

(1970) 05 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. III of 1966

Srimati A. Kameswasamma

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 06-05-1970

Acts Referred:

Constitution of India, 1950 — Article 31A(2)
Orissa Estates Abolition Act, 1951 — Section 2, 3A(1), 8A

Citation : (1970) 36 CLT 1108

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : C.V. Murty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner claims to be a landholder of the disputed lands, about 136 acres in area, in village Bonaballapalle, in the district of Ganjam. She claims that she is a pattadar holding the property as a freehold. The history of acquisition of the property, as given in the writ application, is that one Pilamarri Kodanda Ramayya purchased the disputed lands, from the Collector of Ganjam by an Indenture dated 12-12-1864. A permanent right of occupation was conferred by that document. The purchaser had not to pay land revenue, which was waived as an incentive for development of the property. The property was held to be a free hold in perpetuity. In 1910 the holding was entered in the name of Jagannath Pandit in the Diglot. Jagannath was the successor-in-interest of the original pattadar. On 24-2-1910, the father-in-law of the Petitioner purchased the disputed property in a Court auction held by the District Judge of Ganjam. In 1952 the Petitioner acquired the properties from her father-in-law as her Stridhan and has been in enjoyment of the same since then. The Petitioner claims that she is a raiyat in respect of the disputed lands, that they do not constitute an estate and that she is not an intermediary.

2. Opposite party No. 1 issued a notification on 30-9-1965, as in Annexure A to

the writ application, u/s 3A(1) (Para 8) of the Orissa Estates Abolition Act, 1951 (Orissa Act 1 of 1952 hereinafter to be referred to as the Act,) declaring that the intermediary interest of the Petitioner vested in the State free from all encumbrances. As the notification threw a cloud on the Petitioner's title, and there was impending danger of the Petitioner being disturbed in her possession this writ application was filed for quashing the notification and for the issue of a writ of mandamus against opposite parties directing them not to interfere with the rights and possession of the Petitioner.

3. The writ application was admitted by a Bench of this Court and interim stay of the impugned notification was granted. But at no subsequent stage the opposite parties made a prayer for vacating the stay, nor was any application filed for expeditious hearing. The result is that the case was lying over for about four years and ultimately it has been heard by us.

4. The counter filed by the State of Orissa does not dispute the character of the acquisition by the Petitioner's predecessors-in-interest and by the Petitioner. It was asserted that about 46 tenants were in possession of the disputed lands and after the vesting notification they had filed an application u/s 8-A before the Estate Abolition Collector for being recognised as tenants under the State. A further plea was taken that the writ application is not maintainable as the tenants were not made parties.

5. It may be noted that originally in paragraphs 4 and 5 of the writ application the tenants were said to have acquired occupancy rights. This was however corrected before the filing of the counter by the Collector, and the tenants were said to have acquired only a right of tenancy.

6. The questions for consideration in this writ application are:

(i) Is the Petitioner an "intermediary" within the meaning of Section 2(h) of the Act and did the disputed property constitute an "estate" within the meaning of Section 2(g)?

(ii) Is the writ application not maintainable for non-implementation of the alleged tenants who filed applications before the Estate Abolition Collector for being recognised as tenants?

7. Before answering the aforesaid questions, it would be appropriate to extract the definitions of the expression "estate", "intermediary" and "raiyat" in the Act

"2(g) "Estate" includes a part of an estate and means any land held by or vested in an Intermediary and included under one entry in any revenue roll or any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law relating to land revenue for the time being in force, or under any rule, order, custom or usage having the force of law, and includes revenue-free lands not entered in any register or revenue roll and all classes of tenures or under-tenures and any jagir, inam or muafi or other similar grant;

Explanation II-Revenue-free land includes land which is, or but for any special covenant, agreement, engagement, or contract would have been, liable to settlement and assessment of land revenue, or with respect to which the State has power to make laws for settlement and assessment of land revenue;

* * *

(h) "Intermediary" with reference to any estate means a proprietor, sub-proprietor, landlord, landholder, under-tenureholder, malgujar, thikadar, gountia, tenure holder, and includes an inamdar, a jagirdar, Zamindar, ilaquedar, khoroposhdar, parganadar, sorbarkar and maufidar, including the Ruler of an Indian State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the State.

Explanation I-Any two or more Intermediaries holding a joint interest in an estate which is borne either on the revenue roll or on the rentroll of another Intermediary shall be deemed to be one Intermediary for the purposes of this Act;

Explanation II-The heirs and successors-in-interest of an Intermediary and where an Intermediary is a minor or of unsound mind, or an idiot his guardian, committee or other legal curator shall be deemed to be an Intermediary for the purposes of this Act. All acts done by an Intermediary under this Act shall be deemed to have been done by his heirs and successors-in-interest and shall be binding on them."

(n) "Raiyat" means any person holding the land for the purpose of cultivation and who has acquired the right of occupancy according to the tenancy law or rules for the time being in force in that area or, in the absence of such law or rules, the custom prevalent in that area."

8. In the counter affidavit filed in some of the writ applications, which have been heard analogously, a point has been taken that the disputed properties constituted an estate within the meaning of that expression as used in Article 31-A(2)(a) and (b) of the Constitution, after the Seventeenth Amendment. Those provisions runs thus:

31-A (2) In this article

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its (sic) equivalent has in the existing law relating to land tenures in force in that area and shall also include

(i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janmam right;

(ii) any land held under ryotwasi settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary

thereto, including wasteland, forest land, land for pasture or sites buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans

(b) the expression "rights" in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder (raiyat, under-raiyat, or other intermediary and any rights or privileges in respect of land revenue.

There is no longer any controversy that after Seventeenth Amendment of the Constitution, the expression "estate" has got a very wide connotation. It would be applicable only to those estate abolition laws of the States where a similar wide definition has been expressly given in the statutory definition. In order to see whether the disputed properties would constitute an estate or not, the definition given in the Constitution would be of no assistance unless a similar definition has been given in the Act.

9. The disputed lands are revenue-free lands. They would come within the definition of estates whether they are entered or not in any of the registers. The definition given in the Act is wide enough to include such lands, but they would not constitute an estate unless the same are held by an intermediary. The answer to the question would therefore depend upon the definition of (the expression "intermediary"). An intermediary would come between a raiyat and the State, of whatever class he may be. If below the Petitioner there is no raiyat then she will not be an intermediary.

Even though some tenants might be cultivating the disputed lands under the Petitioner, still they would not be "raiyats" within the meaning of the definition given in Section 2(n) unless they have acquired right of occupancy, according to the prevailing tenancy law or custom. In the counter filed by the State it is not claimed on behalf of the tenants cultivating the disputed lands that they have acquired occupancy right. On the contrary the Petitioner has clearly asserted that she was a raiyat within the meaning of that expression as given in the Act. She had occupancy right but the cultivation was entrusted to the tenants who filed the application before the Estate Abolition Collector.

11. The claim of the Petitioner is fully established by the documents filed in this case as Annexures. Annexure A to the rejoinder is the deed of indenture dated 12.12.1864. It shows that full occupancy right was granted to the Petitioner's predecessors-in-interest. Annexure B to the rejoinder which is the sale certificate dated 24-2-1910 describes the Petitioner's father-in-law as the pattadar. In the diglot of the year 1910 the predecessor-in-interest of the Petitioner had been entered as a pattadar. The Petitioner has been recorded as a raiyat as would appear from the receipts of land revenue (see Annexures E and D dated 6-5-1958 and 11-3-1961). The settlement parcha Annexure F also shows that the Petitioner is a raiyat.

12. As against this array of documents there is not a single scrap of paper to

show that the tenants had any occupancy rights in the land. Neither is there any assertion to that effect in the counter affidavit. In the absence of such an assertion the Petitioner's case that she was the raiyat in respect of the disputed lands must be accepted.

13. On the aforesaid analysis, we would hold that the Petitioner is the raiyat in respect of the disputed lands. As between the Petitioner and the State there is no other interest of whatever class. The Petitioner is accordingly not an intermediary. The disputed properties cannot, therefore, constitute an estate so as to be subject for the mischief of the Act.

14. As has already been indicated, the tenants never claimed any occupancy right. They made an application to the Estate Abolition Collector to be recognised as tenants on the basis that the estate had vested. Once the vesting is declared illegal, the question of the tenants being recognized does not arise.

15. The only question is whether in the absence of the tenants, the writ application is maintainable. As the tenants did not claim any occupancy rights prior to the vesting and want to be recognized only on the basis of vesting, we are of opinion that the tenants are not necessary parties to the writ application where the question is one to be determined as between the Petitioner and the State, namely, whether the Petitioner is an intermediary and whether the properties constitute an estate.

16. In the result, the writ application is allowed with costs. A writ of certiorari be issued quashing the impugned notification. A writ of mandamus be also issued directing the opposite parties not to interfere with the possession of the Petitioner. Hearing fee Re. 50/- (Rupees fifty only).

R.N. Misra, J.

17. I agree.