

(1985) 03 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 303 of 1981

Maharani Bewa and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Land Reforms (General) Rules, 1965 — Rule 30(2), 32(3)
Orissa Land Reforms Act, 1960 — Section 37, 37B, 37E, 41, 41(2)

Citation : (1985) 60 CLT 55

Hon'ble Judges : D. Pathak, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—This application under Articles 226 and 227 of the Constitution of India by the mother and her two married daughters, arises out of a ceiling surplus proceeding under Chapter IV of the Orissa Land Reforms Act, 1960 (hereinafter called as "the Act").

2. The land involved in this case originally belonged to one Basistha. He had two sons, named, Chintamani and Madhab. Daitary, son of Chintamani, is husband of Petitioner No. 1 and father of Petitioner Nos. 2 and 3. He died in the year 1952 and Petitioner No. 1 as widow only became the owner of the properties by succession. In or about 13-4-1967, there was a settlement among Petitioner No. 1 and her two married daughters, Petitioner Nos. 2 and 3. Petitioner No. 1 retained 36 acres 16 decimals, Petitioner No. 2 was given 31.50 acres and Petitioner No. 3 was given 31.09 acres. While the Petitioner were possessing the properties as owner thereof, Chapter IV of the Act came into force. Petitioner No. 1 filed a return under Section 40-A indicating the separate exclusive possession of her daughters. The Revenue Officer registered a proceeding as O.L.R. Case No. 4

of 1974. However, erroneously, he treated all the heirs of Basistha as a family and allowed all of them together to retain only ten standard acres. In appeals u/s 44(2), one by Petitioner No. 1 registered as O.L.R. Appeal No. 7 of 1975 and another by her other co-sharers registered as O.L.R. Appeal No. 8 of 1975, the appellate authority set aside the order and remitted the proceeding back to the Revenue Officer for treating Petitioner No. 1 as one family and other co. sharers as three other families. After remand, the Revenue Officer issued notice to Petitioner No. 1. She appeared and produced the documents of title which indicated that she was holding ceiling surplus land. The order dated 15-6-1976 discloses that she filed an affidavit that her family consists of three members only i.e., herself and her two daughters. After enquiry, the Revenue Officer found 30.77 standard acres to be possessed by Petitioner No. 1. She was allowed to retain ten standard acres selected by her and the balance 20.77 standard acres were found to be surplus. The draft statement was revised and was confirmed u/s 44(1) by order dated 23-8-1976.

Possession of the surplus lands was taken on 15-1-1977. They were distributed u/s 51 of the Act by order dated 28-2-1977 of the Revenue Officer.

A revision was filed by the Petitioner No. 1 against the appellate order which was directed to be returned to her to be presented before the proper revisional authority. Petitioners, however allege that they had no knowledge of such order. After the distribution of the land, a review application was filed by Petitioner No. 1 before the appellate authority where it was claimed that the three Petitioners of this writ application are entitled to three ceiling units of ten standard acres each. After dismissal of the review application of Petitioner No. 1, the three Petitioners have invoked the extraordinary writ jurisdiction of this Court.

3. Mr. R. Mohanty, the learned Counsel for the Petitioners submitted that Petitioner Nos. 2 and 3, the married daughters of Petitioner No. 1 are not the members of the family of Petitioner No. 1 and their lands could not have been treated to be the land of Petitioner No. 1 and the three Petitioners should have been considered by the statutory authorities as three individuals. The moot point for consideration, therefore, is:

Whether the land of the married daughters can be treated as the land of the family of their mother?

4. Under the scheme of Chapter IV, ceiling has been fixed on the holding of land by a person. Any person holding land in excess of the ceiling area is to file return. "Person" has been defined u/s 37(a) to include a family which again has been defined in Section 37(b). Thus, wherever, the word "family" occurs in any provision in Chapter IV it is to carry the meaning as given in Section 37(b). The responsibility of filing the return has been provided for in Section 41 of the Act. So far as family is concerned, the head of the ceiling family or any member thereof has the responsibility to file the return. The responsibility of filing the return having been fixed on more than one "individual u/s 41(2) of the Act, the

proviso thereto clarifies that where several individuals file returns, but in case they relate to the same family, all the returns shall be taken up together. Explanation to Section 37-B makes the position further clear. All lands held individually by the members of the family shall be deemed to be held by the family.

Once an individual becomes a member of the family under the definition given in Section 37-E, the land held by him individually or jointly with other members of the same family shall be deemed to be held by the family and surplus lands are to be determined accordingly.

5. Mr. R. Mohanty, the learned Counsel for the Petitioners submitted that in an earlier decision of this Court reported in *Arda Murari v. State of Orissa* (1979) C.L.T. 1, the son and the mother were held not to constitute a family. Whether an individual would be a member of the family of another would depend upon the nature of the ceiling surplus proceeding. Under the definition of family in Section 37(b), mother is not a member of the family of the son, whereas son is the member of the family of the mother. In the cited decision, the ceiling area was being determined in the hands of the son. Accordingly, it was held that in relation the son, the mother is not a member of the family of the ceiling area would have been determined in the hands of the mother, the question would have been different. This decision would be of no assistance to the Petitioners.

In the present case, the return of the mother Was being considered. The two married daughters continue to be her children notwithstanding their marriage. Therefore, the family in relation to the mother would include the married daughters. Our view is supported by the decision of the Full Bench of this Court reported in *Nityananda Guru and Vs. State of Orissa and Others*, , where Hon''ble R.C. Patnaik, J. at page 49 observed:

Lands held by persons coming within the ambit of the definition of "family" contained in Section 37(b) would get aggregated or clubbed in the lands held by the parent or spouse, as the case may be, in determination of the ceiling area under the provisions contained in Chapter IV of the Act, notwithstanding partition prior to the appointed day i.e. 26.9.1970.

Mr. Mohanty submitted that it is only the view of Hon''ble Mr. Justice R.C. Patnaik and the Hon''ble R.N. Misra, Chief Justice (as he then was) and Hon''ble J.K. Mohanty, J. have given separate views not touching this aspect. Mr. Mohanty's submission has no force. Both the other Hon''ble Judges constituting the Full Bench have agreed with the judgment of Hon''ble R.C. Patnaik, J. adding and highlighting the legislative competence. The ratio decidendi was of the Full Bench.

6. Mr. R. Mohanty, the learned Counsel for the Petitioners submitted that the entire proceeding is vitiated in the absence of any notice to the two daughters. In support of his submission, Mr. Mohanty relied upon the decision reported in *Arda Murari's case* (1979) C.L.T. 1 (supra) and two recent unreported decisions in *Maguni Sardar v. State of Orissa* 59 (1985) C.L.T. (Notes 82) 33 and in

Kamalini Singh v. State of Orissa O.J.C. No. 7 of 1982 - D/25-3-1985 these three decisions would not be of any assistance to the Petitioners.

7. Rule 30(2) and Rule 32(3) of the Orissa Land Reforms (General) Rules, 1965 (hereinafter called "the Rules") provide for notice to the person to whom the draft statement u/s 43(1) of the Act or the confirmed statement relates. In the decision reported in Arda Murari's case (1979) C.L.T. 1 (supra), both the draft and final statements related to the son who was treated to be landholder and it was found as a fact that no notice as envisaged under the Rules had been served.

In the unreported decision in Maguni Sarkar's case 59 (1985) C.L.T. 82, 33 (supra), the draft statement related to the land of the brother which fact was brought to the notice of the Revenue Officer. Brother is not a member of the family of another brother u/s 37(b). Accordingly, it was held that the draft statement related to the other brother who had got interest in the land and notice should have been given to him.

In the other unreported decision in Kamalini Singh's case O.J.C. No. 7 of 1982 - D/25-3-1985 (supra) the draft statement was made in the name of the brother only although the enquiry by the Revenue Officer revealed that there are five daughters. As the land of their father was the subject matter for consideration, the draft statement related to the daughters also. Accordingly, it was held that notice to the daughters was essential and the daughters being Petitioners the order was quashed.

8. The present case stands on It completely different footing. The draft statement and the confirmed statement related to the family of Petitioner No. 1. It is not disputed that notice had been given to Petitioner No. 1. When the language of the Rules 30(2) and 32(3) is that notice is to be given to the person to whom the statement relates, it means in this case that notice is to be given to the family of Petitioner No. 1 to whom the statement relates. The family was being considered in relation to Petitioner No. 1. She is the head of the family. When notice has been given to the head of the family, it is sufficient. In case the Petitioner Nos. 2 and 3 would not have been members of the family of Petitioner No. 1, notice ought to have been given to them as the statement related to their land.

9. All the contentions of Mr. Mohanty having failed, there is no merit in this writ application which is accordingly dismissed. No costs.

D. Pathak, C.J.

10. I agree.