

(1989) 12 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 760 of 1982

Kamini Kanta Misra and Others

APPELLANT

Vs

Sri Srinibas Kar and Others

RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Criminal Procedure Code, 1973 (CrPC) — Section 133 , 137(2)
Limitation Act, 1963 — Section 14, 5
Orissa Estates Abolition Act, 1951 — Section 5, 6, 7, 8(4), 8A

Citation : (1990) 69 CLT 540

Hon'ble Judges : D.P. Mohapatra, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.P. Misra, for the Appellant; Additional Government Advocate and S. Misra, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Being aggrieved by the order passed by the Addl. Dist. Magistrate (O.L.R.), Mayurbhanj (opp. party No. 2) on 6-3-1982 in O.E.A. (Lease) Revision No. 22 of 1981 (Annexure 14) setting the disputed land in the name of Srinibas Kar (opp. party No. 1) the Petitioners filed this writ application under Articles 226 and 227 of the Constitution seeking a writ of certiorari to quash the order. In addition to the aforementioned opp. parties, the Subdivisional Officer, Baripada, the Tahasildar, Baripada and the State of Orissa, represented by the Dist. Magistrate and Collector, Mayurbhanj have been implead in the case as opp. parties 3, 4 and 5 respectively.

2. The relevant facts shortly stated are as follows:

The Petitioners, all residents of village Jamunadeipur in Baripada town have been contesting the attempts of opp. party No. 1 for settlement of the land in question before the statutory authorities in their individual capacity as well as representing the local public. The dispute relates to C.S. plot No. 222 measuring

A. Order 57 decimals which is embakment of a tank and the C.S. plot No. 223 measuring A. Order 34 decimal which is tank and the C.S. plot No. 224/690 measuring A.O. 08 decimal (tank embakment) and all the plots appertain to C.S. Khata No. 1 who is the son of the ex intermediary of the estate of which the aforementioned plots along with the some other plots appertaining to C.S. Khata No. 144/9/1 were part applied to the Tahasildar, Baripada (opp. party No. 4) for settlement of the land u/s 6 and 7 of the Orissa Estates Abolition Act(hereinafter referred to as "the Act"). The said application was registered as Lakhraj Case No. 49 of 1965-66. The Tahasildar by his order dated 29-7-1966 (Annexure-2) rejected the application in respect of the aforementioned three plots and settled some other lands with the applicant. It is the case of the Petitioners that though the tank in question with embakment on a portion of which stands Mahadev temple stood recorded in the current settlement record of rights (C.S.R.O.R.) in the name of Raghunath Kar, the same has all long been used by members of public for taking bath and for catching fish. The public also visit the temple for worshipping the deity. This position continued after vesting of the estate in the State.

The opposite party No. 1 having failed to get the land settled u/s 5 and 7 of the Act filed another application on 31-12-1974 (Annexure-3) before the Abolition collector, Baripada in from "Ja" for settlement of the land the same was registered as O.E.A. No. 300 of 1974 The Tahasildar Baripada considering the application filed by opp. party No. 1 on its merits held that the tank along with its embankment was included in the Sarbasadharan Khata and therefore could not be settled with the ex intermediary. The authority rejected the application by its order dated 26-7-1975 (Annexure-4). According to the Petitioners, this petition was filed by opp. party No. 1 on suppression of material facts that a similar application had been rejected by the Tahasildar earlier on merits. Thereafter the opp. party No. 1 moved the Addl. Dist. Magistrate, Mayurbhanj (opp. party No. 2) in appeal (O.E.A. Appeal Case No. 42 of 1975) challenging the order of the Tahasildar though the Subdivisional Office was the appellate authority prescribed under the statute and not the Addl. Dist. Magistrate. However the Addl. Dist. Magistrate by his order dated 18-9-1975 Annexure-5) disposed of the appeal remanding the case to the Tahasildar with the direction to have a spot enquiry to ascertain whether the lands in question were under khas possession of the ex intermediary. When the O.E.A. Lease Misc. Case No. 3000 of 1974 was received by the Tahasildar on remand, the Petitioners along with some other co-villagers, since deceased, filed applications objecting to the grant of lease to the opp. party No. 1 stating, inter alia, that the tank was being used by the villagers and therefore it should not be settled with an individual. They further stated that the tank which is situated within the Baripada Municipal limits should be handed over to the Municipality which by its Resolution dated 30-4-1975 had taken a decision for moving the Govt. to transfer the same to the Municipality. The Petitioners relied on the instructions issued by the State Govt. in memo No. 2179-OE (GL) 27/61-R dated 23-4-1962. The Tahasildar in pursuance of the order of the Addl.

Dist. Magistrate held a- spot enquiry, took evidence on the spot in order to ascertain whether the ex intermediary was in possession of the land in question and on consideration of all the materials on record rejected the application for settlement by his order dated 12-10-1976 (Annexure-7). The opp. party No. 1 then moved the Addl. Dist. Magistrate, Mayurbhanj in appeal and the authority by its order dated 6-12-1976 (Annexure-8) returned the appeal memo holding that the appeal lay to the Sub-divisional Officer, Baripada and not to him. Thereafter the opp. party No. 1 filed the appeal, (O.E.A. (Lease) Appeal No. 60 of 1976 along with the application under Sections 5 and 14 of the Limitation Act for condonation of delay before the Subdivisional Officer, Baripada. The Subdivisional Officer, Baripada considering the application filed by the Petitioners and some other co-villagers on 4-4-1978 under Order 1, Rule 10 read with Section 151, CPC to be impleaded as parties in the case allowed the application by its order dated 14-9-1979 (Annexure-2) and this order was confirmed by the Addl. Dist. Magistrate, Mayurbhanj in O.E.A. Revision No. 9 of 1979 disposed of by order dated, 26-9-1980 (Annexure-10). The Subdivisional Officer after hearing both the sides dismissed the appeal (O.E.A, (Lease) Appeal No. 60 of 1976) and confirmed the order of the Tahasildar by his order dated 28-8-1981 (Annexure-13). The opp. party No. 1 then moved the Addl. Dist. Magistrate, Mayurbhanj in revision in O.E.A. (Lease) Revision No. 22 of 1981 challenging the order of the appellate authority. The Addl. Dist. Magistrate disposed of the case by the impugned order (Annexure-14) by allowing the revision petition with the direction to settle the lands in question in the name of opp. party No. 1. This writ petition, as stated earlier, it is directed against the said order of the Addl. Dist. Magistrate.

3. It is pertinent to state here that the revisional authority has placed much reliance on certain observations made by the S.D.M., Baripada and the Sessions Judge, Mayurbhanj while disposing of a proceeding u/s 133, Code of Criminal Procedure (Criminal Misc. Case No. 21 of 1976) which was initiated at the instance of the Petitioner No. 1 Kaminikanta Misra who was then a councillor of the Baripada Municipality, seeking to restrain the opp. party No. 1 from polluting the water in the tank in question since it is a public tank. The proceeding was dropped by order u/s 137(2) Code of Criminal Procedure holding, inter alia, that it was private property.

4. The main thrust of the argument of the learned Counsel appearing for the Petitioners was that the proceeding initiated on the application filed by opp. party No. 1 was not maintainable and the proceeding was misconceived. It was the submission of the learned Counsel that the application filed by opp. party No. 1 for settlement of the self-same land u/s 6 and 7 of the Act having been, rejected on merits the, subsequent application filed by him leading to the present proceeding was entertainable.

5. For proper appreciation of the contention we asked Shri S. Mishra-2, learned Counsel appreciation for opp. party No. 1 under which provision of the statute/

instruction the the present application was filed by his client. The learned was unable to give any satisfactory answer to the question. However, it appears from the order passed by the statutory tribunal (opp. parties 2 to 4) that the proceeding was treated to be one under the Orissa Estate Abolition Act. In that view of the matter and in view of the undisputed factual position that the application of opp. party No. 1 filed u/s 8/a(4) of the Act was rejected by order dated 29-7-1966 and that order having attained finality the subsequent application could not have been entertained under the statute. The subsequent proceeding would therefore be vulnerable both on the principle of res judicata and also on public policy. To wriggle out of this position Shri Mishra submitted that the application was filed under the Executive instructions issued by the State Govt. for settlement of land with ex intermediaries This matter appears to have been clarified in G.O. No. EA II-110/63-14399/R. dated 2-3-1964, issued by Revenue and Excise Department to the Land Reforms commissioners, Orissa copies whereof were sent to all Revenue Divisional Commissioners/Collectors/ Sub-divisional/Officers/Tahasildar for information. On perusal of the said Govt. order it appears, inter alia, that instructions had been issued by the State Govt. from time to time for settlement of khas land and personnel jagir lands with ex intermediaries of the hardship in losing the lands in their possession the state Govt. had extended the facility to such person to obtain settlement of the lands by lease to the concerned person who would have been entitled the lands had they applied for in time on realisation of arrear rent and a salami equivalent to three years' rent. The Govt. order further shows that this facility was misused by some ex intermediaries whose applications for settlement of lands under the provisions of the Act had earlier been rejected and taking advantage of this concession they got back the lands in respect of which their claims had been rejected. The State Govt. therefore had withdrawn the concession in G.O. No. 87-49-R/E.A.-II-70/62 dated 7-2-1963 pending determination of a more suitable process under which it would be possible to accommodate the genuine cases only. Thereafter by the afore mentioned order issued on 2-3-1964 the Govt. extended the concession upto 30-6-1964 on certain terms, one of the terms was that the applications of those whose prayers were previously rejected though the applications were presented in time should not be taken into consideration on any ground and while granting such leases, the Tahasildar should satisfy himself that the applicant is not asking for advantages that would not have been available to him under the provisions of the Act.

From the above discussion it is manifest that the application filed by opp. party No. 1 did not come within the purview of the concession granted by the State Govt. in the aforementioned Govt. order. The position therefore is that the application could neither be entertained under provisions of the Act or under the concession granted by the State Govt. by the Executive instructions. Shri Misra appearing for opp. party No. 1 neither produced the copy of the application submitted by his client nor could he state the specific provision under which the application was filed. In these circumstances we are persuaded to hold that in

the backdrop of the facts discussed above the application filed by opp. party No. 1 which gave rise to the present proceeding was not maintainable.

6. Examining the impugned order (Annexure-14) from another angle also it appears to be unsustainable. As noticed earlier, the Tahasildar and the Subdivisional Officer had on more than one occasion rejected the application of opp. party No. 1 holding, inter alia, that the tank along with its embankment was being used by the local public for various purposes and it was not in exclusive possession of the applicant. The Addl. Dist. Magistrate in revision set aside the orders passed by the said authorities mainly relying on some observations in the orders passed in the proceeding u/s 133, Code of Criminal Procedure to the effect that the tank was private property. Firstly, in the proceeding u/s 133, Code of Criminal Procedure the question of actual physical possession by opp. party No. 1 on the relevant date and his right to get the property settled in his favour under the provisions of the Act did not arise for consideration; secondly a mere observation that the tank is private property does not satisfy the requirements for its settlement with the applicant under the provisions of Sections 6, 7 and 8A of the Act. Further, the writ Petitioners who had been impleaded in the proceeding at the earlier stage were not made parties in the revision case disposed of by the Addl. Dist. Magistrate (opp. party No. 2) and their case that the tank was being used by the local public was not taken into consideration in its proper perspective. Therefore on this ground also the impugned order is unsustainable.

7. For the reasons discussed in the preceding paragraphs, the writ application is allowed and the impugned order passed by the Addl. Dist. Magistrate, Mayurbhanj on 9-3-1982 in O.E.A. (Lease) Revision No. 22 of 1981 (Annexure-14) is quashed. Both parties will bear their respective costs of this proceeding.

A. Pasayat, J.

I agree.

Writ application allowed.