

(1975) 04 OHC CK 0017
In the Orissa High Court
Case No : Second Appeal No. 340 of 1970

Magulu Jal and Others

APPELLANT

Vs

Bhagaban Rai and Others

RESPONDENT

Date of Decision : 15-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 162, 226
Orissa Merged Territories (Village Offices Abolition) Act, 1963 — Section 1(3), 3

Citation : AIR 1975 Ori 219 : (1975) 41 CLT 526

Hon'ble Judges : G.K. Misra, C.J.; P.K. Mohanti, J.; N.K. Das, J

Bench : Full Bench

Advocate : S.C. Mohapatra, for the Appellant; B.K. Pal and R.K. Patro, (Standing Counsel), for the Respondent

Final Decision : Partly Allowed

Judgement

G.K. Misra, C.J.—The case of the plaintiff may be stated in short. Schedules A, B and C of the plaint constitute the disputed lands. A and B Schedules are Bhorga lands. They were a part of holding No. 1 of the 3rd settlement (1927) in the ex-State of Sonapur. Schedule A and B lands respectively comprise 3.21 acres and 15.52 acres. Schedule C lands were in holding No. 48 of the 3rd settlement and were raiyati lands with an area of 39.84 acres. All the three schedule lands were recorded in the name of Jaisingh Rai, father of the plaintiffs, in the 3rd settlement.

Schedule A and B lands were converted into rayati by order (Ext. N) of the Collector. Bolangir, on 16-12-1962 in Bhogra Conversion Proceedings in respect of village Siali in which the suit lands are situated. Jaisingh Rai died on 16-11-1954. Till his death he was in peaceful physical possession of the disputed lands in his own right, title and interest. After his death plaintiffs inherited the properties and were in possession thereof. At the time of harvest of the crops in 1957, defendants 1, 6 and some other defendants disturbed the possession of

the plaintiffs. In a proceeding u/s 145, Criminal Procedure Code the possession of the plaintiffs was declared in respect of A and B Schedule lands. The preliminary order in that case was passed on 23-11-1957. Thereafter plaintiffs leased out A and B Schedule lands to Bhikari Das and Udhaba Sahu for one year and cultivated the C Schedule lands themselves. Defendants again created disturbance. An order u/s 145, Criminal Procedure Code in respect of A and C Schedule lands was passed in their favour on 10-7-1963. In the current settlement of the year 1955-56 possession of A Schedule lands had been recorded in the names of defendants 1 and 2 and the Collector on the basis of such recording settled A Schedule lands in the names of defendants 1, 6, 9, 14, 17 and 19 on raiyati basis. Plaintiffs filed an appeal in 1963 against the order of the Collector before the Revenue Divisional Commissioner which was dismissed by the order (Ext. 11) on 15-3-1966. The suit was filed on 16-5-1964 during the pendency of the appeal before the Revenue Divisional Commissioner for declaration of title and recovery of possession of the disputed lands after setting aside the order of the Collector (Ext. N) dated 16-12-1962 settling A Schedule lands on the defendants on raiyati basis.

Defendants 1 to 3, 6, 7, 9 to 11, 14, 17, 19, 20 and 23 filed a joint written statement. Most of the facts are not disputed. It was averred that the ancestors of the defendants were raiyats of the disputed lands for more than sixty years. They had reclaimed the land by being brought into the suit village by the ancestors of the plaintiffs. They were in cultivating possession and as such A Schedule lands were recorded in the current settlement in 1955-56 in their names. The order of the Collector settling A Schedule lands on them is valid and legal and the Civil Court has no jurisdiction to annul the settlement.

2. The learned Munsif, Sonapur, after allowing parties to go into evidence on all disputed questions held that plaintiffs were in possession of the disputed lands all through and defendants were not in possession and that the order of the Collector settling A Schedule lands on the defendants in the Bhogra Conversion Proceedings was contrary to law and the Civil Court had jurisdiction to set it aside- He set aside the settlement on the defendants in respect of A Schedule lands and granted a decree for declaration of title and recovery of possession of the disputed lands.

The contesting defendants filed an appeal before the Subordinate Judge, Bolangir, which was dismissed. Those defendants filed the second appeal. During the pendency of the second appeal the Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act 10 of 1963) (hereinafter to be referred to as the Act) came into force in the ex-State of Sonapur from 1-12-1972.

3. The second appeal came up before Mohanti, J., for hearing. On account of conflict of views in several Single Judge decisions of this Court he referred the matter to a Division Bench. S. K. Ray and K. B. Panda, JJ. heard the second appeal. Both the learned Judges agreed that the second appeal is to be dismissed in regard to B and C Schedule lands. They, however, differed in respect

of A Schedule lands. Panda, J., concluded thus:--

"In fine, therefore, the appeal will succeed to the extent of "A" Schedule lands as the same have been settled with some of the defendants by the Collector. The Civil Court decree, which is without jurisdiction, will not affect it. It is open to the aggrieved party, if so advised, to pursue the remedy in the revenue forum. Since the matter is not before us u/s 13 of the Act, we express no opinion on the propriety of the settlement and we wish to make it further clear that the revenue authorities are not bound by any observation made while disposing of the appeal."

S. K. Ray, J., observed as follows:--

"In my opinion, therefore, the jurisdiction of the Civil Court in the instant case is not ousted and the suit was rightly entertained, and even now taking into consideration the subsequent event of the introduction of the Act in Sonapur, the plaintiffs are entitled to recover possession of the suit lands. In my opinion, the appeal shall fail in its entirety, even in respect of the Schedule A lands."

On account of conflict of views in several Single Judge decisions and difference of opinion in the Division Bench and importance of the points in issue the case was referred to a Full Bench. This is how the matter has come before us.

4. On the contentions advanced by the learned Advocates on either side the following questions arise for determination;

(i) Did the proprietary rights in Bhogra lands vest in the State?

(ii) Had the Collector of Bolangir (defendant No. 24) authority to convert the Bhogra lands into raiyati and make settlement of the raiyati lands under the Press Note dated 2-2-1956?

(iii) Is the order of settlement of the Collector invalid and illegal in the absence of provision in the Press Note prescribing the procedure for enquiry before settlement is made ?

(iv) Is any appeal provided against the order of the Collector and, if so, if it is valid ?

(v) Has the Civil Court jurisdiction to annul the settlement made by the Collector ? If so, what is the scope and ambit of that jurisdiction ?

(vi) Is the Act which came into force in the ex-State of Sonapur from 1-12-1972 applicable to the settlement made by the Collector on 16-12-1962? Is the jurisdiction of the Civil Court barred under the Act to annul any settlement made by the Collector ?

(vii) Do *Pasupati Mahanto v. Damodar Mahanto* (1970) 36 C LT 519, *Dhanu Malik v. Lal Sitanshu Sekhar Singh Deo* (1971) 37 C LT 1152, *Kia Pateluni v. Ghasana Naikani* (1973) 1 C WR 203 and *Chandrabhanu Naik v. Mst. Gomati Naikani* (1974) 40 C LT 549 lay down the correct law ?

(viii) To what extent the views expressed by our learned brothers S. K. Ray and K. B. Panda, JJ., in the differing judgments are sustainable ?

(ix) To what relief, if any, are the plaintiffs entitled?

5. Point No. (i):-- Bhogra lands in all the former States of Orissa which had been granted to headmen differently called in different States, belonged to the State and they had been granted towards remuneration of the headman for management of the villages. In para. 12 at page 14 of the Report on Land Tenures and the Revenue System of the Orissa Chattisgarh States by R. K. Radadyhani I. C. S., Vol. I, the incidents of the Bhogra tenures have been given as follows:--

"12. Headmen without proprietary rights: -- While in some Chattisgarh States, and in Gangpur State in the Orissa Agency, the gaontias have been attempting to arrogate to themselves the status of proprietors as in the adjoining areas of the Central Provinces, in no case has proprietary status been granted to the village headmen. It is categorically laid down in the patta or theka of every gaontia that he is not at liberty to alienate or partition his right in any way, and any violation of this rule results in forfeiture of the theka.

XX XX XX XX"

This general observation receives full support in paragraph 25 at page 267 in Vol. III which specifically deals with the ex-State of Sonapur. Paragraph 25 runs thus:--

"25. Villages may not be transferred by the gaontia by sale, gift etc., and the gaontia is liable to be ejected for such an act. The Ruler may however condone the act by the levy of a suitable penalty. The succession to gaontia villages is governed by personal law but only one person may succeed. The gaontias and thekadars hold bhogra lands in the village. Co-sharers in the bhogra lands may be created by the gaontia as a private arrangement and this will not be interfered with by the State usually; the gaontia cannot eject co-sharers except through a Court on the ground that management of the village is interfered with but if the gaontia's post passes to another family the co-sharers lose their rights. Bhogra lands cannot be leased out for a longer period than one year without the sanction of the Ruler but a portion may be leased out for three years, XX XX XX"

The same is the rule laid down in Section 5 (4) of the Bhumibidhi, (Sonapur State Code), Vol. I, Section 5 (4) runs thus:--

"Section 5 -- The liabilities of all classes of village-holders, as have been described and dealt with in this chapter, to be ejected from the village, shall be for violation of any of the following conditions, namely;

General rules for ejectment of all classes of village holders:

XX XX XX XX (4) Transferring by sale, mortgage, gift, dowry, etc., either the

village or any portion thereof. It is provided, however, in this connection that if on enquiry by the Durbar or by any revenue officer authorised by the Durbar, it be found feasible that the gaontia aforesaid for his illegal act be condoned by imposing a "Suitable penalty, on him and the gaontia pays such suitable penalty, the possession of the village by the gaontia may be allowed to continue by the order of the Durbar.

xx xx xx xx"

Thus the Reports of Ramadhyani as well as the Bhumi-bidhi clearly indicate that the Gaontias had no proprietary rights in the Bhogra lands which they enjoyed towards remuneration for management of the villages. Their rights were wholly precarious. They had no right of transfer in any manner excepting by way of lease for a short period. They were liable to be evicted for contravention of the law unless the Durbar (Ruler) condoned the delinquencies.

We had to examine the incidents of Bhogra tenures in Gopaleswar Dharua Vs. State of Orissa and Others, , with reference to the law prevailing there. In paragraph 8 of the judgment we reached the following conclusion:--

"The legal position that existed in the ex-State of Bolangir prior to the coming into force of the Act on 3-3-1950 was that the Thekadar had no right, title and interest in the Bhogra lands except that he was in possession thereof towards the remuneration for management of the village."

The view we had taken applies to the ex-State of Sonepur though the prevailing laws in both the States were different.

6. Points Nos. (ii) and (iii):-- The source of the Collector's authority to convert Bhogra lands into raiyati lands and to settle them on tenants is derived from a Press Note issued by the Government on 2-2-1956. So far as material, it may be extracted:

"Abolition of Gaontia system and conferring occupancy rights on Bhogra lands with fair rent to those attached to the office of the Gaontia.

It has been decided by Government that the Gaontia system now prevailing in the sub-divisions of Kalahandi Sadar, Dharmgarh and Sonepur will be abolished with effect from the 1st April, 1956. Bhogra lands attached to the office of the Gaontia will be settled with occupancy rights therein on fair and equitable rent in favour of the person in actual possession as on the 1st day of July, 1955, subject to reservation of a fraction of the Bhogra lands in favour of Grama Sabha on the following scale:--

XX XX XX XX 4. Collectors have been authorised to confer occupancy rights in respect of Bhogra lands with the exception of lands to be reserved in favour of Grama Sabhas,

XX XX XX XX 6. Persons desirous of availing themselves of this opportunity of acquiring occupancy rights in respect of Bhogra lands held by them may apply to

the Collector of the district of any other Revenue Officer authorised by him in this behalf."

7. The Press Note is a piece of executive instruction. By the Press Note itself there is a declaration that the Gauntia system prevailing in the ex-State of Sonapur was abolished with effect from 1st April, 1956. The abolition of Bhogra lands was, therefore, the result of the policy decision taken by the Government. In the absence of any law to the contrary the State as the proprietor had full power and authority to abolish the Gauntia system and to issue administrative instruction to subordinate-officers as to how to deal with those lands for conferment of occupancy right.

8. The question which was seriously mooted by Mr. Pal was that the Press Note does not prescribe the procedure of enquiry as to how settlement is to be made by subordinate officers. The settlement would confer civil rights and in the absence of a procedure the settlement is invalid and without jurisdiction.

In *Pramila Dei Vs. Secretary, Board of Secondary Education*, a Full Bench of this Court examined similar contentions in connection with examination held by the Board of Secondary Education. Reference was made in paragraph 6 to *Board of Secondary Education v. Rice* 1911 AC 179, a decision of the House of Lords which is the leading authority on the point. It would be profitable to notice the observations of Lord Chancellor, Lord Loreburn in that case:

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind: but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statute prejudicial to their view."

After examining several English and Supreme Court decisions the following principles were laid down:

"(i) The proceeding against an examinee on a charge, of malpractice is a quasi-judicial proceeding. It affects his future and if any adverse view is taken by the disciplinary authority it might blast his career. Though the proceeding is administrative it is a quasi-judicial in nature inasmuch as the career of the examinee is in issue.

- (ii) Where there are statutory or codified rules the quasi-judicial proceeding will be enquired into in conformity with those rules,
- (iii) Where there are no such rules the principles of natural justice will be followed in making the enquiry keeping in view the fact that it involves the determination of a vital question integrally connected with the rights of the examinee.
- (iv) In making such enquiry the authority might have to ascertain both facts and law.
- (v) In doing so it must act in good faith.
- (vi) The authority must fairly listen to both the sides."

The aforesaid principles apply with full force to an enquiry made by the Collector for settlement of land under the Press Note. Clearly the Press Note does not prescribe any procedure. There is, therefore, no statutory or codified rule and the enquiry must proceed in accordance with the principles of natural justice. The principles of natural justice in a case of this nature will be fulfilled by the Collector even by obtaining information in any way he thinks best. He would, however, give a fair opportunity to parties in knowing the information and in correcting or contradicting it. That means, he must fairly listen to both sides and must act in good faith.

There is, therefore, no substance in the contention that in the absence of any procedure prescribed in the Press Note it is invalid or without jurisdiction.

9. It, however, appears that after the Press Note was given by the Government, instructions were issued by the Board of Revenue which are instituted as "BOARD'S INSTRUCTIONS ON THE DISPOSAL OF GOUNTI ABOLITION AND BHOGRA CONVERSION PROCEEDING IN THE SONEPUR SUB-DIVISION OF BOLANGIR DISTRICT". In these instructions detailed procedure was laid down as to how enquiry is to be made in Bhogra conversion proceeding. Some of the material portions of the Board's instructions are quoted here-under:--

"1. XX XX XX XX 2. xx xx xx xx 3. xx xx xx xx 4. The survey and settlement operations were started in Sonapur in 1954. The record-of-rights prepared during the operation mentions the persons in possession of the Bhogra lands. All stages of the record-of-rights operation are over by now. Hence this record may be taken as the basis for deciding possession. That is to say settlement of Bhogra land should be made with persons whose possession has been recorded in the record-of-rights as they stand now. Where, however, the record-of-rights shows that possession of any person began after 1-7-1955, such possession has to be ignored excepting to the extent indicated in paragraph 6.

5. All the case records started for conversion of Bhogra lands into raiyati shall immediately be referred to the Charge Officer, Sonapur Settlement with an endorsement by the Collector to the effect that as all persons in actual

possession of Bhogra lands as on 1-7-1955 do not appear to have been taken into consideration, the case is referred to the Charge Officer for a detailed report about such possession and fair and equitable rent payable for the lands along with a recommendation regarding reservation of binds for the Grama Sabha. He should also authorise the Charge Officer to ascertain the details about transfers of Bhogra lands effected between 1-7-1955 and 31-3-1956.

6. The Charge Officer on receipt of the records from Collector shall invite applications by issue of General notices in every village asking persons who claim to have come into possession of Bhogra land between 1-7-1955 and 31-3-1956 to file claim petition before him within a month from the date of service of the notice. On receipt of the claim petition if any within time, he should cull upon the petitioner to prove the claim, if the claim is proved, (and a claim shall be taken as not proved unless a registered instrument is produced in cases where registration under the law is compulsory) the petitioner shall be considered as entitled to right of occupancy with effect from 1-4-1956. The Charge Officer should then prepare a detailed report as ascertained from the record-of-rights and enquiries as mentioned above and in the paragraph 7 showing the plot or plots of land with area and classification of each plot in possession of each person entitled to right of occupancy simultaneously indicating his recommendations about reservation for the Gram Sabha of the land from the area in possession of each person and the fair and equitable rent for the lands proposed as well as not proposed for such reservation, X X X X X X X.

7. X X X X. 8. On receipt of the report along with the case record from the Charge Officer, the Collector shall record a proceeding that the surrender petition of the Gountia has de facto been accepted with effect from 1-4-1956, the date from which rent from tenants is being collected through whole time salaried employees. He should then draw up a self-contained order mentioning the plot no., area, classification and deduced rent of the land reserved for the Gram Sabha. The Sarapanch of the Gram Sabha shall be put in possession of the land and shall be intimated that the land may be utilised in any profitable manner until it is required for any Government purpose. The Collector should also mention in the order the name of individuals who are granted right of occupancy with effect from 1-4-1956, the plot no., area, classification and fair and equitable rent payable for the lands in respect of which such right is granted. He shall also mention in his order that the Patta to be issued to the party should mention that transfers if any made after 1-4-1956 should be brought to the notice of the proper Court by the party interested for mutation. He should then wait for a month during which period an appeal may be filed to the Commissioner. If no appeal is filed during this period, or after the disposal of the appeal petition where an appeal is filed, he should order preparation of the Patta and correction of the land records and collection records. The case shall be closed only when intimation that these records have been corrected are received by him and the Patta is handed over to the party on realisation of Patta fee of Re. 1/- in case of persons belonging to scheduled caste and scheduled tribes and Rs. 3/- in case of

others. The case records in which all proceedings taken up u/s 20 (c) of the Sonapur Bhumibidhi immediately before the Gounti Abolition was initiated in 1956 have been merged) will be treated as permanent records and shall be preserved accordingly."

In *Dayasagar Meher v. Chandramoni Malik* O. J. C. No. 261 of 1966, disposed of on 11-2-1970 (Orissa) a Bench of this Court held that the instruction issued by the Board were valid and legal and not without jurisdiction. It is unnecessary to repeat the argument given therein. We accept that decision as laying down the correct law and hold that the Board's instructions were intra vires and were supplementary to the Press Note and the Press Note was to be implemented in accordance with the Board's instructions. These instructions lay down in clear terms the procedure to be followed which conforms to the principles of natural justice. On this ground also we reject the contention of Mr. Pal that no procedure was prescribed for settlement of raiyati lands on occupancy tenants.

10, Point No. (iv):-- An appeal to the Revenue Divisional Commissioner against the order of settlement made by the Collector within a period of thirty days was provided in the Board's instructions. On our conclusion that the Board's instructions are valid and legal, the contention that no right of appeal was provided against the Collector's order of settlement is without substance.

In Ext. 11 the Revenue Divisional Commissioner dismissed the appeal on 15-3-1966 by the following observation:

"Since a civil suit is pending, the decision there will automatically determine whose was the right, title and interest in the lands."

This order is clearly without jurisdiction. When an appellate forum was provided, the Revenue Divisional Commissioner should have gone into merits and could not have dismissed the appeal on the ground that a civil suit was pending. As would be indicated later on, the Civil Court has a very limited jurisdiction. Plaintiffs "should have challenged the appellate order of the Revenue Divisional Commissioner under Article 226 of the Constitution for a writ of certiorari to quash the order and for a writ of mandamus to direct the Revenue Divisional Commissioner to hear the appeal on merits. Plaintiffs did not take such a step. Therefore, the adverse appellate order against them stands.

A similar question arose in *Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad*, .

There the custodian in his order said that the transferee could go and establish his right in a competent Court. Their Lordships observed that if the law bars the jurisdiction of civil and revenue Courts the custodian's observation that the party before him could go to a competent Court to establish his right will not confer jurisdiction on a civil or revenue Court.

11. Point No. (v): We would first examine the legal position.

Section 9 of the CPC lays down that Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Wolverhampton New Waterworks Co. v. Hawkesford (1859) 6 CB (NS) 336, renders the best exposition as to how Section 9 operates. Willes, J., observed thus:

"One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."

We would examine later as to within what class the present case falls.

12. In *Queen v. Commr. for Special Purpose of Income Tax* (1888) 21 QBD 313. Lord Esher dealt with the matter as follows :

"When an inferior Court of Tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what power it will give that Tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such Tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the Tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a Tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of two classes I have mentioned it is an erroneous application of the formula to say that the Tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there

is no appeal from such exercise of their jurisdiction."

13. In AIR 1940 105 (Privy Council) , their Lordships made the following observation :

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

It is to be noted that even where the jurisdiction of the Civil Courts is excluded it has jurisdiction to examine cases if the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

14. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , a Constitution Bench approved the first and third case and so also the second case has been approved in several decisions of the Supreme Court. After reviewing all the relevant authorities their Lordships summed up the several propositions to be kept in view in paragraph 32 of the judgment.

15. In Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh, . their Lordships held that the Civil Court had jurisdiction in the facts and circumstances of a particular case to entertain the suit. They followed Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . The facts in that case may be noticed. The Special Officer had an obligation u/s 2 of the Reduction of Rent Act to determine" in respect of a village the average rate of cash rent per acre for each class of rayoti land in existence at the time of the commencement of the Act, such as, wet, dry and garden. This had to be determined on the basis of relevant material. When the determination is solely based on the settlement register containing no entry in regard to the village, this was considered to be an irrelevant material and cannot constitute a rational basis for founding thereon the determination of the Special Officer. His determination was held to be based on no evidence and accordingly it was held to be in violation of the fundamental principles of judicial procedure. The order of the Government exclusively based on the recommendation of the Special Officer was accordingly quashed.

Though the report of the Special Officer and the notification based thereon were quashed, their Lordships did not substitute their own decision in place of the notification. They directed the concerned authorities to proceed to reduce the rent in accordance with law.

This decision, therefore, furnishes an illustration as to when the Civil Court shall have jurisdiction to set aside an act of a special tribunal or body if it is in violation of the fundamental principles of judicial procedure.

16. In *Shri Raghunandan Panda Vs. State of Orissa and Others*, , a prayer was made in a writ application for quashing the order of the revenue authorities granting a lease in favour of the opposite party. Their Lordships laid down the following proposition :

"Generally speaking an administrative order confers no justiciable right but this rule like all other general rules is subject to exceptions.

X X X X To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties."

17. On examination of facts their Lordships held that no person has a vested right to get any lease of the Government land though he has got a right to get his application for such lease disposed of fairly and not arbitrarily. The facts of that case were not such as to lead to the conclusion that the decision of the revenue authority was unfair, capricious or arbitrary. In that case whether the third respondent came within the category of people for whom the land was reserved was held to be a question of fact within the domain of the administrative authorities to determine.

18. In *Gadam Narasamma v, Dindasi Nayak*. (1968) 34 CLT 1169. this Court examined several decisions of the Madras High Court relevant to the point and accepted the dictum that Darkhast rules are departmental and if they are infringed the remedy for such infringement is also departmental irregularities in observing those rules constitute no valid ground of interference by the Civil Court with a grant of land made by the Government and that it was not competent to set aside a grant made by an officer competent to make the grant. It was made clear therein that the matter would be different if the revenue authorities purporting to act under the Darkhast rules acted outside the scope of their authority otherwise; it was not open to the Civil Courts to assume to themselves the appellate powers conferred on other authorities. The same view has been taken in *Krishnaswami Pillai Vs. Aminjikarai Sri Ekambareswarar Devasthanam*, and *The Secretary of State for India in Council Vs. Katta Venkataratnam and Others*, , which were not referred to in that case.

19. In *V. V. Krishna Rao Dora v. Kotini Sitaram Dora* ILR (1973) Cut 826, a Bench of this Court examined the several provisions of the Estates Abolition Act and in paragraph 16 it was observed as follows:-

"We would sum up our conclusion on this aspect of the law by saying that the Collector has got exclusive jurisdiction to determine the factum of khas possession of an intermediary on the date of vesting. Such a fact is not a jurisdictional fact, but is the basis of the conclusion to be arrived at in the exercise of jurisdiction. The decision of the Collector is final subject to appeal and other remedies provided in the statute and cannot be questioned in Civil Court."

We accept *Gadam Narasamma v. Dandasi Nayak* (1968) 34 CLT 1169, and *V. V.*

Krishna Rao Dora v. Kotini Sitaram Dora ILR (1973) Cut 826, as laying down the correct law.

20. The following principles may be laid down as well settled by the aforesaid authorities :

(i) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.

(ii) Even if jurisdiction is so excluded, Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court would interfere if it finds the order of the special tribunal is unfair, capricious or arbitrary.

(iii) Where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it. a remedy provided by the statute must be followed and the Court's jurisdiction is ousted. The scheme of the particular Act is to be examined to see if remedies normally associated with actions in Civil suits are prescribed by the statute.

(iv) The Legislature may entrust the special tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. The Legislature shall have to consider whether there shall be an appeal from the decision of the tribunal as otherwise there will be none. In cases of this nature, the tribunal has jurisdiction to determine all facts including the existence of preliminary facts on which exercise of further jurisdiction depends. In the exercise of the jurisdiction the tribunal may decide facts wrongly or if no appeal is provided therefrom there is no appeal from the exercise of such jurisdiction.

(v) Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority as in point No. (ii), it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law.

21. The facts of this case may now be tested on the aforesaid principles.

The Press Note which is an administrative instruction conferred jurisdiction on the Collector to settle the resumed Bhogra lands on occupancy rights on persons in possession on 1-7-1955. The right to get such land on occupancy tenancy did not exist at common law and was created by the Press Note. The Press Note also provided a special remedy before the Collector against whose order an appeal was provided to the Revenue Divisional Commissioner under the instructions of the Board of Revenue. The Press Note read with the instructions of the Board of Revenue prescribed procedure and remedies normally associated with actions in civil suits. The intendment of the administrative instructions is to impliedly oust the jurisdiction of the Civil Court,

22. Under the Press Note the Collector had the jurisdiction to determine as to which persons were in possession of the Bhogra lands on 1-7-1955. This fact is not a jurisdictional fact. The Collector in the exercise of jurisdiction determined the factum of possession and in so doing he might decide the question wrongly. The mistake, if any, could be corrected by way of appeal to the Revenue Divisional Commissioner. The Civil Court has no jurisdiction to examine the sufficiency or adequacy of the materials in support of the Collector's decision and cannot sit in appeal over the Collector's order.

23. The resumed lands belonged to the State which is to settle occupancy raiyats therein. It is a matter which lies entirely in the discretion of the State. The State as a benevolent landlord resorted to a fair and equitable policy decision that the lands would be settled on those who were in actual physical possession on 1-7-1955. Civil Courts are not to settle those lands. An illustration would make the position clear. Suppose, before the Collector makes the settlement a person files a suit in the Civil Court with a prayer that the land be settled on him. The suit will be dismissed on the ground of lack of jurisdiction to give such a relief. The position is not altered if the prayer is to set aside the Collector's order of settlement. The Civil Court in that case will sit in appeal over the order of the Collector. The Civil Court cannot have a higher or a different jurisdiction merely because the Collector has already passed an order.

24. We have already said that Civil Court has got jurisdiction to interfere in two cases. In such a case also the Civil Court cannot take fresh evidence to determine which person was in possession on the particular date and as such is entitled to settlement. The Civil Court can only examine if the Collector's order is unfair, arbitrary or capricious. Such a conclusion can be reached if on the materials placed before the Collector a reasonable man could not have reached the same conclusion. However unsatisfactory the Collector's conclusion may be, it cannot be set aside merely because a different view could be taken by the Civil Court on the materials before the Collector. Similarly, the correctness of the Collector's view cannot be tested in the light of evidence adduced before the Civil Court.

25. It was fairly conceded by Mr. Pal that there is no pleading or proof in this case that the order of the Collector was unfair, arbitrary or capricious or that it violated any fundamental principles of judicial procedure.

The Bhogra conversion proceedings were placed before us by the parties though some of the documents were not marked exhibits. Plaintiff No.] filed an application on 25-2-1956 surrendering the Bhogra lands unequivocally making a prayer therein that the same may be settled with him. The surrender was in accordance with the instructions of the Board of Revenue. The surrender was accepted by the Collector on 28-6-1956. It may be noted that the surrender was not necessary as the Bhogra lands belonged to the State.

The matter was enquired into under the orders of the Collector by the Assistant

Settlement Officer (A. S. O. or Charge Officer). He submitted his report Ext. C on 29-1-1957 after full enquiry. The report shows that notice was duly served on the parties who were present and heard. Respective cases of the plaintiffs and defendants were noticed. Plaintiffs did not file any document but produced witnesses in support of their possession. Defendants filed rent-receipts from 1927 onwards and produced witnesses of possession. The current settlement in respect of A Schedule lands was in favour of the defendants. The A. S. O. made a field enquiry. He relied on the statement of Kartick Dharua who looked after the management of the village on behalf of plaintiff No. 1 that defendants were in possession of A Schedule lands from 1942 onwards as annual lessees. Tswar Rai, a Bhogra co-sharer of the plaintiffs, also supported the case of the defendants that late Jaisingh Rai, father of the plaintiffs, gave A Schedule lands for cultivation to defendants as lessees and it was only in 1956 that plaintiffs created disturbance with the possession of the defendants.

On examination of the materials on record the A. S. O. concluded that A Schedule lands were given to the defendants on lease by the plaintiffs' father and they were in possession since 1942 till 1-7-1955. It was only in 1956 that plaintiff No. 1 forcibly trespassed.

26. The Collector passed his order on 16-12-1962. He accepted the surrender petition with effect from 1-4-1956. He perused the enquiry report of the Charge Officer along with details and the connected papers and accepted the recommendation of the A. S. O. Occupancy right in A Schedule lands was granted to the defendant and in B Schedule lands to the plaintiffs. Fair and equitable rent was fixed. Records were sent to the S. D. O., Sonapur, to issue notice to the general public of the order of the Collector regarding (a) individuals who were granted right of occupancy, (b) plot number (c) area, (d) classification, (e) fair and equitable rent payable and (f) lands reserved for the Gram Sabha. The Collector also indicated in his order that any party may appeal before the Revenue Divisional Commissioner within one month from the date of information. The S. D. O. was directed not to prepare Patta within those thirty days.

27. It would thus be seen that in making the settlement, provisions of the Press Note and Board's instructions were fully and meticulously complied with and the Collector did not fail to act in accordance with the fundamental principles of judicial procedure.

28. The learned Courts below were not alive to the aforesaid legal position, allowed fresh evidence to be taken in the suit and on that evidence recorded the conclusion that plaintiffs were in possession of A Schedule lands on 1-7-1955 and declared title in their favour as if the Civil Court had authority and jurisdiction to settle A Schedule lands on occupancy right on the plaintiffs. They clearly acted without jurisdiction and their judgments are liable to be set aside.

29. Point No. (vi): The next question is whether the Act has any application to the settlement by the Collector on 16-12-1962. The Act received the assent of

the President on 23rd May, 1963 and was published in the extraordinary issue of the Orissa Gazette No. 398 dated the 4th June, 1963. Section 1 (3) prescribed that the Act shall come into force on such date as the State Government may, by notification, appoint in that behalf and different dates may be so appointed in respect of different areas.

The Act was brought into force by notification in the ex-State of Sonepur on and from 1-12-1972. The Collector made settlement of A and B Schedule lands on occupancy right on 16-12-1962. The settlement was even prior to the enactment of the Act and about ten years before it came into force. The Act is not retrospective in operation. The Act has no application even though it came into force during the pendency of the second appeal arising out of a suit which challenged of completed settlement.

30. In this view of the matter it would have been unnecessary to examine if jurisdiction of the Civil Court is barred under the Act. It is, however, necessary to examine the question as the decisions of the Single and the Division Benches are divergent. Observations have been made in some of the cases that despite vesting the Gaontia had a right to possess the Bhogra lands and could enforce it in Civil Court. It is, therefore, necessary to examine both the questions and in that connection, the scheme of the Act and several relevant provisions throwing light.

31. In Section 2 (a) "appointed date" in relation to any area means the date appointed in respect of such area by a notification under Sub-section (3) of Section 1.

That means, appointed date is the date when the Act is brought into force by notification in a particular area by the State Government.

"Gounti-rayati lands" in Section 2 (g) means land recorded as such in the settlement papers in the merged territories of the former State of Bamra.

32. Section 3 deals with abolition of Village Offices and consequences thereof. It runs as follows :

"3. Notwithstanding anything in any law, usage, settlement, grant, sanad or order or in any judgment, decree or order of a Court, with effect from and on the appointed date--

(a) the Village Offices, if any, within the respective territories shall be deemed to have been abolished;

(b) all the incidents of the service tenures relating to such offices shall be deemed to have been extinguished;

(c) all settlements, sanads and all grants in pursuance of which such tenures were being held immediately before the appointed day shall be deemed to have been cancelled;

(d) the rights of the holders of such offices to receive any emolument shall be deemed to have been terminated;

(e) all rights to hold office and any liability to render service appertaining to such office shall stand extinguished;

(f) all Bhogra lands shall stand resumed and vested absolutely in the State Government free from all encumbrances; and

(g) the holder of any Village Office shall cease to have the right to hold all other lands which he would not have continued to hold except by virtue of or as incidental to his office."

Section 3 (f) clearly states that on the date the Act comes into force all Bhogra lands would stand" resumed and vested in the State Government free from all encumbrances.

Section 3 (g) deals with the right to hold lands other than Bhogra lands which the holder of a village held by virtue of or as incidental to his office.

The Act deals with settlement of Bhogra lands in Section 5, of Gounti-raiyati lands in Section 6, and of abandoned and surrendered holdings and waste land in Section 7.

Thus Section 3 (f) refers to Bhogra lands dealt with in Section 5 while Section 3 (g) deals with Gounti-raiyati lands, abandoned and surrendered holdings and waste land pertaining to Sections 6 and 7.

By Section 3 (f) Bhogra lands would stand resumed by operation of law and vested absolutely in the State free from all encumbrances while u/s 3 (g) the holder of any Village Office will cease to have the right to hold lands dealt with in Sections 6 and 7 also by operation of law.

33. From the definition in Section 2 (g) it appears that Gounti-raiyati lands exist only in the ex-State of Bamra. Consequently Section 6 will be applicable to the ex-State of Bamra and to no other former States.

Sections 5 to 7 deal with the question as to on whom the settlement is to be made.

34. Section 9 deals with submission of records and delivery of possession of land. It runs thus:

"9. (1) It shall be the duty of every Village Officer in the prescribed manner--
(a) to deliver all records maintained by him before the appointed date in respect of the land or village held by him in relation to his office;

(b) to render all accounts appertaining to his office in respect of dues payable by and to him; and

(c) to deliver to the State Government possession of all abandoned and

surrendered holdings and all lands to which they have no right to a settlement by or under the provisions of this Act.

(2) Whoever without sufficient cause fails to comply with the provisions of any of the clauses of Sub-section (1) within thirty days from the date of service of a notice in that behalf or such further period as the Collector may allow, shall be punishable on conviction with fine which may extend to two hundred rupees and in the case of continuing failure with an additional fine which may extend to ten rupees for every day during which such failure continues after the conviction for the first such failure.

(3) The Collector may for the purpose of recovering the records specified in Clause (a) of Sub-section (1) issue a search warrant and exercise all such power with respect thereto as may be lawfully exercised by a Magistrate under Chapter VII of the Code of Criminal Procedure, 1898.

Section 9 (1) (c) prescribes that it shall be the duty of every Village Officer in the prescribed manner to deliver to the State Government possession of all abandoned and surrendered holdings and all lands to which they have no right to a settlement by or under the provisions of this Act. It was contended by Mr. Pal that the language is clear that the Village Officer has a right to possession in the land till delivery of possession is given. We find no substance in this argument. The moment the Bhogra lands vested in the State u/s 3 (f) the Village Officer had no right to possess the land. There would be a time lag between the declaration and actual delivery of possession. During the intervening period the Village Officer or any other person might be actually continuing in possession of the Bhogra lands but such actual physical possession is not on the basis of any right to possess. On vesting, the title and the right to possess are extinguished. The juristic concept of "right to possess" flows from the existence of right as against the State and not from the mere fact of possession.

Similarly in respect of other lands the Village Officer ceases to have the right to hold u/s 3 (g). The concept of holding takes within its sweep the right to possess. From the appointed date the holder of the office or any other person ceases to have the right to hold which includes the right to possess.

Non-compliance with a notice within thirty days from the date of service entails a penalty as prescribed in Section 9 (2). Imposition of penalty can be made only when the person in actual possession has, no right to continue in possession. Therefore, the factum of continuance in possession of the Bhogra lands or other lands after the Act comes into force is not on the strength of any right. Such right is to be determined under Sections 5 to 7 when the settlement is made.

35. Section 12 lays down that the State Government may, by rules Made in that behalf, specify either generally or in relation to any particular area the time within which, the authorities by whom and the manner in which proceedings in respect of matters under Sections 5, 6 and 7 including matters preliminary, incidental or ancillary thereto shall be commenced, heard and disposed of.

Section 16 confers the rate-making power. Thus, the statute itself does not prescribe the procedure for enquiry under Sections 5 to 7 but confers authority on the State Government to frame rules. Though initially Mr. Pal had advanced a contention that the procedure could not be prescribed under rules he ultimately abandoned it. The Orissa Merged Territories (Village Offices Abolition) Rules, 1962 (hereinafter to be referred to as the Rules) are not beyond the rule-making power and no contention of excessive delegation of legislative power was advanced before us. Rules 6 to 9 in Chapter n prescribe the mode of submission of records and delivery of possession of land in accordance with Section 9 (1). Similarly, Chapter III of the Rules deals with settlement of Bhogra lands and other lands. Rules 10 to 16 prescribe a complete code as to how enquiry is to be made. These rules which are to be dealt with later are *inira vires*.

36. Section 13 prescribes appeal and revision. It runs thus:

"13. (1) Save as otherwise expressly provided in this Act any person aggrieved by any order passed under this Act or the rules made thereunder, may prefer an appeal within thirty days from the date of the order before the Collector, and if the original order is passed by the Collector before the Board of Revenue.

(2) Any person aggrieved by an order passed in appeal not being an appeal before the Board of Revenue, may within thirty days from the date of the order prefer an appeal both on question of fact and law before the Board of Revenue, who may after calling for the records and giving the parties an opportunity of being heard pass such orders confirming, modifying or reversing the order in question according as the Board deems proper.

(3) Any person aggrieved by an order passed by the Board of Revenue in an appeal--

(a) under any of the provisions of this Act other than Sub-section (4) of Section 10 may, within sixty days from the date of such order, file an application for revision on a question of law before the High Court; and

(b) under Sub-section (4) of Section 10 may, within thirty days from the date of such order, file an appeal before the High Court;

and subject to the decision of the High Court the orders passed by the Board of Revenue shall be final.

It would be seen that a complete machinery has been provided as to the authority who would make the settlement and to whom the appeal would lie. Ultimately a revision lies to the High Court on a question of law in matters pertaining to Section 13 (3) (a) while an appeal would lie to the High Court u/s 13 (3) (b). Subject to the decision of the High Court the order passed by the Board of Revenue shall be final. The Act provides a complete machinery for determination of rival claims and when revision and appeal have been provided to the High Court subject to which the decision of the Board of Revenue will be final, it will be fantastic to contend that the Civil Court has jurisdiction to try

those disputes. Question of jurisdiction of the Civil Court is clearly implied. AIR 1940 105 (Privy Council) in terms applies to the facts of this case. On the principles enunciated by us in paragraph 20 of this judgment the Civil Court has no jurisdiction to examine the validity of the settlement made by the Collector. It is difficult to conceive a situation that the Civil Court would sit in appeal over what the High Court ultimately decides either in appeal or in revision.

37. The Rules prescribe a comprehensive procedure. It is not necessary to give the details. It would be sufficient to survey the general scheme.

Chapter I comprises of five rules. Rule 2 gives certain definitions. Rule 3 says that proceeding under certain Chapters would be summary. Rule 4 prescribes notices and mode of their service and Rule 5 lays down that claims, objections and applications under the Act and the Rules are to be in writing.

Chapter II deals with submission of records and delivery of possession of land as referred to in Section 9 of the Act and Chap. III with settlement of Bhogra lands. Gounti-raiyati lands and privileged waste lands. Rule 10 prescribes how preparation of draft Jamabandi and sketch map is to be made, Rule II for local enquiry and Rule 12 for proclamation. Under Rule 13 draft Jamabandi is to be published and objections there to be invited. Rule 14 authorises reception and disposal of objections. Under Rule 15 final Jamabandi and sketch map are to be framed. Intimation to the parties and correction of record-of-rights are to be made under Rule 16.

Chapter IV deals with settlement of ordinary waste lands and Chapter V with surrendered and abandoned holdings.

Chapter VIII is under the heading Miscellaneous. Rule 32 prescribes the procedure to be followed by the Collector while proceeding under the provisions of the Act. Rule 32 (1) (g) in particular lays down that the Collector shall record in his own hand and in a memorandum, the material averments of the parties, the material portions of the evidence, his decision and the reasons therefor. Rule 32 (2) prescribes the procedure as to how appeals are to be filed and disposed of by the Collector. Rule 33 lays down that the filing, hearing and disposal of petitions of appeal or revision before the Board of Revenue shall be regulated by the provisions of the Board of Revenue Orissa Regulations, 1963.

Thus a complete code is prescribed under the Rules as to how enquiry is to be made and lands ultimately to be settled.

38. Once the Bhogra lands vested in the State under the Press Note, Section 3 of the Act cannot have any further operation. There cannot be a second vesting. This itself furnishes the intrinsic evidence that Bhogra lands vested in the State under the Press Note read with the Board's administrative instructions would be governed by the procedure prescribed therein and the Act would have no application. The Act becomes effective only with reference to date it is brought into force in any particular area.

Even if no settlement has been made either under the Press Note or under the Act, claims of the parties cannot be litigated under old titles as on vesting of Bhogra lands in the State the prior titles are extinguished and fresh title would accrue only on settlement.

Settlement made under the Press Note before the Act came into force whether prior to the suit or during the pendency of the litigation would be governed by the provisions of the Press Note. Civil Court will have no jurisdiction to set aside such settlement except in the limited manner already pointed out.

Settlement made under the provisions of the Act during the pendency of a litigation would be governed by the provisions of the Act.

39. Point No. (vii): -- We would now examine the several conflicting Single Judge decisions.

In *Pasupati Mahanto v. Damodar Mahanto* (1970) 36 CLT 519, the facts were as follows. The suit land was Bhogra land in the, district of Keonjhar. Plaintiff's father was the Padhan and used to enjoy the Bhogra lands towards the emoluments of the office of the Padhan. During his minority his maternal uncle was appointed as guardian and he leased out the disputed Bhogra lands to defendants in 1954. On attainment of majority in 1957 plaintiff was appointed Padhan. While he tried to take possession of the disputed Bhogra lands, defendants resisted. Plaintiff filed the suit for declaration of title and recovery of possession. The Courts below upheld plaintiff's title and decreed the suit for recovery of possession. During the pendency of the second appeal the Act came into force on 1-4-1967 and the Collector settled the Bhogra lands on the plaintiff. S. K. Ray. J. rightly dismissed the appeal. Even before the Act came into force plaintiff had title and was, therefore, entitled to recovery of possession. After the Act came into force the Collector settled the lands on the plaintiff. He acquired a fresh title on the basis of settlement.

The learned Judge, however, in course of discussion made some observations to which exception has been taken. The observation u/s 5 at page 523 is:

"He therefore, not only gets a right to hold the lands which he is entitled to a settlement of, under Sub-section (1) of Section 5, but is also entitled to enforce his right to have the same settled with him with rights of occupancy therein on a fair and equitable rent." On the conclusions we have indicated, this view of law is not correct inasmuch as the ex-Gaontia does not get any enforceable right until the lands are settled with him by the Collector.

The observation at page 524 in relation to Section 9 to the effect:

"This reiterates the position already indicated in other parts of the Act that the holder of the Village Office has a right to continue in possession of the lands in respect of which he has acquired a right of settlement."

is contrary to law.

With respect we are unable to agree with the aforesaid observations.

40. *Dhanu Malik v. Lal Sitanshu Sekhar Singh Deo* (1971) 37 CLT 1152, is a judgment of Patra, J. Plaintiff asked for declaration of title as a permanent lessee from defendant No. 1 who was the Zamindar. The suit was decreed. The Act came into force in Boudh on 1-4-1966 during the pendency of the first appeal in this Court. As a result of the Act coming into force the disputed property vested in the State and until a settlement was made by the Collector none of the parties could claim title. The learned Judge rightly held that after the vesting the plaintiff had no further right of action and that the suit was not maintainable in Civil Court and that the parties were to work out their rights in the Revenue Court.

41. In *Kia Pateluni v. Ghasana Naikani*. 1973 (1) CWR 203, the facts were as follows: Suit lands were Bhogra lands and defendant No. 2 was the Gaontia. Plaintiff was in possession of the disputed land as a lessee from the predecessor of the Gaontia. The case comes from Sonapur area and on facts is analogous to the case before us. On 1-7-1955 the plaintiff was in possession and the Collector settled the land with him on occupancy right in a Bhogra conversion proceeding under the Press Note. The Munsif of Sonapur by recording fresh evidence of possession came to the conclusion that defendant No. 2 was in possession of the disputed Bhogra lands on 1-7-1955 and the lands should have been settled with him on raiyati basis. We need not refer to defendant No. 1 who was a transferee from defendant No. 2 on 10-6-1963 and dispossessed the plaintiffs on 20-11-1965. The trial Court, however, decreed the suit holding that though the plaintiff was not in possession of the suit lands on 1-7-1955 on the basis of the evidence before it, the Collector's order of settlement was final and cannot be questioned in Civil Court. The lower appellate Court reversed the trial Court decree by holding that as defendant No. 2 was in possession of the disputed land on 1-7-1955 the Collector of Bolangir had no authority or jurisdiction to settle the land on the plaintiff. It accordingly dismissed the suit.

B.K. Ray, J. dismissed the second appeal. On the analysis already given by us, the learned Judge clearly fell into error. The Collector's order of settlement could not have been set aside by the Civil Court unless it was opposed to fundamental principles of judicial procedure. The settlement could not have been set aside by taking independent evidence in Civil Court as to who was in possession on 1-7-1955. This decision is contrary to law and is hereby overruled.

42. In *Chandrabhanu Naik v. Mst. Gomati Naikani*. (1974) 40 CIT 549. the facts were as follows: Plaintiff claimed the Bhogra lands as the heirs of one Bidyadhar Naik who got the same in his share. They cultivated the suit lands in 1965 but were forcibly dispossessed by defendant No. 1 on 27-7-1965 claiming that he got a permanent lease from defendant No. 2 who got the Bhogra lands to his share. The suit was filed on 29-10-1965. The case arises out of an area in the ex-Gangpur State wherein the Act was brought into force on 1-4-1966. Mohanti, J. held that as the Bhogra lands vested in the State no further action in Civil Court was maintainable and the jurisdiction of the Civil Court was impliedly barred.

This case was correctly decided.

43. Point No. (viii) : Panda, J. was in error in holding that the Act applied to this case. His ultimate conclusion that the Civil Court has no jurisdiction to set aside the settlement is, however, sustainable on different grounds.

Ray, J. was in error in holding that the Civil Court has jurisdiction to set aside the settlement both under the Press Note and the Act.

44. Point No. (ix): We would sum up our conclusions thus :

(i) The order of the Collector settling A Schedule lands on the defendants and B Schedule lands on the plaintiffs on raiyati basis on 16-12-1962 is valid and Civil Court has no jurisdiction to set it aside.

(ii) By the settlement plaintiffs have acquired title to the B Schedule lands and are entitled to declaration of title and recovery of possession from the defendants who trespassed thereon.

(iii) Defendants acquired title to the A Schedule lands by the settlement and plaintiffs cannot evict them.

(iv) C Schedule lands are the raiyati lands of the plaintiffs. They were in their possession. Defendants are trespassers and are liable to be evicted therefrom.

45. In the result, the judgments of the Courts below are set aside regarding A Schedule lands and confirmed in respect of B and C Schedule lands. The second appeal is allowed in part.

In the circumstances, parties to bear their own costs throughout.

P. K. Mohanti, J.

46. I agree.

N.K. Das, J.

47. I agree.