ORISSA HIGH COURT

Phulmani Dibya

Vs

State of Orissa

O.J.C. No. 769 of 1971

(G.K. Misra, C.J., B.K. Patra and K.B. Panda, JJ.)

17.12.1973

JUDGMENT

G.K. Misra, C.J.

1. The disputed lands situate in the district of Mayurbhanj were recorded as Brahmottar Maufi in the name of Prana Krushna Panda who died in 1942 leaving behind two daughters - Haramani (Opposite Party No. 5) and deceased Ashamani, wife of opposite party No. 6. As Prana Krushna died without leaving any male heirs, the Maharaja' of Mayurbhanj passed an order (Annexure 5) on 7-4-1944 that a Hood candidate should be found out to take the property subject to maintenance and marriage of the minor girl Ashamani. On the basis of this order, disputed lands were settled with Rama Chandra Pati, husband of the petitioner, on 13-9-1944 whose name was recorded in the record of rights (Annex. 4). Rama Chandra died in 1959 leaving behind the petitioner as the only heir and she-claims that she was in possession of the disputed property. The disputed property which is an estate vested in State of Orissa on 1-10-1964 Opp. Parties 4 and 6 filed an application in O. E. A Case No. 4 of 1965-66 on 1-2-1965 under Sections 6 and 7 of the Orissa Estates Abolition Act, 1951 claiming as intermediaries in Khas possession. The petitioner filed an application in O. E. A. Case No. 17 of 1965-68 on 3-2-1965 under those sections asserting that she was the intermediary in Khas possession. Both these cases were heard analogously and the disputed lands were settled with the petitioner as the intermediary in Khas possession on 26-5-1966. Opposite party No. 4 preferred an appeal. By the appellate order both the cases were remanded. On 5-9-1969 the Estates Abolition Collector held after remand that the petitioner cannot inherit the property being a female by virtue of the restrictions imposed under the Mayurbhanj Lakhraj Control Order, 1937 (hereinafter to be referred to as the Control Order). He also held that she was not in Khas possession on the date of vesting. The claim of opposite parties 4 and 6 was also negatived. Petitioner filed O. E. A. Appeal No. 43 of 1969. Opposite parties 4 and 6 preferred O. E. A. Appeal No. 45 of 19b9. Both the appeals were dismissed by the A. D. M. (Executive), Mayurbhanj by his order (Annexure 1) on 1-5-1970. The writ application has been filed under Articles 226 and 227 to quash this order. Opposite parties 8 to 14 were added as interveners by an order of this Court passed on 10-4-1972. Their case was that their father was in possession as Bhag tenant under Rama Chandra Pati at the time of his death in 1959 and that the petitioner was never in possession. The interveners had no knowledge about

the proceedings under the Estates Abolition Act. The father of the interveners filed O. L. R. Case No. 66 of 1970 in the Court of the Additional Tahasildar, Baripada, for settlement of the land. In the. O. L. R. Case the land was settled with the father of the interveners on permanent lease basis on 22-4-1971. The interveners claim rights under Section 8(1) of the Orissa Estates Abolition Act. The petitioner filed counter to the interveners' affidavit by stating that the O. L. R. case was filed on false averments and by suppression of notice and the petitioner was not aware of the filing of such a case, or settlement and that the alleged settlement during the pendency of the Estates Abolition Act case without notice to the petitioner is bad in law. It is to be noticed that opposite party No. 4 filed O. J. C. No. 149 of 1971 against the order of the A. D. M. (Executive) passed on 1-5-1970 (Annexure 1). Though that writ application was dismissed at the admission stage, opposite parties 4 and 6 contest this writ application saying that the lands should not be settled with the petitioner.

2. This writ application came up for hearing before a Bench consisting of R.N. Misra and B.K. Ray. JJ. They were of opinion that *Shyama Sundar Sarangi v. Anamoni Dei*[1]*, disposed on 27-8-1970,* by a Bench consisting of B. K. Patra, J., and myself, and *Smt. Gita Mohanty v. Gelhimani Bewa*[1] decided by a Bench consisting of A. Misra, J., and myself, require reconsideration. In their referring order dated 28-9-1972 the main grounds for re-examination of the previous decisions were given as follows :-

> (i) The Control Order is not meant for Hindus only, but governs grants in favour of non-Hindus and as such the Control Order is not repugnant to Section 4(1)(b) of the Hindu Succession Act, 1956.
> (ii) The Lakhraj Grant is resumable on the death of the granted and is not heritable and as such the petitioner cannot lay any claim to the disputed property by inheritance.

It is to be noted that the Control Order was not produced before this Court while the two previous cases were heard and the judgments had been given on the basis of certain extracts taken from the orders of the appellate Court which were accepted by the counsel for both the parties then to be sufficient for the disposal of those cases. This was so stated in the judgment in O. J. C. No. 21 of 1967 (Orissa) as follows :-

> "The learned Advocate for the petitioner did not produce a copy of the Lakhraj Control Order, 1937 which was amended on 7th June, 1943. But the relevant order has been ousted in paragraph, 8 of the judgement of the Revenue Divisional Commissioner and we quote the same hereunder."

3. Mr. Sinha for the petitioner advanced the following contentions :-

> (i) The provision in the Control Order to the effect "Women cannot inherit or succeed to any Brahmottar grant." is hit by Articles 15 and 19(1)(f) of the Constitution.
> (ii) The same provision is repugnant to Section 4(1)(b) of the Hindu
> Succession Act and as such void.
> (iii) Lakhraj Brahmottar is heritable and any inheritance without permission of the competent authorities is voidable but not void.

4. We would now proceed to examine the first contention. The Control Order was enacted on 5th August, 1937 and there have been some subsequent amendments. The Control Order was the law prevalent in the ex-State of Mayurbhanj. In Article 13(3) of the Constitution the word "law" has been defined. In that Article, unless the context otherwise requires, "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. Article 13(3)(b) defines "laws in force". "Laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. Article 13(1) lays down that all laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. The, ex-State of Mayurbhanj merged in the State of Orissa on 1-1-1949. Prior to that the Maharaja of Mayurbhanj was the sovereign in that area. He had, full legislative, judicial and executive powers. He was, therefore, competent to pass the Control Order as a piece of law prescribing conditions of enjoyment and transfer of Lakhraj and other similar tenures within the ex-State of Mayurbhanj, By Extra-Provincial Jurisdiction Act, 1947 (LVII of 1947) and the Administration of Mayurbhanj State Order, 1949 the Control Order which was a law in the ex-State of Mayurbhanj continued in force after the merger. By the date of the Constitution, the Control Order was a law in force in Mayurbhanj district. If it is inconsistent with the provisions of Fundamental Rights in Part III of the Constitution, then it would be void to the extent of inconsistency.

5. Before examining the question whether the impugned provision is hit by Articles 15 and 19(1)(f) of the Constitution, it would be appropriate to notice the main features of the Control Order relevant to the issue involved in this case. By the Control Order it was considered expedient to define the conditions of enjoyment and transfer of Lakhraj and other similar tenures. Clause 3 of the Control Order prescribes that "Lakhraj" includes similar other tenures held under grant made by the Ruler of the State for the benefit of the grantee and his descendants. Clause 8 runs thus :-

> "Notwithstanding any provision contained in any regulation or order relating to the transferability of tenures in general no Lakhraj shall be transferable by mortgage, sale, sifts, will or inheritance either in whole or in part, without the permission in writing of the Maharaja or of such officers to whom the Maharaja may be pleased to delegate his authority in this behalf and such permission may be granted subject to fresh condition."

This clause is very significant. It prescribes that Lakhraj is not transferable by inheritance either in whole or in part without the permission in writing either of the Maharaja or of any competent delegate. Even fresh conditions may be imposed at the time of granting permission.
There is some controversy as to the meaning of the expression "transferable by inheritance". A person inherits property not by transfer. Such a concept is unknown in jurisprudence. Such an expression has, however, been used in the law enacted by the then sovereign. It is too elementary that when the Legislature uses words with a specific object, the words so used cannot be taken to be redundant. Some meaning is to be ascribed to it. In the context the expression would mean change of title to the property from the predecessor-in-interest to the heirs. The underlined

expression would, therefore, carry the natural meaning of devolution by inheritance. In simple words it means that there can be no inheritance of Lakhraj without the permission of the competent authorities in writing. Thus, the Lakhraj tenure under the Control order is of a precarious nature. It is not heritable though ordinarily permission in writing is intended to be given to the heirs to inherit the property. It is, however, open to the Maharaja or his delegate to refuse inheritance to the natural heirs or to impose conditions which are repugnant to the incidence of the right of inheritance.

6. Under Clause 8 the Maharaja laid down certain General Principles to govern the inheritance of Lakhraj estates. General Principles Nos. 2, 3 and 4(a) may be extracted.

> "2. The duty of regularly blessing the Rulers of the State is attached to every Brahmottar grant. Evidently therefore no one should be entitled to inherit or succeed to any such grant who is not capable of performing the duty attached to it.
> 3. Other Lakhraj grants are meant for enjoyment of the grantees, their heirs and successors in perpetuity.
> 4. In deciding Lakhraj cases, it is the duty of the officers concerned to see that the property descends only to deserving heirs and successors.
> (a) Women cannot inherit or succeed to any Brahmottar grant."

Under clause 8, there was a reservation which runs thus :

> "Notwithstanding the provisions contained in this Order, the Maharaja reserves the right to refuse inheritance or succession in any case where he considers the applicant undesirable."

Clause 10(a) is to the effect that the Maharaja may at his pleasure exempt, any particular Lakhraj tenure or any class of such tenures from the operation of any of the provisions of the Control Order. Thus, the main features of the Control Order so far as they are relevant to this case are that on the death of Rama Chandra Pati in 1959 the disputed property did not devolve upon the petitioner in natural course of succession as it would have been under the Hindu Succession Act. There is inconsistency between the Control Order and the Hindu Succession Act so far as it debars women from being entitled to inheritance of any Brahmottar grant. The Lakhraj tenure is not heritable in accordance with the general principles of Hindu law or the Hindu Succession Act. It is a precarious tenure. The Maharaja had full authority and powers not to allow the Lakhraj to be inherited by the next heir and even if such a grant is made it could be imposed with any conditions.

7. On the aforesaid analysis, it matters little whether the heir is a male or a female. The inheritance is not as a matter of right. Consequently, the petitioner cannot have a right to the land unless she proves that the gram was given in her favour by the permission of the competent authority in writing.

8. It is to be however, noted that in deciding Lakhraj cases it is the duty of the officers concerned to see that the property descends only to deserving heirs and successors as envisaged in 'General

Principles No. 4'. That means that even though the Lakhraj tenures are not heritable as of right, they are to be ordinarily settled with deserving heirs and successors. Women cannot, however, succeed to any Brahmottar grant under 'General Principles No. 4(a)' even though they may be deserving heirs.

9. This is why it is contended by Mr. Sinha that 'General Principles No. 4 (a)' is hit by Article 15 of the Constitution and is void since 26-1-1950 when the Constitution came into force.

10. Article 15, so far as relevant, runs thus :-

> "15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
> (3) Nothing in this article shall prevent, the State from making any special provision for women and children." Thus, though the State can make special provision for women, they cannot be discriminated only on the around of sex.
> 'General Principles No. 4(a)' laying down that women cannot succeed to any Brahmottar grant discriminates between mea and women only on the ground of sex. On the plain interpretation of the provision, it is hit by Article 15 and is void.

11. Mr. Mohanty, however, relies on 'General Principles No. 2' and contends that women are not capable of performing the duty of regularly blessing the Rulers of the State which is attached to every Brahmottar grant and as such they are not entitled to inherit or succeed to such grant and the discrimination is not based on sex only.
This contention is not in consonance with the Principles of Hindu law. It is not mentioned in the Control Order that women cannot perform the duty of regularly blessing the Rulers. Law on this point is no longer res integra and is concluded by *Smt. Aneurbala v. Debabrata*[3] *and Mst. Raj Kali Kuer v. Ram Rattan Pander*[4]*. In AIR 1951 SC 293* their Lordships recognised the right of a female to succeed to the religious office of Shebaitship. In the latter case the right of hereditary Driest in a temple was accepted as property where emoluments are attached to such office. In *Shahar Banoo v. Aga Mahomed Jaffer Bindaneem*[5] their Lordships of the Privy Council approved the following observation of the Calcutta High Court relating to a Mahomedan religious office :

> "..... there is no legal prohibition against a woman holding a mutawalliship when the trust, by its nature, involves no spiritual duties such as a woman could not properly discharge in person or by deputy."

The Supreme Court held that this dictum equally applies to the office of a Pujari and Panda in a temple. After reviewing the entire law on the point, their Lordships made the following observation :

> "A careful review, therefore, of the reported cases on this matter shows that the usage of a female succeeding to a priestly office and setting the same performed through a competent deputy is one that has been fairly well recognised. There is nothing in the textual Hindu law to the contrary. Nor can it be said that the recognition of such a usage is opposed to public policy, in the Hindu law sense. As already pointed out the consideration

> of public policy can only be given effect in the present state of the law, to the extent required for enforcing adequate discharge of the duties appurtenant to the office. Subject to the proper and efficient discharge of the duties of the office, there can be no reason either on principle or on authority to refuse to accord to a female the right to succeed to the hereditary office held by her husband and to get the duties of the office performed by a substitute excepting in cases where usage to the contrary is pleaded and established." (Para 11)

Thus, females can succeed to Shebaiti right and right of a Pujari to perform Puja in a temple and are entitled to the emoluments attached to the office by succession. They can discharge their duty by appointing competent deputies. The identical principle applies with greater force to the duty or regularly blessing the Rulers. On the aforesaid analysis, 'General Principles No. 4(a)' that women cannot inherit or succeed to any Brahmottar grant is hit by Art 15(1) of the Constitution and is void.

12. It may be incidentally noted at this stage that from 1-1-49 there was no Ruler in the ex-State of Mayurbhanj and by the Constitution (Twenty-sixth Amendment) Act, 1971 the institution of Rulership had been abolished and there is no corresponding authority in the State of Orissa who is entitled to receive the blessings which was personal to the ex-Rulers. It is, therefore, doubtful if 'General Principles No. 2' has any legal validity now. It is, however, not necessary to express any final opinion on this aspect and more so, when Lakhraj tenures have been abolished by the Orissa Estates Abolition Act, 1951.

13. Mr. Sinha next contended that Clause 8 of the Control Order prescribing that no Lakhraj is heritable without the permission in writing of the Maharaja or of a competent delegate and that such permission may be granted subject to fresh condition is hit by Article 19(1)(f) of the Constitution and is void.

14. Article 19(1)(f) read with Article 19(5) runs thus :-

> "19. Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right -
> (f) to acquire, hold and dispose of property.
> (5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

The prohibition that Lakhraj tenures are not heritable without permission in writing does not apply to any particular individual but is of a general nature and relates to the characteristic of the property itself. When the tenure was created by the sovereign it was made one of restrictive nature. It is not heritable and transferable except by the permission of the competent authority in writing. Where the property itself is of a limited character, the heir or successor cannot have an

enlarged right in the matter of acquiring, holding or disposing of that property. Whoever acquires the property would take it subject to those limitations under which it was created. Article 19(1)(f) cannot, therefore, be invoked in support of the contention that the prohibition imposed a restriction in the matter of acquisition, holding and disposition of the property.
The matter is concluded by *(Sikander Jehan Begum v. Andhra Pradesh State Government*[6]). In that case the Jagirs under consideration were not heritable and on the death of the Jagirdar it was always a case of resumption and re-grant Any person who claimed to be the successor of the deceased Jagirdar had no right to come to a Civil Court for establishing that claim. There could not be any claim to the succession at all, the question of re-grant being always in the absolute discretion of the Nizam. After the Rule of the Nizam came to an end, the only change that occurred was that on the death of the Jagirdar, the property vested in the State and could be re-granted to a successor in the discretion of the State. In this context their Lordships observed as follows :-

> "In view of the special character of the property in question, it is obvious that the petitioners cannot challenge the validity of Section 13(2) on the ground that it contravenes Article 19(1)(f)."

(Para 21)

This dictum applies with full force to the present case. The contention that clause 8 of the Control Order is hit by Article 19(1)(f) is untenable and is rejected. In this view of the matter, it is not necessary to examine the applicability of Article 19(5).

15. Mr. Sinha contended in the alternative that even assuming that 'General Principles No. 4(a)' is not hit by Article 15 of the Constitution, it would cease to apply to Hindus in view of Section 4(1)(b) of the Hindu Succession Act, 1956 which came into force on 17th of June, 1956, the succession having opened in 1959 on the death of Rama Chandra Pati.

16. To appreciate the aforesaid contention, Section 4 may be extracted :

> "4. Overriding effect of Act - (1) Save as otherwise expressly provided in this Act :-
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act :
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.
> (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

Section 4(1)(a) has no application to this case. Section 4(1)(b), in terms, applies. The Control order was the law in force immediately before the commencement of the Hindu Succession Act and it shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions

contained in this Act. In the order of reference a view was expressed that the Control order may apply to non-Hindus and consequently Section 4(1)(b) is not to be applied as it is confined only to Hindus. The opinion so expressed is untenable. It may be that the Control Order in some of its provisions may apply to persons other than Hindus. The question for consideration, however, is whether in its application to Hindus it is repugnant to any of the provisions under the Hindu Succession Act as envisaged under Section 4(1)(b).

We must accordingly examine as to what is the inconsistency. Under the Hindu Succession Act there is no restriction on women to inherit any property including Brahmottar grant, while under the 'General Principles No. 4(a)' women cannot inherit or succeed to any Brahmottar grant. 'General Principles No. 4(a)' must, therefore, cease to apply to Hindus after the coming into force of the 1 Hindu Succession Act.

17. Mr. Mohanty contends that by virtue of Section 4(2) of the Hindu Succession Act. Section 4(1)(b) or other provisions of the Hindu Succession Act have no application Vo agricultural lands. In support, of this contention he places reliance on *(Smt. Prema Devi v. Joint Director of Consolidation*[7]) which lays down that the provisions of the Hindu Succession Act cannot be made applicable to agricultural plots governed by the U.P. Zamindari Abolition Act and Land Reforms Act. The contention requires careful examination.

In List III in Schedule VII of the Constitution. Entry No. 5 runs thus :-

> "5. Marriage and divorce, infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."

Entry No. 5 in List III corresponds to Entry No. 7 of List III in Schedule VII of the Government of India Act, 1935, so far as succession is concerned, which runs thus :

> "7. Wills, intestacy and succession, save as regards agricultural land."

Thus, succession as regards agricultural lands was specially excluded from the
Concurrent List of the 1935 Act and it is on the basis of this principle that it was held in AIR 1941 FC 72 (In re Hindu Women's Rights to Property Act (1937)) that Hindu Women's Rights to Property Act, 1937 had no application to agricultural lands. In Entry No. 5 of List III in Schedule VII of the Constitution agricultural lands are not excluded from succession. The Parliament was, therefore, competent in legislating on succession to all lands including agricultural lands in exercise of the powers conferred in Entry No. 5. There is, therefore, no substance in the contention that Section 4(1)(b) or other provisions of the Hindu Succession Act do not extend to agricultural lands. We agree with the exposition of law given in *(Laxmi Debi v. Surendra Kumar*[8]) and *(Sant Ram Dass v. Gurdev Singh*[9]*)* and do not agree with the Allahabad view unless in those Acts there are clear provisions to the contrary regarding succession.

18. The contents of Section 4, Sub-Section (2), also justify such a conclusion. The section could have been worded to say that the Act had no application to succession or inheritance to agricultural lands. On the contrary, only three cases have been excluded from the operation of the

Act provided there is law to that effect to the contrary in any State on these subjects. Those three matters are prevention of fragmentation of agricultural lands, fixation of ceilings and devolution of tenancy rights in respect of such holdings. The case before us is not concerned with prevention of fragmentation of agricultural lands or fixation of ceilings. The only relevant point for consideration is whether there is any law in the State of Orissa prescribing devolution of tenancy rights in respect of agricultural holdings contrary to the provisions of the Hindu Succession Act. If, in fact, there is any such law, that would prevail over the provisions of the Hindu Succession Act by virtue of Section 4(2). There is, however, no such law in Orissa governing devolution of tenancy rights contrary to the Hindu Succession Act. The argument of Mr. Mohanty is, therefore, wholly academic.

19. As has already been stated, there is no right of inheritance to Lakhraj tenures though the claim of deserving heirs is to be given preferential treatment. There is, therefore, no substance in Mr. Sinha's contention that inheritance will automatically take effect in law unless the State avoids the same by a specific order. The correct legal position is that there will be no inheritance without the permission in writing of the competent authority.

20. On the aforesaid analysis, the two Bench decisions of this Court referred to in paragraph 2 of this judgement correctly laid down the law that the provision in the Control Order debarring women to inherit Brahmottar grant is inconsistent with Section 4(1)(b) of the Hindu Succession Act and had ceased to have effect. But in those two cases the Control Order had not been produced and had not been fully examined in all its perspective and the ultimate conclusions reached therein with regard to the heritability of Lakhraj tenures are contrary to law. On the principles analysed by us with regard to the law on Lakhraj tenures, those two decisions have not been correctly decided and are hereby overruled.

21. We will sum up our conclusions with regard to the law relating to Lakhraj tenures in the ex-State of Mayurbhanj thus :-

(i) 'General Principles No. 4(a)' in the Control Order that women cannot inherit or succeed to any Brahmottar grant is void as being in contravention of Article 15 of the Constitution. It ceases to apply to Hindus under Section 4(1)(b) of the Hindu Succession Act.

(ii) Clause 8 of the Control Order is not in contravention of Article 19(1)(f) of the Constitution.

(iii) Inheritance to Lakhraj tenure is not as of right. It is a precarious tenure. Right to it flows only if permission in writing is given by the competent authority who can impose even fresh conditions at the time of regrant.

(iv) A duty has, however, been cast on the competent authority to see that Lakhraj tenures descend to deserving heirs and successors.

22. On the aforesaid legal position, the petitioner shall have to establish in an application under Section 7 of the Estates Abolition Act the following two facts.

(i) She has permission in writing from the competent authority to inherit the lands under

the Brahmottar grant in favor of her deceased husband.
(ii) She was in Khas possession on the date of vesting.

23. No permission in writing had been produced and as to Khas possession she claims to have entrusted the management of the property as a widow to opposite party No. 6.
Her claim was, however, negatived, principally on the ground that as a woman her claim to inherit the property must be eschewed out from consideration. Mr. Sinha accordingly prays that the case may be remanded to give the petitioner an opportunity to produce the permission in writing. After giving our anxious consideration to the matter we agree with Mr. Sinha that the case would be remanded in the interests of justice to the appellate authority to give an opportunity to the petitioner to prove permission in writing, if any. The petitioner and opposite parties Nos. 4 and 6 would be given an opportunity to adduce evidence on that point only. Fresh evidence will not be permitted on the question of Khas possession on the date of vesting. If the appellate authority comes to the conclusion that there was no permission in writing as required in law, the petitioner's application is to be dismissed as she would not become an intermediary to maintain an application under Section 7 of the Orissa Estates Abolition Act even though she might be found to be in Khas possession on the date of vesting.

24. The interveners, opposite parties 8 to 14, did not appear at the time of hearing of the writ application. They did not contest the proceedings filed by the petitioner under Section 7 of the Orissa Estates Abolition Act. Rightly their case was not considered by the authorities below and they will not be permitted to contest this proceeding even after remand.

25. In the result, the order of the appellate authority is set aside. A writ of certiorari be accordingly issued. The appellate authority is directed to dispose of the case in accordance with law and the observations made above. In the circumstances, parties to bare their own costs.

Patra, J.

26. I agree.

Panda, J.

27. I agree.
Petition allowed.

Cases Referred.

[1] O. J. C. No. 21 of 1967 (Orissa)
[2](1971) 1 Cut WR 605
[3] AIR 1951 SC 293
[4] AIR 1955 SC 493
[5](1907) 34 Ind App 46 (PC)
[6] AIR 1962 SC 996
[7] AIR 1970 All 233
[8] AIR 1957 Oris1
[9] AIR 1960 Pun 462