(2015) 04 OHC CK 0071

In the Orissa High Court

Case No : OJC Nos. 11181 of 1999 and 10236 of 2000

Mala Mallik and Others — APPELLANT

Vs

Shyam Sundar Das and Others — RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:
Orissa Land Reforms Act, 1960 — Section 21, 52, 59(2)

Citation : (2015) 2 OLR 182

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : R. Ch. Mohanty, D.K. Mohanty, P.K. Rath and A.P. Bose, for the Appellant; B.H. Mohanty, D.P. Mohanty, J.K. Bastia, R.K. Nayak, K.P. Parija and S. Burma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.K. Nayak, J—Order dated 12.08.1998 passed by the Sub-Collector, Jagatsinghpur in OLR Appeal No. 01 of 1998, order dated 30.06.1999 passed by the Additional District Magistrate, Jagatsinghpur in OLR Revision No. 09 of 1998 and the order dated 27.06.2000 passed by the learned Land Reforms Commissioner, Orissa in OLR Revision No. 46 of 1999, as contained respectively in Annexures-4, 5 and 6 have been assailed in this writ petition by the petitioners in OJC No. 10236 of 2000. Similarly, Opposite party Nos. 1 to 24 in OJC No. 10236 of 2000 have filed OJC No. 11181 of 1999 challenging the order of the Additional District Magistrate, Jagatsinghpur in OLR Revision Case No. 9 of 1998 insofar as it relates to setting aside the direction of the Sub-Collector, Jagatsinghpur in OLR Appeal No. 1 of 1998 for settling the disputed land in favour of the petitioners of OJC No. 11181 of 1999 on annual lease basis.

2. Since both the writ petitions relate to the same subject matter and common questions of fact and law arise, they are heard together and disposed of by this common judgment. For convenience the petitioners and opposite parties No. 1 to 24 in OJC No. 10236 of 2000 are described as petitioners and opposite parties

throughout the order.

3. The disputed land measures Ac. 1.70 which is a part of river Mahanadi appertaining to plot No. 901 in mouza-Anolipatna. The petitioners are joint land owners in respect of plot No. 987 which adjoins to the south of the disputed land. The petitioners filed an application before the Revenue Officer, Kujang under Section 21 of the OLR Act, registered as OLR Case No. 7 of 1997, claiming that the case land has gradually accredit to their holding in plot No. 987 under khata No. 265 due to recess of river and, therefore, rent in respect of the disputed land should be assessed in their favour in terms of the provision of Section 21 of the Act. After enquiry by the order dated 18.02.1998, the Revenue Officer taking into consideration the report of the Revenue Inspector came to the conclusion that the disputed land has accreted to petitioners holding due to deposit of sand and silt due to recess of river. He, therefore, allowed the petition of the petitioners and directed for recording the disputed land out of plot No. 901 by amalgamating the same in the holding of the petitioners in plot No. 987. As it appears from the order of the Revenue Officer, the proceeding was disposed of after issuing public notice inviting objection.

The opposite parties filed OLR Appeal No. 1 of 1998 in the court of the Sub-Collector, Jagatsinghpur challenging the aforesaid order of the Revenue Officer. Their claim is that they are landless harizans of the village and they have encroached upon the disputed land and therefore, the same shall be settled in their favour and that the order of the Revenue Officer was passed without giving them opportunity of hearing. The Sub-Collector came to the conclusion that even though the Revenue Inspector, Hansura has given a report that the land in question is accreted land, the Tahasildar, Kujang did not conduct any field enquiry personally in order to ascertain the location and character of the land and that he (Sub-Collector) conducted field enquiry on 31.03.1998 and was satisfied that the disputed land is a river bed and during rainy season water flows thereover and that after rainy season it becomes suitable for rabi crops. The Sub-Collector therefore, directed that the land in question cannot be settled in favour of any of the parties and Section 21 of the OLR Act is not attracted. He however, went further and directed that since the land in question has been encroached by the opposite parties-appellants, who are landless harizans, it should be leased out in their favour on annual basis.

4. The aforesaid appellate order was challenged by the petitioners before the Additional District Magistrate in OLR Revision Case No. 9 of 1998. By order dated 30.06.1999 the ADM agreed with the observations and findings of the appellate authority. He, however, disagreeing with the direction of the Sub-Collector that the land be leased out to the opposite parties on annual lease basis, further directed that the land should be used for plantation proposes to protect the river bed from dilluvion.

5. Petitioners however challenged the revisional order of the Additional District Magistrate before the Land Reforms Commissioner in OLR Revision Case No. 46

of 1999 purportedly under Section 59(2) of the OLR Act. It may be stated that the revision before the Land Reforms Commissioner under Section 59(2) of the OLR Act was misconceived one. However, by order dated 27.06.2000 the Land Reforms Commissioner confirmed the revisional order of the Additional District Magistrate and dismissed the petitioners'' revision.

Thus both the parties have filed these two writ petitions.

6. It is the submission of the learned counsel for the petitioners that during enquiry the Revenue Officer (Tahsildar) directed the concerned Revenue Inspector, who submitted his enquiry report stating that the disputed land is an accretion to the petitioners'' plot No. 987 and therefore, there was no necessity for the Tahsildar to personally visit to find out whether the disputed land was in fact an accretion. It is his further submission that the Sub-Collector though stated in his final order that he made personal visit, there is no field visit report and therefore, that observation should not be acted upon. He also submits that since the land in question is an accretion to the petitioners'' plot No. 987, there is no question of leasing out the same on annual basis in favour of the opposite parties.

The learned counsel for the opposite parties on the other hand submits that in view of the finding of the appellate and revisional authorities that the disputed land is not an accretion to the petitioners'' plot No. 987, and that the opposite parties are in possession and raised crops over the same after the rainy season, the land should be settled with them as they are landless harizans. It is urged that direction of the appellate authority for settling the same in their favour on annual basis was quite justified.

7. Section 21 of the OLR Act provides as under:

"21-Lands gained by gradual accretion - Any land gained by gradual accretion to any holding whether from the recess of a river or of the sea, subject to the provisions of section 52 may ordinarily form a part of such holding and the raiyat thereof shall be liable to pay such additional rent as may be determined by the Revenue Officer."

8. It appears from the aforesaid provisions that an accretion to a holding may arise due to recess of a river or the sea by a natural process and such accretion shall form part of the holding and the rayat of such holding shall be liable to pay rent for the same to be determined by the Revenue Officer. The import of the provisions is that a rayat of a holding acquires rayati right over the accreted land which gets amalgamated to his holding for which he is liable to pay additional rent for the accretion. Acquisition of such right is by operation of law and the law does not contemplate of making any application for settlement of the accreted land in favour of the rayat of the holding. However the rayat to whose holding a land has accreted may make an application to the concerned Revenue Officer in order to bring to his notice about such accretion. Even without any such application, the Revenue Officer is competent to settle additional rent for the

accretion if it comes to his knowledge suo motu or from any other source, but he must be satisfied that the land in question is really an accretion to the holding of the rayat. Neither the OLR Act nor the Rules framed thereunder provides for any procedure for the purpose of enquiry to find out the accretion.

9. In the instant case, as it appears the Tahsildar - Revenue Officer did not conduct any personal field visit to find out whether the disputed land is an accretion to the petitioners'' holding. Apparently the local Revenue Inspector conducted an enquiry and submitted a report indicating that the disputed land is an accretion to the holding of the petitioners, on the basis of which the Revenue Officer passed order of settlement. Even though general notice was issued inviting objections as it appears from the impugned order, apparently no objection was received from any quarter. However, the opposite parties being aggrieved by the settlement order passed by the Revenue officer in favour of the petitioners, challenged the said order in appeal before the Sub-Collector and the Sub-Collector held that he made the field enquiry personally and found that the disputed land is not an accretion to the petitioners'' holding and that it is a river bed where water flows during rainy season and that after rainy season the land becomes suitable for rabi crops. He, therefore, directed for settlement of the same in favour of the opposite parties on annual lease basis.

10. The word ''accretion'' has not been defined in the OLR Act. Accretion is addition of alluvial land to a holding which takes place due to recess of a river or sea or river changing the course due to deposit of sand, soil and silt causing diversion of the flow of water course as a natural process. Such deposit and formation of new land would be an accretion to the holding adjoining the same. Therefore, the accretion or alluvion must be of the same or almost of the same level of the holding to which it abuts and must be capable of being put to same use as that of the holding concerned. Further, it must have been formed by natural process. Without satisfaction of these characteristics no land can be called an accretion to a holding within the meaning of section 21 of the OLR Act.

11. In the instant case, the Revenue Officer on the basis of the report of the Revenue Inspector and the Sub-Collector on the basis of his personal field visit have given two inconsistent findings as to the nature of the disputed land. While the Revenue Officer held that the disputed land is an accretion to the holding of the petitioners, the Sub-Collector has found that the land in question still continues to be a river bed and not an accretion, though after the rainy season some seasonal rabi crops can be grown thereon. The Tahsildar being the original authority instead of relying upon the report of the Revenue Inspector, should have conducted a personal enquiry by visiting the field in question in order to find out whether the characteristics of accretion are satisfied or not.

12. Another aspect of the case is that the disputed land abuts to the north of the petitioners'' plot No. 987 and at the same time it also abuts to the east of Plot No. 1090. There is nothing on record as to the nature of plot No. 1090 and whether it is a rayati land or Government land. In case plot No. 1090 is a rayati

holding, the rayat thereof may also claim that the disputed land is an accretion to his holding. This aspect has been completely ignored by the authorities concerned.

13. In the aforesaid circumstances, I set aside all the orders of the Revenue Officer, appellate authority and revisional authorities and remand the matter (OLR Case No. 07 of 1997) to the Tahsildar-cum-Revenue Officer, Kujang for fresh disposal. The Tahsildar shall issue notice to both the parties and also issue a general notice in the village concerned within a period of three months hence and make a personal enquiry by making field visit and to record his finding whether the disputed land is an accretion at all and if so to which of the holdings the accretion pertains. In case he comes to the conclusion that this is an accretion to a particular holding he shall fix additional rent in respect of the same. If he finds that it is not an accretion, he shall drop the proceeding.

Both the writ petitions are accordingly disposed of.

