

(1993) 08 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4327 of 1990

Labanyabati Devi and Others

APPELLANT

Vs

Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 03-08-1993

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 37B, 59(2)

Citation : (1993) 76 CLT 937 : (1993) 2 OLR 365

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

Bench : Division Bench

Advocate : J. Patnaik, for the Appellant; Additional Standing Counsel (1-3), for the Respondent

Judgement

A.K. Padhi, J.—Challenging the order of the Member, Board of Revenue, Orissa, Cuttack exercising his jurisdiction u/s 39(2) of the Orissa Land Reforms Act, 1960 hereinafter referred to as "the Act"), the petitioners have filed this writ application.

2. In the writ application, it has been averred that a suo matu proceeding was initiated against the two brothers Bamadev Satpathy and Durga Charan Satpathy sons of late Bholanath Satpathy. By the time of initiation of the proceeding the father of the petitioners was dead. Both the petitioners had filed written statements taking the stand that both the brothers were separated from each other in mess and property since 30 years and they do not constitute one family. The further stand of the petitioners was that they did not have property beyond the ceiling unit permitted under the Act.

3. After considering the written statements of the petitioners in O. L. R. Case No. 608 of 1975 by order dated 29-11-1975 the competent authority held that the land holders did not possess land more than the ceiling area and, therefore, dropped the proceeding. Against this order dated 29-11-1975 no appeal was filed.

4. On being moved by the Collector, Cuttack u/s 59(2) of the Act against the

order passed in O. L. R. Case No. 608 of 1975 dated 29-11-1975 the Member, Board of Revenue exercised his suo motu jurisdiction and initiated suo motu Revision u/s 59 (2) of the Act which was registered as O. L. R. Revision No. 47 of 1987. The petitioners objected to the initiation of the revision. The learned Member, Board of Revenue had set aside the order dated 29-11-1975 passed in O. L. R. Case No. 608 of 1975 on the grounds that no spot enquiry was conducted and there is no finding that Bamadev Satapathy and Durga Charan Satapathy, both the brothers were living in separate mess and were cultivating their lands separately prior to 1970. He came to the further conclusion that:

".....So all the lands claiming to be held individually by the two brothers of the family should have been deemed to have been held by the family. Once one individul becomes a member of the family, according to the definition u/s 37(b), the land held by him individually or jointly with other members of the same family shall be deemed to have been held by the family and surplus lands, are to be determined accordingly.....".

The learned Member, Board of Revenue came to the further conclusion that no enquiry had been made regarding the transactions which were made after 26-9-1970 by the land-holders. After giving the above findings he set aside the order passed in O. L. R. Case No. 608 of 1975 and remitted the matter of fresh enquiry and disposal in accordance with law. This order passed by opp party No. 1 is challenged in this writ application.

5. The learned counsel for the petitioners submits that the two brothers cannot constitute "a family" as they do not come within the restricted definition of "family" as given in Section 37-B of the Act. The second limb of the contention is that though no time-limit has been prescribed u/s 59(2) of the Act to invoke the jurisdiction as has been decided in various decisions of this Court the same is to be exercised within a reasonable time. The order which was sought to be revised u/s 59 (2) of the Act was passed on 29-11-1975 and the learned Member, Board of Revenue invoked the suo motu jurisdiction in the year 1987. Therefore, this delay in exercising jurisdiction u/s 59(2) of the Act after about lapse of 12 years cannot be said to be within reasonable time. We find much force in both the contentions of learned counsel.

6. Regarding the first contention, that two brothers do not come within the restricted definition of family, in Jaga " Jagannath Nayak and Ors. v. State of Orissa and Anr. 50(1980) CLT 132 it has been held that while determining the ceiling area and surplus lands of one of the brothers, the property held by 2 others could not be taken into account. The brothers cannot be treated as a "body of individuals", i. e., as a "person" within the meaning of Section 37(a). They were to be treated as distinct "families".

In Surendra Prasad Parida Vs. State of Orissa and Others, their Lordships have held that the members of a family as understood in common parlance is not same as the artificial meaning which has been given to the expression "family" in

Sec, 37(b) and they cannot be considered as "an association" or "a body of individuals"".

In *Jibardhan Senapati and Ors. v. State of Orissa and Ors.* 1992 (II) CLR 1 their Lordships have expressed that different members of different branches of one another cannot be considered as "a body of individuals" and they should be treated as different families.

We, therefore, come to the conclusion that the opinion of the learned Member, Board of Revenue that all the lands held individually by both the brothers should have been deemed to have been held by the family is not sustainable. Both the brothers constitute two distinct families within the restricted definition of Section 37(b) of the Act. The order of the Member, Board of Revenue is not sustainable on this ground.

7. Now coming to the next submission as to whether the learned Member, Board of Revenue had exercised his jurisdiction within a reasonable period, we find that he has exercised his suo motu jurisdiction after lapse of 12 years. In *Laxminarayan Sahu v. State of Orissa and Ors.* 1991 (I) OLR 82 while considering the scope and ambit of Sections 59(2) and 59(3) of the Act, Hon"ble G. B. Patnaik, J. speaking for the Court observed :

".....In view of the decision of the Supreme Court in *Hansaram's* case (supra) on which Mr. Murty has placed reliance, even though there is no period of limitation in Section 59(2) of the Act, we have no manner of doubt to hold that the said power has to be exercised in a reasonable manner which necessarily stipulates that it should be exercised within a reasonable time. What would be a reasonable time so as to be immune from the attack that the power has not been exercised in a reasonable manner would depend upon the facts and circumstances of each case.....,"

In *Sri Laxman Konda v. State of Orissa and Ors.* 72(1991) CLT 49 while construing Section 12 of the Orissa Prevention of Land Encroachment Act in which no time limit has been prescribed to invoke the suo motu power of revision, their Lordships have observed :

"We feel that the order of the Tahasildar on 18-1-1978 was not available to be challenged after lapse of nearly 5 years.

xx xx xx

We would thus hold that the initiation of the proceeding against the petitioner was erroneous in law and hence cannot be sustained."

In *Raghubar Bagh others v. Tahasildar, Umerkote* OJC No 2320 of 1987, disposed of on 10-12-1991, it has been held that initiation of a proceeding after 11 years was unreasonable.

8. The order dated 8-10-1990 passed in O.L.R. Revision No. 47 of 1987 setting aside the order dated 29-11-1975 passed in O.L.R. Case No. 603 of 1975 was

exercise after unreasonable delay of 12 years. The suo motu jurisdiction was exercised beyond a reasonable period and, therefore, is not sustainable.

9. in the result, we find that the impugned order (Annexure-4) is not sustainable and is hereby quashed. There shall be no order as to costs.

K.C. Jagadeb Roy, J.

10. I agree.