
(1998) 11 OHC CK 0017
In the Orissa High Court
Case No : O. J. C. No. 6882 of 1994

Smt. Sarala Kumari Rath

APPELLANT

Vs

Khati Rout and Others

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 4(1)
Orissa Tenancy Act, 1913 — Section 236

Citation : (1999) 87 CLT 198 : (2000) 2 OLR 363

Hon'ble Judges : S. Chatterji, J; R.K. Dash, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Dash, J.—In this writ petition filed under Articles 226 and 227 of the Constitution, the petitioner has sought to quash the order of the Additional Settlement Officer, Cuttack passed in suo motu Case No. 16 of 1993. By the impugned order, Annexure-6, the opposite parties 1 to 4 and Ors. have been held to be Sikimi tenants in respect of Hal Plot No. 615/1346 under Khata No. 572 of village Madhupatna of Cuttack town (hereinafter referred to as "disputed land").

2. The brief facts giving rise to the present writ petition may be stated thus :

During Settlement operation Hal Plot No. 615 having area of Ac. 0.248 dec. (the disputed land being part of the said plot) was recorded in the names of Sridhar Mallick and Ors. with note of possession of Banamali Rout and Ors. as Sikimi tenants under Sikimi Khata No. 3. In different stages of settlement operation, the record remained unchanged. Only at the stage of settlement of rent the petitioner filed Rent Case No. 959/128 and prayed for correction of record-of-rights in respect of the disputed land alleging, inter alia, that she has purchased the same from Kanhu Charan Mallick, one of the recorded owners by registered deed of sale dated 11.7.1980. The Assistant Settlement Officer heard the case ex parte and ordered to record the name of the petitioner in place of Kanhu Charan Mallick, the vendor. Later on, Assistant Settlement Officer on the application of

Sridhar Mallick, in exercise of power conferred by Section 22(3) of the Orissa Survey and Settlement Act (hereinafter referred to as "the Act") passed order deleting the name of the petitioner. Against the said order, the petitioner preferred revision in R.P.No. 14/90 before the Commissioner, Land Records and Settlement, Orissa, u/s 32 of the Act. The revisional authority heard the case ex parte and by order dated 15.11.1990 allowed the, revision and directed the Settlement authorities to record the name of the petitioner in respect of the suit land in the record-of-rights. The present opposite parties 1 to 4 filed an application under Order 9, Rule 13, C.P.C. which was registered as Misc., Case No. 78 of 1990. The revisional authority while rejecting the same observed that the ex parte order does not interfere with the sikimi rights of the opposite parties 1 to 4. The dispute having been resolved, final record-of-rights was prepared vide Annexure-5. Subsequently on an application being moved by the opposite parties 1 to 4, the Additional Settlement Officer in exercise of power u/s 22(2) of the Act initiated suo motu Appeal No. 16 of 1993 and by the impugned order under Annexure-6 ordered that the Sikimi right of opposite parties 1 to 4 will remain unchanged and consequently directed to prepare a separate sikimi khata in the names of the opposite parties 1 to 4 and Ors.

3. Opposite parties 1 to 4 on being noticed though entered appearance, but did not file their return.

4. Learned counsel for the petitioner strenuously urged that the dispute between the parties having been finally resolved by the Commissioner. Land Records and Settlement in exercise of revisional power and the claim of the opposite parties 1 to 4 having not been accepted, the Addl. Settlement Officer in purported exercise of jurisdiction u/s 22 of the Act should not have sat upon the order of the revisional authority and directed to prepare sikimi khata in the names of opposite parties 1 to 4. Secondly, it was contended that sikimi-right being not heritable and transferable and in the present case sikimi tenants having died prior to 1944 upon their death the disputed land reverted back to the recorded owners and the petitioner having purchased the disputed land from one of the owners, has acquired title thereto and therefore, the impugned order passed by the Addl. Settlement Officer to prepare a separate record-of-rights in the names of the heirs of the recorded sikimi tenants being contrary to law, should be quashed.

5. In view of the contentions raised at the Bar, the questions that arise for consideration in the present writ petition are :

(I) Whether Sikimi right is heritable, inasmuch as whether after the death of the recorded sikimi tenants his rights in respect of the disputed land devolved upon his heirs or it reverted back to the Sthitiban raiyat?

(II) Whether the Additional Settlement Officer was competent to initiate suo motu proceeding u/s 22(2) of the Act and pass the impugned order, Annexure-6, in view of the decision arrived at by the revisional authority?

6. Question No. I-The disputed land appertains to Hal Plot No. 615/1346 under

Hal Khata No. 247 and stands recorded as homestead, as is evident from Annexure-5. From the lower Court record in R. P. Case No. 14 of 1990 it transpires that in the Sabik record-of-rights, the disputed land was recorded as cultivable, but since it is situated in Cuttack town the same has been converted to homestead. It is admitted case of the parties that predecessors of the opposite parties 1 to 4 were sikimi tenants in respect of the said land. According to law applicable to this State. Sikimi right in respect of agricultural land was not heritable nor transferable. So far as homestead land is concerned, according to Section 236 of the Orissa Tenancy Act as amended in 1946, a Sikimi tenant who ordinarily resides in a homestead would acquire occupancy right in respect thereof and in that view of the matter, it has been consistently held by this Court that since a Sikimi tenant in possession of homestead land acquires occupancy status and therefore, his right thereto is both heritable and transferable. Section 236 of the Orissa Tenancy Act is in the nature of a proviso to the general law that a Sikimi right is not heritable nor transferable. To the present case Section 236 does not apply since the disputed land was cultivable land as per the Sabik record-of-rights.

7. Now we shall refer to the Orissa Land Reforms Act, 1960 ("the O.L.R. Act", for short) to find as to if sikimi tenancy right has been made heritable. Section 4 of the O.L.R. Act under caption "Raiyat" and "tenants" appearing in Chapter-II defines the person who shall be deemed to be "Raiyat". Sub-section (1) of the said section which underwent amendment by Act 29 of 1976 provides that subject to the provisions of Sub-sections (5) to (8) persons who are in personal cultivation of any land and recorded as sub-tenants or under-raiyats in respect of such land in the record-of-rights under law in force in any part of the State and their successors-in-interest shall be deemed to be raiyats. The words "and their successors-in-interest" were not there in the statute earlier. The same was, however, inserted by way of amendment by Act 29 of 1976. This amendment is not prospective but retrospective. It is provided in the Amendment Act that the amendment shall be deemed to be there in the statute. So, a reading of Sub-section (1) of Section 4 makes it abundantly clear that a subtenant or under-raiyat and his successor-in-interest who are in personal cultivation of a land recorded as such shall be deemed to be raiyat subject to the provisions contained in Sub-section (5) to (8). This Court interpreting the words "successors-in-interest" has ruled in the case of Shridhar Chandra Kar v. Upendranath Gochhayat and Ors. 49 (1980) CLT 9 that the same includes a transferee. Therefore, under the O.L.R. Act a right of a sub-tenant or under-raiyat in respect of a cultivable land in his possession is heritable and transferable. In the present case it is not borne out from the record whether the opposite parties 1 to 4 approached the Revenue Officer as envisaged in Sub-section (5) to (8) of Section 4 of the O.L.R. Act, for being declared as raiyats. Even if no such application for declaration has been made, yet the right of the opposite parties 1 to 4 as under-raiyats in respect of the disputed land does not extinguish. Their right, however, would have been enlarged and they would have become raiyats

had they moved the Revenue Officer within the prescribed time, as envisaged in Sub-section (5) to (8) of Section 4 of the Act.

8. Question No. II -The petitioner is the purchaser of the superior right in respect of the disputed land. It is the admitted case that the dispute between the parties in respect of the land in question came to be resolved by the Commissioner, Land Records in R.P. Case No. 14 of 1990 which was preferred by the present petitioner. Since the opposite parties 1 to 4 remained absent, the revision was disposed of ex parte and to set aside the ex parte order they filed a petition under Order 9. Rule 13, C.P.C. Learned Commissioner while dismissing the petition observed that the ex parte order does not interfere with the Sikimi rights of the opposite parties 1 to 4. In view of such observation, the Additional Settlement Officer while maintaining the record-of-rights prepared in the petitioner's name for preparation of a separate Sikimi Khata in the names of opposite parties 1 to 4, since they are Sikimi tenants in respect of the disputed land. In that view of the matter, no fault can be found with the Additional Settlement Officer in passing the impugned order under Annexure-6.

9. In the result, the writ petition fails and the same is dismissed. There shall be no order as to costs.

S. Chatterji, J.

10. I agree.