

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No. 9002 OF 1995

Sri Sukadev Nayak and others* *Petitioners

Mr. Bibhu Bhusan Rath, Advocate
-versus-

Sri Charan Nayak and others* *Opp. Parties

Mr. Dillip Kumar Mishra
Additional Government Advocate
(for Opp. Party Nos. 3 and 4)
Mr. Aurovinda Mohanty, Advocate
(for Opp. Party Nos. 1 to 3)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.03.2022**

Order No.

40. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 18th March, 1993 (Annexure-7) passed by the Revenue Officer-cum-Tahasildar, Binjharpur - Opposite Party No.3 in O.L.R. Case No.4 of 1998 filed by the Opposite Party Nos. 1 and 2 under Section 9(1) of the Orissa Land Reforms Act, 1960 (hereinafter referred to as ‘the Act’).
3. The original Opposite Party Nos.1 and 2, namely, Sricharan Nayak and Haricharan Nayak (hereinafter referred to as ‘the Claimants’) filed a petition under Section 9(1) of the Act before Revenue Officer claiming that they were raiyats under the original Petitioners, namely, Sukadev Nayak, Basudev Nayak, Sahadev Nayak, Golakh Nayak, Kunja Behari Nayak and Sudarsan Nayak (hereinafter referred to as ‘the landlords’) of Mouza Gamu under Binjharpur Tahasil (now under Bari

Tahasil) in the district of Cuttack (now in the district of Jajpur) in respect of Khata No.251 under Plot No.1401 to an extent of Ac.0.64 decimals out of Ac.1.11 decimals. As such, the claimants filed application under Section 9(1) of the Act to declare them as raiyats in respect of the Ac.0. 07.5 decimals out of Ac.0.15 decimals in Plot No.919 and Ac.0.08.5 decimals out of Ac.0.17 decimals in Plot No.929 under Khata No.134 of the said mouza over which they claimed to have constructed their dwelling house. Initially the Opposite Party No.3 allowed the petition vide order dated 13th May, 1988 declaring the claimants to be raiyats of the landlords in respect of an area measuring Ac.0.04.5 Kadi of Plot No. 919(P) under Khata No.134 situated in Mouza Gamu. Assailing the same, the claimants moved this Court in O.J.C. No.3087 of 1989 to declare them as raiyats in respect of rest of the land. This Court allowed the writ petition vide order dated 20th October, 1992 holding as under;

“In the aforesaid premises we quash the orders of the Revenue Officer under Annexure-8 and 9 and remit the matter to the Revenue Officer for re-inquiry and re-disposal in accordance with law. It is open for the Opposite Parties Nos. 3 to 8 to raise an objection that the Petitioners are not entitled to any settlement as they are not tenants under the Opposite Parties in respect of any other land in the village and if such a contention is raised, it will be dealt with by Revenue Officer in accordance with law.

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

Thus, the matter was remitted back to the Revenue Officer-cum-Tahasildar, Binjharpur for fresh adjudication of the petition filed by the claimants under Section 9(1) of the Act.

4. It appears from the record that although the landlords (opposite party Nos. 3 to 8 in OJC No.3087 of 1989) were given opportunity to file objection against settlement of Ac.0.04.5 Kadi in favour of the claimants, but they failed to file any objection. However, the Revenue Officer proceeded with the matter and passed the impugned order dated 18th March, 1993 under Annexure-7. Hence, this writ petition has been filed by the predecessors of the Petitioners.

5. During pendency of the writ petition, the Petitioner Nos. 1 to 3 and 5 died and they were substituted by their legal heirs. Likewise, the Opposite Party Nos.1 and 2 also died during pendency of the writ petition and have been substituted by their legal heirs.

6. Mr. Rath, learned counsel for the landlords submitted that there is no material on record to come to a conclusion that the claimants were raiyats under the landlords. Thus, the provision under Section 9(1) of the Act is not applicable to the case at hand. In order to bring the application filed by the claimants under the purview of Section 9(1) the Act, the claimants have to admit the title of the landlords. They also have to prove that they have been inducted as raiyats or tenants and are in a permissive possession over the land in question by constructing their dwelling house thereon. It is further incumbent upon them to prove that they have constructed dwelling house out of their own expenses with prior permission of the recorded tenants and they don't have any permanent or heritable right over the same. These material aspects were not taken into consideration by the Revenue Officer while adjudicating the matter. There is no finding on the aforesaid

aspect by the Revenue Officer in the order under Annexure-7. As such, the impugned order under Annexure-7 is not sustainable in the eyes of law and is liable to be set aside.

7. Mr. Mohanty, learned counsel for claimants, on the contrary submits that although this Court while disposing of W.P.(C) No.3087 of 1989 granted liberty to the landlords to raise objection with regard to declaration of the claimants as raiyats in respect of a part of the property in question, but no objection whatsoever to that effect was filed by the landlords. They did not also contest the O.L.R. Case No.4 of 1988. In absence of any material to the contrary, the Revenue Officer proceeded with the matter on the materials available on record and declared the claimants as raiyats under Section 9(1) of the Act. Hence, there is no infirmity in the impugned order.

8. Mr. Mishra, learned Additional Government Advocate submits that although there is no detail discussion in the impugned order to satisfy the requirements of Section 9(1) of the O.L.R. Act, but in absence of any material to the contrary, the Revenue Officer has accepted the statements made in the petition under Section 9(1) of the Act as well as the report of the Amin on their local visit and passed the impugned order. As such, the writ petition merits no consideration and is liable to be dismissed.

9. I have heard learned counsel for the parties at length and perused the materials on record. Section 9(1) of the Act clearly stipulates that a person who is a raiyat or a tenant in respect of any land but has no permanent and heritable rights in respect of any site on which his dwelling house or farm stands, shall with effect from the commencement of this Act be deemed to be a

raiyat in respect of the whole of such site or a portion thereof not exceeding one-fifth of an acre whichever ever is less if he or his predecessor-in-interest has –

- (a) obtained permission, express or implied, from the person having permanent and heritable rights in the site and having right to accord permission for the construction of such house; and
- (b) built such house at his own expense.

Thus, in the instant case, the claimants have to establish that they have no permanent and heritable right over the land in question over which they have constructed their dwelling house with permission of the landlords over which the landlords have permanent and heritable right and the construction was made out of their (claimants') own expenses.

10. As held in the case of **Mir Nabiruddin -vrs.- Mir Salimuddin and Ors.** reported in 1984 (II) OLR 1045, the claimants by filing an application under section 9(1-A) of the Act in the prescribed form and manner within the prescribed period has to prove the following;

- “i) the applicant must be a raiyat or tenant in respect of any land:
- ii) he must not having any permanent or heritable right in respect of any site on which his dwelling house or farm house stands:
- iii) he or his predecessors-interest should have obtained permission, either express or implied, from the person having permanent and heritable right in the site:
- iv) grantor of such permission should not only have permanent and heritable right in the site but should have right to accord permission for the construction of the house: and

v) *in pursuance of such permission the grantee, i.e., the raiyat or the tenant, should have built the house at his own expenses.*”

Moreover, the claimants have also to show that they are raiyat or tenant in respect of land other than that over which they have their dwelling house with prior permission of the landlord over which they (claimants) don't have permanent and heritable right. Mr. Rath, learned counsel for the Petitioners relied upon the case of ***Sri Santinidhi Lenka and another vs Shri Jagannath Mohaprabhu, through Biswanth Rajguru, Executive Officer, Jagannath Ballav Endowment Trust Board***, reported in ***1970 (1) C.W.R 308***. The relevant portion is reproduced hereunder for ready reference,

“..... Section 9 provides that a person in order to claim the benefit under that section should first be a raiyat or a tenant in respect of some land other than the site on which the dwelling house or farm house stands. If he is not a tenant or a raiyat in respect of any other land, he cannot claim the benefit of Section 9.”

On a perusal of the impugned order it appears that the Revenue Officer has not made endeavour to find out whether the claimants have proved the aforesaid requirements for grant of relief.

10. Most of the findings on the aforesaid requirements are conspicuously absent in the impugned order under Annexure-7. On the other hand, it appears that the Revenue Officer proceeded on a presumption.

11. Thus, the Revenue Officer-cum-Tahasildar, Binjharpur failed to exercise the jurisdiction vested in him under law. Thus, impugned order under Annexure-7 is not sustainable in the eyes of law and is accordingly set aside. The matter is remitted back to the Revenue Officer-cum-Tahasildar,

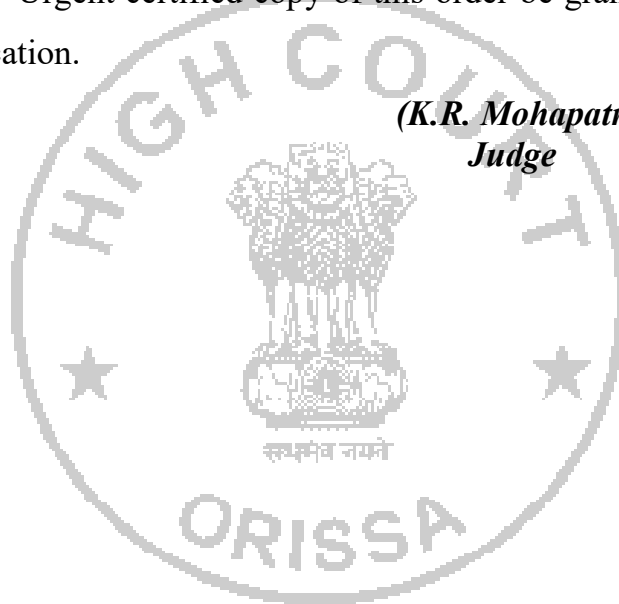
Binjharpur (at present Bari)-Opposite Party No.3 to adjudicate the matter afresh in accordance with law giving opportunity of hearing to the parties concerned keeping in mind the requirements of Section 9(1) of the Act.

12. In order to avoid further delay in the matter, parties are directed to appear before the Revenue Officer-cum-Tahasildar, Bari on 18th April, 2022 along with certified copy of this order to receive further instruction in the matter.

13. This writ petition is allowed to the aforesaid extent.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



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