

(1969) 09 OHC CK 0043
In the Orissa High Court
Case No : O.J.C. No. 232 of 1966

P.C. Singh

APPELLANT

Vs

Panu gahu and Others

RESPONDENT

Date of Decision : 24-09-1969

Acts Referred:

Orissa Merged States (Laws) Act, 1950 — Section 7

Orissa Private Lands of Rulers (Assessment of Rent) Act, 1958 — Section 2, 3, 5, 6

Citation : (1970) 36 CLT 582

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

Bench : Division Bench

Advocate : B.K. Pal, G.B. Patnaik and D.P. Mohapatra, for the Appellant; A.G. and S. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—The Plaintiff is the erstwhile Ruler of the ex-State of Hindol in the district of Dhenkanal. The disputed lands were his private lands on the date of the merger of that State with Orissa. Opposite party No. 1 is in cultivation of the disputed lands as a bhagchassi ever since the date of merger. On 9-4-1959 opposite party No. 1 made an application before the Sub-Divisional officer, Hindol (opposite party No. 3) praying for assessment of fair and equitable rent and declaration of his status as an occupancy raiyat u/s 7(h) of the Orissa merged States Laws Act 1950 (Orissa Act. 4 of 1950 - hereinafter to be referred to as the Act). On 5-5-1959 there was publication of the assessment roll and record of rights under the Orissa Private Lands of Rulers (Assessment of Rent) Act, 1958 (Orissa Act, 13 of 1951 hereinafter to be referred to as the 1958 Act) for certain lands in village Ranjagala, of which the disputed lands form a part, in favour of the Plaintiff. In the patta the Plaintiff's name was included in the column "Raiyat". On 12-11-1963, the Sub-Divisional officer assessed fair and equitable rent in respect of the disputed land at Rs. 25.00 per acre. The same order was passed with regard to the other tenants in village Ranjagola. He directed that the Plaintiff would realise rent and cess and pay Rs. 190.00 to the Government for

his lands in that village, in addition to cess of 54 Ps. Put of this amount the Plaintiff was to defray the collection expenses. The Sub-Divisional officer passed a separate order in Miscellaneous Case No. 101 of 195960 directing opposite party No. 1 to pay fair and equitable rent of Rs. 8.25 Ps. and cess of Rs. 2.09 Ps. to the Ruler; the Plaintiff was to pay Rs. 1.20 Ps. as rent and Rs. 2.09 Ps. to the Government. Against this order the Plaintiff filed 80 revision before the Revenue Divisional Commissioner, Northern Division. The revision was dismissed on 3.1-1966. Against the order passed by the Revenue Divisional Commissioner, this writ application has been filed under Articles 226 and 227 of the Constitution, for issuing 80 writ of certiorari to quash the orders of the Sub-Divisional officer and the Revenue Divisional Commissioner.

2. Mr. Pal for the Plaintiff contends that the opposite party No. 1 is not entitled to the protection of Section 7(h) of the Act, after the disputed lands ceased to be the private lands of the Ruler and were settled with the Plaintiff under the 1958 Act. This contention requires careful examination of the relevant provisions of the two Acts.

Section 7(h) of the Act, runs thus:

7. Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of Article 4 of the States Merger (Governors Provinces) order, 1949

(h) when a person holds Khamar, Nijjote or any other private lands of a Ruler, which has been recognised as such by the State Government, he shall not be liable to ejectment but shall be liable to pay such fair and equitable rent as may be fixed by any competent authority appointed in this behalf by the Revenue Commissioner, Northern Division, as the case may be and thereupon he shall acquire right of occupancy in such lands.

The Act came into force on 3-3-1950. There is no controversy that the disputed lands were the private lands of the Plaintiff as recognised by the State Government and that opposite party No. 1 held them as bhagchassi and was in possession of the same from before 1950 till now. The conditions precedent enjoined upon by the section are thus fulfilled, and opposite party No. 1 has acquired the right of non-eviction. His liability is to pay such fair and equitable rent as may be fixed by the competent authority. It is after fixation of fair and equitable rent that he will acquire the right of occupancy in respect of such lands. The section prescribes no limitation as to the time when the competent authority would determine fair and equitable rent. Non-fixation of fair and equitable rent by the competent authority does not however affect the right of non-eviction which had accrued to opposite party No. 1 by virtue of statutory provisions. The statute works out without a further condition so far as non-eviction is concerned, but the holder of the land would not acquire occupancy right until determination of fair and equitable rent. Fair and equitable

rent was determined by the Sub-Divisional officer on 12-11-1963. Till then opposite party No. 1 was not evictable, but he had acquired no right of occupancy.

3. The relevant provisions of the 1958 Act, may now be noticed. "Private land" as defined in Section 2(e) means any land held on the date of merger by a Ruler free from payment of rent. The disputed lands were held by the Ruler on the date of merger free from payment of rent and thus constitute his private lands within the aforesaid definition.

Section 3 is the charging section. It says:

Notwithstanding anything contained in any other law, custom, contract or agreement to the contrary, the private lands held by a Ruler shall, with effect from the date of commencement of this Act, be liable to assessment and levy of rent as hereinafter provided.

For purposes of assessment, the private lands of the Ruler shall be classified into three categories, as prescribed in Section 5.

That section, so far as relevant, lays down:

5. Subject to the provisions of Section 6 the rates at which the fair and equitable rent shall be assessed with respect of the three classes of lands shall not exceed the amount as may be prescribed from time to time by the State Government

A proviso is appended to this section which runs thus:

Provided that in cases where the tenants of the Ruler have already acquired rights of occupancy under the provisions of Clause (h) of Section 7 of the Orissa Merged States (Laws) Act, 1950, the rent payable by the Ruler to the State Government shall be such proportion of the rent received by him from the tenants as may be prescribed.

Mr. Pal contends that the proviso furnishes the key to the true construction of the rights accrued under the two Acts vis-a-vis the Ruler and the person who hold the private lands. The proviso, on its plain language, means that only in cases where the tenants of the Ruler have already acquired occupancy rights u/s 7(h) of the Act, the rent is to be apportioned. The inartistic drafting of the proviso lends some support to Mr. Pal's contention.

On a closer scrutiny, however, it would be clear that the rights of the person who holds the private lands on the date the Act came into force have not been whittled down by the proviso. Under the Act opposite party No. 1 had the right of non-eviction. It is only on determination of fair and equitable rent that he has acquired the right of occupancy. Determination of fair and equitable rent depends on the volition of the Sub-Divisional officer (opposite party No. 3). Failure on the part of the competent authority to fix fair and equitable rent can be corrected by enforcing the right of opposite party No. 1 to get it fixed. opposite party No. 1 had thus a vested right to acquire occupancy right though, in fact, the same had

not been acquired by the date the assessment roll and the record-of-rights were published under the 1958 Act. The rights conferred on the Ruler by the later Act can be harmonised with those conferred on the opposite party no. 1 under the earlier Act. In cases where the Ruler is in Khas possession he acquires rights under the 1958 Act *proprio vigore*, but where other persons acquired rights or where to acquire rights as occupancy raiyats under the Act, the rights of the Ruler under the 1958 Act would be subject to the rights of the persons holding the land under the Act. Any other construction would render Section 7(h) otiose or nugatory. The 1958 Act does not either expressly or by necessary implication repeal Section 7(h) of the Act.

4. The aforesaid conclusion appears to be irresistible on a reasonable construction of the relevant provisions of both the Acts.

5. Reliance was placed by Mr. Pal on an observation of this Court in *Pratap Kesari Deo v. State of Orissa* and Ors. 26 C.I.T. 952.

By virtue of the impugned Act ex-Rulers become the tenants of Government so far as their private lands are concerned.

This observation does not in any way advance the case of the Plaintiff. On fixation of fair and equitable rent, on the private lands, the Ruler must necessarily become a tenant. The Act or the Rule does not indicate the status which the Ruler would acquire. Tenants can be of various types; they may be occupancy raiyats, non-occupancy raiyats, under-raiyats and so on. In the absence of a statutory provision as to in what particular class the Ruler would fall on fixation of fair and equitable rent, necessarily he would be indicated as a tenant. This does not, however, affect the rights of opposite party No. 1. Even under the proviso to Section 5 of the 1958 Act the right of a Ruler as a person entitled to receive rent has been recognised. In other words, where a person has already acquired occupancy right on fixation of fair and equitable rent in respect of the private lands, the rent of the lands payable by the occupancy raiyat would be apportioned and the Ruler would be called upon to pay a portion thereof to the State. Thus, a Ruler as a tenant of the State and an occupancy tenant under a Ruler can co-exist. If conceptually, such a theory has been accepted by the proviso, there is no substance in the contention of Mr. Pal that occupancy right cannot be acquired by a person in possession of the private lands, subsequent to the fixation of fair and equitable rent in favour of the Ruler in respect of those lands under the 1958 Act. The aforesaid Orissa decision lends no countenance to Mr. Pal's contention. It is to be noted that the Orissa decision was accepted as good law in *Rani Ratna Prova Devi Rani Saheba of Dhenkenal Vs. State of Orissa and Another*, .

6. On the aforesaid analysis, the impugned orders are unassailable. The writ application fails and is dismissed, but in the circumstances without costs.

R.N. Misra, J.

7. I agree.