
(2007) 07 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. No. 9239 of 1993

Muralidhar Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Citation : (2007) 07 OHC CK 0034

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : R.K. Mohapatra and Associates, for the Appellant; S.N. Mohapatra and Associates and State Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Settlement of "Bhogra" lands situated in ex State of Sonapur and preparation of Record-of-Rights in respect thereof is the point in dispute in this Writ application.

2. Before delving into the controversies of individual parties to this Writ application it would be prudent to consider the nature and character of the disputed lands.

Lands granted to Headmen of villages in the former States of Orissa towards their remuneration for management of villages were called "Bhogra" lands. Bhogra lands in all the former States of Orissa though differently called belonged to the State. They had been granted towards remuneration of the Headmen for management of the villages.

In para-12 at page 14 of the Report on Land Tenures and the Revenue System of the Orissa Chhatisgarh States by R.K. Radadyhani, ICS, Vol. I, the incidents of the Bhogra tenures have been given as follows:

Headmen without proprietary rights: While in some Chhatisgarh 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.

3. The observations made in "Sonepur Bhumi Bidhi" are also identical. The said Bhumi Bidhi specifically stipulated that Bhogra lands may not be transferred by Gaontias (Village Headmen) by sale, gift, etc. and Gaontia shall be liable to be ejected for such acts.

The State Government took a policy decision to abolish Gaontia system and issued a Notification. The purpose of the said Notification was to confer occupancy right on Bhogra lands with fair rent to those attached to the office of Gaontia. Persons who were desirous of availing themselves of that opportunity were granted time to apply to the Collectors of the districts or any other revenue officer authorised by him in that behalf.

4. It is alleged that the grand-father of the present Petitioner was the Gaontia in respect of the village where the disputed lands are situated. After his death the present Petitioner and his uncle executed a mortgage deed in respect of the Bhogra lands in favour of one Deba Charan Naik and others in the year 1932 and borrowed some money from them and delivered possession of the lands to the mortgagers. It is further alleged that though the Petitioner tried to payback the money borrowed by him and redeem the mortgage, the mortgagers avoided to receive the amount or deliver possession of the mortgaged lands.

While matter stood thus, Bhogra Conversion Proceedings were initiated in the Mouza in question. Taking advantage of that, Debendra Pradhan, Chaturbhuja Pradhan and others who were in physical possession of the lands in question applied to the Collector and their application was registered as Bhogra Conversion Case No. 33 of 1955/56. The concerned authorities after observing all paraphernalia and on being satisfied that Debendra Pradhan, Chaturbhuja Pradhan and others were in possession of the lands in question settled the same in their favour with Raiyati Status.

5. In the year 1956, the Petitioner being aggrieved by the fact that the mortgagers neither received from him the repaid loan amount nor did deliver the mortgaged lands, filed Title Suit No. 21 of 1956 in the Court of the Subordinate Judge, Balangir for redemption of the mortgaged lands. The said suit was decreed on 12th September, 1957 and the prayer for redemption was allowed. The Title Appeal against the said trial Court judgment and decree filed by the opposite parties was dismissed on 12th September, 1960 and so also Second Appeal No. 373 of 1960 on 17th April, 1962.

6. The Petitioner had also filed Bhogra Appeal No. 57 of 1961 before the Revenue Divisional Commissioner (Northern Division), Orissa, Sambalpur assailing the order passed by the Collector, Balangir settling the lands in favour of Chaturbhuja

Pradhan and others, opposite parties 5 to 23, in Bhogra Conversion Case No. 33 of 1955-56. It was alleged that on the basis of possession only the disputed lands had been settled in favour of the said opposite parties in the Bhogra Conversion Proceeding, but then in the meanwhile the civil suit having been decreed and redemption of lands having been directed, the order of settlement passed in favour of the said opposite parties in the Bhogra Settlement Case should be set aside.

7. The Revenue Divisional Commissioner while dismissing the Appeal observed that in a Bhogra Conversion Proceeding the material fact which needed determination before passing an order of settlement was as to who was in actual cultivating possession of the lands in question on 1.7.1955 and as the Appellant was admittedly not in possession of the lands on the said date or till the date on which the Appeal was admitted, there was no illegality in the order of settlement passed in favour of the aforesaid opposite parties. But then, the Revenue Divisional Commissioner observed that it was open to the Petitioner, who was the Appellant before the said authority, to take steps for recovering possession of the lands in question on the strength of the decree passed by the civil Court and confirmed by this Court in Second Appeal No. 373 of 1960.

8. Thereafter a proceeding for execution was initiated for executing the decree passed in the Title Suit and, it is alleged, possession was handed over. Thereafter Review Petition was filed by the Petitioner before the RDC with a prayer to review the order passed by the said authority on 9th November, 1962 dismissing Bhogra Appeal No. 57 of 1961. The said Review Petition was dismissed mainly on the ground that the RDC had no power to review his own order in absence of any provision in the statute to that effect and observed that it was open to the Appellant to agitate his grievance before the appropriate Settlement authorities. It is pertinent to mention that the said order was not assailed, and consequently the order of settlement passed in Bhogra Conversion Proceeding remained unchanged.

9. It appears that the Petitioner thereafter approached the Collector, Balangir by filing Review Misc. Case No. 4 of 1975 praying for mutation of the disputed lands in his name on the ground that the same had been wrongly recoded in the name of Judhister Pradhan and others. The Collector observing that the Petitioner had got possession of the disputed lands by virtue of a civil Court decree disposed of the Review Misc. Case granting liberty to the Petitioner to approach the Tahsildar for mutation. It was further observed that if the Tahsildar refused to mutate the lands, it would be open to the Petitioner to approach the SDO who was the appellate authority as per the Mutation Manual.

10. Thereafter the Petitioner approached the Tahsildar, Sonapur praying to correct the ROR in the light of the decree passed by the Civil Court which had been confirmed in Second appeal No. 373 of 1960 by this Court.

11. While matter stood thus, by virtue of a Notification, survey and settlement

operation commenced in the Mouza in which the disputed lands are situated. The Tahsildar disposed of the case holding that after commencement of the survey and settlement operation he had no power to deal with a mutation case. The Petitioner however did not prefer any appeal before the SDO as required under the Mutation Manual assailing the said order, and instead filed an appeal before the Settlement Officer, Sambalpur as per the Survey and Settlement Act. The Settlement Officer observed that as the lands had been settled in Bhogra Conversion Proceeding No. 33 of 1961 in favour of the opposite parties with Raiyati Status and the said settlement had not been varied by any superior Court, the Settlement authorities were bound by the order passed in that Bhogra Conversion Proceeding and could not prepare any ROR in favour of the Petitioner. Being aggrieved by the said order, the Petitioner has filed this Writ application.

12. After receiving Rule of this Court a counter-affidavit has been filed by the opposite party No. 3, the Tahsildar, Sonepur taking the stand that on the date the Bhogra Conversion Notification was issued the contesting opposite parties, namely, opposite party Nos. 5 to 23, were in possession of the disputed lands. Accordingly, they made application, for settlement of the said lands in their favour which was registered as Bhogra Conversion Proceeding No. 33 of 1955-56. The authorities concerned after field enquiry were satisfied that the said opposite parties were in cultivating possession of the said lands and therefore settled the same in their favour with Raiyati Status. The order of settlement having not been varied, the right accrued cannot be taken away by the Settlement authorities inasmuch as they are bound by any order passed by a competent authority.

13. A rejoinder affidavit has been filed on behalf of the Petitioner repudiating the stand taken in the counter affidavit filed by opposite party No. 3.

14. The main contention of the learned Counsel for contesting opposite parties 5 to 23, in course of hearing of the Writ application, was that the order passed in the aforesaid Bhogra Conversion Proceeding having not been varied or reversed by any higher forum the same has become final and binding on all. It is further submitted that an order passed in a Bhogra Conversion Proceeding cannot be assailed under the Orissa Survey and Settlement Act and the steps taken by the Petitioner to get the lands recorded in his favour, ignoring the binding order passed in the aforesaid Bhogra Conversion Proceeding has been rightly rejected by the opposite party-authorities. It is further submitted that mutation proceedings are only fiscal in nature. A Tahsildar while exercising power under the Mutation Manual has no right to override an order of settlement passed in a Bhogra Conversion Proceeding. Thus in the instant case the Tahsildar concerned committed no error whatsoever. To sum up, the contention of the learned Counsel for the contesting opposite parties is that the Writ application has no merit and is liable to be dismissed in limine.

15. As has been held by a Full Bench of this Court in the case of Magulu Jal and Others Vs. Bhagaban Rai and Others, , Gaontias had no proprietary right on

Bhogra lands which they used to enjoy towards their 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 Darbar (Ruler) condones the delinquencies.

The same view was also expressed in the case of *Gopaleswar Dharua Vs. State of Orissa and Others*, . In consonance with a Notification, the respective Collectors were the authorities to convert Bhogra lands into Raiyati lands and settle the same with tenants conferring occupancy right with fair rent. For the sake of brevity the relevant contents of the Press Note issued by Government on 2.2.1956 are quoted hereinbelow:

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, Dharmagarh 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:

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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.

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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 or any other Revenue Officer authorised by him in this behalf.

(emphasis supplied)

Thus it is clear that Bhogra lands were to be settled with occupancy right thereon only if a person is in actual possession of the same as on the first day of July, 1955.

16. In the case at hand, as would be evident from the narration of facts made in the preceding paragraphs, the son and brother of the ex Gaontia had mortgaged the disputed Bhogra lands in favour of the contesting opposite parties and had handed over possession thereof. It is further apparent that as on 1st day of July, 1955 the said opposite parties were in actual possession of the disputed lands. Consequently, in the Bhogra Conversion Proceedings the said lands were settled in their favour with Raiyati Status and thereafter Records-of-Rights were prepared in their favour. It is asserted by the contesting opposite parties that

they have been in physical possession of the disputed lands till today and have been paying land revenue. The Petitioner, however, submits that in consonance with the civil Court decree, confirmed by this Court in Second Appeal, he has taken over possession of the disputed lands some time in the year 1962-63. In the alternative it is submitted that the possession of the opposite party (mortgagor) was only permissible and should enure to the benefit of the Petitioner. According to the aforesaid opposite parties, however, delivery of possession said to have been taken in the Execution Case was only symbolic in nature and not actual.

17. Law is well settled that an ROR can be prepared only if the authorities are prima facie satisfied that the person applying for his right, title and interest over the land in question. Such right, title and interest can be acquired, so far as Government lands are concerned, by virtue of an order of settlement creating occupancy status. Thus the sine qua non for preparation of an ROR, so far as Government lands are concerned, is settlement of the land, thereby creating right, title and interest. An ROR is prepared by the Settlement authorities under the Survey and Settlement Act. The said authorities have no right of adjudication about title and are bound by the decision to that effect passed by either Civil Court or any other competent Court under any statute. After completion of settlement operations, power of mutation and correction of RO Rs, by virtue of any right, title and interest acquired after conclusion of settlement operations vests upon the concerned Tahsildar under the Mutation Manual. But then while dealing with an application for mutation, the Tahsildar is also bound by the decision of any civil Court or other competent authorities under any Statute. It is well settled that an order passed by the Settlement authorities under the Orissa Survey and Settlement Act is only fiscal in nature and a recording made in an ROR neither creates nor extinguishes any title.

18. Admittedly in Bhogra Conversion Proceeding No. 33 of 1955-56 the lands in dispute have been settled with the contesting opposite parties and RORs were prepared in their favour and they are paying rent. The said order has not been varied by any competent authority till date. Thus the Settlement authorities have not committed any illegality or irregularity in rejecting the petition filed by the Petitioner for recording the said lands in his favour. This Court is, therefore, not inclined to interfere with the impugned order.

19. Some arguments were advanced with regard to jurisdiction of the Civil Court to deal with a settlement order passed in a Bhogra Conversion Proceeding. But then a perusal of the judgment passed by this Court in S.A. No. 373 of 1960 reveals that the dispute in the suit was not with regard to settlement of lands in Bhogra Conversion Proceeding. On the other hand, the suit was one for redemption of mortgaged property. Thus the said question has no nexus with the facts and circumstances of this case.

20. Before parting, however, this Court makes it clear that it has not examined the legality or otherwise of the orders passed in Bhogra Conversion Proceeding

No. 33 of 1955-56. This Court has also not examined as to whether the Petitioner, being the son of the ex Gaontia, and his uncle had any right to mortgage the Bhogra lands or the effect of such mortgage, because the said questions did not arise for consideration in this Writ application.

In view of the discussions made above, this Court is not inclined to interfere with the impugned orders and dismisses the Writ application.