(2009) 02 OHC CK 0019

In the Orissa High Court

Banamali Panda APPELLANT

Vs

Member Board of Revenue and Others RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2010) 109 CLT 53 : (2009) 1 OLR 849 Supp

Hon'ble Judges : P.K. Tripathy, J;L.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Petitioner has prayed to quash orders under Annexures 3 & 4 Annexure-3 is the order passed by the Additional District Magistrate, Jaipur in

O.E.A. Revision Case No 4 of 1994 on 03.11.1998 & Annexure 4 is the Order Dated 29.06.2001 passed by the Member, Board of Revenue in

O.E.A. Revision Case No. 2 of 1999.

2. Petitioner''s claim is that his father was the recorded tenant of Plot Nos. 515 & 516 of Khata No. 249. According to the Record of Rights of

the year 1911, the total area under those two plots was measuring Ac. 0.30 decimals. He does not dispute the Record of Rights prepared in the

year 1927-1928 in which the area was reduced to Ac. 0.26 decimals, i.e. Ac. 0.13 decimals for each of the plots. After vesting of the Estate,

Petitioner filed O.E.A. Case No. 22782 of 1963-64 for settlement of Ac. 0.26 decimals of land in Plot Nos. 515 & 516. The O E A. Collector-

cum-Tahasildar, Jaipur allowed that application & settled the land to the extent of Ac. 0,26 decimals in favour of the father of the Petitioner. In the

year 1986, Petitioner initiated this litigation with the claim that Ac. 0.04 decimals of land not recorded in the settlement during 1928 is still in the possession of the family & therefore that area also should be recorded in the name of the Petitioner. After long drawn legal battle in that respect by

moving to the Member, Board of Revenue & coming to the High Court getting an order of remand to the Member, Board of Revenue & further an

order of remand from the Board of Revenue to the Tahasildar, the matter was again enquired into & on the basis of the measurement made by the

Amin in presence of the Petitioner but not the Opposite Parties, again order was passed by the Tahasildar on 23.07.1988 vide Annexure-1 for

settlement of the disputed Ac. 0.04 decimals of land in favour of the Petitioner. Opposite Party No. 5 on getting information about the aforesaid

order, agitated against that order before the Sub-Divisional Officer by filing O.E.A. Appeal No. 7 of 1988. Learned S.D.O. dismissed that appeal

on the ground of non-joinder of necessary party, as per his Order Dated 19.04.1994. Opposite Party No. 5 then preferred O.E.A. Revision Case

No. 4 of 1994 & on 03.11.1998, Learned A.D.M., Jaipur passed order under Annexure 3. In that order Learned A.D.M. held that loss of Ac.

0.04 decimals has not been properly verified to appertain to either of the two plots, the map has not been properly superimposed or considered

nor the person, who is at loss because of the aforesaid order of further settlement was made a party to the proceeding & presence of such

interested person was not sought for in course of further enquiry. Accordingly, he set aside the Order Dated 23.07.1988 passed by the

Tahasildar-cum-O.E.A. Collector.

3. Petitioner challenged that order before the Member, Board of Revenue & Learned Member, Board of Revenue passed the order Annexure-4

upholding the order of the A.D.M. & not approving the order of Tahasildar dated. 23 07.1998. It is mentioned in Paragraph-9 of the Judgment of

the Board of Revenue that:

The concerned lands are under consolidation proceedings & both parties have indicated that they are pursuing their claims before Consolidation

Authorities. These Authorities have powers to go in to the question of right title & interest on land during consolidation operations. They will, no

doubt, take a final view on the claims of the disputing parties.

4. Though Petitioner has not stated anything about the consolidation proceeding but in counter Opposite Party No. 5 in paragraph 2.12 has stated

that in the consolidation proceeding only Ac. 0.26 decimals of the aforesaid two plots have been recorded in the name of the Petitioner & that

Petitioner challenged that in an appeal & after being unsuccessful there, he has challenged the same in a consolidation revision & such consolidation

revision is still pending on the ground that a stay order has been passed by this Court. On perusal of Order No. 3 dated 11.09.2001 in Misc. Case

No. 10926 of 2001, we find that in this Writ Petition order was passed directing stay operation of the order in Annexures 3 & 4. There is no order

to stay operation of consolidation proceedings & the Revisional Authority should therefore act accordingly.

5. In course of submission, Learned Counsel for the Petitioner states that the Petitioner filed Title Suit No. 107 of 1986 but that abated because of

the consolidation operation.

6. Basically the dispute between the parties is as to which of the two parties is in actual possession of that Ac. 0.04 decimals of land, whether the

map reflects the actual area in Record of Rights & whether the aforesaid two plots were reduced in their extent. Such controversies are, obviously,

factual & cannot be conveniently determined in a proceeding under Articles 226 and/ or Article 227 of the Constitution of India. As quoted above,

in paragraph 9 of his order Learned Member has directed the parties to settle their dispute before the consolidation forum. Under such

circumstance, we find no illegality in that direction or observation.

7. Learned Counsel for the Petitioner challenges the jurisdiction of the Additional District Magistrate in entertaining the O.E.A. Revision & the

jurisdiction u/s 38-B of the Board of Revenue. Though we find some justification to the challenge of jurisdiction of the A.D.M., order u/s 38-B

passed by the Member, Board of Revenue is within the jurisdiction, inasmuch as, he assessed the correctness of the order passed by the

Tahasildar in the year 1988 & he has power of suo motu revision or review.

8. From the foregoing discussion, submission of the parties & the nature of the dispute, we find that order of the Board of Revenue does not suffer

from any illegality & therefore we do not invoke writ jurisdiction under Articles 226 & 227 of the Constitution of India to interfere with the same.

Be that as it may, we observe that the parties may settle their dispute in the consolidation forum.

9. With the said observation, the Writ Petition is dismissed. It is up to the parties to move the consolidation authority for early disposal of the

consolidation revision. Under the aforesaid facts & circumstance, parties are directed to bear their respective costs of litigation.