

Sudam Pradhan and anr. Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Mar-21-1985

Reported in : AIR1985Ori268; 1985(I)OLR582

Judge : D. Pathak, C.J. and ;S.C. Mohapatra, J.

Acts : Orissa Land Reforms Act, 1960 - Sections 37

Appeal No. : O.J.C. Nos. 1821 and 1822 of 1979

Appellant : Sudam Pradhan and anr.

Respondent : State of Orissa and ors.

Advocate for Def. : Government Adv. and ;Addl. Standing Counsel for Nos. 1 to 4

Advocate for Pet/Ap. : S. Misra, Adv. for Petitioner No. 1

Disposition : Applications allowed

Judgement :

S.C. Mohapatra, J.

1. These two writ applications under Articles 226 and 227 of the Constitution of India arise out of a proceeding under Chapter IV of the Orissa Land Reforms Act, 1960 (hereinafter referred to as 'the Act') for determination of the ceiling surplus land. Three days after the hearing of O. J. C. No. 1821 of 1979 was concluded and

the judgment was reserved, O. J. C. No. 1822 of 1979 came up for hearing. Since both the writ applications arise out of the common revisional order involving the same question of fact and law, they are disposed of by this judgment.

2. Srikar Pradhan, the father of both the petitioners submitted his return under Section 40-A of the Act. He has four sons, namely, Bijoy (Minor), Trinath, Banshidhar and Sudam. Out of them, three sons, viz. Trinath, Banshidhar and Sudam also submitted similar returns independently. Claim of Srikar and three sons is that as early as 1963, they are separated by partition of their lands by metes and bounds and all the four are individual landholders having their own families. Claim of Trinath who is a major married son separated as such prior to 26-9-1970 from his father Srikar was accepted and his lands were excluded from consideration of the ceiling surplus lands of the family of Srikar. However, the lands of Sudam and Banshidhar were included. On determination that the family consists of Srikar, Sudam, Banshidhar and Bijoy, the draft statement was revised and confirmed under Section 44(1) of the Act. Sudam and his brother Banshidhar being aggrieved preferred appeals under Section 44(2) of the Act. Having failed in appeals, they preferred revisions under Section 59. The petitioners not being able to get their lands excluded from ceiling in revision, have approached this Court for quashing the orders to the O. L. R. authorities in these two writ applications.

3. Mr. S. Misra (1), the learned counsel for the petitioners has submitted that the two petitioners having separated from their father by partitions of the joint family property in 1963 much prior to the coming into force of Chapter IV of the Act on 1-10-1965, are to be treated as individuals and not as members of the family of Srikar, the father. He has placed reliance on the decisions of this Court reported in (1978) 46 Cut LT 109 : (AIR 1978 NOC 308) (Gourendra Pratap Singh Deo v. State of Orissa) and (1983) 55 Cut LT 31 : (AIR 1983 Orissa 159) (Bhubaneswar Prasad Singh Deo v. State of Orissa) for the purpose.

4. In (1978) 46 Cut LT 109 : (AIR 1978 NOC 308) (supra), the petitioner claimed before the Revenue Officer that the lands of his joint family consisting of himself, his wife and three sons had been divided by metes and bounds much before 1-10-1965 when Chapter IV of the Act came into force and after partition, no member of

the family was possessed of more than the ceiling area. The revisional authority under the Act accepted the family partition as claimed. Yet it remitted the matter back for further enquiry to find out whether the parties were in separate cultivating possession. It was also directed by the revisional authority that in case separate cultivating possession is found, the parties would be entitled to separate ceiling. Relying upon an earlier decision of this Court under the Orissa Agricultural Income-tax Act, 1947, reported in (1971) 1 Cut WR 208 (Ramanath Panda v. State of Orissa), and a decision of the Supreme Court reported in AIR 1961 SC 1077 (Kashinathsa Yamosa Kabadi v. Narsingasa Bhaskarsa Kabadi), it was held by this Court:

'Once the fact of partition is accepted, there is hardly scope in view of what has been observed by the learned Chief Justice in the agricultural income-tax matter for enquiry into actual separate cultivating possession and in the absence of such evidence to direct that notwithstanding the fact of partition, the members of the family would be entitled to one ceiling area.'

The direction in the revisional order was quashed and the Revenue Officer was directed to finalise the matter on the basis that there had been a completed partition in the family of the petitioner prior to 1-10-1965 and it was further directed that while doing so, the Revenue Officer will keep the legal position indicated above in view. The question whether, the individual, his wife and three sons would constitute a family under the artificial definition in Section 37(b) of the Act was not considered. The effect of the explanation to Section 37-B of the Act was also not considered.

A decision is only an authority for what it decided. The only point urged and decided in the aforesaid decision is that on the face of a partition actually there is no necessity to enquire whether the parties are in separate cultivating possession. This decision is not an answer to the questions raised in the present writ applications and is of no assistance to Mr. Misra.

5. (1983) 55 Cut LT 31 : (AIR 1983 Orissa 159) (supra) which is the next decision relied upon by Mr. Misra is directly in his support. The question whether the lands were allotted to the members of an erstwhile Hindu Joint family on partition much

prior to the coming into force of Chapter IV of the Act was considered. Considering the legislative history of the definition of family in Section 37(b), it was held:

'.....We are of the opinion that in the absence of any express provision or indication the definition would be so construed as to take away existing rights, it should be so interpreted that it would not operate prior to the Act came into force and partitions which had taken effect earlier than the Act have to be accepted and given effect to; otherwise, the consequences would be serious and far-reaching : for instance, a man at the age of sixty who had chosen to remain a bachelor, and had separated from the family four scores of years back, would be brought into the fold of 'family' and land held by him would be put into the hotchpot for determining the ceiling in the hands of his father or mother who may be living. Such a position could not have been contemplated by the legislature.....'

The Division Bench relied upon an earlier decision in O. J. C. Nos. 1950 and 1087 of 1976 decided on 29-9-1978 (Jayakrishna Singh Rai etc. v. State of Orissa) which was not reported. On the basis of the aforesaid finding, the Revenue Officer was directed to determine a separate unit of the ceiling area for the son. Here again the effect of the Explanation to Section 37-B was not taken into consideration.

6. The very question whether the lands allotted to the members of the erstwhile Hindu Joint family on partition can be clubbed for the purpose of determination of the ceiling area under Chapter IV of the Act has now been finally settled by the Full Bench of this Court in a decision reported in (1983) 55 Cut LT 41 : (AIR 1983 Orissa 54) (Nityananda Guru v. State of Orissa) where it has been held that the lands held by a person coming within the ambit of the definition of 'family' contained in Section 37(b) would get aggregated or clubbed with the lands held by the parent or spouse, as the case may be, in a determination of the ceiling area under the provisions contained in Chapter IV of the Act, notwithstanding partition prior to the appointed day i.e., 26-9-1970. In view of the clear principle laid down, opinion on the correctness of the earlier decision of this Court was felt unnecessary. In view of the decision of the Full Bench, the earlier Division Bench decision reported in (1983) 55 Cut LT 31 : (AIR 1983 Orissa 159) (supra) and the

unreported decision in O. J. C. Nos. 1950 and 1087 of 1976 (supra) are deemed to have been overruled.

7. Many other attractive propositions were put forward by Mr. Misra in support of his submission that in case of partition prior to the coming into force of Chapter IV of the Act, each member is a separate entity and would not come within the definition of 'family' under Section 37(b). They being in the realm of academic study only, are not required to be answered.

8. As the law has been settled by the Full Bench, the contentions of Mr. Misra have no merit. In the result, the writ applications are dismissed. There shall be no order as to costs.

Pathak, C.J.

9. I agree.

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