PETITIONER:
DIBYASINGH MALANA

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT19/04/1989

BENCH:
OJHA, N.D. (J)
BENCH:
OJHA, N.D. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1989 AIR 1737 1989 SCR (2) 604
1989 SCC Supl. (2) 312 JT 1989 (2) 210
1989 SCALE (1)1069

ACT:
Orissa Land Reforms Act, 1960: Section 37(b): 'family'Definition of--'Major married son' whether entitled to benefit of statute.

HEADNOTE:
Proceedings were initiated in 1974 under the Orissa Land Reforms Act, 1960 for declaration of surplus land of the appellants. The appellants filed objections asserting, inter alia, that in view of the partition in their families in the year 1965 the land in the ancestral properties which fell in their share could not be clubbed with those of their father. This contention was not accepted on the definition of the term "family" contained in section 37(b) of the Act. Such of the major married sons who as such had separated by partition before the 26th day of September, 1970, as contemplated by the definition of the term "family", were allotted separate ceiling units but so far as the appellants were concerned, their shares were clubbed with those of their father. The appellants, having failed to get relief in the appeals and revisions filed by them under the Act, challenged the orders passed by the various authorities in writ petitions before the High Court of Orissa which were dismissed, relying on its earlier Full Bench decision in Nityananda Guru v. State of Orissa, (A.I.R. 1983 Orissa 54).

Before this Court it was contended that (1) the protection under Article 31(C) would not be available to section 37(b) of the Act and it would be hit by Article 14 unless it was established that it had nexus with the policy of the State towards securing any of the principles laid down in Part IV of the Constitution; (2) section 37(b) of the Act had to be read in such a manner as to exclude the land which had fallen to the share of the appellants even though they did not fail within the category of a major married son" as contemplated by the definition of the term "family" in that section, by adding the word "or" between the words "major" and "married", (3) the words "as such" qualify only "son" and not "major married son" and are meant to distinguish son from brother or uncle, etc.

Dismissing the appeals, it was,

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HELD: (1) The Act aims at agrarian reform and Section 37(b) has a clear nexus with the policy of the State towards securing the principle laid down in Article 39(b) of the Constitution occurring in Part IV thereof. [607E-F]

Tumati Venkaish etc. v. State of Andhra Pradesh, [1980] 3 SCR 1143; Seth Nand Lal & Anr. v. State of Haryana, [1980] 3 SCR 1181 and Waman Rao & Ors. v. Union of India, [1981] 2 SCR 1 referred to.

(2) It is difficult to take recourse to the suggested mode of interpretation of section 37(b), i.e., by adding the word "or" between the words "major" and "married" in view of its plain language. [608C-D]

(3) On a plain reading of the definition of the term "family" in section 37(b) of the Act, the said definition as it stands is neither meaningless nor of doubtful meaning. [608F]

British India General Insurance Co. Ltd. v. Captain Itbar Singh Ors., [1960] 1 SCR 168 referred to.

(4) Keeping in view the agrarian reform which was contemplated by the Act and particularly the provisions of Chapter IV relating to ceiling and disposal of surplus land which were calculated to distribute the surplus land of big tenure holders among the overwhelming havenots of the State. the Legislature in its wisdom gave an artificial meaning to the term "family". [608F-G]

(5) The main provision containing the definition of the term 'family' is to be found in the first part of section 37(b), namely "family in relation to an individual means the individual, the husband or wife as the case may be of such individual and their children whether major or minor". The latter part of section 37(b), namely "but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September 1970", does not on the face of its contain a matter which may in substance be treated as a fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an exception. This admits of no doubt in view of the words "but does not include". [608G-H; 609A-B]

Commissioner of Income Tax, Mysore v. The lndo Mercantile Bank Limited, [1959] Supp. 2 SCR 256 referred to.

(6) Given its proper meaning, the words "as such" can only be

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interpreted to mean that it is only such son who would get the benefit of the exception who had separated by partition or otherwise before the 26th day of September, 1970 as "major married son". [609F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2436 to 2438 of 1989.

From the Judgment and Orders dated 7.4.83 and 2.5. 1986 of the Orissa High Court in O.J.C. Nos. 108 and 109 of 1986 and 6 of 1984 respectively.

T.U. Mehta, Gobind Das and Vinoo Bhagat for the Appellants.

G.L. Sanghi, R.K. Mehta and A.K. Panda for the Respondents.

The Judgment of the Court was delivered by

OJHA, J. Special leave granted.

These three appeals raise a common question about the interpretation of the term "family" in Section 37(b) of the Orissa Land Reforms Act, 1960 (hereinafter referred to as

the Act). According to clause (a) of Section 37 of the Act the term "person" includes inter alia family. Clause (b) of Section 37 being the clause under consideration may usefully be reproduced. It reads:

> "(b) "family" in relation to an individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970."

According to the appellants in these three appeals partition in their respective families had been taken place in the year 1965. The Act except Chapters III and IV came into force on Ist October, 1965. Chapter IV of the Act which contains the provisions relating to ceiling and disposal of surplus land came into force on 7th January, 1972. Suo motu proceedings under Section 42 of the Act for declaration of surplus land and consequential purposes were initiated in the year 1974. Objections were filed asserting inter alia that in view of the partition in the families of the appellants in the year 1965 the land in the ancestral properties which fell in the share of the appellants could not be clubbed with those of their father. This contention, however, was not accepted on the definition of the term "family" contained in Section 37(b) of the Act. Such of the major married sons who as such had separated by partition before the 26th day of September, 1970 as contemplated by the definition of the term "family" were allotted separate ceiling units but so far as the appellants are concerned their shares were clubbed with those of their father and only one ceiling unit was allotted as contemplated by the relevant provision of the Act.

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The appellants having failed to get relief in the appeals and revisions filed by them under the Act challenged the orders passed by the various authorities under the Act in writ petitions before the .High Court of Orissa. These writ petitions were dismissed relying on the decision of a Full Bench of that Court in Nityananda Guru v. State of Orissa and others, A.1.R. 1983 Orissa Page 54 (F.B.). It is these orders of the High Court which have been challenged in these appeals. The validity of Section 37(b) of the Act does not appear to have been challenged before the High Court nor has it been seriously challenged even before us except by making a faint submission that even if by virtue of the said provision being incorporated in the 9th Schedule, it may be immune from challenge in view of Article 3lB of the Constitution, the protection under Article 31C would not be available to it and it would be hit by Article 14 unless it was established that it had nexus with the policy of the State towards securing any of the principles laid down in Part IV of the Constitution. This submission even if it is permitted to be raised for the first time in this Court has obviously no substance in view of the undisputed position that the Act aims at agrarian reform and the provisions with regard to declaration of surplus land and its distribution among the have-nots namely landless persons is apparently to give effect to the policy of the State towards securing the principle laid down in Article 39(b) of the Constitution occurring in Part IV thereof and Section 37(b) has a clear nexus with that policy. The aforesaid submission has, therefore, no substance.

At this place it may also be pointed out that validity of analogous provisions dealing with laws for declaration

and distribution of surplus land framed by the States of Andhra Pradesh, Haryana and Maharashtra has already been upheld by this Court after rejecting challenges to them on various grounds in Tumati Venkaish etc. etc. v. State of Andhra Pradesh, [1980] 3 SCR 1143; Seth Nand Lal & Anr. v. State of Haryana & Ors., [1980] 3 SCR 1181 and Waman Rao & Ors. etc. etc. v. Union of India and Ors., [1981] 2 SCR 1.
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The main attack against the judgment of the Full Bench of the Orissa High Court in the case of Nityananda Guru (supra) relying on which the writ petition filed by the appellants were dismissed by the High COurt has been on the ground that partition in the respective families of the appellants in the year 1965 having been accepted, Section 37(b) of the Act had to be read in such a manner as to exclude the land which had fallen to the share of the appellants even though they did not fall within the category of "a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970" as contemplated by the definition of the term "family" in the said section. It was urged that this purpose could be achieved by adding the word "or" between the words "major" and "married". According to learned counsel if that is done the term "individual" would not include a major son who had separated by partition before the 26th day of September, 1970 even if he had not married prior to that date. We find it difficult to take recourse to this mode of interpretation of Section 37(b) in view of its plain language. 1n British India General Insurance Co., Ltd. v. Captain Itbar Singh and Others, [1960] 1 SCR 168 sub-section (2) of Section 96 of the Motor Vehicles Act, 1939 was sought to be interpreted by the learned Solicitor General in a manner which involved addition of certain words. The submission was repelled and it was held:

> "The learned Solicitor General concedes this and says that the only word that has to be added is the word "also" after the word "grounds". But even this the rules of interpretation do not permit us to do unless the section as it stands is meaningless or of doubtful meaning, neither of which we think it is."

On a plain reading of the definition of the term "family" in Section 37(b) of the Act we are of the view that the said definition as it stands is neither meaningless nor of doubtful meaning. In this connection, it may be pointed out that keeping in view the agrarian reform which was contemplated by the Act and particularly the provisions of Chapter IV relating to ceiling and disposal of surplus land which were calculated to distribute the surplus land of big tenure holders among the overwhelming have-nots of the State the Legislature in its wisdom gave an artificial meaning to the term "family". The main provision containing the definition of the term is to be found in the first part of Section 37(b) namely "family in relating to an individual means the individual, the husband or wife as the case may be of such individual and their children whether major or minor. "The later part of Section
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37(b) namely "but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970" does not on the face of it contain a matter which may in substance be treated as a fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an

exception. This admits of no doubt in view of the words "but does not include". In the Commissioner of Income Tax, Mysore v. The Indo Mercantile Bank Limited, [1959] Supp. 2 SCR 256. it was held:

> "Ordinarily the effect of an excepting or a qualifying proviso is to carve something out of the preceding enactment or to qualify something enacted therein which but for the proviso would be in it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."
> (Emphasis supplied)

That apart the submission made by learned counsel for the appellants would also lead to an anomalous situation if the word "or" is added between the words "major" and "married". Not only a major unmarried son who had separated by partition before the 26th day of September, 1970 would get excluded from the definition of the term "family" even a minor married son would get so excluded. The result would be that even though marriage of a minor son is prohibited by law such son would be placed at an advantageous position to a minor son who was law-abiding and had not married. Further the submission made by learned counsel for the appellants completely ignores the words "as such" used in the later part of Section 37(b) which contains the exception referred to above. Given its proper meaning the words "as such" can only be interpreted to mean that it is only such son who would get the benefit of the exception who had separated by partition or otherwise before the 26th day of September, 1970 as "major married son".

The submission by counsel for the appellants that the words "as such" qualify only "son" and not "major married son" and are meant to distinguish son from brother or uncle etc. is misconceived on the plain language of Section 37(b) which contemplates clubbing of land of spouse and children only and not of brother and uncle etc. So, the question of using the words "as such" to distinguish son from brother or uncle etc. does not arise. Further, for accepting this submission the words "major married" will have to be omitted as superfluous which
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cannot be done in the garb of interpretation.

Learned counsel for the appellants also urged that a son who had separated by partition or otherwise from his father was himself an "individual" and if his land was clubbed with that of his father, he will be subjected twice to the provisions relating to declaration of surplus land. This submission too is equally untenable. Land of such son alone who does not fall within the exception is to be clubbed with that of his father and with regard to land which had been so clubbed the son obviously cannot be treated as another "individual" in his own right for purposes of declaration of surplus land. Only such son who falls within the exception will be liable to be dealt with as an "individual" in his own right, as his land has not been clubbed with that of his father. Even on the facts of these appeals nothing has been brought to our notice to indicate that the land of the appellants which was clubbed with that of their father was subjected twice to the provisions relating to declaration of surplus land treating the appellants also as individuals.

It was then urged by learned counsel for the appellants that according to the definition of the term "family" as contained in Section 37(b) of the Act, land of a married

daughter is liable to be clubbed twice; firstly, with that of her father and secondly, with that of her husband. According to him it is against the spirit of the law dealing with the question of declaration of surplus land. Suffice it to say, so far as this submission is concerned that none of appellants in these appeals is a married daughter and as such we do not find it necessary to go into this question. We may also point out that dealing with an almost similar submission with regard to interpretation of Section 123(7) of the Representation of the People Act, 1951 it was held by a Constitution Bench of this Court in Rananjaya Singh v. Baijnath Singh and others, [1955] S.C.R. Page 671 at 676:

> The learned advocate, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary. grammatical and natural meaning of their language
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> they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

In view of the foregoing discussion we are of the opinion that the Full Bench of the Orissa High Court in the case of Nityananda Guru (supra) lays down the correct law.

One more submission has been made by learned counsel for the appellants in the Civil Appeal arising out of SLP (Civil) No. 9079 of 1986. It has been urged that certain Home-Stead urban land of the appellants not connected with agricultural lying inside Udala Notified Area Council has wrongly been included as agricultural land in the draft statement. This submission does not appear to have been made either before the High Court or before the authorities under the Act. In the counter affidavit filed by the Additional District Magistrate (Land Reforms), Mayurbhanj, Orissa it has been stated in reply to paragraphs 21 to 24 of the SLP that there is no Home-Stead land and no non-agricultural land belonging to the appellant-land holders in the Notified Area Council of Udala. It has also been stated in paragraph 3(c) of the said counter affidavit that no Notification as contemplated by Section 73(c) of the Orissa Land Reforms Act has been made by the State Government. It has further been stated therein that the Urban Land (Ceiling and Regulation) Act, 1976 has not been made applicable so far to the Udala Notified Area Council. In this view of the matter it is not possible for us to record any finding with regard to this submission, and consequently we express no opinion in this behalf.

In the result, we find no merit in any of these appeals and they are accordingly dismissed but in the circumstances of the case there shall be no order as to costs.

R.S.S. Appeals dismissed.

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