

Ram Prasad Mohapatra Vs. Addl. District Magistrate and ors.

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Court : Orissa

Decided On : Jun-23-2000

Reported in : 2000(II)OLR215

Judge : P.K. Misra and ;P.K. Mohanty, JJ.

Acts : Orissa Land Reforms Act, 1960 - Sections 15

Appeal No. : Original Jurisdiction Case No. 1133 of 1990

Appellant : Ram Prasad Mohapatra

Respondent : Addl. District Magistrate and ors.

Advocate for Def. : Addl. Standing Counsel (O.Ps. 1-3), ;Y.S.N. Murty, P. Misra and M.K. Mohanty (O.Ps. 4-6, 10 and 12-16)

Advocate for Pet/Ap. : A.C. Mohanty and R.N. Patnaik

Disposition : Application allowed

Judgement :

P.K. Misra, J.

1. The present writ application has been filed for quashing Annexures -1,2 and 4.

2. The present petitioner had filed O.L.R. Case No. 13 of 1982 before opposite party No. 3 under Section 15 of the Orissa Land Reforms Act (hereinafter called the 'O.L.R. Act') in respect of Ac. 8.930 decimals of land in khata No. 40 of mauza Betaguda on the allegation that the land had been given on Bhag to B. Appalaswamy and R. Appa Rao, who in their turn had inducted some sub-tenants. It is further alleged that on the death of B. Appalaswamy and R. Appa Rao, the legal heirs continued as Bhag tenants. The application under Section 15 of the O.L.R. Act was filed for giving direction to the Bhag tenants to pay Rajbhag. Pursuant to the direction of the Revenue Officer, a sum of Rs. 1,394.60 was deposited. The present petitioner filed O.L.R. Appeal No. 26 of 1987 before the present opposite party No.2. Opposite party No.2 while setting aside the order of the Revenue Officer, remanded the matter to the Revenue Officer for fresh disposal with a direction that the Revenue Officer should make a spot enquiry and give opportunity to both parties of further hearing. The said order of remand was challenged by the present petitioner revision, wherein it was contended that the appellate authority should have disposed of the matter on merit and should have passed necessary orders regarding eviction/payment of Rajbhog. It is to be noticed that the order of the appellate authority had not been challenged by the present opposite parties 4 to 17 in the writ application, The revisional authority, present opposite party No. 1, while negating the contention of the present petitioner and dismissing the revision, observed that the application under Section 15(1)(C of the O.L.R. Act was not maintainable and had been properly rejected by the Revenue Officer. Hence, the present writ application.

3. The private opposite parties had initially entered appearance through counsels. However, at the time of hearing of the writ application. It has been stated by the counsel appearing for the private opposite parties that he has no instruction and accordingly only the counsel for the writ petitioner and the counsel for the state have been heard.

4. It appears that during the pendency of the writ application there was a direction to the opposite parties to deposit a sum of Rs. 2,000/-as the opposite parties were in possession. However, since the private opposite parties did not comply with the said direction in spite of several opportunities, ultimately, the present petitioner

was appointed as the receiver of the dispute property and subsequently direction was given to demarcate the land, deliver the possession and render police assistance, if necessary.

5. Learned counsel for the petitioner contended that the revisional authority has illegally observed that the application was barred by time and was not maintainable. It has been further submitted that the revision itself had been filed by the present petitioner and if the revisional authority did not find any merit in the contention of the present petitioner, the revisional authority should have simply rejected the petition and should not have interfered with the order of the appellate authority who had remanded the matter to the original authority for fresh disposal. Such submission of the counsel for the petitioner appears to be reasonable. The appellate authority, namely, the present opposite party No. 2, had remanded the matter to the original authority for fresh disposal. Such order was challenged by the present petitioner on the ground that the appellate authority should have disposed of the entire appeal on merit. If such contention was not accepted by the revisional authority the revisional authority could have simply dismissed the petition and there was no occasion for the revisional authority to set aside the order of the appellate authority and to dismiss the petition under Section 15 of the O.L.R. Act filed by the present petitioner. Having regard to the facts and circumstances of the case, we think interest of justice would be served by setting aside the order passed by the revisional authority under Annexure-4 and by directing the opposite party No.3, the original authority, to dispose of the application in accordance with law after making spot enquiry and after giving opportunity of hearing to all the parties. It is made clear that the original authority should dispose of the matter in accordance with law without being influenced by any observations made in Annexure-4.

6. The writ application is accordingly allowed to the extent indicated above. This order shall be communicated to opposite parties 1, 2 and 3. The opposite party No.3 shall now proceed to dispose of the application under Section 15 of the O.L.R. Act in accordance with law after making spot enquiry and after giving opportunity of hearing to all the parties as directed by the appellate authority. The arrangement made by the High Court during the pendency of the writ application

by appointing the petitioner as receiver shall continue to be operative till disposal of such application.

P.K. Mohanty, J.

I agree.

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