
(2007) 02 OHC CK 0053

In the Orissa High Court

Case No : Regular Second Appeal No. 4 of 2003

Viswasrai Laxminarayana Dora

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:

Orissa General Clauses Act, 1937 — Section 2(33)
Orissa Land Reforms Act, 1960 — Section 22, 22(3), 67
Registration Act, 1908 — Section 17(1)

Citation : (2007) 103 CLT 609

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Pitambar Acharya, S.R. Pati, P.K. Ray and M.R. Mohanty, for the Appellant; Sangram Das, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.—The Appellant as Plaintiff filed Title Suit No. 58 of 1993 in the Court of Civil Judge (Senior Division), Parlakhemundi for a declaration that he is the absolute owner in possession of the suit land and for an injunction restraining the present Respondents, who were Defendants, from entering into the suit land or interfering with his peaceful possession. The Plaintiff's case in short was that the suit land was the joint family property, which on partition in 1956 fell to his share and since then he is in exclusive possession of the same as owner and title holder, but in the year 1992, the Tahasildar, Parlakhemundi (Respondent No. 2) wrongly attached the standing crops of the suit land. On inquiry, he could know that the Respondents are claiming the suit land on the plea that the State purchased it in the Court auction in E.P. No. 11 of 1973 arising out of M.S. No. 18 of 1957 of the Court of Munsif, Parlakhemundi. The claim of the Plaintiff-Appellant was that he was not aware of the suit or the execution proceeding, that the suit property was not liable for attachment or sale, that the sale by way of auction, if any, was invalid as permission u/s 22 of the Orissa Land Reforms Act (in short "the Act") had not been obtained. The present Respondents as

Defendants in their joint written statement refuted the claim of the Plaintiff pleading inter alia that the suit land belonged to the father of the Plaintiff and his brother and the said land was purchased by the State in public auction sale in E.P. No. 11 of 1973 and therefore, the Plaintiff cannot now challenge the title of the State over the suit land particularly when after the auction purchase the suit land has already been mutated in the name of the State. It was further pleaded that State not being a person, permission of the Revenue Officer contemplated u/s 22 of the Act was not necessary and the suit is not maintainable in view of the bar provided u/s 67 of the Act. From the pleadings of the parties, learned trial Court framed as many as six issues, accepted evidence of the parties and on perusal of those evidence decreed the claim of the Plaintiff. In the said judgment one of the findings was that the State is a "person" and permission of the Revenue authority u/s 22 of the Act was necessary for the sale of the suit land to the Respondent No. 1 in the public auction. The Defendants (present Respondents) filed Title Appeal No. 26 of 1995 in the Court of learned Additional District Judge, Gajapati, Parlakhemundi challenging the aforesaid judgment and decree of learned Civil Judge. The appellate Court on consideration of the submissions of the learned Counsel for the parties and materials on record allowed the appeal in part without cost with an observation that State is not a person, so far as Section 22 of the Act is concerned and therefore, permission of the Revenue authority was not necessary when the suit land was sold to the State in public auction. Aggrieved by such observation, the Appellant has filed this second appeal.

2. The only substantial question of law, which has been formulated for consideration is as follows:

Whether the State Government can be construed as a "person" in terms of Section 22 of the O.L.R. Act

3. Mr. Pitambar Acharya, learned Counsel for the Appellant states that Section 22 of the Act does not contain any saving clause or proviso indicating that permission of the Revenue authority will not be required in case the State purchases land of a person belonging to the Scheduled Tribe. He also indicates that when the Act does not contain the definition of "person", the meaning of "person" as given in Dictionary "The Law Lexicon", can be taken into consideration, wherein it is clarified with reference to some judicial pronouncements that "person" includes the "State". Mr. Acharya relied on the observation of the apex Court in the Case of Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, that provisions of law applicable to person shall also be applicable to the State, unless there is a specific provision excluding the State from the purview of the concerned law. He also cited the case of Ramjee Prasad and Others Vs. State of Bihar and Others, to highlight the same submission. According to Mr. Acharya, when the State itself comes forward to enter into a transaction, which is subject to certain restrictions provided in any law, it would be bound by the provision of law contemplated

unless exempted by any saving clause.

4. Mr. Sangram Das, learned Counsel for the State per contra states that when there is no specific definition provided in the Act itself, the meaning of the particular word or provision has to be ascertained from the contents and spirit of the Act. He indicates that when there is no specific definition of the word "person" in the Act the definition of "person" provided in Section 2(33) of the Orissa General Clauses Act, 1937 would govern the field because the said Act clearly provides that to facilitate the interpretation of the Orissa Acts and to shorten the language used therein, the provisions of Orissa General Clauses Act have been incorporated. He points out that the definition of "person" provided in Orissa General Clauses Act does not include "State" and for that reason the word "person" used in Section 22 of the Act would not include the State. Mr. Das further argues that the OLR Act has been created to protect the interest of the weaker section of the society, namely the Scheduled Castes and Scheduled Tribes and the spirit of the Act indicates that the State is to act as protector of the properties of the person belonging to the weaker section; and that being so, the State cannot be equated with persons belonging to the general category, who have been restricted from purchasing the properties of the persons belonging to the Scheduled Tribes. It is also argued by Mr. Das that observation given in a judicial proceeding in connection with the provision of a particular Act cannot be universally applied to other cases unless the provision noted in the concerned Act is *pari materia* to the provisions of the Act under consideration. He submits that the observation given in *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, was in connection with *Calcutta Municipal Act, 1951*, which does not contain provision similar to the O.L.R. Act and for that reason, the observation in that judgment that the "State" is also a "person" cannot be applied to the present situation. Mr. Das also contends that when certain aspect is not specifically spelt out in the Act, the Court has to give effect to the meaning of the provision taking into consideration the spirit and contents of the entire Act. According to him, if the spirit and contents of the Act is taken as a whole, there cannot be any inference that the restriction provided in Sub-section (3) of Section 22 of the Act is applicable to the State. In support of his submission, Mr. Das relied on the Cases of *Lilavati Bai Vs. The State of Bombay*, ; *Commissioner of Income Tax, Bangalore Vs. Venkateswara Hatcheries (P) Ltd.* etc. etc., ; *Regional Executive, Kerala Fishermen's Welfare Fund Board Vs. M/s. Fancy Food and another* etc. etc., and *Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors.* 2004 (II) OLR (SC) 117.

5. At the outset, it would be profitable to recount the provision of Section 22 of the Act in extenso:

22 Restriction on alienation of land by Scheduled Tribes-(1) (Any transfer) of 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 documents, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

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

(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 (2 of 1963) applies; and

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

A plain reading of the section would show that Sub-section (3) particularly indicates that even in case of sale of land belonging to Scheduled Tribe in public or Court auction permission of the Revenue authority would be necessary. In the present case, it is not disputed that the Appellant is a person belonging to the Scheduled Tribe and the suit land was sold in public auction in the execution proceeding to the State Respondent No. 1. It is also not disputed that permission of the Revenue authority was not obtained for that sale. Now the short question is whether the provision of Sub-section (3) would also apply in case where the State is the purchaser. In Section 22 of the Act no saving clause has been spelt out exempting the State from the provision of Sub-section (3) of Section 22 of

the Act. The claim of the Respondents is that the provision of Sub-section (3) of Section 22 of the Act is applicable to the persons belonging to the general category thereby meaning individual person, company or association or body of individuals as has been noted in Section 2(33) of the Orissa General Clauses Act, but not to the State as the State has not been included in this definition. The counter view is that as per the view expressed by the nine Judge Bench in the Case of Superintendent and Remembrance of Legal Affairs, West Bengal v. Corporation of Calcutta (supra) the definition of "person" would include the "State" if no exemption for the State is provided under the Act. In that case, the question was whether the State of West Bengal, which was carrying on the trade of daily market at Orphan Ganj Road, Calcutta was required to obtain a licence as prescribed u/s 218 of the Calcutta Municipal Act, 1951 and whether for violation of the said provision it was liable for punishment. The apex Court, after analyzing the provisions of the Calcutta Municipal Act held that no exception being there for the State, the State was not exempted from operation of Section 218 of the Act, thereby meaning that the State was as much bound as a private citizen to take out a licence. Following the ratio laid down in the above noted case the High Court of Patna in the Case of Ramjee Prasad and Ors. v. State of Bihar and Ors. (supra) also held that "other person" noted in Section 4(2) of the Bihar Agricultural Produce Markets Act includes the State Government. Now the point for consideration is whether the ratio laid down by the apex Court and Patna High Court is applicable to the present case. As has been said by the apex Court in the case of Smt. Lila Vati Bai v. State of Bombay (supra) observation made by the Court with reference to the construction of one statute cannot be applied with reference to the provision of another statute, which is not in pari materia with the statute which forms the subject matter of the previous decision. No doubt, the provisions of Calcutta Municipal Act and Orissa Land Reforms Act do not contain similar provisions, but that would not be a bar for application of the ratio of Calcutta Municipal Case as the observation in that case is not an observation in person but an observation in rem. In that case, the question was whether the State is also required to obtain a licence for carrying on trade of a daily market like any other individual. Here also the question is whether the State is required to obtain permission of the Revenue authority before purchasing the land of a person belonging to Scheduled Tribe, like any other person. The State claims immunity from the provisions of Section 22(3) of the Act with the plea that it is custodian and protector of the lands of the Scheduled Tribes. No doubt, the State in its concern for the Scheduled Tribe people who belongs to the weaker section of the society formulated the OLR Act and Rules so that the land of Scheduled Tribe persons will not be purchased by Ors. without the scrutiny of the concerned Revenue authority but when the State instead of undertaking such role of caretaker and protector assumes the role of a bidder for purchase of land of a Scheduled Tribe person at a public auction, it cannot enjoy the special status, but will have to be treated as a purchaser like any other person. That is exactly what the apex Court have said in the Calcutta Corporation Case (supra). Moreover, one cannot lose sight of the fact that when the State becomes

a party in civil litigation such as suit, appeal, revision etc., it has to follow the provisions of the Limitation Act, Court Fees Act and CPC etc. like any other litigant unless some exemption is provided for specifically in the Act. So, once the State takes the role of trader, purchaser or a litigant, it has to abide by law and procedures applicable to such class of persons and in such a situation, the State has to be treated as a person. That being the legal position, learned first appellate Court was in legal error in its observation that permission as contemplated u/s 22(3) of the Act was not required for the sale of the suit land to the State in the public auction held in the execution proceeding.

6. The substantial question of law is answered accordingly. Consequently, the judgment and decree of the first appellate Court is set aside and the appeal is remitted back to the said Court for fresh disposal according to law taking note of the findings noted above. It is made clear that the substantial question of law, which has been answered in the second appeal relates to only one of the issues raised in the suit and appeal and the first appellate Court must dispose of the appeal on its own merit according to law.

7. The appeal is thus allowed. No cost.