

(2015) 07 OHC CK 0038
In the Orissa High Court
Case No : OJC No. 6939 of 1997

Satyanarayan Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Land Reforms Act, 1960 — Section 2
Orissa Prevention of Land Encroachment Act, 1972 — Section 3(a-1)

Citation : (2015) 07 OHC CK 0038

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : P.K. Padhi, for the Appellant; B.P Pradhan, A.G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J—In this writ application under Article 226 of the Constitution of India, the petitioner has assailed the notice issued by the Tahasildar, Sonapur, opposite party No. 2, in Encroachment Case No. 45 of 1997, vide Annexure-4.

2. Short facts of the case of the petitioner are that his forefathers reclaimed a portion of the land appertaining to Plot No. 40, Khata No. 6, area of Ac. 0.009 dec. of Mouza-Sahajpita during the year 1928 and constructed a thatched house thereon. In the year 1951, his father started a tailoring shop in the said house. The petitioner constructed a new house after demolishing the existing one and opened a tailoring shop in the year 1968. While the matter stood thus, the opposite party No. 2 initiated a proceeding under the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as "the OPLE Act") against the petitioner, which was registered as Encroachment Case No. 90 of 1994. After receipt of the notice, he entered appearance and submitted that he is in possession of the land since 1951 and prayed for settlement of the same. But

then a fine of Rs. 500/- was imposed on him. He deposited the said amount. Again another case being Encroachment Case No. 45 of 1997 was initiated against him by the opposite parties. Pursuant to issuance of notice, he appeared before the opposite party No. 2 and contended that he is in possession of the land continuously without any interruption since 1928 which includes the possession of his father. He prayed for settlement of the said land on the ground that he has no homestead land and ekes out his livelihood by running a tailoring shop. On 1.5.1997, opposite party No. 2 issued notice to him to vacate the said land, vide Annexure-4. With this factual scenario, this writ petition has been filed.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties. The sum and substance of the case of the opposite parties is that the petitioner is not a landless person. He is the owner of four acres of agricultural land appertaining to Khata No. 106/11 of Mouza-Haridakhhol. The Kissam of the land is "Nayanjori" and the present Kissam of the land is "Rasta", which is objectionable. It is further stated that the encroachment made by the petitioner is creating inconvenience to the general public and that the area is the accident prone. It is further stated that due to encroachment, the expansion for widening of the road could not be done.

4. Heard Mr. Padhi, learned counsel for the petitioner and learned Addl. Government Advocate for the State.

5. Learned counsel for the petitioner submitted that the petitioner is a landless person and the encroached land is in possession of the petitioner. The forefathers of the petitioner reclaimed the said land in the year 1928. The petitioner constructed a new house in the year 1951 and is running a tailoring shop therein. He being a landless person, opposite party No. 2 has committed mala fide illegality and impropriety in not settling the land in question in his favour.

6. Per contra learned Addl. Government Advocate submitted that the petitioner is not a landless person. He has four acres of agricultural land appertaining to Khata No. 106/11 of Mouza-Haridakhhol. The petitioner has a residential house. Thus he does not come within the meaning and ambit of landless person. In view of the same, opposite party No. 2 initiated a proceeding under the OPLE Act and directed the petitioner to vacate the land in question.

7. The sole point that arises for consideration of this Court is as to whether the petitioner is a landless person?

8. Section 3(a-1) of the OPLE Act defines the landless person. The same is quoted hereunder:-

"[(a-1) "Landless person" means a person, the total extent of whose land excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an

amount which the State Government may, by notification from time to time, specify in that behalf;]"

9. The standard acre is defined in Section 2 of the Orissa Land Reforms Act, 1960, which reads as follows:-

"2-Defination - xxx xxx xxx

(30) "standard acre" means the unit of measurement of land equivalent to one acre of Class I land, one and one-half acres of Class II land, three acres of Class III land or four and one-half acres of Class IV land."

Explanation - For the purposes of conversion, one acre shall be equal to 0.4047 hectare;"

10. On a conspectus of Section 3(a-1) of the OPLE Act, it is crystal clear that if the total extent of land of a person, excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf, is a landless person.

11. A specific stand is taken by the opposite parties in the counter that the petitioner is the owner of four acres of agricultural land appertaining to Khata No. 106/11 of Mouza-Haridakhhol. The same has neither been disputed nor denied. In view of the same, the submission of the learned counsel for the petitioner that the petitioner is a landless person has no legs to stand.

12. There being no illegality or infirmity in initiating the proceeding under the OPLE Act, vide Annexure-4, this Court is not inclined to interfere with the same.

Accordingly, the writ petition is dismissed.