
(1991) 12 OHC CK 0008
In the Orissa High Court
Case No : OJC No. 2987 of 1988

Jibardhan Bisi and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-12-1991

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 60

Citation : (1992) 1 OLR 251

Hon'ble Judges : K.C. Jagadeb Roy, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.P. Das and B. Pr. Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Petitioners question legality of the order dated 15-4-1987 passed by the Additional District Magistrate, Sambalpur in OLR Case Nos. 109, 110 and 111 of 1974 directing review of the order dated 19-4-1978 passed by the Additional Tahasildar, Sohella in O.L.R. (Celling) Case No. 110 of 1974, and the order dated 23-5-1938 passed by the Additional Tahasildar and Revenue Officer, Sohella, pursuant to the order of review passed by the Additional District Magistrate.

2. The background facts are as follows :

A proceeding u/s 40-A of the Orissa Land Reforms Act, 1960 (in short "the-Act") was initiated against the petitioner No. 1 Jibardhan. In the said proceeding it was held that Jibardhan was in possession of 13.64 standard acres of land. The Additional Tahasildar, Sohella (opp. party No. 2) also held that the family of Jibardhan consisted of himself, his wife and their son Nibin Kishore, petitioner No. 2, Ten standard acres of land were allowed to be retained and the rest were declared to be surplus. An appeal was preferred by Nabin Kishore before the Additional District Magistrate, (OLR), Sambalpur (opp. party No. 3) against such

determination. The claim of Nabin Kishore was that he being major, married and separated from his father long since, was entitled to a separate ceiling unit. The appeal was remanded to the Additional Tahasildar (opp. party No. 2) with a direction to investigate further into the claim of separation. Pursuant to the said direction opp. party No. 2 made enquiries and came to a finding that Nabin Kishore was major, married and separated prior to 26-9-1970, and therefore, was entitled to a separate ceiling unit. Opposite party No. 2 also concluded that Jibardhan and Nabin Kishore were entitled to 14 and 10 standard acres respectively. Since the total extent of land measuring 13.64 standard acres were being possessed by both the petitioners. It was held that there was no Gelling surplus land and the proceeding against Jibardhan was dropped by order dated 19-4-1973, After about nine years, the Additional District Magistrate passed the following order on 15-4-1987.

"Reviewed the case. Reopen the case for fresh enquiry into the no. of families and classification of lands and dispose of according to law."

Pursuant to the said direction, the order dated 28-5-1988 was passed by the opp. party No. 2.

3. The main challenge in this writ application is to the purported exercise of power of review by the Additional District Magistrate (opp. party No. 3), Section 60 of the Act permits review of an order, on the ground that any clerical mistake or error has crept in course of any-proceeding under the Act. Any order passed under the Act can be reviewed by the officer who made the order or his successor in office on the ground that such mistake or error crept in after notice to all persons interested. The question that falls for consideration is whether fresh order passed related to any clerical mistake or error. It is well settled in law that a right of review does not exist unless conferred expressly or by necessary implication by law. The scope of review is not to be equated with appellate powers which can be exercised by a superior Court. The scope for review is hedged by limitation prescribed by section itself and unless ground on which review is sought to be made, comes within any of the two specifications made in Section 60 (1), review is not permissible. Review is judicial re-examination of cases in certain specified and prescribed circumstances. Power to review is not an inherent power, (See Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji,). It does not engulf re-determination of issues involved. Its operation is restricted to correction of clerical error or mistake. Similar view was expressed by this Court in Maguni Guru v. Krushna Gochhi and Anr. : 1989 (II)OLR 259 (1989) CLT 33 and is OJC No. 2377 of 1987(Palacherela Kantamma v. Addl. District Magistrate, Sambalpur and Ors.) decided on 19-9-1991 to which one of us (Pasayat. J.) was a party.

4. Judged in that background, the order dated 15-4-1987 passed by the Additional District Magistrate (opp. party No. 3) cannot be sustained. Consequentially the order dated 28-5-1988 passed by opp. party No. 2 which had basis on the order dated 15-4-1987 passed by the Addl. District Magistrate

also falls. Therefore, the said orders contained in Annexure-3 are quashed.

The writ application is allowed. No costs.

K.C. Jagadeb Roy, J.

5. I agree.