COURT OF THE REVENUE OFFICER-CUM-SUB-COLLECTOR, ATHAMALLIK

OLR Case under Section 23-A (Parama Bhoi v. Duryodhan Pradhan)

Parama Bhoi … Petitioner v. Duryodhan Pradhan and another … Opposite Parties
Decided on 29 April 2025

Odisha Land Reforms Act, 1960 – Section 23-A – Forest Rights Act, 2006 – Land granted to a Scheduled Tribe person under the FRA occupied by non-ST persons. Land already granted to a Scheduled Tribe person under the Forest Rights Act, 2006 cannot be settled again with others under the OPLE Act, 1972. Non-ST persons in occupation are unauthorised occupants and can be evicted under section 23-A, with possession restored to the grantee. A pending proceeding on a different matter in issue does not bar the Revenue Officer (*Ragho Prasad Gupta v. Shri Krishna Poddar*, 1969).

Result: Petition allowed. Opposite parties to vacate within 30 days; Tahasildar to restore possession.

ORDER

Order and the initial of the Officer

1. The case for the order has been taken up today. The brief case of the case is that one Parama Bhoi S/O- Chandala, caste “Khaira” who belongs to ST category, resident of village Sadananadpur under Athamallik Police Station of Angul District submitted a petition stating that one Duryodhan Pradhan, Dhaneswar Pradhan all are S/O- Gobinda Pradhan, caste: Chasa who belongs to a non-ST caste, has forcibly occupied her following land schedule.

2. LAND SCHEDULE | Mouza | Khata No | Plot No | Area in Ac | Kissam | Sadananadpur | 24 | 243 | 0.45 | Jungle-II | Brief History of the case

3. A petition under section 23 A was received from the petitioner Parama Bhoi S/O- Chandal Bhoi on 3.1.2024. On the same day, the case was instituted. Notice was issued to the defendants to appear before this court on 15.01. 2024. The Tahasildar Athamallik and the ADWO Athamallik were instructed to submit a report. The report of the Tahasildar has been received, but this court has not yet received the report of the ADWO. Vakalatnama filed by advocate AR Deo, P Mishra, P Sahu, L Dash, PK Pradhan & SK. Pradhan. It was accepted. The defendant's advocate was present on call on 15.04.2025 and prayed for time adjournment as he could not gather some important documents. This was 3rd time petition. The first was on 05.01. 2024 and the 2nd was on 05.02.2025. Therefore, not ready to submit the argument thereon. It was accepted and granted till 22.04.2025. The matter stood thus.

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Statement of the Tahasildar Athamallik

4. The Tahasildar of Athamallik, in letter number 306 dated February 4, 2025, reported that he conducted an inquiry through the Revenue Inspector of Thakurgarh. The findings revealed that the disputed land in village Sadanandpur was initially recorded under Government holding number 24 (Abada Jogya Anabadi), plot number 234, with an area of 1.35 acres categorised as Kissam Jungle - II. 2009 the plaintiff acquired 0.45 acres from plot number 243 under the Forest Rights Act 2006. The Revenue Inspector's report indicates that before this, one of the defendants, Dhaneswar Biswal,

son of Labanya Biswal and a member of the non-ST community, occupied 0.20 acres by constructing a dwelling house and a kitchen garden. Another defendant, Kishori Biswal, son of Cheru Biswal, also a non-ST community member, possesses 0.07 acres. During the inquiry, it was noted that all defendants collectively possessed 0.98 acres of land, where they had planted Teak and Mango trees. The plaintiff owns 0.04 acres of the disputed land, having built a dwelling house. Drupada Bhoi and Pradeep Bhoi each possess 0.03 acres of the contested land.

Statement of the defendant

5. Today, the defendant's advocate was present on call.

6. He said the case land was originally recorded in the name of the Government of Odisha. The paternal grandfather of the present opposite party members had encroached on the land above for the last fifty years.

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7. After the death of their paternal grandfather, their father, Govinda Pradhan, had encroached on the case land till his last breath. They have developed the case land by doing manual labour and spending a huge amount of money on improving the case land. They have planted different varieties of trees like mango and teak. The local RI has booked encroachment cases 4-279/2021, 446/1995, 483/2016 &433/2017 against them, and the assessment and penalty have been collected from them. They have had the case pending for more than 30 years. The Tahasil Office has collected the assessment and penalty even after the FRA title was granted in favour of the plaintiff.

8. The defendant’s advocate submitted a copy of the plaint, Civil Suit No 22 of 2025, which has been filed in the court of the Civil Judge Senior Division, Athamallik. The plaintiffs are the defendants in this case, and the defendants are petitioners. There is a claim of 0.98 acres of land out of 1.35 acres from Khata number 24, plot number 243 of Mouza Sadanadpur. The plaintiff also knew that the defendants had the case land. The petitioners were never in possession of the case land at the time of the grant of ROR under the FRA 2006.

9. The defendant's advocate has availed three petitions since the case's inception. At the time of this inception, this civil suit case had not been unearthed, which means this was created during the period of three adjournments. The advocate also submitted a copy of the notarised affidavit statement of Kishori Biswal and Duryodhan Pradhan. The contents are similar to those of the statement of their advocate.

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10. The advocate submitted the following documents.

Form -KHA (OPLE Notice in case number 4-279/21) as Annexure-1

11. A copy of the order of the Hon’ble High Court of Orissa, Annexure-2

12. A copy of the appeal memo filed before this court, Annexure-3

A copy of form J (Demand notice) as Annexure-4

13. A copy of form- Ka (OPLE Case No 446/95-96) as annexure 5

A copy form-Ka (OPLE Case No 482/16) as annexure 6

14. A copy of form -Ka (OPLE Case No 483/16) as annexure 8

A copy of Rent Receipt as annexure 9

15. A copy of Form Ka ((OPLE Case No 483/16) as annexure 10

A copy of Rent Receipt as annexure 11

16. A copy of form -Ka (OPLE Case No 425/17) as annexure 12

A copy of Rent Receipt as annexure 13

17. A copy of form -Ka (OPLE Case No 433/17) as annexure 14

A copy of Rent Receipt as annexure 15

18. A copy of form -Ka (OPLE Case No 427/17) as annexure 16

A copy of Rent Receipt as annexure 17

A copy of RI report as annexure 18

Statement of the petitioner

19. The petitioners were present on call on 15.04.2025 and 22.04. 2025. They had no additional arguments other than the contents of the petition copy.

FINDINGS

20. To decide this case, the following questions need to be answered,

21. Do provisions under sections 22 and 23a apply to this case?

22. Is this court empowered to decide on the legality of the title granted under the FRA 2006?

23. Can a 23 A case under the OLR Act 1960 be dropped on the ground that this matter is sub judice before a Civil Court/ Revenue Court?

24. Can this land be settled under the OPLE Act 1972 once granted under the FRA 2006?

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25. Do provisions under sections 22 and 23a apply to this case?

26. Ans: The validity of the title granted under the FRA 2006 has not been cancelled by any court of law. As such, this case land belongs to the petitioner.

27. The rights conferred under the FRA are heritable, meaning they can be passed down to legal heirs. However, these rights are not alienable or transferable, preventing sale or transfer to non-eligible entities. The title is typically registered jointly in the names of both spouses in a household. Hence, this section attracts.

28. Section 22 of the OLR Act 1960 read as follows,

29. Restriction on alienation of land by Scheduled Tribes.

> *"(1)Any transfer of holding or part thereof by a raiyat, belonging to a Scheduled Tribe, shall be void except where it is in favour of –*

30. a person belonging to a Scheduled Caste/Tribe;

31. a person not belonging to a Scheduled Caste/Tribe when such transfer is made with the previous permission in writing of the Revenue Officer: Provided that in case of a transfer by sale, the Revenue Officer shall not

32. grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is unavailable, and in case of a gift, unless he is satisfied about the bona fides thereof.

33. (3.) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Caste/Tribe."

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34. Section 23a of the OLR Act 1960 read as follows,

35. 23a. Eviction of the person in unauthorised occupation of property.

36. - "Where any person is found to be in authorised occupation of the whole or part of a holding of a raiyat belonging to a Scheduled Caste or of a raiyat belonging to a Scheduled Tribe within any part of the State other than a Scheduled Area, by way of trespass or otherwise, the Revenue Officer may either on application by the owner or any person interested therein, or on his motion and after giving the parties concerned an opportunity of being heard, order eviction of the person so found to be in unauthorised occupation and shall cause restoration of the property to the said raiyat or his heir by the provisions of Sub-section (3) of Section 23".

37. Is this court empowered to decide on the legality of the title granted under the FRA 2006?

38. Ans: - The FRA 2006 does grant permission to a Revenue Officer to decide the legality of the title granted under the FRA 2006

39. Can a 23 A case under the OLR Act 1960 be dropped on the ground that this matter is sub judice before a Civil Court/ Revenue Court?

40. Ans: In this case, the defendant has not moved to the appropriate forum under the FRA 2006 to cancel the title granted, but rather filed a civil suit on the case land.

Stay of suit/ Sub Judice (Section 10, CPC)

> *"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1[India] established or continued by 2[the Central Government 3* * *.] and having like jurisdiction, or before 4[the Supreme Court]"*

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41. In the case of Ragho Prasad Gupta v. Shri Krishna Poddar (1969), the Supreme Court held that the Doctrine of Res Sub Judice will not apply when the matter in issue in a subsequent suit is completely different from the suit that was instituted initially.

42. The OLR Act has a specific objective: to protect the rights of Scheduled Tribes and prevent the unauthorised occupation of their land. In exercising powers under the OLR Act, the Revenue Officer acts within a distinct jurisdiction.

43. While the findings of the Civil Court may have persuasive value, the Revenue Officer is not precluded from taking action under the OLR Act to address the issue of unauthorised occupation, particularly when it pertains to the land of a Scheduled Tribe. The state is also a party to the land in question. The aims of both the Acts are different; the OLR Act aims to protect the rights of ST, whereas the Civil Court seeks to resolve private disputes.

44. Can this land be settled under the OPLE Act 1972 once granted under the FRA 2006?

45. Ans: Not. Because the case land has already been granted in favour of the plaintiff. Settlement under the OPLE Act, 1972. The land in question has already been given to the Petitioner under the FRA, 2006. Therefore, it cannot be settled again under the OPLE Act, 1972. The FRA grant confers a specific and distinct title that must be respected.

46. For the reasons stated above, this Court finds the Opposite Parties to be in unauthorised occupation of the Petitioner's land. The Opposite Parties are hereby directed to vacate the land described in the schedule below and restore its possession to the Petitioner within thirty days. The Tahasildar, Athamallik, is directed to take necessary steps to ensure compliance with this order, including, if required, using the powers conferred under Section 23-A(3) of the OLR Act, 1960.

47. A copy of this order shall be served on the parties and the Tahasildar for information and necessary action.

48. Land Schedule: | Mouza: Sadananadpur | Khata No: 24 | Plot No: 243 | Area: 0.45 acres | Kissam: Jungle-II

Sd/-

Revenue Officer-cum-Sub-Collector, Athamallik

Odisha Revenue Laws · Revenue Court Orders. Reported for the reference of revenue officers. The order-sheet header shows the case number as 04 of 2024, apparently carried over from another case; the case is therefore identified here by the parties. The order applies to its own facts; check the current law before relying on it.