

A **GAYARAM PATEL & ORS.**

v.

KAILASH CHAND PANIGRAHI

February 20, 1979

B [S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Orissa Estates Abolition Act, 1951—S.7—“Intermediary” who is —Gaontia thikadari whether intermediary.

C The ancestors of a former Zamindar dedicated their *maufi* interest in a village in favour of a deity. Acting on behalf of the deity the ex-zamindar created a lease of *thikadari* rights in the village in favour of the appellant for ten years. The lease deed termed the appellant as “legal guardian of *gaontia thikadari patta*”. While the lease was in force the Orissa Estates Abolition Act, 1951 which sought to abolish all intermediaries in land and vest their interest in the State came into force. The Act however protected certain intermediaries thereby carving out an exception to the scheme of the Act.

D Meanwhile the Managing Trustee of the Board of Trustees appointed under the Orissa Hindu Religious Endowments Act, 1951 to look after the affairs of the deity filed a petition under s. 7 of the Abolition Act claiming that the deity was in *Khas* possession of certain lands including the land lease to the appellant and prayed that the same be settled on the Board of Trustees as an occupancy tenant. The question was eventually settled in favour of the Trustees and against the appellant.

E In the Managing Trustee’s application under s. 145 Cr. P.C. asserting that the appellant was disturbing peaceful possession of the deity over the land, the Magistrate held that it was the appellant who was in possession of the land and directed that the land should be restored to him.

F The High Court in revision set aside the order of the Magistrate.

In appeals to this Court the appellant contended that it was he and not the deity, who was the *thikadar* and therefore an intermediary within the meaning of the definition of that term in the Abolition Act and was in *Khas* possession of the land in dispute and so the land should be restored to him.

Allowing the appeals,

G HELD : 1. It was the appellant who had the *Khas possession* of the land, and therefore, the land must be deemed to have been vested in him, and not in the deity, as an occupancy tenant under the provisions of s. 7 of the Abolition Act. [328 F]

H 2. Apart from the description of the appellant as *gaontia thikadari patta*, condition 8 contains a sure indication of the nature of the tenancy agreement. It states “that the cultivable lands cannot be utilised for any other purpose nor can they be transferred or sold or otherwise dealt with to the hardship of the villagers or the *tenants*.” [328 B-C]

3. The reference to tenants in this condition points to the land being under the cultivation of persons other than the appellant at the moment the lease was granted. This position was incompatible with the grant of an ordinary lease to him. The tenure granted in his favour was on the other hand one conferring on him a right to collect the rents from the tenants of the deity and in lieu thereof pay a fixed sum to it. He was, therefore, correctly described as *gaontia* or *thikadar*, both of which expressions describe an intermediary as distinguished from a *raiyyat* or an actual tiller of the soil. [328 D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 286 of 1973.

Appeal by Special Leave from the Judgment and Order dated 16-5-1973 of the Orissa High Court in CrI. Revision No. 645 of 1972.

AND

CIVIL APPEAL No. 2036 of 1973

Appeal by Special Leave from the Judgment and Order dated 6-3-1973 of the Orissa High Court in O.J.C. No. 491/72.

J. L. Jain and *Mrs. S. Gopalakrishnan* for the Appellants.

G. Dass, *Mrs. S. Bhandare* and *A. N. Karkhanis* for the Respondent.

The Judgment of the Court was delivered by

KOSHAL, J. By this judgment we shall dispose of Civil Appeal No. 2036 of 1973 and Criminal Appeal No. 286 of 1973, both of which have arisen from a dispute over a single piece of land and the facts leading to which may be briefly stated. Long before the year 1949, the ancestors of Shri Lal Anup Singh Deo, *ex-zamindar* of Khariar dedicated their *maufi* interest in village Konabira in favour of Sri Samaleswari Devi (hereinafter referred to as the deity). On the 10th May 1949 Shri Lal Anup Singh Deo aforesaid, acting on behalf of the deity, created a lease of *thikadari* rights in the village for a period of 10 years beginning with the 1st of June 1950 and ending on the 31st May 1960 in favour of Gayaram Patel, who figures as the appellant in each of the appeals and is hereinafter called Patel. The deed of lease appears at pages 5 and 6 of the paper book in Civil Appeal No. 2036 of 1973 and describes Patel thus :

“Gayaram Patel son of Bisram Patel, the legal guardian of *gaontia thikadari patta*”

The terms on which the lease was granted to Patel are reproduced below :—

- (i) That the yearly rent payable shall be Rs. 109/- to be paid before January of every year.

- A** (ii) That in case of non-payment the lease is liable to be cancelled.
- (iii) That all the repairs, upkeep and development works should be executed and for such works no compensation can be claimed. All the repairs, maintenance of tanks, garden, buildings, etc., shall be carried out at your responsibility.
- B**
- (iv) That no injustice should be done to the community in maintaining the abovementioned works.
- (v) That no transfer is permissible in respect of the property.
- C**
- (vi) That the property is to be maintained for the exclusive welfare of the community with the help, directions, orders and co-operation of the Estate Officer.
- D**
- (vii) That the rules and regulations for forest lands are to be obeyed.
- (viii) That the cultivable lands cannot be utilised for any other purpose, nor can they be transferred or sold or otherwise dealt with to the hardship of the villagers or the tenants. If any land is abandoned and (?) takes a new land for cultivation he will be liable under the law and be subjected to the payment of the usual rent.
- E**

The lease was acted upon and while it was in force, the Orissa Estates Abolition Act, 1951 (hereinafter called the Abolition Act) was promulgated. The object of that Act was to abolish all intermediaries and rent-receivers, to vest their interest in the State, and to establish a direct relationship between the State and the tillers of the soil. Section 3A of the Abolition Act authorised the State Government to declare by notification that such interests have passed to and become vested in the State free from all encumbrances. A notification of that type was issued by the State Government and became effective from the 1st of June 1959.

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In the meantime a Board of Trustees had been appointed under the Orissa Hindu Religious Endowments Act, 1951 (for short Endowments Act) with Shri Kailash Chandra Panigrahi as the Managing Trustee to look after the affairs of the deity on whose behalf an application under section 7 read with section 8-A(1) of the Abolition Act was made by the Managing Trustee after the said

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notification had come into force. It was claimed in the application that the deity was in "Khas possession" of certain lands in village Konabira and prayed that the same be settled on it as an occupancy tenant. The application was resisted by Patel who claimed that it was he and not the deity who enjoyed the "Khas possession" of the said land. The application was decided by the Tehsildar Khariar, Tehsil Nawapara, acting as Collector under the Abolition Act. He held that Patel was in "Khas possession" of only one plot of land which was designated by No. 5 and had an area of 20.14 acres but that such possession was held by him on behalf of the deity and not on his own account. In this view of the matter he passed the order dated 13th June 1962, the operative part of which runs thus :

"Sir lands in village Konabira bearing plot No. 5 with an area of 20.14 acres are settled on occupancy rights with Gayaram Patel s/o Bishram Patel of Konabira, P. S. Komna Distt. Kalahandi for and on behalf of Samaleswari Devi of Kemna, the Maufidar, u/s 7(1)(b) of the Orissa Estates Abolition Act, 1951. A fair and equitable annual rent of Rs. 6.75 np. is determined from the date of vesting release rent from 1959-60 onwards."

On the 21st of October 1963, the Managing Trustee of the deity made an application to the Assistant Commissioner of Endowments under section 68 of the Endowments Act complaining that he had been resisted by Patel in obtaining possession of the land of the deity and praying for recovery of possession thereof from Patel. In his order dated the 12th of January 1970, the Assistant Commissioner of Endowments allowed the application holding that it was the deity and not Patel who had been declared to be the occupancy tenant in the order dated 13th June 1962 abovementioned. Patel went up in revision to the Commissioner of Endowments but without success and thereafter knocked at the door of the Orissa High Court with a petition under Articles 226 and 227 of the Constitution of India seeking to have the orders of the Assistant Commissioner of Endowments and the Commissioner of Endowments set aside. The High Court however took the same view of the matter as was expressed by authority appointed under the Endowments Act and negatived the contentions raised on behalf of Patel, in its order dated 6th March 1973. It is that order which is challenged before us in Civil Appeal No. 2036 of 1973 instituted by special leave.

In the meantime litigation had started between the deity and Patel on the criminal side also. Claiming that the deity had recovered

A possession of plot No. 5 abovementioned (which had by then come to be designated by No. 15 and to have an area of 22.58 acres) on the 9th of December 1970 through a warrant of possession dated 14th February 1970 issued by the Assistant Commissioner of Endowments, the Managing Trustee filed an application dated 28th October 1971 under section 145 of the Code of Criminal Procedure before a **B** Magistrate of the First Class at Nawapara against Patel, who was alleged to be disturbing the peaceful possession of the deity over the land in dispute. A Preliminary order attaching the property was passed by the Magistrate on the same day, i.e., 28th October 1971. That order was however cancelled and the proceedings were dropped on the 15th November 1971 in pursuance of a report dated **C** 6th November 1971 made by the officer incharge of the Police Station, Komna (within the territorial limits of which lay the land in dispute) to the effect that there was no apprehension of a breach of peace by the parties. Nevertheless, on the 20th November 1971, another report was received by the Magistrate from the same **D** officer revealing "an emergency" whereupon the Magistrate made a direction that the preliminary order dated 28th October 1971 be given effect to and that the land be attached along with the crops standing thereon. Ultimately, the proceedings were finalised through an order dated 21st September 1972 passed by the Magistrate who held that it was Patel who was in possession of the land in dispute **E** on the 20th November 1971, and directing that the land be restored to him.

Aggrieved by the order of the Magistrate the Managing Trustee or the deity went up in revision to the High Court, a learned Single Judge of which set aside the same and directed delivery of possession **F** of the land to the deity on the basis of the findings given below :

- (1) The proceedings had terminated on the 15th November 1971 and the Magistrate has no jurisdiction to revive them five days later and to give effect to the order of attachment which already stood vacated.
- (2) There had been a civil suit and a writ application in respect of the land which has terminated in favour of the deity.
- (3) The matter had been taken up by the Endowments Department which had delivered all properties to the deity before the 29th April 1970.

It is this order of the High Court which is impugned in Criminal Appeal No. 286 of 1973 by special leave of this Court.

2. In order to appreciate the rival contentions of learned counsel for the parties it is necessary to make a reference to the relevant provisions of the Abolition Act and to determine the party in whom the occupancy tenancy vests under section 7 thereof. As already pointed out the object of the Abolition Act was to do away with all intermediaries and rent-receivers and to establish a direct relationship between the State and the actual tillers of the soil. The preamble of the Act states :

“Whereas in pursuance of the Directive Principles of State Policy laid down by the Constitution of India it is incumbent on the State to secure economic justice for all and to that end to secure the ownership and control of all material resources of the community so that they may best subserve the common good, and to prevent the concentration of wealth and means of production to the common detriment;

“AND WHEREAS in order to enable the state to discharge the above obligation it is expedient to provide for the abolition of all the rights, title and interest in land of Intermediaries by whatever name known, including the mortgagees and lessees such interest, between the raiyat and the State of Orissa for vesting in the said State of the said rights, title and interest and to make provision for other matters connected with;.....”

Section 2 contains definitions. Clauses (f), (g), (h), (hh) and (j) thereof are relevant to the dispute and are extracted below :

(f) “date of vesting” means in relation to an estate vested in the State the date of publication in the Gazette of the notification under sub-section (1) of section 3 or sub-section (1) of section 3-A in respect of such estate and in the case of surrender by an intermediary under section 4 the date of the execution of the agreement;

(g) ‘estate’ includes a part of an estate and means any land held by or vested in an Intermediary and included under one entry in any revenue roll or any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law relating to land revenue for the time being in force or under any rule, order, custom or usage having the force of law, and includes revenue-free

A lands not entered in any register or revenue-roll and all classes of tenures or under-tenures and any Jagir, inam or maufi or other similar grant;

B (h) 'Intermediary' with reference to any estate means a proprietor, sub-proprietor, landlord, landholder, malguzar, thikadar, gaontia, tenure-holder, under-tenure-holder, and includes an inamdar, a jagirdar, Zamindar, Ilaquadar, Khorposhdar, Parganadar, Sarbarakar and Maufidar including the Ruler of an Indian State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the State;

C (hh) 'Intermediary interest' means an estate or any rights or interest therein held or owned by or vested in an Intermediary and any reference to 'state' in this Act shall be construed as including a reference to 'intermediary interest' also;

D (j) "Khas possession" used with reference to the possession of an Intermediary of any land used for agricultural or horticultural purposes, means the possession of such intermediary by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock;

E The provisions of section 3A have already been noted. Then comes section 7 which is all-important for the purpose of resolving the present dispute. It states :

F "7. (1) On and from the date of vesting—

(a) all lands used for agricultural or horticultural purposes which were in Khas possession of an Intermediary on the date of such vesting,

G (b) lands used for agricultural or horticultural purposes and held by a temporary lessee or lessees of an Intermediary who owns either as Intermediary or in any other capacity less than thirty-three acres of land in total extent situated within the State,

H (c) lands used for agricultural or horticultural purposes and in possession of a mortgagee, which immediately before the execution of the mortgage bond were in Khas possession of such intermediary,

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 shall, notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and with all the shareholders owning the estate and such Intermediary with all the share-holders shall be entitled to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner :

.....
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Sub-section (1) of section 8A requires Intermediaries to file their claims in the prescribed manner for settlement of fair and equitable rent in respect of land and buildings, which are deemed to be settled with them under section 6 or section 7, before the Collector within the specified period.

3. It would be seen that clauses (a), (b) and (c) of sub-section (1) of section 7 protect certain Intermediaries and thus form exceptions to the scheme of the Act which, generally speaking, conforms to the object detailed in the preamble. In the present case we are not concerned with clause (c). According to learned counsel for Patel his case falls within the ambit of clause (a). It is claimed on his behalf that he was not merely a lessee or a temporary lessee under the deity but was a *thikadar* and, therefore, himself an Intermediary within the meaning of the definition of that word occurring in clause (h) of section 2 and that he being in “Khas possession” of the land in dispute on the date of vesting was an Intermediary described in clause (a). On the other hand, for the deity it is argued that Patel was granted only a temporary lease in 1949, that he did not have any status better than that of a lessee, temporary or otherwise, and that therefore his case was covered by clause (b) and not clause (a) so that it was the deity who was entitled to be regarded as the occupancy tenant on and from the date of vesting. The whole controversy thus turns round the position which Patel came to hold in respect of the land in dispute under the lease deed of 1949 and in order to assess that position it is necessary to refer to the lease deed dated 10th May 1949. As noted earlier that deed itself describes Patel as “*gaontia thikadari patta*”. Learned counsel for the deity has contended that

A this description is really not correct and that the conditions of the lease clearly make out a case of Patel being inducted into the land as an ordinary lessee who was to till the land against payment of rent. The contention does not appear to us to have any force. Apart from the description of Patel as "*gaontia thikadari patia*" the deed contains a sure indication of the nature of the tenure granted in condition (8) which states specifically :

B "That the cultivable lands cannot be utilised for any other purpose, nor can they be transferred or sold or otherwise dealt with to the hardship of the villagers or the tenants.
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D The reference to tenants is of considerable significance and points to land being under the cultivation of persons other than Patel at the moment the lease was granted. This state of affairs is incompatible with the grant of an ordinary lease to Patel. The tenure granted in his favour was on the other hand one conferring on him a right to collect the rents from the tenants of the deity and in lieu thereof pay a fixed sum of Rs. 109/- per annum to it so that he was correctly described in the lease deed as a *gaontia* or *thikadar*, both of which expressions describe an Intermediary as distinguished from a *raiyyat* or an actual tiller of the soil.

E 4. Once Patel is found to be an Intermediary his case must fall within clause (b) of sub-section (1) of section 7 as it was he who had the "Khas possession" of the land now in controversy, according to the findings contained in the order dated 13th January 1962 passed by the Collector and mentioned above, which have not been shown to us to suffer from any infirmity. And if that be so, the land must be held to have vested in him, and not in the deity, as an occupancy tenant under the provisions of that section.

C 5. In the result both the appeals succeed and are accepted, the order of the High Court impugned in each being set aside and it being directed that the possession of the land in dispute attached by the order of the Magistrate in the proceedings under section 145 of the Code of Criminal Procedure be delivered to Patel as an occupancy tenant under the State. The parties are however left to bear their own costs throughout.

H N.V.K.

Appeals allowed.