
(2014) 09 OHC CK 0070
In the Orissa High Court
Case No : O.J.C. No. 4629 of 1996

Biswanath Bishoyi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Citation : (2014) 09 OHC CK 0070

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Judgement

Biswanath Rath, J.—A proceeding under the OPLE Act was initiated against the petitioner vide LEC No. 152 of 1988. The said proceeding was disposed of by order dated 26.7.1988 as appearing at Annexure-4 holding the petitioner to be an encroacher and finally directing issuing a notice of eviction on the encroacher (the petitioner) under section 7(1) of the OPLE Act to vacate the encroachment within the period specified therein. Being aggrieved by this order, the present petitioner filed an appeal before the Sub-Collector, Berhampur vide L.E.A. 49/88 which was disposed of on contest by order dated 8.8.1990 dismissing the appeal. As against the said appeal order, the petitioner filed a Revision vide OPLE Revision No. 42/90. The Revision was dismissed, confirming the orders of the Tahsildar as well as the Appellate Authority.

2. Being aggrieved by the above three orders, the petitioner filed writ, vide O.J.C. No. 1790/1992 which was decided by the Division Bench by order dated 27.6.1992 on contest in favour of the petitioner thereby remanding the matter to the Revisional Authority for its fresh consideration in the light of the observations made therein. The relevant portion of the order dated 27.6.1992 passed in the OJC is quoted herein below:

"In our considered opinion, the aforesaid provisions of the amended Government Land Settlement Act, 1990, will have full application to the present case provided it is established that the petitioner was in possession of Gramakantha land for more than 5 years on the appointed day, the appointed day being 9.1.1991.

Since there has been no positive finding on that score, it would be mete and proper to require the Revisional Authority to examine the materials on record and come to conclusion as to whether the petitioner can be said to have been in possession of the disputed land for a period of 5 years by 9.1.1991 and shall thereafter dispose of the matter in accordance with law. The impugned order of the Revisional Authority is accordingly quashed and the matter is remitted back to it."

3. Under the above direction of this Court, the Revisional Authority reheard the matter and dismissed the revision once again confirming the order passed by the Tahsildar as well as the appellate authority. Learned counsel for the petitioner argued that the order of the Revisional Authority is not in consonance with the direction contained in O.J.C. No. 1790/1992. He strenuously argued that as per the direction of the High court in the previous writ, the Revisional Authority was only required to look into the question as to whether the petitioner was in possession of the land for more than five years on the appointed day and if it is found in affirmative, it ought to have directed for settlement of the land in favour of the petitioner. He alleges that the Revisional Authority failed in appreciating the direction of this Court and thereby arrived at a wrong conclusion.

4. During the course of argument, learned counsel for the petitioner brought to my notice the report of the R.I. prepared in presence of the appellant-petitioner in OPLE Revision Case No. 42/1990 available at page 16 of the brief. The enquiry report dated 25.6.1988 reveals that all the villagers are encroaching the land and he, therefore, directed the A.D.M. to cause eviction of the encroachers before settling the case. It is on the basis of the above, learned counsel for the petitioner submits that he is in possession of the land for more than five years prior to the appointed date, 9.1.1991. I have also heard learned counsel appearing for the intervener who vehemently objects the recording of possession of the five years on the appointed date in favour of the petitioner. He disputes the observations of the R.I. in its report and strenuously argued that the petitioner was not in possession of the land for more than five years prior to the appointed date thus provision under the amended Act has no application to the petitioner's case and the Revisional Authority has not committed any wrong.

5. During the course of argument, I had the occasion to come across the order passed by the Revisional Authority. The order passed by the Revisional Authority which is impugned herein, at internal page 3 and running page 45 of the brief categorically records a finding of possession of five years prior to the appointed day in favour of the petitioner but in para-4 wrongly comes to a conclusion that even if the petitioner had possession for more than five years by the appointed day, he cannot get the benefit of Amended Act, 1990. The direction of this Court in the previous writ was positive to the extent that the Revisional Authority was only required to look into the aspect of five years possession of the petitioner as on the appointed day. While directing in the above manner, this Court had already said that in the event it is found that the petitioner has possession of five

years as on the appointed date, he is to get the benefit of Amended Act, 1990. Therefore, it was incumbent on the part of the Revisional Authority to direct settling the land in favour of the petitioner, the moment it came to a finding that the petitioner had possession of five years as on the appointed date, which the Revisional Authority has not done and I find that the Revisional Authority has exceeded its jurisdiction.

6. Under the above circumstances, while declaring the order of the Revisional Authority as bad in law, keeping in view the finding of the Revisional Authority to the extent that the petitioner was in possession for more than five years prior to the appointed date, the petitioner is entitled to get the benefit of section 3(4/D) of the Act, 1990, therefore, while interfering in the impugned order of the Revisional Authority, I hold that the petitioner is entitled to settlement of the disputed land applying provision contained in section 3(4/D) of the Amended Act, 1990 and direct the revenue authority to correct the Land Records accordingly.

The writ petition thus succeeds. However, there shall be no order as to costs.