
(1969) 08 OHC CK 0024

In the Orissa High Court

Case No : Original Jurisdiction Case No. 636 of 1969

Mst. Sebati Sthua and Others

APPELLANT

Vs

Manglu Padhan and Others

RESPONDENT

Date of Decision : 04-08-1969

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 3B(4), 5, 6, 6(1), 7

Citation : (1969) 35 CLT 1034

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : B. Nayak, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Against the order dated 23-9-1963 passed by the Tahsildar, Bargarh, in Revenue (K.A. Case No. 8/3-50 of 1962-63, opposite parties 1 and 2 initially filed Estate Abolition Appeal No. 73 of 1965-66 on behalf of opposite party No. 3, Sambalpur Joint Farming Co-operative Society, Ltd. Details regarding the other opposite parties need not be given here as they are not relevant. The aforesaid appeal was filed before the Additional District Collector Sambalpur, but it was taken to the file of the Collector by transfer. The writ application is directed against the order of transfer.

2. Section 9(1) of the Orissa Estates Abolition Act, 1951, runs thus:

9. Appeal against Collector's order under Sections 5, 6 or 7.—(1) An appeal against any order of the Collector under Sub-section (4) of Section 3-B, clauses (h), (i) and (k) of Section 5, Sub-section (1) of Section 6 or 7, Sub-section (3) of Section 8 and Sub-sections (3) and (4) of Section 8-A, if preferred within sixty days of such order, shall lie to the Board of Revenue which shall dispose of the appeal according to the prescribed procedure:

Provided that if such order is passed by an officer other than the Collector of the district, an appeal, if preferred within sixty days of such order, shall lie to the

said Collector who shall dispose of the appeal according to the same procedure as is prescribed for disposal of such appeals by the Board of Revenue.

Explanation-The Collector of the district referred to in the proviso shall, for the purpose of this Sub-section, include a Deputy Collector appointed as the Additional District Magistrate of the district.

3. It is contended by Mr. Nayak that the Additional District Magistrate under the Explanation is the Collector of the district and as such has concurrent jurisdiction with the Collector of the district and that once an appeal is filed before the Additional District Magistrate the Collector of the district cannot get the case transferred to his own file as he is no higher authority.

4. This contention is sound and is borne out by the Explanation. We gave full opportunity to the State to bring to our notice any provision under which the District Collector had the power to transfer such appeals. The learned Standing Counsel frankly conceded that there is no such power.

We would accordingly quash the order of transfer passed by the District Collector and issue a writ of mandamus directing that Estate Abolition Appeal No. 73 of 1965-66 be re-transferred to the file of the Additional District Magistrate, Sambalpur, who would hear the same.

The writ application is allowed, but in the circumstances there will be no order as to costs.

R.N. Misra, J

5. I agree.