

(2019) 12 OHC CK 0001

In the Orissa High Court

Case No : Writ petition (C) No. 5586 Of 2003, 2552 Of 2004

Ganesh Chandra Samantray And Others

APPELLANT

Vs

State Of Orissa & Others

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Orissa Survey And Settlement Act, 1958 — Section 12(B), 15, 15(a), 21(1), 33
Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land Act, 1972
— Section 37, 38B, 41, 42, 47
Orissa Prevention Of Land Encroachment Act, 1954 — Section 12
Bengal Money Lenders Act, 1940 — Section 2(22)
Orissa Land Reforms Act, 1960 — Section 59(2)

Citation : (2019) 12 OHC CK 0001

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : B.Routray, D.K.Mohapatra, D.Routray, B.B.Routray, P.K.Dash,
D.Mohapatra, S.N.Mishra, S.D.Das, M.M.Swain, H.K.Behera, S.Biswal, H.Mohanty,
J.S.Samal, K.Sattar, S.N.Mishra

Final Decision : Allowed

Judgement

Biswanath Rath, J

1. Both the writ petitions involve challenge to the orders passed by the Revenue Divisional Commissioner, Southern Division, Berhampur in Revision

Case Nos.28, 29, 30, 31 & 32 of 2001 in exercise of power under Section 15 of the Orissa Survey and Settlement Act, 1958 (herein after called as

the OSS Act) but however, W.P.(C) No.5586 of 2003 is confined to Revision Case No.32 of 2001, whereas W.P.(C) No.2552 of 2004 is

confined to Revision Case Nos.28, 29, 30, 31 & 32 of 2001. It appears, W.P.(C) No.5586 of 2003 is a repetition of challenge to Revision Case No.32

of 2001 but independently.

2. Facts involving the case disclose that the suit plots involved herein were leased out by the Assistant Settlement Officer during the attestation stage

claimed to be in exercise of power conferred upon him, vide Government Letter No.17633/R dated 3. 4.1962 to them on payment of requisite Salami.

As a consequence, it is claimed that the lands involved here were recorded in their names in rayati status. The petitionersâ?? claim that there was no

appeal against the lease granted in their favour by the competent authority, but however at a subsequent stage, objection case being filed by the

Tahasildar, Kandhamal, order was passed in the objection case cancelling the rayati khata prepared in the names of the petitioners and thereby

directing to record the suit plots in Government Anabadi Khata reserving them for developmental purpose. Being aggrieved by such order involving

Objection Case No.1277 of 1975, the objectors therein filed Appeal Case Nos.95, 96, 97, 98 & 99 of 1975 on the file of Settlement Officer, Boudh-

Kandhamal at Phulbani. These Appeals appear to have been finally adjudicated, vide common order dated 19.7.1977 appearing at Annexure-11 to

W.P.(C) No.2552 of 2004 and Annexure-5 to W.P.(C) No.5586 of 2003 thereby the Appellate Authority while allowing the appeals, directed the suit

plots to be recorded in the name of the respective appellants with rayati status as recorded during attestation stage with the classification as already

noted and rent was to be calculated as prescribed for such classes of land. Further fact reveals that pursuant to the direction of the appellate authority,

the Assistant Settlement Officer, vide his order dated 28.6.1980 directed to publish the final Record of Rights in favour of the land owners, parties to

the Objection Cases as well as the Appeal Cases on rayati status as appearing at Annexure-3 to W.P.(C) No.5586 of 2004. While the matter stood

thus, in the year 2001 the Collector, Kandhamal filed Revision Case Nos.28, 29, 30, 31 & 32 of 2001 in exercise of power under Section 15 of the

OSS Act appearing to be as against the order dated 19.7.1977 passed by the Settlement Officer, Boudh, vide Annexure-11 to W.P.(C) No.2552 of

2004 and Annexure-5 to W.P.(C) No.5586 of 2003, disposal of which vide Annexures-13 & 6 respectively giving rise to filing of the present writ

petitions.

3. For the commonness involving both the writ petitions, a common hearing involving all the Counsel, such as Sri S.D.Das, learned senior counsel and

Sri B.Routray, learned senior counsel for the petitioners and common argument also advanced on behalf of the State through Sri S.N.Mishra, learned

Additional Government Advocate was entertained and both the matters are decided by this Common judgment.

4. Advancing their common argument, learned senior counsel, Sri Routray, taking the lead appearing for the petitioners in the subsequent writ petition

assailed the impugned order on the premises that there being a lease of the disputed land by the Assistant Settlement Officer in exercise of power

conferred upon him, vide Government Circulars dated 3.4.62/8.1.64/11.5.64 in favour of the petitioners on 3.4.1970. In 1975 Objection Case Nos.1277

of 1975 and 1279 of 1975 initiated involving the disputed land decided against the petitioners, which orders being challenged in Appeal Case Nos.95,

96, 97, 98 & 99 of 1975, the appellate authority reversed the order of the Tahasildar, Kandhamal. For the above development, learned senior counsel

for the petitioners contended that for settlement of lease of land through the Assistant Settlement Officer exercising his power under the OSS Act

coupled with the OPLE Act, neither the order of lease nor the order passed by the competent authority in exercise of appellate power was assailable

before any other forum. On the Revision Case No.31 of 2001 under Section 15 of the OSS Act initiated involving a challenge to the order of the

appellate authority involving Appeal Case Nos.95, 96, 97, 98 & 99 of 1975 and decided against the petitioners, both the senior counsel contended that

for the appellate order being passed in exercise of power under Section 12 of the OPLE Act and a Revision having been provided under the OPLE

Act, no Revision under Section 15 of the OSS Act is permissible. Further for a Revision undertaken under the provision of Section 15 of the OSS Act

in the year 2001 involving an appellate order on 19.7.1977 and preparation of Record of Rights in the year 1980, learned senior counsel contested the

order on the premises of the proceeding being grossly barred by limitation. Referring to the decisions of the Honâ??ble apex Court in Sulochana

Chandrakant Galande vrs. Pune Municipal Transport & others : (2010) 8 SCC 467 and Ram Karan vrs. State of Rajasthan : (2014) 8 SCC 282, and

taking this Court to the decision of the Honâ??ble apex Court on the question of limitation in initiating such proceedings, learned senior counsel for

the petitioners involving both the writ petitions contended that for the decisions of the Honâ??ble apex Court therein, the revisional order is also

otherwise bad for being hit by the law of land. It is thus, both the senior counsel claimed and prayed this Court for interfering with the impugned orders and setting aside the same.

5. Though there is appearance of Counsel for O.Ps.5 to 24 in W.P.(C) No.5586 of 2003 but no counsel appeared to represent their case.

6. Sri S.N.Mishra, learned Additional Government Advocate appearing in both the cases however taking this Court to the development compelling the

revisional authority to initiate the Revision and particularly for no time stipulation involving Section 15 of the OSS Act contended that for the unfettered

right given to the revisional authority under Section 15 of the OSS Act to initiate suo motu proceeding at any time, there cannot be any stipulation of

limitation otherwise. Further taking this Court to the provisions under Section 33 of the OSS Act, Sri Mishra, learned Additional Government Advocate

contended that for this provision, there is delegation of power of the Board of Revenue to any Official above the rank of Settlement Officer to

exercise such revisional power.

Referring to the Revenue Department Notification dated 24th December, 2002 at Annexure-A/4 to the counter affidavit, Sri Mishra, learned

Additional Government Advocate contended that here the R.D.C. has exercised his revisional power vested upon him as per Section 33 read with

Section 47 of the OSS Act. Sri Mishra however admitted that pursuant to the order being passed by the appellate authority involving Annexure-11, the

suit plots have been recorded in the name of the respective appellants therein with rayati status since 1977. As a consequence, direction was issued on

28.6.1980 to publish the R.O.Rs. in favour of the petitioners on rayati status. Sri Mishra, learned Additional Government Advocate further taking this

Court to the parimateria provision of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 and the provision at

Section 37 therein contended that similar exercise was also conducted by the Commissioner and there is no time stipulation therein. It is in these

circumstances and for the observations and grounds set out by the revisional authority for interfering with the appellate orders, for there is no infirmity

in the revisional order, accordingly a request is made to this Court for dismissing the writ petitions for having no merit.

7. Considering the rival contentions of the parties, this Court finds, the admitted

facts remain, the Assistant Settlement Officer in exercise of power conferred upon him under the provision of the OPLE Act and also on the basis of the Circular granted lease of the disputed land in favour of the applicants therein, the petitioners herein in the year 1970. There is also admission by the parties that there has been no challenge to such grant of lease being made under the OSS Act read with the OPLE Act in the higher forum. Now coming to initiation of objection case by the Tahasildar, Kandhamal bearing Objection Case No.1277 of 1975, this Court again finds, the Objection Case having gone against the respondents therein, Appeal Case Nos.95, 96, 97, 98 & 99 of 1975 being preferred, the appellate authority interfering with the order passed by the lower forum passed the following :-

â??The orders appealed against are, therefore, set aside, and it is ordered that the suit plots be recorded in the names of the respective appellants with raiyati status as recorded during attestation stage with the classification as already noted and rent calculated as prescribed for such classes of lands.â??

8. It is at this stage, taking into consideration the initiation of Revision Case Nos.28, 29, 30, 31 & 32 of 2001 under Section 15 of the OSS Act and looking to the challenge made involving the impugned order, this Court here takes note of Section

15 of the OSS Act, which reads as follows :-

â??15. Revision by Board of Revenue-

The Board of Revenue may in any case direct-

(a) of its own motion the revision of any record of-rights, or any portion of a record-of-rights at any time after the date of final publication under

[section. 12-B] 'but not so as to affect any order passed by a Civil Court under section [42] ;

(b) on application made within one year from the date of final publication under section. 12-B, the revision of any record-of-rights or any portion

thereof whether within the said period of one year or thereafter but not so as to affect any order passed by a Civil Court under section 42:

Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the

matter.â??

Bare reading of the aforesaid provision, this Court finds, Revision lies involving any Record of Rights or any portion of a Record of Rights at any time

after the date of final publication under Section 12(B) of the OSS Act but not so as to affect any order passed by the Civil Court under Section 42 of

the Act. Admittedly, there is no Civil Court's order to affect the proceeding undertaken under Section 15 of the OSS Act.

9. In the above background, it is at this stage, taking into consideration the objection to challenge the impugned order by the learned State Counsel on

the basis of parimateria provision at Section 37 of the O.C.H. & P.F.L. Act, 1972, this Court here finds, considering the challenge to the limitation in

exercise of power under Section 37 more particularly considering the Revision preferred after eight years, taking into account the decisions of the

Hon'ble apex Court in *Mansaram v. S.P. Pathak and others*, AIR 1983 SC 1239, *M/s S.B. Gurbaksh Singh v. Union of India and others*, AIR

1976 SC 1115, *Santoshkumar Shivgonda Patil and Others v. Balasaheb Tukaram Shevale*, AIR 2009 SCW 630 5 and some decisions of this Court in

Laxminarayan Sahu v. State of Orissa and others, 71(1991) CLT 322 and *Labanyabati Devi and others v. Member, Board of Revenue and Others*,

1993(2) OLR 365, wherein it is held that preferring Revision after eight years also is amounting to filing Revision with inordinate delay. However, this

Court in deciding similar situation but involving the allegation of fraud in the case of *Bijay Kumar Bal vrs. Collector, Puri & others* reported in 2018 (I)

ILR, Cuttack 953 condoned the delay in filing the Revision only on the ground of attacking the impugned order therein for involvement of allegation of

fraud.

10. It is at this stage, considering the factual background involving the case, it is observed that the records of the lower appellate court, which was

kept in sealed cover on the direction of a collateral Bench of this Court dated 17.10.2019, is opened for perusal of the Court. On perusal of the

records, this Court finds, the appeals undertaken by the appellants in challenge to the order passed by the lower authority on the premises that the

lower court has no jurisdiction to extinct the right and title from the rayati status of a tenant and/or to make it Anabadi land that too when the suit land

has been converted to rayati status and such other ground that the lower court should have fixed the rent of suit land under Section 21(1) of the OSS

Act, further the Government objection in the lower court was barred by limitation and that in the Appeal there has been no reasonable opportunity of hearing by the lower court. The lower appellate court's order is impugned at Annexure-11. It appears, the appellate court has recorded the ground, on which leases are objected by the State Authority that the suit plots have been reserved by the Collector under appropriate law and as such the same should not have been leased out. State also objected the claim of the appellants that there is no lease deed executed after payment of premium by the appellants. The Appellate Authority also recorded that the Assistant Settlement Officer's direction to cancel the rayati Khatas on the ground that leases granted were defective since no rent or cess had been fixed at the time of grant of lease. From paragraph-5 of the appellate order, this Court finds, the appellate authority again recorded the submission of the appellants that if the rent and cess has not been fixed, they should have been fixed by the objection hearing camp A.S.O. before the lease was executed. The appellate authority recorded that the appellants to have filed counter foil issued to them for deposit of Salami process fee etc., vide receipt nos.5 to 9 and Book No.1 dated 30.4.1970. In spite of recording that lease records are not available and have been misplaced somewhere yet the appellate authority appears to have allowed the Appeal only on the impression that there exists lease, and therefore, unless the grant of lease is challenged and set aside, the Settlement Authorities have no instruction to ignore such lease. State, as appears, has also taken a specific stand in the Revision under Section 15 of the OSS Act that since the suit land was Government land with Jungle Kisam till the settlement operation takes place, no lease could have been granted in absence of conversion of the said land. There is in fact no material produced establishing settlement of land in favour of the petitioners, even in spite of much endeavour, no such record could be traceable. This Court also made frantic effort for ascertainment of such record by giving time to time direction to the Counsel for the opposite parties, who have reported to this Court that in spite of several adjournments, no record is available. There is no other material available to establish the lease aspect.

11. For the foundation in the claim of the petitioners based on a lease being granted in their favour and looking to the status of the land, further there is

also clear recording by the revisional authority that even though the petitioners take help of receipt in proof of deposit of Salami but there is no such material available on record nor such material even produced in the revision proceeding. This Court on calling for Appeal record also nowhere finds any such receipt. In the circumstance, this Court finds, there is no semblance of proof of valid lease further when the status of land again appears to be Jungle Kisam, the appellate authority should have been more vigilant and enforced for clear establishment of their case. There is also no material forthcoming to prima facie even establish change of Kisam of land making available for lease. It is in the circumstance, for the appellate order passed on no foundation inasmuch as no material particular to establish the claim of the appellants, the petitioners herein and looking to the nature of land non-convertible as well as non-settleable, though there appears, there is delay in filing the Revision under Section 15 of the OSS Act but for recording of the reason by the revisional court, the revisional authority ought to have remitted the matter to the appellate authority giving petitioners further opportunity of establishment of their case before the appellate authority.

12. This Court finds Section 15(a) of the OSS Act reads as follows :-

â??15. Revision by Board of Revenue-

The Board of Revenue may in any case direct-

(a) of its own motion the revision of any record of-rights, or any portion of a record-of-rights at any time after the date of final publication under

[section. 12-B] 'but not so as to affect any order passed by a Civil Court under section [42] ;

The Legislation while permitting the parties to make an application within one year from the date of final publication under Section 12- B but under

Section 15(a) has authorised the Board of Revenue its own motion to revise any Record of Rights at any time after the date of final publication.

Therefore, the connotation at any time though does not mean sou motu revision can be entertained after inordinate delay but however for the reason

assigned herein above, this Court finds, exercising the revisional power under the provision of Section 15(a) of the OSS Act becomes essential.

13. For the challenge of the impugned order on being affected for grossly barred by time, this Court in the circumstance stated herein above and for

the reasons assigned herein alone takes into account a decision of this Court in

Bijay Kumar Bal vrs. Collector, Puri & others : 2018 (I) ILR CUT 953,
paragraph-45 of which reads as follows :-

45. The word 'pending' is also interpreted very clearly in the case of (Muhammad Kazim Ali and Anr. v. Ramesh Chandra Sit) AIR 1947 Cal. 270

at page 271-72 in which the Court held that a mortgage suit remains pending, even after the preliminary and final decrees have been passed and sale

held in execution of the final decree, as long as an application for a personal decree can legally be made. The reopening of the mortgage decree

involves the opening of the preliminary as well as the final decree and the mere fact that relief sought related primarily to the setting aside of the sale

of the mortgaged property is not very material. Moreover, the mere fact that no personal decree can be passed unless an application be made for that

purpose will not be sufficient to make the application a separate proceeding such as is contemplated in Section 2(22), Bengal Money Lenders Act, nor

would that fact for the present purpose remove from the category of 'pending suit'. It was then simple to say as long as there is possibility of making

an application for personal decree, a case is still to be treated pending notwithstanding final or preliminary decree passed on sale. No case is cited

before us that in anticipation of a proceeding in another forum the case decided be treated as a case pending on the date of notification.

It is corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to

justify the inference on the ground that the legislature intended something which it omitted to express, In the words of Lord Mervin in the case of

(Thompson v. Gould & Co.) (1910) AC 409, at page 420, it is stated thus :

It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.'

The power Under Section 37 to call for the records is not conferred on the Commissioner of Consolidation or the Director of Consolidation to be

exercised at any time as they choose unlike the powers conferred on the Board of Revenue under Sec, 59(2) of the Land Reforms Act which reads

as follows :

59(2). The Board of Revenue may at any time on being moved in that behalf by the Collector of a district in an appeal under any provision of this Act

filed within the prescribed period revise such order.

Purposefully this expression at any time is absent in Section 37 of the Act and it is not for no reason. This omission is obviously with a definite reason

and the reason \s this. Under the Land Reforms Act a ceiling is fixed over the land and in course of time there may be a case where a person

acquires more land and at a particular point of time holds more than the ceiling area. Therefore, there is the need of an authority to exercise power

under that Act to stop acquisition of excess land over the ceiling limit and to take away the excess land by passing a lawful order. Since that would be

continuing feature under the Land Reforms Act, the Legislature purposefully added these words at any time, but in the case of this Act, since it deals

with a time bound scheme, on conclusion of the consolidation proceeding, nothing remains to be done except in relation to matters excepted Under

Section 41 of the Act. The Legislature has, therefore, not conferred blanket power to the Commissioner of Consolidation or the Director of

Consolidation to exercise the power of superintendence Under Section 37 of the Act at any time.â??

Paragraphs-16 & 18 of the decision in State of Orissa and others vrs. Brundaban Sharma and another : 1995 Suppl. (3) SCC 249 read as follows :-

16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner

which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or

circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of

the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was

obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the

party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to

unravel fraud and to set it right ? The answers would be no.

18. Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of

time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did

pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the

benefit ? Who was responsible for it ? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under

Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as

held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it

confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage.

14. In the circumstance, this Court while interfering with the revisional order at Annexure-13 in W.P.(C) No.2552 of 2004 and Annexure-6 in W.P.

(C) No.5586 of 2003 but however for requirement of fresh adjudication of the dispute, this Court remits the matter back to the revisional authority for

re-determination of the dispute involving Revision Case Nos.28, 29, 30, 31 & 32 of 2001 involving the parties and providing fullest opportunity of

establishing their case to both the parties. Fresh adjudication of the Revisions be done within a period of six months. State Counsel is directed to

submit the Appeal records before the Revisional Authority immediately. Both the parties while permitted to supplement their stand by filing further

response along with production of records/documents, if any. Till a fresh adjudication of the Revisions is made, both the parties are directed to

maintain status quo involving the disputed land.

15. Both the writ petitions succeed in setting aside the orders at Annexures-6 & 13 respectively but with an order of remand and with the

directions/observations made herein above. In the circumstance, there is no order as to cost.