Legislature cannot affect the right vested in the High Court by the Constitution. But whether such a right vested in the High Court would justify interference with past events so as to affect the vested rights of the parties is the question that falls to be considered here. It is a fundamental rule of interpretation that while a rule of procedure may ordinarily have retrospective effect, attributed to it, provisions in a statute which affect existing rights cannot be applied retrospectively in the absence of an express enactment to that effect or necessary intendment: See -- AIR 1927 242 (Privy Council) . There is nothing in Article 227 indicating that it was intended to have retrospective effect and that the Court could interfere with a right in existence at the time of the passing of the Constitution. See -- Bimala Prosad Ray and Another Vs. State of West Bengal, , where it was held that an Article in the Constitution giving the right to interfere with orders should be construed in the same manner as the provisions

in the Constitution would be construed which gave a right to the parties to challenge a decision either by way of appeal or revision.

It was similarly held in -- "Sridhar v. The Collector of Nagpur", AIR 1951 Nag 90 (D), that the power of superintendence vested by Article 227 of the Constitution was not intended to operate on rights which had been finally settled prior to the commencement of the Constitution. The balance of authority, therefore, seems to be against the applicability of Article 227 to the orders sought to be challenged by the petitioners.

6. These petitions accordingly should fail and are dismissed. But there will be no order as to costs.

Narasimham, J.

7. I agree that the revision petitions should be dismissed without costs on the preliminary ground that no revision lies against the appellate order of the Collector passed u/s 11, Orissa Tenants Protection Act and Article 227 of the Constitution has also no application because the order of the Collector became final prior to the commencement of the Constitution. The orders of the Collector under challenge in these revision petitions were passed on 15-7-49 (C. R No. 301 of 1949) & 22-10-49 (C. R. Nos. 350 and 351 of 1949), u/s 11, Orissa Tenants Protection Act as it stood then, the orders were final and not subject to appeal or revision. The opposite party, therefore, obtained a valuable right by virtue of those orders and the main question for consideration is whether Article 227 of the Constitution would permit us to interfere with those orders. That Article came into force on 26-1-1950 with the commencement of the Constitution. Prior to that date this Court had no powers to interfere with judicial orders passed by inferior Tribunals inasmuch as Section 224, Government of India Act of 1935 (corresponding to Article 227) was, by express terms, limited to administrative superintendence only. As pointed out by My Lord, the question is concluded by the Privy Council in -- AIR 1927 242 (Privy Council) . In that case Their Lordships relying on --"Colonial Sugar Refining Co. v. Irving", (1905) A. C. 369 (E), held :

"xx xx provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided."

These observations apply with full force. There is no indication in Article 227 that would justify giving retrospective effect to it so as to affect orders which under the law for the time being in force then were expressly made final and not subject to appeal or revision. My Lord has referred to -- Bimala Prosad Ray and Another Vs. State of West Bengal, and -- " AIR 1951 Nag 90 (D), in this connection. I may refer to a very recent decision of the Assam High Court reported in -- The State Vs. Judhabir Chetri, , where reliance was placed on Section 6, General Clauses Act in construing Article 227. Article 367(1) says that

the General Clauses Act, 1897, shall apply for the interpretation of the Constitution. The Constitution repealed the Govt. of India Act, 1935 and by virtue of Section 6(c), General Clauses Act any right acquired under that Act will not be affected by the repeal. Section 11, Orissa Tenants Protection Act as it stood prior to 26-1-1950 read with Section 224, Govt. of India Act conferred on the opposite party a right of immunity from interference by the High Court in exercise of its powers of superintendence over inferior Tribunals and that right is saved by Section 6, General Clauses Act in the absence of any express provision in the Constitution giving retrospective effect to Article 227.

8. The decision of the Supreme Court in --"Janardhan Reddy v. State of Hyderabad", AIR 1951 S. C 217 at p. 225 (G) while construing Article 226 of the Constitution is helpful in this connection. There the question for decision was whether an order passed by the Special Tribunal, Hyderabad State, and confirmed by the High Court of Hyderabad prior to 26-1-1950 could be re-opened by the High Court under Article 225 of the Constitution or by the Supreme Court under Article 32 of the Constitution. Their Lordships observed:

"From the facts already narrated, it should be clear that the judgment of the High Court affirming the convictions and sentence of the petitioners had acquired finality in the fullest sense of the term before 26-1-1950, and by reason of this finality, no one could question the validity of the convictions at the date when the Constitution came into force. Can then a new law or a change in the old law entitle us to reopen a transaction which has become closed and final? It is common ground that the provisions of the Constitution which are invoked here, were not intended to operate retrospectively, and therefore something which was legally good on 25-1-1950 cannot be held to have become bad on 26-1-1950. If we had no jurisdiction to sit in appeal over the judgment of the Hyderabad High Court, can we now reinvestigate the cases and pass orders which cannot be passed without virtually setting aside the judgments of the High Court which have become final? Can we, in other words, do indirectly what we refused to do directly? It is argued that we are asked not to reopen a past transaction but to deal with the present detention of the petitioners i.e., their detention at this moment. But, how can we hold the present detention to be invalid, unless we reopen what could not be reopened prior to 26-1-1950. This is, in our opinion, one of the greatest difficulties which the petitioners have to face, and it rests not merely on technical grounds but on sound legal principles which have always been and should be respected."

The same reasoning would apply in respect of Article 227 also.

9. But I should add that the order passed by the Collector of Cuttack in Rent Appeal No. 156 of 1948-49 which has been challenged in C. R. No. 301 of 1949 before this Court is clearly incorrect. The finding of the trial Court was that the landlord-raiyat, who was opposite party in the trial Court and petitioner before us had less than 33 acres of land on 30-11-1947. But it thought that the bhagchasi of such a landlord-raiyat was entitled to restoration of possession for wrongful

eviction chiefly because for the purpose of Section 7, Orissa Tenants Protection Act the extent of the raiyati land in the possession of the landlord-raiyat was immaterial. In coming to this conclusion, it relied on para. (3) of Clause (g) of Section 2 of that Act which says that :

"except in Sections 6, 7, 8 and 10 a person cultivating the land of a raiyat when the total extent of the land in the possession of such raiyat on 30-11-1947 did not exceed thirty-three acres."

The trial Court as well as the Collector, on appeal, rightly held that for the purpose of considering the immunity of a bhagchasi from eviction as provided in Section 3 of that Act the extent of the land in the possession of the landlord-raiyat on 30-11-1947 was material. That is to say, if the total extent of the raiyati land in the possession of a landlord-raiyat was below thirty-three acres on 30-11-1947 a bhagchasi cultivating any portion of his land was not immune from eviction and may be evicted by him in the usual course. Such a bhagchasi could not claim the protection of Section 3 of that Act and consequently his eviction would not be unlawful provided it is done in accordance with the terms of the tenancy between him and the landlord-raiyat. The Courts were also right in holding that for the purpose of Section 7 of that Act the extent of the raiyati land in the possession of the landlord-raiyat was not material. But the mistake which they have committed is in thinking that Section 7 is an independent section which confers powers on a Revenue Officer to restore to possession any bhagchasi who was in possession on 1-9-1947. The only right conferred by Section 7 of that Act is the procedural right of obtaining a decision from the Collector in respect of certain classes of disputes between landlords and tenants as specified in that section. Doubtless Sub-section (6) of that section confers powers on the Collector to restore to possession a bhagchasi who was cultivating land as a tenant on 1-9-1947. But that sub-section must be construed along with Clause (a) of Sub-section (1) of that section which expressly refers to the right of a tenant to the benefits under the Act. Therefore, in considering whether such a bhagchasi was entitled to the benefit from eviction under the Act the Court must read Section 3 and if that section has no application to a class of bhagchasis those bhagchasis cannot claim any protection from eviction under the Act. If they have no such protection there can be no question of their being restored to possession. Thus if a landlord-raiyat has less than thirty-three acres of land on 30-11-1947 his bhagchasi even though he was in possession of his land on 1-9-1947 may be lawfully evicted and he cannot claim protection u/s 3 of that Act. If he is so evicted his rights to the benefits under the Act are not in any way adversely affected and consequently there can be no question of his being restored to possession under Sub-section (6) of Section 7. The mistake committed by both the Courts was in assuming that Sub-section (6) of Section 7 was an independent provision conferring unfettered discretion on a Collector to restore to possession a bhagenasi who was in possession of his land on 1-9-1947 and was subsequently evicted. That sub-section is a mere procedural provision and in considering the substantive right of freedom from eviction or restoration

to possession if wrongfully evicted, one must see the main provision contained in Section 3.

10. Doubtless this question is somewhat academic in the present case inasmuch as we have no jurisdiction under Article 227 of the Constitution to interfere with the order of the Collector. But there seems to be some confusion in the lower Courts as regards the true scope of Section 7, Orissa Tenants Protection Act and I thought it advisable to discuss this point also. I may in this connection refer to a Division Bench decision of this Court in O J. C. No. 153 of 1950 (H).