

(1990) 04 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 2653 of 1983

Jagannath Meher and Others

APPELLANT

Vs

Anjana Dharuani and Others

RESPONDENT

Date of Decision : 27-04-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Divorce Act, 1869 — Section 32
Orissa Land Reforms Act, 1960 — Section 22, 22(10), 23, 23(1), 23(2)

Citation : (1990) 70 CLT 568

Hon'ble Judges : J.M. Mahapatra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : B.K. Behura, for the Appellant; P.K. Misra and N.C. Pati for Opp. Party Nos. 1 and 2 and Addl. Standing Counsel for Opp. Party Nos. 3 to 7, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The order of the Sub-divisional Officer dated 11-8-1976 annexed as Annexure-3, the order of the Additional District Magistrate dated 28-5-1977 annexed as Annexure-4 confirming the order of the Sub-divisional Officer in exercise of his revisional jurisdiction under Sub-section (1) of Section 59 of the Orissa Land Reforms Act (hereinafter referred to as the "Act"), and the order of the Special Officer, Land Reforms, dated 21-5-1983 annexed as Annexure-5 confirming the order under Annexure-4 in exercise of powers under Sub-section (2) of Section 59 of the Act are being challenged in this writ application.

2. The order of the Sub-divisional Officer under Annexure-3 is pursuant to an application filed by the opposite party Nos. 1 and 2 under Sub-section (3) of Section 23 of the Act, and the Sub-divisional Officer directed the Revenue Inspector, Larambha Circle, to deliver possession of the lands in favour of the opposite party Nos. 1 and 2 by dispossessing the Petitioners. The sole ground of

attack to the orders under Annexures-3, 4 and 5 is that an application under Sub-section (1) of Section 23 of the Act having been entertained earlier and final order thereon having been passed by the Revenue Officer under Annexure-1 and confirmed by the appellate authority under Annexure-2 by order dated 3-10-1974, a fresh application under Sub-section (3) of Section 23 is not entertainable and, therefore, the Sub-divisional Officer had no jurisdiction to pass order under Sub-section (3) of Section 23 on the fresh application filed by Ganda Dharua who was transferor and a person belonging to a scheduled tribe, and the transfer was in favour of the predecessor-in-interest of the Petitioners who did not belong to scheduled tribe.

3. The facts leading to the filing of the application under Sub-section (3) of Section 23 are that Ganda Dharua, the predecessors-in-interest of the opposite party Nos. 1 and 2 had filed an application u/s 23 of the Act alleging that Dhubal Meher, the predecessor-in-interest of the Petitioners took advantages of the illiteracy of the said Ganda Dharua and having agreed to take the lease of the lands measuring 42.61 acres for three years, got a fraudulent sale deed executed for a consideration of Rs. 5000/-. But, no permission having been obtained for executing the said sale deed, there has been a contravention of Section 22 of the Act and, therefore, the sale deed should be cancelled and the transferor should be put to possession. The Petitioners' predecessor-in-interest appeared in the proceeding and objected to the maintainability of the same. The Sub-Divisional Officer came to the conclusion that the transfer in question is in contravention of Section 22 of the Act and, therefore, he has necessary powers to declare the said transfer invalid under Sub-section (2) of Section 23. He accordingly passed that order. But so far as prayer for possession was concerned, as the said Ganda Dharua contended that notwithstanding the transfer in question he is continuing in possession since 1970 after expiry of the lease for three years, no direction was issued for restoration of possession as if was not necessary. This order of the Sub-Divisional Officer dated 19-7-1971 which has been annexed as Annexure-1 was assailed by the Petitioners in Revenue Appeal No. 15 of 1971. The Collector, Balangir, by his order dated 3-10-1974 confirmed the findings of the Sub-Divisional Officer and dismissed the appeal. The said order of the Collector has been annexed as Annexure- 2. So far as restoration of possession is concerned, the Collector also observed that since the lands are in possession of the transferor as admitted by the transferee; no further order for restoration of the same is necessary., This order of the Collector has been annexed as Annexure-2. While the matter, was pending before the revenue authority pursuant to the application filed under Sub-section (1) of Section 23 of the Act, as Ganda Dharua's possession was sought to be disturbed, he had moved the Sub-Divisional Magistrate in an application u/s 145, Code of Criminal Procedure The preliminary order in that 145 proceeding was passed on 21-10-1970, and the final order was passed on 20-5 1974. In that proceeding, the Magistrate declared the possession of the present Petitioners and further directed that they should continue in possession until evicted in due course of law. The said Ganda Dharua

had carried a revision against the order of the said Magistrate, but became unsuccessful. Thereafter he filed the application under Sub-section (3) of Section 23 of the Act out of which proceeding the present writ application arises. In the meantime, being unsuccessful in the 145 proceeding, the said Ganda Dharua had filed a civil suit, and in that suit he became successful and the suit was decreed. An appeal against the same at the instance of the present Petitioners was dismissed, and a further second appeal in this Court has been filed at the instance of these Petitioners being Second Appeal No. 229 of 1980.

4. In the aforesaid premises, the contention of Mr. Behura, the learned Counsel appearing for the Petitioners to the effect that an independent application under Sub-section (3) of Section 23 cannot be entertained when the earlier application filed under Sub-section (1) of Section 23 of the Act has been disposed of and no order for restoration within the ambit of Sub-section (3) has been made thereunder, crops up for consideration. For better appreciation on the point in issue, Section 23 of the Act is extracted hereinbelow, in extenso:

23. Effect of transfer in contravention of Section 22:

(1) In the case of any transfer in any contravention of the provision of Sub-section (1) of Section 22 the Revenue Officer on his own Information, or on the application of any person interested in the land may issue notice in the prescribed manner calling upon the transferor and transferee to show cause why the transfer should not be declared invalid.

(2) After holding such inquiry as the Revenue Officer deems fit and after hearing the persons interested, he may declare such transfer to be invalid and impose on the transferee a penalty of an amount not exceeding two hundred rupees per acre of the land so transferred for each year or any part thereof during which the possession .is continued in pursuance of the transfer which has been declared to be invalid and may also order such portion of the penalty as he deems fit, to be paid to the transferor or his heir.

(3) On a declaration being made under Sub-section (2), the Revenue Officer suo motu or on the application of any person interested cause restoration of the property to the transferor or his heirs and for the purposes may take such steps, as may be necessary, for compliance with the said order or preventing any breach of peace:

Provided that if the Revenue Officer is of the opinion that the restoration of the property is not reasonably practicable, he shall record his reasons therefor and shall subject to the control to the Government, settle the said property with another member of a Scheduled Tribe or in the absence" of any such member, with any other person in accordance with the provisions contained in the Government Land Settlement Act, 1962.

Explanation: Restoration of the property means actual delivery of possession of the property to the transferor or his heir.

According to Mr. Behura, an examination of the provisions of Section 23 of the Act would indicate that power under Sub-section (3) of the said Section 23 has been conferred on the Revenue Officer as an aid to cause restoration of the property which had been transferred in contravention of Section 22, and since such transfer has been cancelled under Sub-section (2) of Section 23, afresh and independent application under Sub-section (3) is not entertainable. According to the learned Counsel, the fact that order under Sub-section (3) is neither appealable nor revisable under Sections 58 and 59 of the Act respectively supports his contention that the power under Sub-section (3) was never intended to be an independent power but merely a consequential one authorising the Revenue Officer to restore on a declaration being made invalidating the transfer in question under Sub-section (2). The learned Counsel further urged that even if Sub-section (3) of Section 23 would be construed to have conferred an independent power on the Revenue Officer, but that power could be exercised immediately after a declaration is made under Sub-section (2) or shortly thereafter and cannot be exercised after any length of time. It is, therefore, urged that order under Sub-section (2) having become final by rejection of appeal on 3-10-1974 under Annexure-2, a fresh application under Sub-section (3) of Section 23 could not have been entertained in 1975.

5. Mr. Misra, learned Counsel appearing for the opposite party Nos. 1 and 2, on the other hand contended that the plain and unambiguous language of Sub-section (3) of Section 23 -makes it explicitly clear that the said power could be exercised either suo motu or on the application being made by the interested person, and, therefore, that application is an independent application other than the application filed under Sub-section (1) of Section 23. Mr. Misra further argued that such an application could be made subsequent to a declaration made under Sub-section (2) of Section 23 and in the absence of any prescribed period of limitation for making such an application, it could be made within the general period of limitation provided for under the residuary article, i.e., within three years from the declaration made under Sub-section (2) of Section 23. The correctness of the rival submissions depends upon the true interpretation of Sub-section (3) of Section 23 of the Act.

6. Under Sub-section (1) of Section 23 of the Act when the Revenue Officer on his own information or on the application of any person interested in the land comes to a conclusion that there has been a transfer in contravention of Sub-section (10) of Section 22, then the said Revenue Officer would issue notice in the prescribed manner calling upon both the transferor and the transferee to show cause why the transfer should not be declared invalid. Under Sub-section (2) of Section 23, the said Revenue Officer would hold such inquiry as he deems fit and after hearing the persons interested he would declare the transfer to be invalid and would impose on the transferee a penalty of an amount not exceeding Rs. 200/- per acre of the land so transferred for each year or any part thereof during which the possession was continued in pursuance of the transfer which was declared to be invalid. Such a power has been conferred on the

Revenue officer to be exercised either suo motu or on application being made obviously to protect the exploited class of people for whose benefit the legislation in question is really intended. Sub-section (3) of the said Section which is really relevant for our purpose begins with the expression "On a declaration being made under Sub-section (2)". Under the said Sub-section the Revenue Officer either suo motu or on the application of any person interested could cause restoration of the property to the transferor or his heirs and for the purposes may take such steps, as may be necessary, for compliance with the said order or preventing any breach of peace. The plain meaning of the aforesaid Sub-section leaves no room for doubt that the power under Sub-section (3) could be exercised only after a declaration is made under Sub-section (2). Further, since that power could be exercised on the application of any person interested, it is abundantly clear that the said application is an independent application and not the application referred to in Sub-section (1) of Section 23. In other words, an application for declaring a transfer invalid could be made under Sub-section (1) of Section 23 and after the Revenue Officer passes the final order under Sub-section (2) declaring the transfer to be invalid, a fresh application could be made under Sub-section (3) for restoration of possession. The power conferred under Sub-section (3) of Section 23 is in the nature of a power for execution of a decree and, therefore, we are unable to accept Mr. Behura's contention that a fresh independent application under Sub-section (3) is not entertainable. It is true, as contended by Mr. Behura, that no appeal or revision is provided for against an order made under Sub-section (3). But that does not mean that on that score, Sub-section (3) should be interpreted to be a part of Sub-sections (1) and (2) and order under Sub-section (3) could be made only on the application under Sub-section (1) and not on a fresh application. In our considered opinion, the scheme of the Act is that an application could be filed under Sub-section (1) alleging contravention of Section 22 of the Act and the Revenue Officer could pass appropriate orders after holding due inquiry on being satisfied about the contravention declaring the transfer to be invalid. That order under Sub-section (2) could be appealed against u/s 58 and a further revision could also lie u/s 59, and after the declaration made under Sub-section (2) thus becomes final, an application could be made under Sub-section (3) for implementing the decision which has already become final for restoring possession. Any other interpretation made of Sub-section (3) would make the expression on the application of any person interested contained therein redundant and nugatory. It is a cardinal principle of interpretation of statutes that in the exposition of statutes, the intention of the legislature is to be gathered from the whole of the statute and every part of it taken and compared with other parts. All the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. When two Sub-sections of a Section of the statute are under consideration both the Sub-sections must be construed as a whole, each Sub-section throwing light on the rest, and the two Sub-sections must be read as parts of an integral whole and an attempt should be made in construing them in a manner so that both the

Sub-sections would be reconciled and would submit The legislature cannot be said to have made a provision in a statute for no purpose and a construction which renders a particular provision of a statute redundant should be, avoided. No Court should adopt a construction which tends to make any part of the statute meaningless or Ineffective. This being the principle of interpretation, it is difficult for us to accept the contention of Mr. Behura for the Petitioners to the effect that the power under Sub-section (3) could be exercised on the application filed under Sub-section (1) and not on an independent application. Such an interpretation not only makes the expression "on the application of any person interested" in Sub-section (3) nugatory but also runs contrary to the plain and "literary construction of the language used in the same. Rejecting the submission of Mr. Behura, therefore, we hold that an independent application could be filed invoking the power of the Revenue Officer under Sub-section (3) by any person interested and such an application could be filed only after a declaration is made under Sub-section (2) of Section 23 of the Act.

7. The next question that arises for our consideration is, when such an application could be filed. According to Mr. Behura appearing for the Petitioners the beginning phrase of Sub-section (3). "On a declaration being made" indicates that it must be made all the time of a declaration being made under Sub-section (2) and not thereafter or not after any length of time as has been made in the present case, whereas, according to Mr. Misra appearing for the opposite party Nos. 1 and 2, no limitation having been prescribed under Sub-section (3) an application could be made within the time prescribed in the residuary article, namely, three years from the date of the declaration. The key to interpretation of Sub-section (3) lies on a correct meaning of the expression "on a declaration being made". It is no doubt true that no period of limitation has been provided for in Sub-section (3) of Section 23, but the use of the expression "on" restricts the period for filing an application. The expression "on" used in Section 32 of the Divorce Act, 1857 was considered in the case of Robertson v. Robertson and Favagrossa (1883) 8 P.D. 94, Jassel, M.R. Observed:

Whatever meaning may be given to the word "on" in the Act of Parliament, it is very difficult to extend it to above a year. It is not necessary to express an opinion as to what time should be allowed, but it is not to be conceived that a period of more than a year can be included in the word "on". "On", if not confined to the time of making the decree, must mean shortly after.

A similar expression. "on" any decree or dissolution or nullity of marriage used in . Matrimonial causes Act, 1907 came up for consideration in the case of Scott v. Scott (1921) P.D: 107, Lord Sterndale, M.R. observed:"

I was inclined at one time to think that it meant at the same time as the decree was made, or, as it could not precede it at any rate immediately following upon it. Looking however at the decision of Sir James Hannen in Bradley v. Bradley and Sidney v. Sidney in the House of Lords which he follows, and also at Robertson v. Robertson, it seems to me that what Sir James Hannen calls a more

elastic meaning must be given to the word "on" and that it does not mean "on" in the very narrow sense that I first thought it ought to -be taken to mean, but that it must at any rate be limited to this extent namely, it must be at the same time as the decree or within a reasonable time afterwards and that what constitutes a "reasonable time" must no doubt depend on all the circumstances of the case.

The learned Judge further observed:

It is not necessary to express an opinion as to what time should be allowed, but it is not to be conceived that a period of more than a year can be included in the word "on". "On" if not confined to the time of making the decree, must mean shortly after.

The learned Judge later observed:

It does however point in the direction I have already indicated namely that the word "on" does not mean an unlimited time within the judge's discretion, but it does mean within a reasonable time having regard to all the circumstances of the case.

The same view was expressed in another case of *Fox v: Fox*, (1925) P.D. 157 by Pollock, M.R. In our considered opinion, the exposition of law with regard to the expression "on" in the aforesaid cases is the true and correct exposition and applying the same to Sub-section (3) of Section 22 of the Act, it can unhesitatingly be held that an application under Sub-section (3) of Section 23 could be made immediately after the declaration made under Sub-section (2), has reached its finality or after expiry of a reasonable period. What would be a reasonable period would depend upon the facts and circumstances of the case in question. So far as the present case is concerned the declaration made under Sub-section (2) reached its finality on 3-10-1974 when the appellate authority affirmed the said declaration. No application could be filed at that stage invoking the power under Sub-section (3), as admittedly the opposite party Nos. 1 and 2's predecessor-in-interest was in possession of the lands which was admitted by the .present Petitioners" predecessor-in-interest, before the appellate forum as would appear from Annexure-2 itself. It is only because of the order of the criminal Court in a proceeding u/s 145, Code of Criminal Procedure, the possession of the opposite party Nos. 1 and 2 got disturbed and, therefore, filing of an application invoking" the jurisdiction under Sub-section (3) of Section 32 in the year 1975 must be held to be in conformity with the said provision of Sub-section (3) and cannot be held to have been made after such a length of time so as to hold the same to be not entertainable. In the facts and circumstances of the present case, we have no doubt in our mind that the application under Sub-section (3) has been made within a reasonable time after the declaration under Sub-section (2) reached its finality and, therefore, there has been no error in the Revenue Officer entertaining and disposing of the same passing final order for restoration. Mr. Behura's contention on this score also fails.

8. In the result, the writ application fails and is accordingly dismissed, but in the circumstances there would be order as to costs.

J.M. Mahapatra. J.

9. I agree.

Application dismissed.