

(2014) 12 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (Civil) No. 5560 of 2002

Dhoba Mandal

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 12, 12(2), 12(3), 7, 8A

Citation : (2015) 1 OLR 684

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Judgement

Biswanath Rath, J.—Heard Mr. S.S. Das, learned Senior Counsel for the petitioners, Mrs. A. Mohanty, Additional Government Advocate and Mr. Panigrahi, learned counsel for the opposite party No. 4.

2. This writ petition has been filed by the petitioners challenging the order under Annexure-4 passed by Revenue Divisional Commissioner, Southern Division, Orissa, Berhampur vide Revision Case No. 86 of 2001 on the ground of maintainability in view of provision contained in Section 12(3) of the O.P.L.E. Act, 1972.

3. Facts as reveal from the case is that an Encroachment Proceeding was initiated against opposite party No. 4 at the instance of opposite party No. 3. The said encroachment case was rejected by the Tahasildar. Thereafter, the opposite party No. 4 preferred an appeal as provided under the O.P.L.E. Act and the said appeal was also dismissed. Opposite party No. 4 being aggrieved with the order passed by the Tahasildar and the Appellate Authority preferred a Revision before the Revisional Authority, which was also dismissed. It is submitted at the Bar that a suo motu Revision vide O.P.L.E. R.C. No. 86 of 2001 was initiated following provision under Section 12(3) of the O.P.L.E. Act, 1972. It is alleged by learned Senior Counsel for the petitioners that in view of strict provision under Section 12 of Orissa Prevention of Land Encroachment Act, 1972, no second revision can be entertained on the premises that there was already a Revision decided under

the Act vide O.P.L.E. Revision No. 4 of 2001 under Section 12(2) of the O.P.L.E. Act.

For better appreciation of the case, it is here necessary to look into the provision vide Section 12(3) of the O.P.L.E. Act, 1972, which reads as hereunder:--

xx xx xx

"[12. Appeal and Revision--(1) An appeal from any decision or order made under this Act by the Tahasildar shall lie to the Sub-divisional Officer.

(2) The Collector may revise a decision or order made by a Sub-divisional Officer under Sub-sec. (1) [or under Section 7 or Section 8-A]

(3) The [Revenue Divisional Commissioner having jurisdiction] may call for and examine the records of any proceedings under this Act before any officer in which no appeal or revision lies and if such officer appears--

(a) to have exercised a jurisdiction not vested in him by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits, where such contravention has resulted in serious miscarriage of justice, it may after giving the parties concerned a reasonable opportunity of being heard pass such order as it deems fit.

xx xx xx"

4. Learned counsel for the opposite party No. 4 submits that since the case has not been taken into consideration by the Revisional Authority in the earlier instance, the second revision is not a bar. The submission of opposite party No. 3 as well as opposite party No. 4 that the Revision under Section 12(3) of the O.P.L.E. Act is maintainable runs contrary to the provisions contained in Section 12 of the O.P.L.E. Act. In view of the specific provision under Sub-section (3) of Section 12 of the O.P.L.E. Act, 1972, no second revision is maintainable. The very same matter has already been decided in a revision under Section 12(2) of the O.P.L.E. Act, therefore, there is no application of Section 12(3) of the O.P.L.E. Act.

Bare reading of Sub-section (3) of Section 12 makes it clear for entertaining a Revision by the R.D.C. in the matters in which no Appeal or Revision lies. Under the circumstances, I set aside the impugned order vide Annexure-4 holding the same as not maintainable in the eye of law.

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