
(2016) 02 OHC CK 0055
In the Orissa High Court
Case No : OJC No. 10272 of 2000

Lokanath Meher and Others

APPELLANT

Vs

Panchanan Majhi and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, Section 23, Section 23-A
Orissa Merged States (Laws) Act, 1950 — Section 7, Section 7 (1)(b), Section 7(1)(b),
Section 7(b), Section 7(b)(i)
Registration Act, 1908 — Section 17

Citation : (2016) 02 OHC CK 0055

Hon'ble Judges : Dr. Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : Budhiram Das, Advocate, for the Appellant; Soumya Mishra,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.—1. The sole question that arises for consideration in this writ petition is as to whether a proceeding under Section 23 of the Orissa Land Reforms Act, 1960 (hereinafter referred to as "the OLR Act") is maintainable, if any transfer is made by a person belonging to a Scheduled Caste or Scheduled Tribe in favour of a person belonging to non-Scheduled Caste or Non-Scheduled Tribe in contravention of Section 7(b)(i) of the Orissa Merged States (Laws) Act, 1950 ?

2. Opposite party No. 1 is a member of Scheduled Tribe. He filed an application under Section 23-A of the OLR Act before the Revenue Officer, Patnagarh, opposite party No. 2, for restoration of the land alienated by his father Jhankar Majhi by means of RSD No. 120 dated 24.1.1964 in favour of the father of the petitioners. It is stated that he is Binjhal by caste and member of the Scheduled Tribe community, which was registered as Revenue Misc. Case No. 8/10 of 1990. His case is that opposite parties are Bhulia by caste and do not belong to Scheduled Tribe. No permission to alienate the land was obtained from the

competent authority. The transfer is invalid and contrary to the provision of the Orissa Merged States (Laws) Act, 1950. The petitioners filed an objection to the same contending, inter alia, that there was no legal prohibition for transfer of the land by the member of the Scheduled Tribe in favour of a member belonging to non Scheduled Tribe in the year 1964 under the Orissa Merged States (Laws) Act, 1950 and, as such, prior permission from the Revenue Authorities was not at all necessary. Pursuant to the transfer made by the father of the petitioners, they are in possession of the land and acquired title by adverse possession. By order dated 30.6.1994, opposite party No. 2 came to hold that the transfer was made in contravention of the Orissa Merged States (Laws) Act, 1950 and, as such, void. Burden lay on the petitioners to prove the same and mere possession of 12 years will not amount to adverse possession. The petitioners had not adduced any evidence regarding adverse possession. Held so, the opposite party No. 2 allowed the application and restored the possession of the land to the opposite party No. 1. The petitioners unsuccessfully challenged the said order before the Addl. District Magistrate, Bolangir, opposite party No. 3, in OLR Appeal No. 8 of 1994, which was eventually dismissed on 28.2.2000. Thereafter, they filed revision before the Collector, Bolangir, opposite party No. 4, which was registered as OLR Revision No. 2 of 2000. The revision met with the same fate and was dismissed.

3. Mr. Budhiram Das, learned counsel for the petitioners, submitted that to press the legal necessity, Jhankar Majhi, father of the opposite party No. 1 sold the land in favour of the father of the petitioners by means of RSD No. 120 dated 24.1.1964 for a valid consideration and thereafter delivered possession. Their father was in possession of the land and after his demise, they are in possession of the same. He submitted that restriction with regard to the alienation of land as provided under Section 7(b)(i) of the Orissa Merged States (Laws) Act, 1950 was no more in force pursuant to the amendment made in Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 Orissa (Regulation 2 of 1956). Further, Section 23-A of the OLR Act was inserted to the statute book by Orissa Act No. 44 of 1976 and, as such, the proceeding is bad in law. He submitted that even otherwise the petitioners by remaining the land peacefully and continuously with hostile animus to owner for more than twelve years, have perfected title by way of adverse possession.

4. Per contra Mr. Soumya Mishra, learned counsel for the opposite party No. 1 and learned Addl. Government Advocate for opposite parties 2 to 4 supported the impugned order.

5. Section 22 of the OLR Act imposes restriction on alienation of land by Scheduled Tribes to a person not belonging to Scheduled Tribes. Sections 22, 23-A of the OLR Act and Section 7(b)(i) of the Orissa Merged States (Laws) Act, 1950, which are relevant, are quoted hereunder:

Orissa Land Reforms Act, 1960 :

"22. Restriction on alienation of land by Scheduled Tribes - (1) Any transfer of holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of -

(a) a person not belonging to a Scheduled Tribe; or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer :

Provided that in case of a transfer by sale, the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

(2) The State Government may, having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification, direct that the restrictions provided in Sub-section (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of Clause (a) to Clause (e) of Sub-section (1) of Section 17 of the Registration Act, 1908, (16 of 1908) purports to effect transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe, in favour of a person not belonging to a Scheduled Tribe, no Registering Officer appointed under that Act shall register any such document, unless such documents is accompanied by the written permission of the Revenue Officer for such transfer.

(5) The provisions contained in Sub-sections (1) to (4) shall apply, mutatis mutandis, to the transfer of a holding or part thereof of a raiyat belonging to the Scheduled Caste.

(6) Nothing in this Section shall apply -

(a) to any sale in execution of a money decree passed, or to any transfer by way of mortgage executed, in favour of any Scheduled Bank or in favour of any Bank to which the Orissa Cooperative Societies Act, 1962 (2 of 1963) applies; and

(b) to any transfer by a member of a Scheduled Tribe within a scheduled area.

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23-A. Eviction of person in unauthorized occupation of property - Where any person is found to be in unauthorised occupation of the whole or part of a holding of a raiyat belonging to a Scheduled Caste or of a raiyat belonging to a Scheduled Tribe within any part of the State other than a Scheduled Area, by

way of trespass or otherwise, the Revenue Officer may either on application by the owner or any person interested therein, or on his own motion and after giving the parties concerned an opportunity of being heard, order eviction of the person so found to be in unauthorised occupation and shall cause restoration of the property to the said raiyat or to his heir in accordance with the provisions of Sub-section (3) of section 23.

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Orissa Merged States (Laws) Act, 1950 :

7. Modification of Tenancy Laws in force in the merged States -

(b) an occupancy tenant shall be entitled -

(i) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-divisional Officer concerned;

6. It is apt to state here that Section 7(b)(i) of the Orissa Merged States (Laws) Act, 1950 was repealed under Regulation 9 of 1956. The same is quoted below:

"The words "subject to the restrictions that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Magistrate concerned in item 1 of Clause [(d) of Section have been omitted.]"

7. On an interpretation of Section 23 of the OLR Act, a Division Bench of this Court, in the case of Anadi Mohanta (dead) and after him Kointa Mohanta and others v. State of Orissa and others, , 68 (1989) CLT 1, came to hold that the transfer in contravention of any other law would normally not come within the purview of Section 23 of the Act. Section 23-A was introduced by the Act 44 of 1976 in the O.L.R Act, which provides that where any person is found to be unauthorised occupation of the whole or part of a holding belonging to a Scheduled Caste or Scheduled Tribe within any part of the State other than a Scheduled Area, by way of trespass or otherwise, the Revenue Officer may, either on application by the owner or any person interested therein or on his own motion, and after giving the parties concerned an opportunity of being heard, order eviction of the person so found to be in unauthorised occupation and shall cause restoration of the property to the said owner or to his heir in accordance with the provisions contained in Sub-section (3) of Section 23. Thus, the transfer by a person belonging to a Scheduled Caste or Scheduled Tribe in favour of a person belonging to a non-Scheduled Caste or non-Scheduled Tribe, if prohibited by any other law in force, may come within the scope of Section 23-A of the Act, as such a transferee may be called to be in unauthorised occupation of the property within the meaning of the said Section. Clause in Section 7(b) of the Orissa Merged States" (Laws) Act, 1950 that "no transfer of a holding by a

member of aboriginal tribe to a member of non-aboriginal tribe shall be valid unless the transfer is made with the previous permission of the Sub-divisional Officer concerned," has been repealed by Orissa Regulation 2 of 1956. The said Regulation imposes a similar restriction in Clause 3 thereof, but it provides that it would be applicable to transfers of immovable property situated within the "scheduled areas". The phrase "Scheduled Areas" as it stood in the aforesaid Regulation before its amendment by Regulation 1 of 1979 means "Scheduled Areas" specified in respect of the State of Orissa in the Scheduled Areas (Part A States), Order, 1950. The District of Keonjhar was not specified as one of the Scheduled Areas in the aforesaid Order of 1950. By Regulation 1 of 1979 the definition of "Scheduled Areas" was changed to include the "areas specified in respect of the State of Orissa in the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977". By notification in the year 1977 the district of Keonjhar was specified as a Scheduled Areas. Therefore, the restrictions on transfer by a member of aboriginal Tribe to a non-aboriginal tribe which was originally therein the Orissa Merged States" (Laws) Act, 1950 was lifted by repeal of the said provision in the year 1956 by Regulation 2 of 1956 and during the time when the transfers in question took place, there was no par in law requiring permission of any authority as a condition precedent.

8. But then a contrary view has been taken by another Division Bench in the case of Srikar Bag v. Revenue Officer, Titilagarh and others, , 1993 (II) OLR 95. Though the case of Anadi Mohanta (supra) was cited, but the learned Judges did not agree with the view taken in Anadi Mohanta (supra). It was held that the transfer by opposite party No. 4- a Scheduled Tribe in favour of the petitioner-non Scheduled Tribe being in contravention of the provision contained in Section 7(1)(b) of the Orissa Merged States (Laws) Act, 1950 is invalid and consequently the occupation of the land in question by the petitioner therein was unauthorised. It was further held that the provision contained in Section 7(1)(b) of the Orissa Merged States (Laws) Act, 1950 was not repealed by Regulation No. 2 of 1956 so far as the district of Bolangir is concerned.

9. Dealing with "repeal" made in Clause (9) of Regulation No. 2 of 1956, the Division Bench in Srikar Bag (supra) held thus:

"7. Clause (9) of Regulation No. 2 deals with repeal. According to Clause (9)(1) (b) on and from the date of commencement of this Regulation the following shall stand repealed, namely :

"The enactments mentioned in column 2 of the Schedule to the extent specified in column 3 thereof in so far as they are in force in the Scheduled Areas."

Column 2 of item No. 2 of the Schedule states about Orissa Merged States (Laws) act, 1950, 1950 and Column 3 which deals the extent of repeal says that the words ""subject to the restriction that no transfer of a holding from a member of an aboriginal Tribe to a member of a non-aboriginal Tribe shall be valid unless such transfer is made with the previous permission of the Sub-

Divisional Magistrate concerned" appearing in item 1 of Clause (b) of Section 7 shall be omitted. When this extent of repeal is read in conjunction with Clause (9) (1)(h), there remains no room for doubt that Section 7 (1)(b) of the Orissa Merged States (Laws) Act 1950 came to be repealed only for the Scheduled Areas as defined in the aforesaid regulation and not for all the merged States. Then, it is to be seen whether the land in question transferred was within any Scheduled Area as defined in Regulation No. 2 of 1956. The expression "Scheduled Areas" as it stood in the aforesaid Regulation prior to its amendment by Regulation No. 1 of 1979 was defined to mean "Scheduled Areas" specified in respect of the State of Orissa in the Scheduled Areas (Part A States) Order, 1950. The district of Bolangir within which the land transferred situates was not specified as one of the Scheduled Areas in the aforesaid Order of 1950. By Regulation 1 of 1979, the definition of "Scheduled Areas" was changed to include the areas specified in respect of the State of Orissa in "Scheduled Areas" (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977" and on a reference to the said Order of 1977, we find that in the said Order also the district of Bolangir had not been included. Therefore, the provision contained in Section 7(1)(b) of the Orissa Merged States (Laws) Act, 1950 was not repealed by Regulation No. 2 of 1956 so far as the district of Bolangir is concerned."

(Emphasis laid)

It was held that the Areas Merged States (Laws) Act, 1950 has application throughout the merged States in the State of Orissa and Regulation 2 of 1956 has application only to the Scheduled Areas. In other words, baring the Scheduled Areas, the provision contained in the Orissa Merged States (Laws) Act, 1950 is applicable to the other Merged States of Orissa. Since Keonjhar District referred in the reported case and the Bolangir district were not within the Scheduled Areas, the provisions contained in the Orissa Merged States (Laws) Act, 1950 has application to those districts in the year 1965 when the transfer in the present case took place. Held so, the Division Bench did not agree with the view taken in Anadi Mohanta (supra).

10. The next question is when there are divergent views expressed by the Division Benches of the High Court, which decision would be followed?

11. In Jabalpur Bus Operators' Association v. State of Madhya Pradesh, , AIR 2003 Madh Pra 81, it is held that :

"With regard to High Court, a Single Bench is bound by the decision of another Single Bench. In case he does not agree with the view of other Single Bench, he should refer the matter to Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall

be binding. The decision of Larger Bench is binding on Smaller Benches."

(Emphasis laid)

12. The same view has been taken by another Full Bench of the Madhya Pradesh High Court in *Wali Mohammed and etc. v. Batulbai and etc.*, , 2003 CrL.L.J. 2755. It is held thus:

"....in case of conflict between two decisions of the High Court rendered by the Benches of equal strength (be it a Full Bench, Division Bench or single Bench), the decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding..."

13. In view of the same, this Court is of the opinion that the latter decision in the case of *Srikar Bag* (supra) is to be followed.

14. The irresistible conclusion is that the transfer of land by the father of the opposite party No. 1 in favour of the father of the petitioner No. 1 being in contravention of Section 7(b)(i) of the Orissa Merged States (Laws) Act, 1950 is invalid. Consequently occupation of the land in question by the petitioners is unauthorised.

15. So far as the second contention of Mr. Das, learned counsel for the petitioners, that the petitioners have perfected title by way of adverse possession, the submission is difficult to fathom.

16. In the celebrated judgment, the Privy Council in *the Secretary of State v. Debendra Lal Khan*, , AIR 1934 Privy Council 23 held that the classical requirement of adverse possession is that the possession should be *nec vi nec clam nec precario*. Their Lordships quoted with approval the decision in the case of *Radhamoni Devi v. The Collector of Khulna and others*, Indian Appeals 1900 Vol. XXVII at page 140 that "the possession required must be adequate in continuity, in publicity, and in extent to shew that it is possession adverse to the competitor".

17. Except bald assertion in the objection filed by the petitioners that they have perfected title by adverse possession, there is no material on record to come to a definite conclusion that the petitioners have perfected title by way of adverse possession.

The petition, sans any merit, is dismissed.