

(1998) 09 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 8991, 8992 and 8993 of 1992

Surendra Kumar Prusty, Kailash Chandra Prusty and Puni
Bewa and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 37A, 37B, 52

Citation : (1998) 2 OLR 610

Hon'ble Judges : R.K. Patra, J; Pradipta Ray, J

Bench : Division Bench

Advocate : Mahadev Mishra, S.K. Mohanty and S. Barik, for the Appellant; R.K. Mohanty, A.G.A., for the Respondent

Judgement

R.K. Patra, J.—In the aforesaid three applications under Articles 226 and 227 of the Constitution of India, the petitioners seek quashing of the order dated 17.10.1988 of the Revenue Officer passed in Ceiling Case No. 1 of 1988 at Annexure-3 (partly modified by the appellate order dated 26.2.1991 at Annexure-2 and the revisional order dated 5.10.1991 at (Annexure-1) determining ceiling surplus land at the hands of Puni Bewa (petitioner No. 1 in OJC No. 8993 of 1992).

As the facts and the law involved in all the cases are one and the same, they were heard together and are disposed of by this common judgment.

2. Suo motu ceiling case No. 1 of 1988 was initiated against Puni Bewa (petitioner No. 1 in OJC No. 8993 of 1992) on the allegation that she was in possession of Ac. 24.30 decimals of land which was in excess of the ceiling prescribed under law. The Revenue Officer, Bhadrak accordingly issued draft statement to her showing a surplus land of 9.89 standard acres at her hands and she was asked to file objection against the draft statement. On receipt of the copy of draft statement, the petitioner- Puni Bewa with her two sons Narendra Prusty and Gahendra Prusty (petitioner Nos. 2 and 3 in OJC No. 8993 of 1992)

filed a joint objection. Her two other sons namely, Surendra Kumar Prusty (petitioner in OJC No. 8991 of 1992) and Kailash Chandra Prusty (petitioner in OJC No. 8992 of 1992) filed separate objections on their behalf. The main objections raised on their behalf are as follows:

- (i) The ceiling proceeding was started on the basis of incorrect reports;
- (ii) Lands held by the land owners prior to the cut-off date 26.9.1970 could not be brought within the purview of the ceiling case;
- (iii) Prior to the cut-off date 26.9.1970 there was partition of properties into three portions and as such they are not available to be clubbed together for determining the ceiling surplus lands; and
- (iv) There was no proper classification of land inasmuch as all the paddy lands were not Class-I.

3. The Revenue Officer considered the objections and over-ruled the same by order dated 17.10.1988 at Annexure-3 and confirmed the draft statement. Against the said order of the Revenue Officer, three separate appeals, namely, O.L.R. Ceiling Appeal Case No. 45 of 1988, 49 of 1988 and 50 of 1988 were filed on behalf of the petitioners. The appellate authority by its order dated 26.2.1991 at Annexure-2 dismissed the appeals. Thereafter, three revisions, namely, O.L.R. Ceiling Revision Case Nos. 4 of 1991, 5 of 1991 and 6 of 1991 were filed by the petitioners before the learned Additional District Magistrate (L.R.), Balasore who by his common order dated 5.10.1991 at Annexure-1 allowed the revisions in part by excluding the lands separately recorded in the names of grand-sons of the ceiling surplus holder (Puni Bewa) and reduced the total ceiling surplus area to 6.08 standard acres.

4. Shri Mishra, learned counsel for the petitioners, firstly contended that when Tauli Prusty (husband of petitioner Puni Bewa) was alive, there was a family partition in May, 1970 and the landed properties were divided among the co-sharers of the family consisting of the father and four sons and a deed of "Panchayat Bantan Patra" was executed to that effect on 24.5.1970. In view of such partition, the lands of the sons could not have been clubbed together for determining the ceiling surplus land at the hands of Puni Bewa.

5. Section 37-B of the Orissa Land Reforms Act (in short, "the Act") declares that on and from the commencement of the Orissa Land Reforms (Amendment) Act, 1973, no person shall, either as land-holder or raiyat or as both, be entitled to hold any land in excess of the ceiling area. Explanation appended thereto provides that for the purpose of the aforesaid provision, all lands held individually by the members of a family or jointly by some or all the members of a family shall be deemed to be held by the family. Section 37-A states that the Ceiling area in respect of a person shall be ten standard acres provided that where the person is a family consisting of more than five members, the ceiling area in respect of such person shall be ten standard acres increased by two

standard acres for each member in excess of five, but in any case, the ceiling area shall not exceed 18 standard acres. Section 37(b) defines "family" in relation to an individual to mean the individual, the husband or wife, as the case may be, of such individual and their children whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970. From the aforesaid provisions it is clear that the sons of Puni Bewa in order to escape from the rigour have to establish by evidence that before 26.9.1970 each of them was a major married son who as such had separated by partition or otherwise.

6. The Additional District Magistrate had discussed this issue which is evident from paragraphs 5 to 8 of the impugned order at Annexure-1 and did not accept the plea that there was family partition on 24.5.1970. He (Additional District Magistrate) found that not only there was discrepancy in the evidence with regard to the date of partition but also there is no acceptable evidence adduced on behalf of the petitioners to establish that each of the sons of Puni Bewa was a major married one and separated as such by partition or otherwise before the cut-off date 26.9.1970. As a matter of fact, no partition deed was produced. The petitioners in order to prove that partition took place on 24.5.1970 produced a "Panchayat Bantan Patra" which was not accepted by any of the Revenue authorities. Whether there was any partition in the family on 24.5.1970 is a question of fact based on appreciation of evidence and it has been consistently held by all the three Revenue authorities that there is no acceptable proof of any family partition having taken place on 24.5.1970. It is thus a pure finding of fact. The petitioners have not been able to make out a case to up-set the said finding.

7. It was next contended that the Revenue Officer having not consulted the local committee, the order determining the ceiling surplus land is vitiated. Section 43 (1) of the Act provides that the Revenue Officer after considering all relevant materials available to him and after consultation with the local committee, if any, shall record his findings in a draft statement. Annexure-4 is the copy of the proceeding of the local committee held on 29.4.1988. On perusal of the same, it would appear that there was a meeting of the local committee on 29.4.1988 in the presence of the Revenue Officer wherein one of the non-official members stated that Puni Bewa has no land except in mouza Pandado and Olodang whereas another non-official member stated that he had no knowledge about any land possessed by the family members of Puni Bewa. It may be stated that consultation with the local committee does not mean concurrence with it. The Revenue Officer, in fact, on consultation with the local committee on 29.4.1988 and on the basis of other evidence available on record has determined the ceiling surplus land. It is, therefore, not a case where the local committee was not consulted by the Revenue Officer.

8. Shri Mishra also contended that two of the daughters of Puni Bewa who had expired in 1974 and 1980 respectively prior to the institution of the ceiling case should be taken and included in the family of the ceiling surplus holder- Puni

Bewa. In this connection, he referred to a Bench decision of this Court in Mahendra Vs. State of Orissa and Others, wherein it was held that question of allotting the number of units or the extent of area to a "person" has got to be determined with reference to the date on which the 1973 Amending Act came into force, i.e. 2.10.1973 and any subsequent change in the constitution of "family" thereafter is not to be of any consequence and the ceiling decrease in the number of the family members.

The aforesaid observations made by this Court in Mahendra Prahdan (supra) is sought to be utilised as the foundation for an argument that there cannot be any ceiling proceeding with reference to any date subsequent to 2.10.1973. We may state here that provision contained in Section 52 of the Act which deals with ceiling on future acquisition was not brought to the notice of the Bench which decided the case of Mahendra Pradhan (supra). Section 52 of the Act reads as follows:

"52. Ceiling on future acquisition: The foregoing provisions of this Chapter shall, mutatis mutandis apply where lands acquired and held subsequent to the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (President's Act 17 of 1973) by any person through inheritance, bequest, gift, family settlement, purchase, lease or otherwise," together with the lands held by him at the time of such acquisition exceed the ceiling area ;

Provided that the return required u/s 40-A shall be submitted to the Revenue Officer within ninety days from the date of such acquisition:

Provided further that where an application u/s 57-A has been made on behalf of such person within the aforesaid period of ninety days, the return required u/s 40-A shall be submitted to the Revenue Officer within ninety days from the date of final disposal of the proceedings u/s 57-A.

... .."

The aforesaid provision (Section 52) is an answer to the contention that there cannot be any ceiling proceeding with reference to any date subsequent to 2.10.1973.

We may further explain the position which is as follows:

Section 37-A of the Act provides that in respect of a person the ceiling area shall be ten standard acres provided that where the person is family consisting of more than five members the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, by the same shall not exceed 18 standard acres. Section 37-B prohibits a person either as land-holder or as raiyat or as both, from holding any land in excess of the ceiling area. "Person" has been defined in Section 37 (a) to include a "family". "Family" in relation to an individual means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated

by partition or otherwise before 26.9.1970 [vide Section 37(b)]. The provision of Section 37-A has come into force with effect from 2.10.1973. The combined reading of Sections 37-A and 37-B would show that in given point of time after 2.10.1973, a person cannot hold any land in excess of the ceiling area applicable on that given date. Ceiling area is required to be determined with reference to the position prevailing as on 2.10.1973. The question is: Whether after such determination is made, subsequent change in the composition of further addition or acquisition of land would call for subsequent initiation of ceiling proceeding in respect of such person ? The answer is in the affirmative. In other words, after ceiling area is determined as on 2.10.1973 in respect of a person subsequent change in the composition of the family or future acquisition of lands will attract the ceiling law necessitating fresh determination according to the provisions contained in Chapter IV of the Act. As already indicated. Section 52 of the Act permits redetermination of ceiling basing on future acquisition i.e., lands acquired subsequent to 2.10.1973.

For the reasons stated above, we are of the considered opinion that the observations of this Court in Mahendra Pradhan (supra) that question of allotting the number of units or the extent of area to a "person" has got to be determined with reference to the date on which the 1973 Amending Act came into force (2.10.1973) and any subsequent change in the constitution of "family" thereafter is not to be of any consequence and the ceiling area would not fluctuate with the subsequent increase or decrease in the number of the family members should not be construed to mean that once ceiling is determined in respect of family as on 2.10.1973, subsequent change in the composition of family or subsequent acquisition of land will not attract the ceiling law enacted for equitable distribution of agricultural lands and in particular to provide land to landless persons for personal cultivation. If the observations of Mahendra Pradhan's case are read or construed in the manner in which the learned counsels for the petitioner wants us to read, it will frustrate the aim and purpose for which the ceiling law has been enacted.

Now in order to decide the question as raised by Shri Mishra that two of the daughters of Puni Bewa should also be included in her family, factual determination is necessary. We are, therefore, inclined to remand the matters to the Additional District Magistrate to decide this question. This order of remand is only in respect of inclusion or otherwise of the two daughters of Puni Bewa who are said to have expired prior to the institution of the ceiling cases as we have upheld the findings recorded by him on other issues.

9. In the result, the impugned order dated 5.10.1991 of the Additional District Magistrate (Annexure-1 in each of the writ applications) so as far as it relates to his finding on the question of constitution of family of Puni Bewa with her deceased daughters is quashed. The Additional District Magistrate will reconsider the aforesaid question on the basis of materials available on record and decide the matter according to law keeping in view our observations made above.

The writ applications are accordingly disposed of. There would be no order as to costs.

Pradipta Ray, J.

10. I agree.