
(1992) 08 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 52 of 1992

Ramsingh Dharua and Another

APPELLANT

Vs

Lab Jhankar and Others

RESPONDENT

Date of Decision : 14-08-1992

Acts Referred:

Orissa Offices of Village Police (Abolition) Act, 1964 — Section 4(1), 4(2)

Citation : (1993) 1 OLR 399

Hon'ble Judges : S.K. Mohanty, J;L. Rath, J

Bench : Division Bench

Advocate : S.S. Das, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The petitioners who are brothers of opp. party No. 1 are assailing the orders passed by the authorities under the Orissa Offices of Village Police (Abolition) Act, 1964 (hereinafter referred to as "the Act") to settle the lands pertaining to the village office of Jhankar with opp. party No. 1. in short their case is that their father Narad Dharua and the Jhankar of the village and that the lands in question were held by him. The village office was abolished during the lifetime of Narada and hence after his death the lands were liable to be settled with all his sons as co-sharers. Their claim was negated by the authorities under the Act holding that in 1958 the opp. party No. 1 was appointed by issue of a Sanad as the Gumasta Jhankar specifically settling the lands in question as his remuneration and that being so, the lands were to be settled with him. The questions raised by Mr. S. S. Das are that Narada being the Jhankar and he having not been noticed under the provisions of the Act, the settlement with opp. party No. 1 is illegal.

2. We have not agreed to the submissions raised on behalf of the petitioners to issue notice in this case as on the very questions of law raised by Mr. Das we do not think a case for admission is made out. It is found that on 19-2-1972 a

petition had been filed by the petitioners stating that during his lifetime, Narada had not partitioned the properties and had stated that opp. party No. 1 had been discharging the duties of Jhankar and that hence the petitioners were earning their livelihood as wage-earners and that after his death the lands should be partitioned among the brothers. This was due to the tact that Narada had acknowledged opp. party No. 1 to be the Jhankar discharging the duties. The desire of Narada that the lands should be partitioned among the sons had no legal basis as the lands were granted by way of remuneration for the services rendered. That apart. Section 4(1) of the Act provides that all Jagir lands resumed under the provisions of the Act shall, subject to the provisions of Sub-section (2), be settled with rights of occupancy with the village police officer or with him and all those other persons, if any, who may be holding the lands or any part thereof as his cosharer or as tenants in pursuance of any local custom, usage or practice under him or under such co-sharer to the extent each such person was in separate and actual cultivating possession of the same immediately before the appointed date. Opposite party No. 1 was admittedly a co-sharer of Narada. Thus even if it is accepted that Narada was the Jhankar and opp. party No. 1 was appointed as the Jhankar Gumasta, yet the lands had been allotted to him as Jagir for discharging the duties and it is apparent that those lands were being possessed by opp. party No. 1 alone who must have been appointed as Jhankar Gumasta, as Narada was no longer able to discharge the functions as Jhankar although he continued to be so. Jhankar Gumasta as it appears is only a shadow Jhankar discharging the functions of a Jhankar while the Jhankar nominally exists, a fact which is admitted by the petitioners themselves in their affidavit of 19-2-1972 acknowledging Narada himself to have stated that the opp. party No. 1 was discharging the functions of Jhankar. Thus the fact of possession of opp. party No. 1 of the lands as his separate actual cultivating possession immediately before the appointed date as a co-sharer of the Jhankar and on his own right as Jhankar Gumasta is unchallenged and as such the lands are to be settled with him. For this reason, we do not find any merit in the submissions raised.

3. Another question raised by Mr. Das is that the applications by opp. party No. 1 for settlement had been filed beyond time. It is well known that a question of limitation is a mixed question of law and fact. It is candidly conceded by Mr. Das that neither in appeal nor in revision the petitioners had raised such question and hence in certiorari jurisdiction we are not inclined to investigate into this question for the first time.

4. In the result, the writ application is devoid of merit and is dismissed.

S.K. Mohanty, J.

5. I agree.