

(2015) 06 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 15100 of 2014

Ainthu Charan Senapati

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Land Reforms Act, 1960 — Section 2
Orissa Prevention of Land Encroachment Act, 1972 — Section 3(a-1), 9

Citation : (2015) 06 OHC CK 0020

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : N. Behuria, for the Appellant; P.C. Panda, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.—Aggrieved by and dissatisfied with the order dated 23.5.2014, vide Annexure-1, passed by the Additional District Magistrate, Keonjhar, opposite party No. 2 in O.P.L.E. Revision Case No. 6 of 2011, the petitioner has filed this present writ application. By the said order, the opposite party No. 2 dismissed the revision and thereby confirmed the order of eviction passed by the Tahasildar, Anandpur-opposite party No. 4 in Encroachment Case No. 47 of 2007-08, vide Annexure-2, which was confirmed by the Sub-Collector, Anandpur-opposite party No. 3 on 25.5.2010 in Encroachment Appeal No. 8 of 2007.

2. Sans details, the case of the petitioner is that he is in possession of an area Ac.0.08 decimal out of total area Ac.0.55 decimal appertaining to hal plot No. 1043, hal khata No. 160 of mouza-Salapada. He is in possession of the said land since 1976. He has constructed a dwelling house over the said plot and residing therein with his family members. While the matter stood thus, opposite party No. 4 issued a notice under Section-9 of the O.P.L.E. Act in form-KHA. He entered

appearance and filed show cause stating therein that he is in possession of the land in question since 1.1.1976 and has constructed a dwelling house. It is further stated that he is a landless person and has acquired title by way of adverse possession remaining in the land peacefully/continuously to the knowledge of the State for more than thirty years. However, on 17.10.2007 the opposite party No. 4 passed the order of eviction. Challenging the same, he filed an appeal, which was registered as Encroachment Appeal No. 8 of 2007, before the opposite party No. 3. The same having been dismissed, he filed O.P.L.E. Revision Case No. 6 of 2011 before the opposite party No. 2. The revision met the same fate.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the Tahasildar, Ghasipura. The sum and substance of the case of the opposite parties is that the petitioner has never possessed the land since 1.1.1976. A false plea has been taken to garb the valuable Government land. The petitioner encroached upon the land just before initiation of the eviction proceeding. He has no rights to encroach upon the Government land. The kissam of land is objectionable in nature. It is further stated that the petitioner is not a landless person. The land encroached is a portion from South "ADI" of the tank. The contention of the learned counsel for the petitioner that by efflux of time, kissam "ADI" has been converted to homestead land, has specifically been denied. Since the petitioner is not a landless person and kissam of the land being "ADI", he is not entitled for settlement of the land. It is further stated that the ancestral land of the petitioner i.e., hal plot No. 1335, area Ac.0.110 decimal corresponding to hal khata No. 116, has been recorded in the name of Ananta Senapati son of Labha Senapati, village-Nizagaon, who is father of the petitioner. It is further stated that the petitioner has encroached upon Ac.0.06 decimal of land appertaining to plot No. 1218, khata No. 147 (Bebandobast) of Mouza-Salapada. He has also encroached upon the additional area measuring an area Ac.0.03 decimal appertaining to plot No. 40, khata No. 140 of mouza-Salapada through his sons in two places near to the public road. The petitioner is in habit of garbing the Government land.

4. Heard Mr. Behuria, learned counsel for the petitioner and Mr. Panda, learned Additional Government Advocate for the opposite parties.

5. The scope and jurisdiction of the High Court in a writ of certiorari is no more res integra. The Constitution Bench of the apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 of the report held as follows:--

"(7) The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise

jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was "insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, AIR 1955 SC 233 : (1955) 1 SCR 1104 , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, AIR 1960 SC 1168 . It is, of course, not easy to define or adequately describe what an error of law apparent on the face of (1) *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, AIR 1955 SC 233 : (1955) 1 SCR 1104 (2) *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 . (3) *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, AIR 1960 SC 1168 .

(8) It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of

certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record.

xxx xxx xxx"

6. On the anvil of the decisions cited supra, this Court has examined the case. One aspect is crystal clear that the petitioner is not a landless person. Further, he has not adduced any cogent evidence to substantiate the plea of adverse possession. Adverse possession is a mixed question of fact and law. In the celebrated judgment, the Privy Council, in the Secretary of State for India in Council vs. DebendraAIR 1934 23 (Privy Council) , held that the classical requirement of adverse possession is that the possession should be nec ve nec clam nec precario. Their Lordships quoted with approval the decision in the case of Radhamoni Debi vs. The Collector of Khulna and Others(1900) L.R. 27 I.A. 136 (Privy Council) that "the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor". Though a plea is taken that the petitioner has filed the show cause, but the same has not been annexed to the writ application. The petitioner has utterly failed to substantiate the plea of adverse possession before the forum below. Thus, the submission of Mr. Behuria, learned counsel for the petitioner that the petitioner has perfected his title by way of adverse possession, is difficult to fathom. It is apposite to refer the relevant provisions of the Orissa Prevention of Land Encroachment Act.

7. Landless person is defined in Section 3(a-1) of the O.P.L.E. Act, 1972. The same is quoted hereunder:--

"[(a-1)"Landless person" means a person, the total extent of whose land excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf;]"

8. The standard acre is defined in Section 2 of the Orissa Land Reforms Act, 1960, which reads as follows:--

"2-Definition - xxx xxx xxx

(30) "standard acre" means the unit of measurement of land equivalent to one acre of Class I land, one and one-half acres of Class II land, three acres of Class III land or four and one-half acres of Class IV land."

Explanation - For the purposes of conversion, one acre shall be equal to 0.4047 hectare;

9. This Court on an interpretation of landless person as defined in Sec. 3(a-1) of the O.P.L.E. Act, 1972 and Standard Acre as defined in Sec. 2 of the Orissa Land Reforms Act, 1960 in the case of Sailendri Nayak and others v. State of Orissa, disposed of on 23.6.2015, in paragraphs 8 and 9 held as follows:--

"8. On a conspectus of the Sec. 3(a-1) of the O.P.L.E. Act, it is evident that if the total extent of land of a person excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf, is a landless person.

9. Before settlement, embarking upon an enquiry for settlement of land in favour of a person a duty is cast upon the Tahasildar to find out as to whether the total extent of land of a person excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and the total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify therein. Further the Tahasildar has to follow the procedure as envisaged under the O.P.L.E. Act and Rules framed thereunder. All these aspects have been brushed aside by the opposite party No. 2. The opposite party No. 1 in a mechanical manner affirmed the order of the Tahasildar-opposite party No. 2."

10. The stand taken by the opposite parties that the petitioner is not a landless person and is a habitual land grabber, has not been specifically denied by filing any affidavit. Thus, the same goes unchallenged.

11. Judging the case from any angle, this Court is of the considered opinion that the opposite party No. 4 has rightly passed an order of eviction under the O.P.L.E. Act, which was subsequently confirmed by the Sub-Collector, opposite party No. 3 in Encroachment Appeal No. 8 of 2007 and the Additional District Magistrate, Keonjhar, opposite party No. 2 in O.P.L.E. Revision Case No. 6 of 2011. There being no perversity or illegality in the orders of the Court below, this Court is not inclined to interfere with the said orders. In view of the same the writ application is dismissed. No Costs.