
(2013) 08 OHC CK 0038
In the Orissa High Court
Case No : Writ Petition (C) No. 18572 of 2010

Digambar Mohanta

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 37(1), 41(1)
Orissa Survey And Settlement Act, 1958 — Section 12(b), 15(b)

Citation : (2013) 08 OHC CK 0038

Hon'ble Judges : Raghbir Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghbir Dash, J.—The writ petitioner seeks for quashing of the order dated 21.06.2010 passed by the Revenue Divisional Commissioner, Central Division, Cuttack (R.D.C.), opposite party no. 1 in R.P. No. 49 of 2009 under Annexure-5. The grievance of the petitioner is that even though the land appertaining to Plot No. 117 measuring an area of Ac. 0.06 decimals and Plot No. 113/405 for an area of Ac. 0.12 decimals under Hal Khata No. 28 of Mouza-Anlabani is his exclusive property and that the said plots were recorded exclusively in his name, respondent Nos. 3 and 4, after lapse of about 28 years, filed an application before the R.D.C. for correction of the Record-of-Rights and to record the land jointly in the name of the petitioner and the opposite party Nos. 3 and 4.

2. It is contended by the petitioner that an application for correction of R.O.R. after lapse of 28 years should not have been entertained by the R.D.C. It is further contended that an application for correction of R.O.R. can be filed within a period of one year from the date of final publication of R.O.R. but the learned R.D.C. entertained the said application of opposite party Nos. 3 and 4 having condoned the long delay of 28 years on a flimsy ground that opposite party Nos. 3 and 4 are ignorant of law. Opposite party Nos. 2 and 3 have filed separate

counter affidavit justifying the impugned order asserting that their names, along with the name of the petitioner, should have been jointly recorded in the R.O.R.

3. The legality of the impugned order has been challenged on the sole ground that the learned R.D.C. could not have exercised his jurisdiction in a revision proceeding which was initiated about 28 years after preparation of the R.O.R. In support of his contention, the learned counsel for the petitioner relies on a decision in the case of Shri Abhaya Charan Mohanty -Vrs.- State of Orissa and others, reported in 2003 (Supp.) OLR-882, wherein while dealing with the revisional power of the Commissioner of Consolidation u/s 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Lands Act, 1972, it is observed that the court cannot overlook the conduct of the party in approaching the revisional authority. In that case the revisional authority had dismissed the revision solely on the ground that the revision had been filed about 18 years after final publication under Section- 41(1) of the said Act. This Court upheld the order of the Commissioner and it is observed that approaching the revisional authority after 18 years of final publication under Section- 41(1) of the said Act showed the laches on the part of the petitioner in invoking the revisional jurisdiction.

4. In the case of Rasananda Rout Vs. Commissioner, Consolidation and Settlement and Others, the Commissioner, Consolidation and Settlement, Orissa, Bhubaneswar had rejected the revision petition under Section- 15(b) of the Orissa Survey and Settlement Act, 1958. In the revision petition, the petitioners had claimed title over the disputed property. Observing that since the question of title was involved for which disputed questions of fact were likely to arise, this Court observed that it was more appropriate to direct the petitioner to file a suit for establishing his title. Also in the case at hand, the revision petitioners have demanded joint recording of R.O.R. claiming that along with the writ petitioner they have also got title in the disputed land. Impugned order reflects that the claim of title made by the opposite parties before the Commissioner of settlement has been disputed by the writ petitioner. He claims exclusive title over the disputed land. Under such circumstances, the settlement authority cannot go into disputed facts on title. Approaching the civil court would be the appropriate step.

5. In the case at hand, learned R.D.C. has condoned the long delay of 28 years accepting the submission made by the Government Pleader that the delay was due to ignorance of law on the part of the revision petitioners. Under Section- 15(b) of the Orissa Survey and Settlement Act, 1958 (for short, "the Act, 1958"), the revisional power is to be exercised on an application to that effect is made within one year from the date of final publication under Section- 12(b) of the Act, 1958. There was no compelling circumstances under which the learned R.D.C. could have exercised the revisional power after lapse of 28 years.

6. Considering the laches on the part of opposite party nos. 3 and 4 in making the application before the learned R.D.C. u/s 15(b) of the Act, 1958, the order

passed by the learned R.D.C. on that application vide Annexure-5 is liable to be quashed. The writ petition is allowed and the impugned order dated 21.06.2010 passed by the Revenue Divisional Commissioner, Central Division, Cuttack, opposite party no. 1 in R.P. No. 49 of 2009 under Annexure-5 is quashed.