

**Kuturi Dei Vs. Suka Dei and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/532405](http://sooperkanoon.com/532405)

**Court :** Orissa

**Decided On :** Apr-06-1998

**Reported in :** 1998(II)OLR65

**Judge :** R.K. Patra ;and Pradipta Ray, JJ.

**Acts :** [Orissa Estates Abolition Act, 1951](#) - Sections 2, 8 and 39; [Orissa Tenancy Act, 1913](#) - Sections 2(16) and 3(23); Orissa Land Reforms Act - Sections 39

**Appeal No. :** Original Jurisdiction Case No. 1260 of 1993

**Appellant :** Kuturi Dei

**Respondent :** Suka Dei and ors.

**Advocate for Def. :** P. Kar, Adv.

**Advocate for Pet/Ap. :** B.H. Mohanty, Adv.

**Disposition :** Petition allowed

**Judgement :**

Pradipta Ray, J.

1. Being aggrieved by the judgment and order dated August, 22 1990 passed by the Commissioner of Consolidation, Sambalpur at Bhubaneswar in Consolidation Revision No. 1721 of 1983 (Annexure-7) the writ petitioner has filed this writ application.

2. The case of the petitioner is briefly stated below :

Plot. No. 2072 in Khata No. 287 of Mouza-Bania, P.S. Bhadrak, District-Balasore having an area of Ac.0.74 decimals (hereinafter referred to as the 'disputed property') was originally recorded in the name of Ranka Jena, the husband of the writ petitioner and Ajodhya Bewa, w/o. Gadei Jena with sthitiban status in the record of rights of 1928. Ajodhya Bewa died issueless and thereafter Ranka Jena became exclusive owner of the disputed land. Ranka paid rent to the ex-intermediary regularly and obtained receipts. As Ranka was a tenant under the intermediary on the date of vesting under the Orissa Estates Abolition Act hereinafter referred to as 'O.E.A.Act'), he became a direct tenant under the State and continued to pay rent to the State. Ranka died leaving behind the writ petitioner as his widow and a minor son named Abhiram Jena. One Kalandi Parida, the predecessor-in-interest of the opp. parties 1 to 6 was cultivating the disputed land as a bhag tenant. Rent was being paid by the writ petitioner through Kalandi. Taking advantage of the petitioner's simplicity and innocence Kalandi managed to obtain some receipts from the Revenue Inspector in his own name. In 1978 the petitioner received a notice from the Revenue Supervisor, Bhadrak asking her to clear up the arrear rent in respect of the disputed land by January 30, 1978. On receipt of such notice the petitioner cleared up the arrear rents and thereafter continued to pay rent regularly. By order dated December 23, 1981 passed in

O.L.R Case No. 4/174 of 1980 the Revenue Officer-cwm-Tahasildar, Bhadrak converted the rent in kind into cash rent. Petitioner was also issued a Rent Schedule accordingly. Although settlement operation started in the area, but before its completion the area was brought under consolidation operation. Before the consolidation authority Kalandi Parida objected to the petitioner's claim for recording the disputed land in her name. Objection case being No. 1169/180 was started by Consolidation Officer, Bhadrak. During pendency of that consolidation objection case Kalandi died leaving the opp. parties as his legal heirs. In the objection the opp. parties 1 to 6 as his legal alleged that ex-intermediary Mritunjaya Narayan Praharaj resumed the disputed land from Ranka, got back possession and thereafter inducted Kalandi as a tenant on bhag basis.

3. Before the Consolidation Officer the petitioner referred to the order passed by the Addl. Tahasildar under the provisions of the Orissa Land Reforms Act. After coming to learn about the order passed by the Additional Tahasildar under Section 4(9) of the O.L.R Act the opp. parties filed an application for review of the order dated December 23, 1989 and the same was registered as Misc. Case No. 1 of 1982, The said review petition was dismissed by the Addl. Tahasildar. The opp. parties filed O.L.R Appeal No. 51 of 1982 against order of dismissal of the review application. By order dated November 12, 1982 the Consolidation Officer directed to maintain the record in respect of the disputed land in the name of Kalandi till the disposal of the aforesaid O.L.R appeal. It was observed therein that the parties successful in the O.L.R appeal would be entitled to ask for correction of the land records subsequently. The petitioner filed consolidation appeal No. 95 of 1982 before the Deputy Director, Consolidation, Bhadrak. The appellate authority held that Ranka was a sthitiban tenant under the ex-intermediary and that Kalandi was not inducted as a tenant in the disputed land. By order dated April 27, 1983 the appellate authority allowed the appeal and directed to record the disputed land in the name of the petitioner. During pendency of the consolidation appeal OLR Appeal No. 51 of 1982 filed by the opp. parties was dismissed on March 15, 1983. The opp. parties filed consolidation revision No. 1721 of 1983 before the Consolidation Commissioner, who by the impugned judgment and order dated August 22, 1990 allowed the revision and directed to record the disputed land in favour of opp. parties 1 to 6. Hence, this writ application.

4. Thus the moot question is who was the tenant of the disputed land under the ex-intermediary on the eve of vesting under the O.E.A. Act.

5. Admittedly, the predecessor of the present writ petitioner was the original tenant and his name was recorded in the settlement record of rights of 1928. The opp. parties have pleaded resumption and recovery of possession by the landlord and subsequent settlement with Kalandi as a tenant on bhag basis. The Commissioner placed onus on the writ petitioner to prove that tenancy of Ranka continued till the date of vesting. It further appears that possession of Kalandi at the time of vesting was also accepted. It is the specific case of the writ petitioner that Kalandi was a bhag tenant of the disputed land under her whereas Kalandi alleged that he was tenant on bhag basis under the ex-intermediary. The Consolidation Commissioner has committed error in determining the dispute only on the basis of possession without considering the nature of possession. The Consolidation Commissioner has failed to appreciate the real dispute before him and adopted an erroneous view that the tenant under the Government need not prove his claim even where pre-vesting situation was under dispute. It appears that the authorities particularly the Consolidation Officer and the Consolidation Commissioner were under confusion regarding the position of law.

6. [Orissa Estates Abolition Act, 1951](#) (hereinafter referred to as 'OEA Act') was enacted for abolition of all the rights, title and interest in land of intermediaries including the mortgagees and lessees of such interest between the raiyat and the State of Orissa, for vesting in the State of the said right, title and interest and to make provision for other connected matters. Under Section 8(1) of the OEA Act a person in possession of any holding as a tenant under an intermediary immediately before the date of vesting was given the right to continue as a direct tenant under the State. To be entitled to the benefit of Section 8(1) a person has to be a tenant and in possession of the concerned land immediately before the date of vesting.

7. The term 'tenant' has not been defined in the OEA Act. Section 2(q) has provided :

'Section 2(q) - All words and expressions used in this Act, but not defined in it shall have with reference to any part of the State of Orissa, the same meaning as defined in the tenancy laws and rules for the time being in force and in the absence of written laws and rules, as recognised in the custom for the time being obtaining in that part of the State of Orissa.'

Before coming into operation of the OEA Act tenancies in respect of the lands in districts of Cuttack, Puri and Balasore were governed by the provisions of the [Orissa Tenancy Act, 1913](#). Under Section 3(23) of the Orissa Tenancy Act 'tenant' means 'a person who holds lands under another person and is or but for a special contract would be liable to pay rent for that land to that person'. Section 4 of the Orissa Tenancy Act enumerated different classes of tenants under the provisions of the said Act. 'Rent' has been defined under Section 2(16) as 'what is lawfully payable or deliverable in money or in kind by a tenant to his landlord on account of use or occupation of the land held by the tenant'.

8. A tenancy in a land is created by transferring an interest in the land, permanent or temporary, on consideration of payment of rent either in cash or in kind. There cannot be a tenancy of land without creation of an interest in the land. It appears that the term 'bhag-tenant', though not used or mentioned anywhere in the Orissa Tenancy Act, was being used to denote a tenant of land who was liable to pay a portion of the produce of the land as rent for the tenancy. There is a distinction between a 'tenant' having an interest in the land and a person who has only the right of cultivation without having interest in the land, on condition that he would deliver a specified share of the crops to the owner as the owner's share of the crops. Such delivery of the share of the crops is not payment of rent for the land. Those cultivators, who have only the right of cultivation, would not be said to be 'tenant' in law.

9. The said position has been made clearer by the provisions of the Orissa Land Reforms Act. In the O.L.R. Act a distinction has been made between a 'raiyat' and a 'tenant'. Section 2(31) of the O.L.R. Act has defined 'tenant' as follows :

'(31) 'tenant' means a person who has no rights in the land of another but under the system generally known as Bhag, Sanja, Kata or such similar expression as under any other system, law, contract, custom or, usage personally cultivates such land on payment of rent in cash or in kind or in both or on condition of delivery to that person-

(a) either a share of the produce or such land; or

(b) the estimated value of a portion of the crop raised on the land; or

(c) a fixed quantity of produce irrespective of the yield from the land; or

(d) produce or its estimated value partly in any of the ways described above and partly in another;'

Section 39 of the O.L.R. Act expressly provides that the lands in the possession of a tenant or a mortgagee shall be deemed to be the land of the person while determining the ceiling area of person. Whether a cultivator has merely the right of cultivation or has got an interest in the land depends on the particular facts and circumstances of each case.

10. It has been laid down by the Full Bench of this Court in Radhamani Dibya and Ors. v. Braja Mohan Biswas and Ors., Vol. 57 (1984) CLT 1 that all bhag-chasis were not tenants under the Orissa Tenancy Act and the question is to be decided after taking into consideration the terms of the agreement and the whole of the circumstances. In this connection we may refer to a decision of the Supreme Court reported in AIR 1971 SC 2097 (State of West Bengal and Anr. v. Sevayats of Iswar Sri Sardia Thakurani and Ors.). In the said case the Supreme Court was examining whether the deity was entitled to retain the tank fisheries under the West Bengal Estates Acquisition Act. According to the provisions of West Bengal Estates Acquisition Act the deity was entitled to retain tank fisheries if the same was not leased out to any other person. Admittedly the deities therein transferred right to catch fish in the disputed tank. In that connection the Supreme Court pointed out

the distinction between a mere right to catch fish and lease of the tank fisheries itself and held that where mere right to catch fish has been transferred, no interest was created in the tank itself.

11. To avail of all the rights conferred under Section 8(1) of the OEA Act a person has to establish that the intermediary had conferred on him an interest in the land as distinguished from a mere right of cultivation.

12. Under the provisions of the Orissa Tenancy Act 'tenant' included a 'raiyat'. In other words raiyats were a class of tenants under the Orissa Tenancy Act (vide Section 4). Unless a raiyat surrendered or voluntarily abandoned his right in the manner provided under Section 97 or 98 of the Orissa Tenancy Act, he could not be rejected from his tenure or holding except in execution of a decree (vide Sections 27, 98 and 100). Even a forcible dispossession would not extinguish tenancy till it was disrupted by a prescriptive right. It is for the person who takes the plea of eviction of an admitted tenant under Orissa Tenancy Act to prove such plea.

13. It is also to be borne in mind that when the entries in the post-vesting record of right are challenged, those entries lose their significance or weight and the concerned authority will have to determine the fact-situation as prevailed immediately before the date of vesting for deciding the correctness of such entries in the post-vesting Record-of-Rights.

14. In the present case the Consolidation Commissioner missed those basic principles and his erroneous approach vitiated his findings.

15. For the reasons aforesaid, we set aside the order of the Consolidation Commissioner and direct him to hear the revision afresh keeping the observations in this judgment in mind. The Commissioner will dispose of the revision within a period of four months from the date of communication of this order.

R.K. Patra, J.

16. I agree.

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