
(2015) 07 OHC CK 0004
In the Orissa High Court
Case No : W.P.(C) No. 14199 of 2009

Jabar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 15(b), 18(1), 22, 32, 36(1)(c)

Citation : (2016) 121 CLT 467 : (2015) 2 OLR 697

Hon'ble Judges : B.K. Nayak, J.

Bench : Single Bench

Advocate : Soumya Mishra, for the Appellant

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—Common order dated 27.12.2007 passed by the Settlement Officer, Cuttack Major Settlement (opposite party No. 3) in Appeal Case Nos. 455 of 2003, 658 of 2003 and 363 of 2004 rejecting the petitioner's application to recall final appellate order dated 31.08.2006 and to hear the appeals afresh, has been assailed In this writ application.

2. The final common appellate order dated 31.08.2006 passed in all the three appeals had not been filed along with the writ petition, but subsequently on the direction of the court, the certified copy of the said order has been filed along with additional affidavit of the petitioner dated 17.04.2015.

3. The petitioner's case is as follows:

"(A) The disputed land in toto involved in all the three appeals measuring Ac.5.00 appertaining to Hal plot No. 4969 under Hal khata No. 1076 in mouza-Gadakana, P.S. Mancheswar, Dist-Khurda corresponds to sabik plot No. 4047 under khata No. 918. It is stated that the said land originally belonged to the Raja of Kanika, the Exintermediary, who had leased out the same in favour of the father of the petitioner on 03.02.1944 by way of Yayati patta". The petitioner's father possessed the said property and continued to pay rent to the Ex-

intermediary. After vesting of the intermediary interest the landlord submitted "Ekapadia", on the basis of which Tenants Ledger (Jamabandi) as per Annexure-3 was prepared in favour of the father of the petitioner by the Tahasildar, Cuttack Sadar as by then the land in question was within the jurisdiction of the Cuttack Sadar Tahasil. It is further stated that during the settlement operation after vesting the petitioner and his father were never noticed and the property was recorded in the name of the State Government with the kisam "Unnata Jojana Jogya" in the record of rights published in 1973-74. By then the petitioner's father was no more and, therefore, the petitioner filed Revision Case No. 1824 of 1993 under Section 32 of the Orissa Survey and Settlement Act (in short "the Act") before the Commissioner, Land Records & Settlement, Orissa, Cuttack. By his order dated 07.07.1993 (Annexure-5), the Commissioner Land Records & Settlement, Orissa having found that there was no earlier appeal by the petitioner, remanded the revision petition to the Additional Settlement Officer, Bhubaneswar/Puri with a direction to treat the same as a petition (appeal) under Section 22 of the Act..

(B) On receipt of the remand order in the R.P. Case, the Settlement Officer registered the same as Appeal Case No. 109 of 1993 and after hearing, by his final order dated 26.05.1995 (part of Annexure-9) allowed the appeal and directed to record the disputed land (Hal, plot No. 4969, Ac.5.00) in the name of the appellant, being satisfied about the grant of lease by the ex-landlord in favour of the petitioner's father and submission of Ekpadia by the landlord after vesting and preparation of Jamabandi by the Tahasildar, Cuttack Sadar.

(C) It is stated that soon after the final publication of Settlement of ROR in favour of the State in 1973-74 a further settlement operation commenced since 1975 in which the property in question was bifurcated to several plots and recorded in the name of the State Government. Having come to know of such recording at a belated stage the petitioner preferred Appeal Case Nos. 455 of 2003, 658 of 2003 and 363 of 2004, which were dismissed by the Settlement Officer by his common order dated 31.08.2006. The petitioner thereafter filed applications to recall the said order dated 31.08.2006 and to give him opportunity of filing relevant documents in his favour and to rehear the appeals. The recall petitions were rejected by the impugned common order as per Annexures-6 to 8."

4. Learned counsel for the petitioner submits that in view of grant of Rayati Patta in respect of the land by the Ex-landlord in favour of the petitioner's father and the submission of Ekapadia in respect thereof by the landlord after vesting and preparation of Jamabandi register on that basis by the Tahasildar, Cuttack Sadar and in view of the direction of the Settlement Officer in the previous Appeal Case No. 109 of 1993 the land should be directed to be recorded in favour of the petitioner.

5. The State-opposite party No. 4 has filed a counter affidavit in which it is stated that the Estate "Killa Gadakana" comprising of village-Gadakana was never a

part of Kanika Estate and it was false that the Exintermediary of Kanika Estate granted Rayati Patta in favour of the petitioner's father. It is stated that the Estate "Killa Gadakana" was jointly held by the Raja of Kanika and his mortgagees in possession, namely, Choudhury Chakradhar Mohapatra, Choudhury Chintamani Mohapatra, Choudhury Rama Krishna Mohapatra, Rajani Kanta Ray and Adity Ch. Ray and that the Raja of Kanika had no authority to grant lease out the case land to the petitioner's father without the consent of the other co-intermediaries. It is stated that the so called Hat Patta dated 03.02.1994 (Annexure-4) appears to be forged and fraudulent document as it does not bear the signatures of the ex-intermediaries. It is also stated that the assertion that the petitioner's father was in occupation of the property in question by way of "constructing homestead" and planting of trees are blatant lies inasmuch as the enquiry report of the Assistant Settlement Officer (Technical) in Appeal Case No. 658 of 2003 indicate that neither the petitioner nor his father was at any point of time in possession of the case land, which was of the kism of "Jhudi Jungle" as per the sabik records. It is asserted that the Government vide notification dated 31.12.1975 (Annexure-D/4) issued under Section 18(1) of the Act directed only for settlement of rent. But irregularities having been noticed in the settlement operation pursuant to the said notification dated 27.11.1997, Government directed for taking up simultaneous proceedings relating to survey, preparation of record of rights and settlement of rent under Section 36(1)(c) of the Act afresh within the limits of village- Gadakana, setting all previous proceedings and orders at naught. It is also stated that mere issuance of a Hat Patta and/or preparation Of Zamabandi in favour of a person in respect of the land does not create or confer title on him.

6. Learned counsel for the petitioner submits that since the Settlement Officer in the earlier Appeal Case No. 109 of 1993 had passed order for recording the case land in favour of the petitioner, the same would operate as res-judicata and the appellate authority could not have dismissed the subsequent appeal cases bearing No. 455 of 2003, 658 of 2003 and 363 of 2004. It was also submitted that in the appeals, the petitioner could not produce some relevant documents and, therefore, prayed for recall of the common appellate order passed in the three appeals" and for rehearing of the appeals and that in the interest of justice the Settlement Officer should have allowed the same.

The learned State Counsel, on the other hand, submitted that the petitioner had ample opportunity to produce all materials before the appellate authority and after the appeals were dismissed by the common order he cannot be given further opportunity for production of documents and fresh hearing of the appeals as that would amount to review of the earlier order which power the appellate authority does not possess.

7. Power of review is a creature of statute and unless the statute confers such power, no court, tribunal or quasi judicial authority can review its own order. Admittedly the OSS Act does not confer power of review on the settlement

authorities. However, under certain circumstances an order can be recalled by the authority which may not strictly amount to review, even though no specific power for recall is provided for. Such limited power to recall is inherent in the Court or Tribunal.

8. The Hon'ble apex Court in the decision reported in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, have held that the National Consumer Disputes Redressal Commission has inherent power to recall its judgment and order if found to be obtained by fraud/forgery inasmuch as fraud amounts to abuse of process of the Commission.

The apex Court in the case reported in *Budhia Swain and Others Vs. Gopinath Deb and Others*, have held as follows:

"8. In our opinion a Tribunal or a Court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and Such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the Court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."

9. It is thus, manifest that a Court or Tribunal may recall an order if the order suffered from inherent and patent lack of jurisdiction, or it has been obtained by practising fraud on the court or collusion, or there has been a mistake committed by the court which prejudicially affects the party, or the order was passed in ignorance of the fact that a necessary party had not been served with notice or had died and the estate was not represented. Such power to recall is however not available if the ground on which recall of the order and reopening of the proceeding is sought for was available to be pleaded during the proceeding but was not done, or where any other alternative remedy by way of appeal or revision is available but not availed.

10. In the instant case after the final publication of the settlement record of rights in the year 1973-74, the petitioner instead of challenging the same under the appropriate provision of the Act, filed a revision under Section 32 of the Act before the Commissioner of Settlement which was legally not entertainable. The Commissioner of Settlement was however free to treat the said revision as one under Section 15(b) of the Act and decide the matter finally. Instead he remanded the revision to the Settlement Officer directing to treat the same as an appeal under Section 22 of the Act, which was not permissible.

11. After such remand by the Commissioner of Settlement the Settlement Officer

registered the same as Appeal Case No. 109 of 1993. In the meantime, fresh settlement operations in respect of the village in question started in pursuance of the Notifications of 1975 and 1997 issued vide Annexure-D/4 and Annexure-E/4 in which apparently, the disputed land was bifurcated to several plots and admittedly some part of it was recorded in the name of the Utkal University. Apparently, the rent settlement proceeding that started in pursuance of Notification of 1975 did not reach finality and notification for fresh settlement was issued in 1997. Therefore, the order passed in Appeal No. 109 of 1993 cannot operate as res-judicata.

The common order passed in the three appeals could have been challenged in revision before the Member, Board of Revenue, Orissa, Cuttack. Instead of doing the same, the petitioner filed recall petition before the appellate authority praying to re-hear the appeals on the ground that he could not produce some relevant documents at the time of hearing. The petitioner was himself the appellant and the common appellate order was passed after hearing him and perusing the documents filed by him. There is no indication of what other relevant documents could not be produced and even if the appellant could not produce some materials, that would not furnish a ground for recalling the final order as has been held by the apex Court in the case of Budhia Swain and others (supra). It is not a case where the order sought to be recalled was passed without hearing the petitioner. That apart, admittedly some part of the disputed property has been recorded in the name of the Utkal University forming part of the University Campus. Probably, those properties were leased out to the Utkal University by the State Government in whose favour the property was recorded in 1973-74 Settlement R.O.R. Utkal University was a party to Appeal Case No. 363 of 2004. But the University has not been made a party to this writ petition. Further, the petitioner had the opportunity to challenge the common appellate order in revision and has also a further right of revision under Section 15(b) of the Act to challenge the correctness of record of rights to be finally published in the ongoing settlement operation. Therefore, rejection of the recall petition by the impugned orders is justified and warrants no interference.

Hence, the writ petition is dismissed. No costs.