

(1973) 11 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 517 of 1971

Srikrishna Mohapatra and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-11-1973

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 5, 5(1), 9(1)
Orissa Estates Abolition Rules, 1952 — Rule 4

Citation : (1974) 40 CLT 66

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : S.C. Sahoo, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The transferee of a house from the ex-intermediary of Khallikote is the Petitioner before us seeking for a writ of certiorari to quash the appellate order passed under the Orissa Estates Abolition Act (hereinafter referred to as the Act) reversing the order of the Collector under, the Act in a proceeding u/s 5(i) of the Act. It is not necessary to deal with the details of the case because in our view the writ application has to succeed on a technical point. The Estates Abolition Collector initiated a proceeding u/s 5(i) of the Act by his order dated 5-11-1953 and directed notices to issue to the transferor ex-intermediary and the transferee. At the top of the order sheet of the proceeding both the transferor and the transferee were shown as the opposite parties. The record of the proceeding was brought up to this Court and it transpires therefrom that the ex-intermediary had also entered appearance in the proceeding to support his anterior title and the ultimate title of the vendee. Both the parties were heard and as the order of the Collector would show on hearing the parties he had found that the property was of the ex-intermediary and had not vested in the State under the provisions of the Act. When an appeal was taken u/s 9(1) of the Act, for reasons best known to the State of Orissa the ex-intermediary was not

impleaded.

2. It has been contended before us that the Estates Abolition Appeal before the Collector was not in accordance with law and was not sustainable. Indisputably to all appeal u/s 9(1) of the Act, Order 41 of the CPC applies.

3. The learned Standing Counsel appearing for the State takes the stand that the ex-intermediary was not necessary party to the proceeding u/s 5(i) of the Act and, therefore, the appeal without the ex-intermediary is not affected. We are not prepared to accept this contention. Section 5(i) of the Act in clear terms says that the Collector has to proceed after giving reasonable notice to the parties concerned to appear and be heard. Rule 4 made under the Act provides,

The notice under Clause (h) of Section 5 shall be in form A, the notice under Clause (i) of Section 5 shall be in form B or B(1) and the notice under Clause (j) of Section 5 shall be in Form C.

Form B is meant for the ex-intermediary transferor and Form B(1) is meant for the transferee. In the instant case both the notices were issued. The learned Standing Counsel emphasis upon the use of the word " or" and contends that it is open to the Collector to issue notice either to the transferor or to the transferee and he requires us to construe the words "persons concerned" occurring in Section 5(1) of the Act in that light.

4. We are not in a position to accept this contention because "persons concerned" occurring in Section 5(1), in our opinion, must cover both the parties to the transaction which is impugned in the proceeding. If the transfer is vacated by an appropriate order under the Act, the transferee would certainly have a cause of action against the transferor. It would, therefore, be : reasonable to hold that the transferor has interest in the proceeding and rules of natural justice would certainly entitle him to a hearing. That is why the rules prescribe two separate forms and for the present proceeding the Collector under the Act had appropriately issued notices to both the parties. The record shows that the transferor had come to support his title and the transfer itself. In the circumstances merely because the word used in the rule is "or" we cannot hold that it is open to the Collector either to notice the lessor or the lessee as he in his discretion considers proper. The use of the word in the said rule must necessarily mean "and". This interpretation of ours is in consonance with the rules of natural justice and in fact if the rule had precluded one of the parties to be heard it would not have been sustained as contravening the rules of natural justice. One of the usual rules of interpretation is that a rule has to be given that interpretation which would sustain it. We would accordingly hold that the word " or" appearing in Rule 4 is really in the sense of " and" and parties concerned in Section 5(1) would cover both the parties to the transaction and, therefore, both would be entitled to notice. In every such proceeding notice has to issue both in Form B as also in Form B(i).

The ex-intermediary in this proceeding was, therefore, a necessary party to the

appeal and in the absence of a necessary party the appeal itself cannot be sustained. In fact the ex-intermediary having not been impleaded in the appeal is not bound by the appellate order. The order in his favour given by the original Collector stands so far as he is concerned. By dropping him out from the appeal, a peculiar position arises. So far as the transferee is concerned, the transfer has been found to be bad, but so far as the transferor is concerned, the transfer must be taken as valid. Such a position in law is not tenable. It is true that on account of carelessness such a situation has come about. But we cannot help the State out of this difficulty. The consequence must, therefore, be that the Estates Abolition Appeal taken against the order of the original Collector must be taken to have been not maintainable. The appellate order has got to be quashed. We accordingly allow the writ petition. By issuing a writ of certiorari we direct the impugned order to stand quashed. Parties, however, shall bear their own costs because the success is more or less on a technical point.

K.B. Panda J.

5. I agree.