
(2008) 04 OHC CK 0045
In the Orissa High Court

Smt. Silu Ekka

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 3(a1), 7, 8A

Citation : (2008) 106 CLT 21 : (2008) 1 OLR 938 Supp

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The Petitioner has filed this Writ Petition challenging the action of the Opposite Parties in threatening to evict her from the Government land and demolish her house by use of force though she has perfected her right, title and interest over the said land by way of adverse possession and the land in question is to be settled in her favour u/s 8-A of the Orissa Prevention of Land Encroachment Act, 1972 (for short "the Act"). The Petitioner alleged that the Opposite Parties without adopting the procedure of law are trying to evict her and demolish her house in violation of the provisions of the Act and principles of natural justice. The Petitioner has accordingly prayed for a direction to the Opposite Parties to settle the said, land in her favour.

2. The brief facts of the case is that Khata No. 814, Plot Nos. 1123/1, 1124/1 and 1723/1, measuring an area of AO. 19 decs. in village Brahmani Tarang in the district of Sundergarh is an Anabadi land which belongs to the State Government. On the basis of a report from the local Revenue Inspector ("R.I." for short), Encroachment Case No. 1 of 2006 was initiated against the Petitioner by the Tahasildar, Panposh, Kuarmunda under the provisions of the Act. A notice to show cause was issued to the Petitioner to show cause as to why she shall not be evicted from the disputed land as she has encroached on the said Government land.

3. The notice was issued on 1.1.2006, fixing 10.1.2006 for appearance and show cause of the Petitioner. On 10.1.2006, the Petitioner appeared in person and filed a show cause reply stating therein that she is a permanent resident of village Brahmani Tarang and is a landless person and is in possession of the disputed land by using the same as Ghara and Bari. She further claimed that she is maintaining her livelihood from the business and prayed for settlement of the Government land in her favour. She admitted that she is in encroachment of the said Government land and prayed for settlement of the same in her favour.

4. The Tahasildar, Kuarmunda, Opposite Party No. 3 after considering the show-cause filed by the Petitioner and after hearing her in Encroachment case No. 1 of 2006 vide Order Dated 10.1.2006 passed the following order:

The case record is put up today. The encroacher is present. He/She files show cause and admitting the encroachment over the Government plot for an area Ac.0.19 out of plot No. 1123/1, 1124/1 & 2723/1 under Holding No. 814 of village Brahmani Tarang and requested for settlement in his favour. As per report of Revenue Inspector, Kalunga it is seen that the classification of land is Goda & Gharbari under 814 Khata which is objectionable in nature and liable for eviction. Further reported that the annual income of the encroacher is Rs. 60,000/- which exceeds the prescribed limit. The case land cannot be settled in his favour. Hence his prayer is rejected.

The encroacher is directed to pay penalty of Rs. 5,700 assessment of Rs. 1,020/- aggregating to Rs. 6,720/- for un-authorised occupation of Government land.

The encroacher is directed to vacate the Government land in form "B" within 30 days" from the date of order. Issue "J" slip to Revenue Inspector for finalisation with an instruction to ensure eviction and report compliance.

5. In the counter affidavit filed on behalf of Opposite Party No. 3 it has been stated that in course of enquiry it was found, that the Petitioner is not a permanent resident of Brahmani Tarang and rather she is a permanent resident of village Kuanarmunda Tola-Chutia Tola. The total area of land of her family, comes to A.13.64 decs, in village Kuanarmunda under Khata No. 335. The local R.I. has assessed the annual income of the Petitioner to be Rs. 60,000 per annum, which has not been disputed by the Petitioner. So the Petitioner is not eligible for settlement of any land as she does not come within the definition of landless person as has been defined u/s 3(a-1) of the Act. The permanent residence of the Petitioner is in the same village and not far from the disputed land. The R.I. has reported, on enquiry, that the Petitioner has been in unauthorized occupation of the Government land since 2003 and her claim of adverse possession for 30 years is false.

6. It is further stated in the said Counsel affidavit of Opp. Party No. 3 that the disputed site being objectionable in nature and the Petitioner not being a landless person or eligible to be settled with any Government land on the basis of her annual income, the aforesaid order of eviction was passed by the Tahasildar

Panposh, Kuarmunda on 10.1.2006 and the rent was assessed along with penalty. The Petitioner accepted the said order and deposited penalty and assessed rent on 13.1.2006. Accordingly, the Petitioner is estopped from praying for settlement of the Government land in her favour under the provisions of the Act. Definition of "Landless Person" as given in Section 3(a-1) reads as follows:

"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.

7. Section 4 of the Act provides for levy of assessment of land unauthorized occupied, which reads as under

4. Levy of assessment of land unauthorized occupied-Any person unauthorized occupying any land which is the property of Government shall be liable to pay by way of assessment

(i) if the land so occupied was at any time assessed to rent, the full assessment for the whole period of occupation or a part thereof proportionate to the area occupied, as the case may be, provided that for special reasons the Tahasildar may impose the full assessment of rent or any lesser sum irrespective of the area occupied; or

(ii) if the land so occupied was not at any time assessed to rent, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar description and with similar advantages in the vicinity or when no such prevailing rate exists, in such manner as may be prescribed:

Provided that where the person unauthorized occupying such land is a landless person, the amount payable by him by way of assessment shall in no case exceed an amount equal to five times the annual assessment:

Provided further that notwithstanding anything in the tenancy laws for the time being in force, payment of assessment under this Sections shall not confer any right of occupancy.

8. Section 7 of the Act provides for summary eviction, forfeiture and line, which reads as under:

(1) Any person unauthorized occupying land for which he is liable to pay assessment u/s 4 shall be summarily evicted by the Tahasildar and any crop or other product raised on the land, any encroachments such as a building, other construction or anything deposited thereon shall be liable to forfeiture:

Provided that in case of said encroachments, the Tahasildar shall give reasonable notice to remove the same.

(2) Notwithstanding anything contained in Sub-section (1)

(a) where any land is in the unauthorized, occupation of a landless person, the Tahasildar may instead of evicting such person from the land in his, authorized occupation, settle the same with him, so however, the land so settled with him together with the land excluding homestead, if any owned by him and, the lands owned by all the members of his family Tahasildar are living with him in common mess, shall, on no account, exceed one standard acre and shall not include more than one-tenth of an acre of land which is being utilized or can be utilized for purposes of homestead; and

(b) where any land is in the unauthorized occupation of a homesteads person, which is being utilized by him as homestead, the Tahasildar shall, instead of evicting such person, settle the same with him. So, however, that the land so settled with him shall not exceed one-tenth of an acre. xx xx xx.

9. The Petitioner in the Writ Petition admits that the encroachment proceeding under the provisions of the Act had been initiated against her in the year 2006 and notice had been issued by the Tahasildar, Opposite Party No. 3 and after receipt of such notice, the Petitioner had filed show-cause and after hearing, the Tahasildar, Opposite Party No. 3, has passed the aforesaid Order Dated 10.1.2006, as per Annexure-3 to the Writ Petition directing the Petitioner to pay penalty of Rs. 5,700/- and assessment of Rs. 1,020 /- aggregating to Rs. 6,720/- for unauthorized occupation of Government land. The Petitioner has also been directed therein to vacate the Government land within 30 days.

10. The Petitioner has deposited the penalty and assessment as directed by the Tahasildar, Opposite Party No. 3, and has accepted the said Order Dated 10.1.2006, as per Annexure-3 to the Writ Petition and hence she is estopped from questioning the same. Moreover, the Petitioner has not assailed the said order of the Tahasildar dated 10.1.2006 in this Writ Petition. The main contention of the Petitioner is the plea of adverse possession which involves disputed question of facts, which cannot be effectively adjudicated in a writ proceeding and no appeal having been filed against the said order as provided u/s 12 of the Act, the same has attained finality and cannot be questioned in this Writ Petition.

11. In view of the above, we do not find any merit in the Writ Petition so as to warrant interference by this Court in exercise of its jurisdiction conferred u/s 226 of the Constitution.

The Writ Petition is accordingly dismissed.

I.M. Quddusi, J.

12. I agree.