
(2010) 09 OHC CK 0053
In the Orissa High Court
Case No : OJC No. 6730 of 1993

Bijay Kumar Jally

APPELLANT

Vs

Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

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

Citation : (2011) 111 CLT 233 : (2010) 2 OLR 1010

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—Challenge has been made in this writ application to the order dated 17th July, 1993 passed by the Member, Board of Revenue, Orissa, Cuttack in OLR Revision Case No. 43 of 1991 in a reference u/s 59(2) of the Orissa Land Reforms Act, 1960 (hereinafter referred to as "the Act") setting aside the order dated 15.10.1991 passed by the Addl. District Magistrate, Puri in OLR Appeal Case No. 23 of 1984 and confirming the order dated 25.11.1983 passed by the Revenue Officer, Puri in OLR Misc. Case No. 5 of 1983.

2. The facts as narrated in the records are as follows:

Petitioner is the wife of opposite party No. 9 and the mother of opposite party No. 10. They are "Kaibarta" by profession and belong to Schedule Caste. The family of the Petitioner which consists of 6 to 7 members depends on the agriculture to maintain the livelihood. They obtained a certificate from the Tahasildar, Puri in Misc. Case No. 1059 of 1983 on 21.12.1983 to the effect that they belong to Scheduled Caste under the Constitution (Scheduled Castes) Order, 1950 as amended by the Scheduled Castes & Scheduled Tribes (Amendment) Order Act, 1976 in the State of Orissa. Opposite party No. 9 being addicted to intoxication transferred an area of Ac.2.27 decimals of land by a registered conditional mortgage deed dated 12.12.1969 in favour of Hari Sahoo. The said

deed was executed without knowledge of the Petitioner and without any permission from the Revenue Authority as required under the Act. The sons of Hari Sahoo are opposite parties 5 to 7 in this writ application. Said Hari Sahoo subsequently transferred the disputed land to opposite party No. 4 by registered sale deed on 20.9.1984. However, opposite party No. 9 was in possession of the suit land, as stated above and paying rent in respect of the same. In the year 1982, it was ascertained by the Petitioner that her husband executed the sale deed in favour of Hari Sahoo and said Hari Sahoo executed a registered sale deed in favour of opposite party No. 4 when he wanted to take possession of the suit land. As such, she filed OLR Case No. 5 of 1983 u/s 23 of the Act before the Revenue Officer, Puri for declaration of the said registered mortgage deed as invalid. The Revenue Officer arbitrarily, without proper enquiry, by order dated 25.11.1993 dropped the said case observing that the "Kaibarta" caste was not initially included in the list for publication in respect of the State of Orissa regarding Scheduled Castes in the Presidential Notification and the said caste at best may be treated as Scheduled Caste from the date of the judgment in which this Court declared "Kaibartas" as Scheduled Caste persons. The Petitioner's husband filed O.S. No. 120 of 1974 with a prayer for redemption of the said registered mortgage deed executed by him. The said suit was dismissed on 5.11.1976. Being aggrieved, he filed a second appeal before this Court which was also dismissed on 6.12.1982. The Petitioner stated that in view of Section 67 of the Act, all suits and decrees are inapplicable after 26.9.1970 which is the cut off date under the Act, if the subject-matter is under the Special Act like Orissa Land Reforms Act. Since the original decree was passed on 5.11.1976, it was ineffective under the specific provision of the Act. Against the order passed by the Revenue Officer, opposite party No. 4 preferred an appeal before the Addl. District Magistrate, Puri in OLR Appeal Case No. 23 of 1984 who by order dated 15.10.1991 held that "Kaibartas" by caste shall be deemed to be belonged to Scheduled Castes from the date of the Constitution (Scheduled Caste) Order, 1950 as amended in the Amending Order of 1976. Relying on a decision reported in (69) 1990 CLT 375, vide Annexure-4, he allowed the appeal declaring the registered mortgage deed dated 16.12.1969 executed by opposite party No. 9 in favour of Hari Sahoo as void. Against the said order of the Addl. District Magistrate, opposite party No. 4 filed a revision u/s 59(2) of the Act to refer the matter to the Member, Board of Revenue. On being referred, the Member, Board of Revenue on 11.12.1991 without issuing notice and without giving an opportunity to the present Petitioner or other opposite parties and without calling for the lower Court record, while answering the reference, exceeded his jurisdiction and misinterpreting the law, gave finding on merit. Hence, the present writ petition.

3. Learned Counsel for the opposite parties submitted that the caste of "Keuta" and "Dhibara" have been included in the list of Scheduled Castes in the year 2002 so far as State of Orissa is concerned by virtue of amendment to the said list. In the case of Sebati Behera Vs. Subasi Nayak and Another, , this Court

considered the said amended provision and in view of the said decision, it is presumed that the amendment is prospective and it has no retrospective effect.

4. Learned Counsel appearing for the Petitioner in reply to the above submissions of the learned Counsel for the opposite parties submitted that in *Sebati Behera's* case (supra), this Court has not decided whether the amendment is retrospective or prospective. The said question was neither raised nor answered by this Court in the said decision. Therefore, it cannot be presumed that in that case the Court held that the amendment is prospective. In support of his contention, he cited the decision of the apex Court reported in *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, .

5. Law is well settled that no authority other than the Parliament by law can amend the Presidential Order. Neither the State Government nor the Courts or Tribunals or any other authority can assume jurisdiction to hold enquiry or take evidence to declare that a caste or a tribe or a part of or a group within a caste or tribe is included in the Presidential Order in one entry or the other although they are not expressly and specifically included in the said order. The Amending Act of 2002 was published on 18.2.2002 and entry No. 24 was substituted by adding "Dhibara", "Keuta", "Kaibarta" to "Dewar". A bare reading of the Statement of Objects and Reasons reveals that the amendment was by way of modification which became necessary in view of the directives of this Court in the case of *Narayan Behera v. State of Orissa* OJC No. 247 of 1978 and the apex Court in the case of *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, . In the case of *Zile Singh v. State of Haryana and Ors.* AIR 2004 SCW 5842 wherein the apex Court has held as follows:

It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. The rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations....

The presumption against retrospective operation is not applicable to declaratory statutes....In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meanings of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect.

(emphasis supplied)

6. The apex Court in the case of *Shamarao V. Parulekar Vs. The District*

Magistrate, Thana, Bombay and Others, has held that the construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

7. In view of the above ratio, it is clear that the Amendment Act, 2002 is declaratory and curative in nature and the amendment in the Presidential Order is having a retrospective effect even though there is no express provision to that effect. Since the amendment in question has relation back to the time when the original Presidential Order, 1950 was notified, there was no infirmity in the caste certificate issued by the Tahasildar. As such, the transaction having been made in favour of Hari Sahoo without permission was void.

8. Taking into consideration its earlier decision in the case of Gondumogula Tatayya Vs. Penumatcha Ananda Vijaya Venkatarama Timma Jagapathiraju, , the apex Court in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, has held that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follows from it.

In view of the above pronouncement of the apex Court since this Court in Sebati Behera's case (supra) has not decided whether the amendment is prospective or retrospective, it cannot be presumed that the amendment in question is a prospective in nature.

9. For the foregoing reasons this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, sets aside the order dated 17th July, 1993 passed by the Member, Board of Revenue, Orissa in OLR Revision Case No. 43 of 1991 and confirms the order dated 15.10.1991 passed by the Addl. District Magistrate, Puri in OLR Appeal Case No. 23 of 1984.

The writ petition is accordingly allowed. No costs.