

(2010) 01 OHC CK 0011

In the Orissa High Court

Case No : Writ Petition (C) No's. 4506 and 4589 of 2009

Mahamad Din Md. Mafazular Rahaman

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-01-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Orissa Prevention of Land Encroachment Act, 1972 — Section 12, 4, 8(A)

Citation : (2010) 110 CLT 353

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—Since both the Writ Petitions involve similar questions, they were heard together & are being disposed of by this common Judgment.

2. One Md. Sharif Rayeen, S/o. Late Md. Safi of village Maguragadia, College Square N.H.6, Keonjhar Garh, Keonjhar has filed Misc. Case Nos. 9688 & 9689 of 2009 to intervene in both the Writ Petitions. He has claimed that though he owns the disputed lands, he was not made a party to the encroachment proceedings. Since he was not a party to Encroachment Case Nos. 2 & 3 of 1998-99, it is open to him to approach the appropriate authority for redressal of his grievance. Therefore, we are not inclined to consider his claim in these Writ Petitions. Both the intervention applications are accordingly rejected.

3. In both the Writ Petitions, the Petitioners have challenged the Order Dated 6.3.2009 passed by the Addl. District Magistrate, Keonjhar in Encroachment Revision Case Nos. 1 & 2 of 2009 respectively rejecting the revisions filed by them u/s 12 of the Orissa Prevention of Land Encroachment Act (in short, "the OPLE Act").

4. The brief facts, as narrated in the Writ Petitions, are as follows: u/s 4 of the OPLE Act, the Tahasildar, Keonjhar initiated Encroachment Case Nos. 2 of

1998-99 against Md. Din (Petitioner in W.P.(C) No. 4506 of 2009) for his eviction from the land measuring Ac. 0.83 decimals in Plot No. 613 & Encroachment Case No. 3 of 1998-99 against Md. Mafazular Rehman (Petitioner in W.P.(C) No. 4589 of 2009) for his eviction from the land measuring an area of Ac. 0.57 decimals in Plot No. 613/1, both the plots under Khata No. 257 of mouza-Pabitradiha, Kamargadia in the district of Keonjhar. Kissam of both the lands is recorded under Government Khata. The Tahasildar considered the show cause filed by the Petitioners wherein Md. Din took a plea that he is in possession of the case land since 1967 while Md. Mafazular Rahman took a plea that he is in possession of the Case land since last 30 years & they claimed adverse possession. On verification of the Records-of-Right it was found that the case lands are recorded under Government Khata & a note of possession has been recorded in the remark column in favour of one Mazhrul Haque & Ekramul Haque sons of Md. Sirajudin in respect of Plot No. 613. Md. Din is not the legal heir of the said persons & he had also not produced any material in support of his claim regarding adverse possession. The Petitioners were also not eligible for settlement of the said land as they were not coming under the category of "landless person". Their income was more than Rs. 15,000 per annum. The Tahasildar, Keonjhar directed the R1, Sadar, Keonjhar to visit the spot & enquire into the matter. Basing on the report of the R1, on 29.4.2000 eviction orders were passed in both the cases. Being aggrieved by the Order Dated 29.4.2000, both the Petitioners filed Encroachment Appeal Nos. 4 & 6 of 2000 respectively before the Sub-Collector, Keonjhar along with an application u/s 5 of the Limitation Act for condonation of delay. The Appellate authority condoned the delay & called for the LCR. On 10.2.2004 Encroachment Appeal No. 4 of 2000 was heard & posted to 27.2.2004 for order. In the said appeal, on 27.2.2004 the order was pronounced in the open Court vide separate sheets & the same was attached to the case record. On the other hand, in Encroachment Appeal No. 6 of 2000, the order was pronounced on 10th February, 2004. Since the Petitioners had not produced any material in support of their plea of long possession over the disputed land even before the Appellate Court to settle the land in their favour u/s 8(A) OPLE Act, in both the appeals the Appellate Court rejected the plea of adverse possession of the Petitioners & confirmed the order passed by the Tahasildar. Being aggrieved by the said orders, the Petitioners filed Encroachment Revision Case Nos. 1 & 2. of 2009 respectively before the Addl. District Magistrate, Keonjhar. The Petitioners stated that though both the appeals were disposed of on 27.2.2004 & 10.2.2004 respectively, the said fact was not within their knowledge & apart from that, as Md. Nurulain, who was looking after the case, died on 28.11.2006, they could not file the revisions within the stipulated period. However, the Revisional Court rejected both the revisions as the Petitioners could not be able to explain sufficient cause in filing the revision applications at a belated stage.

5. Learned Counsel appearing for the Petitioners submitted that the rejection of the revisions on the ground of limitation has resulted in miscarriage of justice &

caused prejudice to the Petitioners. Hence, the Petitioners have filed these Writ Petitions. He further submitted that as the Appellate Court had not heard the Petitioners & the Petitioners had adduced oral evidence in support of their plea of adverse possession, the revisional authority should have considered the same & given an opportunity to the Petitioners of being heard on merits.

6. A counter affidavit has been filed by the Opp. Parties refuting the allegations of the Petitioners & taking a specific stand that the final publication of the ROR was made in the year 1978 which reveals that the lands are recorded in the name of the Government & at the remark column, the note of possession is in the name of the sons of Md. Syrazuddin. Neither the name of the Petitioners nor the name of the predecessor-in-interest of the Petitioners has been recorded in the Records-of-right. Therefore, the claim of the Petitioners regarding adverse possession is not sustainable. The encroachment case was initiated in the year 1998-99. Since the Petitioners had not substantiated their claim of adverse possession, rightly the eviction orders were passed. The appeal was filed along with a limitation application which was heard & disposed of on merits & the Petitioners did not challenge the same within the period of limitation & also could not satisfactorily explain the delay in filing the revisions. Therefore, the Revisional Court rightly rejected the revisions. Hence, the impugned orders need not be interfered with.

7. From the rival contentions of the parties, it appears that the Petitioners were aware about the eviction Order Dated 29.4.2000 passed by the Tahasildar, Keonjhar in Encroachment Case Nos. 2 & 3 of 1998-99 respectively. They took part in the hearing of the appeals as it appears from the Order Dated 10.2.2004. Thereafter the Petitioners did not follow the order passed by the Appellate Court. From the orders of the Revisional Court, it appears that the Petitioners could not satisfy the Revisional Court to condone the delay in filing the revisions. Admittedly, there was a delay of 5 years & the Petitioners had to explain the same. Here also, neither the Petitioners filed any application u/s 5 of the Limitation Act along with the revision applications to condone the delay in filing the revisions nor did they explain in the revision petitions about the delay in filing the same. Learned Counsel for the Petitioners argued that the Petitioners claimed adverse possession over the disputed land & wanted to adduce oral evidence before the Appellate Court. However, they had not taken any step before the Appellate Court to adduce oral evidence by filing list of witnesses or presenting the witnesses to be examined in support of their plea. However, in the present applications also they have not annexed any document to show that they had filed any application before the Appellate. Court to adduce oral evidence & the same was not considered by the Appellate Court.

8. This is a certiorari proceeding & this Court is not satisfied with the materials filed by the Petitioners in support of their plea. Besides, encroachment proceeding is a quasi-judicial proceeding & the Petitioners have not been able to make out a case that the Appellate authority did not consider their appeals on

proper perspective & there is an error apparent on the face of the record to be interfered with. Therefore, this Court is not inclined to interfere with the impugned orders.

9. The Writ Petitions are accordingly dismissed.