

(1973) 07 OHC CK 0028
In the Orissa High Court
Case No : A.H.O. No. 5 of 1970

V. Krishna Rao Dora and Others

APPELLANT

Vs

Kotini Sitaram Dora and Others

RESPONDENT

Date of Decision : 16-07-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 —
Section 2, 3, 3(1), 3A, 4(1)
Orissa Estates Abolition Act, 1951 — Section 39, 6, 6(1), 7, 7(1)

Citation : (1973) 39 CLT 975

Hon'ble Judges : G.K. Misra, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : B. Mohapatra, for the Appellant; N.V. Ramdas, for the Respondent

Judgement

G.K. Misra, C.J.—Plaintiff's case may be stated in short. S. Pitamber Dora, S. Ramaswami Dora and S. Chakrapani Dora were the intermediaries in Khas possession of the disputed agricultural lands. On 3rd of June, 1946 they sold the disputed lands by a registered sale deed (Ext. 1) for Rs. 2,000/- to Plaintiff No. 2, the Karta of the family of the Plaintiffs and gave delivery of possession. Plaintiffs were thus the intermediaries in Khas possession of the disputed lands. In paragraph 3 of the plaint the Plaintiffs averred that their vendors and after the purchase they themselves were treating the disputed lands as their private lands. First Defendant K. Sitaram Dora is the brother-in-law of the vendors and in collusion with them he got himself surreptitiously recorded as the tenant of the disputed lands though he was an attester to the sale deed (Ext. 1). Against this entry in the record-of-rights the Plaintiffs filed a revision before the Board of Revenue which was pending by the time the suit was filed in 1961. The Plaintiffs have filed an application on 16-12-1957, after vesting, u/s 8-A(1) of the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952) (hereinafter to be referred to as the Act) for settlement of fair and equitable rent in respect of the disputed lands which were deemed to be settled with them u/s 7 of the Act. On

19-12-1957 Defendant No. 1 filed a similar application. The Orissa Estates Abolition Collector (hereinafter to be referred to as the Collector) disposed of the application of the Plaintiffs on 9-8-1959 in their absence by reference to the record-of-rights showing that Defendant No. 1 was the occupancy tenant in respect thereof and as such the lands cannot be deemed to have been settled with the Plaintiffs. The Plaintiffs got notice of this order on 4-2-1961 in some other proceeding when a certified copy of the order was filed by Defendant No. 1. They accordingly applied for a certified copy of the same order but it was not supplied to them as the records were said to be untraced. The Plaintiffs could not accordingly file an appeal. They made an application before the Member, Board of Revenue, for directing the Collector to make appropriate enquiry. This application was sent by the Board of Revenue to the Additional District Magistrate, the Appellate authority against the Collector u/s 9 of the Act. The Additional District Magistrate made a thorough enquiry and directed remand of the case on the 13th of September, 1961 by his order Ext. 5. The Additional District Magistrate held that the Collector had disposed of the application of the Plaintiffs behind their back without giving them any opportunity. He treated the application before the Board of Revenue as an appeal and condoned limitation holding that there was sufficient cause. Ext. 5 was filed before the trial Court. As the proceedings before the Collector after remand had not come to a close, the Plaintiffs could not file the final order of the Collector in the trial Court and the same (Ext. 9) dated 14-3-1964 was filed before the Subordinate Judge by way of additional evidence. In Ext. 9 the Collector held that the Plaintiffs successfully established that they were intermediaries of the disputed lands in Khas possession on the date of vesting and as such the suit lands were deemed to be settled with them u/s 7(1) of the Act and that Defendant No. 1 had no occupancy right therein. The suit was filed by the Plaintiffs on account of a proceeding u/s 145, Code of Criminal Procedure which terminated in their favour on 15-10-1960 in the Court of the Magistrate 1st Class but ultimately decided against them in Criminal Revision No. 419 of 1950 wherein the High Court held on 10-5-1961 that Defendant No. 1 was in possession of the disputed lands on the date of the preliminary order. The Plaintiffs accordingly filed the suit for declaration of title and confirmation of possession on the plea that after the High Court passed the order in Crl. Revision No. 419 of 1960 the Plaintiffs had not been dispossessed and were continuing in possession. The second Defendant is an alienee from the first Defendant pendente lite and he filed an application for being impleaded as a party before the Subordinate Judge at the Appellate stage which was allowed.

The case of the first Defendant is that he was an occupancy raiyat under the vendors of the Plaintiffs prior to Ext. 1 and he continued to be an occupancy raiyat subsequent to the sale and was paying Raj Bhag to the Plaintiffs after their purchase. Under Ext. 1 the Plaintiffs purchased only the Melawaram right but not the Kudiwaram right which vested in him. "The disputed lands were not the private lands of the Plaintiff's vendors or the Plaintiffs after their purchase. The first Defendant was all-through in possession and in view of the order passed by

the High Court in the proceeding u/s 145, Code of Criminal Procedure that he was in possession on the date of the preliminary order the suit for confirmation of possession was not maintainable.

2. The learned Munsif held that the first Defendant was in possession of the disputed lands and under Ext. 1 the Plaintiffs merely purchased the Melawaram right. On the finding that the disputed lands were private lands of the Plaintiffs he held that the sale under Ext. 1 was hit by Section 3 of the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 (Orissa Act I of 1948) (hereinafter to be referred to as the 1948 Act). Be accordingly dismissed the Plaintiff's suit.

In appeal, the learned Additional Subordinate Judge held that the vendors of the Plaintiffs and after them the Plaintiffs were in Khas possession under Ext. 1 whereunder both the Melawaram and the Kudiwaram rights had been transferred by the vendors. He further held that Ext. 9, the order of the Estates Abolition Collector, holding that the Plaintiffs were intermediaries in Khas possession concluded the matter in favour of the Plaintiffs and that Ext. 1 was not hit by the 1948 Act. He accordingly decreed the suit.

3. The learned Single Judge recorded the following conclusions:

(i) The decree of the lower Appellate Court for confirmation of possession is not sustainable in the face of the final order u/s 145, Code of Criminal Procedure passed by the High Court declaring that the first Defendant was in possession on the date of the preliminary order.

(ii) He did not express any final opinion as to whether the civil suit was barred u/s 39 of the Act.

(iii) He also did not express any final opinion as to whether the Plaintiffs or the first Defendant were in possession of the disputed lands on the date of vesting.

(iv) The disputed lands admittedly being the private lands of the intermediaries, Ext. 1 was hit by Section 3 of the 1948 Act and was void and as such the Plaintiffs cannot acquire any title thereunder. Whether the Plaintiffs can acquire a valid title under Ext. 1 is a matter which lies exclusively within the jurisdiction of the District Judge u/s 4(2) of the 1948 Act.

The learned Single Judge dismissed the suit on the ground that the Plaintiffs shall have to establish their title under Ext. 1 before the District Judge and the same cannot be adjudicated by the ordinary Civil Court.

4. Both the points on which the learned Single Judge has expressed final opinion and dismissed the suit cannot be sustained.

5. The averment of the Plaintiffs in paragraph 3 of the plaint was to the following effect:

The suit lands were under the personal cultivation of the Plaintiff's vendors and

they were always treating the same as their private lands.

There is no other averment or any evidence in support of the place that the disputed lands were the private lands of the intermediaries. The averment that the intermediaries were treating the disputed lands as their private lands does not establish that the disputed lands are private lands. The first Defendant on the other hand seriously contested the position that the disputed lands are not the private lands of the intermediaries. The onus was heavy on the Plaintiffs to plead and prove that the disputed lands were private lands. Not only they have not pleaded such a case but they have completely failed to establish the same.

The idea of just faintly saying that the Plaintiffs treated the disputed lands as their private lands was to assert that the first Defendant even if he was in possession of the disputed lands cannot acquire occupancy right, the admitted legal position being that there will be no accrual of occupancy right in respect of the private lands of the landlord. In view of our conclusion that there is no plea or proof of the disputed lands being the private lands of the Plaintiffs the applicability of the 1948 Act does not arise. Section 3(1) of that Act lays down that no landlord shall without the previous sanction of the Collector, sell private lands and Section 4(2) prescribes that the District Judge would be the forum to determine the validity of a claim coming u/s 4(1). The question of applicability of Sections 3 and 4(2) of the 1948 Act does not arise for consideration as the disputed lands are not private lands. Ext. 1 is, therefore not hit by Section 3 of the 1948 Act. Mr. Mohapatra frankly conceded that he cannot sustain the claim of the Plaintiffs that the disputed lands are private lands.

6. The learned Single Judge also held that the suit was not maintainable as the Plaintiffs did not ask for the relief of recovery of possession and were satisfied with the relief of confirmation of possession. Law is now well settled that both "recovery of possession" and "confirmation of possession" are consequential reliefs. If the suit is for declaration of title and anyone of these consequential reliefs, then the Plaintiffs are to pay ad valorem Court-fee. In this case, ad valorem Court-fee has been paid on the amount for which the suit was valued. In fact, the quantum of Court-fee being disputed the matter was ultimately decided by the Taxing Judge who held that the ad valorem Court-fee paid on the disputed lands on the reduced valuation was sufficient. Doubtless, when possession is declared in favour of a party in a proceeding u/s 145, Code of Criminal Procedure the party not in possession must ask for the relief of recovery of possession, he having been held as being out of possession. But where ad valorem Court-fee has been paid, it is open to the Court to grant the relief of recovery of possession even if the prayer is for confirmation of possession. Such a relief would come within the ambit of the wide powers conferred upon the Courts to grant relief and that is why an omnibus prayer is added in the plaint that the Court may grant such relief as it thinks fit. In this case, the plaint contains such a prayer. Even if such a prayer had not been made, the Court is not powerless to grant the relief. In the facts and circumstances of this case the relief of recovery of possession

can be granted to the Plaintiffs even though they prayed for confirmation of possession as they had paid ad valorem Court-fee which is payable in a suit for declaration of title and recovery of possession.

7. The findings of the learned Single Judge on which he expressed final opinion having been reversed the other relevant points on which he did not express final opinion may now be examined. These points are:

(i) Were the Plaintiffs in Khas possession of the disputed lands on the date of vesting?

(ii) Has the Civil Court jurisdiction to go into the question as to who was in possession on the date of vesting after the Collector's order in Ext. 9 u/s 8-A of the Act that the Plaintiffs were in Khas possession on the date of vesting?

(iii) Is Ext. 9 void and not binding on the Civil Court?

8. The learned Subordinate Judge held that under Ext. 1 the Plaintiffs acquired both the Melawaram and the Kudiwaram rights and that the Plaintiffs were in possession of the disputed lands on and before the vesting of the estate. His finding may be stated in his own words:

In view of the above circumstances I in disagreement with the learned Munsif hold that it is the Plaintiffs and their vendors who were in actual physical possession of the land in suit and the Defendant has not acquired the Kudiwaram right in respect of the suit land.

This finding is a pure finding of fact based on evidence and is binding on us in second appeal. Nothing substantial has been urged that the finding is contrary to law. A bare perusal of Ext. would show that it conveyed both the Melawaram and the Kudiwaram rights. It is unnecessary to refer to the very materials on which the learned Subordinate Judge relied in support of his conclusion that the Plaintiff's vendors and after them the Plaintiffs were in Khas possession of the disputed lands. As would, however, be presently indicated, the Civil Court has no jurisdiction to again go into the question of possession on the date of vesting after the Collector's order in Ext. 9.

9. Assuming that the Plaintiff's vendors and after them the Plaintiffs were not in Khas possession of the disputed lands on and before the date of vesting, it is necessary to examine whether the Civil Court has got jurisdiction to go behind Ext. 9 wherein it was held that the Plaintiffs were in Khas possession on the date of vesting. This problem necessitates an examination of the relevant provisions of the Act.

10. Section 2(j) defines "Khas possession". "Khas possession" used with reference to the possession of an intermediary of any land used for agricultural or horticultural purposes, means the possession of such intermediary by cultivating such lands or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock.

Section 3 empowers the State Government to issue notification vesting an estate in the State.

Section 5(a) deals with the consequences of vesting of an estate in the State. So far as relevant, it runs thus:

5. x x x

(a) subject to the subsequent provisions of this Chapter the entire estate including all communal lands and porambokes, other non-raiyati lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals (whether discovered or undiscovered, or whether being worked or not, inclusive of rights in respect of any lease of mines and minerals) quarries, rivers and streams, tanks and other irrigation works, water channels, fisheries, ferries hats and bazars, and buildings or structures together with the land on which they stand shall vest absolutely in the State Government free from all encumbrances and such Intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of this Act:

Explanation- "Encumbrance" means a mortgage of or a charge on any estate or part thereof and includes any rights" in land or other immovable property comprised in an estate, but does not include an Intermediary interest or the interest of a raiyat or an under-raiyat.

Section 6(1), 7(1), 8(1), 8-A and 39 are extracted here under.

6. Homesteads of Intermediaries and buildings together with lands on which such buildings stand in the possession of Intermediaries and used as golas, factories or mills to be retained by them on payment of rent (1) with effect from the date of vesting, all homesteads comprised in an estate and being in the possession of an Intermediary on the date of such vesting, and such, buildings or structures together with the lands on which they stand, other than any buildings used primarily as offices or kutcheries or rest houses for estate servants on duty as were in the possession of an Intermediary at the commencement of this Act and used as golas (other than galas used primarily for storing rent in kind), factories or mills for the purpose of trade, manufacture or commerce, or used for storing grains or keeping cattle or implements for the purpose of agriculture and constructed or established and used for the aforesaid purposes before the 1st day of January, 1946, shall, notwithstanding anything contained in this Act, be deemed to be settled by the Government with such Intermediary and with all the shareholders owning the estate, who shall be entitled to retain possession of such homesteads and of such buildings or structures together with the lands on which they stand, as tenants under the State Government subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner:

Provided that where the Intermediaries have come to any settlement among themselves regarding the occupation of buildings and file a statement to that

effect before the Collector, the buildings shall be deemed to have been settled with the Intermediaries according to that settlement:

Provided further that homesteads in actual possession of the Intermediary shall be settled with him free of ground-rent in those areas where no ground-rent is charged under the existing law on homestead lands.

7. Certain other lands in khas possession of Intermediaries to be retained by them on payment of rent as raiyats having occupancy rights:

(1) On and from the date of vesting:

(a) All lands used for agricultural or horticultural purposes which were in Khas possession of an Intermediary on the date of such vesting,

(b) lands used for agricultural or horticultural purposes and held by a temporary lessee or lessees or an Intermediary who owns either as Intermediary or in any other capacity less than thirty-three acres of land in total extent situated within the State,

(c) lands used for agricultural or horticultural purposes and in possession of a mortgage, which immediately before the execution of the mortgage bond were in Khas possession of such Intermediary, shall notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and with all the shareholders owning the estate and such Intermediary with all the shareholders shall be entitled to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner:

Provided that where the Intermediaries have come to any settlement among themselves regarding occupation of lands and file a statement to that effect before the Collector the land shall be deemed to have been settled with the Intermediaries according to that settlement.

8. Continuity of tenure of tenants:

(1) any person who immediately before the date of vesting of an estate in the State Government was in possession of any holding as a tenant under an Intermediary shall on and from the date of vesting, be deemed to be a tenant of the State Government and such person shall hold the land in the same rights and subject to the same restrictions and liabilities as he was entitled or subject to, immediately before the date of vesting.

8-A. Filing of claims under Sections 6, 7 and 8 and dispute relating thereto:

(1) The Intermediary shall file his claim in the prescribed manner for settlement of fair and equitable rent in respect of lands and buildings which are deemed to be settled with him u/s 6 or Section 7 before the Collector within six months from the date of vesting.

(2) Any person who is discharged from the conditions of personal service under Sub-section (3) of Section 8 may file his claim in the prescribed manner before the Collector within six months from the date of vesting for settlement of the lands held under the terms and conditions of such service.

Provided that the Collector shall, as soon as may be after any such claim under Sub-section (1) or Sub-section (2) is filed, give public notice thereof by beat of drum in the appropriate locality and by placards posted at such conspicuous places as he deems fit, inviting objections from persons interested:

Provided further that in respect of estates which have vested in the State Government prior to the date of commencement of the Orissa Estates Abolition (Second Amendment), Act, 1957, (Orissa Act 3 of 1958), the claims mentioned in Sub-sections (1) and (2) shall be filed before the Collector within a period of six months from the date:

Provided also that the State Government may further extend the period specified in the last preceding proviso up to a maximum period of one year for any sufficient cause in any case or class of cases.

(3) On the failure of filing the claims within the period specified under this section the provisions of Clause (h) of Section 5 shall, notwithstanding anything to the contrary in Sections 6, 7 and 8, apply as if the right to possession of the lands or buildings or structures, as the case may be, had vested in the State Government by the operation of this Act and, thereupon the right to make any such claim as aforesaid shall stand extinguished:

Provided that when such failure is due to the pendency of proceedings in a Court of law in which the validity of any notification u/s 3 or 3-A is in dispute, the State Government may by order specially made in that behalf, extend the period for filing of the claim.

(4) Any person disputing the claim as to the extent or possession of such lands or buildings or structures, as the case may be, may file an objection before the Collector within three months from the date of the public notice under Sub-section (2) of such claim and the Collector shall, prior to the determination of rent under Sections 6, 7 and 8, enquire into the matter in the manner prescribed and pass such order as he deems just and proper.

10. Bar to jurisdiction of Civil Courts in certain matters:

No suit shall be brought in any Civil Court in respect of any entry in or omission from a Compensation Assessment roll or in respect of any order passed under Chapters II to VI or concerning any matter which is or has already been the subject of any application made or proceeding taken under the said Chapters.

11. Interests of raiyats in an estate do not vest in the State on the vesting of an estate. The Explanation to Section 5(a) excludes it from the definition of "Encumbrance" and the main part of Section 5(a) makes the position dear. The

matter is concluded by *Kumar Bimal Chandra Sinha v. State of Orissa* 1963 S.C.D 226. The facts of that case show that the proprietors of Paikpara estate in the State of Orissa purchased certain occupancy holdings under certain tenure holders. They contended that the occupancy rights purchased by them had not vested in the State of Orissa as a result of the notification u/s 3. It was contended on behalf of the State that the occupancy holding purchased by the proprietors was situate within the tenure held under the proprietors and lay within the geographical limits of the estate which vested in the State and as such the occupancy right also vested. This contention was negatived. In paragraph 5 of the judgment their Lordship observed thus:

Hence, the position in law is that though these lands with the buildings are situate geographically within the ambit of the Appellant's estate, they are not part of the estate. In other words, the Appellants hold those properties with the buildings not as proprietors as such, but as raiyats.

In paragraph 8 their Lordships further observed in unambiguous language:

But that does not mean that the interests of raiyats also have become vested in the State as a result of the notification u/s 3 read with Section 5.

The legal position can, therefore, be taken as settled that interests of raiyats whether they belong to the proprietors or tenants do not vest in the State as a result of vesting of the estate by notification u/s 3. Such raiyati rights are recognized and saved u/s 8 of the Act.

12. The position of law is, however, different in respect of other lands in which an Intermediary is in Khas possession. *Shivashankar Prasad Shah and Anr. v. Baikunth Nath Singh Ors.* 1969 S.C.D. 982. deals with such a case. This case dealt with the scope of Sections 3, 4 and 6 of the Bihar Land Reforms Act, 1950 which correspond to Sections 3, 5(a) and 7 of the Act. The question that arose therein was whether on the vesting of an estate that lands in Khas possession of an Intermediary coming within the ambit of Section 6 of that Act was excluded from the operation of vesting. In paragraph 10 of the judgment their Lordships observed thus:

Reading Sections 3, 4 and 6 together, it follows that all Estates notified u/s 3 vest in the State free of all encumbrances. The quondam proprietors and tenure-holders of those Estates lose all interests in those Estates. As proprietors they retain no interests in respect of them whatsoever. But in respect of the lands enumerated in Section 6 the State settled on them the rights of raiyats. Though in fact the vesting of the Estates and the deemed settlement of raiyat's rights in respect of certain classes of lands included in the Estates took place simultaneously, in law the two must be treated as different transactions, first there was a vesting of the Estates in the State absolutely, and free of all encumbrances. Then followed the deemed settlement by the State of raiyats' rights on the quondam proprietors. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within

Section 6.

It is to be noted that an Intermediary may be in Khas possession of raiyati lands and lands which are not raiyati. Raiyati lands in Khas possession of the Intermediary would not vest in the State on the vesting of the estate. Such a case would be covered by *Kumar Bimal Chandra Sinha v. State of Orissa* 1963 S.C.D 226, and Section 8 of the Act. On the other hand, other agricultural lands which are in the Khas possession of the Intermediary in which he has no raiyati rights would vest in the State absolutely u/s 5(a) and is not saved by Section 7(1). Though the incidence of vesting and saving with reference to lands in Khas possession of the Intermediary u/s 7(1) operates simultaneously the two are to be deemed as two different transactions. The first transaction in point of time is the vesting of the estate. Consequently lands covered by Section 7(1) of the Act which are in Khas possession of an Intermediary would vest in the State absolutely on the issue of the notification u/s 3. By a subsequent transaction the same lands shall be deemed to have been settled with the Intermediary provided the conditions prescribed in Section 8-A of the Act are complied with. To the latter class of cases the principles of *Shivashankar Prasad Shah and Anr. v. Baikunth Nath Singh and Ors.* 1969 S.C.D. 982, apply. The aforesaid two Supreme Court decisions cover two different fields. They are not inconsistent. *Bhagaban v. Ananda* is contrary to *Shivashankar Prasad Shah and Anr. v. Baikunth Nath Singh and Ors.* 34 (1968) C.L.T. 1289, and does not lay down good law.

Though the language in Sections 7(1) and 8(1) is similar in using the words "shall, on and from the date of vesting, be deemed to be settled", yet in relation to vesting and saving Section 7(1) is to be differently treated from Section 8(1).

13. If the case of the first Defendant that he was the occupancy raiyat of the disputed lands before vesting had been found to be true by the Collector in Ext. 9, clearly he would have no jurisdiction to hold that the lands shall be deemed to have been settled with the Intermediary. If the contest in respect of the disputed lands is between two persons, each claiming occupancy right, the Collector has no jurisdiction to determine such a dispute. Determination of such a dispute lies within the exclusive jurisdiction of the Civil Court.

14. The position is, however, otherwise where an intermediary claims to be in Khas possession of the disputed lands and the rival claimant is an occupancy raiyat claiming possession as in the position here between the Plaintiffs and the first Defendant.

To establish their claim, Plaintiffs have to make an application to the Collector u/s 8-A(1) of the Act for settlement of fair and equitable rent in respect of the lands which are deemed to be settled with them. If the claim is not filed within the period of limitation, then Section 8-A(3) would operate and the right to make such a claim shall stand extinguished. After the claim under Sub-section (1) of Section 8-A is entertained the Collector shall issue public notice of the claim

under the first proviso to Section 8-A(2) by beat of drum in the appropriate locality and by placards posted at such conspicuous places as he deems fit, inviting, objections from persons interested.

An occupancy tenant in possession of the lands claimed by the Intermediary as being in Khas possession is clearly a person interested in resisting the latter's possession. u/s 8-A(4) any person disputing the claim of the Intermediary as to possession shall file an objection before the Collector within the period of limitation prescribed. Before the Collector determines fair and equitable rent u/s 7(1) he shall enquire into the matter in the prescribed manner and either accept the claim or reject the same as he deems just and proper u/s 8-A(4).

15. It is one thing for an occupancy tenant to contend that occupancy rights do not vest in the State on the vesting of an estate. It is quite a different thing for him to contend that he would not appear before the Collector to resist the claim of the Intermediary in Khas possession and remain content with the mere fact that he had occupancy right prior to the vesting. u/s 8-A (4) the Collector gets full jurisdiction to determine possession of a particular land in which there are rival claimants on one side, the Intermediary in Khas possession and on the other an occupancy raiyat claiming possession. As the statute confers exclusive jurisdiction on the Collector to determine such possession u/s 8-A(4), the fact of possession is not a jurisdictional fact and the Civil Court's jurisdiction to determine such possession would be impliedly excluded even if Section 39 of the Act had not been on the statute book. The position of law is, therefore, unassailable that where in respect of a claim for fixation of fair and equitable rent by the Intermediary on the basis of his Khas possession of agricultural or horticultural land is made, any person interested to oppose such a claim must appear before the Collector in response to the public notice and establish his case to repel the claim. In case the Intermediary's claim is not resisted, the claim is to be recognised and the decision is binding on the occupancy tenant who did not appear in response to the public notice and did not establish his case of being in possession.

This question was fully discussed in *Raghunath Panigrahi v. Uddyanath Sahu and Ors* ILR 1969 Cutt 214. We accept this case as laying down the correct law on this point. This decision was followed by *Patra, J. in Ratnakar Naik and Others Vs. Kedarnath Mohapatra and Others*, .

In *Chowdhury Krushna Chandra v. Smt. Hemmamani Biswal* 1970 (1) C.W.R. 224, R.N. Misra, J. examined the question of ouster of jurisdiction of the Civil Court u/s 39 at length. In para 17 of the judgment the following observations were made:

17. x x x x

Whether, an Intermediary is in possession on the date of vesting or not is a matter within the exclusive jurisdiction of the Collector to determine.

x x x x x

Whether the Intermediary is in possession on the relevant date is not a jurisdictional fact, but is the basis for disposing of the claim.

x x x x

It is unnecessary to traverse the reasoning even in support of his conclusion. This decision was followed by A. Misra, J. in *Jogendranath v. Jagannath* 38 (1972) C.L.T. 225. We fully endorse this view, though the facts in the aforesaid two cases were not similar to the facts before us.

16. We would sum up our conclusion on this aspect of the law by saying that the Collector has got exclusive jurisdiction to determine the factum of Khas possession of an Intermediary on the date of vesting. Such a fact is not a jurisdictional fact, but is the basis of the conclusion to be arrived at in the exercise of jurisdiction. The decision of the Collector is final subject to appeal and other remedies provided in the Statute and cannot be questioned in Civil Court.

17. Mr. Ramdas, however, very strenuously contended that in this case the Collector originally decided the matter in favour of the first Defendant by finding that he was an occupancy raiyat and the claim of the Plaintiffs u/s 7(1) for settlement of fair and equitable rent was not maintainable as they were not in Khas possession on the date of vesting. According to him, this decision of the Collector could not be set aside by the subsequent decision Ext. 9 and that the application of the Plaintiffs to the Board of Revenue for a fresh enquiry was without jurisdiction.

To appreciate the aforesaid contention, facts have been clearly stated while dealing with the case of the Plaintiffs. It has to be remembered that Plaintiffs came to know of the adverse order of the Collector against them not directly by notice being served on them nor in their presence. They accordingly applied for a certified copy of the order. The certified copy was not supplied to them as the records were untraced. Accordingly they moved the Board of Revenue the highest revenue authority for a further enquiry into the matter by bringing the injustice to its notice. The Board of Revenue sent that application to the Additional District Magistrate (Ext.) for enquiry as he was the first Appellate authority against the order of the Collector. The Additional District Magistrate (E) obtained the report of the Collector, treated the application before the Board of Revenue as a memorandum of appeal before him, examined the question of limitation and contended the delay as there was sufficient cause. The Appellate authority was satisfied on enquiry that the adverse order had been passed against the Plaintiffs without giving them an opportunity of being heard. As principles of natural justice were violated and the judicial procedure prescribed under the Act was not followed, he remanded the case to the Collector on 13-9-1961 by his order Ext. 5. The matter went back to the Collector. Therein, the first Defendant raised no objection that Ext. 5 was passed without notice to him behind his back. Though the Plaintiffs and the first Defendant appeared

before him, contested the case and the Collector came to the conclusion on 14-3-1964 by his order Ext. 9 that the Plaintiffs were the Intermediaries in Khas possession and the first Defendant was not in possession, the first Defendant did not file any appeal against Ext. 9 and allowed it to become final.

Mr. Ramdas contends that no notice was given to the first Defendant while the Additional District Magistrate remanded the case. It has to be noted that Ext. 9 was for the first time filed before the Additional Subordinate Judge by way of additional evidence. It could not be filed before the trial Court as by then the application u/s 8-A for settlement of fair and equitable rent u/s 7 was pending before the Collector. Ext. 9 was admitted by the lower Appellate Court. No objection was taken that before the Additional District Magistrate the first Defendant did not either get notice or a reasonable opportunity of hearing. No appeal was filed against Ext. 9 though such an order was passed in his presence and after contest. There are no materials in support of the contention that the first Defendant did not get notice of the proceeding before the Additional District Magistrate. Even assuming that he did not get any notice he could have filed an appeal against Ext. 9 on that ground and could have taken legitimate objection before the Collector that the remand order was without jurisdiction as no notice had been given to him before remand. The contention has no factual basis.

18. In AIR 1940 105 (Privy Council) , the principle was laid down as to when Civil Court shall have jurisdiction to examine into cases finally determined by statutory tribunals. Their Lordships observed as follows:

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Thus, the Civil Court has got jurisdiction to examine into the decision finally determined by statutory tribunals in two cases. The first class of cases is where the provisions of the Act have not been complied with and the second is where the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

As has already been stated, no materials have been placed before us to show any of the violations. This is therefore not a case where it can be held that Ext. 9 was without jurisdiction. We accordingly reject the contention of Mr. Ramdas.

19. In course of argument, certain observations in Raghunath Panigrahi v. Udayanath Sahu and Ors. ILR 1969 Cutt 214 were brought to our notice. In that case the suit had been remanded to examine if the Collector had given public notice so as to enable the persons interested to contest the case. In para 10 (1) an observation was made that in case such a public notice had not been given u/s 8-A, Sub-section (2) first proviso, it would be open to the Civil Court to

examine the question of Khas possession of the Intermediary on the date of vesting. Such a view is not correct in law. If the decision of the Collector is quashed on the ground that the provisions of the Act had not been complied with or that he did not act in conformity with the fundamental principles of judicial procedure, then the matter would go back to the Collector to determine, in accordance with law, after following the provisions of the Act and fundamental principles of judicial procedure, the question whether the Intermediaries were in Khas possession on the date of vesting. To that limited extent the observations made in para 10(1) does not lay down good law.

20. On the aforesaid analysis, the resultant position is that Ext. 9 is conclusive on the question that the Intermediaries were in Khas possession on the date of vesting and the disputed lands shall be deemed to have been settled with the Plaintiffs u/s 7(1) of the Act. As the Plaintiffs have paid ad valorem court-fee, they are entitled to recovery of possession. Plaintiff's suit for declaration of title is decreed and they be given delivery of possession of the disputed lands.

21. In the result, the judgment of the learned Single Judge is set aside and that of the Additional Subordinate Judge is restored. The appeal is allowed as indicated above. In the circumstances, parties are to bear their own costs throughout.

S.K. Ray, J.

22. I agree.