(2013) 06 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) No. 1879 of 2013

Khirod Chandra Behera and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Orissa General Clauses Act, 1937 — Section 2(28), 26
Orissa Survey And Settlement Act, 1958 — Section 15, 15(b), 25, 33, 47

Citation : (2013) 06 OHC CK 0013

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

Bench : Single Bench

Advocate : S.D. Das, H.S. Satpathy, A.N. Sahu, M. Panda, M.M. Swain and S. Biswal, for the Appellant; D. Routray, S. Jena and S. Rout for O.Ps. 5 to 13, for the Respondent

Final Decision : Allowed

Judgement

B.K. Patel, J.—In this writ petition, petitioners have made prayer to quash the order under Annexure-9 dated 17.12.2008 passed by the Commissioner, Consolidation & Settlement Orissa, Bhubaneswar in Settlement Revision Case No. 496 of 2005, a proceeding u/s 15(b) of the Orissa Survey and Settlement Act, 1958 (for short, ''the Act'') instituted by opposite parties 5 to 13. By the said order Tahasildar, Bhubaneswar was directed to "examine the relevant documents, inviting parties, make Sabik Hal correlation, make field enquiry and to decide the matter as per law." Facts relevant for adjudication of the dispute raised in this writ petition are that the case lands are situated within Bhubaneswar Tahsil under Khurda district. When Settlement Revision Case No. 496 of 2005 was pending notification under Annexure-10 dated 20.2.2008 was issued by the Government of Orissa, Revenue and Disaster Management Department. The notification reads as follows:

Government of Orissa Revenue and Disaster Management Department

NOTIFICATION Dated Bhubaneswar the 20th Feb, 2008

No. S-72/06(Pt)9056/R&DM. In exercise of powers conferred by Section 33 and 47 of the Orissa Survey & Settlement Act, 1958 (Orissa Act 3 of 1959) and in partial modification of this Department Notification No. 64141-S-71/2002(Pt.) R., dated 24th December, 2002, the State Government do hereby notify that the following Commissioners or Revisional Authorities shall cease to exercise the powers u/s 6-D, 15 and 25 of the said Act in respect of the territory noted against each.

2. All the revisional cases, filed under the aforesaid sections of the said Act pertaining of the territory of the aforesaid Tehsils, whether admitted or not, shall stand transferred to the court of Member, Board of Revenue, Orissa with effect from the date of this notification from the respective courts of the Revisional Authorities mentioned above.

3. All the revisional cases, under the aforesaid sections of the Orissa Survey & Settlement Act, 1958 pertaining to the territory of the aforesaid Tehsils, shall, with effect from the date of notification, be filed in the court of Member, Board of Revenue, Orissa, Cuttack.

By the order of Governor Commissioner & Secretary Revenue & Disaster Management.

Memo No. 9057/R&DM Dated 20.02.08

Copy forwarded to Member, Board of Revenue, Board of Revenue Building, At/P.O. Chandinichowk, Cuttack/Land Reforms Commissioner, Board of Revenue Building, At/P.O. Chandinichowk, Cuttack/Commissioner, Land Records & Settlement, Cuttack, Board of Revenue Building, At/P.O. Chandinichowk, Cuttack/Commissioner, Consolidation, Cuttack, Board of Revenue Building, At/P.O. Chandinichowk, Cuttack/Commissioner, Consolidation, Plot No. A/25, Nilakantha Nagar, Bhubaneswar/Commissioner, Consolidation & Settlement, Block-8, Unit-V(in front of Nirman Soudha) Bhubaneswar/R.D.C., Central Division, Cuttack/R.D.C., Northern Division, Sambalpur-768001/R.D.C., Southern Division, Berhampur-760004/Secretary, Board of Revenue, Board of Revenue Building, At/P.O. Chandinichowk, Cuttack for information and necessary action.

Sd/20.2.08 Joint Secretary to Government.

Memo No. 9058/R &DM Date: 20.02.08

Copy forwarded to the Director, Printing, Stationery and Publication, Orissa, Cuttack with a request to publish this notification in an extraordinary issue of Orissa Gazette and supply 40(forty) copies of the same to Secretary, Board of Revenue, Orissa, Cuttack and 20(twenty) copies to this Department.

2. S.R.O. Number may be allotted to this as this is statutory one.

Sd/20.2.08 Joint Secretary to Government.

2. As has already been pointed out Settlement Revision Case No. 496 of 2005

was disposed of by the Commissioner, Consolidation & Settlement, Bhubaneswar by the impugned order passed on 17.12.2008.

3. It is also not disputed that another notification as published in the Extraordinary issue of Orissa Gazette on 30.12.2008 reads as follows:

The Orissa Gazette Extraordinary Published by Authority

No. 2380 Cuttack, Tuesday, December 30, 2008/Pausa 9, 1930

REVENUE & DISASTER MANAGEMENT DEPARTMENT NOTIFICATION The 19th December, 2008

S.R.O. No. 640/2008 - With the issuance of the General Administration department''s Notification No. 30670-AIS-1, dated the 18th December, 2008 by which the present incumbent holding the post of Commissioner, Consolidation and Settlement, Bhubaneswar has been appointed as Officer-on-Special Duty, Board of Revenue, Orissa, Cuttack, Government in partial modification of this Department Notification No. 61141-S-71/2002(Part), dated the 24th December, 2002 and in partial modification of this Department Notification No. 9056-R & DM, dated 20th February, 2008 and in exercise of powers conferred by Section 33 and 47 of the Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959) do hereby notify that the revision cases pertaining to all Tehsils of Khurda and Nayagarh districts under sections 6-D, 15 and 25 of the said Act, whether admitted or not, lying in the Court of Commissioner, Consolidation and Settlement, Bhubaneswar shall stand transferred to the Court of Member, Board of Revenue, Orissa with effect from the date of this Notification.

2. All the revision cases under the aforesaid sections of the Orissa Survey and Settlement Act, 1958 pertaining to the territory of all the Tehsils of the aforesaid two districts, shall with effect from the date of this Notification be filed in the Court of Member, Board of Revenue, Orissa.

[No. 52741-S-72-2006(Pt.) R&DM] By order of the Government G.V.V. Sarma Commissioner-cum-Secretary to Government.

4. It is contended by the writ petitioners that in view of the notification dated 20.2.2008, Commissioner, Consolidation & Settlement, Bhubaneswar ceased to have jurisdiction to deal with and decide Settlement Revision Case No. 496 of 2005 with effect from 20.2.2008. It was argued by the learned counsel for the petitioners that upon issuance of said notifications revision petition was required to be transferred to the court of Member, Board of Revenue, Orissa. The impugned order passed in violation of the notification is without jurisdiction. The crux of the contention raised in this writ petition and rejoinder affidavit filed by the petitioners is that in view of the notification dated 20.2.2008 withdrawing from the Commissioner, Consolidation and Settlement, Bhubaneswar, the authority to exercise powers under Sections 6-D, 15 and 25 of the Act, the impugned order passed on 17.12.2008 is a nullity. It was pointed out by the learned counsel for the petitioners that in the notification dated 20.2.2008, it was

specifically mentioned that all the revisional cases pertaining to Tahasils mentioned therein shall stand transferred to the court of Member, Board of Revenue, Orissa with effect from the date of the notification. It was pointed out that in spite of above said notification, the Commissioner, Consolidation and Settlement, Bhubaneswar heard Settlement Revision Case No. 496 of 2005 on 17.12.2008 and reserved the revision case for order to be pronounced on 18.12.2008. However, the impugned order was passed on 17.12.2008 directing Tahasildar, Bhubaneswar to decide the matter. The petitioners could know about passing of the impugned order only after receipt of notices from the Tahasildar, Bhubaneswar. It was argued that the impugned order being without jurisdiction and nullity is liable to be quashed and the matter is required to be remitted for adjudication by the court of Member, Board of Revenue, Orissa.

5. Though a preliminary counter affidavit was filed by the private opposite party nos. 5 to 13, issues involved in the writ petition were heard at length in course of which elaborate submissions were made on merit of the writ petition by the learned counsel for the petitioners, learned counsel for the private opposite parties and learned counsel for the State.

6. In the counter affidavit filed by the private opposite parties it is not disputed that by notification dated 24.12.2002 at Annexure-A/5 issued by the Government of Orissa, Revenue Department jurisdiction to exercise the powers under Sections 6-D, 15 and 25 of the Act was delegated to different authorities. So far as revisions pertaining to Khurda District are concerned, the power to deal with revisions was delegated to the Commissioner, Consolidation and Settlement, Bhubaneswar. In the preliminary counter affidavit, private opposite party nos. 5 to 13 also do not dispute regarding issuance of notification under Annexure-10 dated 20.2.2008 directing that the Commissioner of Consolidation and Settlement, Bhubaneswar shall cease to exercise revisional power in respect of Bhubaneswar Tahasil. However, it is contended by the private opposite parties that said notification dated 24.12.2002 was not given effect to inasmuch as the notification was never published in the official gazette. Instead, notification dated 19.12.2008 was published in the extraordinary issued of Orissa Gazette dated 30.12.2008 directing that the revision cases pertaining to all Tahasils of Khurda and Nayagarh districts shall stand transferred to the court of Member, Board of Revenue, Orissa with effect from the date of said notification. It is averred in the preliminary counter affidavit that notification dated 20.2.2008 was not notified in the official gazette and, hence, not given effect to. In fact the State Government notified in the official gazette dated 30.12.2008 that the court of Member, Board of Revenue, Orissa shall have jurisdiction to deal with revisional cases pertaining to all Tahasils of Khurda and Nayagarh Districts and revision cases pending before Commissioner, Consolidation and Settlement, Bhubaneswar shall stand transferred to the court of Member, Board of Revenue, Orissa with effect from 30.12.2008. According to the private opposite party nos. 5 to 13, a notification does not come into effect unless notification is published in the official gazette. It is further averred in the preliminary counter affidavit that pursuant to the

impugned order passed way back on 17.12.2008, the Tahasildar, Bhubaneswar has already issued notices. The petitioners having not assailed the impugned order for a long period of five years, the writ petition suffers from laches and is liable to be dismissed.

7. It was argued by the learned counsel for opposite party nos. 5 to 13 that apart from the writ petition being barred by limitation, the petitioners have no scope to derive any benefit out of the notification dated 20.2.2008 which was never published in the official gazette. Placing reliance on decision of this Court in Prannath Samantarai vs. Bhagirathi Sahoo: AIR 1965 Orissa 196, it was strenuously contended that a notification in order to come into force has to be published in the official gazette inasmuch as u/s 2(28) of Orissa General Clauses Act "notification" means a notification in the gazette.

8. Though delay in filing the writ petition was not raised as the main ground for assailing maintainability of the writ petition, in course of hearing it is observed that in fact Settlement Revision Case No. 496 of 2005 was heard on 17.12.2008 and reserved for order directing to be put up on 18.12.2008. However, impugned order appears to have been passed on 17.12.2008. In such circumstances, the contention raised on behalf of the petitioners that the petitioners became aware of the impugned order only after receipt of notices from the Tahasildar cannot be brushed aside. Moreover, in this writ petition the impugned order has been assailed to be a nullity. Therefore, there is nothing to infer laches on the part of the petitioners to assail the impugned order.

9. So far as the main contention regarding effect of notification dated 20.2.2008 by which power of the Commissioner, Consolidation and Settlement, Bhubaneswar to deal with revisional case in respect of Bhubaneswar Tahasil was withdrawn and the revisional cases were directed to be transferred to the court of Member, Board of Revenue, Orissa from the date of the said notification is concerned, there is absolutely no dispute that the said notification was issued by the order of the Governor. Even the notification dated 19.12.2008 takes note of notification dated 20.2.2008 inasmuch as notification dated 19.12.2008 has been stated to have been issued in partial modification of earlier notification dated 24.12.2002 as well as notification dated 20.2.2008. Section 33 of the Act provides that the Government may, by notification, delegate the powers of the Board of Revenue to any Officer above the rank of a Settlement Officer. It is not at all disputed that the State Government has power to delegate the revisional powers of the court of Member, Board of Revenue, Orissa to the Commissioner of Consolidation and Settlement as well as the power to withdraw such delegated power. Section 33 of the Act does not postulate publication of notification in the official gazette. It has been specifically stated in the notification dated 20.2.2008 that the said notification was issued in exercise of powers under Sections 33 and 47 of the Act. Section 47 of the Act provides for power of the Government to remove difficulties and lays down that if any difficulty arises in giving effect to the provisions of the Act, the Government may, as occasion may require, do

anything which appears to them necessary for purpose of removing the difficulty. Section 26 of the General Clauses Act provides for publication of orders and notifications in the gazette. It reads:

Where in any Orissa Act or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Gazette.

There being nothing in the Act that notifications under Sections 33 and 47 of the Act shall be published in the Gazette, Notification dated 20.2.2008 has to be deemed to have come into force on 20.2.2008. Admittedly, notification dated 20.2.2008 does not provide that it shall come into force from the date of publication in the gazette. On the contrary, it has been specifically provided that in view of the notification, revisional case pending before the Commissioner, Consolidation and Settlement, Bhubaneswar shall stand transferred to the court of Member, Board of Revenue, Orissa from the date of such notification.

10. An attempt was made by the learned counsel for the private opposite party nos. 5 to 13 to defend the impugned order passed by the Commissioner, Consolidation and Settlement, Bhubaneswar by placing reliance of order dated 24.9.2008 passed in W.P.(C) No. 13749 of 2008 as modified by order dated 1.10.2008 passed in Misc. Case No. 12611 of 2008 arising out of the said writ petition by this Court. It appears from the averments made in the writ petition that private opposite party nos. 5 to 13 filed W.P.(C) No. 13749 of 2008 with a prayer to issue direction to the Commissioner, Consolidation and Settlement, Bhubaneswar to dispose of Revision Petition Case No. 496 of 2005 within a stipulated period. Considering the limited nature of grievance raised in the writ petition that no steps have been taken to dispose of revision case, W.P.(C) No. 13749 of 2008 and Misc. Case No. 12611 of 2008 arising there from were disposed of directing the Commissioner, Consolidation and Settlement, Bhubaneswar to dispose of Revision Petition Case No. 496 of 2005 by the end of December, 2008 in accordance with law. It was contended that this Court having specifically directed the Commissioner, Consolidation and Settlement, Bhubaneswar to dispose of Revision Petition Case No. 496 of 2005 within the stipulated period, the Commissioner, Consolidation and Settlement, Bhubaneswar committed no illegality in disposing of the revision case by passing the impugned order. It is not disputed that W.P.(C) No. 13749 of 2008 was disposed of without notice to the petitioners at the stage of admission considering the limited nature of grievance of delay in disposal of the revision case. The thrust of the direction made in W.P.(C) No. 13749 of 2008 is for disposal of the revision case by the end of December, 2008 in accordance with law. It does not appear that notification dated 20.2.2008 was brought to the notice of this Court while dealing with W.P.(C) No. 13749 of 2008. By notification dated 20.2.2008 it had already been notified that the Commissioner, Consolidation and Settlement, Bhubaneswar shall cease to exercise revisional powers and revisional cases shall stand transferred

to the court of Member, Board of Revenue, Orissa with effect from the date of the notification under Annexure-10. It was incumbent upon the Commissioner, Consolidation and Settlement, Bhubaneswar to transfer Revision Petition Case No. 496 of 2005 to the court of Member, Board of Revenue, Orissa to ensure disposal in accordance with law within the period stipulated by this Court in W.P.(C) No. 13749 of 2008. There is no scope for the private opposite party nos. 5 to 13 to urge that by orders passed in W.P.(C) No. 13749 of 2008, jurisdiction was conferred on the Commissioner, Consolidation and Settlement, Bhubaneswar to deal with and dispose of the revision case. In such view of the matter, the impugned order is found to have been passed by the Commissioner, Consolidation and Settlement Orissa, Bhubaneswar in violation of notification dated 20.2.2008 duly issued by the State Government. Therefore, the impugned order dated 17.12.2008 is a nullity and liable to be quashed. Settlement Revision Case No. 496 of 2005 is required to be readjudicate and decided by the authority competent to exercise revisional jurisdiction.

Accordingly, the writ petition is allowed. The impugned order dated 17.12.2008 passed by the Commissioner, Consolidation and Settlement, Bhubaneswar is quashed. The matter is remitted back for adjudication in accordance with law in the light of observations made above.