(1995) 04 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 939 of 1994

Brajamohan Das and Another — APPELLANT

Vs

Member, Board of Revenue and Others — RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Orissa Board of Revenue Act, 1951 — Section 7(1)
Orissa Estates Abolition Act, 1951 — Section 38A

Citation : (1995) 2 OLR 267

Hon'ble Judges : G.B. Patnaik, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S. Mishra-2, for the Appellant; Bhaktahari Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The order of the Member. Board of Revenue, dated 21st of January, 1994, in purported exercise of power u/s 38-A of the Orissa Estates Abolition Act in Review Case No. 1 of 1993, annexed as Annexure-5, is being challenged in this writ application, inter alia, on the ground that the Member, Board of Revenue, exceeded his jurisdiction in exercising the said power as well as on the ground that the documents relied upon by the said Member, Board of Revenue, were, in fact, interpolated and as such, could not have formed the basis of a conclusion.

2. The dispute centres round in respect of certain properties in villages Saroi and Neulpur and the said dispute was before this Court in OJC No. 2280 of 1987. The said writ application was disposed of by judgment dated 11-10-1991 and the matter was remitted to the Member, Board of Revenue, with a direction that he will allow opportunity to the parties concerned to lead evidence for determining the dispute as to whether the disputed properties in the two villages were. In fact, subject-matter of reference made by the Collector u/s 13-D(2) of the Orissa Estates Abolition Act to the Tribunal constituted u/s 18-C of the said Act for

determining whether the properties formed a part of the trust estate or not, as per the Gazette Notification under Anntxure-9. After the matter went back on remand, when the Member, Board of Revenue, took up the hearing the parties did not appear though the order of the Member, Board of Revenue, indicates that certain written arguments had been produced by the counsel appearing for the parties. The learned Member, Board of Revenue, heard the learned Standing Counsel representing the State and on consideration of materials on record disposed of the matter by judgment dated 24th of October, 1992. The said judgment has been annexed as Annexure-2. The Member, Board of Revenue, came to the conclusion that the disputed lands did not form a part of the trust estate and the said matter was never before the Trust Estates Tribunal. After the order of the Member, Board of Revenue, dated 24th October, 1992 as per Annexure-2, the opp. parties filed an application for review before the successor Member, Board of Revenue, u/s 38-A of the Orissa Estates Abolition Act which was registered as Review Case No. 1 of 1993. The said review application having been disposed of by order dated 21st of January, 1994, the present writ application has been filed.

3. Mr. Mishra appearing for the petitioners contends that the succeeding Member, Board of Revenue, has taken into consideration several materials which had not been produced before his predecessor and has re-appraised the entire materials and had reached a conclusion contrary to his predecessor''s conclusion which is not permissible u/s 33-A of the Orissa Estates Abolition Act and, therefore, the order is without jurisdiction. He further contends that the said conclusion is base upon certain interpolated documents and, therefore, the conclusion is vitiated.

Mr. Mohanty appearing for the opp. parties, on the other hand, contends that the earlier order having been passed ex pane, the Member, Board of Revenue, had the power of review u/s 7(1) of the Orissa Board of Revenue Act, 1951, and, therefore, no illegality has been committed by re-hearing the matter and re-disposing of the same in accordance with law. According to Mr. Mohanty, substantial justice having been done by the succeeding authority, the same need not be Interfered with.

4. In view of the rival stands of the parties the first question that arises for consideration whether the Member, Board of Revenue, having disposed of the matter pursuant to the observations of this Court on 24th of October, 1992, annexed as Annexure-2, was it permissible for the succeeding Member to review the same either in exercise of power u/s 38-A of the Orissa Estates Abolition Act, or u/s 7(1) of the Orissa Board of Revenue Act, as contended by Mr. Mohanty. In order to appreciate this contention, it will be appropriate for us to extract the two relevant provisions, namely. Section 38-A of the Orissa Estates Abolition Act as well as Section 7(1) of the Orissa Board of Revenue Act:

"38-A. Review--Any decision made or order passed under this Act whether before or after the commencement of the Orissa Estates Abolition (Amendment) Act, 1973 (other than a decision or order against which an appeal or revision has been preferred under this Act) may, within one year from the date of the decision or order, as the case may be, and after giving all persons interested an opportunity of being heard, be reviewed by the officer who made the decision or passed the order, or this successor in office on the ground that there has been a clerical or arithmetical mistake in the course of any proceeding under this Act."

"7. Power of Board to review any order :

(1) The Board may either on its own motion or on the application of any person aggrieved by any order of the Board, review any order passed by itself and pass such order in reference thereto as it thinks fit :

Provided that no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order."

On scrutiny of the aforesaid two provisions, we find that a power of review has been conferred under the Orissa Estates Abolition Act u/s 38-A and the same power or review has been conferred on the Member, Board or Revenue, u/s 7(1) of the Orissa Board of Revenue Act. The power of review u/s 7(1) could be exercised by the Board either on its own motion or on the application of any person aggrieved by any order of the Board. When under the Orissa Estates Abolition Act, the relevant statute under which the proceeding was pending, a power of review has been conferred upon the Board, it is not permissible for the Board to exercise any jurisdiction beyond the provisions of the statute and therefore, the same power of review as conferred upon it u/s 7 of the Board of Revenue Act could not have been exercised. Review being a creature of statute and that power haying been conferred upon the Board of Revenue u/s 38-A of the Orissa Estates Abolition Act, the said power could be exercised within the parameters provided thereunder. A plain reading of Section 38-A of the Orissa Estates Abolition Act shows that only a clerical or arithmetical mistake in course of any proceeding under the Act could be reviewed by the very authority or by his succeeding authority. This power u/s 38-A cannot be stretched to mean to allow parties to adduce materials which were not before the predecessor, or to re-examine or re-appraise materials in question. Once a specific power of review has been conferred upon the Board u/s 38-A of the Orissa Estates Abolition Act, the Board also could not have expanded the same in purported exercise of general power of review u/s 7(1) of the Orissa Board of Revenue Act. On examining the impugned decision of the Member Board of Revenue, under Annexure-5, we have no doubt in our mind that the said authority could not have exercised that power within the parameters of Section 38-A of the Orissa Estates Abolition Act. In that view of the matter, the impugned order in our considered opinion is without jurisdiction and cannot be sustained.

5. In view of our conclusion, as aforesaid, it is not necessary for us to examine the second argument advanced by Mr. Misra for the petitioners that the conclusion is based upon certain interpolated documents. In the aforesaid premises, the impugned order of the Member, Board of Revenue, under

Anhexure-5 is quashed.

6. Mr. Mohanty appearing for the opp. parties raised a contention that since there is no power either under the Orissa Estates Abolition Act or under the Orissa Board of Revenue Act giving authority to set aside an ex pane order, the general power of review u/s 7(1) could have been exercised by the Board. We are not in a position to accept this contention, since the power u/s 7(1) of the Orissa Board of Revenue Act as well as u/s 38-A of the Orissa Estates Abolition Act is a power of review.

The writ application is accordingly allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.

7. I agree.