
(2001) 11 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 4481 of 1993

Labangalata Panda

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(3), 16, 4, 6, 7

Citation : AIR 2002 Ori 147 : (2002) 93 CLT 119 : (2001) 2 OLR 666

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : P.V. Ramdas and P.V.B. Rao, for the Appellant; A.K. Mishra, Standing Counsel and N.C. Pati, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The order passed by the Revenue Divisional Commissioner (Southern Division), Berhampur, in O.P.L.E. Revision No. 2 of 1992 directing eviction of the petitioner from the encroached land, after realising penalty and assessment, is impugned in this writ application.

2. The subject matter of the dispute has a chequered career. The petitioner asserts that she is in possession of Ac. 0.74 cents of land appertaining to Sabik plot No. 800/2 of mouza Ankuli near Berhampur. The said plot corresponds to Hal plot No. 91 having an area of AC. 0.597 decimals and Hal plot No. 93 having an area of Ac. 0.202 decimals in mouza Kolapur in Berhampur town (hereinafter referred as the "case lands"). The opp. party No. 5 also claims to be in possession of the case lands. The petitioner asserts that in view of her continuous, uninterrupted and exclusive possession since 1929, she has acquired valid right, title and interest over the land by way of adverse possession. At the other hand, opposite party No. 5, an adjacent land owner, claimed to have encroached upon a portion of the case land. The inter se claim between the petitioner and opposite party No. 5 culminated in Title Suit No. 69 of 1977 in the

court of the Munsif, Berhampur. The said suit was decreed in favour of the petitioner (plaintiff) and it was declared that the petitioner is in exclusive possession of the case land, since 1929 and has acquired title by adverse possession. The judgment and decree passed by the Munsif was challenged by opposite party No. 5 in Title Appeal No. 47 of 1979. The learned District Judge, Ganjam-Boudh, Berhampur confirmed the judgment and decree passed in the suit. Thereafter the matter came before this Court in second Appeal No. 192 of 1983. This Court also confirmed the findings arrived at by the learned courts below and confirmed the findings that the plaintiff-petitioner is in exclusive possession of the case land since 1929 and dismissed the Second appeal. Thus, the assertions made by the petitioner that she is in possession of the case land since 1929 was confirmed by competent civil court and became final and binding,

3. During the pendency of the litigation before the civil court, a proceeding under the provisions of the Orissa Prevention of Land Encroachment Act, 1954 (hereinafter referred to as "the O.P.L.E. Act") was initiated against the petitioner treating her to be an encroacher. The said proceeding was disposed of by order dated September 27, 1964 passed by the Tahasildar, Berhampur, who observed as follows:

"Perused the report of the Revenue Supervisor dated 25.9.64. On in section it is found that the encroachment is existing since 1929 and not objectionable. It is purely a Sivai Jama case and an assignment file in this office is pending in favour of the encroacher. From the records, it is seen that no penalty has been assessed at any time and all along. T.A. was being charged. All the formalities for assignment were completed and only submission proposals to the higher authorities are pending. In view of the facts on record and on the spot. I do not find this is an objectionable case. The encroachment is treated as unobjectionable and may be settled with the encroacher on payment of premium as per the approved principles for the entire area of Ac. 0.74 in S. No. 800/2. Send the records to the Settlement department for realisation of Salami and settlement of the lands. The file bearing No. B-II-26/63 of this office regarding assignment is hereby closed,"

(Quoted from writ petition)

It is pertinent of mention here that the order passed by the Tahasildar dated 27.9.1964 was not challenged nor varied or set aside by any of the authorities under the O.P.L.E. Act and has become final and binding.

However, in the year 1975, a second proceeding under the same O.P.L.E. Act was initiated for eviction of the petitioner and the same was registered as I.E. Case No. 60 of 1975 by the Tahasildar, Berhampur. The Tahasildar, after conducting local enquiry, by his order dated April 14, 1977 dropped the proceeding on the ground that the petitioner has acquired right, title and interest over the case land on account of her uninterrupted and exclusive possession from 1929. For the sake of brevity, the relevant portion of the finding of the Tahasildar in the said

case is quoted herein below:

"Visited spot today and found that the entire S. No. 800/2 with area of Ac. 0.74 in revenue village Ankuli has been converted to paddy field. Originally the classification of the S. No. 800/2 was Road (Danda) Paramboke. On inspection I found [hat the road Paramboke has lost its own character. The land is far away from the town and at a reasonable distance from E. Railway line. It is low land and fit for cultivation. The old classification of road does not justify its own character as it has no link with any road or free passage of public.

One Smt. Labangalata Panda, W/o. Sri Simanchal Panda has encroached the land and cultivating regularly . The area is closed with fencing. I enquired and convinced that it is very old encroachment,"

(quoted from writ petition)

4. Opposite party No. 5 who is a stranger to the proceeding and had absolutely no locus standi filed an appeal before the S.D.O., Berhampur, challenging the order passed by the Tahasildar in L.E. Case No. 60 of 1975 which was registered as L.E. Appeal No. 103 of 1977. The appellate authority under the O.P.L.E. Act, by his order dated May 11, 1979 dismissed the appeal on the ground that opp. party No. 5 has no locus standi to contest the case. Against the said order, opposite party No. 5 preferred L.E. Revision No. 18 of 1979. The Revisional Authority without appreciating the facts and circumstances of the case disposed of the revision by his order dated May 28, 1982 erroneously setting aside the order passed in L.E. Appeal No. 103 of 1977 and held that opp. party No. 5 is competent to challenge the order of the Tahasildar. The Revisional authority remitted the case back to the appellate forum. The S.D.O. (Appellate authority) after remand, by his order dated July 25, 1987, set aside the order of the Tahasildar, Berhampur passed in L.E. Case No. 60 of 1975. Challenging the said order, the present petitioner filed O.P.L.E. Revision No. 28 of 1987 before the Additional District Magistrate, Chatrapur. The said revision was disposed of on July 30, 1991. The Revisional Authority, however, did not accept the order passed by the Appellate Authority and observed as follow:

"Hence since the reasonings given by the S.D.O.. Berhampur in directing the respondent No. 2-Appellant in L.E.A. 103/77 to approach the Tahasildar, concerned in proper forum for assignment of the same in their favour and not inclined to accept the views of Addl. Tahasildar of adverse possession and his order dt. 14.4.77 in L.E.C. 60/75 is set aside holds no more good, the same is hereby quashed.

The Tahasildar is directed to do the needful in accordance with the observation and direction of the Civil Court after receipt of application from the party."

5. After receiving the order passed by the revisional forum, the Tahasildar, by his order dated January 31, 1992 recommended to settle the case land which were in exclusive possession of the petitioner as held by the civil court, for

confirmation as required u/s 8(a) of the O.P.L.E. Act by the Sub-Collector.

6. While the matter stood thus, opposite party No. 5 who had lost in the Civil Court and up to the stage of High Court, preferred a second revision before the Revenue Divisional Commissioner which was registered as O.P.L.E. Revision Case No. 2 of 1992. The revisional court surprisingly came to a conclusion that the petitioner is not in continuous possession and cannot claim any right and di(sic)ted eviction of the present petitioner as well as opp. party No. 5 from the case land. The said finding is contrary to the decision of the competent Civil Court which was confirmed by this court. The order passed by the R.D.C. is impugned in this writ application.

7. Heard Mr. Ramdas, learned counsel for the petitioner, Mr. N.C. Pati, learned counsel for opp. party No. 5 and Mr. Sangram Das, learned Additional Standing Counsel.

The question with regard to possession of the petitioner vis a vis opposite party No. 5 was the subject matter before the competent Civil Court in Title Suit No. 69 of 1977. The Civil Court came to a categorical finding that the present petitioner is in exclusive and uninterrupted possession of the case land right from 1929. The said finding of the trial court was confirmed by the lower appellate court in Title Appeal No. 47 of 1979 and was further confirmed by this Court in Second Appeal No. 192 of 1983. Thus, the finding that the petitioner was in possession of the case land continuously and uninterruptedly has attained its finality and cannot be reagitated.

8. Admittedly, the proceeding under the O.P.L.E. Act is summary in nature. The same can be resorted to by the Government, against a person who is in unauthorised occupation of any land (property of the Government), But then if there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take an unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 of the O.P.L.E. Act for evicting the person who is in possession of the property under a bona fide claim of title. The Hon"ble Supreme Court in the case of Govt. of Andhra Pradesh v. Thummala Krishna Rao and Anr., reported in AIR 1982 SC 1081, has held thus;

"The summary remedy provided by Section 7, according to the Division Bench, cannot be resorted to "unless there is an attempted encroachment or encroachment of a very recent origin" and further that it cannot be availed of in cases where complicated questions of title arise for decision."

While invoking the provisions under the O.P.L.E. Act, the paramount consideration is, the duration of the occupation of a person over the Government property openly for an appreciable length of time, asserting bona fide title over the property. Such claim requires an impartial adjudication according to the established procedure of law.

Further, in the case of *State of Orissa v. Bhanu Mali (dead) Nurpa Bewa and Ors.*, reported in AIR 1996 Ori 199, relying upon the decisions reported in *Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*, and *Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others*, this Court held that the decision of the Revenue Officer in the proceeding under the O.P.L.E. Act can neither operate as *res judicata*, nor Section 16 thereof can stand as a bar relating to the question of title in the subsequent civil suit by the plaintiffs-respondents. This decision practically reiterates the well recognised principles as enunciated in the decision in the case of AIR 1940 105 (Privy Council) and subsequently by a catena of decisions of several High courts holding that-"the jurisdictional facts recorded by a court holding that - " the jurisdictional facts recorded by a court of limited jurisdiction is not final or conclusive and Civil Court have always jurisdiction to decide such a question notwithstanding the decision of the court of limited jurisdiction."

10. Here is a case where adjudication was made by a competent civil court and a finding has been arrived at holding that the petitioner is in exclusive possession of the case land since 1929. The said finding was confirmed not only by the lower appellate court, but also by the High Court in Second Appeal No, 192 of 1983. It is no more *res Integra* that the authority having limited jurisdiction is bound by the decision arrived at by the competent civil court relating to title. Thus, for all acts and purposes, the finding that the petitioner was in possession of the case land since 1929 is also binding upon the O.P.L.E Authorities having limited jurisdiction.

11. Mr. Sangram Das, referring to Section 16 of the Act submitted that, as there is a bar of civil suit, the finding relied upon by the petitioner is a nullity. According to me, the said submission cannot be accepted. What Section 16 of the Act stipulates is, no suit or other legal proceeding in respect of the matter of dispute for determining or deciding which provision is made in the Act shall be instituted in any court of law except under and in conformity with the provision of this Act.

In the case at hand, the sole dispute which cropped up before the civil court is with regard to possession of the petitioner who was plaintiff in the said suit vis a vis opposite party No. 5 There is no provision under the O.P.L.E Act to decide such dispute. Thus, the argument is not tenable.

12. Section on 8-A of the O.P.L.E Act clearly stipulates that, if in the course of any proceeding instituted under Sections 4,6,7 or 8 against any person unauthorisedly occupying any land, it is proved by such person that he has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding, the Tahasildar shall refer the case to the Sub-Divisional Officer.

In view of the clear finding which has been upheld by the High Court that the petitioner is in continuous and uninterrupted possession of the land since 1929,

provisions of Section 8-A are clearly applicable. Thus, the order of the R.D.C passed in Revision Case No.2 of 1992 directing eviction of the petitioner is not sustainable in law.

Even otherwise , the R.D.C has entertained the O.P.L.E Revision No.2 of 1992 in exercise of power conferred upon him under Section-12(3) of the Act. The said section makes it clear that only in respect of those orders against which no appeal or revision lies, the R.D.C may call for and examine the records and exercise his jurisdiction. In the present case, the S.D.O being the appellate authority, the revision lies to the Collector and in fact, the revision bearing O.P.L.E. Revision No. 28 of 1987 was filed before the Additional District Magistrate, Chatrapur, who disposed of the same. Thus, a second revision u/s 12(3) of the O.P.L.E . Act is not tenable.

13. For the reasons stated above, I have no hesitation to set aside the impugned order dated 15.3.1993 passed by the R.D.C (SD), Berhampur in O.P.L.E Revision No. 2 of 1992 (Annexure-I) and direct the O.P.L.E. authorities to dispose of the matter keeping in view the decision arrived at by the Civil Court which was confirmed by this court in second Appeal.

The writ application is, accordingly allowed. No cost.

14. Writ petition allowed