
(1973) 04 OHC CK 0025
In the Orissa High Court
Case No : O.J.C. No"s. 802 and 803 of 1970

Laxmidhar Panigrahi

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 12-04-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 1

Orissa Land Reforms (Amendment) Act, 1965 — Section 15

Citation : AIR 1974 Ori 127

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : K.C. Jagadeb Ray, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Both these writ applications are petitions for certiorari. Several orders passed by the Revenue Officer, the appellate authority and the revisional authority under the Orissa Land Reforms Act are impugned in these writ petitions. The petitioner in both the writ petitions is the same person but some of the opposite parties are different

2. Opposite party No. 3 In O. J. C. 802/1970 and opposite parties 3 and 4 in O.J.C. 803 of 1970 separately applied to the Revenue Officer (opposite party No. 2 in both the writ petitions) for determination of their respective tenancy interests in the lands in question under the petitioner and the other opposite parties -- Padma Dibya and Baidei Dei. The petitioner and his relations opposed the claim by saying that the applications before the Revenue Officer were made mala fide by persons who had no connection with the lands in question. Their possession as tenants was seriously disputed.

3. The Revenue Officer held local enquiry on 25-12-1966. It is stated that he received some evidence from the people who were present at the spot and made some confidential enquiry. On the basis of such materials he found the claim of

tenancy to be genuine in both the cases.

Appeals were carried against the aforesaid order in both the cases, and as the appeals proved unsuccessful, revisions were also carried to the Additional District Magistrate of Puri. He upheld the orders of the original authority as affirmed in appeal. These writ applications are, therefore, filed for quashing of the several orders by the authorities under the Orissa Land Reforms Act.

4. The contesting tenants have not appeared in this Court in spite of service of process. Mr Jaaadeb Rav for the petitioner claims that it was not competent for the Revenue Officer to hold any confidential enquiry. In fact the appropriate section under the Land Reforms Act does not conceive of any such confidential enquiry. As regards the evidence, the Revenue Officer had stated:--

"I held the spot enquiry On 25-12-1966 and in course of my enquiry I came to the conclusion that the lands owned by Lokanath Paniarahl in mauza Sarua are not entirely being cultivated by his legal heirs but some portion of the lands has been given to others on bhag basis. On taking evidence from the people who were present at the spot and on my confidential enquiry I came to understand that the petitioner Sauri Muduli is in personal cultivation of the land and in the suit year also. I believe, there is some truth in it"

In regard to this aspect of the matter, the appellate authority stated:--

"On a perusal of the records of the Tower Court it appears that the petitioner Sauri Muduli under the provisions of the O. L. R. Act moved the Revenue Officer for determination of the non-resumable lands in respect of his tenancy over the plot No. 878. area C.O. 415 and pending disposal of that case the petitioner filed one application before the Revenue Officer for protecting his tenancy etc. u/s 15 (1) (b) of the O. L. R. Act.

The Revenue Officer after receipt of the application started a case u/s 15 (7) of the O. L. R. Act, 1965, declared the petitioner as tenant over the suit land and disposed of the dispute.So far as the procedure of this enquiry is concerned, the Revenue Officer appears to have conducted the enquiry perfectly according to the provisions of law and I do not find anything wrong there."

The order of revision shows the treatment of the aspect of the matter thus:

".....on 25-12-1967 the Revenue Officer had made a local inspection and also examined some boundary witnesses and has come to the finding that the opposite party Sauri Muduli was in actual cultivating possession of the suit land."

5. Apart from what had been stated in the writ petitions, an affidavit in each of the cases has been filed by the petitioner to say:--

"That during the inspection also the usual method recognised in law was not at all followed in examining any witness and the petitioner had no occasion to cross-examine anybody and it was a gathering and almost every body was shouting across each other.

That the petitioner humbly stated that there was no recording of evidence as contemplated in law and anything referred to by the learned Revenue Officer are to outcome of his secret inquiry about which the petitioner has no knowledge."

These allegations in the further affidavit are not controverted before us by learned Advocate General appearing for the opposite parties 1 and 2. The other opposite parties do not appear at all.

6. We are satisfied that there is no material on record to support the conclusion of the revisional authority that boundary witnesses were examined. The Revenue Officer did not say so. On the allegations raised before us we are satisfied that there has been no adequate enquiry as contemplated in law. On the other hand some secret enauirv had been made by the Revenue Officer. He was admittedly acting as a judicial authority while disposing of application u/s 15 of the Act He could not have collected materials confidentially and without disclosing the same to the opposite parties before him. the Revenue Officer could not have utilised them for coming to his conclusion regarding the fate of the lis. The action of the Revenue Officer is clearly violative of the principles of natural justice.

Section 15 (2) of the Act provides that on receipt of an application of the type as in this case the Revenue Officer may dispose of the same after making such enquiry as he deems fit Counsel for the petitioner contends, and learned Advocate-General agrees, that the Rules under the Act do not specify any procedure and in fact Rule 16 which is the only Rule with reference to Section 15 of the Act merely deals with the manner of filing of the application.

Section 61 of the Act declares that orders passed under the statute, subject to any order passed in appeal or revision, as the case may be, are final and are not to be called into question in any Court of law. Section 67 of the Act bars the jurisdiction of the Civil Court. Undoubtedly civil rights of parties are dealt with under the Act and the jurisdiction of the common law Court is ousted.

The Revenue Officer and the appellate and revisional authorities under the Act are Courts in the strict sense of the term (See Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . The proceeding under the Act is a iudicial proceeding in any view of the matter and. therefore, in terms of Section 1 of the Evidence Act, the provisions of that Act apply to the proceedings before the statutory officers under the Act In the absence of legislative provision outsting the application of the Evidence Act to the proceedings under the Land Reforms Act. statutory authorities thereunder in dealing with iudicial proceedings cannot overlook the provisions of the Evidence Act. If the Evidence Act is to be applied, all the oral evidence collected has to be subjected to cross-examination.

7. Even if the Revenue Officer is not a "Court" in the strict sense of the term, as Lord Guest pointed out in Wiseman v. Porneman 1971 AC 297 (HL)--

"It is reasonably clear on the authorities that where a statutory tribunal has been

set up to decide final questions affecting parties" rights and duties, if the statute is silent upon the question, the Courts will imply into the statutory provision a rule that the principles of natural justice should be applied. This implication will, be made upon the basis that Parliament is not to be presumed to take away parties" rights without giving them an opportunity of being heard in their interest....."

Reasonable opportunity will certainly imply that the statutory authority would act fairly, put the parties to notice of all material that may be available to be used so that reasonable opportunity would be available to the parties to meet such evidence. In the aforesaid decision Lord Reid pointed out:--

"..... .Natural justice requires that the procedure before any tribunal which is acting iudicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard-and-fast rules. For a long time the Courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

Learned Advocate General has not supported the procedure of the Revenue Officer. He is at one with Mr. Jagadeb Ray that confidential enquiries are not permitted at all because that would be negation of fairplay and would be contrary to the well settled iudicial procedure of this country.

It is difficult at this stage to assess on the basis of the record in what manner and to what extent the confidential enquiries led to the final result of the proceeding. Besides, the nature of evidence collected in this case also is not in accordance with the provisions of the Evidence Act as indicated above. The enquiry, therefore, was vitiated. As was pointed out in *Leary v. National Union of Vehicle Builders* (1970) 2 All ER 713, a failure of natural justice in a trial body cannot be cured by a sufficiency of natural justice in an appellate forum and where the evidence has not been properly received, the entire proceeding becomes vitiated because the foundation is not in accordance with law.

As we have already said, the appellate authority did not deal with the matter and in the order of revision it has been stated that evidence of boundary witnesses had been recorded. There is no material on record to show that any boundary witness was ever examined. On the other hand, the petitioner has disputed that there was any enquiry of the type referred to in the revisional order.

8. We are, in the circumstances. satisfied that the impugned orders cannot be sustained and have got to be quashed. Both the applications filed before the Revenue Officer shall revive and shall be deemed to be pending for disposal in accordance with law. The opposite party No. 2 in each of the cases is commanded to dispose of those applications in. accordance with law within three

months from the date of receipt of the writ By him and report compliance to the Deputy Registrar of this Court.

The writ applications are allowed. In view of the fact that the contesting opposite parties have not entered appearance, we direct parties to bear their own costs.

B.K. Ray, J.

I agree.