

(2008) 07 OHC CK 0103
In the Orissa High Court
Case No : Writ Petition (C) No. 5414 of 2008

Sri Rabindranath Routray

APPELLANT

Vs

Sanjukta Swain and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 144(1)
Evidence Act, 1872 — Section 44
Orissa Government Land Settlement Rules, 1983 — Rule 5(5)
Orissa Land Reforms Act, 1960 — Section 8, 8A
Orissa Land Reforms Rules, 1965 — Rule 12A(2)
Orissa Survey and Settlement Act, 1958 — Section 15

Citation : (2008) 07 OHC CK 0103

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Pramod Kumar Routray, N.D. Deo, Abinash Routray and A. Routray, for the Appellant; Satyabadi Mohanty, A.K. Sharma and P.K. Dash for Opp. Party No. 1 and Addl. Standing Counsel for Opp. Party Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Sanju Panda, J.—The grievance of the Petitioner in this writ petition is that opposite party No. 1, who is none other than his sister, fraudulently obtained an order on 28.8.2002 from the Tahasildar, Sadar, Cuttack, opposite party No. 2, in OLR Case No. 297 of 2002 u/s 8(A) of the OLR Act wherein she was permitted to surrender her raiyati rights in respect of the land in plot No. 179 measuring an area of Ac.0.12 decimals in mouza Unit-37, Badambadi. Therefore, she converted the KISSAM of the case land from agricultural purpose to homestead purpose since 1984 and as per the R.I.'s report, such conversion no way hampered the irrigation facilities to the neighbouring plots or obstructed the natural water flow or caused water logging in the vicinity and proclamation under Rule 5(5) of the OGLS Rules, 1985 was duly served. The suit plot relates to Cuttack Municipality area. The Petitioner had filed municipality holding tax receipt, electricity bill,

water sanction order and on the basis of those documents the Petitioner was assessed to pay 50% of the rate of premium as she used the land for non-agricultural purpose prior to commencement of OLR Amendment Act, 1993. She was assessed to pay a total of Rs. 16800/- towards 50% of the premium. As regards the arrear of land revenue, since the conversion was done in the year 1984, the Applicant was liable to pay arrear of land revenue for total area of Ac.0.112 decimals from 1984-85 to 2001-2002. According to the provision of Sub-rule 4(2) of Rule 12-A of the OLR Act, the rate of rent was fixed at Rs. 500/- per acre per annum. So the total arrear of land revenue came to Rs. 1200/-. Both the premium and the land revenue, in total, came to Rs. 18000/- as arrear of land revenue and she was directed to pay the same within one month.

2. It is submitted by the learned counsel for the Petitioner that opposite party No. 1 misrepresenting herself as the only legal heir of Khetra Mohan Routray, the recorded owner, who is the father of the Petitioner and opposite party No. 1 and by practising fraud obtained the order passed by the Tahasildar, Sadar, Cuttack by virtue of which the ROR was corrected and she paid the premium and rents of Rs. 16,800/- vide rent receipt No. 910056 dated 19.01.03. Being aggrieved by the said order, the Petitioner filed RP Case No. 780/2004 before the Commissioner, Settlement and Consolidation, Cuttack u/s 15(b) of the Orissa Survey and Settlement Act, 1958 to record his name and his sister's name in the ROR on the basis of the registered family partition deed No. 5851 dated 17.12.1984. As per the said registered partition deed (Annexure-1), out of the said plot the Petitioner and opposite party No. 1 are entitled to 50% each, i.e. an area of Ac.0.055.5 links each. The Joint Commissioner, Settlement after due service of notice by order dated 30.9.2005 remanded the case to the Tahasildar, Sadar, Cuttack for giving effect to the registered partition deed, Annexure-1 specifically directing him to hear the parties, verify the relevant documents and field possession and make correction of ROR. Opposite party No. 2 on receipt of the order from the Joint Commissioner submitted a report that the Petitioner and opposite party No. 1 being the son and daughter are the legal heirs of Khetra Mohan Routray. Opposite party No. 1 on receipt of the notice from the Tahasildar in Remand Revision Petition, filed an application before the Joint Commissioner to recall the order of remand dated 30.9.2005 on the ground that the order passed in OLR Case No. 297 of 2002 u/s 8-A of the OLR Act and the same was final. Therefore, the ROR cannot be corrected by the Settlement authority and the order was passed in Criminal Misc. Case No. 70 of 2006 u/s 144(1), Code of Criminal Procedure and the land pass book was prepared basing on the order in the OLR Case. She stated that she exclusively got the land in the OLR Case and basing on the said order, the ROR was corrected. Therefore, the remand order was liable to be recalled. On the said recall application, opposite party No. 4, the Joint Commissioner passed an order staying the further hearing in the Remand RP application. It is further submitted by the learned Counsel for the Petitioner that as the impugned order was obtained by opposite party No. 1 by practising fraud on the OLR authority, the same is not sustainable in the eye of law and

since the Settlement authority has no jurisdiction to set aside the order passed in the OLR Case, the Petitioner has approached this Court for redressal of this grievance.

3. The opposite party No. 1 has filed a counter affidavit in this case. Learned Counsel for opposite party No. 1 submitted that by virtue of the order of the Tahasildar, she obtained a lease deed from the State Government for non-agricultural purpose and got the land pass book on 28.12.2005 and also got the property on the basis of an unregistered partition deed made between herself and the Petitioner in respect of the said land. Therefore, she obtained an absolute ownership over the said property and this writ petition has been filed by the Petitioner after the said fact came to his knowledge in the year 2005. He further submitted that this writ petition should be dismissed on the ground of delay.

4. To the counter affidavit of the opposite party No. 1, the Petitioner has also filed a rejoinder explaining the delay and stating therein that since under the document Annexure-A/1 (Panchayat Faisala Kachha Farda) the right is created by virtue of the document which required to be registered. It was further submitted by the learned Counsel for the Petitioner that the said document is to be ignored as per the bar to the said document. Therefore, the same needs to be ignored and the record clearly shows that opposite party No. 1 has fraudulently obtained an order from the OLR Court. Therefore, the order passed by the Tahasildar in OLR Case No. 297 of 2002 needs to be quashed. In support of his contention, he cited the decision of the apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and in the case of N. Khosla v. Rajlakshmi (dead) and Ors. reported in 102 (2006) CLT 76 (SC).

5. This Court after examining the records and the respective pleadings of the parties found that in her application u/s 8-A of the OLR Act opposite party No. 1 had stated that she was the only legal heir of Khetra Mohan Routray. As such she was entitled to convert the disputed land from agricultural purpose to homestead and on that basis the ROR was corrected and she obtained the land pass book. In the said application, she was totally silent about the earlier partition by way of either a registered or an unregistered deed made between the parties in respect of the aforesaid property. The Tahasildar, Sadar, Cuttack in the impugned order u/s 8-A of the Act has observed that "the case land stands recorded in favour of Khetra Mohan Routray under statutes Stitiban. Khetra Mohan Routray is dead. The present Petitioner Sanjukta is the only daughter and legal heir of late Khetra Mohan Routray". The above observation is tale tell. Admittedly, the Petitioner is her brother and he being the successor-in-interest was entitled to a share after the death of the recorded title holder Khetra Mohan Routray. Opposite party No. 1 did not whisper anything about the Petitioner and also had not gone to the said forum with clean hands.

6. In view of Section 44 of the Evidence Act, fraud has not only been practised on the Court but also played on the parties. The right of the parties cannot be

extinguished by obtaining an order on misrepresentation. If fraud has been played while decision had been taken by the authority, the same would also provide a ground to approach the Court for redressal. See *Karbalai Begum Vs. Mohd. Sayeed and Another*,

7. Fraud avoids all judicial acts. The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands and a person cannot abuse the process of Court by practising fraud and take advantage of his own wrong acts. Unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. From the face of the impugned order, it is apparent that opposite party No. 1 has presented herself as the only successor of Khetra Mohan Routray, the recorded owner, which is not a fact and the same is an error apparent on the face of the record. Therefore, this Court has no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out any stage of the litigation.

8. For better appreciation of matter, Section 8-A(a) of the OLR Act is extracted below:

8-A. Conversion of agricultural land for purposes other than agriculture(1)
Notwithstanding anything contained in Section 8:

(a) the authorized officer may, where an application is made to him by a raiyat in the prescribed form for conversion of the use of any agricultural land belonging to him for purposes other than agriculture, allow such conversion, if he is satisfied that such conversion shall not violate:

(i) any master plan, improvement scheme, development plan or town planning scheme, made or published under the Orissa Town Planning Improvement Trust Act, 1956 (Orissa Act 10 of 1957) or under the Orissa Development Authorities Act 14 of 1982 or under any law for the time being in force and applicable to such land; and

(ii) any other condition or conditions as may be prescribed for the purpose of dealing with bona fide cases of such conversions.

In the present case the recorded raiyat did not apply in the prescribed form for conversion of the use of any agricultural land. Therefore, the order passed by the Tahaeildar, Sadar, Cuttack is illegal and liable to be set aside.

9. Hence, this Court in exercise of the jurisdiction under Article 227 of the Constitution of India quashes the impugned order dated 28.8.2002 passed by the Tahasildar, Sadar, Cuttack, opposite party No. 2, in OLR Case No. 297 of 2002 and remands the matter to the Tahasildar, Sadar, Cuttack to rehear the aforesaid OLR Case and he will decide the same in accordance with law after issuing notice to the present Petitioner as well as opposite party No. 1.

The writ petition is accordingly allowed.