
(1977) 08 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 774 of 1976

Pankaj Behari Panigrahi

APPELLANT

Vs

Rivenu Officer and Others

RESPONDENT

Date of Decision : 06-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1978) 45 CLT 1

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R.C. Patnaik, P.K. Misra and S. Biswanath, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.B. Panda, J.—This is an application under Article 226 and 227 of the Constitution of India for quashing the orders of opposite parties 1 to 3 passed in exercise of their jurisdiction conferred on them under Chapter IV of the Orissa Land Reforms Act, 1960 (hereinafter referred to as the Act) arising under the following circumstances: On the report of the Revenue Inspector, Sublaya, the Revenue Officer, Birmaharajpur opposite party No. 1 initiated a suo motu proceeding for fixing the ceiling area of one Satyabadi Panigrahi of village Anandapur on 14-10-1974 (O.L.R. Case No. 198 of 1975). Direction was given for obtaining details of lands owned by Satyabadi from the Record Room. Also the Revenue Inspector was asked to report if there were any lands in the name of Panigrahi or his family members. Satyabadi was asked to show cause why his surplus lands should not vest in Government under the provisions of the Act by 8-11-1974. That day the notice was returned without service with the report that the tenant, that is, Satyabadi, refused to receive notice. Accordingly fresh notice was directed to be issued against another. i.e. Soumitri Panigrahi to produce document in support of the lands held by him. Fixing 4-12-1974 opposite party No. 1 ordered thus:

It is seen that Sri Panigrahi owns 14.207 S.A. (standard acres) of cultivable lands 10 S. A. is fixed in his ceiling area and the surplus 4.207 is to be vested to Government. Prepare D. S. and put up on 31-1-1975.

On 31-1-1975, the following order was passed:

Seen the draft statement. Publish the same in the N. B. (Notice Board) and intimate Sri Panigrahi fixing 9-3-1975.

On 3-3-1975, the following order was passed:

The registered letter was received back in original on the grounds that the land-holder is dead. Send the notice in the name? of his son Sri Soumitri Panigrahi and put up on 29-3-1975.

Again on 29-3-1975, the following order was passed:

A.D. not back. Put up on 25-4-1975.

On 25-4-1975, the following order, which is material, was passed:

A.D. is back. Party is absent on call. He was intimated vide this office letter No. 750 dated 17-3-1975 to inspect the draft statement published in respect of the lands stands recorded in the name of his father. But no objection is received from any person during the period. So now it is necessary to confirm the draft statement so published. It is seen that 42.670 acres of land is recorded in the name of Satyabadi Panigrahi of Anandapur, P.S. Birmaharajpur, Dist. Bolangir under this Tahsil. From the above land 0.253 acre covers the homestead land of the land-holder. So 42.423 acres of cultivable land equal to 14.139 S.A. is now owned by him and since the holder is dead leaving two sons, namely, Soumitri and Pankaja Panigrahi, ceiling is fixed in their name jointly. Since neither Soumitri and the brother Pankaja? appeared in the Court it is difficult to know about the present position of the land and also about their family members. So since this is a suo motu case stated against the land-holder, only ten S.A. is fixed to be the ceiling area of the Panigrahi brothers. The details of the ceiling area of Soumitri Panigrahi and Pankaja Panigrahi are furnished below.

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Pankaja the present Petitioner preferred an appeal against this order which was dismissed as barred by time and a subsequent revision was dismissed on the ground that the matter had received finality. Hence this petition.

2. The grounds on which the petition is based are Satyabadi the recorded tenant had died since 30-8-1970 leaving two sons Soumitri and Pankaja, the Petitioner. He (Satyabadi) had four daughters also. Soumitri's first wife Uttara did not bear any child for which he married for the second time and that led to dissention in the family. Consequently, Pankaja and Soumitri divided their assets and possessed the lands separately. They made alienations on the basis of the above separation and incurred loans on the different occasions from co-operative

societies mortgaging their respective lands. The Petitioner's grievance is that since Soumitri and himself did not pull on well and since Soumitri was alone noticed, he had no chance to know the O.L.R. proceeding and when he learnt about it he took legal steps. But the appellate authority as well as the revisional Court, without going into the merits, rejected them on technical grounds-which are not sustainable.

3. That the common ancestor Satyabadi was dead by the time when sou motu proceeding was initiated in October, 1974 is not challenged nor the family tree given in the petition. The only objection taken in the counter affidavit filed on behalf of opposite parties 1, and 3, the rest being parties with whom the alleged surplus land is said to have been settled, is as already quoted in the order dated 25-4-1975.

4. The question for consideration is if the proceeding has been fairly done according to the rules so that no interference is warranted. The undisputed facts that state at the face are that Satyabadi was dead by the time of the proceeding and that he had two sons known to the authorities. Therefore, the initial report of the Revenue Inspector, Subalaya on 14-10-1974 that Satyabadi Panigrahi owns surplus lands is myth. The report should have been that Soumitri and Pankaja possessed surplus lands. Thus evidently the starting point of the proceeding is incorrect. At worst, on a mistaken view, if not false report, the proceeding has been initiated. Secondly, the endorsement in the notice that Satyabadi refused to receive notice is false for by 1974 Satyabadi was not in life to refuse the notice. From the order sheet quoted above it is dear that opposite party No. 1 realised that Satyabadi had two sons but he did not deem it just to notice Pankaja the Petitioner who is nowhere in the picture in the whole proceeding. The ground of difference between the two brothers appear to be genuine and not challenged. The further assertions how they were enjoying their respective properties separately and how the Petitioner gave shelter to the first wife of Soumitri is not denied. In this background, if Pankaja was out of picture at least the Revenue Inspector could have furnished all this information without any difficulty. But purposely he suppressed that for which the proceeding was initiated against a dead man. Opposite party No. 3 also went ahead with the proceeding without trying to ascertain the real facts. The Act gives ample powers to the Revenue Officer. But along with powers, great responsibility rests with the authority so vested with such wide powers. It is expected that such an authority should proceed carefully and fairly and should not act hastily or arbitrarily. Here only notice was given to Soumitri leaving behind the Petitioner and on the failure of Soumitri to appear, the proceeding was finalised behind the back of the Petitioner. Had opposite party No. 1 been a little circumspect or even if he would have just made a query from the very Revenue Inspector. Subadaya, facts now admitted would have been available, and in such an event, the conclusion arrived at would have been different. In short, the proceeding not having been conducted in a manner as it should have been and there being unnecessary haste in finalising the same it is vitiated and cannot be allowed to stand to the

prejudice of the Petitioner. Also the appeal and revision which have been also dismissed on technical grounds without; going to the pith of the matter, should not be allowed to stand.

5. In the result, therefore, we would quash the orders of opposite party Nos. 1, 2 and 3 and remand the case for proper adjudication by the concerned authority after giving due notice to the proper parties.

The petition is allowed, but in the circumstances, without costs.

R.N. Misra, J.

I agree

Petition allowed.