

(1984) 09 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 414 of 1978

Mir Nabiruddin

APPELLANT

Vs

Mir Salimuddin and Others

RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 9, 9(1A)

Citation : (1984) 2 OLR 1045

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.C. Ghose, Sanjit Mohanty and R.K. Sahoo, for the Appellant; Addl. Standing Counsel for O.Ps. 2 to 4 and P.K. Dhal and D. Nayak for O.P. 1, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This is an application for a certiorari to quash the determination of the Revenue Officer in a proceeding u/s 9 of the Orissa Land Reforms Act.

2. Opposite party No. 1 filed an application u/s 9 of the Orissa Land Reforms Act (for short, the "Act") for a declaration that he was the raiyat in respect of a holding, 4.5 decimals in extent. The application was registered as O.L.R. Case No. 1052 of 1976. On 8.8.1976, the Revenue Officer rejected the petition holding that the application was not maintainable u/s 9 of the Act. On 2.9.1976, opposite party No.1 filed a fresh petition in respect of 2.5 decimals out of the property which was the subject-matter of the earlier proceeding. He claimed that he was in occupation of the house and homestead as a tenant since long and prayed that he should be declared as a raiyat in respect thereof The Revenue Officer called for a report from the Revenue Inspector. After receiving the report, the Revenue Officer passed the following order (Annexure-6) on 25.10.1976:

"Petitioner absent but R.I's report received which reveals Chat the petitioner has got his dwelling house over the suit land 21/2 ac. Hence u/s 9(1) of the O.L.R.

Act, I order the petitioner be a raiyat in respect of the suit land....."

The petitioner has alleged that: no notice had been issued to him though he was arrayed as an opposite party in the proceeding and the decision as per Annexure-6 was reached behind his back. The petitioner has alleged that coming to know of the decision against him in the proceeding referred to above he filed an application for recall of Annexure-5 but his application was rejected by order dated. 8.7.1977 on the ground that the petitioner should have availed of the appellate remedy. An appeal was carried by the petitioner but the same was rejected on the ground that no appeal lay against a decision u/s 9(1) of the Orissa Land Reforms Act.

3. Originally the petitioner had not sought the quashing of the decision of the appellate authority as per Annexure-8. In course of the hearing, an application was filed for the quashing of the appellate order and we allowed the amendment permitting the petitioner to assail the appellate order.

4. The provision contained in Section 9 of the Act is beneficial in character. It confers a right on the raiyat or the tenant who has no permanent and heritable rights in respect of any site on which his dwelling house or farm house stands to secure a declaration that he is a raiyat in respect of the whole of such site or a portion thereof not exceeding one-fifth of an acre provided that he or his predecessor-in-interest has obtained permission, expressly or implied, from the person having permanent and heritable rights in the site and right to accord permission for the construction of such house, and has built such house at his own expenses.

5. The provision requires the following to be alleged and proved by the applicant :

- (a) the applicant must be a raiyat or a tenant in respect of any land;
- (b) he must not be having any permanent and heritable right in respect of any site on which his dwelling house or farm house stands;
- (c) he or his predecessor-in-interest should have obtained permission, either express or implied, from the person having permanent and heritable right in the site;
- (d) grantor of such permission should not only have permanent and heritable right in the site but should have right to accord permission for the construction of the house; and
- (e) in pursuance of such permission the grantee, i.e., the raiyat or the tenant, should have built the house at his own expenses.

The applicant, in order to succeed, must establish all the aforesaid requirements which are the sine qua non for Section 9 relief. He would not be entitled to the relief if he fails to establish any of the aforesaid requirements.

6. Sub-section (1-A) of Section 9 provides that after receipt of an application in

the manner prescribed from a person referred to in Sub-section (1), the Revenue Officer shall cause an enquiry to be made and issue a certificate declaring the applicant as a raiyat in respect of the whole to as the case may be, of a portion of the site. Sub-section (2) provides that if any person, except the Government, has before the commencement of the Orissa Land Reforms Act any permanent or heritable right in the site in a capacity other than that of a land-holder, the rights shall stand extinguished and such person shall be entitled to compensation from the raiyat or the tenant at the prescribed rate. A determination in favour of the applicant affects the rights of the person who has permanent and heritable right in the site, prejudicially. He should, therefore, be afforded an opportunity of hearing before any determination is made. It, therefore, follows that in the enquiry contemplated by Sub-section (1-A) of Section 9, the person whose rights would be extinguished in the event of a determination in favour of the applicant should be afforded adequate opportunity of being heard. Any determination in favour of the applicant without notice to the person having permanent and heritable right in the site would be void as offending the principles of natural justice.

7. As Sub-section (1) of Section 9 postulates, the applicant to succeed must establish each of the five requirements. Though the enquiry would be such as may be determined by the Revenue Officer, it should be in accordance with the established principles-it should be just and fair. Unless the Revenue Officer is satisfied that the applicant has established all the requirements of Sub-section (1) he would not be justified to grant the relief.

8. We have extracted the relevant portion of the order (Annexure-6) passed by the Revenue Officer declaring the opposite party No. 1 applicant as a raiyat. He found that the applicant had got his dwelling house over the site in question. That alone and by itself in our opinion did not justify the grant of the certificate. The applicant may have his dwelling house. He has further to establish that he was a tenant or raiyat in respect of some land and has no permanent and heritable right in respect of the site on which his dwelling house or farm house stands. Equally he has also to establish that he built the house at his own expenses and permission to construct has either been expressly granted or by implication, by the person having permanent and heritable right in the site and has right to accord permission for construction of such house. If the person granting permission does not have permanent and heritable right in the site or does not have the right to accord permission for the construction, the permission would be of no avail. We are sorry to note that the Revenue Officer threw the provisions to the winds while determining the case before him. Power has not been vested in him for arbitrary or capricious exercise. It seems to us that the concerned Revenue Officer was oblivious of the rudimentaries of the provisions applicable.

9. In view of our aforesaid conclusion, it is unnecessary to enquire further whether the proceeding was vitiated for infraction of the principles of natural

justice. We may further note that when it was alleged before the Revenue Officer that the proceeding u/s 9 had been disposed of without notice to the person affected by the determination, it was not open to him to brush aside the allegations by holding that the aggrieved person had not availed of the remedy by way of appeal. If no notice had been served on the person affected by the decision, the proceeding was void and as soon as it was brought to the notice of the authority concerned, he should have set the records straight. If it was found that in fact no notice had been served on the party affected by the decision, it became the bounden duty of the authority, whether it was exercising judicial or quasi-judicial powers, to undo the wrong. It is not then a case of review. It is a case of curing a decision infected by infraction of natural justice. It is immaterial whether an appeal had been filed or not, the reason being the determination having violated the principles of natural justice and the provisions of law, the sooner it was set right the better, i.e., by recalling the decision. The Revenue Officer failed to exercise jurisdiction by rejecting the application filed by the petitioner for recall of the decision which had been taken without notice to him.

10. In view of our holding that Annexure-6 is bad in law, the confirming appellate order also fails with the original order. In the result, the writ application is allowed. Annexures-6 and 8 are quashed and the matter is remitted to the opposite party No. 4, the Revenue Officer, Binjharpur, for a determination afresh of the question after giving the parties, adequate opportunity of being heard. In the facts and circumstances, we leave the parties to bear their own costs of this proceeding.

D.P. Mohapatra, J.

11. I agree.