

**(2003) 07 OHC CK 0028**

**In the Orissa High Court**

**Case No : Writ Petition (C) No. 1591 of 2002**

Krushna Chandra Mahakul

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision : 21-07-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226 , 227

Orissa Survey and Settlement Act, 1958 — Section 12B, 15, 5

**Citation : (2003) 96 CLT 676 : (2003) 2 OLR 306**

**Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J**

**Bench : Division Bench**

**Advocate : S.K. Nayak-3, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent**

## **Judgement**

A. K. Patnaik, J.—The case of the petitioner is that he is a landless person and he applied to the Tahasildar, Boudh for grant of lease of land for homestead purpose in Boudh town. The said application was registered as U.L.S. Case No. 3/69 and by order dated 24.12.1974 lease of the land measuring Ac. 0.06 decimals in Plot No. 55, Sabik Khata No. 1229 corresponding to Hal Plot No. 1495 and Hal Khata No. 1041 in Mouza Boudh town (Machhakhanda) District-Phulbani was granted in favour of the petitioner. The petitioner paid rent for the land and patta was issued in his favour. Settlement operation in the area was started in the year 1996 and Record of rights were published on 13.9.1996 and in the said record of rights, the aforesaid land was shown as Government land (Anabadi). In March 2002, the petitioner came to know about the fact that in the record of rights published under the Orissa Survey and Settlement Act, 1958, the aforesaid land has been shown as Government land (Anabadi). He filed a Revision Petition No. 98/2001 on 25.5.2001, before the Commissioner, Land Reforms and Land Records, Orissa, Cuttack u/s 15 of the Orissa Survey and Settlement Act praying for recording the aforesaid land in his favour with the Kissam as "Gharabari". Along with the said application he filed an application for condoning the delay of four years, eight months and twelve days in filing the revision petition. By order

dated 21.3.2002, the Commissioner, Land Reforms and Land Records held that the reason for delay as mentioned by the learned counsel for the petitioner was not at all convincing and the petition was barred by limitation and thereby did not admit the Revision petition. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution with a prayer to quash the said order dated 21.3.2002 of the Commissioner, Land Reforms and Land Records and for a direction to the said Commissioner to record the land in his favour.

2. All that has been stated in the impugned order dated 21.3.2002 of the Commissioner, Land Reforms and Land Records is that the reason for delay, as mentioned by the learned counsel for the petitioner, is not at all convincing. By order dated 15.7.2003 we called upon the petitioner to file a copy of the application for condoning the delay which was filed before the commissioner, Land Reforms and Land Records and the petitioner has produced a copy of the said application dated 10.1.2002. Paragraph-5 of the said application states that the petitioner was a Government servant and most of the time he was remaining outside his village due to his official work and he has no knowledge regarding the settlement operation. Paragraph-6 of the said application states that the delay to file the revision application is not intentional, deliberate or wilful and, therefore, delay of four years, eight months and twelve days to file the revision may be condoned and the case may be heard on merit.

3. Mr. S. K. Nayak, learned counsel for the petitioner submits that u/s 15(b) of the Orissa Survey and Settlement Act, 1958 the Board of Revenue has the power to revise the record of rights or any portion thereof not only within the period of one year from the date of final publication of the record of rights u/s 12-B but even thereafter and the only limitation provided in the said Section 15 is that the Commissioner cannot revise the record of rights or any portion thereof so as to affect any order passed by the Civil Court u/s 42 of the said Act. Hence the Commissioner should have entertained the Revision petition even after the period of one year from the date of publication of the record of rights, particularly when valuable right of the petitioner which had accrued to him was affected on account of non-recording of his right in the record of rights published under the Act.

4. Mr. G. K. Mohanty, learned Additional Government Advocate, on the other hand, supporting the order of the Commissioner, states that the "petitioner has not explained sufficiently the delay of four years, eight months and twelve days in filing the revision petition.

5. Section 15 of the Orissa Survey and Settlement Act, 1958 is quoted hereinbelow :

"15. Revision by Board of Revenue : The Board of Revenue may in any case direct :

(a) of its own motion the revision of any record of rights, at any time after the date of final publication u/s 12-B but not so to effect any order passed by a Civil Court u/s 42;

(b) on application made within one year from the date of final publication u/s 12-B the revision of record of rights or any portion thereof whether within the said period of one year or thereafter but not so as to effect any order passed by a Civil Court u/s 42."

Section 15(b) quoted above provides that on application made within one year from the date of final publication u/s 12-B the revision of record of rights or any portion thereof whether within the said period of one year or thereafter, can be entertained by the Board of Revenue and the record of rights may be revised. The aforesaid language indicates that even after expiry of the period of one year of the date of publication of record of rights u/s 12-B, the Commissioner can revise the record of rights. There is no provision in the aforesaid Section 15(b) to the effect that when an application is filed beyond the period of one year from the date of final publication u/s 12-B, such application would be entertained only if the petitioner furnishes sufficient cause for non-filing the application within the period of one year from the date of publication of record of rights.

6. Section 15(b) of the Orissa Survey and Settlement Act, 1958 is different from Section 5 of the Limitation Act, 1963, which is quoted hereinbelow :

"5. Extension of prescribed period in certain cases : Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

Whereas u/s 5 of the Limitation Act, 1963, the applicant has to show sufficient cause for not preferring the appeal or making the application as the case may be within the period prescribed, u/s 15(b) of the Orissa Survey and Settlement Act, 1958 there is no such requirement. Hence, even if the petitioner has not been able to explain sufficiently the entire period of delay of four years, eight months and twelve days in filing the revision, his revision should not be thrown out only on the ground of delay in filing the revision beyond the period of one year. In each case, the authority hearing the revision will have to consider as to whether ends of justice require entertaining the application for revision beyond the period of one year or as to whether any valuable right has accrued to some other party on account of delay in filing the application for revision on account of which the revision petition should not be entertained beyond the period of one year.

7. In the present case, the petitioner's case is that the land has been leased out to the petitioner for ninety years and the petitioner is residing over the said land after constructing his house. There is no finding by the Commissioner in the impugned order that on account of the delay in filing the revision petition, some one else has acquired a valuable right to the land. To throw out such a petition on the ground that it has been filed beyond one year of the publication of the record of rights would obviously cause immense hardship to the petitioner.

8. For the aforesaid reasons, we quash the impugned order dated 21.3.2002 and

direct the Commissioner, Land Reforms and Land Records, Orissa, Cuttack to admit the revision application No. 98 of 2001 and decide the same on merit. The writ petition is disposed of accordingly.

M. Papanna, J.

9. I agree.