
(2008) 03 OHC CK 0014
In the Orissa High Court

Bansidhar Pattnaik

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Orissa Land Reforms (General) Rules, 1965 — Rule 27C, 29A DDD, 29DDD
ORISSA LAND REFORMS Act, 1960 — Section 36A, 43

Citation : (2008) 106 CLT 266 : (2008) 2 OLR 183

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The petitioner-Bansidhar Pattnaik, in this writ application, has sought to challenge the following orders:

- (i) Order dated 19.05.1990 passed by the Revenue Officer,
- (ii) Order dated 27.2.1993 passed by the Sub-Collector in Appeal, and
- (iii) the order dated 9.7.1993 passed by the Addl. District Magistrate, Ganjam, Chhatrapur in Revision.

2. Miss Mishra, learned Counsel for the petitioner submits that the impugned orders under Annexures 1, 2 and 3 and the proceedings giving rise to them are vitiated on account of non-constitution and non-consultation of the "Local Committee" as contemplated u/s 43 of the Orissa Land Reforms Act, 1960. She further submits that while the Revenue Officer had directed vide his order dated 21.8.1989 to convene a "Local Committee", yet no such local committee was convened nor any consultation was ever effected by the Revenue Officer with such local committee. In this respect, Miss Mishra submits that since the provisions of Rule 27-C of the Orissa Land Reforms (General) Rules, 1965 have not been complied with, all proceedings impugned herein stand vitiated in the eye of law.

3. Mr. Das, learned Addl. Government Advocate submits that Rule 27-C has no application to a proceeding u/s 43 of the Act, 1960 and therefore, no question of complying with the requirements of Rule 27-C arises.

4. In the impugned revisional order dated 9.7.1993 passed in O.L.R. Revision No. 8 of 1993, the Addl. District Magistrate has noted the fact that the Revenue Officer did not wait for the report of the "Local Committee", even though, he had directed the concerned Rule 1 to convene a meeting of the local committee, constituted under the O.L.R. Act. Though such contention was noted and the fact accepted, yet the Addl. District Magistrate in the revisional order came to hold that since the Revenue Officer himself had carried out a "spot inquiry" on 21.1.1990 and the petitioner was present at the spot inquiry, ample opportunity had been given to the petitioner to put forth his claim before the lower Court and therefore, no grievance on this score would be accepted.

5. Considering the contentions of the learned Counsel for the respective parties, relevant provisions of the O.L.R. Act are quoted herein below:

Section 43. Preparation and publication of draft statement showing ceiling and surplus lands- (1) The Revenue Officer on receipt of the return under Sub-section (1) of Section 40-A or u/s 40-B after considering all relevant materials available to him and the selection made by the person concerned having a right to do so under the said Sub-section of the lands to be retained by him and after consulting the Local Committee, if any, shall record his findings in a draft statement.

Rule 27-C(1) For the purpose of consulting local committee u/s 36-A, the Revenue Officer shall inform the members of the Committee of the date, time and place of its meeting by a notice specifying the matters for such consultation and the said notice shall be served seven clear days before the meeting. A copy of the notice signifying due service on the person concerned shall be retained by the Revenue Officer and shall form part of the case record.

(2) The Revenue Officer shall consult the Committee in the meeting on the appointed day.

(3) The proceedings of the meeting of Committee shall form part of the proceeding under Sections 36-A.

(4) If consultation with the Committee on the appointed day is not possible due to absence of the members or due to their disinclination or inability to express their opinion, the fact shall be recorded by the Revenue Officer and it shall thereupon constitute sufficient compliance with the requirement of consultation with the committee.

Rule 29-DDD : For the purpose of consultation with the Local Committee u/s 43 of the provisions contained in Rule 27-C shall so far as may be apply.

On a reading of Rule-27-C of 1965 Rules, it is clear that the said provision has

been enacted for the purpose of the proceeding u/s 36-A of the O.L.R. Act, 1960 and cannot ipso facto be made applicable to a proceeding u/s 43 of the O.L.R. Act, 1960.

6. A Division Bench of this Court presided over by Justice R.C. Patnaik (as His Lordship then was) in the case of Kalicharan Paikaray and Another Vs. Benga Bewa and Others, has come to hold that in the absence of consultation by the Revenue Officer with the Members of the Local Committee in a meeting, all proceedings stand vitiated. Paragraph-13 of the said judgment is quoted herein below:

This itself should have been the end of our exercise but the parties argued at length on another question, namely, the necessity and the procedure of consultation with the local committee in a proceeding u/s 36A. As we have seen, Section 36A(1) itself requires the Revenue Officer to consult the local committee, if any, before giving his decision. If there is in existence a local committee in relation to the area, it is the bounden duty of the Revenue Officer to consult it. Rule 27-C extracted above, prescribes in detail the mode of consultation. Analysed, the rule breaks into the following elements : (a) the consultation with the committee shall be in a meeting (b) the members shall be intimated about the date, time and place of the meeting by a notice, (c) notice must specify the matters as regards which consultation is necessary and (d) the notice shall be served on the members seven clear days before the meeting.

The rule also requires that a copy of the notice shall be retained and form part of the record, obviously to obviate any challenge to propriety of consultation in future. Sub-rule (2) provides that the committee shall be consulted by the Revenue Officer in the meeting on the appointed day and if consultation is not possible due to absence of the members or due to their disinclination or inability to express their opinion, the Revenue officer would record the facts and thereupon it shall be sufficient compliance of the requirement of consultation of the committee as provided in Sub-rule (4). The two most essential feature of the provisions are that the members must be apprised a week before the meeting of the members for consultation and that the consultation must be in a meeting of the member with the Revenue Officer. No other mode of consultation is permissible.

7. From the above while, it would be correct to state that the opinion was expressed in the context of Section 36A and Rule-27-C, yet, in the present case, though the proceeding was initiated u/s 43, the said Section mandates that the Revenue Officer on receipt of the return under Sub-section (1) of Section 40-A or u/s 40-B after considering all relevant materials available to him and the selection made by the person concerned having a right to do so, under the said Sub-section of the lands to be retained by him and after consulting the Local Committee, if any, shall record his findings in a draft statement on various aspects contained therein. Apart from the above, Sub-section (2) of Section 43 also mandates that after the draft statement has been published inviting

objections, the Revenue Officer is required to make inquiry as he deems necessary and after consulting the Local Committee, may record his reasons in writing alter or amend all or any of the particulars specified in the draft statement.

8. The requirement of consultation with the Local Committee u/s 43 came up for consideration before this Court in the case of Maguni Sardar Vs. State of Orissa and Others, wherein a Division Bench of this Court presided over by Justice L. Rath (as His Lordship then was) has also placed reliance upon the earlier judgment of this Court in the case of Kalicharan Paikaray (supra) as well as on a decision of this Court in the case of Rabindra Kumar Badajena v. Bichitrananda Khatei 72 (1991) CLT 656 and came to hold that though those decisions were rendered with reference to Section 36-A, yet the principles decided would apply with full force to ceiling proceedings as the provisions are identical and the mischief sought to be avoided by the Legislature in both the proceedings are the same. Their Lordships further came to hold that Rule 29-DDD of the Orissa Land Reforms (General) Rules, 1965 corresponds to Rule-27-C of the said Rules. Therefore, it is clear that Rule-29-DDD read with Rule 27-C would apply to a proceeding u/s 43 of the O.L.R. Act.

9. In view of the aforesaid pronouncement of this Court, there can be no manner of doubt that consultation with the Local Committee as contemplated u/s 36-A of the O.L.R. Act and Rule-29-DDD is para materia and similar to the consultation with the Local Committee contemplated u/s 43 read with Rule-27-C of the 1965 Rules.

10. In the present case, it is an admitted fact that the Revenue Officer by his order dated 21.8.1989 had directed the Revenue Inspector to convene a Local Committee meeting, but it is a further an admitted fact that no such Local Committee was ever constituted nor any meeting was convened and therefore, non-observance of this mandate of Section 43(1) and (2) regarding consultation with the Local Committee renders the impugned orders under Annexures 1, 2, and 3 vitiated in law. Accordingly, the writ application is allowed, the impugned orders under Annexures 1, 2 and 3 are quashed and the matter is remitted back to the Revenue Officer to proceed afresh in accordance with law by complying with the requirement of Section 43(1) and (2) of the O.L.R. Act, 1960 read with Rule-29-DDD of the 1965 Rules.