

PETITIONER:
K.C. SINGH DEO

Vs.

RESPONDENT:
NILADRI SAHU(DEAD) BY L.RS. & ORS.

DATE OF JUDGMENT: 06/05/1999

BENCH:
S.R.Babu, S.N.Phukan

JUDGMENT:

S.N. PHUKAN, J.

This appeal is directed against the judgment of the Orissa High Court in O.J.C. No.602 of 1978. By the impugned judgment and order, the High Court after interpreting Section 4(1)(h) of Orissa Land Reforms Act, 1960 (for short the Act) did not agree with the findings of the Board of Revenue that under the above section possession of land by the person on date of vesting is necessary for the purpose of declaration as a Raiyat.

Shortly stated facts are as follow: Respondent Nos. 1, 2 and 3 filed an application for declaration as Raiyats under Section 4(1)(h) of the Act for Survey Plot Nos. 719, 915, 804, 805, 297, 266 and 957 in village Padampur where respondents reside. This village was part of the estate of Badagada and the estate was abolished by Orissa Estates Abolition Act, 1951(for short the Act of 1951) and the land vested in the Government free from all incumbrances w.e.f. 01.06.1953. In the above application for being declared as Raiyats, the appellant before us filed objection on the ground that the land in question belonged to the Deity of Sri Jagannath Mahaprabhu of which the appellant was a trustee. The Revenue Officer held that the respondents herein failed to prove possession of the land and the appellant also did not take any step for declaration that it was a trust estate and, therefore, rejected both the applications. In appeal filed by the appellant it was held that the appellant should have put forth his claim of hereditary trustee before the Orissa Estate Abolition Collector appointed under Act of 1951. Therefore, the plea of the appellant was not accepted. Regarding Respondent Nos. 1,2 and 3 it was held that they failed to prove their possession and, therefore, could not be declared as Raiyats. This finding was also accepted by the Revisional Authority. A reference was made to the Board of Revenue by the Revisional Authority and the Board also agreed with the findings of the Revenue Authorities regarding personal cultivation of the land by Respondent Nos. 1 to 3 and, therefore, reference was rejected. The Tribunal constituted under Act of 1951 declared the Deity Sri Jagannath Mahaprabhu as religious trust of public nature on an application filed by the appellant. The order of Board of Revenue was challenged before the High Court by the Respondent Nos. 1 to 3 and the High Court by the impugned order held, inter alia, as follows: (1) under Section 4(1)(h) of the Act for giving status of Raiyat requirement that the person would be holding the land on the date of

vesting of the land on the government was not envisaged under the above sub-section and, therefore, finding of the Board of Revenue was contrary to law. (2) according to the High Court the requirements for a declaration that the person is a Raiyat are (i) the land is in a vested estate (ii) such land is held by the person under the Government and (iii) (a) the person holding land is a temporary lessee in personal cultivation of the land for agricultural purposes, or (b) holds in mediately or immediately under such temporary lessee or (c) is a successor in interest of any such persons. Regarding factual aspects, the High Court confirmed the declaration of the Revenue Officer that the respondents are Raiyats in respect of land covered by Survey No. 719; the claim of the respondents for declaration of Raiyats in respect of Survey No. 957, 804 and 805 was rejected and the Board of Revenue was directed to consider the matter afresh in light of the judgment in respect of Survey No. 915, 266 and 297. We have heard Mr. Janaranjan Das, learned counsel for the appellant and Mr. P.N. Mishra, learned counsel for the respondent. We extract below the relevant provisions of the Act namely Clause(h) of Sub-section(1) and Sub-sections (2),(3) and (4) of Section 4:

"4.Raiyats-(1) The following persons shall be deemed to be raiyats for the purpose of this Act in respect of the lands held by them, namely: (a)..... (b).....

(1)(h) - subject to the provisions of Sub-sections (2),(3) and (4) persons who are temporary lessees in personal cultivation of lands in the vested estates held under Government for agricultural purposes, persons who are in personal cultivation of such lands held either mediately or immediately under such temporary lessees and the successor- in-interest of any such persons:

Provided that nothing in this clause shall apply to char or diara lands or lands held under the custom of Utabandi or similar other customs;

(i).....

(2) - The Revenue Officer, on an application in that behalf in the prescribed form and manner by a person referred to in Clause (h) of Sub-section(1) made not later than ninety days from the commencement of this Act or within such further period not exceeding thirty days as such officer in his discretion allows, may after such enquiry as may be necessary by order declare that such person shall be a raiyat holding immediately under Government in respect of the land held as specified in the said clause with effect from the beginning of the year next following the date of the order:

Provided that any such person as aforesaid, who has failed to make an application within the said period, may make such application within ninety days from the date of commencement of the Orissa Land Reforms (Amendment) Act, 1966(Act 8 of 1967;

Provided further that any such person as aforesaid who has failed to make an application within any of the periods specified in this sub-section may make such application within a period of two years from the commencement of the

Orissa Land Reforms (Amendment) Act, 1973(President's Act 17 of 1973:

Provided further that any such application made after the expiry of the period specified in this sub-section and before the aforesaid date shall, for all purposes, be treated as an application filed within the period of limitation;

Provided further that an application under this sub-section may, if it relates to any land situate in an estate vested in the Government after the 30th day of September, 1965, be filed within two years from the date of commencement of the Orissa Land Reforms (Second Amendment) Act, 1975 or the date of vesting of the estate, whichever is later.(emphasis supplied)

(3) - While making an order under Sub-section (2) the Revenue Officer shall determine the permium in respect of the raiyati right to be so acquired to be paid to Government which shall be an amount calculated at the rate of eight hundred rupees per standard acre of the land.

(4) - The permium determined under Sub-section (3) shall be payable in five equal annual instalments on such dates as may be fixed by the Revenue Officer and the amount of premium or any portion thereof remaining unpaid shall be recoverable as arrears of land revenue."

We agree with the High Court that to acquire the status of Raiyat under Clause(h) of sub-section(1) of Section 4 of the Act, the land has to be a vested estate and such land is held by the person under the Government and (a) the person holding the land is a temporary lessee doing personal cultivation on the land for agricultural purposes or (b) holds it mediately or immediately under temporary lessee or (c) is successor-in-interest of any such person. We, however, do not agree with the High Court that possession of the land is not a condition for acquiring such Raiyati right for the reasons stated hereinafter. By the Act of 1951, right, title and interest of all intermediaries over land were abolished and such rights in respect of the land vested in the Government free from all incumbrances. Such land after vesting is called vested land. There is no dispute in the case in hand that the land in question is a vested land.

After the enactment of the Act of 1951 legislature enacted the present Act and from the preamble of the Act we find that it was so enacted as a progressive piece of legislation relating to agrarian reforms of land in order to confer better rights on agriculturists. In other words after abolition of rights of intermediaries, steps had to be taken by the enacting the Act to give rights on land to the tillers of the soil. The expression "personal cultivation" has been defined in Clause(22) of Section 2 of the Act. The said Clause is extracted below:

"(22) "personal cultivation" with its grammatical variations and cognate expressions means to cultivate on one's own account-

(a) by one's own labour; or

(b) by the labour of any member of one's family; or

(c) by servants or hired labour on wages, payable in cash or kind, but not in crop-share, under one's personal supervision or the person supervision of any member of one's family;

Explanation- '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 minor or major;"

Therefore, unless a person is in actual physical possession of land the question of personal cultivation could not arise and, therefore, he cannot claim Raiyati right. We are, therefore, of the opinion that possession is a must for the purpose of considering whether a person has acquired the status of Raiyat under Clause (h) of sub-section(1) of Section 4 of the Act. Regarding the date of possession we have to consider sub-section(2) of Section 4 of the Act. Under sub-section (2) a person can make an application for declaration of Raiyati right under Clause(h) of sub-section(1) of Section 4. The period within which such application is to be made is fixed by sub-section (2) and, it is clear from the said sub- section that the period is to be counted, under main sub- section, from the date of commencement of the Act. Under the first proviso it would be from the date of commencement of Orissa Land Reforms (Amendment) Act, 1966, under the second proviso from the date of commencement of Orissa Land Reforms Act, 1973 and under the 4th proviso from the date of commencement of Orissa Land Reforms(Second Amendment) Act, 1975 or on the date of vesting of the estate in the Government, whichever is later.

Unless a person is in possession of the vested land he cannot make an application as would appear from sub-section(2) of Section 4. Therefore, date of possession would depend on nature of the claim put up by a person for his Raiyati right and this date is to be decided by the revenue authority in terms of the above sub-section(2). For the reasons stated above the appeal is partly allowed and the impugned judgment is modified to the extent that the revenue authority, as directed by the High Court shall also consider the question of possession as indicated above along with the claim of the appellant. Parties shall bear their own costs.