
(1984) 06 OHC CK 0018
In the Orissa High Court
Case No : First Appeal No. 190 of 1972

Kaluri Balakrishna Rao

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-06-1984

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 32
Specific Relief Act, 1963 — Section 38

Citation : AIR 1985 Ori 52 : (1984) 58 CLT 94

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : P.V. Ramdas and N.V. Ramdas, for the Appellant; Govt. Advocate (for No. 1), P. Palit, A.K. Tripathy, L. Rath and N.R. Agarwalla, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—This is an appeal against a decree of dismissal of a suit filed by the appellants for a declaration that the Kudiwaram interest in the suit property did not vest in the State of Orissa pursuant to the vesting notification dt 11-12-64 directing vesting of intermediary interests and for a declaration that the entries in favour of defendants 4 to 34 in the record-of-rights finally published in 1952 were without jurisdiction and for permanent injunction restraining the State of Orissa from interfering with the appellants possession.

2. The plaint case shortly stated is that the lands described in the schedule appended to the plaint were enfranchised minor inam granted in the year 1791. In 1862 during the enquiry into the inams, it transpired that the Inamdars and their alienees had reclaimed the land and made the same cultivable. So, title deed No. 486 was issued The plaintiff-appellants have alleged that both the Melwaram and Kudiwaram interests inhered in the Inamdars. Defendants 4 to 34 were temporary tenants merely and had no occupancy rights in the suit lands. The Kudiwaram rights have been recognised by the Civil Court After the enactment of the Orissa Estates Abolition Act, 1951, the State of Orissa issued a

notification in 1954 directing vesting of estates. Some of the Inamdars filed O. J. C. No. 254 of 1954 in this Court for annulment of the notification on the ground that the lands did not constitute an estate. At the hearing, on the concession of the learned Advocate General for the State, the notification in respect of the suit lands was quashed. In 1954, the definition of expression "estate" was amended by Orissa Act 17 of 1954 making it more comprehensive. The inamdars and some others filed writs challenging the vires of the Amending Act. This Court upheld the validity of the Amending Act. The Supreme Court also confirmed the decision of this Court (vide *Mahant Sankarshan Ramanuja Das Goswami etc., etc. Vs. The State Of Orissa and Another*, . It was held that the amended definition included inams of any kind. It made little difference whether it comprised whole villages or lands in the villages, whether the holders were not intermediaries or whether the inam comprised both the Melwaram and Kudiwaram rights.

3. By Orissa Act 15 of 1956, the Orissa Legislature amended the definition of the expressions "intermediary" and "intermediary interests" and added Section 3A to the statute. The suit lands were declared to vest by notification dt 11-12-64. Thereupon O. J. C No. 86 of 1965 was filed. At the hearing objection was raised on behalf of the State to the maintainability of the writ application on the ground that the tenants in whose favour pattas had been issued in 1952 had not been made parties to the writ application. This Court permitted withdrawal upholding the objection. While permitting withdrawal this Court made an observation to the following effect :

".....in our opinion the reliefs can be appropriately granted in a properly constituted suit to which the tenants would be parties....."

The suit out of which this appeal arises was filed on 14-11-69 on allegations that the plaintiffs were not intermediaries. Their occupancy rights in the suit lands did not vest under the notification and inasmuch as the suit lands were not part of any estate, the record-of rights prepared and published in 1952 was without jurisdiction and for permanent injunction against the State from interfering with the possession of the plaintiffs.

4. The State of Orissa traversed the allegations. Its main stand was that the suit lands constituted an estate. The plaintiffs did not have occupancy rights but were intermediaries. They were not in possession of the property and since they had more than 33 acres of land, the suit lands vested in the State Government.

5. Some of the defendants chose to contest and filed a joint written statement. They controverted most of the assertions of the plaintiffs. They disputed that the plaintiffs had Kudiwaram or occupancy rights in the suit lands. They asserted that the defendants and before them their ancestors were all along in cultivating possession as occupancy raiyats. They specifically disputed the assertion of the plaintiffs that both the Melwaram and Kudiwaram rights were held by them. They challenged the plaintiffs' assertion that the latter's occupancy right in the suit lands had been declared by the Civil Court. They asserted that the suit lands

constituted an estate and they were not bound by any observation that might have been made by this Court in an earlier proceeding. In gist their case was that the plaintiffs were the intermediaries and they were the raiyats and the suit lands being an estate, vested in the State under the notification dt 11-12-1964 and the suit challenging the record-of-rights of 1952 was grossly barred by limitation

6. The learned Subordinate Judge held that the suit lands comprised an estate. The plaintiffs being intermediaries, their rights vested Defendants 4 to 34 were in possession of the lands as tenants and the plaintiffs never cultivated any part of the land As they had not pursued the remedy u/s 8-A of the Orissa Estates Abolition Act their title stood extinguished and the temporary rights of the defendants 4 to 34 matured into permanent rights. The learned Subordinate Judge further held that the preparation of the record-of-rights in the year 1952 u/s 164 of the Madras Estates Land Act was without jurisdiction.

7. Mr. P. V. Ramdas, the learned counsel for the appellants, submitted that under the Orissa Estates Abolition Act, estates and intermediary interests vested in the State. The Act did not affect the occupancy rights of holders. We were referred to two decisions of the Supreme Court in the cases of Kumar Bimal Chandra Sinha Vs. State of Orissa, and Mahant Sankarshan Ramanuja Das Goswami etc., etc. Vs. The State Of Orissa and Another, . In the first case the Supreme Court observed:

".....the Act is intended to abolish all intermediaries and rent-receivers and to establish direct relationship between the State, in which all such interests vest after abolition under the Act, and the tillers of the soil. The interest of a raiyat was not at all touched by the Act Since the appellants held the lands along with the buildings not as proprietors but as raiyats, their interest did not vest in the State."

The object of the legislation was, therefore, to abolish all intermediaries, middlemen in between the State and the tillers of the soil Right of occupancy has been held to be specie of the tenancy right. In A. S. N. Nainapillai v. Ramanathan AIR 1924 PC 65, it has been observed:

"A permanency right of occupancy in land in India is a right, subject to certain conditions of a tenant to hold the land permanently which he occupies. It is a heritable right, and in some places it possibly may be transferable by the tenant to a stranger. That permanent right of occupancy can only be obtained by a tenant by custom, or by a grant from an owner of the land who happens to have power to grant such a right, or under an Act of the Legislature....."

It is usually described as the "kudiwaram" interest which means the cultivator's share in the produce of the land as distinguished from the landlord's share which is called the Melwaram interest

8. Though the plaintiffs alleged that their Kudiwaram right was declared by the

Civil Court in disputes between the parties or their predecessors-in-interest, no such decision was exhibited despite specific challenge of the defendants. One witness was examined on behalf of the plaintiffs. He was plaintiff 1. He merely asserted that the plaintiffs had Melwaram and Kudiwaram rights and the defendants were temporary tenants only. In cross-examination, however, he stated that the extent of the land in the village was 2500 acres and he could not say the number of minor inams. The share of the plaintiffs in the Inam was 7/32. He admitted that the plaintiffs did not possess any land personally. All the lands were under cultivation of bhag tenants. He could not furnish details of the land cultivated by tenants individually.

9. By way of documentary evidence, the plaintiffs merely filed the inam grants which had some relevance. All the other documents do not throw any light on the controversy. It was held by the Privy Council in *Chidambara v. Veerama* AIR 1922 PC 292 that there was no initial presumption either in favour of the inamdars or the tenants that any of them had occupancy right. Each case must be decided on its own facts, on the terms of the grant and on a consideration of the whole circumstances so far as they can be ascertained.

10. In this case, the grant was of forest land. The grant throws no light whether both the interests were conferred on the inamdars. Nor is there any material to show as to in what manner the land was held during the 150 years since the grant. We are, therefore, of the opinion that the plaintiffs have failed to establish that they were occupancy raiyats in respect of the suit lands. Admittedly the plaintiffs are not in actual cultivating possession. P. W. 1 admits that defendants A to 34 cultivate the lands. Hence, there is no cause of action against the State so far as the relief of permanent injunction is concerned. There is no averment in the plaint which could furnish a cause of action for the reliefs.

11. Mr. Ramdas strongly relied upon *Mahant Sankarshan Ramanuja Das Goswami etc., etc. Vs. The State Of Orissa and Another*, and urged that the Supreme Court decided that the Kudiwaram rights of the plaintiffs did not vest under the notification. In our opinion, the contention is not well founded. The question did not fall for consideration and has not been so decided. To appreciate the aforesaid, it is necessary to read the entire discussion:

"..... Once it is held that inams of any kind were included, it makes little difference if the inams were of lands and not of whole villages. So also the fact that the holders of such inams cannot be described as intermediaries, or that they comprised both the Melwaram and the Kudiwaram rights. Such a distinction would have significance, if the law abolished only intermediaries and not inams which it did....."

The Supreme Court observed that once the expression "estate" was wide enough to include a minor inam, it was immaterial whether the inams were of lands or of whole villages, whether or not the holders were intermediaries, whether or not the inams comprised both the Melwaram and Kudiwaram rights. We therefore,

reject the said submission.

12. In the result, we find no merit in this appeal which is accordingly dismissed
There would be no order as to costs of this Court

B.K. Behara, J.

13. I agree.