(1993) 08 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 460 of 1991

Dwarika Mohanta and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 12-08-1993

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 43(1), 43(2), 44(1)

Citation : (1993) 2 OLR 418

Hon'ble Judges : G.B. Pattnaik, J;B.N. Dash, J

Bench : Division Bench

Advocate : S. Misra-2, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—Petitioners have assailed the legality of the orders passed by revenue authorities in a proceeding u/s 43 of the Orissa Land Reforms Act.

2. A ceiling surplus proceeding was initiated suo motu as no returns were filed by the alleged ceiling surplus holder which was registered as O.L.R.Case No. 98 of 1974. That proceeding was ultimately dropped by order dated 2-12-1974 on a finding by the Revenue Officer that the eldest son Hadibandhu was Major, married and separated from his father prior to the appointed day and, therefore, a separate ceiling is to be given to Hadibandhu and thus the family does not possess land in excess of the ceiling area. The said order of the Revenue Officer dropping the ceiling proceeding was set aside by the Member, Board of Revenue, who remanded the matter to the Revenue Officer for further enquiry. After subsequent enquiry, the Revenue Officer passed an order on 28 12-1987 coming to the conclusion that 7.92 acres of land is the surplus land in the hands of the land-holder. He accordingly directed that draft statement be prepared and published under Sub-section (2) of Sec 43 of the Act. Against this order of the Revenue Officer dated 28-12-1987 though no appeal is provided for and an appeal u/s 44 is only provided against the confirmed statement u/s 44 (1), the

petitroners filed an appeal which was registered as O.L.R. Appeal No. 2 of 1988, That appeal was disposed of by order dated 17-4-1990, annexed as Annexure-6. The appellate authority remanded the matter to the Revenue Officer for deciding the question whether some lands gifted in favour of the daughters which gift was confirmed in a title suit, could at all be taken into consideration or would be excluded from the purview of determination of ceiling. After the matter came back on remand to the Revenue Officer again, the Revenue Officer disposed of the same by order dated 7-8-1990, annexed as Annexure-7. The Revenue Officer came to hold that it is difficult to believe that 6.70 acres of land had actually been held by the donee Chitrangini before the appointed day and consequently, the lands are liable for inclusion in the ceiling proceeding. This order under Aunexure-7 o was again appealed against by the petitioners in O. L.R. Appeal No. 4 of 1990. The appellate authority disposed of that appeal by order dated 7th of November, 1990, annexed as Annexure-8. The appellate authority dismissed the appeal and directed publication of the draft statement. Against the said order under Annexure-8, the petitioner carried the matter in revision and, in fact, three different revisions were filed by three different petitioners, one by Dwarika, the other by Hadibandhu and the third by Chitrangini. All these three revisions were disposed of by a common order dated 18-12-1990, annexed as Annexure-9 and all the revisions were dismissed. The Revenue Officer then directed by order dated 29-12-1990 to publish the draft statement inviting objection. The said order of the Revenue Officer has been annexed as Annexure-10. The petitioners filed objection as per Annexure-11. That objection having been rejected on the ground that no such objection is entertainable the petitioners have filed the present writ application. The order of rajection is dated 17-1-1991, annexed as Annexure-12.

3. The sole ground, urged by Mr. Misra appearing for the petitioners is that the order dated 28r1 2-1987 passed by the Revenue Officer in the ceiling case was not appealable though the petitioners carried an appeal, Since the appeal was not maintainable, the findings thereon were without jurisdiction and, at any rate, the petitioners'' right to appeal conferred under Sub-section (2) of Section 44 against a confirmed statement prepared u/s 44(1) as well as the right to file objection under Sub-section (2) of Section 43 of the Act after the draft statement is published cannot be taken away.

The learned Additional Government Advocate, on the other hand, contends that even though '' an appeal might not have been maintainable, but the petitioners themselves having preferred an appeal and the appellate authority having considered the same and disposed of the matter on merits, it is not now open to the petitioners to assail those very orders passed by the appellate arid revisional authorities.

4. Having heard the learned counsel for the parties and on examining the records of the case, we have no hesitation to come to the conclusion that the order of the Revenue Officer dated 28-12-1987 was not appealable and the petitioners

have erroneously preferred appeals and the authorities have entertained appeals without jurisdiction and have disposed of the same by giving findings one way or the other. Under the Orissa Land Reforms Act, the Revenue Officer is required to prepare and publish a draft statement showing the ceiling and the surplus lands in the hands of the ceiling surplus holder under Sub-section(1) of Section 43 and on such statement being published, the persons interested have a right to file objection under Seb-sec (2) of Section 43. The Revenue Officer is then called upon to hold such further enquiry as he deems necessary and then pass an order recording his reasons either altering or amending all or any of the particulars specified in the draft statement. After passing of the order by the Revenue Officer under Sub-section (2) as stated above, the Revanue Officer is required to confirm the draft statement under Sub-section (1) of Section 44 and against such confirmed statement, an appeal lies by the person aggrieved under Sub-section (2) of Section 44 of the Act. There is no provision under the Act conferring the power on the alleged ceiling surplus holder to file any objection prior to the draft statement being published, nor a power has been conferred on the Revenue Officer to entertain and decide such objection, if filed. In that view of the matter, the appeal preferred by the petitioners against the order dated 28-12-1987 was without jurisdiction and was not maintainable and all subsequent proceedings thereafter are vitiated being without jurisdiction and not being maintainable and consequently, the findings arrived at by different authorities under the Orissa Land Reforms Act are no findings in the eye of law.

5. After the draft statement is published pursuant to the order of the Revenue Officer dated 29-12-1990 the petitioners have a right to file objection under Sub-section (2) of Section 43 and, therefore, the objection filed by the petitioner under Annexure-11 could not have been rejected on the ground that appellate and revisional authorities have already taken decisions on those objections. In our considered opinion, the orders of the appellate and revisionalauthorities relying upon which the Revenue Officer has rejected the objection are without jurisdiction and therefore, those findings should not weigh With the Revenue Officer in deciding the objection filed by the petitioners under Annexure-11. The right of the petitioners conferred under Sub-section (2) of Section 43 on publication of the draft statement is a statutory right which cannot be taken away. In the aforesaid circumstances, we quash the orders passed by the revenue authorities under Annexures-6 to 9-B and direct that the objection filed by the petitioners under Annexure-11 be considered by the Revenue Officer not being influenced in any manner by the findings and observations made by the authorities under Annexures 6 to 9-B. After disposing of the objection filed by the petitioners, the Revenue Officer may confirm the statement under Sub-section (1) of Section 43 whereafter the matter will proceed in accordance with law.

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

B.N. Dash, J.

I agree.

