
(1977) 03 OHC CK 0020
In the Orissa High Court
Case No : Civil Revision No. 192 of 1976

Bariko Pujari and Another

APPELLANT

Vs

Korono Jena and Others

RESPONDENT

Date of Decision : 14-03-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 151

Citation : (1977) 44 CLT 235

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : L. Rath.A.K. Misra, J.K. Rath and B.S. Misra, for the Appellant; B. Pal, N. Prusty, A. Mohanty, S. Misra, for Respondent 2 and B.K. Pal, for Respondents 7 to 11, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—This Civil Revision is against the order passed by the Munsif, Parlakhemundi in M. J. C. No. 31 of 1971. By the impugned order, the petition by Defendants 1 and 3 in Title Suit No. 26 of 1971 to stay the suit until disposal of the V. O. Case No. 31 of 1974 on the file of the Tahasildar, Parlakhemundi has been rejected. Title Suit No. 26 of 1971 has been filed for a declaration that the suit lands were Banjar fallow lands and the Plaintiffs by reclaiming the same are in possession thereof since a very long time, and the Defendants having no right, title or interest over the suit lands are, at times, disturbing the peaceful possession of the Plaintiffs over those lands. Mainly on such averments the Plaintiffs pray for the aforesaid declaration and for a permanent injunction against the Defendants not to interfere in any manner with the Plaintiffs' possession over the suit lands. When the suit was being heard and the evidence on the Plaintiffs side had been closed, Defendant Nos. 1 and 3 filed a petition u/s 151, CPC to stay the trial of the suit until disposal of the V. O. Case No. 31 of 1974 pending before the Tahasildar, Parlakhemundi. The main ground on which the said petition is filed is that the Tahsildar. Parlakhemundi has initiated the said

proceeding (V. O. Case No. 31/74) under Chapter III of the Ganjam-Boudh (Village Officers Abolition) Act, 1962 (hereinafter referred to as the "Act"), and in that proceeding he prepared the draft jamabandi in favour of Defendant No. 1 for settling the suit lands with him as the said lands were the Inam lands of Defendant No. 1 in respect of his post as Mutha head of the village, which post was abolished in 1971 as per the provisions of the Act. It is stated in that petition that the Plaintiffs have filed objection in the said proceeding and that the Tahasildar is the competent authority to finally decide the dispute relating to the nature and character of the suit property. On the above averments, it is prayed that the present suit be stayed until disposal of V. O. Case No. 31 of 74 pending before the Tahasildar, Parlakhemundi.

The Court below has rejected the said petition, and hence this revision.

2. According to the Plaintiffs, the suit lands were Banjar fallow lands reclaimed by the Plaintiffs, and are in their possession, and the same were never the Inam lands of Defendant No. 1. The Defendants alleged that the suit lands were held by Defendant No. 1 as his emoluments in respect of his office as Mutha head of the village. So in this suit it is to be decided whether the suit lands were Inam lands of Defendant No. 1 or whether those lands were Banjar fallow lands reclaimed by the Plaintiffs. The Tahasildar in the said V. O. Case may decide the question as to whether the said lands were Inam lands of Defendant No. 1 or not, for so long the said question is not decided in the affirmative the Tahasildar cannot have jurisdiction to settle the said lands with Defendant No. 1 u/s 5 of the Act.

3. Mr. Rath, the learned Counsel for the Petitioners, contends that as the Tahasildar has to decide that question, his decision on that matter will become final as per Section 12 of the Act, accordingly the Civil Court cannot again decide that question and so the Civil suit must be stayed.

Mr. Pal, the learned Counsel for the opposite parties, on the other hand contends that the Civil Court has jurisdiction to decide whether it has jurisdiction to decide the subject matter of the suit or not. Moreover, the question whether the suit lands were Banjar fallow lands or the Inam lands of Defendant No. 1 can be decided by the Civil Court, though the Tahsildar may also have to decide that question in V. O. Case No. 31/74 pending before him. He further contends that the decision of the Civil Court shall prevail over the decision of the Tahsildar on that question.

4. The moot question for decision therefore, in this case is whether the Civil Court has jurisdiction to try the suit filed by the Plaintiffs in view of the pendency of V. O. Case No. 31/74 before the Tahsildar.

5. Where a special Tribunal is given power to decide certain facts, that Tribunal besides deciding the issues specifically entrusted to it can also decide facts which are generally called preliminary, collateral or jurisdictional facts. The decision of that Tribunal on such issues or facts cannot be final or conclusive between the

parties, though it has jurisdiction to decide such matters for the limited purpose of adjudicating the issue specifically entrusted to it for decision by the special Act. Merely because a special Tribunal decides such preliminary or collateral issues or jurisdictional facts for the aforesaid limited purpose it cannot be said that the Civil Court loses its jurisdiction to finally decide those issues or facts, while the decision of the Tribunal on the aforesaid matters is for the limited purpose of adjudicating the special issues entrusted to it by the statute as otherwise the Tribunal cannot possibly adjudicate the matters specially entrusted to it the decision of the Civil Court on such matters shall be final and binding between the parties for all intents and purposes, and would operate as *res judicata* between them as per the provisions of Section 11 of the Code of Civil Procedure. But the decision of the Tribunal in respect of matters specially entrusted to it by a special statute will be final and conclusive between the parties, if that is so provided in that statute. If of course the statute vests the Tribunal also with the jurisdiction to decide all questions regarding certain matters in all their aspects, including the preliminary issues and jurisdictional facts, and make the decision of the Tribunal on an those matters conclusive and final, then, notwithstanding the general law that the Civil Court has jurisdiction to decide all matters brought before it, that Court can have no jurisdiction to decide all such issues or facts. But in the absence of any such prohibition, the Civil Court can decide all matters which are not specifically excluded from its jurisdiction by any special law to that effect, and its decision will be final and binding between the parties and would operate as *res judicata* between them. So the decision by the Civil Court on such matters will have preference over and will nullify the finding of a Tribunal to the same effect. In this connection, the decision *M/s. Biharilal Neoram v. Udaba Charan Sahu and Ors.* ILR 1965 Cutt 539, may be seen. That decision has been arrived at on a consideration of a number of decisions on this point of the Privy Council, the Supreme Court and some other High Courts, and it squarely supports the view taken by me above.

6. True it is that the Tahasildar in the said V. O. Case No. 31/74 may, at first, decide as to whether Defendant No. 1 held the suit lands as his emoluments for holding the post of a village Mutha head which was abolished u/s 3 of the Act. But merely because the Tahsildar has the jurisdiction to decide that preliminary issue it cannot be said that the Civil Court loses its jurisdiction to decide that question vis-a vis the Plaintiff's case that the said lands were Binjar lands and were reclaimed and possessed by them. There is nothing in the Act which states that the decision of the Tahsildar on such matters which he has to decide only as preliminary issues or jurisdictional facts, will be final and conclusive and that the Civil Court can have no jurisdiction to decide the said matters. The orders which are made final as per Section 12 of the Act, in my view, are only such orders which are passed by the Revenue Officer in exercise of their special power and functions under the Act. Their decisions on preliminary issues or jurisdictional facts are only for the purpose of properly performing or executing their functions and duties under the Act, and hence their decisions on such matters cannot be

considered as final u/s 12 of the Act.

7. I am also not able to appreciate the contention of Mr. Rath that as per the provisions of Section 10 of the Act, only the Revenue authorities specially empowered by the State Government can decide all preliminary, incidental or ancillary issues connected with matters and/or proceedings u/s 5 of the Act, and the Civil Court has 110 jurisdiction to decide such issues. Section 10 only provides that the State Government may, by rules made in that behalf, specify either generally or in relation to any particular area, the time within which, the authorities by whom, and the manner in which proceedings in respect of matters u/s 5 including matters preliminary, incidental or ancillary thereto shall be commenced, heard and disposed of. So Section 10 only enables the State Government to frame rules with regard to matters specifically mentioned in that section. That section does not oust the jurisdiction of the Civil Court to decide matters within its jurisdiction. But on a reading of Section 5, 10 and 12 together one can say that orders u/s 5 of the Act, passed by the Revenue authorities especially empowered under the Act, have to be treated as final. So the Civil Court cannot have any jurisdiction to question an order passed by a competent Revenue authority if it is strictly written the scope and ambit of Section 5 of the Act. But that does not mean that the Civil Court cannot have any jurisdiction to decide whether the lands in question were enjoyed by any Village Officer as his emoluments and so were actually resumed under the provisions of the Act, or whether those lands belong to some other persons or are of any other nature or character. There is nothing in Sections 10 and 12 or in any other provisions of the Act to oust the jurisdiction of the Civil Court to decide such matters. As there is no prohibition in the Act for the Civil Court to decide such matters, it can give its decision on such matters and once a decision on such matters is given by the Civil Court, the Revenue authorities have to respect the same for all intents and purposes, and have to take that into account while passing orders under that Act. That decision will also have preference over the decision of the Revenue authority deciding the same question as a preliminary or incidental issue while proceeding to perform his job under the Act.

8. On the above considerations I am of the opinion that the Civil Court has jurisdiction to decide the Plaintiffs' suit and it cannot be stayed on the grounds alleged by the Petitioners.

9. The Civil Revision accordingly fails and is dismissed with costs.

Revision dismissed.