
(2018) 03 OHC CK 0076
In the Orissa High Court
Case No : WRIT APPEAL No. 167 of 2017

Harsh Kumar Primus Lakra	Vs	APPELLANT
Land Allotment Committee Rourkela and another		RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 8A
Constitution of India, 1950 — Article 19(1)(e), 21, 300A

Citation : (2018) 03 OHC CK 0076

Hon'ble Judges : VINEET SARAN, DR. B.R. SARANG

Bench : Division Bench

Advocate : Bharat Kumar Mishra, B.P. Pradhan

Final Decision : Dismissed

Judgement

DR. B.R. SARANG, J

1. The appellant, who was writ petitioner, has filed this intra-Court appeal challenging order dated 12.05.2017 passed by the learned Single Judge in

W.P.(C) No. 8656 of 2017, whereby the writ petition has been disposed of as premature, in view of pendency of the statutory appeal before the

appellate authority preferred at the instance of the appellant-writ petitioner following the direction of this Court in W.P.(C) No. 6302 of 2009.

2. The facts which led to filing of this appeal are that the appellant's father was rendering personal service to one Rajiv Panda, the owner of the

land appertaining to plots no. 123/285 and 123/286 under Khata No.4, Unit-38, Mouza Rourkela Town measuring Ac.1.200 decimals, who got the

same from the then ruler for his service. The said Rajiv Panda had given the land in question to the father of the appellant to enjoy the same, but the

same was waterlogged and low-lying and was not fit for house site.

Subsequently, the appellant's father rendered it fit for house site and was residing there by constructing a jhumpuri house and, after his death, the appellant is residing therein. In the year 1954, the land was acquired by the State Government for establishment of Steel Plant and, as it was not required, the Steel Plant authority surrendered the same with other acquired lands to the Government. Since then the same became the government property. In major settlement, in the year 1970, the appellant's name was recorded as forcible occupier of the land in the remark column of the ROR. But due to disturbance created by a private person in respect of the suit land, the appellant filed a title suit bearing T.S. No. 2 of 1980, wherein the State Government was not made a party, for declaration of right, title and interest, which was decreed by the Civil Court in favour of the appellant. After such declaration, the appellant filed Mutation Case no. 308 of 1991 before the Tahasildar, but the same was not mutated in his favour. Therefore, the appellant preferred Mutation Appeal no. 3 of 1992 before the appellate authority, who issued direction to correct the ROR. But subsequently, the matter was placed before the Board of Revenue by the Collector, where the order passed by the appellate authority was rejected.

3. In the meantime, Encroachment Case No. 678 of 1993 was initiated by the Tahasildar wherein notice was issued to the appellant. Against such notice, the appellant filed OJC No. 3910 of 1993, in which this Court passed an interim order of status quo on 26.07.1993 in Misc. Case No. 4361 of 1993. But in the encroachment proceeding, the order of eviction was passed by the Tahasildar, in spite of the appellant filed show cause mentioning therein to refer the matter to the SubCollector as provided under Section 8-A of the Orissa Prevention of Land Encroachment Act, 1972 (for short 'OPLE Act'). Against the said order of eviction, the appellant preferred appeal before the Sub-Collector, Panposh in Encroachment Appeal No.

5 of 1993, wherein the appellate Court issued direction to the Tahsildar for taking necessary steps as prescribed under Section 8-A of the OPLE Act.

In compliance of the same, the Tahasildar caused verification and found that the appellant is in encroachment of the land under Anabadi Khata No. 4,

Plots No. 123/285 and 123/286 measuring Ac.0.98 dec. Pursuant thereto, by order dated 10.11.1993, the appellate Court came to hold that the

proceeding is absolutely a referable one and instructed the Tahasildar to take

necessary action as per the provisions of law. But the Tahsildar, instead of referring the matter to the Sub-Collector for settlement, transmitted the case record to the Collector, Sundargarh, who cancelled the order of the appellate Court. Subsequently, the appellant filed OJC No. 1456 of 1994 seeking to quash the order of the Tahasildar and consequential order passed by the Collector. This Court, after hearing the parties, set aside the order passed by the Tahasildar as well as Collector by its order dated 18.07.1994 and remitted the matter back to the Tahasildar to dispose of the same in accordance with law keeping in mind the observations made in the said order.

But no action was taken by the Tahasildar since 1994 till 2005.

4. As the case record of the appellant was misplaced, the appellant filed W.P.(C) No. 11467 of 2005 and this Court disposed of the said writ petition on 05.01.2006 allowing the Tahasildar, Rourkela to reconstitute the encroachment case record relating to the appellant and dispose of the same in terms of the direction issued by this Court in OJC No. 1456 of 1994 within a period of six months from that date. It is further directed that the appellant shall cooperate the Tahasildar in reconstituting the record and may produce certified copies of the relevant papers, if available with him, before the Tahasildar. The appellant through his counsel submitted all the certified copies before the Tahasildar and filed a petition to refer the matter to the appellate Court as per the provisions contained under Section 8-A of the OPLE Act, but the Tahasildar, vide its order dated 25.01.2006, directed that since the order of status quo passed by this Court in W.P.(C) No. 15654 of 2005 over the land is in force, no further steps can be taken till disposal of the said writ petition. When the status quo order was in force, the Tahasildar demolished the houses, shops and other structures. Therefore, the appellant filed W.P.(C) No. 7902 of 2008, where this Court issued notice to the respondents. Since the Tahasildar did not appear in the aforesaid writ petition nor filed any counter affidavit, the appellant filed CONTC No. 915 of 2008, which was ultimately dropped by this Court on 19.04.2017. In the meantime, the Tahasildar, Rourkela, vide order dated 18.03.2009, after hearing the parties, dismissed Encroachment Case No. 678 of 1993 and rejected the petition filed by the appellant to refer the matter to the Sub-collector under Section 8A of the OPLE Act, and also came to a definite finding that the appellant was not at all in possession of the land in question. It

was also observed that mere note of illegal possession in the ROR against the remark column of case plots without actual physical possession does not confer any right and title. It is well settled law that settlement entry cannot create or extinguish any right and title, if not actually created or extinguished.

5. Against the order dated 18.03.2009 of the Tahasildar, the appellant preferred W.P.(C) No. 6302 of 2009, which was dismissed by this Court on

27.10.2016 with an observation that dismissal of the writ petition would not prevent the appellant from preferring appeal and in the event appeal is filed

within two weeks thereafter, the same shall be decided in accordance with law. Pursuant thereto, the appellant preferred an appeal before the

appellate Court, which is pending for disposal. When the matter stood thus, the appellant filed W.P.(C) No. 8656 of 2017 seeking for direction to the

respondents to pay adequate and suitable compensation, as provided under the provisions of settled laws for depriving him from the landed property

including the demolition of the houses, shops, well etc. without authority of law and without issuing any notice during pendency of the proceeding.

Considering the said writ application, the learned Single Judge vide order dated 12.05.2017 dismissed the said writ petition, as premature, stating inter

alia that an appeal at the instance of the appellant following the direction of this Court in W.P.(C) No. 6302 of 2009 has been filed and the same is

pending for consideration.

6. Mr. B.K. Mishra, learned counsel for the appellant states that since the house of the appellant stood on the disputed plot has been demolished, he is

entitled to compensation in view of the provisions contained under Articles 19(1) (e), 21 read with Article-300A of the Constitution of India. To

substantiate his contention, he has relied upon the judgments of the apex Court, as well as different High Courts and contended that the order passed

by the learned Single Judge may be set aside and compensation, as claimed in writ petition, be awarded to the appellant.

7. Mr. B.P. Pradhan, learned Addl. Government Advocate appearing for State-respondents contended that the impugned order passed by the learned

Single Judge is wholly and fully justified. As such, no right, title and interest has ever been established in favour of the appellant. Therefore, the claim

of the appellant for compensation cannot sustain in the eye of law.

8. We have heard Mr. B.K. Mishra, learned counsel for the appellant and Mr. B.P. Pradhan, learned Addl. Government Advocate appearing for

State-respondents. Pleadings having been exchanged between the parties and with the consent of the learned counsel for the parties, this appeal is

being disposed of finally at the stage of admission.

9. Admittedly, the appellant's name stood recorded as forcible occupier of the land appertaining to plots no. 123/285 and 123/286 under Khata

No.4, Unit-38, Mouza Rourkela Town in major settlement record of 1970. Though there was a private dispute between the appellant and others, vide

Title Suit No. 2 of 1980, deliberately and willfully the appellant had not impleaded the State as party in the same and got a decree in his favour. On the

basis of such civil court decree though Mutation Case No. 308 of 1991 was filed before the Tahasildar, but his name could not be recorded, pursuant

to order passed by the Board of Revenue. The land in question has remained under Khata of the State. The Encroachment Case No. 678 of 1993,

having been initiated, was challenged before this Court in OJC No. 3910 of 1993 where this Court directed to dispose of the matter within stipulated

time. During consideration of the said encroachment case, the appellant filed show cause and prayed to refer the matter to the SubCollector, as

provided under Section 8-A of the OPLE Act. Such prayer of the appellant, having been rejected, encroachment appeal was preferred. The Sub-

Collector remanded the matter back to the Tahasildar by holding that the proceeding is absolutely referable one and instructed the Tahasildar to take

necessary action as per the provisions of law taking into consideration the long possession of the appellant on the land in question. But the Tahasildar

did not refer the matter to the Sub-Collector for settlement and transmitted the record to the Collector, Sundargarh, who canceled the order passed by

the Sub-collector. Therefore, the order of the Tahasildar as well as the Collector was challenged before this Court in OJC No. 1456 of 1994, which

was allowed by setting aside the order passed by the Tahasildar and the Collector, and the matter was remitted back to the Tahasildar to dispose of

same in accordance with law. As a consequence thereof, the encroachment case, which was initiated by the Tahasildar, was to be decided on its own

merit, but due to non-availability of records the same could not be done. As a result, the appellant approached this Court by filing W.P.(C) No.11467

of 2005, in which this Court directed for reconstitution of the encroachment case record. Consequent upon reconstitution of the encroachment case record, the Tahasildar, after due adjudication, passed the order of eviction which itself is appealable one. Instead of preferring appeal, the appellant again approached this Court by filing W.P.(C) No. 6303 of 2009 which was dismissed directing the appellant to prefer an appeal. Accordingly, the appellant preferred an appeal. But, instead of pursuing the appeal, the appellant filed W.P.(C) No. 8656 of 2017 claiming compensation alleging demolition of his house situated over the disputed plots. The appellant has not established his right, title and interest over the plots in question and the matter is subjudice before the appropriate forum for consideration. Unless the appellant establishes his right, title and interest over the disputed plots, no compensation can be awarded to him, as he is an encroacher and not the lawful occupier of the premises.

10. In view of the facts and circumstances of the case, we are of the considered view that the learned Single Judge has not committed any error in dismissing W.P.(C) No. 8656 of 2017, as premature, since appellant had already preferred an appeal, pursuant to order dated 27.10.2016 passed by this Court in W.P.(C) No. 6302 of 2009, which is still pending for consideration. Therefore, we are not inclined to entertain this appeal having no merit. Accordingly, the same is dismissed. No order to costs.