

(2008) 04 OHC CK 0021
In the Orissa High Court

Rajamani Bahinipati and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Citation : (2008) 106 CLT 40 : (2008) 2 OLR 45

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—In the present writ application, the Petitioner has sought to challenge the Order Dated 10.9.1991 passed by the Member, Board of Revenue, Orissa, Cuttack in O.L.R. Revision No. 14 of 1989 holding that Gopinath was not entitled to a separate ceiling and the land of Gopinath was tagged along with that of his mother Rajamani for the purpose of allotment of a single unit.

2. Shorn of unnecessary details, the essence of the case as would be available in the revisional order itself, indicates that the State had accepted the fact that Gopinath was the "major" and the family had "separated" by way of partition in the year, 1965 and these facts remained uncontroverted/unchallenged. The question that arose for consideration was as to whether Gopinath was "married", prior to the cut-off date or post cut-off date. The State authorities based their conclusions on the "report" of the local committee that Gopinath was not married till 26.9.1970, i.e., cut-off date and he was major and separated by partition prior to the cut-off date since he was unmarried by the said date, he was, therefore, not entitled for separate ceiling.

3. Mr. Das, Learned Counsel for the Petitioner asserts that the Learned Member Board of Revenue failed to take into consideration the various documents filed by the present Petitioner in order to establish the fact that, he had married prior to the cut-off date. In this respect, he asserts that the necessary documents were filed on behalf of the Petitioner and the same is available at page-18 of the

Commissioner's report. In the said note, in paragraph-10 thereof, the Petitioner has asserted that the Revenue Officer-cum-Tahasildar, Pottangi pad come to an erroneous finding that out of the two sons, the elder son is Raghumani and married prior to 26.9.1970 whereas, the younger brother Gopinath though major and separated prior to 26.9.1970 was married only in the year 1971. Mr. Das further asserts that this finding of fact of the Revenue Officer, that Gopinath was married in the year 1971, is based on no evidence whatsoever.

4. In fact, it is asserted in paragraph-15 of the Writ Petition that Gopinath married much prior to the cut-off date, i.e. 26.9.1970 and supporting it, he has filed xerox copy of birth certificate issued by Bhejaput Gram Panchayat in favour of his son, which indicates that a son was born to Gopinath and his wife on 23.6.1971. Apart from the first note of submission, the Petitioner filed an additional note of submission along with certain documents on 2.7.1991, i.e., the date fixed by the Commissioner for filing of all documents and this additional note contained a submission that the matriculate certificate of Gopinath's son would indicate that Gopinath's School Leaving Certificate was filed along with this note on 23.7.1971.

5. Based on these documents, Mr. Das submits that the simple arithmetical calculation was required that if the date of birth of son was on 23rd June, 1971, obviously, the marriage of the parents must have occurred prior to 26.9.1970, i.e., before the cut-off date. In support of the stand, the School Leaving Certificate issued in favour of Sri Gopinath and his son as well as other documents relating to the Gopinath's age as would be available from the Board of Secondary Education Certificate, were furnished.

6. Mr. Das, Learned Counsel for the Petitioner submits that none of the documents were ever taken into consideration by the Commissioner as well while passing the impugned order under Annexure-1, and placing reliance on the so-called report of the Revenue Officer based on land local enquiry, which was wholly inadequate, to deny the Petitioner the benefit of being treated as a separate family for the purpose of the O.L.R. Act.

7. In this respect, Learned Counsel for the Petitioner places reliance upon on the Judgment of this Court rendered in the case of Bhubaneswar Prasad Singh Deo v. State of Orissa and Ors. (1983) C.L.T. 31, and submits that it is by now well-settled that the definition of the term "family" was inserted into the Act with effect from 29th September, 1973, but was given effect from 26th of September, 1970. It is well settled that a prior date was indicated in the amendment Act with a view of preventing manipulations or arrangements by which the purpose of the Act would be defeated.

8. Considering the amendment and the retrospectively of such an amendment, this Court came to hold that the legislative intent behind this amendment was that partitions beyond 26th September, 1970 should not be acted upon. This decision justifies the contention of the Petitioner that once the partition in his

family was effected by metes and bounds was effected in the year 1965. The legislative intention of introducing the amendment to the O.L.R. Act was obviously not the question of any partition made prior to 26.9.1970. In fact, in the Judgment referred hereinabove, Hon^{ble} the Chief Justice R.N. Mishra (His Lordship the then was) come to hold as follows:

We are of the opinion that in the absence of any express provision or indication of intention by necessary intendment that the definition would be so construed as to take away existing rights, it should be so interpreted that it would not operate prior to the Act came into force and partitions which had taken effect earlier than the Act have to be accepted and given effect to.

9. In view of the aforesaid Judgment of the Division Bench of this Court, the said interpretation is binding and conclusive and the partition being admitted to have been effected in the year 1965, such partition cannot be questioned and must be given effect to in law. The obvious consequence of not accepting the interpretation have also been dealt with on the self-same Judgment and His Lordship has come to hold as follows:

otherwise, the consequences would be serious and far-reaching; for instance, a man at the age of sixty who had chosen to remain a bachelor, and had separated from the family four scores of years back, would be brought into the fold of "family" and land held by him would be put into the hotchpot for determining the ceiling in the hands of his father or mother who may be living. Such a position could not have been contemplated by the legislature.

10. In my considered view, the interpretation of the amendment Act incorporated defining the term "family" and the legislative intent could not have been better described and/or understood than has been noted hereinabove and in the present case treating Gopinath, a person who admittedly was a major and separated by the partition in the year 1965 and adding his land into the hotchpot for determining ceiling along with his surviving mother Rajamani was not within the contemplation with the Legislature.

11. Therefore, even without entering into the question as to whether the present Petitioner Gopinath was married prior or after the cut-off date, is of no consequence and, therefore, the partition having effected prior to 26.9.1970, i.e., in the year 1965, the same is to be given effect to and, therefore, the Revenue Officer was not entitled to initiate a proceeding against the Petitioner's mother.

12. In view of the facts of the present case and for the reason as noted hereinabove, the impugned order herein in O.L.R. Revision No. 14/1989 dated 10.9.1991 under Annexure-1 is quashed and the order of the Appellate authority under Annexure-4, passed by the Addl. Dist. Magistrate, Koraput in OLR 6/85 dated 18th July, 1987 is affirmed.

13. The writ application is allowed to the extent indicated above, but in the

circumstances without costs.