(1985) 04 OHC CK 0033

In the Orissa High Court

Case No : O.J.C. No. 1831 of 1979

Mst. Kunjalata Purohit — APPELLANT

Vs

Tahsildar, Sambalpur and Others — RESPONDENT

Date of Decision : 26-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Land Reforms (General) Rules, 1965 — Rule 30
Orissa Land Reforms Act, 1960 — Section 37B, 42, 60(1)

Citation : AIR 1986 Ori 115 : (1985) 60 CLT 139

Hon'ble Judges : D. Pathak, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : P.K. Mohanty and R.Ch. Mohanty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohapatra, J.—In this application under Articles 226 and 227 of the Constitution, the petitioner has prayed for quashing the orders in O.L.R. Case No. 303 of 1974, a proceeding under Chapter IV of the Orissa Land Reforms Act, 1960 (hereinafter called as ''the Act'').

2. A suo motu proceeding u/s 42 of the Act was initiated by the Revenue Officer, Sambalpur in the name of Byamakesh Purohit, the husband of the petitioner. The landholder objected to the draft statement claiming that his major married son had separated as such before the 26th day of Sept., 1970 and is not a member of the family. Specific parcels of land possessed by the father and the son separately were mentioned in the schedule to the objection. Local enquiry was made by the Revenue Officer, who also recorded the statements of different persons on 16-5-1975. On 19-5-1975 the arguments were heard and the case was posted to 30-5-1975 directing the Amin to submit information regarding partition in the family of Byamakesh and classification of lands. The case was awaiting finalisation of the draft statement. In the meantime, on 2-6-1975, which

was not a fixed date in the case, a petition was filed by the husband of the petitioner, the material portions of which read as follows :

"1. That lands appertaining to M. S. Khata No. 20, total area 5.05 acres, and Khata No. 21 total area 9.14 acres, i.e. Grand total 14.19 acres in village Takha P.S. Sader, Dist. Sambalpur stand recorded in the name of the petitioner''s wife Smt. Kunjalata Purohit, which she inherited from his father.

2. That as the aforesaid land stands recorded in the name of the petitioner''s wife, the same has not been included in the above O.L.R. (Ceiling) case.

3. That these lands have been partitioned between the petitioner and his only son Suryakumar Purohit, since 1968 and they are in separate possession of their respective shares.

4. That if it is necessary to include these lands in the above ceiling case, then it should be included accordingly."

Filing of this petition was not mentioned in the order-sheet. The Revenue Officer dropped the proceeding by order dt. 7-7-1975 without considering the petition dt. 2-6-1975 or the finding that the landholder does not possess any ceiling surplus land.

3. About one year after, on 23-8-1976 the successor Revenue Officer reopened the proceeding in exercise of his power of review u/s 60 of the Act.

The order reads as follows :

"The record is put up today. It is seen that my predecessor has dropped the case without any detailed enquiry. For the ends of justice, it is necessary to make detailed enquiry into the matter and then pass necessary orders. Accordingly the previous order is reviewed u/s 60 of the O.L.R. Act. Issue notice to the party fixing 20-12-76."

Notice of reopening of the proceeding was given only to the landholder. The Revenue Officer included the separate land of the petitioner and treating the same to be the land of the family of Byamakesh determined the land of the petitioner as the ceiling surplus land of the landholder.

4. After unsuccessfully approaching various authorities, the petitioner has . approached this Court for getting her separate land excluded from ceiling surplus.

5. The only ground on which her petition before the Revenue Officer was rejected was that the case had become final and there was . no scope of giving her opportunity of being heard.

6. Mr. R. K. Mohanty, the learned counsel for the petitioner submitted that:

(a) Initiation of the proceeding u/s 60(1) of the Act was without jurisdiction of the Revenue Officer, and

(b) Finalisation of review proceeding was erroneous in law

(i) in the absence of notice to the petitioner as required u/s 60(1); and

(ii) being in violation of principles of natural justice.

Mr. Bijan Ray, the learned Government Advocate on the other hand supported the initiation of the proceeding and its finalisation on the basis of materials on record which were produced. He drew support of the provisions of the Act and the rules made under the Act.

7. Rival contentions of the parties centre round the interpretation of Section 60(1) of the Act. It reads as follows :

"60. Review. -- (1) Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order or his successor in office on the ground of any clerical mistake or error in course of any proceedings under this Act."

8. The plain language of the provision makes it clear that only two grounds on which review can be made suo motu are :

(i) clerical mistake,

(ii) error in course of any proceeding under the Act.

Mr. Mohanty would have been right in his submission that absence of detailed enquiry" as revealed in the order dt. 23-8-1976 is not a ground on which an officer is authorised under the Act to review an order, but for the petition of the husband of the petitioner dt. 2-6-1975 for including the lands of the petitioner which was left out of consideration by the Revenue Officer while dropping the proceeding on 7-7-1975.

This is an error in course of the proceeding to clothe the Revenue Officer with jurisdiction to review the order dt. 7-7-1975 u/s 60(1). The first contention of Mr. Mohanty fails.

9. The next contention of Mr. R. K. Mohanty, the learned counsel for the petitioner is that the proceeding is liable to be quashed since the petitioner was not given notice of the proceeding at any stage and without giving opportunity to the petitioner, her lands were not only included in the ceiling surplus proceeding but also were declared to be the surplus lands to vest in the State Government.

The learned Government Advocate on the other hand submitted that under R. 30 of the Orissa Land Reforms (General) Rules, 1965 (hereinafter called as ''the Rules'') notice is necessary to be given only to the person to whom the draft relates. Thus, the ''person interested'' u/s 60 (1) of the Act according to him is the husband of the petitioner in whose name the draft was prepared. Notice has admittedly been given to him which is sufficient compliance of Section 60(1). It is further contended that even on the assumption that the notice u/s 60(1) of the Act should have been given to the petitioner it would have been an empty formality as no benefit would have been given since under Explanation to Section 37B of the Act her lands are deemed to be the lands of the family of her husband, she being a member thereof in view of the definition in Section 37(b) of the Act.

10. Submission of the learned Government, Advocate is not acceptable, Rule 30 provides for notice to person to whom the draft relates. Section 60(1) provides for notice to person interested. This difference has to be given due weight. Where Section 60(1) of the Act enjoins upon the statutory authorities to issue notice, it cannot be ignored on the ground that it would be an empty formality. When admittedly the land of the petitioner is being included in a review proceeding she is a person interested. She was entitled to notice. In this case it was not an empty formality. In case the notice would have been given, she would have pointed out to the Revenue Officer that while declaring the surplus lands, her lands may be permitted to be retained by the family and other specific parcels of lands of her husband might be held to be the surplus land to vest in the State. To this limited extent her interest is affected.

Lord Reid in LR 1964 AC 40 (Ridge v. Baldwin) at page 68 observed :

"......... even as a general rule a watch committee must hear a constable in his own defence before dismissing him. This case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse....."

Lord Hodson supported the same at page 128 of the Reporter by observing :

"I do not find that the answer put by counsel for the watch committee to your Lordships that the case was as plain as a pikestaff is an answer to the demand for natural justice....."

11. The Revenue Officer, thus, violated both the statutory mandate in Section 60(1) of the Act and the principle of natural justice in finalisation of the review proceeding without notice to the petitioner.

12. In the result, the writ application is allowed The order dt. 29-12-1976 in O.L.R. Case No. 303 of 1974 before the Revenue Officer, Sambalpur and all subsequent proceedings on the basis of the said order are quashed. The Revenue Officer is directed to consider the objection of the petitioner and conclude the review proceeding. The petitioner is directed to appear before the Revenue Officer, Sadar, Sambalpur on 27-5-1985 (Monday) and file her objection failing which she will not get any further opportunity to object to the review proceeding. In case the objection is filed by the petitioner, the Revenue Officer shall fix a date for taking steps to conclude the proceeding in accordance with law. The Revenue Officer shall do well in disposing of the review proceeding on or before the 15th June, 1985, as the matter is an old one. No costs.

Pathak, C.J.

13. I agree.