

(2025) 04 OHC CK 1435

In the Orissa High Court

Case No : Writ Petition (C) No..13928 Of 2019

Radhamohan Das And Others

APPELLANT

Vs

Commissioner Of Consolidation, Orissa, Cuttack And Others
Vs

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 4, 4(1), 4(5)
Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land
(Amendment) Act, 1975 — Section 4(3), 6(2)(b), 9(3)

Citation : (2025) 04 OHC CK 1435

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Satyabadi Mantry, D.P. Mohanty, P.K. Ray

Final Decision : Dismissed

Judgement

R.K. Pattanaik, J

1. Instant writ petition is filed by the petitioners challenging the impugned orders as at Annexures-4 to 6 and to modify the same with a declaration for them to be recorded as sikimi raiyats with opposite party No.4 having no semblance of title in respect of the case land.

2. As per the petitioner, the subject matter in question was recorded with one Maulabi Sayed Tajmul Ali as an occupancy raiyat situate over Khata No.927 measuring an area of Ac.7.67 decimals, inasmuch as, the lands were recorded in the names of 9 sikimi raiyats under Sikimi Khata Nos.47 to 56 and while claiming so, a copy of the RoR of 1930 as at Annexures-1 and 1/A is referred to. It is further pleaded that all the sikimi raiyats having died, the case land was resumed prior to 1936 and on 6th July, 1936 after the death of the raiyat named above, his legal heirs executed a power of attorney in favour of the raiyat's son-in-law, namely, Mujibur Rahaman and on 15th September, 1944, the father of the petitioners was inducted as a permanent raiyat and was delivered possession of

the case land and it was by virtue of a Hat Patta but in the meantime, on 23rd February, 1951 and 15th September, 1953, the legal heirs of the occupancy raiyat sold the case land to one Oulad Alli, which are void and the further pleading is that during Major settlement in 1965, Yadast was prepared in the name of the petitioner's father in respect of the case land as sikimi raiyat and ever since, such possession, the rents were paid and received by the landlord and in that connection, the receipts dated 21st May, 1944 and 19th June, 1962 have been referred as Annexures-2 and 2/A with the last of the receipts dated 10th February, 1986 at Annexure-3 besides the rents paid in respect of Raiyati Khata No.927 as Annexures-3/A and 3/B. It is claimed by the petitioners that on 2nd June, 1969, the father of opposite party No.4 admitting such tenancy of the petitioner's father and also possession by the latter, submitted a proposal for sale of the case land which was not accepted and thereafter, the sale deed dated 25th June, 1974 was executed in respect of the sikimi tenancy right from one Akuli Nanda, son of one of the sikimi tenants, namely, Padmanabha Nanda and similarly, said Oulad Alli sold the interest in respect of the case land on 1st August, 1974 in favour of opposite party No.4 through a registered sale deed and in so far as, such transfer of sikimi right in 1974 is concerned, the claim is that the same is void and also the subsequent transfer, furthermore when, the father of the petitioners had already acquired tenancy right since 1944, so therefore, the question of selling any such right by a non-existent sikimi tenant cannot convey any valid title. The petitioners also pleaded that before the Major settlement could be concluded, the case land was brought within the sweep of the Consolidation operation with the issuance of notification and that time, the land record was illegally prepared in the name of opposite party No.4, to which the petitioners filed Objection Case No.3721 of 1984 in terms of Section 9(3) of the OCH & PFL Act, 1975 before opposite party No.3, who, however, dismissed the same with the findings that the father of the petitioner was inducted as under-raiyat by the occupancy raiyats in 1944 accepting the rent from him as a sub-tenant and it was by virtue of Hat Patta, an unregistered document and opposite party No.4 purchase of sikimi right from Akuli Nanda was without consent of the occupancy raiyats and new occupancy right cannot be created during consolidation and since, all the LRs of the original recorded tenants have not sold the case land to opposite party No.4, therefore, the other raiyats besides opposite party No.4, hence, should be jointly recorded in the Land Register as raiyats by an order dated 27th May, 1988 as at Annexure-4, whereafter, Consolidation Appeal No.198 of 1988 was preferred before opposite party No.2, who partly allowed the same with the conclusion that the father of the petitioner was a sikimi raiyat in possession of the case land from 1944 and in 1970 and the petitioners have become sikimi raiyats, hence, their possession to be noted in the land record as 'Bhag Sutra Dakhal' and purchase of sikimi right by opposite party No.4 from the son of deceased sikimi tenant in 1974 is void but without disturbing the other findings reached at by opposite party No.3 by an order dated 10th August, 1989 at Annexure-5 and it was followed by a revision by opposite party No.4 before opposite party No.1 against recording of the petitioners'

possession as tenants, wherein, a cross-revision was claimed to be filed against the decision that the petitioners were recorded as a bhag tenants instead of sikimi raiyats. It is also pleaded that the revision was allowed and hence, the petitioners filed OJC No.8142 of 1999 and the same was disposed of on 12th September, 2016 with a remand and after hearing both the sides, opposite party No.1 again allowed the revision holding that in 1974, the sikimi right was transferable and as far as the petitioners are concerned, they have not produced any documents or records in their support and hence, directed the case land to be recorded exclusively in favour of opposite party No.4 by deleting the note of possession therefrom as 'Bhag Sutre Dakhal' by an order dated 22nd July, 2019. According to the petitioners, the same was without considering the finding on possession by them as sikimi tenants of opposite party Nos.2 and 3. Such a decision of opposite party No.1 in Consolidation Revision No.3214 of 1989 as at Annexure-6 is under challenge with the claim that there is concurrent finding by the authorities below that the petitioner's father and after him, they are in possession of the case land from 1982 and in continuous cultivating possession as under-raiyats and their names are, hence, to be recorded in the Land Register in view of Section 6(2)(b) of the OCH & PFL Act and therefore, the impugned order i.e. Annexure-6 is not legally tenable. The further claim is that the rights of the petitioners to be recorded as sikimi raiyats was in fact recognized during the settlement supported by a Yadast report in a proceeding under the OS&S Act, 1963 which could not, however, be completed due to abatement on account of the notification issued under Section 4(3) of the OCH & PFL Act but then, in view of the proviso thereto, the rights on the basis of such possession are saved. It is lastly pleaded that the undisputed possession of the petitioners vis-à-vis the case land is from 1944 as tenants and hence, to be recorded, morefully when, there is no dispute over existence of a relationship of landlord and tenant and on the face of the findings of the Consolidation Officer and by the Appellate Authority, opposite party No.4 is estopped to raise dispute with regard to their possession and tenancy status, when his vendors admitted such right and even accepted rent from their father from 1962 to 1971 and therefore, the petitioners as found to be in personal cultivation of the case land as sub-tenants or under-raiyats, such rights are to be accordingly recorded under the OCH & PFL Act and opposite party No.1 as such committed serious error in holding that sikimi right is heritable and transferable in 1974 and the finding on the basis of a void transfer in favour of opposite party No.4 is, hence, to be held as nonest in the eye of law.

3. On the other hand, opposite party No.4 filed the counter affidavit and pleaded that Sabik Khata No.927 was recorded in the name of Maulabi Sayed Tajmul Ali and the status of the khata was 'Bajyapti Stitiban' and not occupancy and it comprised of 30 plots and all the plots were subjected to several sikimi holdings and each sikimi tenant was recorded with a separate khata and the present dispute relates to Sikimi Khata No.47 having an area of Ac.1.32 decimal comprising two plots and the sikimi tenants were the sons of late Bidyadhar Nanda and Mana Barik and they were cultivating the same jointly. The further

claim is that the sale deeds dated 23rd February, 1951 and 15th September, 1953 have been executed by the LR's of the landlord and they sold the entire stitiban khata in favour Sayed Oulad Ali and such sale is not under dispute and hence, the sikimi tenants became the tenants under the transferee and while all the sikimi tenants were in joint possession and enjoyment of the property, one of them, namely, Mana Barik died issueless, whereafter, the remaining tenants were in joint occupation of the entire land measuring Ac.1.32 decimals and some time before 1970, the other tenant, namely, Giridhari Nanda died issueless leaving behind his brother, namely, Padmanabha Nanda, who also died in the same year and by that time, he was the sole owner of the sikimi holding and after his death, it was succeeded by Akuli Nanda and on 25th June, 1974, the purchaser landlord sold his interest in Stitiban Khata No.927 corresponding to Sikimi Khata No.47 in favour of opposite party No.4 by a registered sale deed as at Annexure-4/A and on the same day, purchased another set of properties from the vendor by RSD No.4018 dated 25th June, 1974 as at Annexure-4/B and by virtue of the above alienations, he became the sole and absolute owner of the land, the sikimi interest having been merged with the stitiban holding. The further pleading is that the father of the petitioners is claimed to have been inducted as a permanent tenant through Hat Patta and it was on the basis of a power of attorney executed in favour of the Mujibur Rahaman but such claim is a hoax and was created to lay an unlawful claim over the property in question, inasmuch as, there was no such Hat Patta and all such rent receipts have been managed and are fabricated ones admitting the fact that in the Yadast of Major settlement of 1965, the name of the father of the petitioners was found place as a sikimi tenant in respect of the disputed plot but the entry was apparently wrong as the name of one Nityananda Barik, son of Kalandi Barik was also recorded along with him and it is nobody's case that Nityananda Barik had any interest in the disputed property and he also had not put forth any claim before the settlement authority and during that stage, Khetramohan Das had moved an application under Section 4(5) of the OLR Act accepting said Sayed Oulad Ali as a landlord and the proceeding therein vide O.L.R. Case No.63 of 1974-75 was disposed of rejecting such claim by the order of the learned Revenue Officer-cum-Tahasildar, Kendrapara by order dated 26th May, 1975 at Annexure-4/C but in any case, the Yadast in question was prepared at Khanapuri stage and before the next stage of the settlement, the consolidation operation stepped in and therefore, it was abandoned and apparently, the petitioners managed to introduce their father in the Yadast suppressing the order under Annexure-4/C. It has been pleaded that opposite party No.4 has been in physical possession and enjoyment of the case land, right from the date of the purchase, till date and in support of the same, the rent receipts (Annexure-4/D series) are referred to. It is challenged that opposite party No.4 is the sole stitiban tenant but unfortunately, the Appellate Authority included the petitioners for their possession as 'Bhag Sutre Dakhal' and deleted the name of the LR's of ex-stitiban tenants, when there was no such claim by any of the parties, rather a 3rd case was made out from nowhere and hence, it was the subject matter of consideration in revision and rightly, opposite

party No.1 deleted the note in the remarks column and as such a finding has not been challenged by the petitioners so to say, when the claim was all along as sikimi tenants or permanent under-raiyats and therefore, the finding of the Appellate Authority with such a note of possession having been overturned is no more available for adjudication. It is also pleaded that the petitioners did not file any revision and hence, the order in appeal has merged with the decision of opposite party No.1 and therefore, they cannot challenge the correctness of the same. With the above pleading, opposite party No.4 contends that the impugned order as at Annexure-6 does not suffer from any legal infirmity and hence, not to be interfered with.

4. Heard Mr. Mantry, learned counsel for the petitioner and Mr. Ray, learned AGA for the State and Mr. Mohanty, learned counsel for opposite party No.4.

5. In fact, this Court in O.J.C. No.8142 of 1999 set aside the order dated 21st October, 1998 in Revision Case No.3214 of 1989 corresponding to Objection Case No.3721 of 1984 filed under Section 9(3) of the OCH & PFL Act and had remitted the matter back for a fresh consideration, whereupon, opposite party No.1 passed the impugned order under Annexure-1. The undisputed facts are that Plot Nos.2311 and 2312 measuring an area of Ac.1.32 decimals stood recorded in the name of Maulabi Sayed Tajmul Ali in 'Bajyapti Stitiban' status in respect of Khata No.927 with a note of sikimi possession in the remarks column and in 1930 settlement, Sikimi Khata No.47 was in the names of one Giridhari Nanda, Padmanabha Nanda and Mana Barik and as such, all the raiyats and sikimi tenants since dead, the legal heirs sold the interest by way of the sale deeds of 1951 and 1953 and thereafter, it was transferred in favour of opposite party No.4 in 1974 and whereas, after death of the sikimi tenants, surviving successor of the tenant, namely, Padmanabha Nanda alienated the sikimi right over the case land on 25th June, 1974. From the pleadings on record, it is revealed that the landlord, namely, Oulad Alli sold his interest in respect of Stitiban Khata No.927 in favour of opposite party No.4 vide Annexure-4/A and as earlier stated, on the same day, Sikimi Khata No.47 was transferred by Akuli Nanda, son of late Padmanabha Nanda vide Annexure-4/B and on the basis of the sale deeds, absolute ownership in respect of the land and also the sikimi interest having merged with the stitiban holding is pleaded. On the other hand, the claim of the petitioner is based on a Hat Patta and possession which was accepted by the authorities below and hence, was the note of possession in their favour as 'Bhaga Sutre Dakhal', however, the finding was overruled in revision. In fact, opposite party No.1 disbelieved execution of Hat Patta in 1944 in favour of Khetramohan Das and that apart, no power of attorney was ever produced for verification with a finding that the document to be an unregistered one, hence, cannot be placed reliance on with a conclusion that the consolidation authorities lack jurisdiction to declare a person as bhag tenant and that apart, no such evidence was on record to show that said Khetramohan Das was ever inducted as a sikimi tenant under the landlord. A question has been raised regarding any such transfer of sikimi right and legality thereof and it is at the instance of the petitioners with a plea

that the sale deeds of 1974 are void ab initio since sikimi tenant rights by then was neither transferable nor heritable.

6. In response to the question, whether, a sikimi tenancy to be transferable or otherwise, it would be profitable to refer to the following decisions, such as, Smt. Sarala Kumari Rath Vrs. Khati Rout and others 2000 (II) OLR 363 and Daitary Swain Vrs. Kartika Swain and others 2019(II)OLR (FB) 171. In Smt. Sarala Kumari Rath (supra), sikimi right in respect of both agricultural land and homestead was held to be heritable and transferable which was in conflict with a decision in Natabara Pandey Vrs. Sri Sri Tareswar Dev and Sri Sri Tarini Thakurani and others decided in O.J.C. No.4349 of 1994 dated 30th October, 2002 with a contrary view that such a tenant is an under-raiyat and the tenancy is not heritable and alienable, as a result of which, a reference was made, which was finally decided in Daitary Swain (supra). Upon considering Section 4 of the OLR Act, as it originally stood and later amended by Orissa Act 29 of 1976 with the insertion of the words and expression 'and their successors-in-interest', it was held in the above decision that the sub-tenants and under-raiyats and successors have all been covered under Clause (i) of sub-section (1) thereof and since it would cover both, the inheritors and transferees, the tenancy shall have to be held as heritable and alienable and the decision to the contrary in Natabara Pandey case was held to be erroneous and was overruled, which was held in ignorance of the law decided in Smt. Sarala Kumari Rath (supra) and the amended clause of Section 4 (1) of the OLR Act. In Smt. Sarala Kumari Rath (supra), it has also been held that sub-section (1) of Section 4 of the OLR Act with the amendment of 1976 and insertion of words "and their successors-in-interest" has to be held as retrospective and not prospective and it does mean that the Amendment Act shall be deemed to be in existence ever since the law brought into force. So, a reading of amended Section 4(1) would make it abundantly clear that a sub-tenant or under-raiyat and a successor, who are in personal cultivation of land recorded as such shall be deemed to be raiyat subject to provisions contained in sub-sections (5) to (8) thereof and referring to a case law in Shridhar Chandra Kar Vrs. Upendranath Gochhayat and others 49 (1980) CLT 9 (Short Notes) held that the same included even a transferee and therefore, under the OLR Act, right of a sub-tenant or under-raiyat in respect of a cultivable land in his possession is heritable and transferable and such view received concurrence upon a reference in Daitary Swain (supra). In such of view of the matter, when opposite party No.1 disbelieved the plea of the petitioners which rested on a Hata Patta and rent receipts and accepted the acquisition of interest by opposite party No.4 on the basis of the sale deeds 1974 in respect of proprietary interest as well as sikimi tenancy from the rightful owners, notwithstanding the Yadast report etc., the Court is of the humble view that there has been no error in the decision for the reason that with the amendment to Section 4 of the OLR Act and its retrospective effect, any such transfer in respect of the sikimi tenancy even prior to Orissa Act No.29 of 1976 shall have to be held as permissible. In the case at hand, opposite party No.4, as already stated,

acquired such interest by virtue of the sale deeds dated 8th January, 1974 and 25th June, 1974 and having found such tenancy to be transferable with the amendment of Section 4 of the OLR Act having the effect of retrospectivity, the transfers by Oulad Alli in respect of the proprietary right and thereafter, the sale by Akuli Charan Nanda in respect of the sikimi interest shall have to be held as valid as such interest is not only heritable but also alienable as held in Daitary Swain (supra) approving the earlier decision Smt. Sarala Kumari Rath. Having said that and furthermore when, opposite party No.4 proved such possession through Annexure-4/D series and the fact that the proceeding in OLR Case No.63 of 1974-75 under Section 4(5) of the OLR Act ended in dismissal rejecting the claim of Khetramohan Das, namely, the father of the petitioners with an order vide Annexure-4/C and after the commencement of the consolidation operation, disallowing the plea of the wife of late Khetramohan Das in Objection Case No.3721 of 1984 with a direction to record the name of opposite party No.4 in respect of the case land by order dated 27th May, 1988, though, including the LR's of the last recorded stitiban tenant, the inevitable conclusion would be that the decision of opposite party No.1 as per Annexure-6 suffers from no illegality and therefore, calls for no interference and hence, it is ordered.

7. In the result, the writ petition stands dismissed, however, in the circumstances, there is no order as to costs.

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