

(1990) 01 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No's. 1052-53 of 1990

The Revenue Officer and others

APPELLANT

Vs

Prafulla Kumar Pati and others

RESPONDENT

Date of Decision : 17-01-1990

Acts Referred:

Constitution of India, 1950 — Article 341
Orissa Land Reforms Act, 1960 — Section 22, 23
Registration Act, 1908 — Section 17(1)

Citation : AIR 1990 SC 727 : (1990) 69 CLT 732 : (1990) 1 JT 155 : (1990) 1 SCALE 124 : (1990) 2 SCC 162 : (1990) 1 SCR 88 : (1990) 1 UJ 390

Hon'ble Judges : K. Jayachandra Reddy, J; B. C. Ray, J

Bench : Division Bench

Advocate : A.K. Sen, N.D.B. Raju, K. Rajeshwaran and N. Gabpathy, for the Appellant; Kundan Lal Jagga and K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

1. Special leave granted. Arguments heard.

2. These two appeals on special leave arise out of the common judgment of the High Court of Orissa made in O.J.C. Nos. 1007 and 1008 of 1983 decided on July 4, 1986 whereby the High Court set aside and quashed the impugned orders made by the Special Officer, Land Reforms, Central Division, Cuttack in O.L.R. Revision No. 131 of 1982 as well as O.L.R. No. 142 of 1982.

3. The matrix of the case in O.J.C. No. 1007 of 1983 is that on July 30, 1977, the respondent No. 2, Paramanand Sethi filed case No. 85 of 1977 u/s 22 of the Orissa Land Reforms Act, against S/Shri B. Mohapatra, Prafulla Kumar Pati and Gadadhar Pati (Respondent Nos. 1, 3 and 4) for restoration of lands sold to respondent Nos. 1, 3 and 4 on the ground that respondent No. 2 was a member of the Scheduled Caste (Dhoba Community) and the sales in question were hit by the provisions contained in Section 22 of the Orissa Land Reforms Act, 1960. The respondent No. 2 filed a caste certificate of the Additional Tehasildar, Betanoti

wherein the respondent No. 2 was shown as belonging to 'Dhoba' by caste which is recognised as a Scheduled Caste. He also filed the record of rights in the name of Arjun Sethi, father of respondent No. 2 which showed the caste of Arjun Sethi as 'Dhoba'.

4. The respondent No. 5, Smt. Nilamani Sethi, wife of Late Bhanu Sethi also filed O.L.R. Misc. Case No. 21 of 1979 u/s 22 of the Orissa Land Reforms Act stating inter alia that the sale made by her in favour of respondent No. 1 who admittedly belonged to Brahmin Caste is void as the said sale was made without the permission of the Revenue Officer as mandatorily required under the provisions of the said Act. She produced the Caste certificate issued by the Tehasildar, Betanoti which showed that she belonged to 'Dhoba' caste which is recognised as a scheduled caste. She further filed two caste certificates issued by the two M.L.As. which certified that she belonged to a scheduled caste, (Dhoba).

5. The Revenue Officer, vide his order dated March 19, 1979 rejected the case No. 85 of 1977 filed by the respondent No. 2, Paramanand Sethi. The respondent No. 2 filed O.L.R. Appeal No. 89 B of 1979 in the court of Additional District Magistrate, Mayurbhanj and the same was allowed vide judgment and order dated December 22, 1980. The Additional District Magistrate while allowing the appeal observed as follows:

It is a known fact that there is no community called 'Rajaka' community which is different from Dhoba community. Rajaka is only a literary word for the common term Dhoba. While mentioning his caste as 'Rajaka' the appellant has not ceased to be a 'Dhoba'. The certificate given by the Addl. Tehasildar, Betanoti and the entry in the R.O.R. confirm the assertion of the petitioner that he is a Dhoba by caste. In the circumstances, the petitioner must be held to be a S.C. person and for that matter, his brothers and mother are also the members of a S.C. According to Section 22 of the Orissa Land Reforms Act previous permission from the Revenue Officer should have been obtained by them before transferring their lands to the respondents. Since this statutory requirement has not been met, the transfers are illegal. The suit land must, therefore, be restored to the transferors.

6. Against the said judgment and order, the respondent No. 1 filed O.L.R. Revision No. 131 of 1982 before the Special Officer, Land Reforms, Central Division, Cuttack. The said Revision Case was dismissed vide judgment and order dated March 4, 1983 on the finding that there were records of competent authorities like Addl. Tehasildar, Betanoti and the record of rights showing that the caste of Paramanand Sethi is 'Dhoba'. It has been further observed that:

As per the Oriya Bhasakosha the definition of 'Dhoba' is 'Rajaka? Washerman'. Hence, there is no conflict regarding what is the meaning of 'Rajaka'. It is merely a synonym of the word 'Dhoba'. The Sanskrit for 'Dhoba' is 'Rajaka'. Just because the word 'Rajaka' does not find mention in the Presidential Order does not exclude it from the purview of such an order. 'Dhobas' are Scheduled Castes and 'Rajaka' is a synonym of 'Dhoba'. Now, that the High Court has so eloquently

laid down the law in this regard, there is no reason to deny protection to the weaker sections on a mere technicality. This denial would be contrary to the spirit of the Orissa Land Reforms Act, itself.

7. O.L.R. Misc. Case No. 21 of 1979 filed by the respondent No. 5, Smt. Nilamani Sethi was allowed vide order dated March 10, 1980 by the Revenue Officer directing the restoration of the suit lands to respondent No. 5 u/s 23 of the Orissa Land Reforms Act. The respondent No. 1 filed O.L.R. Appeal No. 42 of 1980 in the Court of Additional District Magistrate, Mayurbhanj. The said appeal was dismissed vide judgment and order dated February 21, 1981 holding that the transferor had amply proved that she was Dhoba which is a Scheduled Caste by producing documentary evidence. She, therefore, does not cease to be a Dhoba even if she has described herself in the various deeds as Rajaka. Since the transfer of the suit lands had been made to the respondent No. 1, Prafulla Kumar Pati who is a brahmin by caste without obtaining prior written permission of the Revenue Officer as required u/s 22 of the Orissa Land Reforms Act, the transactions had been rightly declared as void by the Revenue Officer. The suit lands must therefore, be restored to the possession of the respondent No. 5.

8. Against this order, respondent No. 1 filed O.L.R. Revision No. 142 of 1982 before the Special Officer, Land Reforms, Central Division, Cuttack and the same was dismissed vide judgment and order dated February 2, 1983.

9. The respondent No. 1 thereafter filed two writ petitions called O.J.C. Nos. 1007 and 1008 of 1983 against the judgments and orders dated March 4, 1983 and February 2, 1983 respectively passed by the Special Officer, Land Reforms, Central Division, Cuttack. Both these writ petitions were heard and disposed of by a common judgment impugned in these two appeals on special leave whereby the High Court, Orissa set aside and quashed the judgments and orders passed by the Special Officer, Land Reforms, Central Division, Cuttack and allowed the writ petitions observing inter alia that:

Considering the cases in hand in the light of the above discussions, I have no hesitation to come to the conclusion that the Revenue Authorities have committed a serious error of law in coming to the conclusion that 'Rajaka' caste was included within the notified caste/community of 'Dhoba' as their nature of work was similar. Although it is unnecessary to make any further discussion, I must point out that even on a reference to the Bhashakosha it could not be categorically said that 'Rajaka' was a caste which could not be said to be a class of washerman as the Bhashakosha itself gives other meanings of this word.

10. Against this judgment and order, the instant appeals on special leave have been filed. Before proceeding to decide the question whether the respondent Nos. 2 and 5, the transferors belonged to the scheduled caste? Dhoba Community as mentioned in item No. 26 of the List of Scheduled Castes in the Scheduled Caste Order, 1950 in the State of Orissa, it is relevant to refer to the provisions of Section 22 and Section 23 of the Orissa Land Reforms Act, 1960 (Orissa Act

16 of 1960):

Section 22: Restriction on alienation of land by Scheduled Tribes. (1) Any transfer of a holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of?

(a) a person belonging to a Scheduled Tribe; or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer:

Provided that in case of a transfer by sale the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

(2) The State Government may having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification direct that the restrictions provided in Sub-section (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force where any document required to be registered under the provisions of Clause (a) to Clause (e) of Sub-section (1) of Section 17 of the Registration Act, 1908 (16 of 1908) purports to effect transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe in favour of a person not belonging to a Scheduled Tribe, no registering officer appointed under that Act shall register any such document, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

(5) The provisions contained in Sub-section 1 to 4 shall apply, mutatis mutandis, to the transfer of a holding or part thereof of a raiyat belonging to the Scheduled Castes.

(6) Nothing in this section shall apply

(a) to any sale in execution of a money decree passed, or to any transfer by way of mortgage executed, in favour of any scheduled bank or in favour of any bank to which the Orissa Co-operative Societies Act, 1962 (Orissa Act 33 of 1962) applies; and

(b) to any transfer by a member of a Scheduled Tribe within a Scheduled Area.

Section 23: Effect of transfer in contravention of Section 22. (1)

In the case of any transfer in contravention of the provisions of Sub-section (1)

of Section 22 the Revenue Officer on his own information or on the application of any person interest in the land may issue notice in the prescribed manner calling upon the transferor and transferee to show cause why the transfer should not be declared invalid.

11. Section 22 clearly enjoins that a person belonging to Scheduled Tribe can not make a valid transfer of his lands in favour of a person not belonging to the Scheduled Tribe without obtaining the previous permission in writing of the Revenue Officer to such transfer. Sub-section 5 of the said section further provides that the provisions contained in Sub-section 1 to 4 shall apply, mutatis mutandis to the transfer of a holding or part thereof a raiyat belonging to the Scheduled Castes. Section 23-B of the said Act further provides that if the validity of the transfer of any holding or part thereof is in question, the burden of proof that the transfer was valid shall, notwithstanding anything contained in any other law for the time being in force, lie on the transferee.

12. In this case, the transfers made by the respondent Nos. 2 and 5 in favour of respondent No. 1, Prafulla Kumar Pati who admittedly belongs to Brahmin caste are hit by the provisions of Section 22 of the said Act in as much as the previous permission in writing of the Revenue Officer had not been obtained to the alleged transfers. It has been submitted on behalf of the respondent Nos. 2 and 5 that they belong to Dhoba (Dhobi) community which is one of the Scheduled Caste in the State of Orissa under the Scheduled Caste Order, 1950. It has been further contended that the father of the respondent No. 2 has been recorded as belonging to Dhoba community in the finally published record of rights which has been annexed as Annexure 'B' to these appeals. It has also been submitted on behalf of the respondent Nos. 2 and 5 that the caste certificates granted by the Tehsildar, Betanoti as well as by the two local M.L.As. clearly established that the respondent Nos. 2 and 5 belong to Dhoba community and as such they are Scheduled Castes. Much argument has been advanced on the mentioning of the caste of these two respondents as 'Rajaka' in the alleged deeds on the ground that the caste 'Rajaka' as mentioned in the sale deeds did not find place in the List and instead the Caste 'Dhoba' appears in Item 26 of the List of Scheduled Castes in the State of Orissa under the Constitution of Scheduled Caste Order, 1950 as made under Article 341 of the Constitution of India. It has been urged in this connection that the Caste 'Rajaka' as mentioned in the deeds can not be taken to be synonym of caste 'Dhoba' and no evidence can be adduced to that effect to prove that 'Rajaka' included within the notified caste, commentary of 'Dhoba' as held by the High Court.

13. We are unable to accept this contention advanced on behalf of the respondent Nos. 1, 3 and 4 on the ground that the caste of the respondent No. 2 and 5 was mentioned in the caste certificates granted by the Tehsildar, Betanoti as 'Dhoba'. Moreover, in the finally published record of rights the caste of the father of respondent No. 2 had been recorded also as 'Dhoba' which undoubtedly is a Scheduled Caste under the Scheduled Castes Order, 1950 issued under the

provisions of Article 341 of the Constitution of India. It is also pertinent to mention that 'Rajaka' is the literal synonym for the word 'Dhoba' and according to the Purna Chandra Oriya Bhasakosha which is a recognised authority, the definition of 'Dhoba' is Rajaka-washerman. As such, the submission that the caste 'Rajaka' is different from caste 'Dhoba' is not at all sustainable. It is pertinent to refer in this connection to the observations of the Supreme Court in *B. Basavalingappa Vs. D. Munichinnappa*, wherein it has been observed that:

Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the Order.

But that in our opinion does not conclude the matter in the peculiar circumstances of the present case. The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all. The Order refers to a scheduled caste known as Bhovi at the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order, when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to courts to find out which caste was meant by Bhovi is to take evidence in that behalf.

14. In the instant case, referring to this decision even though the respondent Nos. 2 and 5 i.e. the transferors mentioned in the deeds of transfer their caste as 'Rajaka', there is no such caste mentioned in the Constitution of Scheduled Caste Order, 1950. In such circumstances, relying on the aforesaid observation of this Court, it is necessary and also incumbent on the Court to consider as to what caste the respondent Nos. 2 and 5 belong to. Moreover, considering the record of rights as well as the various certificates issued by the revenue authorities and the local M.L.As. referred to hereinbefore wherein the transferors have been described as belonging to 'Dhoba' community, the irresistible conclusion that follows is that the respondents-transferors belong to 'Dhoba' caste which is one of the Scheduled Caste in the State of Orissa.

15. In the premises aforesaid the judgment and order of the High Court referred to in O.J.C. Nos. 1007 and 1008 of 1983 are liable to be set aside. We, therefore, set aside the same and affirm the order of the Special Officer, Land Reforms, Central Division, Cuttack passed in O.L.R. Revision No. 131 of 1982 and O.L.R. No. 142 of 1982. The respondent Nos. 1, 3 and 4 are directed to restore the lands in question to the possession of the respondent Nos. 2 and 5 forthwith. The appeals are allowed without any order as to costs.