

(1973) 05 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1038 of 1971

Prasana Kumar Patnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-05-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Estates Abolition Act, 1951 — Section 3A, 8A

Citation : (1973) 39 CLT 777

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

Bench : Division Bench

Advocate : R.C. Ram, S. Mahatab and G.C. Patnaik, for the Appellant; A.G., Salil Kr. Dey and P. Mitra, for the Respondent

Judgement

R.N. Misra, J.—This is an application under Articles 226 and 227 of the Constitution of India asking for a writ of certiorari or other appropriate writ direction quashing the orders passed by the Collector and the Appellate authority under the Orissa Estates Abolition Act, 1 of 1952 (hereinafter called the Act) as being contrary to law and for a declaration that the Petitioner is an occupancy raiyat in respect of the disputed property.

2. On 21-2-1968, a notification was made u/s 3-A of the Act to the effect that intermediary interests of the classes of intermediaries shown in the schedule to the notification were abolished and they vested in the State of Orissa free from all encumbrances. In the schedule to this notification was shown the Brahmottar Datta Panapika Lakharaj lands to be constituting an estate in which the Petitioner claims right, title and interest. According to the Petitioner, the property in dispute is not an "estate" as defined under the Act and the status of the Petitioner is not that of an "intermediary" as also defined under that Act. It is, therefore, contended that the notification is without authority of law and proprietary right of the Petitioner in the property which had been gifted by the ex-rulers of the Hindol State in favour of his ancestors has been unduly interfered with. It is also

contended that pursuant to the vesting notification, the Petitioner had erroneously applied u/s 8-A of the Act for settlement of the land with him. Since he is not an intermediary and the property does not constitute an estate, the application made by the Petitioner was not maintainable and, therefore, the order of the Collector and the Appellate order of the Additional District Magistrate lack without jurisdiction.

3. The State of Orissa and the other public officers have filed a counter affidavit. It has been alleged by them that the land in question is actually an estate. The tenure was that of Datta Panapika a jagir. In the Record-of-Rights of 1912-13. in the remarks column satwa of the property has been indicated as Datta (gift) but the other records on the basis whereof the Patta had been granted bore the entry that it was Datta Panapika Lakhraj. The final Record of the recent Settlement in 1969 also showed the status of the land to be Datta Panapika Lakhraj. On the basis of these records, it is contended, the property constituted an estate and it has been rightly notified to have vested under the Act in exercise of the powers vested in the State Government u/s 3-A of the Act. Reliance is also placed on the conduct of the Petitioner in applying u/s 8-A of the Act for settlement of these lands with him. It is only on the footing that the Petitioner is an intermediary qua the estate vested that the application as made by the Petitioner could be maintained. Neither before the Collector nor before the Appellate authority was it ever contended that the notification was without authority of law. Having failed to obtain settlement in terms of Chapter-II of the Act, it is contended, the Petitioner has filed this writ application on completely new allegations.

4. As we find, this is a case where the Petitioner's title is in dispute. While according to the Petitioner the property was not liable to be notified under the Act, according to the opposite parties, the property constituted an estate and was liable to vest. It is the claim of both parties that there are documents which support their respective claims. Serious disputes of fact have got to be adjudicated with reference to evidence to find out whether the Petitioner is entitled to relief. The Petitioner's status is in dispute so also the character of the land. These can, in our opinion, be adequately adjudicated by a Court dealing with title to the property and not in our extraordinary jurisdiction.

5. Mr. Ram for the Petitioner contended that the Civil Court would not have jurisdiction to entertain such a litigation. We are afraid this contention of Mr. Ram has no force. If the property in dispute is not an "estate" and if the status of the Petitioner is not that of an "intermediary", Orissa Act 1 of 1952 would not at all apply and the bar provided under that Act to the jurisdiction of the Civil Court can also not be called in aid against the Petitioner when suing as Plaintiff for the reliefs claimed in this writ application. The Estates Abolition Act does not contain any machinery for adjudication as to whether the property notified to vest in the State constituted an estate. That Act makes provision on the footing that what has been notified to vest in the State was an estate. In respect of actions taken

within the bounds of the Act, the provisions thereof will certainly apply but where the vesting notification is without authority of law, the same would be vitiated and all actions taken under the Act would tantamount to nullity. We are, therefore, of the view that it would be open to the Petitioner to vindicate his present grievances in a duly constituted suit and that actually would be the appropriate remedy.

6. We accordingly decline to interfere in this writ application and direct the same to be dismissed. We make no order as to costs.

B.K. Ray, J.

7. I agree.