
(2010) 06 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (C) No's. 16231 and 16885 of 2009

Board of Secondary Education

APPELLANT

Vs

Joint Commissioner, Consolidation and Settlement and Others

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Orissa Survey and Settlement Act, 1958 — Section 12B, 15

Transfer of Property Act, 1882 — Section 48

Citation : (2010) 110 CLT 153 : (2010) 2 OLR 685

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Judgement

S.K. Mishra, J.—These two Writ Petitions are disposed of by this common Judgment at the stage of admission.

2. The Petitioner in W.P. (C) No. 16231 of 2009 assails the order passed by the Joint Commissioner, Consolidation & Settlement, Cuttack in R.P. Case No 441 of 2008 dated 23.06.2009, wherein the Learned Joint Commissioner allowed the petition of the present Opp. Parties & directed the Tahasildar, Sadar, Cuttack to correct the Record of Rights by deleting Hal Plot No. 1300, measuring an area of Ac.0.040 decimals from the Hal Khata No. 410 recorded in the name of the Petitioner & to record the same in the name of the present Opp. Parties 1 & 2 i.e. Gopal Krishna Srichandan & Gopi Krishna Srichandan. In W.P.(C) No. 16885 of 2009 the Petitioner assails the action of the Tahasildar, Sadar, Cuttack in not carrying out the Order Dated 23.06.2009 passed by the Learned Joint Commissioner, Consolidations & Settlement, Cuttack in R.P. Case No. 441 of 2008.

3. The undisputed case of the parties is that originally the land belonged to one Banchhanidhi Natia. He sold a portion of the land bearing Plot no 1522 of Sabik Holding No. 219 measuring an area of Ac,0.954 decimals 7 Kadis to one Saraswati in the year 1961. The Board of Secondary Education i.e. the present

Petitioner purchased the land measuring Ac.1.830 decimals of land out of a total area of Ac.2.918 decimals out of Sabik Plot No. 1512 & part of 1522.

4. During the current settlement operation, the land was recorded in the name of Saraswati, i.e. the mother of Opp. Parties, but in a sue motu appeal bearing Appeal Case No 573 of 1991 the Addl Settlement Officer in Order Dated 30.06.1992 ordered, ex parte, to delete the name of Susama Mahapatra & to record the same. In the name of Board of Secondary Education. Accordingly, Plot No. 1300 measuring an area of Ac.0.040 decimals was recorded in the name of the Petitioner This Record of Rights is published on 8.1.1999. Thereafter, the Opp. Parties filed an application u/s 15(b) of the Orissa Survey & Settlement Act on 30.12.2008 accompanied by a petition u/s 5 of the Limitation Act to condone the delay in filing the revision application. The Joint Commissioner condoned the delay & issued notice to the Opp. Parties. After appearance of the Opp. Parties & affording reasonable opportunity Of hearing to them, Learned Joint Commissioner by Order Dated 23.06.2009 in R.P. Case No. 441 of 20.08 allowed the Revision Application & ordered as aforesaid.

5. In assailing the order passed by the Learned Joint Commissioner, Learned Counsel for the Petitioner submitted that no limitation petition was ever filed for condonation of delay. Secondly, it is contended that no notices were served upon them to file objection on the petition filed for condonation of delay. Alternatively, he argued that the Learned Joint Commissioner has not taken into consideration the order passed by the Addl. Settlement Officer in Suo Motu Appeal Case No. 571 of 1991. Learned Counsel for the Opp. Parties, on the other hand, supported the finding recorded by the Learned Commissioner & prayed to dismiss the Writ Petition

6. To verify whether any petition for condonation of delay was filed or not, the lower Court records were called for & on perusal of the records, it is found that on the date of filing of the revision petition before the Learned Commissioner, a petition duly supported by an affidavit has been filed to condone the delay. It is true that the Opp. Party has not been noticed on the question of delay, but it appears that after their appearance, they have raised this point of limitation Moreover, the Learned Commissioner has again in the final order has condoned the delay in filing the revision. Learned Counsel for the Opp. Parties also relied upon the decision in the case of Krushna Chandra Mahakul Vs. State of Orissa and Others, , wherein the Division Bench of this Court held that the plain language of Section 15 of the Orissa Survey & Settlement Act, 1958 indicates that even after expiry of the period of one year of the date of publication of the record of rights u/s 12B, the Commissioner can revise the record of rights. The Court further held that there is no provision in the aforesaid Section 15(b) to the effect that when an application is filed beyond the period of one year from the date of final publication of record of rights u/s 12B, such application would be entertained only if the Petitioner furnishes sufficient cause for non-filing the application within the period of one year from the date of publication of record of

rights This ratio has been quoted with the approval in the case of Parikhita Das Vs. Commissioner Consolidation and Another, This Court comes to the conclusion that the expression "xxx thus, the said period of one year or thereafter xxx" appearing in Clause (b) of Section 15 of the Survey & Settlement Act indicates that even after expiry of one year, the Commissioner has Jurisdiction to entertain the application for revision of record of rights. Further, it is seen that no provision has been made In condoning the delay in filing any revision application This Court, in respectful concurrence of the earlier decision of this Court, holds that even after expiry of one year, a revision can be maintained u/s 15(b) of the Orissa Survey & Settlement Act. In such cases, it is not necessary for the Petitioner to show sufficient cause for filing the revision petition after expiry of the limitation period. In other words, the rigours that is attached to a petition u/s 5 of the Limitation Act is not attracted in this case. Therefore, the contention of the Learned Counsel for the Petitioner regarding the so-called illegality committed by the Learned Commissioner is not acceptable keeping in view the recent trend of Courts in condoning the delay in filing of such revision applications before the appropriate authority. It is also noted that the law of procedure is the handmade of the substantial justice & such procedural law cannot prevent the Courts from doing justice substantially.

7. The substantial question that arises in this case is whether, the Hal Plot No. 1300 measuring an area of Ac.0.040 decimals has been purchased by Saraswati, mother of the Opp. Parties, or it has been purchased by the Petitioner i.e. the Board of Secondary Education. It is noted that the Commissioner has taken note of the fact that the land was sold to the mother of the Opp. Parties in the year 1961, whereon she constructed house in the year 1962, It is undisputed at this stage that the Regd. Sale Deed was executed in the year 1961, the land sold was described in terms of the boundary tenants (Chauhadi). The Petitioner has purchased the full part i.e. Sabik Plot No. 1512 & a portion of Plot No. 1522 As far as Plot No 1512 is concerned, however, there is dispute with respect to Plot No. 1522. Since the land has already been sold to the mother of the Opp. Parties, the vendor had no alienable title over that portion of land u/s 48 of the Transfer of Property Act, 1882, the earlier transferee shall have priority of rights over the same.

8. In course of hearing of this writ application, it is contended by the Learned Counsel for the Opp. Parties that Ac. 0.040 decimals of the land of the disputed plot i.e. 1300 measuring an area of Ac. 040 decimals has been wrongly recorded in the name of the Petitioner as it is their admitted case that they have purchased an area of Ac. 1830 decimals & the same has already been recorded in their name as Plot No. 1301, which measures an area of Ac. 1.834 decimals. No explanation " is forthcoming from the side of the Petitioner, wherefrom they acquired title over the Ac.0.040 decimals of land of Plot No. 1300, which corresponds to Hal Plot no 1522. Taking into consideration the entire facts of the case, the Court is of the opinion that the order passed by the Learned Joint Commissioner is correct & it requires no interference. Accordingly, W.P.(C) No.

16231 of 2009 is dismissed.

9. In view of the above, W.P.(C) No. 16885 of 2009 is allowed & the Tahasildar, Sadar, Cuttack, Opp. Party No. 2 is directed to carry out the orders passed by the Learned Joint Commissioner.