

# ORISSA HIGH COURT

Ananda Chandra Sahu

Vs

Ananta Khuntia

O.J.C. Nos. 52 to 61 of 1978

(P.K. Mohanti Ag. C.J. and B.K. Behera, J.)

04.04.1983

## JUDGEMENT

### **P.K. Mohanti, Ag. C.J.**

1. In this batch of writ applications, the petitioners have challenged the validity of the orders passed under Section 36-A of the Orissa Land Reforms Act by the Revenue Officer, Narsinghpur declaring opposite party No. 1 in each of the writ applications as raiyat in respect of the lands in question.

2. It appears that during the pendency of the proceedings, opposite party No. 1 in each of the writ applications filed petitions on 5-6-1975 that he wanted to administer special oath to the petitioners before Mahakali Thakurani installed at village Kherada. It was stated that if the petitioners reiterated their claim on oath, he would give up the lands in favor of the petitioners. The petitioners agreed to the suggestion of opposite party No. 1 in each of the writ applications and accordingly on 22-6-1975 special oath was administered to the petitioners in the temple of Mahakali Thakurani in presence of the Revenue Officer. Relying on the special oath and without taking any evidence from either side, the learned Revenue Officer passed orders under Section 36A of the Orissa Land Reforms Act in favor of opposite party No. 1 in each of the writ applications. The orders passed by the Revenue Officer were confirmed by the Appellate and Revisional Courts.

3. Sections 9 to 12 of the Indian Oaths Act, 1873 prescribe the procedure which may be adopted for proving a matter in dispute. A party to a judicial proceeding may offer to be bound by an oath or solemn affirmation if such oath or solemn affirmation is made by the other party to such proceeding and if such party agrees to take such oath or affirmation, the Court is empowered to administer it. The evidence so given is, as against the person who offered to be bound by it, conclusive proof of the matter stated.

4. The Indian Oaths Act, 1873 was repealed and was replaced by Act, 1969. In the Act of 1969, there no provision for a matter being in the aforesaid manner. In our opinion, when the Act of 1969 came into force, the procedure envisaged in Sections 9 to 12 of the old Act of 1873 was no

longer available. In this view of the matter, the learned Revenue Officer erred in law in making the orders under Section 36-A of the Orissa Land Reforms Act without holding any enquiry or taking any evidence. The impugned orders are therefore liable to be quashed.

5. We allow these writ applications, quash the impugned orders and remand the cases to the Revenue Officer for a fresh disposal according to law.

6. The parties are directed to appear before the Revenue Officer on 20th April, 1983 to receive appropriate directions. The Revenue Officer is directed to dispose of the cases expeditiously. The records be sent back at once.

**B.K. Behera, J.**

7. I agree.

Applications allowed.