
(2015) 07 OHC CK 0018
In the Orissa High Court
Case No : WP(C) No. 8721 of 2007

Dilip Kumar Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Prevention of Land Encroachment Act, 1972 — Section 4, 6

Citation : (2015) 07 OHC CK 0018

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : P.K. Das, for the Appellant; B.P. Pradhan, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.—By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner assails the order dated 11.07.2007 passed by the Additional District Magistrate, Mayurbhanj, opposite party No. 3, in Encroachment Revision No. 6 of 2007, vide Annexure-8, dismissing the same and thereby confirming the order dated 03.07.2007 passed by the Sub-Collector, Karanjia, opposite party No. 4, in Encroachment Appeal Case No. 6 of 2007, vide Annexure-6. By order dated 03.07.2007, opposite party No. 4 confirmed the order of eviction dated 30.06.2007 passed by the Tahasildar, Karanjia, opposite party No. 5, in Encroachment Case No. 272 of 2007, vide Annexure-4.

2. Shorn of unnecessary details, the short facts of the case of the petitioner are that he is a landless person. To eke out his livelihood, he took a shop room on rent constructed by the Secretary, Trust Board, Shri Shri Purneswar Mahadev, opposite party No. 6, in the year 1975. The shop room was constructed over Plot No. 1244, Khata No. 476 of Mouza-Karanjia in the year 1975. Shri Shri Purneswar Mahadev temple was constructed over Plot No. 1243. The land is in possession of the temple since 1930. While the matter stood thus, a writ petition

being WP(C) No. 2531 of 2007 was filed by some people of the locality before this Court alleging inaction on the part of the Government in not taking any steps against the encroachers. The same was disposed of on 2.5.2007 with a direction to the Collector, Mayurbhanj, opposite party No. 2, to consider the representation of the petitioners and take a decision thereon within a period of two months. Thereafter, opposite party No. 2 directed the opposite parties 4 and 5 to submit a report. The report submitted by opposite parties 4 and 5 reveals that opposite party No. 6 has constructed the shop rooms. It is further stated that the opposite parties 4 and 5 are ex-officio members of the management of the temple. The petitioner did not know that the land belongs to the Government. While the matter stood thus, a notice under Sections 4 and 6 of the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as "the OPLE Act") was issued by the opposite party No. 5 on 20.6.2007 to the petitioner for his unauthorised possession over Plot No. 1244. He filed his reply stating therein that opposite party No. 6 is in possession of Plot No. 1244. He is a tenant in respect of a shop room constructed by opposite party No. 6. Opposite party No. 5 is the ex-officio member of the management of the opposite party No. 6. Thus initiation of a proceeding at his behest is bad in law. It is further stated that opposite party No. 6 is in possession of the land for more than 70 years. Without considering the reply filed by the petitioner, the Tehasildar, Karanjia, opposite party No. 5, passed an order of eviction and imposed a penalty of Rs. 115/- on 30.6.2007 in Encroachment Case No. 272 of 2007 and directed the petitioner to vacate the land in question within thirty days. He challenged the same before the Sub-Collector, Karanjia, opposite party No. 4, in Encroachment Appeal Case No. 6 of 2007. The appeal having been dismissed, he filed revision being Encroachment Revision No. 6 of 2007 before the Additional District Magistrate, Mayurbhanj, opposite party No. 3. The revision also met with the same fate.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties. It is stated that the land belongs to the Government and is recorded in the name of P.W.D. Department. It is further stated that Shri Shri Purneswar Mahadev is the village deity of village Karanjia. Opposite party No. 6 is not the Secretary of the trust board. There is neither any trust board nor any proposal for construction of trust board for the deity. It is further stated that because of the mismanagement of the deity, a meeting was convened on 30.12.1994 by the Executive Officer, N.A.C. to pacify the situation. While the matter stood thus, one Braja Kishore Panda filed WP(C) No. 2531 of 2007 before this Court. By order dated 2.5.2007, this Court directed the Collector and District Magistrate, Mayurbhanj, Baripada, opposite party No. 2, to dispose of the petition. Accordingly, the opposite party No. 2 by order dated 6.6.2007 directed the Tahasildar, Karanjia, opposite party No. 5, to initiate an action. Further case of the opposite parties is that the Tahasildar, Karanjia, opposite party No. 5, initiated Encroachment Case No. 272 of 2007 against the encroachers and issued notice under Section 7A of the OPLE Act on 21.6.2007. The petitioner entered appearance. Since the land is objectionable one, the Tahasildar, Karanjia,

opposite party No. 5, passed an order of eviction and imposed penalty. The petitioner unsuccessfully challenged the order passed by the Tahasildar, Karanjia, opposite party No. 5, before the Sub-Collector, Karanjia, opposite party No. 4 in Encroachment Appeal Case No. 6 of 2007. The same was dismissed; whereafter the petitioner filed Encroachment Revision No. 6 of 2007 before the Additional District Magistrate, Mayurbhanj, opposite party No. 3, which was eventually dismissed. The specific case of the opposite parties is that the P.W. D. land is encroached by the petitioners. The same creates inconvenience to the general public at large and traffic congestion.

4. Heard Mr. P.K. Das, learned counsel for the petitioner, learned Addl. Government Advocate for the opposite parties 1 to 5 and Mr. P.K Rath, learned counsel for the opposite party No. 6.

5. Learned counsel for the petitioner submitted that the petitioner is a tenant under opposite party No. 6 and is in possession of the land since 1975. Opposite party No. 6 is in possession of the land in question for more than 70 years. Thus the petitioner has perfected title by way of adverse possession by remaining in possession of the land for more than the statutory period. He further submitted that opposite party No. 6 is a necessary party to the lis, but no proceeding was initiated against them. Further, opposite party No. 5 is a member of the management committee of the opposite party No. 6 and as such the proceeding at his behest under the OPLE Act is not maintainable. It is further submitted that the opposite party No. 5 has not taken any action against other encroachers. Further, the road in front of the petitioner's shop room is wide enough and there is no traffic congestion. He further submitted that in the event the writ petition is dismissed the petitioner may be allowed four months time to vacate the premises in question.

6. Per contra Mr. Pradhan, learned Addl. Government Advocate, and Mr. Rath, learned counsel for the opposite parties, submitted that the petitioner is in unauthorised possession of the Government land. Thus the Tahasildar, Karanjia, opposite party No. 5, has rightly passed the order of eviction. The petitioner has unsuccessfully challenged before the Sub-Collector, Karanjia, opposite party No. 4, and the Addl. District Magistrate, Mayurbhanj, opposite party No. 3. In view of the concurrent finding of facts recorded by the opposite parties, the petitioner is liable to be evicted.

7. The scope and jurisdiction of the High Court in a writ of certiorari is no more res integra. The Constitution Bench of the apex Court, in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 of the report, held as follows:--

"(7) The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or

tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was "insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, AIR 1955 SC 233 : (1955) 1 SCR 1104 , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, AIR 1960 SC 1168 . It is, of course, not easy to define or adequately describe what an error of law apparent on the face of : (1) *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, AIR 1955 SC 233 : (1955) 1 SCR 1104 . (2) *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 . (3) *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, AIR 1960 SC 1168 .

(8) It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes

in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record.

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8. On the anvil of the decisions cited supra, this Court has examined the case. The petitioner has not adduced any cogent evidence to substantiate the plea of adverse possession. Adverse possession is a mixed question of fact and law. In the celebrated judgment, the Privy Council, in the Secretary of State for India in Council vs. DebendraAIR 1934 23 (Privy Council) , held that the classical requirement of adverse possession is that the possession should be nec ve nec clam nec precario. Their Lordships quoted with approval the decision in the case of Radhamoni Debi vs. The Collector of Khulna and Others(1900) L.R. 27 I.A. 136 (Privy Council) that "the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor". Though a plea is taken but the petitioner has utterly failed to substantiate the plea of adverse possession before the forum below. Thus the submission of Mr. Das, learned counsel for the petitioner that the petitioner has perfected his title by way of adverse possession, is difficult to fathom. So far as the second contention of the petitioner that opposite party No. 6 is a necessary party, this Court is of the view that the same can only be challenged by opposite party No. 6 and not by the petitioner. With regard to the third contention of the petitioner that opposite party No. 5 is a member of the trust board, in the counter affidavit the same has been specifically denied. It is stated that there is no trust board to manage the affairs of the deity. Thus the proceeding initiated by opposite party No. 5 is maintainable. With regard to fourth contention of the petitioner that opposite party No. 5 has not taken any action against the other encroachers, this Court is of the view that the same is per se not a ground to challenge the order of eviction passed by the competent authority.

9. The concurrent finding of fact recorded by the opposite parties is that the encroached land is objectionable one. The kissam of the land is Sarba Sadharana. The Plot No. 1247, Khata No. 482 is recorded in the name of P.W.D. Department. The same creates traffic inconvenience. The order of eviction has been passed for public interest and that too free flow of traffic.

10. There being no perversity or illegality in the order dated 11.7.2007 passed by the Additional District Magistrate, Mayurbhanj, opposite party No. 3, in Encroachment Revision Case No. 6 of 2007, the order dated 3.7.2007 passed by the Sub-Collector, Karanjia, opposite party No. 4, in Encroachment Appeal Case No. 6 of 2007 and the order of eviction dated 30.6.2007 passed by the Tahasildar, Karanjia, opposite party No. 5, in Encroachment Case No. 272 of 2007, vide Annexures-8, 6 and 4 respectively, this Court is not inclined to

interfere with the same. The petitioner is directed to hand over the vacant possession of the land to the Tahasildar, Karanjia, opposite party No. 5, within three months from today, failing which, the opposite party No. 5 shall take steps to evict the petitioner in accordance with law.

Accordingly, the writ petition is dismissed. No costs.