

(1964) 01 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 251 of 1963

Ambarish Misra

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 14-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Estates Abolition Act, 1951 — Section 7(1)

Citation : AIR 1965 Ori 215

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : R.N. Misra, L. Misra, A.K. Rao and M.S. Rao, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—This is a petition under Article 226 of the Constitution against an, order of the Collector of Bolangir dated 4-6-1963 in Estate Abolition Review case No. 8 of 1962-63 reviewing and modifying an order passed by his predecessor on 25-5-1955 in Estate Abolition Review Case No. 73 of 1954-55.

2. The zamindari of Loisinga in Bolangir district, of which the proprietor was one Dewan Chitrabhanu Singh, was taken over by Government and then one Ambarish Misra (who is the petitioner, before us) filed an application u/s 7 of the Orissa Estate Abolition Act in respect of 289.54 acres of land in village Bendra within the said zamindari. His case was that the said lands were actually let out to him by the zamindar and that he was in possession. The Zamindar Chitrabhanu however contended that Ambarish was not a tenant but a mere mortgagee and that u/s 7(1) (c) of the Estate Abolition Act (as it then stood) the lands should, be deemed to have been settled with him. The Collector however disallowed the claim of the Zamindar held Ambarish to be a tenant and directed settlement of the lands with him on a royalty basis on payment of prescribed rent and cess u/s 7 of the Estate Abolition Act.

The matter was taken up on appeal before the President, Board of Revenue (in Estate Abolition Appeal No. 37, of 1955-56) who upheld , the contention of the ex-zamindar and held that Ambarish was a mere mortgagee and not a tenant and directed that the lands should be settled with the ex-zamindar u/s 7. Against that order an application under Article 226 of the Constitution was filed before the High Court in O. J. No. 91 of 1957 and a Bench of this Court by its order dated 16-2-59 quashed the order of the Board of Revenue and restored the order of the Collector.

3. I should further state that a review petition (Estate Revision Case No. 60 of 1956-57) was filed before the President Board of Revenue by Ambarish himself against the earlier order of the Board, passed in Estate Abolition appeal No. 37 of 1955-56. The Board, by its order dated 5-5-1957 however held that as there was no-provision for review in the Estates Abolition Act, the Board had no jurisdiction to review its own previous order.

4. The matter was thus concluded between the parties, but strangely enough, about three years later the Government Pleader of Bolangir applied to the Collector of, Bolangir for reviewing the previous order of the Collector. The Collector registered the application as Estates Abolition Review case No. 8 of 1962-63 and though he was fully aware of the previous litigation which went to the High Court in the said writ petition under Article "226, he nevertheless thought that he had powers of review and that his predecessor had committed a mistake in applying Section 7 of the Estates Abolition Act and that the proper section to apply was Section 8(1) of the Act. Hence he thought that Ambarish Misra should not get rayati status but by virtue of Section 8(1) of the Orissa Estates Abolition Act he continued to be a tenant but subject to the same rights and restrictions and liabilities as he was entitled or subject to immediately before the date of vesting.

5. Mr. Misra in support of this writ application urged two important points relating to jurisdiction. Firstly he urged that the Collector as an authority subordinate to the Board of Revenue, was bound by the decision of the Board to the effect that the Estates Abolition Act does not provide for review and he should not have assumed jurisdiction to review the order, of his own predecessor. Secondly he urged that in any view of the case, as the matter was finally decided by the High Court in an earlier application under Article 226 of the Constitution (in O.J.C. No. 91 of 1957) the Collector should have left it to the parties to agitate the matter before the High Court even if there was an error in the final order and should not have taken upon himself the duty of reviewing the order of his predecessor which, in effect, meant reviewing the orders passed by a superior authority namely the High Court which he had obviously no jurisdiction to do.

6. In my opinion both these contentious must prevail. There is no express power of review conferred on the Revenue authorities by the Estates Abolition Act. It was in view of the absence of such a provision that the Board of Revenue in Estate Abolition Rev. case. No. 60 of 1956-57, held that a review petition would

not He. We are here not concerned with the correctness or otherwise of the decision of the Board of Revenue, but the Collector is bound by the decision of his superior authority namely the Board of Revenue and he should not have assumed that he had jurisdiction to review the order of his predecessor.

7. The second contention raised by Mr. Misra is even more weighty. All the parties before the Collector including the State of Orissa were parties before the High Court in O.J.C. No. 91 of 1957. If in the earlier order of the Collector dated 25-5-55 Section 7 of the Estates Abolition Act was wrongly applied and the correct section to apply was Section 8 (1) this point should have been taken before the High Court in that writ application. This however was not done and as between the parties to that application before the High Court that order has become final. The High Court definitely restored the order of the Collector & set aside the order of the Board of revenue. The succeeding Collector cannot therefore purport to review his predecessor's order because that order has merged in the order of a superior Court. If any party felt aggrieved by that order he should have approached this Court according to law.

8. For these reasons we allow, this petition, set aside the Order of the Collector of Bolangir dated 4-6-1963. The petitioner will also be entitled to the costs of this petition.

9. Hearing fee is assessed at Rs. 100/-(One hundred only).

S. Barman, J.

10. I agree.