

(1990) 10 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 84 of 1983

Srimati Madanbati Lath

APPELLANT

Vs

S.D.O. and Others

RESPONDENT

Date of Decision : 26-10-1990

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 2(11), 2(12), 2(14), 22, 23

Citation : (1991) 71 CLT 390 : (1991) 1 OLR 46

Hon'ble Judges : V. Gopalaswamy, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : Sanjit Mohanty, for the Appellant; Addl. Standing Counsel (for O.P. Nos. 1 to 3), R.N. Sinha, S.N. Sinha, P.K. Routray, S. Das and P. Mohanty (for O.P. No. 4), for the Respondent

Judgement

R.C. Patnaik, J.—This is an application by the transferee seeking the quashing of the orders (vide Annexures-1, 2 and 4) passed by the original, appellate and revision authorities under the Orissa land Reforms Act, 1960 by way of judicial review.

2. 19 decimals of land appertaining to Hamid Settlement Plot Nos. 21 and 22—under Khata No. 25 in village Ainthapalfi within the Sadar Police Station in the district of Sambaipur is the subject-matter of the dispute. Opp. party No. 4, a person belonging to the Scheduled Tribe, filed an application on 13-3-1966 before the Additional Tahsildar seeking permission to sell the property in dispute to the petitioner. That was sent to the R. 1. for enquiry and submission of report. The R. 1. raised no objection and submitted his report in September, 1966, Proclamation was issued on 7-1-1967 inviting objection. On 25-7-1967, the Additional Tahsildar submitted the file to the Sub-Divisional Officer recommending grant of permission. While the matter was pending before the Sub-Divisional Officer, the petitioner obtained a sale-deed in anticipation of grant of permission. Since the sale was effected not with the previous permission in writing of the S. D. O., the S. D. O. was of the view that the provision contained

in Section 23 of the Orissa Land Reforms Act was contravened. So, a suo motu proceeding was started. As admittedly, the transferee was not a person belonging to the Scheduled Tribe and previous permission was not obtained, the Revenue Officer (S. D. O., Sambalpur) declared the transfer invalid and directed restoration of possession to the transferor. A penalty of Rs. 200/- was also imposed (vide judgment dated 20-11-1969 in O.L.R. Case No 70 of 1969 (Annexure-1). In appeal (O. L. R. Appeal No. 19/70). the petitioner was unsuccessful. The petitioner thereafter moved an application for review and the same was rejected vide judgment dated 15-7-1978 in O. L R. Review No. 14 of 1970. In O. L. R. Revision No. 16 : 1980, the petitioner raised three contentions before the revisional authority. Firstly, the Tahsildar having recommended to the Sub-Divisional Officer for accord of permission, the transfer was not invalid as there was inordinate delay in the matter of accord of permission. The second contention raised was that the petitioner was not afforded adequate opportunity of hearing. The third and the substantial submission was that the land being situated within the limits of the municipality, was in ban land. Hence, the provisions of the Orissa Land Reforms Act were non applicable. The revision authority negated all the contentions.

3. In course of hearing, the learned counsel for the petitioner did not reiterate the first two contentions that were raised before the revisional authority but strenuously urged that having regard to the situation of the land within an urban area, i. e. within the limits of the municipality, the Orissa Land Reforms Act had no application. Reliance was placed upon two decisions of this Court : Vol. Mahurilal Agarwalla Vs. Dusan Sahu and Others, (Sri Bhanuganga Tribhuban Deb v. Tahsildar-cum-Revenue Officer, Sambalpur and others. Reliance was also placed on another decision of this Court in Batara Behera v. Special Officer, Land Reforms and others, O. J. C. No. 321 of 1984 disposed of on 4-7-1985 (so far unreported). Reference was made also to Section 73(c) of the Orissa Land Reforms Act.

4. We may, however, observe that Section 73(c) can have no application to the facts of this case inasmuch as the said provision does not apply. Section 73(c) of the Orissa Land Reforms Act reads as under :

"73. Nothing contained in this Act; shall apply :

XX XX XX (c) to any area which the Government may, from time to time by notification in the official Gazette specify as being reserved for urban, non-agricultural or industrial development or for any other specific purpose ;" Admittedly, no notification has been issued by the Government specifying if the land was reserved for urban development, etc."

5. Section 22 posits that the transfer of any holding or part thereof by a raiyat belonging to a Scheduled Tribe in favour of a person not belonging to a Scheduled Tribe shall be void except where it is accepted that such a transfer is made with the previous permission in writing of the Revenue Officer. Analysing

the various elements of this provision, this Court in Bhanuganga's case (supra) observed as follows:

"Where lands are located in the urban area it is for the Revenue Officer to establish the link, that is to show that such lands were connected with agricultural operations and, therefore were to be taken into account; otherwise, as pointed out by this Court in the case of Mahurilal Agarwalla v. Dusan Sahj 43 C LT 661, a house located in the urban area would not be includible."

In Batara's case (supra) both the earlier decisions of this Court were considered and the concept of holding was analysed with reference to the definition of "Holding" and "Land" contained in Clauses (11) and (14) of Sec 2. The definition of "Land" in Clause (14) is relevant which is as under;

"(14), Land" means land of different classes used or: capable of being used for agricultural purposes and includes homestead."

"Homestead" has been defined In Clause (12) which reads as under ;

"(12), "homestead means any land, whether or not recorded as such, ordinarily used as house-site, ancillary or incidental to agriculture ;"

Therefore, the holding i. e. the land contemplated by Section 22, shall either be land used or capable of being used for agricultural purposes or homestead or ordinarily used as house-site, ancillary or incidental to agriculture. Unless the disputed land comes within the definition of "homestead" or "land" as defined in Clauses (12) and (14), Section 22 would not be attracted. There is no finding in any of the orders that the disputed property was either being used or capable of being used for agricultural purposes or was land ordinarily used as a house-site, ancillary or incidental to agriculture. This was a jurisdictional fact conferring authority on the Revenue Officer to apply Section 23 in the absence of any finding. No doubt it is true that opp. party No. 4 had made an application u/s 22 seeking permission but that does not bind the transferee. The application may have been misconceived, may not have been made under proper instructions and guidance Therefore, it obligated the Revenue Officer under the Act to initially record that finding as a foundation on which the edifice of Section 23 could be built and directions issued. Unless the disputed property satisfied the definition of "land" the Revenue Officer does not get jurisdiction to proceed further. Therefore, rightly it was observed in Bhanuganga's case (supra) that where lands are located in the urban area it is for the Revenue Officer to establish the link and, therefore, this Court (in its judgment to which one of us (R. C. Patnaik, J.) is a party) observed that mere situation of a land within the municipal area or that the land has potentiality of being used as homestead or for commercial purposes not relevant considerations for determination of the question. Vainly did we seek for the appropriate finding in the judgments of the Courts below. Since the law was not clear, perhaps appropriate evidence has not been led. We, therefore, remit the matter to the Sub-Divisional Officer, Sambalpur, for disposal of the proceeding afresh. It shall be open to the parties to lead evidence, if they

are so advised. We, therefore, quash Annexures-1, 2 and 4, i. e. the decisions of the original, appellate and revisional authorities, and remit the matter to the S. D. O., Sambilpur, for disposal of the proceeding in accordance with law after giving the parties an opportunity of hearing. The original proceeding be disposed of within a period of four months from the date of receipt of the order.

In the circumstances, there would be no order as to costs.

V. Gopalaswamy, J.

6. I agree.