

Brundaban Chandra Jew Vs Binod Majhi and Others

Court: Orissa High Court

Date of Decision: Aug. 9, 1989

Acts Referred: Constitution of India, 1950 " Article 226, 227

Orissa Estates Abolition Act, 1951 " Section 6, 7, 8

Orissa Land Reforms Act, 1960 " Section 36A

Citation: (1989) 68 CLT 737

Hon'ble Judges: S.C. Mohapatra, J; J. Das, J

Bench: Division Bench

Advocate: K.N. Jena, Sridhar Pradhan and B.S. Patnaik, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

J. Das, J.

This is an application under Articles 226 and 227 of the Constitution of India for issue of a writ of certiorari. The Petitioner has

sought in his prayer to quash the orders vide Annexure"s 4, 5 and 6.

2. The Petitioner Brundaban Chandra Jew is a deity represented through its marfatdar Mahanta Sachidananda Deb Goswami. The opposite party

Binod Majhi claimed that he is the tenant of the Petitioner in respect of plot Nos. 208, 209, 210 and 239 appertaining to Holding No. 33/1 of

village Jogitofa. The opposite party No. 1 filed a petition u/s 36A of the Orissa Land Reforms Act for declaration that he is a tenant in respect of

these lands and for further declaration that the lands are non-resumable. The petition was allowed by the Tahasildar, Baripada, vide his order

dated 30-11-1977 passed in O.L.R. Case No. 959 of 1976 (Annexure-4) and the opposite party No. 1 was declared as a tenant in respect of

plot Nos. 208, 209 and 210 but the opposite party No. 1"s claim in respect of plot No. 239 was rejected as the same had already been vested in

the ceiling area. The Petitioner made an appeal before the Additional District Magistrate, Mayurbhanj being O.L.R. Appeal No. 358 of 1977. The

appeal was dismissed and the order of the Tahasildar was upheld (vide Annexure-5). The Petitioner filed O.L.R. Revision No. 29 of 1980-before

the Collector, Mayurbhanj. The revisional Court also upheld the orders of the Tahasildar and the appellate Court (vide Annexure-6). In these

circumstances. the Petitioner filed this writ application for issue of a writ of certiorari.

3. The learned Advocate for the Petitioner argued that neither the opposite party raised any objection when the lands in question were settled

under Sections 6 and 7 of the Orissa Estates Abolition Act with the Petitioner nor the opposite party raised any objection at the time of ceiling

proceeding and hence the petition u/s 36A of the Orissa Land Reforms Act is not maintainable. The learned Advocate for the Petitioner also

argued that the report of the local committee has not been obtained and taken into consideration and hence the whole proceeding is vitiated. He

also argued that the opposite party has not been paid rent for about ten years. Hence, there is no relationship of landlord and tenant and this fact

has not been taken into consideration. He also submitted that the Petitioner was not given an opportunity at the time of local inspection and hence

the principle of natural justice has been violated.

4. The contention of the learned Advocate for the Petitioner Mr. Jena that at the time of vesting operation under Sections 6 and 7 of the O.E.A.

Act and the ceiling operation, the opposite party did not raise any objection cannot be sustained. There is no provision either in the O.E.A. Act or

in the O.L.R. Act giving an opportunity to the tenant to raise any objection at the time of vesting operation or ceiling operation. Under the Estates

Abolition Act, the right of the tenant does not vest but u/s 8 all the tenants are deemed to be tenants under the State and as per statute this is quite

automatic and a tenant need not apply for the same. There is also no provision in the O.L.R. Act for the tenant to raise any objection at the time of

ceiling proceedings. The only provision under which the tenant may file application is u/s 36A. O.L.R. Act and the opposite party has filed the duly

constituted application and the application has been enquired into in accordance with the law.

5. When an application u/s 36A is filed, the Revenue Officer is required to give opportunities to the parties interested of being heard and the

Revenue Officer is also required to consult the local committee, if any before declaring that the tenant is in cultivating possession of the lands which

are non-resumable.

In this case adequate opportunities have been given to the Petitioner at all stages. Even at the time of local inspection the representatives of the

Petitioner was present and he has also signed on the margin of the order-sheet of the relevant date. The Petitioner also engaged a lawyer who has

cross-examined the witnesses at length and there has been hot contest over the claim of the opposite party. In these circumstances, it must be held

that adequate opportunity has been given to the Petitioner to be heard in the matter. It may also be stated that the order was passed after hearing

arguments on both sides.

There is nothing to show that any local committee was constituted and hence in the absence of any local committee there is no scope for the

Revenue Officer to consult any such committee. This is also the policy of law. There is clear provision u/s 36A of the O.L.R. Act after consulting

the local committee, if any. This goes to show that there may be a local committee and there may not be any local committee. If there is any local

committee, the Revenue Officer may consult the said committee. When there is nothing to show that there was any local committee it cannot be

presumed that the order is vitiated as the Revenue Officer did not consult the local committee.

6. Whether the Petitioner paid rent or not is not very material, once the relationship of landlord and tenant is established. When the relationship of

landlord and tenant is established, the landlord has right to claim rent unless the same is paid on due date. If the landlord fails to collect the rent it is

at his own risk. Added to this, there is also provision in the O.L.R. Act to evict the tenant for non-payment of the rent and the landlord may take

recourse to that provision also. For the purpose of section 36A. however, the non-payment of rent is not, very material.

7. The contention that principle of natural justice has been violated cannot be sustained. This aspect has been dealt with in the preceding

paragraphs. It is also seen from the record that at every stage the Petitioner has been given ample opportunity. Hence this contention has no basis.

8. The original Court, the appellate Court and the revisional-Court have acted within their jurisdiction and they have passed their orders after giving

adequate reasons and after considering the evidence on record. There is nothing to show that the findings are perverse and are based upon any

inadmissible evidence. It cannot also be said that the evidence have not been supported by any materials. It is the law that there, may not be any

interference in, a writ of certiorari only because a finding of the Tribunal is erroneous in fact or the Tribunal is acted without sufficient evidence or

misdirected himself in considering the evidence or has not admitted legal evidence or has rejected the legal evidence. Provided that the Tribunal has

acted without its jurisdiction. There is nothing to show that the Courts below have acted without jurisdiction. On perusal of the orders, we find that

the decisions are based upon cogent reasons. In such circumstances, there is no scope for interference in a writ of certiorari.

9. In the result, there is no merit in this writ application and the same is dismissed. No costs.

S.C. Mohapatra, J.

I agree.

Writ application dismissed.