

(1980) 07 OHC CK 0025

In the Orissa High Court

Case No : O.J.C. No"s. 129 and 556 of 1977

Sankarsan Dhal and Another

APPELLANT

Vs

Gopinath Dhal and Others
 Gopinath Dhal Vs Sudhal
Bewa and Others

RESPONDENT

Date of Decision : 02-07-1980

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 9, 9(1)

Citation : (1980) 50 CLT 105

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

Bench : Division Bench

Advocate : M. Patra, B. Dagara, in OJC 129/77 and Panda, in OJC 556/77, for the Appellant; B. Rath, M.R. Panda, Standing Counsel in OJC 129/77, G.C. Mohapatra, B. Brabmachari, M. Patra, B. Dagara and Standing Counsel in OJC 556/77, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Both these applications seek to assail the orders passed by the Revenue Officer u/s 9 of the Orissa Land Reforms Act. Opposite party No. 1 In the first writ application, namely Gopinath Dhal, made an application on 12-5-1976 purporting to be u/s 9 of the Act before the Revenue Officer claiming that he was Entitled to relief as provided in that section of the Act. Petitioners appeared and filed their objection. The Revenue Officer by order dated both of November. 1976 allowed the application in respect of seven decimals of land as against the claim of 14 decimals. The dispute is in regard to 7 decimals claim in respect of which has been allowed by the Revenue Officer. In the other case, the successful party before the Revenue Officer is the Petitioner. He challenges the order of the Revenue Officer allowing the claim of 2 decimals out of the seven decimals which has been given to him in the first case at the instance of some other persons. Both the cases were heard analogously.

2. Section 9(1) of the Act provides:

Every person who is a raiyat or a tenant in respect of any land but has no permanent and heritable rights In respect of any site on which his dwelling house or farm house stands, shall with effect from the commencement of this Act be deemed to be a raiyat in respect of the whole of such site or a portion thereof not exceeding one-fifth of an acre whichever is less if he or his predecessor-in-interest has-

(a) obtained permission, express or implied, from the person having permanent and heritable rights in the site and having right to accord permission for the construction of such house; and

(b) built such house at his own expense.

Explanation....

Admittedly, in the application made by Opp. party before the Revenue Officer, the necessary averments were not there. In the order of the Revenue Officer, he has also not indicated these requirements, nor is there a statement that on the material before him, the Revenue Officer was satisfied that the requisite permission had been obtained and the house had been built at the expense of the applicant. The disposal of the case is very perfunctory and since jurisdictional facts have not been found, the order of settlement is certainly without any foundation. We would accordingly quash the order so far as O.J.C. No. 129 of 1977 is concerned.

The order in the connected case (O.J.C. 556/1977) also suffers from the same lacuna. Apart from it, as it appears, two decimals of land settled with Gopinath were settled with another without noticing the fact that there had already been an order and Gopinath should have been afforded an opportunity of being heard. We would accordingly allow the connected writ application and quash that order too.

3. Both the matters shall go back to the Revenue Officer for a fresh determination in accordance with law. The Revenue Officer is directed to dispose of both the cases after giving full opportunity to both the parties within three months from the date he receives the writ.

There will be no order for costs.

N.K. Das, J.

4. I agree.