
(1978) 09 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 1342 of 1976

Amina Bibi

APPELLANT

Vs

Tahsildar-cum-Revenue Officer and Others

RESPONDENT

Date of Decision : 12-09-1978

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 42(2), 44(1)

Citation : AIR 1979 Ori 47 : (1978) 46 CLT 527

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R.K. Mahapatra and A. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—This writ application for certiorari was filed by a mother and her son who were petitioners 1 and 2 respectively. During the pendency of the application, the mother having died, the son has become the sole petitioner. The determination of the ceiling area in a suo motu proceeding u/s 42 of the Orissa Land Reforms Act (hereinafter referred to as the "Act") and the decision of the appellate and the revisional authorities are assailed in this application.

2. It is unnecessary to examine the facts of the case as having heard learned counsel for parties at length we are inclined to take the view that the appeal preferred by the petitioners before opposite party No. 2 was within the period of limitation and the same should not have been thrown out as being barred by limitation and the appellate authority was obliged to dispose of the appeal on merit. We shall presently examine the question as to whether the appeal was barred or not barred by time.

3. The Revenue Officer (opposite party No. 1) initiated the proceeding by his order dated 22-2-1975 and Miscellaneous Case No. 113 of 1974 (O.L.R.) was registered. On 12-1-1976, the Revenue Officer directed issue of a revised draft

statement. On 19-1-1976, the draft statement was signed and published. On 20th of Feb., 1976, the Revenue Officer directed re-issue of notice as he was not satisfied that the landholder had refused to accept notice as reported and required the objection to be filed on 28-2-1976. On the footing that no objection was filed by 28-2-1976, on 29-2-1976, the Revenue Officer made an order confirming the draft statement and directed publication thereof, as provided u/s 44 (1) of the Act. On 29-3-1976, he made the following order :--

"Appeal period is over. No intimation of appeal if any filed is received. Prepare and publish a copy of the confirmed statement for a period of 15 days....."

and posted the matter to 26-4-1976 on which date he recorded the following order :--

"Confirmed statement duly published on 7-4-76. Fifteen days, the period of publication, is over. Issue final statement. Ask R.I. to report the Government dues if any outstanding against the landholder...."

He directed the matter to be called on 18-5-1976. On 8-6-1976, he directed issue of notice to the petitioners as provided u/s 45-A (2) of the Act. The said notice was served on 15-6-1976 and the appeal was tiled on 21-6-1976. The appellate authority came to hold:--

"This appeal arises out of the order dated 29-2-76 passed by the Revenue Officer, Surada, in O.L.R. Case No. 113/ 74 confirming the draft statement u/s 44 (1) of the O.L.R. Act.

The appeal was filed on 21-6-76, Thus there has been delay of 113 days in preferring the appeal. No explanation has been offered why the appeal was not filed within the prescribed period of limitation as envisaged u/s 44 (2) (a) of the O.L.R. Act. Apparently the appeal is barred by limitation."

After saying so, the appellate authority casually referred to certain features relating to merit of the matter and dismissed the appeal. Petitioner's revision before the Revenue Divisional Commissioner was disposed of by saying:--

"Heard the Advocate for the petitioner on point of admission. Perused the judgment of the lower court. The appeal before the lower appellate court is barred by limitation. The learned Advocate stated that in the trial court the son of Ahmed Hussain had only appeared. Shri S.K.C. Das pleaded that under Mahammadan Law appearance of son does not amount to appearance for the mother. In any case there was adequate notice on the party and he has participated in the proceedings of the trial court. I, therefore, see no reason why the limitation should be condoned. The revision is rejected. Advocate informed."

4. Mr. Mohapatra for the petitioner has taken the stand that the petition of appeal was in time from the date of communication of the order of the Revenue Officer and both the appellate and the revisional authorities have, therefore, gone wrong in proceeding on the footing that the appeal was barred by limitation.

5. Section 44 (2) of the Act provides:---"An appeal against the order of the Revenue Officer under Sub-section (1) confirming the statement, if presented-

(a) by any person aggrieved by the order within thirty days from the date of the order; or

(b) shall lie to the prescribed authority."

Undoubtedly, the order against which the appeal was filed is dated 29-2-1976 and the appeal was filed on 21-6-1976. Five days' time was available u/s 12 of the Limitation Act. Since the appeal has to be presented within thirty days from the date of order and the time requisite u/s 12 of the Limitation Act is five days, the appeal had to be filed within thirtyfive days from the date of the order. On the aforesaid basis, it has been the stand of the appellate and the revisional authorities and of learned Additional Government Advocate before us that the appeal had to be presented by 4th April, 1976. As the appeal was filed on 21-6-1976, it was out of time by 77 days.

Mr. Mohapatra for the petitioner, however, does not accept this position and maintains that "date of the order" as contemplated in Section 44 (2) (a) of the Act has to be construed to mean "the date of communication of the order". Reliance is placed on a series of authorities in support of the contention.

6. In the case of Bharat Sabaigrass Ltd. Vs. The Collector of Commercial Taxes, the question for consideration was whether an application for reference under the provisions of the Orissa Sales Tax Act was in time. Section 24 (2) of the Orissa Sales Tax Act as it then stood provided:--

"If, for reasons to be recorded in writing, the Revenue Commissioner refuses to make such reference the applicant may, within thirty days of such refusal, either-

(a) withdraw his application (and if he does so, the fee paid shall be refunded), or

(b) apply to the High Court against such refusal."

On 30th July, 1951, the Revenue Commissioner refused to make a reference. The application before the Court was filed on 28th Sept. 1951. Considering the question of delay, a Bench of this Court held (at p. 24):--

"It is contended by the petitioners that the period of limitation should commence not from the signing of the order but from the communication of such order to the petitioners. An affidavit has been filed by the petitioners which remains uncontroverted to the effect that the refusal was communicated by Officer of the Commissioner, Sambalpur, in his Office Letter No. 5750/GL, dated 9th Aug. 1951, which was received in the Office of the petitioner on 13th Aug. 1951. To us, it appears that the term refusal implies within itself communicated refusal. If the Commissioner signs the order and keeps it for himself without communicating it to the person against whom refusal is meant, it cannot be taken to be a refusal as contemplated u/s 24. We, therefore, think that the limitation will start from the date of communication of the order or refusal and not from the date of

signing of it....."

Reliance was placed on three Madras decisions. First is the case of Secy. of State for India in Council v. Gopi Setty Narayanaswami Naidu Garu ILR (1911) Mad 151 and next is the case of Swaminathan v. Latchumanan ILR (1930) Mad 491 : AIR 1930 Mad 490. The third one is the case of O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, , where Chief Justice Rajamannar speaking for the Division Bench observed (at p. 205 of AIR):--

"The only question on the merits which falls for decision is whether the one year has to be computed from the date when the order was signed by the Income Tax Officer, or the date when it was communicated to the petitioner, or the date, if there be any, on which the petitioner had the opportunity of coming to know of the order. The learned Advocate for the petitioner relied on a catena of decisions of this Court of which it is sufficient to refer to two, namely, Secy. of State for India in Council v. Gopi Setty Narayanaswami Naidu Garu ILR (1911) Mad 151 and Swaminathan v. Latchumanan ILR (1930) Mad 491: AIR 1930 Mad 490, which support his contention that the date of the order does not mean the date when the officer passed the order but the date when it was pronounced or published in such a manner that the party must be deemed to have had notice of it on the date of such pronouncement or publication....."

In the case of Harish Chandra Raj Singh v. Dy. Land Acquisition Officer AIR 1930 SC 1500 the question that, fell for consideration was whether the application made to the Land Acquisition Collector u/s 18(1) of the Land Acquisition Act, I of 1894, for a reference to the court, was barred by limitation. The section makes provision thus:--

"Provided that every such application shall be made-

(a) if the person making It was pre sent: or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector"s award;

(b) in other cases within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector"s award, whichever period shall first expire,"

The Allahabad High Court took the view that the application having been made beyond six months from the date of the award, it was barred by limitation. The Supreme Court observed (at pp. 1502, 1503):--

"....,. It has been held by the Allahabad High Court that since the application made by the appellant before res-pondent-1 was made beyond six months from the date of the award in question it was beyond time. The view taken by the High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by res-pondent-1 on March 25, 1951, and the application by the appellant was made u/s 18 on Feb. 24, 1953. It has been held that the effect of the relevant clause is that the

application made by the appellant is plainly beyond the six months permitted by the said clause and so respondent-1 was right in rejecting it as barred by time....."

The Court then formulated the proposition, thus:--

"..... The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in law. It is obvious that the effect of this construction is that, if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application u/s 18 may in many cases be rendered ineffective, If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing....."

The Court concluded by indicating :--

"The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression the date of the award used in the proviso must mean the date when the award is either communicated to the party or as known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words from the date of the Collector's award used in the proviso to Section 18 in a literal or mechanical way."

The Supreme Court approved the dictum of Rajamannar C. J. in the last of the Madras decisions O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, and overruled a decision of the Bombay High Court in the case of Jehangir Bomanji and Others Vs. C.D. Gaikwad, and a decision of the Kerala High Court in the case of State of Travancore-Cochin Vs. Narayani Amma Ponnammamma and Others, , taking the contrary view.

A similar question arose before a Division Bench of the Rajasthan High Court in the case of Bajrang Singh Vs. The State of Rajasthan and Others, . Section 39 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, provided for appeals in the following manner:--

"(1) The Government or any person aggrieved by any decision of the Jagir Commissioner or the Collector, as the case may be, u/s 5, Sub-section (2) of Section 23, Section 24, Sub-section (2) of Section 25, Section 26A" Sub-section (2) of Section 32, Sub-section (3) of Section 35, Section 36, Section 37, Section 38 or Section 38B may within ninety days from the date of such decision, appeal to the Board.

(1A) Any person aggrieved by an order made by the Collector u/s 16 may appeal therefrom to the Commissioner for Khudkasht land within sixty days from the date of the order.

XX XX XX".

Speaking for the Court, the learned Chief Justice observed (at p. 83):--

"..... It appears to us that when the legislature provided ninety days" time for filing an appeal from the date of the decision u/s 39, it had in its mind the basic principles which have to be followed by a civil court in pronouncing its judgment and which are embodied in Order 20, Rule 1 of the Civil P. C.

It is provided in that order that after the case has been heard, the Court shall pronounce judgment in open Court, either at once or, as soon thereafter as may be practicable, on some future day and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders. If a day is fixed by the court for the pronouncement of the judgment and the judgment is actually pronounced on that day, then the period of limitation would commence from that day whether any one of the parties cares to appear in the court or not.....

It could not have been envisaged by the legislature that the Jagir Commissioner, or for that matter, the Collector, would reserve his order and then would not inform the parties of the future date on which he proposes to announce his decision. The scheme of Section 33 seems to be that if the Jagir Commissioner does not announce his decision before the parties, or if he does not fix any day for pronouncing his decision, then he must communicate his final order to the Government, the Jagirdar and every other interested person as soon as practicable. In such a case, the period of limitation would commence from the date, the party concerned receives the communication u/s 33."

In the case of Madan Lal Vs. State of U.P. and Others, , the question for consideration was whether an appeal filed under the provisions of the Indian Forest Act of 1927 was barred by limitation, Section 17 of the Act allowed an appeal to be preferred by any person who had made a claim under the Act or any Forest Officer or other person generally or specially empowered by the State Government in that behalf against an order passed on such claim by the Forest Settlement Officer u/s 11 and the appeal had to be filed within three months from the date of the order, The order in that case had been made on 24-4-1956, but the impugned order was dated May 9, 1955. Dealing with the question of limitation, the appellate tribunal observed (at p. 2086):--

"Since the order dated 9-5-1955 was not delivered in the presence of the parties or after giving them any notice of date it cannot be said to have been delivered properly under the law. It is obvious that in case the Forest Settlement Officer had decided to pass an order determining the rights of the parties it was incumbent on him to have duly informed the parties concerned both of the date of the order and subsequently of its content. This was clearly not done."

The Court approved of the ratio in the decision reported in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another, and concluded by holding (at p. 2088):--

"The High Court in the case before us was, therefore, right in holding that the impugned order should be deemed to have been passed on April 24, 1956 when the Forest Department came to know of the order and the right of appeal granted to the Department should be determined on that very basis."

A Bench decision of this Court in the case of P. Appa Rao Vs. Additional District Magistrate and Others, , adopted the ratio of the Supreme Court decision reported in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, .

7. We have already taken note of the fact that petitioner had been required to file an objection by 28-2-1976. No date for making of the order had been indicated. "29-2-1976" was not a date appointed in the proceeding for any purpose. Therefore, petitioner could not have had the occasion to take notice of that date. According to the petitioner, his knowledge of the impugned order is dated 15-6-1976. That fact has not been controverted. On the ratio of the several cases referred to above, it would follow that the date from which the limitation of thirty days provided under the Act for appeal would commence is 15-6-1976. The appeal has admittedly been filed within a period of six days therefrom and; therefore, it could not have been thrown out as being barred by limitation.

8. We would accordingly quash the order of the Revenue Divisional Commissioner as also the appellate order and would require the appellate authority to re-dispose of the appeal in accordance with law on the footing that the appeal had been presented in time and was to be disposed of on merit. Petitioner shall have his costs. Hearing fee is assessed at rupees one hundred.

N.K. Das, J.

I agree.