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On a consideration of all the features of the wound as described by the doctors together, we have come to the conclusion that the doctor's opinion as given in his examination-in-chief, which was not challenged in cross-examination before the Committing Magistrate, that the shot may have been fired about three to four feet away should be accepted as correct. We find no reason therefore interfere with the assessment of evidence as made by the High Court and also with the order of conviction and sentence passed by it.

The appeal is accordingly dismissed.

Appeal dismissed.

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April 30

KUMAR BIMAL CHANDRA SINHA

v.

STATE OF ORISSA

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VETKATARAMA AIYAR, JJ.)

Estates, Abolition of—Raiyati right purchased by proprietor—Building on occupancy holding, used as Katcheri—Notification vesting estate in the State—Effect—Whether building on occupancy holding vests in the State—Orissa Estates Abolition Act, 1951 (Orissa 1 of 1952), ss. 2(g), (h), (i), 3, 5, 26.

The appellants held the Paikpara estate as proprietors. They had purchased the properties in question comprising *raiyati* lands with certain buildings thereon from the *raiyat*. Thus the proprietors became occupancy *raiyats* under the tenure holders or sub-proprietors. By virtue of a notification issued under s. 3 of the Orissa Estates Abolition Act, 1951, the Paikpara estate vested in the State of Orissa. But the interest of tenure holders and sub-proprietors within the estate had not been taken over under the provisions of the Act.

The said buildings on the lands of the occupancy holdings were used as Katcheri houses by the proprietors for the administration of their estates. The state officials took possession of these buildings situated on the *raiyati* land. The appellants made an application to the collector, Puri, for vacant possession of the lands and the buildings. The Collector did not concede the demand and held that the occupancy holding was situated within the tenure held under the proprietors and lay within the geographical limits of the estate which had vested in the Government. The High Court dismissed the writ petition of the appellant under Art. 226 on the ground that the question raised was practically concluded by the Supreme Court in *K. C. Gajapati Narayan* v. *Deo State of Orissa.*

The appellants came up in appeal on a certificate granted by the High Court.

Held, that the appellants' *raiyati* interests in the lands and in the buildings standing on those lands had not been affected by the abolition of their interests as proprietors, and the State Authorities had illegally taken possession of them.

Held, further, that the Orissa Estates abolition Act, 1951, was intended to abolish all proprietors, sub-proprietors, tenure-holders, with a variety of names, but did not touch the interest of the *raiyat*. Hence though these lands with buildings was situate geographically within the ambit of the appellant's estate, they were not part of the estate. The appellant held those properties with the buildings not as propritors as such, but as *raiyats*.

Held, also, that the conclusion drawn by the High Court from the decision in *K. C. Gajapati Narayan Deo* v. *The State of Orissa* is not well founded. The observation of this Court on which it drew its conclusion had reference to the definition of 'home-stead' in cl. (1) of s. 2 of the Act. This court while dealing with the constitutionality of the Act; in the above case, was not concerned with *raiyati* lands. Its observations had reference only to such buildings as stood upon the proprietor's private land, which were in his possession as proprietor or as tenure-holder.

K. C. Gajapati Narayan Deo v. *The State of Orissa*, [1954] S. C. R. 1, not applicable.

CIVIL APPELLATE JURISDICTION: *Civil Appeal No.* 177 *of* 1960.

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Kumar Bimal Chandra Sinha
v.
State of Orissa

Appeal from the Judgment and order dated March 27, 1958, of the Orissa, High Court in O. J. C. No. 191 of 1956.

Hemendra Chandra Sen and *S. Ghose*, for the appellants.

N. S. Bindra, *V. N. Sethi* and *P. D. Menon*, for the respondents.

1962. April 30. The Judgment of the Court was delivered by

Sinha C. J.

SINHA, C. J.—This appeal on a certificate granted by the High Court of Orissa raises the question of the interpretation of certain provisions of The Orissa Estates Abolition Act, 1951 (Orissa Act 1 of 1952)—which hereinafter will be referred to as the Act. The appellants who were petitioners in the High Court were the proprietors of an Estate, known as Paikpara Estate, in the district of Puri, bearing Touzi Nos. 268, 269 and 270. The respondents are the State of Orissa and its officials.

The facts on which the High Court based its judgment under appeal are as follows. Within the said Paikpara Estate, there were several tenures and sub-proprietory interests. The Paikpara Estate vested in the State of Orissa by virtue of a notification issued under s. 3 of the Act, on August 23, 1953. It is common ground that the interests of tenure-holders and sub-proprietors within the said estate have not yet been taken over under the provisions of the Act. Under the tenure-holders aforesaid, there were some occupancy holdings which had been purchased by the proprietors, the appellants in this Court, long ago. Thus the proprietors by virtue of their purchase became occupancy *raiyats*, under the tenure-holders or sub-proprietors, in respect of the holdings purchased by them. It is also common ground that in the last Settlement *Khatians* their interests as occupancy

raiyats in respect of the holdings purchased by them have been recorded. On the lands of the occupancy holdings, there were several buildings which were used as *Katcheri* houses by the proprietors, for the administration of their estate. In January 1954, according to the petitioners in the High Court, the State Officials took illegal possession of those buildings situate on the *raiyati* land, as aforesaid. The appellants thereupon made an application to the Collector of Puri for vacant possession of the lands and the buildings, described in the petition, on the allegation that those lands together with the buildings, purchased from tenants with rights of occupancy, were, after purchase by the proprietors, used as *Katcheri* house by them. They also alleged that those properties had not vested in the State of Orissa as a result of the said notification, under the Act. Part of the said house had been let out to the Postal Department. The Anchal Adhikari of that area wrote to the Postmaster, and Superintendent of Post Offices, not to pay rent to the proprietors. The Postal Department, therefore, vacated that portion of the building in their occupation, which has gone into the occupation of the State Government. Another portion of the property, which was used as *dhangola* was let out for storing paddy, to a third party. That *dhangola* was also taken illegal possession of by the Naib Tehsildar of the place. Other portions of the property also are in illegal possession of the State Government, through its Anchal Adhikari. It was thus claimed on behalf of the proprietors that the State Government had no right to take possession of the property, as it did not form part of the estate which had been acquired under the Act, and had, on notification, vested in the State Government. The learned Collector of Puri did not concede the demand of the proprietors, and held that the occupancy holding is situated within the tenure held

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under the proprietors and lay within the geographical limits of the estate which had vested in the Government. Being aggrieved by the aforesaid order of the Collector, dated November 20, 1956, the proprietors moved the High Court under Art. 226 of the Constitution for relief against what was alleged to be illegal interference with their interest not as proprietors but as occupancy tenants. The High Court dismissed the proprietors' claim chiefly on the ground that the question raised by the petition before the High Court was "practically concluded by the observations of the Supreme Court in the case of *K. C. Gajapati Narayan Deo* v. *The State of Orissa* (1).

It is manifest that the controversy raised in this case has to be answered with reference to the provisions of the Act. 'Estate' has been defined in cl. (g) of s. 2 of the Act as follows :

> " '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 lands not entered in any register or revenue-roll and all classes of tenures or under-tenures and any jagir, inam or muafi or other similar grant";
>
> Explanation I.—Land Revenue means all sums and payments in money or in kind, by whatever name designated or locally known, received or claimable by or on behalf of the State from an Intermediary on account of or

(1) (1954) S. C. R. 1.

in relation to any land held by or vested in such intermediary;

Explanation II.—Revenue-free land includes land which is, or but for any special covenant, agreement, engagement or contract would have been, liable to settlement and assessment of land revenue or with respect to which the State has power to make laws for settlement and assessment of land revenue;

Explanation III.—In relation to merged territories 'estate' as defined in this clause shall also include any mahal or village or collection of more than one such mahal or village held by or vested in an Intermediary which has been or is liable to be assessed as one unit to land revenue whether such land revenue be payable or has been released or compounded for or redeemed in whole or in part".

The definition makes reference to an 'Intermediary', which has been defined in cl.(h) as follows :

'Intermediary' with reference to any estate means a proprietor, sub-proprietor, landlord, landholder, malguzar, thikadar, gaontia, tenure-holder, undertenure-holder, and includes an inamdar, a jagirdar, Zamindar, Ilaquadar, Khorgoshdar, 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;

Explanation I.—Any two or more Intermediaries holding a joint interest in an estate which is borne either on the revenue-roll or on the rent-roll of another Intermediary shall be deemed to be one Intermediary for the purposes of this Act;

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Explanation II.—The heirs and successors-in-interest of an Intermediary and where an Intermediary is a minor or of unsound mind or and idiot, his guardian, committee or other legal curator shall be deemed to be an Intermediary for the purposes of this Act. All acts done by an Intermediary under this Act shall be deemed to have been done by his heirs and successors-in-interest and shall be binding on them.

Reading the two definitions together, the position in law is that 'estate' includes the interest, by whatever name called, of all persons, who hold some right in land between the State at the apex and the *raiyat* at the base. That is to say, the Act is intended to abolish all Intermediaries and rent-receivers and to establish direct relationship between the State, in which all such interests vest, after abolition under the Act, and the tillers of the soil. The interest of a *raiyat* is designated by the word 'holding' and is defined by the Orissa Tenancy Act (Bihar and Orissa Act II of 1913), as follows:

> "'holding' means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy".

Under the Orissa Tenancy Act, the unit of interest of a proprietor is an 'estate'. Under a proprietor may be a number of sub-proprietors. 'Sub-proprietor' is also defined in the Tenancy Act, but we are not concerned in this case with that class of holders of land. The interest of a tenure-holder or an under-tenure-holder is characterised as a 'tenure'. Thus, the process of infeudation and sub-infeudation, which has been similar in all places where the Permanent Settlement took place, that is to say, in Bengal, Bihar and Orissa and Madras and Andhra Pradesh,

has led to the coming into existence of proprietors, with their estates, sub-proprietors under them, tenure-holders and under-tenure-holders and ultimately the tiller of the soil, the *raiyat*, whose unit of interest is a 'holding'. The Act was intended to abolish all proprietors, sub-proprietors, tenure-holders and under-tenure-holders, with a variety of names; but did not touch the interest of the *raiyat*. The same person, by transfer or by operation of law, might at the same time occupy different status in relation to land. He may be in respect of a particular area, which is geographically included in the estate, the proprietor. That land may be held by a *raiyat* not directly under a proprietor but under a tenure-holder, who holds directly under proprietor. The proprietor may have acquired the interest of a *raiyat*. Thus the proprietor, in his capacity as the owner of the estate holds the entire estate, and he may have by purchase acquired the interest of a *raiyat*, paying rent for the *raiyati* interest to his immediate landlord, the tenure-holder. The tenure-holder, in his turn, may have been liable to pay rent to the proprietor. That is what appears to have happened in this case. The appellants held the Paikpara estate as proprietors. They also appear to have purchased the properties in question comprising *raiyati* lands with certain buildings thereon from the *raiyat*. Hence, the position in law is that though these lands with the buildings are situate geographically within the ambit of the appellants' estate, they are not part of the estate. In other words, the appellants hold those properties with the buildings not as proprietors as such, but as *raiyats*. It appears that the Courts below have not kept clearly in view this distinction. The Collector, in the first instance, and the High Court in the proceedings under Art. 226 of the Constitution, appear to have fallen into the error of confusing the petitioners' position as ex-proprietors, with their present position as *raiyats* in

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respect of the land on which the buildings stand. The High Court has drawn the conclusion from the decision of this Court in *K. C. Gajapati Narayan Deo* v. *The State of Orissa*, (1) and has observed that whether the buildings in question vested in the Government, on the vesting of the estate under s. 3 of the Act, would depend not upon whether it formed part of the estate acquired by the Government but on the purpose for which the buildings were used by the proprietors. As the buildings in question had been primarily used as office or *Katcheri* for the collection of rent or for the use of servants or for storing grains by way of rent in kind, the buildings will vest in the Government on the vesting of the estate itself. In our opinion, this conclusion drawn by the High Court from the decision of this Court is not well-founded in law. The High Court draw its conclusions from the following observations of this Court in the aforesaid case at Pages 25-26:

> "Assuming that in India there is no absolute rule of law that whatever is affixed to or built on the soil becomes a part of it and is subject to the same rights of property as the soil itself, there is nothing in law which prevents the State legislature from providing as a part of the estates abolition scheme that buildings, lying within the ambit of an estate and used primarily for management or administration of the estate, would vest in the Government as appurtenances to the estate itself. This is merely ancillary to the acquisition of an estate and forms an integral part of the abolition scheme. Such acquisition would come within article 31 (2) of the Constitution and if the conditions laid down in clause (4) of the article are complied with, it would certainly attract the protection afforded by that clause. Compensation has

(1) (1954) S.C.R. 11.

been provided for these buildings in s. 26(2)(iii) of the Act and the annual rent of these buildings determined in the prescribed manner constitutes one of the elements for computation of the gross asset of an estate."

The observations quoted above of this Court have reference to the following definition of 'homestead' in cl. (i) of s. 2 of the Act:

> "'homestead' means a dwelling house used by the Intermediary for the purpose of his own residence or for the purpose of letting out on rent together with any courtyard, compound, garden, orchard and out-buildings attached thereto and included any tank, library and place of worship appertaining to such dwelling house but does not include any building comprised in such estate and used primarily as office or kutchery for the administration of the estate on and from the 1st day of January, 1946"

It will appear from this definition that the Legislature placed a proprietor's 'homestead' in two categories, namely (1) a dwelling house used by the Intermediary for his own purposes, and (2) any building comprised in such estate and used primarily as office or *Katcheri* for the administration of the estate on and from the 1st day of January, 1946. In respect of first category the Act provides in s. 6 that that portion of the homestead shall be deemed to be settled by the State with the Intermediary, who will continue to hold it as a tenant under the State Government, subject to the payment of fair and equitable groundrent, except where under the existing law no rent is payable in respect of homestead lands. It will be noticed further that the second category in the definition of homestead, which has not been permitted to the outgoing

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Intermediary has reference to "any building comprised in such estate". It has no reference to any building standing on *rayati* holding or a portion thereof. This becomes further clear with reference to the provisions of s. 5, which lays down the consequences of vesting of an estate in the State. Under cl. (a) of s. 5, the entire estate, including all kinds of lands described in meticulous details, and other *non-raiyati* lands vest absolutely in the State Government. This Court, while dealing with the constitutionality of the Act, was not concerned with *raiyati* lands. Its observations had reference only to such buildings as stood upon the proprietor's private lands like *peel, seer, Zirat*, etc., which were in his possession as proprietor or as tenure-holder. It is thus clear that the very basis of the judgment of the High Court is entirely lacking. That the High Court was not unaware of this distinction becomes clear from the following passage in its judgment:

> "Doubtless, Ryoti lands are excluded from the scope of this clause. But buildings and structures standing on Ryoti lands and in the possession of the proprietor are not expressly saved."

The first sentence quoted above is correct, but not the second. There is no question of expressly saving structures on *ratyati* lands, when it is absolutely clear that *raiyati* lands are not the subject-matter of legislation by the Act. The same remarks apply to the reference in section. 26 (b) (iii). Section 26 begins with the words "for the purpose of this chapter", namely, Chapter V, headed "Assessment of Compensation". Reading s. 26 as a whole it is absolutely clear that for the purpose of assessment of the compensation payable to the outgoing proprietor or tenure-holder, of the estate to be acquired, gross assets have to be determined, by aggregating the rents payable by

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tenure-holders or under-tenure-holders and *raiyats*. It is, thus, clear that the rent payable by the appellants as *raiyats* in respect of the disputed lands would form part of the assets which have to be included in the gross assets in determining compensation. But that does not mean that the interests of *raiyats* also have become vested in the State as a result of the notification under s. 3, read with s. 5.

For the reasons aforesaid, it must be held that the appellant's *raiyati* interests in the lands and in the buildings standing on those lands have not been affected by the abolition of his interest as proprietors, and that the State authorities had illegally taken possession of those. The appeal is accordingly allowed with costs here and below.

Appeal allowed.

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April 30.

COLLECTOR OF CUSTOMS, CALCUTTA

v.

EAST INDIA COMMERCIAL CO. LTD.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR, and T. L. VANKATARAMA AIYAR, JJ.)

Sea Customs—Effect of confirmation of order in appeal—Order of Collector merged into that of Central Board of Revenue—Sea Customs Act, 1878 (8 of 1878).

The respondent imported 2,000 drums of mineral oil and the appellant confiscated 50 drums and imposed a personal penalty. The appeal of the respondent was dismissed by the Central Board of Revenue. The respondent filed a petition under Art. 226 of the Constitution in the Culcutta High Court. A Full Bench of the High Court held that the High Court had no jurisdiction to issue a writ against the Central Board of Revenue in view of the decision in the case of *Saka Venkata Subba Rao*. However, as the Central Board of Revenue had merely dismisssd the appeal against the