

(1954) 09 OHC CK 0029

In the Orissa High Court

Case No : Supreme Court Appeal No. 4 of 1954

Jagannath Behera and Others

APPELLANT

Vs

Raja Hari Hara Singh Mardaraj Bhramarabara Roy

RESPONDENT

Date of Decision : 07-09-1954

Acts Referred:

Constitution of India, 1950 — Article 133, 226, 291, 362, 363
Government of India Act, 1935 — Section 290A, 290B
Orissa Merged States (Laws) Act, 1950 — Section 7, 8
Orissa Tenants Protection Act, 1948 — Section 13, 2

Citation : (1955) 21 CLT 102

Hon'ble Judges : Narasimham, J; Mohapatra, J

Bench : Division Bench

Advocate : B.M. Patnaik and R.K. Das, for the Appellant; K. Patnaik, for the Respondent

Judgement

Narasimham, J.—This is an application under Article 133 of the Constitution for leave to appeal to the Supreme Court against the decision of a Bench of this Court (Panigrahi, C.J. and Mohapatra, J.) in O.J.C. No. 37 of 1952 which has been reported in XIX C.L.T. (1953) 491 : ILR Cutt (1953) 739.

2. The material facts are as follows-

The sixteen applicants are residents of some villages in Khandpara which is now part of a subdivision in Puri district. Prior to January, 1938, Khandpara was one of the "Indian States" as defined in the Government of India Act, 1935 and the opposite party was the Ruler of that State. On the 14th December, 1947 the said Ruler entered into an agreement with the then Government of India (known as Merger Agreement) by which he ceded full authority and jurisdiction over his State to the Government of India with effect from the 1st January 1948, The Government of India in turn guaranteed to the Ruler "full ownership, use and enjoyment of all private properties (as distinct from State properties)" belonging to him on the date of the Agreement. For some time after the 1st January, 1948

Khandpara and other Indian States formerly known as "Feudatory States of Orissa" were administered by the provincial Government of Orissa as a delegate of the Central Government under the provisions of the Extra-Provincial Jurisdiction Act. The then Orissa Legislature had no Jurisdiction over these States. But on the 12th January, 1949 the Government of India Act, 1935 was amended and two new Sections (290-A and 290-B) were inserted in that Act empowering the Governor-General by an Order to direct the administration of these States as if they formed part of the neighbouring Province. In exercise of the powers conferred by these sections the Governor General issued an Order on the 27th July, 1949 known as the States Merger (Governor's Provinces) Order, 1949 by which he directed that Khandpara and other former Orissa States shall be administered as if they formed part of the old Province of Orissa. After the coming into force of the Constitution on the 26th of January, 1950 Khandpara became part of the new State of Orissa (see 2nd para of Part A of the First Schedule) subject to the legislative jurisdiction of the Orissa Legislature. For the purpose of this case it is unnecessary to describe in detail the various Orders and Ordinances that were issued from 1-1-48 till the 3rd March, 1950 for the purpose of extending the laws that were in force in the old province of Orissa to these merged States. It is sufficient to say that on the 3rd March, 1950 the Orissa Legislature passed an Act known as the Orissa Merged States (Laws) Act, 1950 (Orissa Act IV of 1950) for the main purpose of extending to these merged States most of the laws that were in force in the old Province of Orissa. A Schedule was appended to that Act containing a list of the various Central and Provincial Acts that were so extended to those States. One of the important Acts so extended is the Orissa Tenants Protection Act, 1948 (Orissa Act III of 1948). But the Legislature was conscious that in extending those Acts to merged States some adaptations and alterations may be necessary inasmuch as in many of the former feudatory States of Orissa regular statutory laws as ordinarily understood were not in existence prior to merger and consequently many of the expressions used in the Acts would be inapplicable to the conditions existing in those States unless extensive adaptations were made. Instead of taking upon itself the duties of making such detailed adaptations and modifications the Legislature specially enacted Section 8 in the Orissa Merged States (Laws) Act, 1950, which runs as follows-

For the purpose of facilitating the application in any of the merged States of any Act or Regulation Specified in the Schedule, any Court or other authority may construe any such Act or Regulation with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court or other authority.

That is to say, the Court or other authority was given extensive powers to make such adaptations and modifications as may be necessary for facilitating the application of any of the Acts mentioned in the Schedule, to the merged States so long as the substance was not affected. The aforesaid Section 8 is a well known transitional provision which is usually inserted whenever laws are

extended to new areas and it is not possible to make adaptations exhaustively due to lack of adequate data regarding the conditions prevailing in those areas (Compare para 21 of the Government of India (Constitution of Orissa) Order, 1936.

3. But at the same time in the Orissa Merged States (Laws) Act 1950 a special provision was made in Section 7 for modifying the tenancy laws in force in the merged States. Clause (h) of that section specially dealt with the private lands of a Ruler as follows

When a person holds khamar, nijjote or any other private lands of a Ruler which has been recognised as such by the Provincial Government he shall not be liable to ejectment but shall be liable to pay such fair and equitable rent as may be fixed by any competent authority appointed in this behalf by the Revenue Commissioner, or the Commissioner, Northern Division, as the case may be and thereupon he shall acquire the right of occupancy in respect of such land.

4. The Orissa Tenants Protection Act was one of the important pieces of tenancy legislation passed by the Orissa Legislature in 1948 (Orissa Act III of 1948) for the purpose of giving temporary protection to certain classes of tenants. At that time it was extended to (i) the old districts of Cuttack, Puri and Balasore where the Orissa Tenancy Act was in force, and (ii) the districts of Ganjam and Koraput where the Madras Estates Land Act was in force. Those two Acts contained adequate provisions safeguarding the rights of occupancy raiyats (known as ryots in Ganjam and Koraput). But those tillers of the soil who were not occupancy raiyats had practically no security of tenure. The Tenants Protection Act was meant to be a supplementary tenancy law giving temporary protection to cultivators of the sole other than occupancy raiyats and it was expressly provided in Section 13 of that Act that it should, as far as may be, be read and construed as forming part of the Madras Estates Land Act and the Orissa Tenancy Act. One of the important rights conferred by the Orissa Tenants Protection Act on such class of tenants was the right to seek the help of the Revenue Courts to be restored to possession (see Section 7) if they are unlawfully evicted from their lands by their landlords after the 1st day of September, 1947. By virtue of the "Orissa Merged States (Laws) Act 1950 the Orissa Tenants protection Act was also extended to all the merged states including Khandapara and instead of making extensive adaptations in that act, the legislature by Section 8 of the Orissa Merged states (Laws) Act left it to the Court or other authority to make such adaptations and alterations not affecting its substance so as to facilitate its application in the merged States. Some anomalies were bound to arise in its application to the merged States and the O.T.P. Act had to be amended from time to time so as to remove the anomalies. One of the important amendments made was in 1951 by the O.T.P. (Amendment) Act, 1951 (Orissa Act XVII of 1951) by which for the "1st day of September, 1947" occurring in the parent Act the letters and figures "1st day of August, 1949" were substituted in applying the O.T.P. Act to the merged States. In other words, in a merged State the right of a tenant to

take the help of the Revenue Court for the purpose of being restored to possession of his tenancy lands from which he is unlawfully evicted by the landlord would arise only if he was in possession of the lands as a tenant on the 1st day of August, 1949.

5. Sometime in 1952, several tenants of Khandapara (including all the Petitioners) applied to the Revenue Officer there for the purpose of being restored to possession of their tenancy lands under the O.T.P. Act alleging that the opposite party was their landlord and that he had unlawfully evicted them from their lands. These were numbered as O.T.P. Act cases Nos. 21 to 25 of 1952, 26 to 28 of 1952, 29 to 32 of 1952 and 33 to 41 of 1952, Notice was issued to the Ruler but it appears that he did not care to enter appearance before the Revenue Officer or to contest. On the ex-parte evidence of the Petitioners the Revenue Officer directed restoration of possession to them holding that they were in possession of the lands as tenants on the 1st day of August, 1949 and as such were entitled to the benefits conferred by the O.T.P. Act as amended in its application to the merged States. Against that order the Ruler of Khandapara (opposite party) filed an application under Article 226 of the Constitution before this Court for quashing the entire proceeding on the ground that in respect of the disputed lands he was not a "landlord" within the meaning of the O.T.P. Act. His application was allowed by a Bench of this Court as already stated and the detailed reasons for allowing his application will be found in the official report of the judgment. For the purpose of this leave application, however, I may briefly summarise the conclusions arrived at by that Bench

(i). Article 362 of the Constitution expressly enjoins the Legislature of a State in making laws to have "due regard" to the guarantee or assurance given under an agreement between the Ruler of an Indian State and the Government of India referred to in Article 291 of the Constitution

(ii). By Article 3 of the Merger Agreement the Raja of Khandapara was guaranteed full ownership, use and enjoyment of all his private properties

(iii) In the O.T.P. Act as extended to the merged States there are no express provisions to the effect that even in respect of the private lands of a Ruler he shall be deemed to be a "landlord" for the purpose of that Act

(iv) The only rights conferred on the tenants in possession of the Khamar, nijote or other private lands of a Ruler were those rights expressly conferred by Clause (h) of Section 7 of the Orissa Merged States (Laws) Act, 1950. That is to say, they were not liable to ejectment but may acquire occupancy status by applying to the competent revenue authority for settlement of fair and equitable rent

(v) By construing the provisions of the O.T.P. Act along with the provisions of Article 362 of the Constitution and the Orissa Merged States (Laws) Act, 1950 bearing in mind the guarantee of full ownership, use and enjoyment of all private lands conferred on the Ruler by Article 3 of the Merger Agreement the only reasonable construction is as follows-

The special right of being restored to possession which is conferred by the O.T.P. Act will not be available for the tenants who were in possession of the khamar, nijjote or other private lands of a Ruler on the 1st of August, 1949 and who were subsequently evicted by the Ruler. Hence, the Bench held that the Revenue Officer of Khandpara had no jurisdiction to entertain the applications of the tenants for restoration of possession and quashed the entire proceeding. The Bench further considered it unnecessary to discuss the applicability of Article 363 of the Constitution.

6. Mr. B. M. Patnaik on behalf of the Petitioners urged that the approach to the whole question by the said Bench of this Court was vitiated by its overlooking the decision of the Supreme Court of India in *Vishweshwar Rao v. State of Madhya Pradesh* 1952 S.C.J. 427 where the scope of the guarantee conferred on a Ruler by Article 3 of the Merger Agreement and its bearing on the legislative power of a State with special reference to Article 362 of the Constitution had been clearly decided. Though the said decision had been reported in the official reports of the year 1952 it is unfortunate that it was not cited before the Bench of this Court which disposed of the application under Article 226 of the constitution in September, 1953. In the Supreme Court decision one of the points for consideration was whether the private lands of the Ruler of Khairagarh which (like Khandpara) had merged with the neighbouring Province of Madhya Pradesh could be validly acquired under the Estates Abolition Act. The Ruler relied on Article 362 of the Constitution and also on the covenant of agreement conferring full ownership on the private properties. While rejecting his contention Das, J. observed-

Khairagarh is one of the States which formerly fell within the Eastern States Agency. On December 15, 1947, the Ruler entered into a covenant of merger. In that covenant the properties in question were recognised as -the personal properties of the Ruler as distinct from the State properties. Reference is made to Article 362 which provides that in the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. It is said that the impugned Act is bad as it contravenes the above provisions. There occur to me several answers to this contention. The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler qua a Ruler. It does not extend to personal property which is different from personal rights. Further, this Article does not import any legal obligation but is an assurance only.

All that the covenant does is to recognise the title of the Ruler as owner of certain properties. To say that the Ruler is the owner of certain properties is not to say that those properties shall in no circumstances properties acquired by the State. The fact that his personal properties are sought to be acquired on

payment of compensation clearly recognises his title just as the titles of other proprietors are recognised. Finally, the jurisdiction of the Court to decide any dispute arising out of the covenant is barred by Article 363.

and Mahajan J. (as he then was) also dealt with the subject as follows

The properties belonging to the Petitioner and acquired under the statute were originally situate in an Indian State which became subsequently merged with Madhya Pradesh. It was contended that by the terms of the covenant of merger those properties were declared as the Petitioner's private properties and were protected from State legislation by the guarantee given in Article 362 of the Constitution and hence the impugned Act was bad as it contravened the provisions of this article. Article 362 is in these terms-

In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of an executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

Article 363 takes away the jurisdiction of the Courts regarding disputes arising out of treaties, agreements, covenants engagements, sanads, etc.

It is true that by the covenant of merger the properties of the Petitioner became his private properties as distinguished from properties of the State but in respect of them he is in no better position than any other owner possessing private property. Article 362 does not prohibit the acquisition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the rulers properties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been fully respected by the impugned statute, as it treats those properties as their private properties and seeks to acquire them on that assumption. Moreover, it seems to me that in view of the comprehensive language of Article 363 this issue is not justifiable.

The aforesaid decision of the Supreme Court has decided the following points

- i) Article 362 of the Constitution does not import any legal obligation but only an assurance
- (ii) The "personal rights" referred to in Article 362 do not extend to the private properties of a Ruler
- (iii) In respect of the private properties of a Ruler his position is no better than that of any other owner of private properties
- (iv) If any Ruler claims that his private properties are protected from State legislation by virtue of the guarantee given in Article 362 that question is not justifiable by the Courts by virtue of the special bar imposed by Article 363 of the

Constitution.

7. Mr. B.M. Patnaik further contended that if the Merger Agreement and Article 362 are thus completely excluded from consideration, on a mere construction of the provisions of the O.T.P. Act as applied to the merged States along with the provisions of the Orissa Merged States (Laws) Act, 1950 the Ruler of Khandapara is a "landlord" within the meaning of the former Act and that the Petitioners are "tenants" as defined in that Act. He urged that the Ruler himself admitted in his petition under Article 226 before this Court that these Petitioners were formerly cultivating the disputed properties. The judgment of the Revenue Officer in the O.T.P. Act cases shows that the Petitioners had been given Sanja pattas and Bhag pattas by the Ruler himself in 1948-49 and 1950-51, Hence, according to Mr. Patnaik they would come within the definition of a "tenant" as given in Clause (g) of Section 2 of the O.T.P. Act.

8. The question as to whether the Ruler of Khandpara is a "landlord" as defined in Clause (c) of Section 2 of that Act presents some difficulty, That clause is as follows-

Landlord means a person, whether a proprietor, sub-proprietor, tenure-holder or raiyat or under-raiyat either in the raiyatwari area or in the zamindari area or land-holder or permanent under-tenure-holder whose land a person, whether immediately or mediately, cultivates as a tenant.

On behalf of the Ruler of Khandapara Mr. K. Patnaik urged that the definition of the expression "landlord" in that clause would apply only to those persons who are recognised as landlords or land holders either under the provisions of the Orissa Tenancy Act or the Madras Estates Land Act and that it cannot apply to the right of a Ruler in respect of his private lands, In support of this argument he urged that the expressions used in Section 2(c) such as "proprietor", "sub-proprietor", "tenure-holder", "raiyat" or "under-raiyat", "land-holder" or "permanent under-tenure-holder" have a well-defined connotation either under the Orissa Tenancy Act or the Madras Estates Land Act. Mr. B.M. Patnaik on behalf of the Petitioners urged that the words whether a proprietor, sub-proprietor, tenure-holder or raiyat or under-raiyat either in the raiyatwari area or in the zamindari area or land-holder or permanent under-tenure-holder" occurring in Clause (c) of Section 2 of that Act were merely illustrative of certain classes of landlords and were not exhaustive. According to him, the main part of the definition of a "landlord" in Section 2(c) is as follows

"landlord" means a person.... Whose land a person, whether immediately or mediately, cultivates as a tenant.

Here, admittedly, the Ruler of Khandapara is the owner of the private lands, According to his own admission and according to the finding of the Revenue Officer the Petitioners cultivated those lands under him either by Sanja pattas or by Bhag pattas. Hence, according to Mr. B.M. Patnaik the Ruler of Khandapara also comes within the definition of a "landlord", In support of this argument he

further urged that by virtue of Section 8 of the Orissa Merged States (Laws) Act, 1950 (already quoted) Law Courts should for the purpose of facilitating the application of the O.T.P. Act to the merged States, which was expressly declared to be the intention of the Legislature, construe the definition of "landlord" somewhat liberally by making some adaptations and alterations so as not to affect the substance thereof. That is to say, as the main object of extending the O.T.P. Act to the merged States was to give protection to the actual tillers of the soil who had no occupancy rights they should not be denied protection under the Act merely because the person under whom they cultivated the lands was not strictly a "landlord" as defined either in the Orissa Tenancy Act or a "landholder" as defined in the Madras Estates land Act but was a Ruler of an Indian State, In support of this argument he further relied on the fact that in Section 7(h) of the Orissa Merged States (Laws) Act the position of the Ruler in respect of his private lands vis-a-vis the actual cultivator of the land was recognised to be that of a landlord and tenant.

9. In the judgment of the Division Bench of this Court it was observed that in respect of the private lands of a Ruler the only right of a tenant that was recognised was the right conferred by Clause (h) of Section 7 of the Orissa Merged States (Laws) Act, namely, security from eviction and the right to apply to the competent revenue authority for fixation of fair and equitable rent and thus to obtain occupancy rights. Mr. B.M. Patnaik, however urged that the special provision in that clause for acquiring occupancy rights would not in any way affect the other rights of non-occupancy tenants conferred by the O.T.P. Act inasmuch as by that very Act, namely, the Orissa Merged States (Laws) Act, 1950 the provisions of the O.T.P. Act were applied to the merged States. According to him, the rights conferred by the two Acts were distinct, the right conferred by the former Act being the permanent right of an occupancy raiyat whereas the rights under the O.T.P. Act are of a temporary nature meant to secure the tillers of the soil from arbitrary eviction and to determine the share of the produce to which they are entitled and also to restore them to possession if they have been unlawfully evicted.

10. It is unnecessary for this Court hearing the leave petition to give its final views on these questions raised by the learned Counsel for both sides. It is sufficient to say that they raise important questions of law which will have far-reaching effect regarding the relationship of landlord and tenant in the merged States. Twenty-four Indian States were merged in the Province of Orissa and the Ruler of everyone of those States was recognised as having some private properties in his State. Hence, any decision of the question as to whether the tenants of those lands could claim the benefits under the O.T.P. Act will have far-reaching results affecting the rights of thousands of tenants in the merged States which form nearly one-third of the new State of Orissa. It is clearly of wide public and private importance. The points raised by Mr. B.M. Patnaik appear to be plausible and arguable and hence I am satisfied that this is a fit case for granting leave to appeal to the Supreme Court.

11. The main questions of law may be formulated as follows

(i) Has Article 362 of the Constitution any bearing on the question as to whether the O.T.P. Act applies to the private lands of a Ruler?

(ii) Is Article 363 a bar to the decision by any Court of the question whether by virtue of the merger agreement, the provisions of the Orissa Tenants Protection Act do not apply to the private lands of a Ruler?

(iii) On a mere construction of the O.T.P. Act, 1948 along with the provisions of the Orissa Merged States (Laws) Act, 1950 is the Ruler of Khandapara a "landlord" and are the Petitioners "tenants" within the meaning of that Act?

12. Mr. B.M. Patnaik further urged that the observation made in the judgment of this Court in O.J.C. No. 37 of 1952 to the effect that all parties admitted that the disputed properties were the private lands of the Ruler was not correct and that as only two of the Petitioners entered appearance in the said O.J.C. there can be no question of an admission of this fact by the other Petitioners. On perusing the records of the said O.J.C. I find that the Ruler who was the Petitioner in that case had claimed all the properties as private lands recognised as such by the Government of India. Doubtless, most of the tenants did not care to enter appearance or contest. But notice was given to the Advocate General and it does not appear that he contested this statement of the Ruler that the disputed properties were all his private lands. Hence, though there might not have been an "admission" by all the Petitioners that the disputed properties were the private properties of the Ruler this question may be taken as concluded as a question of fact.

13. Let a certificate issue accordingly.

Mohapatra, J.

14. I agree.