

Khali Rout and ors. Vs. Additional District Magistrate and ors.

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Court : Orissa

Decided On : Dec-15-1998

Reported in : 87(1999)CLT69; 1999(I)OLR111

Judge : S. Chatterji and ;R.K. Dash, JJ.

Acts : [Orissa Hindu Religious Endowments Act, 1951](#) - Sections 42; Orissa Land Reforms Act, 1960 - Sections 15(1)

Appeal No. : Original Jurisdiction Case Nos. 3227 and 3680 to 3684 of 1995

Appellant : Khali Rout and ors.

Respondent : Additional District Magistrate and ors.

Advocate for Def. : G.K. Mishra, ;G.N. Mishra, ;K.C. Swain and ;B.K. Raj for Opp. Party No. 4

Advocate for Pet/Ap. : S. Mishra-2, ;S. Mantry, ;R.C. Rath and ;A.K. Sharma

Disposition : Petition dismissed

Judgement :

R.K. Dash, J.

1. Revisional orders passed by the Additional District Magistrate (Land Reforms), Cuttack, confirming the orders of the appellate authority have been challenged in

these writ petitions. Since the facts and questions of law involved in these writ petitions are similar, they were heard analogously and are disposed of by this common judgment.

2. These petitioners and others filed separate applications under Section 15(1)(d) of the Orissa Land Reforms Act, 1960 (for short, 'the Act') before the Revenue Officer-cum-Tahasildar, Tigiria, praying to determine the dispute regarding existence of relationship of landlord and tenant between them and Madan Mohan Jew of Nuapatna-opposite party No. 4 as envisaged in the Act, since they were restrained to cultivate their respective lands by the trustees. Opposite party No. 4 on being noticed challenged the maintainability of the proceedings containing, inter alia, that in a proceeding under Section 42 of the Orissa Hindu Religious Endowments Act (for short, 'Endowments Act') the lands in question were kept in the custody of interim trustees, namely, Chaitan Das and the Inspector of Endowments, who had inducted the petitioners to cultivate the same. The proceeding ultimately having been terminated in favour of hereditary trustees, the lands were released from the custody of the interim trustees and possession thereof was delivered to the former on 17.2.1987. So, the petitioners being ad hoc tenants cannot claim to have any right as tenants under law and therefore, the proceedings under Section 15(1)(d) of the Act were not maintainable.

3. On the question of maintainability of the proceedings argument was advanced on behalf of the petitioners that admittedly pursuant to the order of the Endowment Commissioner in a pending proceeding both Chaitan Das and the Endowment Inspector, Athagarh were appointed as custodians to look after the deity and its properties and consequently they engaged the petitioners as bhag tenants to cultivate the lands in dispute. So the aforesaid custodians had power to induct tenants and the petitioners being so inducted have acquired right to the property in dispute as bhag tenants and therefore, the proceedings initiated by them were maintainable. On the other hand, counsel appearing for opposite party No. 4 urged that the induction of the petitioners to cultivate the disputed land as bhag tenants by the custodians as aforesaid being not by their own right, the petitioners would be considered as ad hoc tenants and on termination of the proceeding before the Endowment Commissioner, such induction automatically came to an end, in view

of what has been decided by this Court in the case of Sankar Kumar Bhattar and Ors. v. Tahasildar-cum-Revenue Officer, Basta and Ors., reported in AIR 1976 Orissa 103.

4. On consideration of the submissions of both the parties, the learned Revenue Officer held that the petitioners being tenants, proceedings under Section 15 (l)(d) of the Act were maintainable. Aggrieved by the said order, opposite party No. 4 preferred appeal to the Sub-Collector, Athagarh and the learned appellate Court, on consideration of the facts and circumstances of the case, reversed the orders of the Revenue Officer and held the proceedings to be not maintainable. The petitioners preferred revision to the learned Additional District Magistrate (Land Reforms), Cuttack, challenging the order of the appellate Court. The revisional authority also concurred with the finding and the ultimate conclusion of the appellate Court. Hence the present writ petitions.

5. Shri S. Misra-2, learned counsel for the petitioners, while not challenging the factual aspects of the case as narrated above, contended that in a proceeding under Section 42 of the Endowments Act, the Endowment Commissioner appointed interim trustees in respect of the disputed property belonging to opposite party No. 4 and they being de jure trustees were entitled to induct tenants. So the petitioners having been inducted as tenants by the de jure trustees are tenants in the eye of law, as defined in the Act and therefore, the proceeding initiated by them under Section 15 (l)(d) of the Act are maintainable.

6. Shri G.K. Mishra, learned counsel for opposite party No. 4, controverting the submission of Shri S. Mishra-2, urged that the properties of the deity were subject-matter in a proceeding before the Endowment Commissioner who appointed custodians to look after the same. Consequently, the custodians in such capacity inducted the petitioners as ad hoc tenants. As soon as the proceeding terminated, right of the petitioners as ad hoc tenants came to an end. In that view of the matter, the petitioner being not tenants in the eye of law cannot maintain the present proceedings against opposite party No. 4.

7. It is admitted case of the parties that in a proceeding under Section 42 of the Endowments Act, the Endowment Commissioner appointed custodians for the

management of the deity as well as its properties and pursuant thereto the custodians let out the lands in question to the petitioners for cultivation. There is no dispute about the legal proposition that the Commissioner acts as a Civil Court while deciding matters under the Endowments Act. There is clear prohibition as envisaged under Section 73 (d) of the Act about applicability of the provisions thereof to lands under the management of Civil, Revenue and Criminal Courts. In that view of the matter, the petitioners though admittedly were inducted by the custodians to cultivate the lands in question, but they being ad hoc tenants cannot claim to have any right as tenants under the landlord and avail of the benefit of the provisions of the Act. Needless to say that relationship of landlord and tenants is created by virtue of an agreement which may either be oral or written. So it being a contractual relationship, the person entering upon such contract as landlord must have the competency to do so. A receiver or a custodian appointed by the Court having no right to the land cannot be termed as 'landlord'. He only holds the land for the benefit of the parties to the proceeding pursuant to the Court's order. His custody comes to an end immediately when the proceeding terminates. So as a custodian if he engages any person to cultivate the land on bhag, the latter cannot claim to have any right as a tenant, as provided under the Act under the real owner to whom the land ultimately passes on termination of the proceeding. This view of ours gains support from what has been decided by this Court in Sankar Kumar (supra), where it was observed :

'xxx while the lands are in custodia legis pending the final determination of the lis, the other provisions of the Act regarding landlord and tenant would not apply to ad hoc tenants inducted upon the lands for the purpose of cultivation by the Courts or by receiver during the pendency of the suit. Therefore, the ad hoc tenants who are inducted by the Court or receiver cannot claim any benefit under the Act. x x x.'

8. In view of discussions made above, the writ petitions having no merit, are dismissed. No costs.

S. Chatterji, J.

9. I. agree.

