PETITIONER:
MAGUNI CHARAN DWIVEDI

Vs.

RESPONDENT:
STATE OF ORISSA AND ANOTHER

DATE OF JUDGMENT19/12/1975

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH

CITATION:
1976 AIR 1121 1976 SCR (3) 76
1976 SCC (2) 134

ACT:
ORISSA Merged Territories (Village offices Abolition) Act, 1963-Sections 3, 5 and 9-Interpretation of.

HEADNOTE:
In the execution proceedings to satisfy a decree dated 14-10-1958 for title and recovery of possession of certain "ganju Bhogra lands" obtained by the appellant against the State, the Notified Area Council. Rourkela claimed the suit lands by an application u/o XXI Rule 58 r/w ss. 37 and 38 Code of Civil Procedure. The said application was rejected. A revision against it was also dismissed with the observation that the council was free to file a regular suit for adjudication of its rights. When the appellant took out a fresh application for execution u/s 47 of the Code' of Civil Procedure, the Council which never filed any suit, and the respondent State which never appealed against the original decree, opposed the execution application on the ground that the decree became infructuous by virtue of s. 3 of the orissa Merged Territories (Village offices Abolition) Act, 1963.

The Executing court upheld the objection and dismissed the execution petitition. On appeal the Additional District Judge, by his order dated 2-5-1970, held that the decree was executable resulting in a second appeal to the High court by the respondent State. The High Court allowed the appeal by its order dated 4-11-1974 holding that as the decree holder was not in actual physical possession of the land, the tenure has vested in the State free from all encumbrances u/s 3 of the Act and the decree was rendered "non est".

Dismissing the appeal by special leave, the Court,
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HELD: (1) As a result of the abolition of the village office under s. 3 of the OMTA, all incidents of the appellant's service tenure, e.g., the right to hold the "bhogra land" stood extinguished by virtue of the provision of clause (b) of s. 3, and ail settlements, sanads and all grants in pursuance of which the tenure was being held by the appellant, stood cancelled under s. 3(c). The right of the appellant to receive emoluments was also deemed to have

been terminated under Cl. (d) and by virtue of Cl. (f), his bhogra land stood resumed and "vested absolutely" in the State free from all encumbrances. Section 3 of the Act, in fact, expressly provided that this would be the result, notwithstanding anything in law, usage, settlement, grant, sanad, order or "in any judgment, decree or order of a court." All these consequences ensued with effect from April 1, 1966 the date of coming into force of the orissa Merged territories (Village offices Abolition) Act, 1963. From that date, the appellant suffered from these and other disabilities enumerated in s. 3 of the Act, the "bhogra land" in respect of which he obtained the decree dated October 14, 1958 declaring his title and upholding his right to possession was, therefore, lost to him as it vested "absolutely" in the State Government free from all encumbrances. The decree for possession also thus lost its efficacy by virtue of the express provisions of the Act and there is nothing wrong in holding that the decree was rendered incapable of execution by operation of law. [77 D-H]

(2) Under sec. 5 of orissa Merged Territoies ((Village offices Abolition) Act, 1963, once a "bhogra land" stood resumed and vested absolutely in the State Government to the exclusion of the village officer concerned, it was required to be "settled" with rights of occupancy thereunder. The settlement of the land contemplated by sec. S had to be with the holder of the village office and the other persons who were enjoying it (or part of it) and as his co-sharers, as tenants under him or his co-sharers, but that was to be so on the condition
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that "each such person, namely, the holder of the village office and his cosharers or the tenants under the holder of the office or his co-sharers was in separate and actual cultivating possession" of the land immediately before April, 1966. The words "each such person" occurring in sub-section I of Sec. 5 include the holder of the village office so that in order to be eligible for settlement of the land with occupancy rights, he must also be in separate and cultivating possession of the "bhogra land" immediately before April 1, 1966. There is nothing in sub-section I of Sec. 5 to justify the argument that the interpretation of the words "each such person" should be such as to exclude the holder of v the village office from its purview. [78 E, F-H]

State of orissa v. Rameswar Patabisi (Civil Revision Petition No. 257 of 1974) decided on 27-6-1975 (orissa High Court) over-ruled; Meharabansingh and Ors. v. Nareshaingh and ors. [1970] 3 S.C.R. 18 (held not applicable).

(3) The provisions of sec. 9 do not justify the argument that the village officer was entitled to continue his possession of the "bhogra land" under that section in spite of the fact that the land. stood resumed and vested absolutely in the State Government free from all encumbrances. [80 E]

(4) The normal consequences arising out of the rejection of the application under o. XXI, r. 58, Civil Procedure Code and the failure to institute the suit thereafter, were rendered nugatory by the express provisions of section 3 of the orissa Merged Territories (Village offices Abolition) Act, 1963. The question of executability of the decree did not arise. [81 A-B]

[The Court left open to the authorities concerned to examine the question of settlement of the land under s. 5(1) of the orissa Merged Territories (Village Dr offices

Abolition) Act, 1963, with liberty to the village officer to rely upon such matters as may be available according to law.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 577 of 1975.

Appeal by Special Leave from the Judgment and order dated the 4-11-74 of the orissa High Court in M.A. No. 75 of 1970.

G. S. Pathak, Santosh Chatterjee and G. S. Chatterjee for the Appellant.

Sachin Chowdhury (Respondent No. 2) and Vinoo Bhagat for the Respondent No. 1.

The Judgment of the Court was delivered by

SHlNGHAL J., Maguni Charan Dwivedi, the appellant, filed a title suit in the Court of Munsif, Sundargarh against the State of orissa, for declaration of his title and recovery of possession of plot No. 99 meaguring 3.80 acres in khata No. 89 of village Mahulpali claiming it as his "ganju bhogra" land. The suit was decreed on October 14, 1958, in respect of 3.45 acres. The defendant State of orissa, did not file an appeal and the decree became final. Decree-holder Dwivedi applied for its execution. The case was transferred to the court of the Subordinate Judge of Sundargarh. An objection was taken there by the Notified Area Council, Rourkela, respondent No. 2, hereinafter referred to as the Council, under ss. 37 and 38 and order XXI rule 58 of the Code of Civil Procedure on the ground that it was in actual physical possession of the land. The objection application was however rejected by the execution court on March 31, 1965. The Council applied for revision or the order of rejection, but its application was dismissed with the observation that the Council might file a regular suit for adjudication of its right if it so desired. No suit was filed by the Council and decreeholder Dwivedi filed an application on September S, 1966 for proceeding with the execution of his decree. The Council and the State then
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made an application under s. 47 of the Code of Civil Procedure stating A that the decree was not executable because the orissa Merged Territories (Village offices Abolition) Act, 1963, hereinafter referred to as the Act, had come into force in the area on April 1, 1966, and the "bhogra land" in question had vested in the State free from all encumbrances. The Subordinate Judge upheld that objection and dismissed the execution application.

Decree-holder Dwivedi felt aggrieved, and filed an appeal which was heard by Additional District Judge, Sundargarh, who held by his order dated May 2, 1970 that the decree was executable. He therefore set aside the order of the execution court, and the State of orissa and the Council went up in appeal to the High Court. The High Court held that as the decree-holder was not in actual physical possession of the land, the tenure had vested in the State free from all encumbrances C under s. 3 of the Act, the decree was "rendered non est", and the Collector could not settle the land with him under s. S of the Act. It therefore allowed the appeal by its impugned judgment dated November 4, 1974, and ordered that the decree-holder could not execute the decree. He applied for and obtained special leave, and has filed the present appeal.

It is not in dispute before us that the appellant held

the "village office" within the meaning of s. 2(j) of the Act. It is also not in dispute that it was in that capacity that he held the "bhogra land" in question by way of emoluments of his office. Moreover it is not in dispute that the appellant's village office stood abolished in accordance with the provisions of s. 3(a) of the Act. The consequences of the abolition, have been stated in cls. (a) to (g) of s. 3. It will be sufficient for us to say, for purposes of the present controversy, that as a result of the abolition of the office, all incidents of the appellant's service tenure, e.g., the right to hold the "bhogra land", stood extinguished by virtue of the provisions of cl. (b) of s. 3, and all settlements, sanads and all grants in pursuance of which the tenure was being held by the appellant stood cancelled under s. 3(c). The right of the appellant to receive the emoluments was also deemed to have been terminated under cl. (d), and by virtue of cl. (f) his "bhogra land" stood resumed and "vested absolutely in the State Government free from all encumbrances." Section 3 of the Act in fact expressly provided that this would be the result, notwithstanding anything in any law, usage, settlement, grant, sanad or order or "in any judgment, decree or order of a Court." All these consequences therefore ensued with effect from April 1, 1966 when, as has been stated, the Act came into force in the area with which we are concerned. There can be no doubt therefore that from that date appellant Dwivedi suffered from these and the other disabilities enumerated in s. 3 of the Act; the "bhogra land" in respect of which he obtained the decree dated October 14, 1958 declaring his title and upholding his right to possession, was therefore lost to him as it vested "absolutely" in the State Government free from all encumbrances. The decree for possession also thus lost its efficacy by virtue of the express provisions of the Act referred to above, and there is nothing wrong if the High rt has held that it was rendered incapable of execution by operation of the law.

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Section S of the Act deals with the settlement of the resumed "bhogra land" and has been the subject matter of controversy before us. It provides as follows:

> "5. Settlement of Bhogra lands:-(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 Grama 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." (Emphasis added) .

It would appear that once a "bhogra land" stood resumed and vested absolutely in the State Government to the exclusion of the village officer concerned, it was required to be "settled", with rights of occupancy thereunder, with the erstwhile holder of the village office, or with him and all those other persons, if any, who may be in enjoyment of the land or any Part thereof as his co-sharer to the extent that each such person was in separate and actual cultivating possession of the same immediately before the date appointed for the coming into force of the Act. The settlement of the land contemplated by s. 5 had therefore to be with the holder of the village office and the other persons who were enjoying it (or part of it) as his co-sharers or as tenants under him or his co-sharers, but that was to be so on the condition that "each such person" namely, the holder of the village office, and his co-sharers, or the tenants under the holder of the office or his co-sharers, was in "separate and actual cultivating possession" of the land immediately before April 1, .1966. There is nothing in sub-section (1) of s. S to justify the argument of Mr. Pathak that we should so interpret the words "each such person" as to exclude the holder of the village office from its purview. In fact the same words occur in sub-s. (2) of s. S as well, which deals with the question of reservation of a fraction of the "bhogra land" in favour of Grama Sasan, and Mr. Pathak has not found it possible to argue that the land in possession of the holder of

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the village office was immune from the liability to such fractional reservation. We have no doubt therefore that in order to be entitled to the settlement contemplated by sub-s. (1) of s. S, the village officer or the other persons mentioned in the sub-section had to be in "separate and actual cultivating possession" immediately before the appointed date.

It has also been argued by Mr. Pathak that the provisions of s. 3 of the Act were subject to the provisions of s. 5, and that the High Court committee an error in losing sight of that requirement of the law. He has urged that if s. 3 had been read as suggested by him, it would have been found that, in spite of the resumption and vesting of the "bhogra land" under s. 3, the appellant's right to possess the "bhogra land" in question continued to subsist so long as it was not converted into a right of occupancy under sub-s. (1) of s. 5. Counsel has gone on to argue that the appellant was therefore entitled to ignore any trespass on his possession of the "bhogra land", and to ask for execution of the decree for possession against the respondents as they were mere trespassers and were not co-sharers or tenants within the meaning of sub-s. (1) of s.5. Reference in this connection has been made to Maxwell on Interpretation of Statutes, twelfth edition, p. 86, where it has been stated that it is necessary to interpret the words of the statute so as to give the meaning "which best suits the scope and object of the statute." It has been argued that grave injustice would otherwise result for, by a mere act of trespass committed on the eve of the coming into force of the Act, a village officer would lose the right of settlement of his "bhogra land" under sub-section (1) of s.5. It has also been argued that the words "each such person" occurring in that sub-section do not include the holder of the village office himself, so that it was not necessary for him to show that he was in separate and actual

cultivating possession of his "bhogra land". Reliance for this proposition has been placed on a bench decision of the High Court of Orissa in State of Orissa v. Rameswar Patabisi (Civil Revision Petition No. 257 of 1974 decided on June 27,1975) and on Meharaban Singh and others v. Naresh Singh and others(1). As will appear, there is no force in this argument.

Section 3 of the Act expressly provides for the abolition of village offices under the Act, and the consequences of such abolition. We have made a reference to cls. (a) (b) (c) (d) and (f) of that section, and we have no doubt that the consequences stated in the section in regard to the abolition of village offices, the extinction of the incidents of the service tenures, cancellation of the settlements and sanads etc. creating those office, termination of the right to receive any emoluments for the offices, the resumption and vesting of the "bhogra lands" free from all encumbrances ensued "with effect from and on the appointed date" and were not put off until after the settlement provided for in sub-section (1) of s. 5 had been made. Section 3 in fact expressly made provision for those consequences and there is no justification for the argument that they remained suspended or were put off until occupancy rights were settled on the persons concerned. As has been

(1) [1970] 3 S.C.R. 18.

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stated, sub-section (1) of s. S deals with the settlement of such lands, with rights of occupancy, with the holder of the village office or with him and the other persons, if any, referred to in the sub-section, but such settlement was required to be made as a result of the consequences referred to in s. 3 and not otherwise. It is therefore futile to contend that the appellant did not suffer from those consequences merely because the "bhogra land" claimed by him had not been settled with rights of occupancy under sub-s. (1) of s. 5 because it was the subject matter of the decree which had not been executed.

We have gone through the decision in State of Orissa v. Rameshwar Patabisi (supra) and it has no doubt been held there that actual cultivating possession of the village officer was not necessary for purposes of sub-s. (1) of s. S, but, as has been shown, we have no doubt that the words "each such person" occurring in sub-s. (1) of s. 5 include the holder of the village office, so that in order to be eligible for settlement of the land with occupancy rights, he must also be in separate and actual cultivating possession of the "bhogra land" immediately before the appointed date. It appears that the earlier bench decision to the contrary, which is the subject matter of the present appeal, was not brought to the notice of the Bench which decided Rameswar Patabisi's case. We have gone through Maharabansingh's(1) case also but that was quite a different case which was decided in accordance with the provisions of a different Act.

It has next been argued by Mr. Pathak that the High Court lost sight of the provisions of s. 9 of the Act which provided for submission of records and delivery of possession of other land but did not require delivery of possession of the "bhogra land" even after its resumption. The argument is however untenable because s. 9 was meant to serve quite a different purpose inasmuch as it made provision for the delivery of all records maintained by the village officer in respect of the land or village held by him in relation to his office, the rendering of all accounts appertaining to his office in respect of the dues payable by

and to him, and the delivery of possession of all abandoned and surrendered holdings etc. The section did not therefore have any bearing on the question of the vesting of the "bhogra land" absolutely in the State Government and the extinction of the right of the village officer to hold it. That had in fact been. expressly provided in those clauses of s. 3 to which reference has been made by us already. As it is, section 9 did not deal with the question of delivery of possession of the "bhogra land" and its provisions could not justify the argument that the village officer was entitled to continue his possession of the "bhogra land" under that section in spite of the fact that the land stood resumed and vested absolutely in the State Government free from all encumbrances under s. 3.

It may be mentioned that Mr. Pathak has argued further that as the application which had been filed by the Council under order XXI r. 58 C.P.C. had been rejected on March 31, 1965 and the Council did not file a suit to establish its right to the "bhogra land", the decree in favour of the appellant became final and could not be challenged for
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any reason whatsoever, and the High Court committed an error in A taking the view that it was rendered inexecutable merely because of the coming into force of the Act. It will be sufficient for us to say in this connection that whatever might have been the consequences of the rejection of the Council's application under order XXI r. 58 C.P.C. and the failure to institute a suit thereafter, those normal consequences were rendered nugatory by the express provisions of the Act to which reference has been made above. The question of executability of the decree has therefore been rightly decided with reference to the Act.

It may be mentioned that in a given case there may be no "bhogra land" to be settled with a village officer, or a village officer may feel aggrieved on the ground that the Act provides for the acquisition of property by the State, but we find that provision has been made in the Act for the payment of solatium or compensation under ss. 8 and 10 in such cases and it cannot be said that they have been left without a remedy.

For the reasons mentioned above, we find no force in the arguments which have been advanced on behalf of the appellant. It however appears to us that there is justification for the other argument of Mr. Pathak that there was really no occasion for the High Court to express the view that the appellant "had no possession of the land" so as to claim its settlement under s. 5(1) of the Act, and that the Collector could not settle the land with him. As is obvious, that was clearly a matter for the authorities concerned to examine and decide under s. 5 and it was, at any rate, outside the purview of the question relating to the executability of the decree which was the subject matter of the appeal in the High Court. While therefore the appeal fails and is dismissed, the observation of the High Court that the decree-holder had no possession of the land and the Collector could not settle the land with him, is set aside, and it is left to the authorities concerned to examine the question of settlement of the land under s. 5(1). The appellant may rely on such matters as may be open applellant the law. In the circumstances of this case, we leave the parties to pay and bear their own costs.

S.R. Appeal dismissed
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