

OM PRAKASH AGARWAL AND ORS.

A

v.

BATARA BEHERA AND ORS.

MARCH 10, 1999

[G.B. PATTANAİK AND M.B. SHAH, JJ.]

B

*Tenancy and Land Laws :*

*Orissa Land Reforms Act, 1960 :*

*Sections 2(14) and 73(c)—Land—Situating within municipal area or in villages or in an urban agglomeration—Applicability of Act—Held, the Act applies to all such lands which are being either used or capable or being used for agricultural purposes.*

C

*Sections 22(1) and 23(2)—Sub-Divisional Officer, on the basis of materials produced before him, concluded that vendors of the sale deeds belonged to the Scheduled Caste—Such conclusion not challenged before Appellate Authority—Held, finding is final and cannot be permitted to be re-agitated again—Hence, High Court did not consider the said question rightly—Therefore, the said question cannot be re-opened before the Supreme Court.*

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E

*Words and Phrases :*

*"Land"—Meaning of—In the context of S. 2(14) of the Orissa Land Reforms Act, 1960.*

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The agricultural land situated within the municipal limits was sold to the appellants by a Registered Sale Deed in favour of non-scheduled caste persons by persons alleged to be belonging to Scheduled Casts. Respondent No. 1 who was a co- sharer of the vendors of the aforesaid Sale Deed filed petition before the Revenue Officer under Section 23 of the Orissa Land Reforms Act, 1960 on the ground that the transfer in question was in contravention of Section 22(1) of the Act and, therefore, the vendors should be put back in possession.

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The Revenue Officer came to the conclusion that the vendors belonged to the Scheduled Caste and that the lands in question could be

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A governed by the Act although the said land was situated within the municipal limits. The Additional District Magistrate dismissed the appeal. However, the Special Officer, Land Reforms allowed the revision on the ground that the Act did not apply to the land in question. Respondent No. 1 filed a writ petition before the High Court challenging the aforesaid order, which was allowed. Hence this appeal.

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On behalf of the appellant it was contended that in the absence of any materials to indicate that the vendors belonged to the Schedule Caste the embargo under Section 22 of the Act would not apply and, therefore, the application under Section 23 was not tenable.

C

Dismissing the appeal, this Court

HELD : 1. The Orissa Land Reforms Act, 1960, no doubt, is a measure relating to agrarian reforms and land tenures and abolition of intermediary interest but there is no provision in the Act which excludes such agricultural lands merely because they are situated in an Urban Agglomeration. The Act applies to all land, which is either used, or capable of being used for agricultural purposes irrespective of whether it is situated within a municipal area or in villages. The very object of the legislation being agrarian reform, the object will be frustrated if agricultural lands within the municipal area are excluded from the purview of the Act. [972-G]

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2. The Sub-Divisional Officer on the basis of materials produced before him came to a positive conclusion that the vendors of the sale deeds belong to Schedule Caste. Since this finding of the Sub-Divisional Officer had not been assailed before the Appellate Authority, the said finding has become final and cannot be permitted to be re-agitated again. Rightly, therefore, the High Court did not consider the said question and that question cannot be re-opened before this Court. [973-B-C]

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G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 121 of 1986.

From the Judgment and Order dated 4.7.85 of the Orissa High Court in O.J.C. No. 321 of 1984.

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G.L. Sanghi and Vinoo Bhagat for the Appellants.

P.N. Misra, R.S. Jena and Raj Kumar Mehta for the Respondents. A

The Judgment of the Court was delivered by

PATTANAİK, J. This appeal is directed against the judgment dated 4.7.85 of the Orissa High Court whereunder the High Court has come to the conclusion that the agricultural lands even within the municipal area will come under the purview of the Orissa Land Reforms Act. The disputed land measuring 2.133 acres is situated on periphery of Cuttack Town and the said land was sold by a Registered Sale Deed dated 24.6.1966, in favour of non-scheduled caste persons by persons alleged to be belonging to Scheduled Caste. Respondent No.1 who is a co-sharer of the vendors of the aforesaid Sale Deed filed a Petition invoking the jurisdiction of the Revenue Officer under Section 23 of the Orissa Land Reforms Act (hereinafter referred to as 'The Act') alleging therein that the transfer in question being in contravention of Sub-Section (1) of Section 22 is void and, therefore, the vendor should be put back in possession. The said Revenue Officer held the necessary enquiry under Sub-Section (2) of Section 23 and by order dated 28.2.83 declared the sale to be invalid. While coming to the aforesaid conclusion the Revenue Officer rejected the contention that the vendors are not Scheduled Caste persons and also recorded the finding that the lands in question could be governed by Orissa Land Reforms Act notwithstanding the fact that the land is situated within the municipal limits of the Cuttack Town. The aforesaid order of the Revenue Officer was assailed in appeal before the Additional District Magistrate, Cuttack, but the appeal was dismissed by order dated 7.6.83. The matter was then carried in revision to Special Officer Land Reforms, Cuttack, and the said Special Officer allowed the Revision by order dated 31.12.1983 on a conclusion that Land Reforms Act does not apply to urban land. Respondent No. 1 filed a Writ Petition assailing the aforesaid order of the Special Officer Land Reforms, Cuttack and by the impugned judgment dated 4.7.85 the High Court after analysing different provisions of the Act, more particularly, the definition of 'Land' in Section 2 (14) of the Act came to the conclusion that the situation of the land within the urban area is not a relevant consideration to determine whether the particular land comes within the purview of the Land Reforms Act or not. But since no evidence had been lead by the parties to indicate whether the disputed land comes within the definition of 'Land' under Section 2 (14) of the Act the High Court remitted the matter to the Sub-Divisional Officer for fresh

A disposal after giving opportunities to both parties to lead evidence, if they are so advised. It is this order of the Orissa High Court which is being challenged in this appeal.

B Mr. G.L. Sanghi, the learned senior counsel appearing for the appellants contended that the very purpose of the Orissa Land Reforms Act being a progressive legislation relating to agrarian and land tenures, the said Act cannot have any application to the land which is a part of the master plan of a City and, therefore, the High Court committed error in applying the provisions of the Land Reforms Act to the case in hand. Mr. Sanghi further contended that in the absence of any materials to indicate C that the vendors of the sale deeds belong to the Scheduled Castes the embargo contained under Section 22 of the Act will not apply and, therefore, the application under Section 23 of the Act was not tenable. Mr. Sanghi also submitted that in view of Section 73© of the Land Reforms Act and in view of the fact that the area comes within a master plan thereby necessarily reserved as an urban area the Act cannot have any application. D The learned senior counsel for the respondents on the other hand contended, that the definition of 'Land' in Section 2(14) is wide enough to include the lands within the municipal area provided the same is used for agricultural purposes or is capable of being used for agricultural purposes and in that view of the matter the High Court rightly remitted the matter E to the Sub-Divisional Officer for re-consideration.

In view of the rival submissions at the Bar the first question that arises for consideration is whether the land as defined in Section 2(14) of the Act and which is either being used or capable of being used for F agricultural purposes within the municipal area do come under the purview of Orissa Land Reforms Act. The Act, no doubt is a measure relating to agrarian reforms and land tenures and abolition of intermediary interest but there is no provision in the Act which excludes such agricultural lands merely because they are situated in an Urban Agglomerations. The Act G applies to all land which is either used or capable of being used for agricultural purposes irrespective of whether it is situated within a municipal area or in villages. The very object of the legislation being an agrarian reform, the object will be frustrated if agricultural lands within the municipal area are excluded from the purview of the Act. In this view of the matter we have no hesitation to come to the conclusion that the Act H applies to all lands which is used or capable of being used for agricultural

purposes irrespective of the fact wherever the said land is situated and the conclusion of the High Court on this score is unassailable. The first submission of Mr. Sanghi is, therefore, devoid of any force. So far as the question that the vendors do not belong to the Scheduled Castes it appears that the Sub-Divisional Officer on the basis of materials produced before him came to a positive conclusion that the vendors of the sale deeds belong to Scheduled Castes which is confirmed by the record of right. This conclusion of the Sub-Divisional Officer had not been assailed before the Appellate Authority, as is apparent from paragraph 2 of the Appellate judgment. Since the finding of the Sub-Divisional Officer on the question whether the vendors of the sale deeds belong to Schedule Castes or not had not been assailed before the Appellate Authority, the said finding has become final and cannot be permitted to be re-agitated again. Rightly, therefore, the High Court did not consider the said question and in our considered opinion, that question cannot be re-opened now.

So far as the third submission of Mr. Sanghi is concerned, we do not have an iota of material on record to establish that the area in question has been reserved for urbanisation by a notification issued in the Official Gazette of the Government within the ambit of Section 73©) of the Act so that the Act cannot have any application. In the absence of such material it is difficult for us to sustain the said submission of Mr. Sanghi, learned senior counsel appearing for the appellants.

In the premises, as aforesaid, all the submissions having been failed the appeal fails and is dismissed. But in the circumstances, there will be no order as to costs.

V.S.S.

Appeal dismissed.