

Satyananda Mali and anr. Vs. State of Orissa and ors.

Satyananda Mali and anr. Vs. State of Orissa and ors.

SooperKanoon Citation : sooperkanoon.com/533501

Court : Orissa

Decided On : Jul-04-2000

Reported in : 2000(II)OLR180

Judge : P.K. Misra, J.

Acts : Orissa Land Reforms Act, 1960 - Sections 45B and 52

Appeal No. : Original Jurisdiction Case No. 12837 of 1996

Appellant : Satyananda Mali and anr.

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv.

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

Disposition : Application allowed

Judgement :

P.K. Misra, J.

1. The facts giving rise to the present writ application may be noticed in brief. A ceiling proceeding under Chapter IV of the Orissa Land Reforms Act (in short the 'Act') was initiated against the present petitioners, wherein petitioner No. 1 was shown to be the ceiling surplus holder. In the said O.L.R. Case No. 164 of 1975,

by order dated 31.12.1975, the matter was finalised and it was held that the petitioner and members of his family shall be entitled to retain 18 standard acres of land and balance Ac. 3.01 decimals of land was vested in the State Government. Thereafter, in the year 1991, O.L.R. Case No. 15 of 1991 was initiated apparently by applying the provision of Section 52 of the Act. In such proceeding, apart from questioning the maintainability of such fresh proceeding, it was contended on behalf of the petitioners that the eldest son, the present petitioner No. 2, had separated from his father prior to the appointed date and as such, fresh ceiling proceeding should not be initiated. It was also indicated that there had been no fresh acquisition of land after the finalisation of the O.L.R. Case No. 164 of 1975. The authorities below have held that after finalisation of the first ceiling proceeding, the petitioners have converted all the Class-IV lands to Class-III by raising paddy crops and as such a fresh ceiling proceeding can be initiated under Section 52 of the Act.

2. Section 52 of the Act contemplates about initiation of fresh ceiling proceeding. For convenience, the provisions contained in Section 52 of the Act are quoted hereunder :

'52. Ceiling on future acquisitions - The foregoing provisions of this Chapter shall, mutatis mutandis apply where lands acquired and held subsequent to the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (President's Act 17 of 1973) by any person through inheritance, bequest, gift, family settlement, purchase, lease or otherwise, together with the lands held by him at the time of such acquisition exceed the ceiling area :

Provided that the return required under Section 40-A shall be submitted to the Revenue Officer within ninety days from the date of such acquisition :

Provided further that where an application under Section 57-A has been made on behalf of such person within the aforesaid period of ninety days, the return required under Section 40-A shall be submitted to the Revenue Officer within ninety days from the date of final disposal of the proceedings under Section 57-A.

Explanation I - If, as a result of irrigation facilities provided by the Central Government, or the State Government, any local authority, any Government Company as defined in Section 617 of the Companies Act 1 of 1956 or any statutory body or corporation to a person after the commencement of the Orissa Land Reforms (Amendment) Act, 1973, any land falling at such commencement, within Class II, Class III or Class IV, falls, subsequent to such commencement within Class I or Class II, as the case may be, the lands held by such person in excess of the ceiling area applicable to the class of land to which such land has fallen as a result of the provision of such irrigation facilities, shall be deemed to have been acquired and held by such person after such commencement.

Explanation II - Homestead lands which have been kept out of account in determining the ceiling area in respect of any person, shall, on ceasing to be used as homestead land after the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (President's Act 17 of 1973), be deemed to have been acquired and held by him with effect from the date on which such lands have so ceased to be used as homestead lands.

Explanation III - Where in any local area record-of-rights prepared under any law for the time being in force did not exist during the period of limitation provided under Section 40-A or 40-B and for the first time record-of-rights in respect of lands in such area has been prepared and published under the Orissa Survey and Settlement Act, 3 of 1958 after expiry of the said period of limitation and any person is recorded as the holder of any land in the record-of-rights so prepared, he shall, for the purpose of this section, be deemed to have acquired such land subsequent to the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (President's Act 17 of 1973) and the return, if any, required to be submitted under Section 40-A, shall be submitted to to the Revenue Officer within ninety days from the date of commencement of the Orissa Land Reforms (Amendment) Act, 1989 or from the date of final publication of the record-of-rights, whichever is later.'

3. The learned counsel appearing for the State has submitted that by virtue of Explanation-I, when there is subsequent change of classification, fresh ceiling

proceeding can be initiated. A perusal of Explanation-I makes it clear that if any land falling within Class-II, Class III and Class-IV at the time of earlier determination subsequently becomes Class-I or Class II, as the case may be, due to irrigation facilities provided by the Central Government, State Government, or authority or any Government Company, or any statutory body or Corporation, fresh ceiling proceeding can be initiated. Keeping in view the specific provision in Explanation-I, there is no doubt that where any Class-IV land becomes Class-III land due to mere cultivation, a fresh ceiling proceeding cannot be initiated. Only where a Class-III land becomes Class-I, or Class-III or Class-IV land becomes Class-I or Class-II because of facilities for irrigation. fresh ceiling proceeding can be initiated to re-fix the ceiling limit of a person. In the present case, it is apparent that Class-IV land has become Class-III land as the same has been used for the purpose of agriculture. However, in absence of any clear provision covering such conversion, fresh proceeding could not have been initiated.

4. Explanation-II relates to conversion of homestead land which makes it clear that if any homestead land has been subsequently ceased to be used as homestead land, such land shall be considered for determination of fresh ceiling area. In the present case, it is not the case of the State Government that the said land was allotted as homestead land and has subsequently ceased to be homestead land.

5. There is no finding nor allegation anywhere that the petitioners have acquired any fresh land after determination of the earlier ceiling proceeding.

6. The provisions contained in Section 45-B of the Act are equally inapplicable. The said provisions are quoted hereunder :

'45-B. Lands escaping ceiling proceedings to vest with surplus lands already vested - (1) If at any time within six years from the date of finalisation of the statement under Sub-Section (3) of Section 44 relating to any person holding land in excess of ceiling area, it is found that some more lands held by such person have escaped inclusion in the above statement due to any reason whatsoever, the Revenue Officer may, after giving the person an opportunity of being heard and after making such enquiry as he deems proper, declare in the prescribed manner, the whole or any part of such lands as are found to be held by the person to be

surplus land in relation to him.

(2) All lands declared to be surplus land under Sub-Section (1) shall be deemed to have vested in the Government free from all encumbrances alongwith the surplus lands mentioned in the aforesaid statement and the provisions of Sections 45, 45-A and 46 to 51 shall, so far as may be, apply to the lands so vested: Provided that the amount payable in respect of the interest of the person to whom the surplus lands relate shall be subject to reduction at the following rate:

Rate of reduction

(i) Where the land was in occupation Fifty-five per centum of the person for a period not exceeding one year from the date of finalisation of the statement under Section 44(3); (ii) Where the period of such occupation Fifty-five per centum plus exceeds one year; five per centum for each year or part thereof in excess of one year. (3) Without prejudice to the provisions of Section 39, the transfer of any land declared to be surplus land under Sub-Section (1) by sale, gift, or otherwise or the partition thereof, made or effected from the date of finalisation of the statement under Sub-Section (3) of Section 44 shall be deemed to be void.'

There can be no doubt that if some of the lands of the petitioners had escaped during the previous ceiling proceeding, there can be fresh determination, but such a proceeding under Section 45-B of the Act can be initiated within six years only. In the present case, it is not the case of the State that any land of the Petitioners had escaped consideration on earlier occasion. Moreover, the subsequent proceeding has been started beyond six years. As such the orders cannot be justified by taking recourse to Section 45-B.

7. In such view of the matter, the orders passed by the forums below cannot be sustained and are accordingly quashed. Needless to point out that it goes without saying that if there is any fresh acquisition or if any land is converted to Class-I or Class-II, it would be open to the authorities to take appropriate action in accordance with Section 52 of the Act and if such occasion arises, the principle of law decided in the decision of this Court reported in 84 (1997) CLT 676 (Kashinath Panda and Ors. v. State of Orissa and Ors.) has to be kept in view.

8. The writ application is accordingly allowed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com