

(1956) 09 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 219 of 1955

Raja Srikanth Radhanath Bebartta Patnaik	APPELLANT
Vs	
V. Ramanathan and Others	RESPONDENT

Date of Decision : 24-09-1956

Acts Referred:

Constitution of India, 1950 — Article 31, 362
Orissa Merged States (Laws) Act, 1950 — Section 7
Orissa Tenancy Act, 1913 — Section 47(4), 50
Orissa Tenants Relief Act, 1955 — Section 3

Citation : AIR 1957 Ori 24

Hon'ble Judges : Narasimham, C.J.; Das, J

Bench : Division Bench

Advocate : M. Mohanty, for the Appellant; A.G., D.N. Rath and G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—This is an application under Article 226 of the Constitution of India for setting aside the order of the Member, Board of Revenue, Orissa, dated the 18th May, 1955, and for the issuance of an appropriate writ. The petitioner's case is that he is the Ruler of the ex-state of Athgarh, since merged with the State of Orissa, and the opposite parties Nos. 3 to 37 are the holders of his Khamar (home farm) lands which they cultivate on the basis of bhag.

The opposite parties Nos. 3 to 37 filed an application u/s 7(h) of the Orissa Merged States" (Laws) Act 1950 (Orissa Act IV of 1950), in respect of the Khamar lands of the petitioner for fixation of a fair and equitable rent. The Revenue Commissioner of Orissa first appointed the Collector of Cuttack to be the "competent authority" under the Act for fixing such fair and equitable rent.

The Collector of Cuttack by his order dated 21-7-52 fixed the fair and equitable rent at one-third of the gross annual produce in each case and directed the Sub-Divisional Officer of Athgarh to give effect to this order.

2. Subsequently, the order of the Collector dated 21-7-52, was set aside by the Member (Excise), Board of Revenue, Orissa, by his order dated 8-2-53, and the case was remanded to the Collector for fixing a fair and equitable rent after examining the matter afresh.

Ultimately, the Sub-Divisional Officer, Athgarh by his order dated 16-3-54 fixed cash-rents on the basis of the rate of rent fixed for the occupancy tenants and adopted the same rental which was fixed by the settlement authorities under the then Durbar Government for the self-same lands. I may mention here that during the Durbar Government before merger, the lands in question were assessed to a rate of rent prevailing in respect of occupancy holding in the Ex-State area, but the Ruler being the landlord himself the payment of rent was held in abeyance.

3. Against the aforesaid order of the Sub-Divisional Officer of Athgarh, the petitioner moved the Board of Revenue, Orissa, and Sri V. Ramanathan, Member (Excise), Board of Revenue, by his order dated 18-5-55, dismissed the said revision cases holding the cash-rents fixed in the previous settlement to be the fair and equitable rent, Against this order of the Member, Board of Revenue, the present petition was filed.

4. The opposite party No. 1, Member, (Excise) Board of Revenue, Orissa, by his affidavit contended that the Collector of Cuttack was the "competent authority" appointed by the Revenue Commissioner, Orissa, in his order No. 585 R-XXIX-13/50 dated 4-2-50, in exercise of the powers conferred upon him under paragraph 4 of the Government Order No. 3045(2) States, dated 9-11-49 read with the Government Notification No. 1492-States, dated 25-7-49.

The Member (Excise), Board of Revenue, Orissa in partial modification of the aforesaid order dated 4-2-50 appointed the Sub-Division Officer of Athgarh as the "competent authority" for the fixation of a fair & equitable rent. The Sub-Divisional Officer, Athgarh, thus after notice to the parties concerned, & after going through the settlement records in respect of the suit-lands and after hearing the parties, settled a fair and equitable rent.

By virtue of the settlement operations carried on by the then Durbar Government of the ex-State of Athgarh, the disputed lands were duly assessed to rent, but the payment was suspended because the lands were the Khamar lands of the Ruler. The petitioner undoubtedly filed the revision cases against the order of the Sub-Divisional Officer, and the Board of Revenue dismissed the same, finding that the rent fixed is fair and equitable and is on the same level as that of the lands held by the neighbouring tenants of the same locality.

By the aforesaid fixation of cash-rent, the Sub-Divisional Officer neither diminished the right of the petitioner in any way, nor violated the principles of Article 362 of the Constitution; and much less the provisions of Section 7(h) of the Orissa Merged States" (Laws) Act. Rather, in pursuance of the assurance given to the Ruler by the agreement, the Union Government recognised the

properties in dispute as the petitioner's private properties which doubtless were subject to the revenue laws of the land.

Accordingly, the impugned order did not amount either to deprivation of any property, or to any reduction or diminution or restriction of the petitioner's right to hold the property, contrary to Articles 31 and 19 of the Constitution. Thus, by the impugned order the petitioner has not been deprived of any property or of his right to hold the private lands but, on the contrary, he has derived the advantage of not paying anything to the State even when he realises a certain fixed rent from the tenants.

5. The opposite parties 3 to 37 filed a separate-affidavit in which they averred that, after due enquiry, the competent authority appointed by the Revenue Commissioner, Orissa, for the purpose of fixing the rent assessed a fair and equitable rent to be payable by the tenants to the petitioner.

6. Mr. Mohanty, learned counsel on behalf of the petitioner, contended that the impugned order amounts to deprivation of the petitioner's right to own and enjoy his Khamar lands and the produce thereof which were meant for his maintenance, and the order is expropriatory, unconstitutional, being hit by Article 31 of the Constitution of India, and is contrary to the letter and spirit of Section 7(h) of the Orissa Merged States" (Laws) Act, 1950. It will be convenient here to quote Section 7 (h) of the Orissa Merged States" (Laws) Act, 1950:

""Section 7(h). When a person holds Khamar, Nijjote or any other private lands of a Ruler, which has been recognized as such by the Provincial Government he shall not be liable to ejectment, but shall be liable to pay such fair and equitable rent as may be fixed by any competent authority appointed in this behalf by the Revenue Commissioner or the Commissioner, Northern Division, as the case may be, and thereupon he shall acquire right of occupancy in respect of such lands."

7. Mr. Mohanty's contention was that by Clause (g) of Section 7, a service tenure, either under the Ruler or any member of his family, is to cease on payment of such rent as may be assessed by the Provincial, Government as fair and equitable, and the holder of the service-tenure will acquire occupancy right therein.

Accordingly he submitted that the order contemplated under Clause (g) was in the nature of an executive order, whereas in Clause (h), it was a judicial order to be passed by the competent authority". Mr. Mohanty's whole contention therefore was that by the use of the words "fair and equitable" what the Legislature meant was that it must be fair and equitable to both the landlord and the person who holds under him, and the rent which has been fixed in this case, having worked to the detriment of the" petitioner, cannot be said to be fair and equitable; particularly when the petitioner loses his property-right; and the person who holds the land acquires occupancy right therein. Mr. Mohanty relied upon the principles as embodied in Section 50 of the Orissa Tenancy Act (Bihar and Orissa Act II of 1913) by virtue of which a non-occupancy raiyat is admitted

to the occupation of land, and becomes liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

To further illustrate his argument he relied upon Section 3 of the Orissa Tenants Relief Act (Orissa Act V of 1955), and urged that the principles for the determination of fair and equitable rent should have been at least on that basis.

8. From the plain language of Section 7(h) of the Orissa Merged States" (Laws) Act, 1950, it is manifestly clear that the holder of Khamar, Nijjote or any other private lands of the Ruler is protected from ejectment, but he is liable to pay such fair and equitable rent as may be fixed by the competent authority as a consequence of which he would acquire the right of occupancy in respect of such lands.

Therefore, what the Statute requires is not only that the revenue authority will exercise his judicial discretion, but he must, while fixing a fair rent, proceed upon some reasonable basis. Neither, therefore, the principles of Section 50 of the Orissa Tenancy Act, nor of Section 3 of the Orissa Tenants Relief Act are applicable; as Section 50 of the Orissa Tenancy Act concerns with the fixation of the initial rent of the non-occupancy-raiyats by way of a contract, while Section 3 of the Orissa Tenants Relief Act enacts in respect of the protection of tenants from eviction and fixation of the maximum rent.

The report of Land Tenures and the Revenue System of Orissa and Chattishgarh States as prepared by Mr. R.K. Ramadhyani, I. C. S., details the revenue history and settlement of Athgarh State. It is clear from the said report that the settlement which was held in the year 1920 was based upon the Orissa Tenancy Act and the general instructions issued by the Deputy Commissioner, Angul.

Among the factors taken into consideration in classifying the lands was the nature of the crop grown which is not one of the factors prescribed under the Orissa Tenancy Act. Therefore, it is apparent that the principles of survey and settlement operations as embodied in the Orissa Tenancy Act were followed in the 1920 settlement. Section 47 of the Orissa Tenancy Act deals with the commutation of rent payable in kind. Clause (4) of Section 47 deals with the basis on which the revenue officer is to determine the cash rent. They are:

"(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(b) the average value of the rent actually received by the land-lord during the preceding ten years or during any shorter period for which evidence may be available.

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(d) improvements effected by the landlord or by the occupancy raiyat in respect

of the raiyat's holding, and

(e) the rules laid down in Section 40 regarding enhancement of rent on the ground of a landlord's improvement."

The above principles of Section 47 doubtless do afford a reasonable basis and serve as a guidance for the fixation of a fair and equitable rent.

9. The learned Advocate-General appearing on behalf of the State, however, contended that there being no challenge to the validity or otherwise of Section 7(h) of the Orissa Merged States" (Laws) Act, 1950, and the basis of the Durbar settlement being in accordance with the provisions of the Orissa Tenancy Act, and the general instructions issued by the Deputy Commissioner, Angul, the broad principles of the Orissa Tenancy Act for the commutation of rent are applicable to the present case; and the competent authority having taken the same into consideration, has adopted the rate of rent usually paid by the occupancy tenants for the land of similar description with similar advantages. . As stated above, there is some force in this argument of the learned Advocate-General.

10. The Revenue authority thus having adopted the same rate as fixed by the Durbar Government for the disputed lands, the order u/s 7(h) cannot be held to be unfair or inequitable. Hence, the rent so fixed by the competent authority, in this case the Sub-Divisional Officer, Athgarh, does not violate the principles of Article 362 of the Constitution, nor does it amount to any reduction diminution or restriction of the petitioner's right to hold property contrary to Article 31 of the Constitution.

Nor does it offend the principles of natural justice. Hence the order cannot be held to be capricious or arbitrary in any way. The competent authority, in my opinion, has applied his judicial mind to the facts of the case and, on the basis of the rates available in the vicinity, has fixed a fair and equitable rent. There is no question of any deprivation of property by the petitioner, nor any infringement of the right under Article 14 of the Constitution. Thus, I am afraid, there is no merit in the contentions of Mr. Mohanty,

11. In view of the above finding, I see no reason to interfere with the order of the revenue authorities fixing a fair and equitable rent for the lands in question; and accordingly, the petition is dismissed with costs.

Narasimham, C.J.

12. I agree.