
(2003) 10 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. No. 5189 of 1997

Smt. Rabeha Khatun

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(3)

Citation : (2003) 2 OLR 637

Hon'ble Judges : P.K. Tripathy, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.K. Padhi, D. Mohapatra, S. Parida and S.R. Mohapatra, for the Appellant; Devasis Das, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Learned Addl.Government Advocate states that the Tahasildar, Chatrapur (Opposite Party No. 2) has not responded to the intimation issued to appear and file counter affidavit. From the submission, we do not find any reason to further adjourn the case when the opposite party members do not pray for adjournment.

2. The writ petition is taken up for disposal at the stage of admission.

3. Heard.

4. Grievance of the petitioner is that though the Tahasildar, Chhatrapur recommended for settlement of Ac. 0.020 cents of land out of Plot No. 496 from Rakhita Khata No. 279 in Mouza Chanakhyapur (in Chhatrapur town) yet it was erroneously and arbitrarily turned down by opposite party Nos.3 to 5. In that respect petitioner claims that she has been abandoned by her husband, she is a homesteadless person and therefore she comes within the categories of persons who can be settled with homestead land. In that respect she banks upon the favourable report and recommendation of the opposite party No. 2. She also states that refusal of settlement on the ground that the case land is part of

"Rakhit Khata" is not legal in as much as out of "Rakhit Khata" plot Nos 74/36, 271/7, 271/6, vide Khata No. 436/937, Khata No. 496/613, and 496/612 respectively have been settled with encroachers like Gopinath Mallik, Kas.inath Das and Dinabandhu Panigrahi.

5. On consideration of the aforesaid contention and going through the order of opposite party Nos. 2 to 5, we find that petitioner is the wife of a Government servant and there is no acceptable evidence that she is a divorced woman. Opposite Party Nos.3 to 5 took such fact into consideration to reject the recommendation of the opposite party No. 2. We do not find illegality in the impugned orders. The plot under encroachment belongs to reserve category therefore the act of denial of settlement of the said land with the petitioner is found not to be illegal, unjust or improper.

6. The aforesaid contention of the petitioner relating to settlement of similar category of land with Gopinath Mallik, Kasinath Das and Dinabandhu Panigrahi should not have been superfluously dealt with and disposed of by opposite party No. 5 in as much as Sub-section (3) of Section 12 of the Orissa Prevention of Land Encroachment Act, 1972 confers revisional jurisdiction to check illegality and impropriety in orders of settlement or denial of settlement land. Therefore he should have verified and in the event of finding illegality he could have passed appropriate order. That course is still left open to opposite party No. 5.

7. No record or relevant documents are available to us in support of the contention of the petitioner that land of "Rakhit Khata" of similar category as involved in this case, was settled with the above noted three persons. Therefore we do not record any finding in that respect except the observation we have made in the preceding paragraph.

8. For the sake of discussion even if it is presumed that there has been illegal settlement of lands in favour of the said three persons, then also we should not direct for settlement of the encroached land in favour of the petitioner because Court should not direct for equality in illegality. Under such circumstance, we find no merit in the prayer advanced by the petitioner and accordingly the writ application is dismissed.

9. At this stage learned Counsel for the petitioner states that petitioner shall apply for settlement of land afresh with requisite proof that she is a divorcee and homesteadless person and therefore direction be given to the opposite party members to consider the same and to allot a homestead land in her favour notwithstanding her eviction from the case land. We, thus, observe that any such application made by the petitioner be considered by the concerned authorities, strictly in accordance with law.