**(1975) 09 OHC CK 0006**

**In the Orissa High Court**

**Case No :** O.J.C. No. 1677 of 1975

Rahas Debi and Others — APPELLANT

Vs

The Revenue Officer Aska and Others — RESPONDENT

**Date of Decision :** 19-09-1975

**Acts Referred:**

Orissa Land Reforms (General) Rules, 1965 — Rule 30, 30(2)
Orissa Land Reforms Act, 1960 — Section 37, 40A, 42, 43, 44(1)

**Citation :** (1977) 44 CLT 109

**Hon'ble Judges :** R.N. Misra, J;N.K. Das, J

**Bench :** Division Bench

**Advocate :** R.C. Patnaik, for the Appellant; Additional Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

R.N. Misra, J.—This is an application for a writ of certiorari to quash the final order dated 1-11-1974, passed in a proceeding under the Orissa Land Reforms Act hereinafter referred to as the ''Act'') relating to fixation of ceiling surplus lands by the Revenue Officer, Aska (Opposite-party No. 1).

2. The family genealogy appended below would show the relationship of many of the parties:

Jagannath Ramchandra Bhima widow-Pata wife-Rahas (O. P. No. 3 Petitioner No. 1) Arjuna Nakula Sahadev (Petitioner No. 2) wife - Kishori daughter - Jhuli (Petitioner No. 3) Petitioners alleged that there was a partition in the family around 1944. After the partition, Rahas, Pata and Kishori, the three sisters-in-law made many acquisitions of land. As the landowners did not have any liability to make returns as required u/s 40-A of the Act, they did not file any return. The Revenue Officer initiated a suo motu proceeding u/s 42 of the Act, prepared a draft statement showing the ceiling and surplus lands but did not notify the owners of the property as required under Rule 30 of the Orissa Land Reforms (General) Rules, 1965 (hereinafter referred to as the ''Rules''). Similarly after the final statement of the ceiling and surplus lands was prepared, no notice was given. In July, 1975, Petitioners came to know about the order made by opposite-party No. 1 and being apprehensive of undue interference with their rights approached this Court for quashing the order as it was contrary to law.

3. The records of the proceedings have been produced and a counter-affidavit has been filed by the Additional Tahsildar of Aska. It has been pleaded that notice u/s 43 of the Act was issued to Pata Dei alone and the said notice was received by one Lakshman Naik on her behalf. Due publication was made of the draft statement as required under the law. Pata did not cause appearance. Thereafter an order was made u/s 44(1) of the Act and on 30th of July, 1974, due publication thereof was made and notice was also given by registered post to Pata. The same was, however, not received by the addressee and was received back in the office of opposite-party No. 1. It is claimed that the proceedings are in accordance with law.

4. The draft statement clearly shows that it had been drawn up in the name of Pata and others. There is no indication in the record of the Revenue Officer as to who the others were. There is no denial of the allegation that the properties had been acquired in the names of the three ladies named above. By no stretch of imagination, Pata, Rahas and Kishori can be said to belong to a joint family which can be represented by Pata. Title of the property inheres in the three ladies and there was no justification for the Revenue Officer, in the absence of any clear material to hold that all the three constituted a family within the meaning of Section 37(b) of the Act in respect of whom only one ceiling area was to be determined. At any rate, notice should have been given to all the three persons, i. e., Pata. Rahas and Kishori because they are the persons to whom the statement drawn under Sections 43 and 44 of the Act relates. If they had been communicated the order by notice at the earlier stage, they could have appeared before the Revenue Officer before he passed his order u/s 44 of the Act and if they were aggrieved by the final determination by the Revenue Officer, they could remedy their grievance by preferring an appeal. The consequences of an order determining ceiling area indeed far reaching as was noticed by this Court in the case of Bhikari Sahu and Ors. v. State of Orissa and others ILR 1975 Cutt 843. In that view of the matter, the Revenue Officer should have taken due care to notify all interested parties. The order made without notice thus cannot take away the rights of the Petitioners.

5. At the hearing of the matter, learned Additional Government Advocate, after scrutinising the records and being satisfied that the law has not been properly complied with agreed that the final order may stand quashed. The matter must go back to the Revenue Officer to be proceeded with from the stage when the draft statement was prepared by the Revenue Officer. Mr. Patnaik for Petitioners and Mr. Sinha for opposite party No. 3 undertook to appear before the Revenue Officer on the 25th of October. 1975. No notice, therefore, as required under Rule 30(2) of the Rules need be given. The draft statement shall be taken to

 

have been published on that day and parties would have thirty days time from that day to file their objections. The matter shall thereafter be disposed of in accordance with law. In view of the concessions made by learned Additional Government Advocate, it is unnecessary to examine the legal position further.

6. We would accordingly allow the writ application, quash the final order made by the Revenue Officer and would require him to dispose of the matter afresh following our directions and the law applicable to the matter. Parties shall bear their own costs.

N.K. Das, J.

I agree.

Application allowed.

 