(1977) 10 OHC CK 0009

In the Orissa High Court

Case No : O.J.C. No. 1098 of 1976

Bimbadhar Barik	APPELLANT
Vs	
Tahsildar-cum-Revenue Officer and Others	RESPONDENT

Date of Decision : 11-10-1977

Acts Referred:

Limitation Act, 1963 — Section 5
Orissa Land Reforms Act, 1960 — Section 42

Citation : (1978) 45 CLT 6

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : E.K. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Petitioner is a landholder. The Revenue Officer of Sundargarh (opposite party No. 1) initiated a proceeding u/s 42 of the Orissa Land Reforms Act (hereinafter referred to as the ?Act?) for determining the ceiling area of the Petitioner. A draft statement was prepared by order dated 25-8-1975 and was duly published inviting objection by 25-9-1975. Petitioner filed an objection wherein he alleged that he was the ex-Gountia of village Bhandari-Shankara within Talasara Police Station of the district of Sundargarh and 30.88 acres of lands were settled with him on occupancy basis. Out of the said lands, Petitioner claimed that he had already given away 7.28 acres to Lalmati Dei, his step mother, in lieu of maintenance and the said mother had separated and was living away. 5.15 acres were said to have been given by way of gift under a registered document since 1965 to Artatran Pasayat of village Telipali. 3.88 acres had been donated in favour of Lord Jagannath of the village for fourteen years. Petitioner also pointed out that lands of some other persons had been taken into account in his hands and stated that the total area of which he was owner in possession was 11.00 acres. Along with the objection of the Petitioner, his step mother Lalmati Dei, the donee Artatran Pasayat and alienees and tenants filed their objections.

On 25-9-1975, the Revenue Officer posted the matter to 4-10-1975 for local enquiry. Petitioner alleges that on the date fixed for local inspection, the Revenue Officer went to the village and sent for the Petitioner. Petitioner?s only son had died six days prior to 4-10-1975 and the Petitioner and members of his family were in mourning and Petitioner, therefore, prayed for adjourning the enquiry. Petitioner was given to understand that as the opposite party No. 1 had already come to the village he would hold a preliminary enquiry and he assured the Petitioner that another date would be fixed for full-fledged enquiry at Sundargarh after giving notice to parties. Petitioner had been asked to sign on tour order-sheets which in good faith he signed and left. Petitioner pleads that the Revenue Officer did not go to the fields nor did he hold any formal enquiry. As no further date was communicated to the Petitioner, he came to Sundargarh and made an application on 16-4-1976 to ascertain the position of the ceiling case and he was shocked to be told that the same had already been finalised. Petitioner received the certified copy of the order dated 4-10-1975 on 26-4-1970 and preferred an appeal against the confirmed statement before the appellate authority and along with the appeal filed an application u/s 5 of the Limitation Act for condonation of delay. The appellate authority (opposite party No. 2) by order dated 22-5-1976 dismissed the appeal as barred by limitation. Petitioner filed a revision against the appellate order. The same was also dismissed on 20th of September, 1976, by opposite party No. 3. The Petitioner thereafter has filed this writ application.

2. In the counter affidavit on behalf of the opposite parties filed by the Additional Tahsildar of Sundargarh, it was alleged:

.... On receipt of the objection, the opposite party No. 1 passed orders on the same days fixing the case for enquiry on 4-10-1975. On the aforesaid day the Revenue Officer personally with his staff visited the spot made a field enquiry and visited the house of the Petitioner. During the enquiry the Petitioner was present and in token thereof be also put his signature at the end of the order made is pursuance of the said enquiry....

As from the order-sheet of the case which was placed before us, we found that Petitioner had not signed at the end of the order, as alleged in the counter affidavit, we required the deponent of the counter affidavit as also the Revenue Officer who had made the impugned order, to appear before the Court for elucidation of the position. In terms of our direction both these officers appeared and have been examined. A reference to the order-sheets shows that the order dated 4-10-1975 runs into twelve pages, but as alleged by the Petitioner, he had signed only on the first four sheet. There is admittedly no signature beyond the fourth sheets, Petitioner having signed on the front pages of the order-sheet only. It is not understood as to why signatures of the Petitioner were not obtained on each of the pages or at least at the end of the order in case the order was made in his presence as alleged. In the order-sheet it had been stated that several other persons were present. Signature of any outsider present at the enquiry has not been taken. To avoid the situation, the Revenue Officer, who made the order has stated:

... The impugned order dated 4-10-1975 runs into twelve pages in order-sheets. Signature of the Petitioner appears on the first four sheets, i.e. eight pages. The last two sheets with four pages do not bear his signature....After the order was pronounced, I made it over to the Peskar with instruction to obtain party?s signature. I did not verify as to whether each page was signed by the party.

It is dear that the assertion made in the counter-affidavit that signature had been obtained from the Petitioner at the end of the order is incorrect. The explanation of the deponent of the counter-affidavit that he meant to indicate that Petitioner had signed after the order was written out does not indeed improve the position.

We are inclined to agree with the assertion of the Petitioner that his only son had died about six days before 4-10-1975 and he was not in a position to participate in the enquiry and on his request, the Revenue Officer had agreed to adjourn the real enquiry to another date.

The materials which have been referred to in the order-sheet dated 4-10-19/5 would not have been available forthwith so as to enable the Revenue Officer to make the order while he was in the village of the Petitioner. Keeping in view, the length of the order, the manner in which it has been written and the references made to other matters, we are inclined to agree that the order was not made at the spot.

Ordinarily the statement of the statutory authority should have been preferred to that of the Petitioner, but the manner in which things have moved leads us to hold that the Petitioner has indicated the correct state of affairs and on account of his only son?s death, Petitioner was not in a position to participate in the enquiry and the Revenue Officer has on his request agreed to adjourn the matter to some other date for further enquiry, but instead of waiting, he made the order. Ordinarily, signature is taken at the end of the order-sheet. There was no justification to obtain signature on the first four sheets and to leave the last two pages without signature in case Petitioner was available at the set and was present until the entire order had been written out. On the aforesaid finding, we are inclined to agree with Mr. Mohapatra for the Petitioner that Petitioner had no notice of the order and there was justification for the Petitioner to expect notice of a further date of enquiry and when nothing was done, he started enquiring about the fate of the case when he came to know that a final order had been made without further enquiry.

3. The manner in which the lands have been classified also yields scope for finding support for the Petitioner?s stand. In the circumstances, we conclude that the Petitioner has been seriously prejudiced and the appeal should not have been dismissed as barred by limitation. There would be no point in restoring the revision for disposal on merit, inasmuch as what is necessary to meet the ends of justice is a further enquiry. We would accordingly quash the orders of the

Revenue Officer, the appellate authority and the revisional authority and direct that the original proceeding be enquired into afresh from the stage it was on 4-10-1975 before the final order had been passed and the Revenue Officer may proceed to dispose it of in accordance with law. There would be no direction for costs.

K.B. Panda, J.

I agree.

Case remanded.

