
(1975) 02 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 791 of 1973

Teja Singh

APPELLANT

Vs

Additional District Magistrate (Executive) and Others

RESPONDENT

Date of Decision : 14-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1976 Ori 11 : (1975) 41 CLT 434

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

Bench : Division Bench

Advocate : P.V. Ramdas, for the Appellant; B.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—At the instance of the Assistant Settlement Officer, Tribal and Rural Welfare Department, a proceeding under Rule 3 of the Orissa Schedule Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 (Orissa Regulation No. 2 of 1956) (hereinafter to be referred to as the Regulation) was initiated. The Assistant Settlement Officer (opposite party No. 3) in his report dated 12-4-1966 found that 0.18 acre of land belonged to Chamara Oram in holding No, 17 Plot No. 935 in village Durjapur in the district of Sundargarh. This land was given to Teja Singh on lease. A notice was issued to the parties interested in the land. In response to the notice Temba Oram, Etue Oram, Buda Oram, Chot Lundia Oram and Goinda Oram appeared. Chamara Oram had two sons--Goinda and Biru. Temba Oram is one of his brothers. Buda Oram and Chot Lundia Oram are his distant cousins. On receipt of notice, Teja Singh (Petitioner) took the plea that he had taken it by lease from one Rur Singh sometime in 1960-61. The Adibasis took the stand that they had let out the land to Rur Singh on rent and had effected no sale. The S. D. O., Panposh, held that Order 10 acre of the suit land had been transferred by Chamara Oram to Rur Singh much before the Regulation came into force. Regarding the balance of 0.08 acre, he held that no transfer had been established and it cannot be

brought within the purview of the Regulation and the aggrieved party may agitate the matter in a competent court of law. Temba Oram, Etua Oram, Buda Oram, Chot Lundia Oram and Goinda Oram filed an appeal before the Collector of Sundargarh against the order of the S. D. O. making the State of Orissa, Teja Singh and Rur Singh as parties. The appellate authority held that the disputed lands had been transferred by sale by the scheduled tribe members in favour of Rur Singh after the Regulation came into force and accordingly such transfers were null and void. He found that 0.14 acre of the disputed land was in possession of Rur Singh and 0.04 acre was in possession of Teja Singh. Rur Singh did not appear at the appellate stage nor has he filed any writ application challenging the finding of the appellate authority. Teja Singh has filed this writ application challenging the legality and propriety of the finding of the appellate authority regarding 0.04 acre.

2. Mr. P. V. Ramdas raised two contentions:--

(i) The Adibasis were not parties to the original proceeding and consequently an appeal at their instance before the Collector of Sundargarh was not maintainable. The Collector exercised his jurisdiction illegally in dealing with the appeal.

(ii) There are no materials on record to show that the Adibasis at all transferred the disputed 0.04 acre which has been found to be in possession of Teja Singh by the appellate authority.

Mr. Mohanty, on the other hand contends that even though the Adibasis were not parties to the original proceeding they appeared therein in response to the notice and gave evidence. Their interest was directly and adversely affected by the disputed lands having been occupied by Teja Singh and Rur Singh and as such an appeal at their instance was maintainable. He further contended that though five of the scheduled tribe members were the appellants, in the writ application only Temba Oram was made party and the other four appellants had not been impleaded as parties. The appellate order has become final and conclusive in favour of the other four members, namely, Etua Oram, Buda Oram, Chot Lundia Oram and Goinda Oram, and if this court interferes in exercise of the jurisdiction under Articles 226 and 227 of the Constitution, then there will be two inconsistent orders in one and the same proceeding and as such this court would refuse to exercise the jurisdiction.

3. The finding of the appellate authority is that 0.04 acre out of the disputed land is in possession of Teja Singh which he purchased from Rur Singh who purchased the same from the scheduled tribe members subsequent to the coming into force of the Regulation. This finding has become concluded and final in favour of Etua, Buda, Chot Lundia and Goinda. Even if we examine the materials on the record and come to the conclusion that the finding is based on no evidence, still we cannot interfere in exercise of the jurisdiction under Articles 226 and 227 of the Constitution as a reversal of the order of the appellate authority in favour of Teja Singh would result in two inconsistent orders being passed in one and the same

proceeding. The writ application is liable to be dismissed on this simple ground. It is, therefore, not necessary to examine the merit of the contention urged by Mr. Ramdas that the factual finding of the appellate authority is based on no evidence.

4. The contention that the appeal filed at the instance of the scheduled tribe members before the Collector, Sundargarh was not maintainable as they were not parties to the original proceeding is not a correct proposition of law; It is not necessary to cite several decisions. The matter is concluded by Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., . Their Lordships held that it is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment. There can be no controversy that the scheduled tribe members would have been prejudicially affected by the order of the original authority if they would not have been permitted to file the appeal. It is, however, to be noted that they filed no application to obtain the leave of the court and the order sheet does not indicate that leave of the Court was expressly granted for filing the appeal. There again the difficulty of the petitioner is that he did not raise such an objection before the appellate authority. If an objection would have been raised, the scheduled tribe members could have filed an application for leave subsequent to the filing of the appeal and in the facts and circumstances of this case leave would have been granted and that would have regularised the matter. In the absence of any objection before the appellate authority on this score such an objection cannot be entertained in the writ application.

5. The result of the aforesaid discussion is that we cannot exercise our jurisdiction under Articles 226 and 227 of the Constitution as the writ application is not properly constituted. The application fails and is dismissed, but in the circumstances parties would bear their own costs throughout.

N.K. Das, J.

6. I agree.