
(2007) 11 OHC CK 0044
In the Orissa High Court

Ramamani Dei

APPELLANT

Vs

Tahasildar and Others

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 105 CLT 101

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the Petitioner, Learned Standing Counsel for the State, Learned Counsel for Opposite Party No. 6 and the Writ Petition is disposed of on consent of the parties.

2. The dispute starts with initiation of Lease Case No. 71/ 79 of 1979 in Binjharpur Tahasil of district Jajpur. Petitioner applied for settlement of Ac.0.30 decimals of land in her favour from Plot No. 2421 under Khata No. 66 in Mouza Ratalanga with the assertion that she has encroached that area and in possession of that land. On 02.02.1980 Learned Tahsildar, Binjharpur passed order for settlement of Ac.0.04 decimals of land in her favour. Petitioner preferred Encroachment Appeal Case No. 6 of 1981 before the Sub-Collector, Jajpur. On 30.7.1992 Learned Sub-Collector set aside the order of the Tahsildar and directed for fresh enquiry with respect to the remaining area while affirming the order of settlement of Ac.0.04 decimals of land. Petitioner challenged that order before the Revisional Authority in O.P.L.E. Revision No. 10/92 CTC./3/94 Jajpur. Learned Additional District Magistrate, Jajpur on 21.07.1999 disposed of that appeal with the direction for fresh enquiry in the manner as was directed by the Appellate Court.

3. On receipt of the record on remand, the case was taken up for enquiry by the Tahasildar, Bari because of bifurcation of the Tahsil in the meantime. On

29.09.2000 the Tahsildar, Bari passed order that the enquiry reveals that Petitioner is not in possession of any area of land out of Ac.0.30 decimals. Her husband and the family have landed properties and house and therefore she is not a landless person or homestead less person and accordingly she is not entitled to settlement of any area. It was mentioned in that order that an area of Ac.0.01 decimal is being used as cattle-shed. Petitioner challenged that order before the Sub-Collector, Jajpur in Encroachment Appeal No. 6 of 2000. On 15.11.2002 Learned Sub-Collector disposed of that appeal with the direction that Ac.0.04 decimals of land be settled with her (Petitioner) as per the previous order and so far as the remaining Ac.0.26 decimals of land is concerned, that can be set apart. Petitioner being not satisfied with that order, filed Encroachment No. 2 of 2002 in the Court of Collector, Jajpur and Learned Collector concurred with the order of the Tahsildar about communal character of the land and, apart from that, ineligibility of the Petitioner to settlement of any area. Petitioner challenged that order before the Revenue Divisional Commissioner in a O.P.L.E. Revision No. 5 of 2006. On 18.8.2006, Learned Revenue Divisional Commissioner dismissed the Revision by way of concurring with the order of the Collector. Thereafter, this Writ Petition has been filed.

4. Petitioner invites our attention to the following passage from the order of the Learned Addl. District Magistrate, Jajpur passed in O.P.L.E. Revision Case No. 10 of 1992.

In view of the above, she is only entitled to A0.04 of land out of plot No. 2421 under khata No. 66 of Mouza - Ratalanga being used as homestead and balance A0.26 is required to be enquired for setting apart for communal used as alleged by the O.Ps. Hence the case is remanded to the Tahasildar, Binjharpur for further enquiry and final disposal as per provision made u/s 7(2) of the O.P.L.E. act and Rules framed thereunder. Revision petition is disposed of accordingly with above direction.

5. Capitalizing on the above quoted passage, Learned Counsel for the Petitioner states that the subsequent order passed by the Tahsildar, Bari in not settling Ac.0.04 decimals of land is illegal and liable to be set aside and, at least to that extent the superior authorities in the two Revisions should have interfered with the order of the Tahasildar, We find on record that in the first round of litigation Learned Addl. District Magistrate only oral argument in absence of any evidence was accepted that Petitioner was living separate from her husband and she is a homesteadless person entitled for settlement of the case land. At the same time, Learned Addl. District Magistrate took note of the report and finding in the order of Tahasildar that her two sons are serving as school teachers. Taking note of that Learned Addl. District Magistrate (in O.P.L.E. Revision No. 10 of 1992 observed that:

Hence Ramamani Devi w/o Harekrushna cannot be a landless person. Moreover the balance A0.26 out of alleged settled land of A0.30 is not adjacent to their homestead land. Even if she claims to have been separated from her husband,

the authenticity is to be verified and ascertained whether she remains with her sons or not. After separation she is entitled to maintenance only from her husband as per orders of the competent Court.

6. After remand, Tahsildar, Bari conducted the enquiry. During the course of enquiry, no evidence was adduced from the side of the Petitioner that she is living separate from her husband, a retired government servant and the two sons who are school teachers, though the family possesses AC.6.20 decimals of land. The enquiry of the Tahsildar further reveals that out of AC.0.04 decimals claimed by the Petitioner, only one decimal was occupied to be used as cattle-shed of the family. Therefore, in the operative part of the order passed on 15.11.2002 Learned Tahsildar, Bari recorded that:

In view of the above facts I am satisfied that Smt. Ramamani Dei is not entitled to get any land under the provision of O.P.L.E. Act and Rules. She is also not in occupation of any land settled in her favour in encroachment case No. 71/ 79 as per the sketch map of the case record.

7. Bone of contention of Mr. Mohanty, Learned Counsel for the Petitioner is that the direction of the Addl. District Magistrate in O.P.L E. Revision No. 10/92 (as quoted supra) is mandatory and therefore it was obligatory on the part of the Tahasildar to comply with the same with respect to four decimal of land. He further argues that Tahasildar did not conduct an enquiry as to whether Petitioner was living jointly with her husband or children or separate from them and therefore the enquiry is incomplete as per the aforesaid direction. Accordingly, he argues to set aside the order of the Tahasildar, Annexure-3, and the confirming order of the superior revenue authorities, Annexures 5 and 6 and to restore the order of the S.D.O. Annexure-4, who directed for settlement of four decimals of land in favour of the Petitioner. Mr. Manoranjan Mishra, Learned Counsel for Opposite Party No. 6, on the other hand, argues that when the Tahasildar, Bari on enquiry found that Petitioner is not in possession of any area of land claimed by her as a landless or homestead person, therefore the order passed by him and confirmed by the superior revenue authorities in Annexures 5 and 6 is legally justified and therefore the earlier order of the Addl. District Magistrate cannot be implemented, which is contrary to the statutory provision. Learned Standing Counsel appearing for the State supports that argument.

8. Section 7 of the O.P. L.E. Act, 1972 so far as relevant for the present purpose reads as hereunder:

7. Summary eviction, forfeiture and fine -(1) Any person unauthorisedly occupying land for which he is liable to pay assessment u/s 4 shall be summarily evicted by the Tahasildar and any crop or other product raised on the land, any encroachments such as a building, other construction or anything deposited thereon shall be liable to forfeiture:

Provided that in case of said encroachments, the Tahasildar shall give reasonable notice to remove the same.

(2) Notwithstanding anything contained in Sub-section (1)

(a) where any land is in the unauthorized occupation of a land less person, the Tahasildar may instead of evicting such person from the land in his unauthorized occupation, settle the same with him, so however, the land so settled with him together with the land excluding homestead, if any owned by him and the lands owned by all the members of his family who are living with him in common mess, shall, on no account, exceed one standard acre and shall not include more than one-tenth of an acre of land which is being utilized or can be utilized for purposes of homestead; and

(b) where any land is in the unauthorised occupation of a homestead less person, which is being utilized by him as homestead, the Tahasildar shall, instead of evicting such person, settle the same with him, so, however, that the land so settled with him shall not exceed one-tenth of an acre.

9. The above quoted provision makes it clear that when land is in unauthorized occupation by landless person or homestead less person, then only it may be considered for settlement subject to satisfaction after regulations of law in that Section. In this case, in course of earlier enquiry, there was no step taken by the Tahasildar or the Revenue Authorities at different level to find out if Petitioner was a landless or homestead less person. Notwithstanding that they made observation for settlement of four decimals of land. That observation/direction being contrary to the statutory provision, it is to be treated as illegal and non-implementable. On the other hand, the finding recorded by the Learned Tahasildar Bari that Petitioner is in encroachment of only one decimal of land and that to for using as cattle-shed does not confer a right on her to claim for settlement unless she proves that she is a landless person. Apart from that, if the Petitioner claims to be a landless person, burden lies on the Petitioner to assert such fact and to prove the same. Therefore, she cannot blame the Tahasildar for not conducting an enquiry as to whether she lives alone or with her husband and serving sons. It is for her to bring evidence on record to the satisfaction of the Revenue Authorities and not to ask to prove the negative, i.e., whether she is not a landless or homesteadless person. In this case, after the spot visit and enquiry, the factual finding of the Tahasildar was made known to the Petitioner if not earlier, then at least from the impugned order, Annexure-3 and thereafter Petitioner approached Appellate and revisional authority but did not produce any evidence in furtherance of the claim so as to satisfy the requirement of law in Section 7 of the O.P.L.E. Act. Under such circumstance, while in seisin of the matter under Article 227 of the Constitution of India, we do interfere with the impugned order as we find that the order does not suffer from illegality or perversity. Thus, the Writ Petition is dismissed.

Misc Case No 7442 of 2007

10. In view of the preceding order, the Misc. Case stands disposed of and the order interim protection stands vacated.