

**(1990) 04 OHC CK 0047**

**In the Orissa High Court**

**Case No :** Original jurisdiction Case No. 2660 of 1983

Sri Sibanarayan Singh Deo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 18-04-1990

**Acts Referred:**

Orissa Land Reforms Act, 1960 — Section 2, 2(14), 2(5)

**Citation :** (1990) 2 OLR 141

**Hon'ble Judges :** J.M. Mahapatra, J;G.B. Pattnaik, J

**Bench :** Division Bench

**Advocate :** C.V. Murty, C.A. Rao and C.N.K. Murty, for the Appellant; A.S. Naidu, A.G.A. and J.P. Misra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

G.B. Pattnaik, J.—The determination of ceiling in a ceiling surplus proceeding initiated suo motu by the Revenue Officer and confirmed by the appellate authority and further confirmed by the revisional authority is being assailed in this writ application.

2. Before the Revenue Officer the Surplus holder raised objection on the ground that sands which are admittedly water logged cannot be considered to be a Class I land. It was further objected to on the ground that the transfer made after 26-9-1970 in respect of 7.17 acres should not be taken into consideration as the transfer was really one in earlier point of time though the execution of deed was made after 26-9-1970. The landholder also objected to the draft statement on the ground that he may be allowed to exercise his option to select the land to be retained by him. The Revenue Officer rejected all these objections. The Petitioner filed an appeal. The appellate authority also considered the findings of the Revenue Officer and rejecting the grounds urged in the appeal, affirmed the order of the Revenue Officer. The Petitioner carried a further revision and the revisional authority having affirmed all the findings of the forums below dismissed the revision. Hence the Petitioner has approached this Court.

3. Mr. Murty, the learned Counsel appearing for the Petitioner in this case, raised two contentions in assailing the orders of the revenue authorities., He first urged that the fact that the lands are described as water logged is sufficient to indicate that they could not be held to be Class I land and, therefore, the revenue authorities have committed-an error in accepting those lands to be Class I land. He further contended that the portion of the land being non-agricultural and being situated in an urban area as would appear from the certificate issued by the Notified Area Council annexed as Annexure-5, those lands could not have" been included while determining the ceiling. Mr. Murty also urged that the lands measuring 1.02 acres being homestead should not have been included in the ceiling.

4. So far as the first submission of Mr. Murty is concerned, we do not find any substance in the same. The definition of Class I and as per Section 2(5-a) of the Orissa land Reforms Act (hereinafter referred to as the "Act") clearly indicates that the land in which two or more crops were in any year within a period of three years before the commencement of the Orissa land Reforms (Amendment) Act, 1973 grown or can be grown in year, would be Class I land. More in the present case, on enquiry being made, it has been ascertained that the Petitioner has been growing two crops a year in the land in question. In view of that positive finding during enquiry which has been accepted by all the forums below, it is difficult for us to accept the contention that merely because the land has been nomenclatures as water logged or less water tax is being levied, the land would not be held to be Class I land. In view of the finding of the forums below which is based on the report of the enquiry to the effect that the Petitioner has been growing two crops a year in the land in question, the conclusion that the land is Class I is unassailable and cannot be interfered with.

5. So far as the second contention that the lands are non agricultural and, therefore, could not come within the purview of the Act, particularly when they are situated in the urban area, is concerned, this contention had not been raised earlier in any of the forums below. A certificate by the Notified Area Council cannot be conclusive with regard to the manner in which the lands were being used. If such a contention would have been raised in the lower forums or objection would have been raised before the Revenue Officer, the matter could have been enquired into. This is a question of fact which depends upon certain enquiry and certain findings. The point having not been raised in the forums below and the point not being a pure question of law but on the other hand being dependent on ancillary findings of fact cannot be permitted to be urged in this writ application. The said contention of Mr. Murty is accordingly rejected.

6. So far as the contention that the land being homestead should be excluded from the purview of the Act is concerned, not only this point has also not been urged in any of the forums below, but also the definition of "land" in Sub-section (14) of Section 2 of the Act includes homestead. In that view of the matter, we are not inclined to entertain that submission of the learned Counsel for the

Petitioner.

7. All the contentions of Mr. Murty appearing for the Petitioner having failed and after applying our mind to the orders of the revenue authorities, we have not found any error of law so as to interfere with any of the conclusions arrived at. Accordingly the writ application fails and is hereby dismissed, but in the circumstances there would be no order as to costs.

J.M. Mahapatra, J.

8. I agree.

Writ application dismissed.