
(2008) 08 OHC CK 0083
In the Orissa High Court

Purna Chandra Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

ORISSA LAND REFORMS ACT, 1960 — Section 9(1)(A)

Citation : (2008) 2 OLR 655

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—In this writ application challenge has been made to the order dated 28.5.2005 passed by the Sub-Collector, Puri in O.L.R. Appeal No. 2 of 2004 wherein the petitioner's appeal was rejected.

2. The facts of the case are as follows:

One Minas Behera, son of Joseph Behera was a recorded tenant of Plot No. 255 under Khata No. 104 measuring an area Ac. 0.10 decimal as per the 1927-28 Settlement R.O.R., which is annexed as Annexure-2. One Irfan Behera misrepresenting himself as son of Joseph Behera and in a surreptitious manner managed to record his name in respect of the suit land in 1966 Settlement. Neither Irfan Behera belongs to the family of Minas Behera nor is he the successor of the recorded tenant. However, he claimed himself as the successor of Joseph Behera and alienated the suit land by a fake and frivolous sale deed executed in favour of one Ashalata Rout in the year 1986. Jiten Behera is the only son of Minas Behera, the recorded tenant. Irfan Behera was no way connected with the family of Minas Behera. The Tahasildar-cum-Revenue Officer, Pipili enquired into the facts and gave a certificate that Jiten Behera is the only son of Minas Behera as per the Miscellaneous Certificate Rules.

3. The further case of the petitioner is that by virtue of the sale deed executed by Irfan Behera, who had no saleable right, Ashalata Rout sold the property to

one Indumati Behera. Thereafter one Gandharba Panda alleged to have filed an application u/s 9(1)(A) of the O.L.R. Act (hereinafter referred to as "the Act"), claiming settlement impleading Ashalata Rout and Indumati Behera as landlord and declared himself as a tenant. However, there was no order available in the office of the Tahasildar in respect of such declaration u/s 9(1)(A) of the Act declaring Gandharba Panda as tenant and fixation of rent thereof. On the basis of such non-existing order u/s 9(1)(A) of the O.L.R. Act, a mutation case was filed and the land was mutated in the name of Gandharba Panda. After such mutation, said Gandharba Panda created disturbances in the possession of the petitioner. The petitioner is all along in possession of the suit land and he purchased the property from one Jiten Behera, who is the successor of Minas Behera, the recorded tenant. Therefore, he filed O.L.R. Appeal No. 2 of 2004 before the Sub-Collector, Puri against the order of the Tahsildar-cum-Revenue Officer u/s 9(1)(A) of the Act though he was not a party in the said proceeding. In the appeal, he specifically raised all the above said questions.

4. The appellate Court called for the Lower Court Record from the office of the Tahasildar. But in the year 2005, the report came from the Tahasildar that no such record was available in the office, as the office was ransacked a couple of years back. However, the Sub-Collector, without going into the merits of the case and without any basis, rejected the appeal of the petitioner on the presumption that such an order was passed only on the basis of a xerox copy of the order filed by the counsel for the respondent and no written note was filed by the appellant.

5. The law is well settled that a person aggrieved by an order, even though he was not a party to such a proceeding, can file an appeal and in the present case, the petitioner has filed such an appeal. It reveals that the order passed by the Tahasildar, Pipili u/s 9(1)(A) of the Act was not exercised only because a xerox copy cannot take the place of an authenticated copy. The petitioner who purchased the property from the successor of the recorded tenant was not heard in the matter and no record was available in the said office. In pursuance of order dated 8.2.2006 of this Court to produce the record, the Tahasildar filed an affidavit on 10.7.2008 before this Court stating therein that there was a ransacking in the office of the Tahasildar on 3.10.1996 for which most of the case records with vested interest were destroyed and the said affidavit is contrary to the observation made by the Sub-Collector in 2005 that a couple of years back the office of the Tahasildar was ransacked for which records were not available. The appellate Court, without taking into consideration all the facts and circumstances of the case and without following proper procedure and dealing with the above said questions raised by the appellant regarding the fraudulent misrepresentation by which the land was recorded in the name of Gandharba Panda, simply accepted the case of the respondent without any Lower Court Record and dismissed the appeal without going into merits of the case as the counsel for the appellant had not filed any written argument. The order passed by the Sub-Collector, Puri in O.L.R. Appeal No. 2 of 2004, if allowed to stand, will cause grave injustice to the petitioner.

6. Therefore, this Court interferes with the impugned order dated 28.5.2005 passed by the Sub-Collector, Puri in O.L.R. Appeal No. 2 of 2004 and remands the matter to the Tahasildar, Pipili to reconsider the case of the petitioner and opposite party Nos. 4 and 5 in accordance with law after taking all steps as provided in the statute.

7. The writ application is accordingly allowed.