
(1976) 07 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 698 of 1976

Arakhita Bisoi

APPELLANT

Vs

Revenue Officer and Others

RESPONDENT

Date of Decision : 15-07-1976

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 44, 44(2), 45, 58, 59

Citation : AIR 1977 Ori 19 : (1976) 42 CLT 796

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

Bench : Division Bench

Advocate : R.C. Patnaik and P.K. Misra, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution for a writ of certiorari. The original order of the Revenue Officer, the appellate order of the Sub-divisional Officer and the revisional order of the Additional District Magistrate-opposite parties 1, 2 and 3 respectively are assailed.

2. Though several averments were made in the writ application, a lone contention has been pressed at the hearing. It is claimed that the appellate order of the Sub-divisional Officer (Annexure 2) was open to revision u/s 59 of the Orissa Land Reforms Act (hereinafter referred to as the "Act") and yet the revisional authority (opposite party No. 3)" has rejected the application, saying that the same was not maintainable. As jurisdiction vested in the revisional authority and yet he has declined to exercise the same, his order is vitiated. Thus, the only question for examination is as to whether the impugned appellate order was open to revision before the opposite party No. 3.

3. By order dated 1-11-1974, the Revenue Officer refused to accept the claim of partition, found that the petitioner's family consisted of five members in all and, therefore, petitioner was entitled to a ceiling area of ten standard acres.

Accordingly he directed the revised confirmed statement indicating the surplus lands to be published. An appeal was carried against the said order and was dismissed on merit on 26th of April, 1975 (Annexure 2). The petitioner thereafter filed a revision before the Additional District Magistrate who held that the appellate order was not subject to revision in view of the provision regarding finality contained in Section 44 (2) of the Act. He relied upon the decision of the Member, Board of Revenue, in the case of Bhagmani Devi v. State of Orissa 42 (1976) CLT 529.

4. To resolve the dispute as to whether the impugned appellate order was revisable, it is necessary mainly to consider the provisions in Sections 44, 45, 58 and 59 of the Act. These provisions have been amended by Orissa Act 29 of 1976 which came into force with effect from 19th May, 1976. For convenience, we extract below juxtaposed to each other the various unamended and amended provisions:--

44. Final statement of ceiling and surplus lands: - 44. Final statement of ceiling and surplus lands: -

(1)

On the termination of the proceedings u/s 43 the Revenue Officer shall by order confirm the draft statement with such alterations or amendments as may have been made therein under the said section.

(1)

On the termination of the proceedings u/s 43 the Revenue Officer shall by order confirm the draft statement with such alterations or amendments as may have been made therein under the said section.

(2)

An appeal against the order of the Revenue Officer under sub-section (1) confirming the statement if presented within thirty days from the date of the order shall lie to the prescribed authority and subject to the result of such appeal, if any, the orders of the Revenue Officer shall be final.

(2)

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)

by the State Government within sixty days from the said date, shall lie to the

prescribed authority.

(3)

The draft statement as confirmed or as modified in appeal, if any, shall be published by the Revenue Officer in such manner and for such period as may be prescribed, and on the expiry of the said period the statement shall be final and conclusive, a copy whereof shall then be furnished to the person concerned free of cost and another such copy to such authority, if any, as may be prescribed.

(3)

The draft statement as confirmed or as modified in appeal or revision, if any, shall be published by the Revenue Officer in such manner and for such period as may be prescribed, and on the expiry of the said period the statement shall be final, and conclusive, a copy whereof shall then be furnished to the person concerned free of cost and another such copy to such authority, if any, as may be prescribed.

45.

Surplus lands to vest in Government. With effect from the beginning of the year next following the date of the final statement referred to in subsection (3) of Section 44 the interests of the person to whom the surplus lands relate and of all land-holders mediately or immediately under whom the surplus lands were being held shall stand extinguished and the said lands shall vest absolutely in the Government free from all encumbrances.

45.

Surplus lands to vest in Government: - With effect from the date on which the statement becomes final under subsection (3) of Section 44 the interest of the person to whom the surplus lands relate and of all land-holders mediately or immediately under whom the surplus lands were being held shall stand extinguished and the said lands shall vest absolutely in the Government free from all encumbrances.

58. Appeal: - 58. Appeal: -

(1)

Any person aggrieved by an order passed under any of the following Sections may prefer an appeal to the prescribed authority, namely; - Sections 4, 9 (4) 10, 12 (2), 15, 16, 17, 18, 19 (1) (c), 20, 21, 22 (1), 23 (2), 27, 28, 34-A, 35, 36-A, 36-B, 42, 52 and 56-A.

(1)

Any person aggrieved by an order passed under any of the following sections may prefer an appeal to the prescribed authority, namely: - Sections 4, 9 (4), 10, 12 (2), 15, 16, 17, 18, 19 (1) (c), 20, 21, 22 (1), 23 (2), 27, 28, 34-A, 35,

36-C, 42, 52, 56-A, 56-B and 57-B (4).

(2)

The procedure for filing and disposal of appeals shall be as may be prescribed.

(2)

The procedure for filing and disposal of appeals shall be as may be prescribed.

(3)

Any tenant aggrieved by an order passed u/s 27, Section 35 or Section 36-A (other than an order dismissing the case for default or non-prosecution) prior to the date of commencement of the Orissa Land Re-forms (Second Amendment) Act, 1975, may if he has not preferred an appeal as provided in sub-section (1), prefer the same within one year from the said date.

59. Revision: - 59. Revision: -

(1)

The Collector may revise any order passed in appeal by any officer below the rank of a Collector under this Act and the Board of Revenue may revise any order passed by the Collector under this Act, and the period of limitation for such revision shall be as may be prescribed.

(1)

The prescribed authority may, on application by any party aggrieved by any order passed in an appeal under any provision of this Act filed within the prescribed period, revise such order.

(2) (2)

(3) (3)

5. According to the petitioner's counsel, the use of the phrase "shall be final in Section 44 (2) of the Act meant only that no further appeal lay against the appellate decision. But the effect of this, phrase was not that a revision would not be maintainable u/s 59 of the Act. The Board of Revenue while disposing of a revision case filed u/s 59 of the Act took the view that a revision did not lie against the appellate order in view of the finality provided in Section 44 (2) of the Act. It was to undo the mischief of the decision that Sub-section (2) of Section 44 was suitably amended to give effect to the true legislative intention. In support of this proposition, he has placed reliance on several authorities and we may now refer to some.

In the case of Shah Chaturbhuj Vs. Shah Mauji Ram, , the question for consideration was whether in view of the provision of Section 5 (2) of the U. P. Agriculturists' Relief Act, 27 of 1934, declaring that the decision of the appellate court shall be final, a revision u/s 115 of the CPC was maintainable. Iqbal

Ahmad, J. speaking for the Court concluded the discussion on the point by saying:

"In our judgment the provision in Clause (2) of Section 5 that "the decision of the Appellate Court shall be final" means no more than this that the order passed by the Appellate Court cannot be made the subject of a second appeal....."

A Full Bench of the Kerala High Court in the case of Pulikkottil Tharappan Vs. Perumbulli Manakkal Purushothaman Nambudiri, was examining the maintainability of a revision in view of the provision in Section 23-A of the Kerala Agriculturists Debt Relief Act, 1958, which provided:--

"An appeal shall lie against any order passed under Sub-section (1) of Section 8, Sub-section (1) or Sub-section (3) of Section 9 and Sections 12, 18, 22 and 23 to the Court to which appeals ordinarily lie from the decisions of the Court passing the order and the order passed in appeal shall be final:

Provided....."

The Court followed the dictum in the Allahabad case and held the revision to be maintainable.

In the case of Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, , the Supreme Court had occasion to deal with the provision of finality in Section 12 of the Court-Fees Act. Mahajan, J., as the learned Judge then was, spoke for the Court thus:--

"...,.. In other words, Section 12 when it says that such a decision shall be final between the parties only makes the decision of the Court on a question of court-fee non-appealable and places it on the same footing as other interlocutory non-,appealable orders under the Code and it does no more than that. If a decision u/s 12 is reached by assuming jurisdiction which the Court does not possess or without observing the formalities which are prescribed for reaching such a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers....."

A Full Bench of the Madras High Court in the case of K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, was considering whether a revision u/s 115 of the CPC from a decision under the Madras Local Boards Act which makes the decision final would lie. The learned Chief Justice observed:--

"..... I know of no better way of directing that there shall be no appeal than by the Legislature stating that the decision of a particular Court shall be final. It is the ordinary mode of expression used for the purpose in much of the legislation in England on which this legislation is founded; and, where the whole object of revision is to prevent a Court, from which there is no appeal, acting contrary to its jurisdiction, a finding that it is the law that, "because the words used are "the decision shall be final", a Court ordinarily subject to the revisional powers of this Court, should be permitted to act wholly without jurisdiction without the aggrieved party being entitled to any remedy, would in my judgment be

untenable, and that would be the effect of deciding this second point in favour of the contention put forward."

On these and many other authorities cited before us during the hearing, learned counsel for the petitioner maintained that the phrase "shall be final" was a legislative device to indicate that there would be no further appeal and if there was an omnibus revisional jurisdiction provided by statute, the remedy by way of revision was not barred. He further contended that the revisional jurisdiction under the Act was a wide one and did not suffer from the restrictions imposed by Section 115 of the Code of Civil Procedure.

6. Learned Advocate-General on behalf of the State relying upon the provisions of Section 45 of the Act claimed that the scheme of the particular statute was different and when it declared that following the date of the final statement as provided in Section 44 (3) of the Act, the right of the owner in the surplus land was to stand extinguished the remedy of revision which if availed would conflict with the statutory scheme could not have been contemplated within its framework. According to learned Advocate-General, therefore, keeping this legislative intention in view, the question of maintainability of a revision u/s 59 must "be found. He further maintained that the legislative policy under the Act was to determine the ceiling surplus lands with utmost expedition so that the agrarian reform which Government has undertaken may not be impeded. The Court should not, therefore, interpret the law in such a way that the remedy of a revision in the matter of determination of the surplus lands would be implanted and the process thereby impeded.

7. The problem before us does not seem any longer to present much of difficulty because whatever may have been the ambiguity in the legislation prior to the 1976 amendment, the matter has now been clarified beyond any shred of doubt. Sub-sections (2) and (3) of Section 44 have now been amended by the recent legislation. The concept of finality occurring in Sub-section (2) of the unamended provision has been completely deleted and in Sub-section (3) where the concept of finality still subsists, "revision" has been added after "appeal". The effect of the amendment makes it clear that until the revisional decision, wherever that remedy is availed, is made, the statement does not become final. Corresponding amendment has also been made in Section 45 of the Act to reflect the true intention of the Legislature. The right of the owner does not stand extinguished until the revision is disposed of because Section 45 refers to the final statement contemplated u/s 44 (3) of the Act and that finality in Section 44 comes into play only when the revision if filed is disposed of. We have, therefore, not referred to various other aspects which were placed before us during argument,

8. A statute, it has been always said, is an edict of the Legislature and the duty of the Court is to act upon the true intention of the Legislature : mens or sententia legis. See *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, and *South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others*, . A statute as enacted cannot be explained by the individual

opinion of the legislators nor even by a resolution by the entire Legislature. Once the enacting process is over, the Legislature "becomes functus officio so far as that particular statute is concerned and it cannot itself interpret it. Interpretation is left to the Court but where the Court is not able to gather the true legislative intention and the interpretation given by it fails to bring out the true legislative intent, the Legislature intervenes and by amendment makes its , true intention clear and explicit. In the instant case, the amendment has served such a purpose. The concept of finality occurring in Section 44 (2) of the Act as interpreted by the Board was found not to reflect the legislative intent. Therefore, the provision was recast and the concept of revision was directly implanted into the framework of Section 44 of the Act.

9. Section 59 was and is in wide terms and any order passed in an appeal under any provision of the Act is open to revision. Section 59 by its own terms does not confine its operation to what is covered in its preceding section. Right to appeal is a creature of statute and unless conferred by statute, an appeal does not lie. Section 58 makes orders under certain sections appealable, The scheme of revision in Section 59 (1) is that only appellate orders are open to revision. Undoubtedly, an appeal against an order u/s 44 is not included in Section 58. Obviously as the provision in Section 44 is a very important one, the Legislature has made that provision comprehensive by providing the right of appeal in the section itself and has not kept it to be indicated in Section 58. The language of Section 59 (1) being wide enough to admit of any appellate order under the Act, there is no justification to hold that an -appellate order u/s 44 is not amenable to revision u/s 59 (1) of the Act.

By the amending Act, appellate orders made u/s 44 (2) of the Act even in proceedings initiated prior to the amendment would be open to revision because providing a revision as a new and/or additional forum for ventilation of grievance is procedural and would apply to pending proceedings. In our holding that a revision lies in this type of cases we do nothing more than say what the Legislature has so clearly intended.

10. On the analysis indicated, there can be no doubt that an order u/s 44 (2) is revisable and the revision in the instant case was maintainable. The learned Additional District Magistrate went wrong in dismissing the revision as not tenable in law and by doing so, he failed to exercise the jurisdiction vested in him.

11. We would accordingly quash the order of the learned Additional District Magistrate and hold that the revision filed by the petitioner before him was maintainable and, therefore, the learned Additional District Magistrate is called upon to dispose of the same in accordance with law. We make no direction for costs.

Mohanti, J.

I agree.