(1979) 04 OHC CK 0015

In the Orissa High Court

Case No : Civil Revision No. 409 of 1977

Draupadi Patel and Others APPELLANT

Vs

Mangal Prasad Patel and Another RESPONDENT

Date of Decision : 13-04-1979

Acts Referred:

Orissa Board of Revenue Act, 1951 — Section 7(1)
Orissa Merged Territories (Village Offices Abolition) Act, 1963 — Section 13

Citation : AIR 1979 Ori 190 : (1979) 47 CLT 567

Hon'ble Judges : S.K. Ray, C.J

Bench : Single Bench

Advocate : H. Patel and A.K. Tripathy, for the Appellant; P.K. Lenka and S.N. Kar, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Ray, C.J.—This is a revision u/s 13(3) of the Orissa Merged Territories (Village Offices Abolition) Act, 1963 (hereinafter called the ''Act''). The sole question of law raised is that the Board of Revenue acted without jurisdiction in allowing the review application (Review Case No. 5 of 1977) filed before it by reviewing its own order dated 28-3-1977 under which Section A. No. 43 of 1973 had been dismissed, and then proceeding to direct the Collector to dispose of Review Appeal No. 44 of 1971 on merits. To understand the implication of this question, it is necessary to state briefly the history of this litigation.

2. In a proceeding u/s 5 (1) of the Act, 8.29 acres of Bhogra land in village Mangaspur were settled in favour of one Mangal prasad patel of Kurla (hereinafter referred to as Patel of Kurla). This proceeding was contested by one bearing the same name, but of a different village Mangaspur (hereinafter referred to as Patel of Mangaspur). This order of the Tahsildar settling the land with Patel of Kurla was passed on 17-10-1970. Being aggrieved thereby, Patel of Mangaspur preferred Revenue Appeal No. 44 of 1971 before the A. D. M., Sundargarh. This appeal was ultimately dismissed for default on 30-5-1973. An

attempt was made to restore the said appeal by filing a petition for restoration registered as Misc. Case No. 7 of 1973, but that attempt ultimately failed as Misc. Case No. 7 of 1973 was dismissed on 1-6-1973 ex parte. Patel of Mangaspur, thereafter preferred Second Appeal No. 43 of 1973 from the order dated 1-6-1973 dismissing Misc. Case No. 7 of 1973, before the Board of Revenue. This Second Appeal No. 43 of 1973 was also dismissed for default on 4-1-1974. Later on, on an application being made in that regard the Second Appeal No. 43 of 1973 was restored to file on 22-3-1974. After restoration, some proceedings were initiated for substitution of the legal representatives of the said respondent, namely, Patel of Kurla. This matter of substitution came up to this Court in C. R. No. 246 of 1975. In accordance with the order passed in that Civil Revision the widow of the deceased Patel of Kurla was impleaded making the Second Appeal No. 43 of 1973 ready for hearing. This Second Appeal was dismissed by the Board of Revenue on 28-3-1977. Thereafter an application for reviewing the same was filed on 24-9-1977 which was registered as Review Case No. 5 of 1977. The Board of Revenue by the impugned order dated 24-9-1977 not only reviewed its previous order dated 28-3-1977 but directed the Collector to hear Revenue Appeal No. 44 of 1977 on merits.

3. There is no express provision either in the Act or in the rules framed thereunder, conferring power of review on the Board of Revenue hearing appeal u/s 13 of the Act. It is well settled that the power of review cannot be exercised unless statute confers such power. If the matter stood at this stage, then Mr. Patel''s contention could be upheld. But there is the Orissa Board of Revenue Act, 1951 (Act 23 of 1951) which confers power of review on the Board of Revenue u/s 7 (1) thereof. The only restriction is that in exercise of such power 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. The power of the Board of Revenue under this section was considered by this Court in the case of Ramakanta v. Gaji Pratap Singh ILR (1974) Cut 777). The question was whether the Board of Revenue exercising its jurisdiction under the Orissa Survey and Settlement Act, 1958 had power of review. It was held that the power of review conferred on the Board of Revenue was very wide and was not restricted by any limitations. Reading the Orissa Survey and Settlement Act, 1958 along with the Orissa Board of Revenue Act, 1951, it was held that the power of review conferred by the Orissa Board of Revenue Act on the Board of Revenue can be exercised in respect of orders passed under the Orissa Survey and Settlement Act. In the instant case, the first order of the Board of Revenue was passed under the Act. So reading the provisions of that Act along with the Orissa Board of Revenue Act, 1951 there can be no escape from the conclusion that the power of review conferred by the Orissa Board of Revenue Act can be exercised in respect of orders passed under the Act. The Board of Revenue therefore, had power to review.

4. It is now agreed by both parties that the petition for restoration of Misc. Case No. 7 of 1973 was rejected by the A. D. M., Sundargarh ex parte without notice

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to the petitioner. By the impugned order, the Board of Revenue has not only allowed Second Appeal No. 43 of 1973 but also Misc. Case No. 7 of 1973 which had been dismissed ex parte and has directed the Collector to hear Revenue Appeal No. 44 of 1971 on merits. The petitioner feels rightly aggrieved by this order by which Misc. Case No. 7 of 1973 has been allowed without giving him any opportunity to be heard in that Misc. Case and, consequently, he also feels aggrieved by the last part of the order directing the Collector to dispose of Revenue Appeal No. 44 of 1971 on merits. I would, therefore, while maintaining the order allowing review application, modify the same to this extent that the A. D. M. is to rehear Misc. Case No. 7 of 1973 after notice to the petitioner and by giving him adequate opportunity to contest the same, and, in case the A. D. M. was satisfied that there were good grounds for restoration, it would be open to him to restore Revenue Appeal No. 44 of 1971 and then to hear it after notice to all parties concerned. That part of the order of the Board of Revenue allowing Misc. Case No. 7 of 1973, restoring Revenue Appeal No. 44 of 1971 and directing the A. D. M. to dispose it of on merits is bad in law and is cancelled.

5. Civil Revision is partly allowed. There would be no order as to costs.

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