
(1989) 12 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 2289 of 1984

Mahabir Prasad Khemka

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Land Reforms Act, 1960 — Section 47, 59(2)

Citation : AIR 1991 Ori 4

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : Meena Ghosh and G. Mukherjee, for the Appellant; Addl. Standing Counsel, K.N. Jena and B. Mishra, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—This writ application has been filed by a land-owner who was adjudged to be a ceiling surplus holder without compliance of the procedure and the law and even though the higher authorities came to the conclusion that due procedure had not been followed and remanded the matter to the original authority and even though the original authority on enquiry has come to a finding that there has been no surplus, yet on account of certain intervening state of affairs like distribution of the ceiling surplus land in favour of opposite parties 3 to 29, the petitioner has approached this Court.

2. The petitioner asserts that he received a notice for the first time in May, 1976, purporting to be one u/s 47 of the Orissa Land Reforms Act for assessment of compensation payable in respect of Ac. 11-47-5 kadies of land. It was stated in the said notice that the State has taken possession of the surplus land on 1-4-1976. Along with the notice, a draft compensation assessment roll was also sent to the petitioner. The petitioner became surprised to receive such a notice since he had not received any prior notice under any of the provisions of the Orissa Land Reforms Act nor the draft statement had been served upon him nor

even the confirmed statement was served upon him. The petitioner, therefore, rushed to this Court in C.J.C. No. 323 of 1976 but later on in view of the Constitutional Amendment (Forty-second Amendment), the writ application having abated, the petitioner approached the Additional District Magistrate in appeal which was registered as O.L.R. Appeal No. 111 of 1977. The Additional District Magistrate disposed of the appeal by order dated 25-7-1977 clearly giving a finding that there has been grave procedural defect and no notice had been served on the petitioner and no opportunity has been given to the petitioner to put forth his grievances in the ceiling proceeding. He, therefore, set aside the determination of the ceiling made by the Revenue Officer and remanded the matter to the Tahsildar for re-determination of the matter. This order of the Additional District Magistrate has been annexed as Annexure-4. On remand the Tahsildar made further enquiry into the matter and on merits came to the conclusion that in fact, the petitioner had no ceiling surplus land. But since the lands in the meantime had been distributed to different landless persons who were also noticed and had appeared before him, came to the conclusion that no further action could be taken. The order of the Tahsildar has been annexed as Annexure-5. The petitioner asserts in the writ application that the Revenue Officer suo motu made a reference to the Collector invoking his jurisdiction u/s 59(2) of the Orissa Land Reforms Act for redressing the grievance of the petitioner, but there has been no further action by the Collector and, therefore, the petitioner had no other alternative than to approach this Court, for issuance of a mandamus to the Revenue Officer-cum-Tahsildar (opposite party No. 2) to restore the possession of the land which has been illegally distributed in favour of opposite parties 3 to 29.

3. At the hearing of this writ application, Mr. G. Mukherjee, the learned counsel for the petitioner, contends that in view of the findings and conclusions of the appellate authority that there has been no compliance of the procedure and the provision of the Act and the Rules made thereunder and further in view of the fact that the appellate authority quashed the order of the original authority with regard to the determination of the ceiling, any action taken by the concerned authorities in the matter of distribution would be non-est in the eye of law and, therefore, such distribution would not confer any right on the allottee. There would be no vesting of the property with the State in the eye of law, and consequently, the State had no jurisdiction to make distribution of the alleged ceiling surplus land. The Revenue Officer on assessment having found that there is no surplus beyond the ceiling, erred in law in not directing restitution of the property and thereby he failed to exercise his jurisdiction vested in law. We find sufficient force in the aforesaid contention of the learned counsel for the petitioner. On the facts found in the present case, there is no manner of doubt that the original determination of ceiling had been made without compliance with the procedure and the provisions of the Orissa Land Reforms Act and the Rules made thereunder. In fact, the appellate authority quashed the order of determination made by the Revenue Officer and remitted the matter for further

enquiry. The original authority on further enquiry also came to the conclusion that the petitioner does not possess any land in excess of the ceiling. In view of the aforesaid finding of the Revenue Officer, the draft statement as confirmed earlier as well as all other subsequent action taken by the revenue authority including action of settling the land in favour of the landless persons must be held to be without jurisdiction and non-est in the eye of law.

4. Mr. Jena appearing for some of the allottee-opposite parties strenuously urges that there is no provision under this Orissa Land Reforms Act authorising the Revenue Officer to direct restitution. We are unable to accept the aforesaid submission of the learned counsel. The initial allotment itself having been held by us to be non-est on account of non-compliance of the provisions of the Act and the Rules, no right has been conferred on the so called allottees. The determination of a ceiling made by the Revenue Officer is subject to appeal and revision as provided under the statute. The moment, the appellate authority comes to a conclusion that there has been non-compliance of the procedure provided under the Act and the Rules, and the moment the appellate authority quashes the order of original determination, the proceeding gets relegated to the position as it was prior to such determination and, therefore, the original authority would have all the jurisdiction in him to pass such appropriate order as the ends of justice require. In fact, the aforesaid position of law has been held by a Bench of this Court in the case of Sankarsan Misra and Others Vs. State of Orissa and Others, . In the premises, as aforesaid, we allow this writ application and direct the Revenue Officer to restore possession of the property to the petitioner. Let a writ of mandamus be issued accordingly.

The writ application is accordingly allowed, but in the circumstances, there would be no order as to costs.

A.K. Padhi, J.

5. I agree.