

ORISSA HIGH COURT

State of Orissa

Vs

Rameswar Patabisi

Civil Revn. No. 257 of 1974

(R.N. Misra and B.K. Ray, JJ.)

27.06.1975

JUDGMENT

R.N. Misra, J.

1. This is an application under Section 13 (3) (a) of the Orissa Merged Territories (Village Offices Abolition) Act, 1962 (Orissa Act 10 of 1963) (hereafter referred as the "Act") directed against the appellate order of the Board of Revenue.

2. Under the provisions of the Act, Gountiship of village Dainidihi within the district of Sundergarh was abolished. The opposite party was the Gountia of the said village until abolition of that office. Under the provisions of the Act, Bhogra lands as defined under Section 2 (b) of the Act vested in the State Government under the provisions of Section 3 (f) and steps were taken to settle the same under Section 5 (1) of the Act. While preparing the final zamabandi, the Tahsildar left out five plots being plot Numbers 85, 123, 124, 129 and 129/1. According to the opposite party, the Tahsildar omitted to consider his claim in regard to the first two plots and disallowed the claim in regard to the other three plots on the ground that they were recorded as Jalput (water reservoir). The opposite party preferred an appeal before the Collector as provided under Section 13 (1) of the Act and having failed to get relief came in second appeal before the Board of Revenue under Section 13 (2) thereof. The Member, Board of Revenue by order dated 17th of May, 1974, vacated the decision of the Tahsildar and the Additional District Collector and directed the opposite party's claim to be accepted, subject to easementary rights of villagers, if any. The State of Orissa has come up in revision being aggrieved by the second appellate order of the Board.

3. This revision came up for hearing before the learned Chief Justice and two single Judge decisions of my learned brother were cited during hearing being the judgment in (*Khyamasila Rout v. Kalindi Behera*¹) delivered on 8-11-1974 and the case of *Kia Puteluni v. Ghasana*

*Naikani*², The learned Chief Justice directed the revision to be heard by a Division Bench so that the correctness of the said judgments may be examined by a large Bench.

4. The provisions of the Act may first be analytically examined. The Act seeks to abolish village offices in the Orissa Merged Territories and is intended to come into force on such date as the Government may by notification appoint in that behalf and different dates may be so appointed in respect of different areas. Under Section 2 (b), Bhogra lands in relation to any village office have been defined to mean "lands by whatever name described or locally known, whether or not recorded as such in the settlement papers, held as emolument in respect of such office". Under Section 3, with effect from and on the appointed date, the village offices within the respective territories are deemed to have been abolished: service tenures are extinguished; all settlements, sanads and all grants in respect of such tenures are deemed to have been cancelled; rights of the holders of such offices to receive emoluments are deemed to have been terminated; all rights to hold office and any liability to render service pertaining to such office stand extinguished and all Bhogra lands stand resumed and vested absolutely in the State Government free from all encumbrances. Under Section 5 (1), all Bhogra lands resumed under the Act are to be settled with rights of occupancy therein on fair and equitable rent basis with the holder of the village office or with him and his co-sharers and tenants in actual cultivating possession. As the decision of the dispute in this case hinges upon an appropriate construction of Section 5, we shall deal with this provision a little later at length. Under Section 6, all Gounti-raiyati lands are to be settled with right of occupancy therein on a fair and equitable rent with the Gountia or his co-sharers and/or tenants who may be in actual enjoyment of the lands. Provision has been made under Section 8 for payment of solatium in the event of there being no Bhogra lands to be settled with the Village Officer whose office has been abolished. Section 9 deals with submission of records and delivery of possession of land. Sections 10, 11 and 12 deal with the procedure for settlement of the land, while Section 13 provides remedy by way of appeal and revision against the order of settlement. We may now deal with Section 5 of the Act which runs thus :-

"(1) All Bhogra lands resumed under the provisions of this Act shall subject to the provisions of sub-section (2) be settled with rights of occupancy therein on a fair and equitable rent with the holder of the Village Office or with him and all those other persons, if any, who may be in the enjoyment of the land or any part thereof as his co-sharers or as tenants under him or under such co-sharer to the extent that each such person was in separate and actual cultivating possession of the same immediately before the appointed date.

(2) The total area of such land in possession of each such person shall be subject to a reservation of a certain fraction thereof in favour of the Gram Sasan within whose limits the land is situate and the extent of such reservation shall be determined in the following manner, namely:-

Land in possession Extent of reservation

For the first 10 acres Nil

For the next 20 acres 5 per cent.

For the next 70 acres 10 per cent.

For the next 100 acres 30 per cent.

For the remaining 40 per cent.

Provided that the area reserved shall, as far as practicable, be in compact block or blocks of one acre or more."

The scheme behind Section 8 is to compensate the Village Officer by payment of solatium where there is no Bhogra land to be settled with him. The true intention of the statute seems to be to abolish the Village Office, do away with the service tenure and in lieu thereof to settle the lands held by the Village Officer in lieu of service on occupancy basis with him subject to certain reservations provided for in Section 5 (2) of the Act. Under Section 9, obligation has been cast upon every Village Officer to deliver all records maintained by him in respect of the lands held by him in relation to his office (i.e., Bhogra lands); to render all accounts pertaining to his office in respect of dues payable by and to him and to deliver to the State Government possession of all abandoned and surrendered holdings and all lands to which he has no right to settlement by or under the provisions of this Act. Section 9 (1) (c) of the Act, therefore, clearly indicates that such lands which the Village Officer is entitled to settlement of under Section 5 (1) of the Act have not to be made over to the State Government.

5. Under Section 5 (1), a distinction has been maintained between the holder of the Village Office and his co-sharers and tenants both under the holder of the Village Office as also his co-sharers. So far as settlement of the land with the holder of the Village Office is concerned, his actual cultivating possession immediately before the appointed date is not necessary while in order to be entitled to settlement under Section 5 (1) of the Act, his co-sharer or a tenant under the holder of the Village Office as also under the co-sharer has to establish actual cultivating possession immediately before the appointed date. Under the scheme of the Act, the holder of the Village Office who is losing his Office on account of abolition thereof is intended to be compensated and the compensation is settlement of the land held by him hitherto as emolument of his office on occupancy basis or payment of a solatium in lump sum. The true meaning of Section 5 (1) cannot be anything different from what we have said above. The settlement is contemplated with the holder of the Village Office or with him and all those other persons, if any, who may be in the enjoyment of the land or any part thereof as co-sharers of the holder of the Village Office or as tenants under the holder or his co-sharer. The words "to the extent that each such person was in separate and actual cultivating possession of the same" refer to the co-sharer and tenants under the holder or his co-sharer. They have obviously no reference to the holder of the Village Office himself. Take for instance a case where fifty acres of Bhogra land constituted the emoluments ten acres out of which are with a co-sharer while five acres are with a tenant. Of the remaining thirtyfive acres, the holder of the Village Office is in actual occupation of twenty-five acres and ten acres are either lying fallow or are in possession of a trespasser. The ten acres

with the co-sharer as also the five acres with the tenant are to be settled with them while the entire remaining 35 acres must be taken to be in possession of the holder of the Village Office notwithstanding the fact that some area out of it is lying fallow without any actual cultivating possession while some other area is in the hands of a trespasser. Subject to reservation under subsection (2), all Bhogra lands resumed under the provisions of the Act are intended to be settled and it is not the intention of the statute to keep away any portion on any other ground. The true interpretation of Section 5 (1), therefore, is that actual cultivating possession has to be established in the case of a co-sharer or a tenant either under the holder of the Village Office or the co-sharer and in respect of the remaining Bhogra lands to be settled with the holder of the Village Office actual cultivating possession immediately before the appointed date is not required to be established. Apart from the fact that the interpretation we have given to the provision flows out of the language of the section, the spirit and scheme of the statute also support such a view.

6. In the instant case, there is no claim by any co-sharer or tenant. The holder of the Village Office laid claim to the entire property. The decision of my learned brother reported in 1973 (1) Cut WR 203 was cited before the Member, Board of Revenue. He, therefore, examined the question of possession also and recorded a finding that the opposite party was in possession.

7. Learned Additional Government Advocate contended that since some of these properties have been recorded as water reservoir, the holder of the Village Officer would not be entitled to settlement thereof. He concedes, however, that these properties formed part of the Bhogra lands in possession of the opposite party as holder of the Village Office as his emoluments and no distinction has been maintained in the Act in the matter of settlement of cultivated and other lands with the holder of the Village Office. In such circumstances, we do not think, the character of the land would give rise to a different principle in the matter of settlement of the lands. If there be any communal rights in respect of these lands, the settlement under the Act would not take away the same and the settlement must be subject to such communal rights. In fact, the Member, Board of Revenue, has given a direction in that regard.

8. In the two decisions referred to above, it has been stated that actual cultivating possession would be necessary to be established in respect of the three categories of settlees, namely, the holder of the Village Office, his co-sharer and tenant under either of them. It has already been indicated above that so far as the holder of the Village Office is concerned actual cultivating possession is not material while for the other two categories, settlement would depend upon actual cultivating possession. With reference to the holder of the Village Office, actual cultivating possession is not necessary to be established and to that extent only, the principle laid down in those two decisions must be held to be not correct.

9. There is no merit in the revision and, therefore, it is dismissed with costs. Hearing fee Rupees one hundred.

B.K. Ray, J.

10. I agree.

Revision dismissed.

Cases Referred.

¹ Civil Revn. No. 217 of 1973

²(1973) 1 Cut WR 203