
(2009) 06 OHC CK 0009
In the Orissa High Court

Lalit Mohan Patnaik

APPELLANT

Vs

Sub-Divisional Officer and Others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 108 CLT 333 : (2009) 2 OLR 421

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—This is an application under Article 227 of the Constitution of India filed by the Petitioner challenging the initiation of the proceeding u/s 23(1) of the Orissa Land Reforms Act (hereinafter referred to as "the Act") by the Revenue Authorities.

2. The facts of the case are as follows:

The Petitioner purchased Ac.0.20 decs, of land from out of an area Ac.1.30 decs, in Plot Nos. 223, 518 & 914 under Khata No. 288 in Mouza Turanga Jungle in the then district of Dhenkanal, at present in the district of Angul, in the year 1964 from one Bihari Naik, the eldest sqn of one Mitu Naik. The vendor Bihari Naik belongs to the Scheduled Caste community. Physical possession was delivered in favour of the Petitioner following the transaction for sale of the land. Since the sale transaction & physical delivery of session of the land was completed in March, 1964, i.e., prior to enforcement of Section 22 of the Act, the vendor did not obtain any written permission from the Revenue Officer at the relevant time as it was not required. After purchasing the said land, the Petitioner constructed a residential house thereon & continued to reside there with his family members. Subsequently, on 22.4.1966, the vendor executed a formal sale deed in favour of the Petitioner vide sale deed No. 2137 dated 22.4.1966 without any objection from the registering authority.

3. While the matter stood thus, the Sub-Divisional Officer, Angul on the basis of

the report of the Assistant District Welfare Officer, Angul, initiated a case u/s 23 of the Act as O.L.R. Case No. 54 of 1982. After hearing both the parties, the Sub-Divisional Officer, Angul dropped the proceeding on 10.11.1982 on a finding that the sale transaction in respect of the land in question was completed much prior to the enforcement of Section 22 of the Act. The registering authorities accepted the sale deed for registration. The record also reveals that from out of the land under the same Khata No. 288 in Plot Nos. 223, 518 & 914, the vendor Bihari Naik sold some land in favour of one Smt. Damayanti Pani through registered sale deed No. 2296 dated 3.5.1966. The OLR Authorities when confronted with the legality of sale of the land by the vendor in favour of Smt. Damayanti Pani, held that the sale deed was valid as the registration was held to have been done in the earlier stage of the operation of Chapter II of the Act, when the rigour of the Act was not much promulgated.

4. Being aggrieved by the Order Dated 10.11.1982, Opposite Party Nos. 5, 6 & 7 preferred Appeal Case No. 4 of 1984 before the Addl. District Magistrate, Dhenkanal. On 31.5.1984, the Addl. District Magistrate, Dhenkanal remanded the matter to the Sub-Divisional Officer, Angul for de novo enquiry & adjudication. After remand, the respective parties adduced their evidence & after hearing both the parties, the Revenue Officer-cum-Sub-Divisional Officer, Angul on 17.1.1989, held that the sale of the land in favour of the Petitioner was in contravention of Section 22 of the Act & the registered sale deed dated 22.4.1966 was invalid. Against the said order, the present Petitioner preferred O.L.R. Appeal No. 5 of 1989 before the Addl. District Magistrate, Angul, which was dismissed on 18.12.1991. Aggrieved by the said order of the Addl. District Magistrate, Angul, the Petitioner preferred O.L.R. Revision No. 3 of 1994 before the Collector, Angul u/s 59(1) of the Act read with Rule 42-B of the O.L.R. (General) Rules, 1965 & the said revision was also dismissed on 1.5.2002. Hence, the present Writ Petition.

5. Learned Counsel for the Petitioner submitted that the authorities failed to determine the applicability of the Act in respect of the land covered under the provisions of the Act. The Petitioner purchased the land in the year 1964 and at that time, the land in question was not an agricultural land nor was it having the potentiality of being used as agricultural land or agricultural operations were ever carried out. After purchasing the land, the Petitioner immediately constructed his residential house to reside there. The object & reason for enactment of the Orissa Land Reforms Act is to remove all hurdles for development of the agrarian economy in respect of the land which has the potentiality of being used for agriculture. Section 2(14) of the Act defines the word "land" which covers only the lands which are used or have potentiality of use for agricultural purposes. Since the land in question purchased by the Petitioner was used for construction of house, the same will not come within the definition of "land" as per the Act as it was not used for agricultural purposes. The authorities failed to appreciate & notice that the land in question was not covered under the expression "homestead" as defined u/s 2(12) of the Act. Since none of the portion of the

land or any of its extent has any ancillary or incidental nexus with agriculture & the land in question being wholly unfit for agricultural purpose or having no potentiality to be used for agricultural purposes, the transaction was not for agricultural purpose but for the purpose of constructing a residential house which is transparent from the nature of the transaction & the evidence led to that effect by the parties. Therefore, the order passed by the authorities is liable to be interfered with by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

6. Learned Counsel appearing for the Opposite Parties submitted, that since the authorities have passed a reasoned order, the impugned order does not warrant any interference by this Court.

7. On the aforesaid submissions of the parties, it is to be examined whether the land in question was covered under the provisions of the Act & used for agricultural purposes or had the potentiality of being used as agricultural land or any agricultural operation was ever carried out. No doubt the Act applies to all land which is either used or capable of being used for agricultural purposes irrespective of whether it is situated within a municipal area or in villages. The very object of the legislation being an agrarian reform, the object will be frustrated if agricultural land situated within the municipal area or village, is excluded from the purview of the Act. Therefore, the Act is applicable to all land, which is used or capable of being used for agricultural purposes, irrespective of the fact wherever the said land is situated. Here, as admitted by the parties, the Petitioner constructed the house immediately after the transaction & is residing therein & the land is situated in Mouza Turanga Jungle. The parties have adduced evidence to that regard & the vendor has also admitted the said facts. However, the authorities have not considered the fact that the land in question was used for agricultural purposes or had the potentiality for being used as agricultural land or agricultural operation was ever carried out. The Apex Court in a decision reported in 1999 (II) OLR 182 SC (Om Prakash Agarwal and Ors. v. Batara Behera and Ors.) has held that the Act is applicable to all land which is used or having capacity of being used for agricultural purposes irrespective of the fact wherever the said land is situated.

8. From the aforesaid discussion, it is crystal clear that the OLR authorities have not only ignored the admitted facts that the land in question has been transferred since 1964 & used for residential purpose since long, but also not given any definite finding as to whether the land in question was an agricultural land or capable of being used for agricultural purposes & whether the Act was applicable to the land in question & a proceeding u/s 23 of the Act thereof was maintainable. As such this Court sets aside the finding of the OLR authorities in exercise of its jurisdiction under Article 227 of the Constitution of India.

9. In view of the above, this Court remands the matter to the OLR authorities to examine the same in the light of the observation made above.