

(1973) 03 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 1115 of 1970

Radhakrushna Pati

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 06-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Estates Abolition Act, 1951 — Section 6, 7, 8, 8A, 8A(1)

Citation : (1973) 39 CLT 476

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : S. Misra 2, for the Appellant; B.K. Pal, for the Respondent

Judgement

G.K. Misra, C.J.—The disputed property belonged to late Mohan Patio His estate vested in the State of Orissa on 1-10-1964. He died on 24-12-1964. Krutibas Panda (opp. party No. 5) is related to Mohan as sister's son. Radhakrushna Pati (Petitioner), an agnate of Mohan is more distinctly related to him than opposite party No. 5. On 4-3-1965 Harekrushna, brother of the Petitioner, filed O.E. A Case No. 623 of 1965-66 and Brundaban Pati, another agnate of late Mohan, filed another case under the Orissa Estates Abolition Act on 15-3-1965. These cases were tried jointly by the Tahsildar of Betnoti in the district of Mayurbhanj and he settled the agricultural lands in khas possession of. Mohan in favour of Brundaban on 26-7-1966. In appeal, the order of the Tahasildar was set aside as it was held that none of Brundaban, Harekrushna and Radhakrushna was an heir or co-sharer of Mohan Patio This order was passed on 20-4-1966. The objection of the Petitioner to the application of Brundaban u/s 7 of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the Act) was not accepted.

Brundaban filed a title suit in the Court of the Munsif, Baripada for a declaration that he was an heir of Mohan. In that suit Radhakrushna and Harekrushna were parties. It was held that none of them was an heir of Mohan but opposite party No. 5, the sister's son, was the heir. The title suit was disposed of on 12-7-1967.

While that suit was pending, the Petitioner filed a number of Lease Cases on 16-6-1966. The Tahasildar settled the disputed lands in his favour on 29-12-1967. After the disputed lands were settled with Radhakrushna, opposite party No. 5 filed an application on 29-11-1968, u/s 8-A of the Act for settling the agricultural lands in the khas possession of the intermediary on the date of vesting in his favour. The Tahasildar of be notice by his order dated 5-2-1969 rejected the application of opposite party No. 5 as the lands had already been settled in favour of the Petitioner. Against that order opposite party No. 5 filed an appeal before the Sub Divisional Officer who allowed it in Misc. Appeal No. 2 of 1969. He had referred, to various considerations which did not weigh with the Tahasildar. Against the appellate order, the Petitioner came up in revision before the Additional District Magistrate. The revision having been dismissed this writ application has been filed under Articles 226 and 227 of the Constitution for quashing the appellate order (Annexure-4) and the revisional order (Annexure-8).

2. The point that was urged by Mr. Misra in support of the writ application is that once lease was granted in favour of the Petitioner by the Tahasildar on 29-12-1967 there was no further title in the State of Orissa to settle the lands on opposite party No. 5. The contention, though apparently attractive, is wholly without substance.

3. The proposition advanced by Mr. Misra that once a title has been conferred, the same cannot be taken away even by the State conferring the title in its bald form is unexceptionable. Once the lease has been granted the lessor has no further interest in the leasehold except in respect of realisation of rent and the lessor would have no further title to grant another lease in favour of somebody else.

4. Here, however, the point is different. On vesting, the entire estate vested in the State of Orissa subject to the provisions of Sections 6, 7, 8 and 8-A of the Act. u/s 7, on and from the date of vesting, all lands used for agricultural purposes which were in khas possession of an intermediary on the date of such vesting shall, not with standing anything contained in this Act, be deemed to be settled by the State Government with such intermediary, and such intermediary with all the share holders shall be entitled to retain possession thereof and hold them as royals under the State Government having occupancy right in respect of such lands subject to payment of such fair and equitable rent as may be determined by the collector in the prescribed manner.

Under Sub-section (1) of Section 8-A the intermediary shall file his claim in the prescribed manner for settlement of fair and equitable rent in respect of lands and buildings which are deemed to be settled with him u/s 7 before the Collector within six months from the date of vesting. The Petitioner himself has filed a circular of the Government in the Revenue and Excise Department (Annexure-I) which shows that many of the intermediaries would not take advantage of the privilege conferred upon them u/s 7 after the expiry of the period of limitation. To extend the benefit, this circular was issued by the Government to the Land

Reforms, Commissioner giving direction as to renewal of the previous facilities granted to the ex-intermediaries for settlement of khas lands and personal jagir lands. This administrative instruction in the absence of any law to the contrary is binding on all the Revenue Administrative authorities, and they cannot act in contravention of the direction issued under Annexure-1, Any act done in contravention of the direction given therein is not binding on the State Government, and will be without jurisdiction of the officers so acting. It appears from the judgment of the Appellate Authority (Annexure-4) that the benefits and privileges conferred by Annexure-1 were extended from time to time till 31-12-1968. In the writ application no affidavit has been filed challenging the correctness of this statement made in the appellate judgment. In fact, it refers to Revenue Department Notification No. 24428, 12 dated 11-5-1968.

It has been clearly stated in that Circular that those intermediaries who could not take advantage of putting in their claim during the period of limitation will be conferred upon with all the benefits prescribed in Sections 7 and 8-A. We are therefore satisfied that opposite party No. 5 made the application on 29-11-1968 within the period of limitation extended by Annexure-1.

5. As the Tahsildar had no power and jurisdiction to grant lease of the disputed lands which should have been kept without being disposed of till 31-12-1968, opposite party No. 5's application was in time and as Mohan Pati the intermediary, was admittedly in khas possession on the date of vesting, the appellate authority was right in settling the lands on opposite party No. 6.

6. We find no merit in this writ application which is accordingly dismissed, but in the circumstances without costs.

S. Acharya. J.

7. I agree.