
(2011) 09 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 21394 of 2011 and M.C. No. 12218 of 2011

Kishore Chandra Pradhan and Another

APPELLANT

Vs

Registering Officer and Another

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22A, 22A(1), 22A(2), 22A(3)

Citation : (2011) 09 OHC CK 0016

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : B.H. Mohanty, for the Appellant;

Judgement

B.K. Nayak, J.—The learned counsel for the petitioner is permitted to correct the Annexure number in the prayer portion of the writ petition is court. The learned Addl. Government Advocate has filed counter affidavit on behalf of O.P. No. 1 serving a copy of the same on the learned counsel for the petitioners. The counter affidavit be kept on record.

2. Heard learned counsel for the parties.

3. This writ petition has been filed for quashing the order dated 26.7.2011 passed by the Sub-Collector, Talcher in OLR Case No. 38 of 2011 u/s 22-A of the O.L.R. Act, 1960 (in short, "the Act" and for directing O.P. No. 1 for accepting the document in Annexure-2 for registration without insisting upon permission from the authorities under the Act.

4. The case land in plot No. 210 under Khata No. 270 of Mouza Deulabeda in the District of Angul stands recorded in the name of the father of petitioner No. 1. In the remarks column of the ROR there is note of forcible possession in favour of father of petitioner No. 2.

5. It is alleged that petitioner No. 1 presented the sale deed as per Annexure-2 before O.P. No. 1 for registration. But in view of the note of forcible possession of

the land in favour of father of petitioner No. 2, who is a Scheduled Caste person, O.P.No.1 insisted for obtaining permission of the authorities under the Act. Petitioner No. 2 filed a petition before the Sub-Collector, Talcher U/s.22-A of the Act for surrender/abandonment of the land in question. The Sub-Collector (O.P. No. 2) has referred the matter to the Tahasildar, Talcher to decide the same as per the Act and the instructions and circulars issued by the Government there under.

6. At the time of argument it is submitted by the learned counsel for the petitioners that petitioner No. 2 has no objection for sale of the case land by petitioner No. 1 as because he is not a tenant or raiyat in respect of the land in question and that under a misconception of law OLR Case No. 38 of 2011 was filed before the Sub-Collector. He submits that since Section 22-A has no application in case of forcible possession of land, he does not want to press the relief for quashing the order passed by the Sub-Collector and instead press for the first relief, i.e., a direction to the Sub-Registrar-Registering Officer, Talcher, who is refusing to accept the document for registration without order of the O.L.R. authorities.

7. Sub-sections (1), (2) and (3) of Section 22-A of the Act which are relevant for our purpose are quoted hereunder:

22-A. Surrender or abandonment by raiyat or tenant - (1) No surrender to the landlord or abandonment of any holding or any part thereof by a raiyat or a tenant shall be valid unless such surrender or abandonment has been previously approved by the Revenue Officer.

(2) Any raiyat or tenant desiring to surrender or abandon his holding or any part thereof may furnish information thereof in writing to the Revenue Officer.

(3) On receipt of information under Sub-section (2), the Revenue Officer may, after making or causing to be made such inquiry and in such manner, as may be prescribed, or order either approve or disapprove the proposed surrender or abandonment.

Provided that no surrender or abandonment shall be disapproved unless the raiyat or tenant, as the case may be, has been given a reasonable opportunity of being heard in the matter.

8. It is evident that permission for surrender or abandonment of holding from the O.L.R. Authority is necessary where the person concerned is either a raiyat or tenant and therefore, without permission of the authority under the Act no surrender or abandonment shall be valid.

9. In the present case, however, it is nobody's case that the father of petitioner No. 2 whose forcible possession in respect of the case land has been noted in the remarks column of the R.O.R. is either a tenant or a raiyat in respect of the land in question. In such circumstances, the Registering Officer has no authority to insist upon for obtaining any permission from the O.L.R. authorities for the

purpose of acceptance of document for registration.

10. In the circumstances, I allow the writ petition directing opp.party No. 1 to accept the document presented by the petitioner No. 1 for the purpose of registration.

11. The writ petition and misc.case are accordingly disposed of. This order be communicated to O.P. No. 1 at the cost of the petitioner. Issue UCC as per rules.