(1985) 06 OHC CK 0014

In the Orissa High Court

Case No : O.J.C. No. 635 of 1978

Khiradhar Patel and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 27-06-1985

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115
Orissa Land Reforms Act, 1960 — Section 37, 59(1), 59(2), 59(3)

Citation : AIR 1986 Ori 215

Hon'ble Judges : D. Pathak, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This writ application under Article 226 of the Constitution of India arises out of a proceeding under Chap. IV of the Orissa Land Reforms Act, 1960 (hereinafter referred to as the ''Act'').

2. The Revenue Officer, Sundargarh initiated a suo motu proceeding u/s 42 of the Act for determining the ceiling surplus lands in the hand of the family of Khiradhar Patel, petitioner No. 1. Khiradhar objected to the draft statement on various grounds one of them being that there has been a partition among Khiradhar and his three sons, petitioners 2 to 4 since the year 1963. The Revenue Officer disbelieved the partition. He came to the conclusion.

"....I hold that the younger sons are not separate from the date of execution of the partition deed...."

3. Taking the family to be consisting of five members, the Revenue Officer allowed 10.68 standard acres to be retained and declared 5.52 standard acres as surplus land. This order was confirmed in an appeal u/s 44(2) of the Act and in revision u/s 59(1) of the Act. The petitioners approached the Land Reforms

Commissioner to move the Board of Revenue to revise the orders in exercise of the power u/s 59(2) of the Act. Being satisfied that the family of Khiradhar consists of six persons, i.e., Khiradhar (Petitioner No. 1), his wife (Baidehi), his three sons, namely, Purna Chandra (petitioner. No. 2), Upendra (petitioner No. 3) and Govind (Petitioner No. 4) and his married daughter Sumitra, the Land Reforms Commissioner moved the Board of Revenue to revise the order u/s 59(2) of the Act.

4. At the time of hearing, petitioners submitted before the Member, Board of Revenue to consider the matter on merits on all points and on the only illegality pointed out by the Land Reforms Commissioner. The Board of Revenue did not accept the contention and held :

"....While the revisional power is not restricted and is of wide amplitude there is a clear distinction between revision by the prescribed authority under Sub-section (1) of Section 59 and revision by the Board of Revenue under Sub-section (2). The jurisdiction of the Board of Revenue cannot be invoked by parties to proceedings however aggrieved they may be with the orders of the other authorities. The object of specifying that the Board of Revenue can be moved only by the Collector of a District or by the Land Reforms Commissioner is to discourage the Board of Revenue being turned into a second forum in revision. It is not the intention that parties to proceedings who have the opportunities of appeal and of revision by the prescribed authority will use the device of filing a petition before the Collector or the Land Reforms Commissioner to secure a further revision by the Board of Revenue....."

The Board of Revenue found that the eldest son Purna Chandra had separated before the 26th day of September, 1970 and accordingly he would not be taken as a member of family of Khiradhar. The Member, Board of Revenue found that the family of Khiradhar consisted of five members only excluding Purnachandra and accordingly upheld the order of the Revenue Officer permitting the family to retain ten standard acres.

5. While Mr. P. K. Misra, the learned counsel for the petitioner assailed the order of the Board of Revenue, Mr. R. K. Patra, the learned Additional Government Advocate justified the order. On the rival contentions, the following questions arise for consideration.

(a) What is the scope and ambit of the revisional power of the Board of Revenue u/s 59(2) of the Act?

(b) What is the effect of the finding of the Board of Revenue that being separated before the 26th day of September, 1970, Purna Chandra is not a member of the family of Khiradhar.

5. Question No. (a)

Section 59 reads as follows : --

"59(1) The prescribed authority may, on application by any party aggrieved by any order passed in an appeal under any provision of this Act filed within the prescribed period, revise such order.

(2) The Board of Revenue may, at any time on being moved in that behalf by the Collector of a district or by the Land Reforms Commissioner, revise any order passed by any authority under this Act.

(3) For the purposes of revising any order, the prescribed authority and the Board of Revenue shall follow such procedure as may be prescribed and shall have power to call for and examine the records of the proceedings wherein such order was passed and to pass such order as they deem fit.

Provided that no order under this section shall be passed without giving the parties concerned a reasonable opportunity of being heard."

6. The language of the section is clear that there is no ambiguity. The scope of revision of an appellate order under Sub-section (1) and any order under Sub-section (2) is the same.

While considering the scope and ambit of Sub-section (1) it has been held in ILR (1977) 2 Cut 334 : AIR 1978 (NOC) 86 (Naresh Chandra Tripathy v. Revenue Officer-cum-Additional Tahasildar, Angul):

".....The jurisdiction of the revisional authority is not fettered by any limitation. In fact, as has been universally accepted, a revision as provided under this Statute is wide in its amplitude and the revisional authority has full powers to pass appropriate orders for ends of justice.....".

In a recent Division Bench decision of this Court reported in Kalicharan Paikaray and Another Vs. Benga Bewa and Others, , it has been held :

"Under Section 59(2), the Collectors of the districts and the Land Reforms Commissioner have been vested with jurisdiction when they are satisfied that there has been miscarriage of justice or an order/decision is illegal, to make a reference to the Board of Revenue. The prescribed authority may be satisfied suo motu having himself coming across proceeding/ decision or by being apprised of it by an aggrieved party or other person....."

The main object of the power of revision is to correct the errors in the ends of justice. It is not fettered by any limitation as u/s 115 of the Civil P. C. which is confined only to questions of jurisdiction. While exercising the power either under Sub-section (1) or Sub-section. (2) of Section 59 of the Act, the revising authority is to examine the record and pass such order as they deem fit which is the clear language of Sub-section (3). The phrase "as they deem fit" under Sub-section (3) of Section 59 makes the position clear that there is no restraint on the Board of Revenue to confine the examination only to the point on which it has been moved either by the Collector of the district or by the Land Reforms Commissioner. The decision of the Board of Revenue thus suffers from an error of law apparent on the face of the record.

7. Question No. (b)

On the finding that Purna Chandra being separate is excluded from the family of Khiradhar, the scope of determination of ceiling surplus land in the hand of the ''family'' in relation to Khiradhar has changed. In a decision reported in Arda Murari and Another Vs. State of Orissa and Others, , this Court observed :

".....We are sure that the Revenue Officer while examining the matter would certainly take into consideration the words "separated by partition or otherwise" appearing in the definition of ''family'' in Section 47(b) of the Act and would not be wholly guided by Section 19(1) thereof."

Another Division Bench of this Court in a decision reported in Sankarsan Misra and Others Vs. State of Orissa and Others, held that the Revenue Authorities u/s 37(b) of the Act are required to determine the effect of separation in status. Therefore, the Board of Revenue ought to have set aside the order of the Revenue Officer, Appellate Authority and Revisional Authorities. Thus, on this account the order of the Board of Revenue is vulnerable.

8. In view of the above, the order of the Board of Revenue in Annexure 3 is quashed and the Revenue Officer is directed to proceed with the ceiling proceeding No. 164 of 1975 on the basis that the family of Khiradhar as defined u/s 37(b) of the Act consists of five members and Purna Chandra is not a member of the family of Khiradhar. The petitioners are directed to appear before the Revenue Officer on 29-7-1985 for fixation of date of further proceeding in the matter and no notice need be sent to them by the Revenue Officer who shall dispose of the proceeding u/s 42 of the Act from the stage of the publication of the draft statement u/s 43(1) of the Act in accordance with law.

9. In the result, the writ application is allowed, but without any order as to costs.

D. Pathak, C.J.

10. I agree.

