

(1977) 05 OHC CK 0025

In the Orissa High Court

Case No : Original Jur. Case No. 680 of 1976

Narayan Prasad Singh Samanta

APPELLANT

Vs

Revenue Officer and Another

RESPONDENT

Date of Decision : 03-05-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 226(3)
Orissa Land Reforms Act, 1960 — Section 40A

Citation : AIR 1977 Ori 157 : (1977) 44 CLT 10

Hon'ble Judges : R.N. Misra, J; N.K. Das, J

Bench : Division Bench

Advocate : R.C. Patnaik and P.K. Misra, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner has applied for a writ of certiorari for quashing the orders passed in a Ceiling Fixation proceeding by opposite party No. 1 under the provisions of the Orissa Land Reforms Act (hereafter referred as the Act). According to the petitioner, he belongs to a family with the following genealogy:--

CHAKRADHAR (deceased) widow-Haripriya | Padmanava Singh Samant
(deceased) widow Kshirabdhitanaya _____|
_____ | | | | Narayan Prasad Soubhagya
Anngamanjari. Bibhuti Mahesh Prasad. (Petitioner) manjari. Narayan. wife
Lakshmi Kumari.

Petitioner submitted a return u/s 40-A of the Act indicating the total extent of land in possession of the family, the lands alienated prior to the relevant date and the lands of which they were in possession and stated that as at present the total area was within the ceiling to which petitioner's family was entitled, all the lands should be permitted to be retained. By order dated 5-12-1974, the Revenue Officer came to hold that the family possessed of more than 26 acres of land and as such the matter should be investigated. He asked for a report from

the Record-Keeper. The Revenue Officer after obtaining reports from the Revenue Inspectors directed a draft statement to be drawn up and published in form 13. On receipt of notices on 26-7-1975, petitioner filed an objection on 20th of August. 1975. After the objection was filed, according to the allegation of the petitioner, a notice was served on him to appear on 6-9-1975 for the hearing of objection, petitioner appeared and wanted time till 11-9-1975. On that date, he produced some documents and was told that a local inspection would be made for finding out the truth of his stand and for determining the classification of the lands. In support of his allegations he produced the notice dated 6-9-75 and certain registered documents on which the Revenue Officer had put his signature with the date as "11/9". According to the petitioner, there was no local inspection and he was surprised ultimately to find a notice that certain lands had been declared as surplus and were directed to be taken over from him. He then filed this application for relief.

2. When rule nisi was issued, the successor-Revenue Officer filed the return claiming that the objection was disposed of on 21-8-1975 and no notice had been issued fixing 6-9-1975 for hearing. That records were produced on 11-9-1975 was also denied and it was claimed that Petitioner having not preferred an appeal against the confirmed statement no relief under the extraordinary jurisdiction should be granted to him. At the hearing, learned counsel for the opposite parties also alleged that the writ application must be declared to have abated under Article 226(3) of the Constitution.

3. With reference to the preliminary objection of abatement, counsel for petitioner contended that when property of the petitioner was being taken away without a hearing, fundamental rights under Articles 19 and 31 were affected and rules of natural justice having been denied, the order was not at all sustainable. Accordingly this application could not be thrown out on account of abatement as it would be directly covered under Article 226(1)(a) of the Constitution and Sub-article (3) would have no application. We are inclined to agree with Mr. Patnaik for the petitioner and accordingly this application cannot be thrown away as having abated.

4. In view of the assertion in the writ application that a notice was actually issued for hearing of the objection fixing 6-9-1975 and inasmuch as the said assertion was supported by a document marked as Annexure 1 we called for the records of the proceedings and when it transpired that the assertion in the counter-affidavit was correct that the case was not posted to 6-9-1975, we thought it appropriate to direct the Revenue Officer who disposed it of to appear before us and state under what circumstances the notice referred to above had been issued. In terms of our directions, the Revenue Officer concerned appeared on 28th April, 1977 and has been examined at length. He has admitted that the notices marked as Exts. 1 and 2 were issued by him in connection with the case in question. Exts. 1 and 1/a are the same notice. Ext. 1 is the copy which was sent to the petitioner while Ex. 1/a is the office copy thereof on the reverse of

which receipt of notice has been acknowledged by the petitioner. Ext. 1 shows that the draft statement had been published in the notice-board of the Revenue Officer on 21-7-1975 and a copy of the draft statement was being sent to the petitioner inviting objection within thirty days. As a fact, petitioner submitted his objection on 20th of August, 1975, i, e. within the time provided. Ex. 2 is a notice signed on 21-8-1975 and issued on 28-8-1975 fixing 6-9-1975 as the date for hearing the objection. Confronted with the embarrassing situation that though the notice was issued for 6-9-1975, the case had not been posted to that date, the Revenue Officer stated in Court:--

"The date 6-9-75 is a clerical mistake for 21-8-75."

When it was pointed out to him that the very notice fixing 6-9-75 was signed by the officer on 21-8-75, he further stated:--

"My clerk has put the date below the notice as 21-8-75. At the top, it bears the date 28-8-75. I cannot remember now as to why and under what circumstances I signed the notice under Ext. 2."

As is manifest from the record, petitioner had no notice of the proceeding until under Ext. 1", he was called upon to file his objection within thirty days from publication of notice. As a fact, the objection was filed within thirty days. Petitioner was not made aware of the posting of the case to 21-8-1975. Therefore, in normal circumstances, it is quite probable that the notice fixing 6-9-1975 for hearing of the objection had been issued. According to the petitioner, on that day he wanted some more time to produce documents in support of his claim of alienations prior to the prescribed date and he contends that the Revenue Officer asked him to appear on 11-9-1975. In support of the petitioner's claim that he appeared on 11-9-1975, he has relied upon two endorsements of the Revenue Officer on the back side of two registered documents. The Revenue Officer has admitted that the initials are his and he also accepted the fact that he made these endorsements on 11-9-1975. When questioned as to under what circumstances, he had put the date 11-9-75, he has stated:--

"I cannot say under what circumstances I have initialled on the sale deeds on 11-9-75. I might have returned the documents on that day but there is no order in the order sheet showing the documents to have been returned. Generally I do not maintain any receipt at the time the records are returned; nor is any endorsement obtained in the order sheet for return of the records."

He has further stated:--

"..... Invariably when I received a document as Revenue Officer, I put my initial with date below it. The letter "S" above my signature in Exts. 3 and 3/a is for "seen"....."

It is therefore, clear that on 11-9-1975, the Revenue Officer saw the sale deeds and his earlier statement in his deposition that on 11-9-75 he might have put his

signature in token of return of the record is not correct. It is clear from the record that no notice fixing the date of hearing to 21-8-1975 had been given to the objector (petitioner). A notice was issued under Ext. 2 fixing the hearing to 6-9-1975 and in the absence of any explanation as to how and why such a notice was issued, we must assume that the petitioner was intended to be given a hearing on 6-9-1975. The endorsements made by the Revenue Officer on the registered deeds vide Exts. 3 and 3/a go to show that the documents were produced and he saw them on 11-9-1975. Though the Revenue Officer has asserted in his evidence that he held local inspection, there is no indication in any order-sheet to support the stand, nor is any memorandum of local inspection forthcoming from the record. It must, therefore, also be held that there has been no local inspection. These are intrinsic features forthcoming from the record itself which would go to support petitioner's stand that the objection had been fixed for 6-9-1975 to be heard and was adjourned to 11-9-1975 on petitioner's request and it is, therefore, reasonable also to hold that the petitioner remained under the impression that there would be a local inspection and he would have an opportunity of placing his case in due course.

The order-sheet maintained by the Revenue Officer on the other hand exhibits a very different situation. The Revenue Officer has made several corrections of the dates in different orders, for instance, the date of adjournment on 3-7-75 was initially indicated to be 23-7-1975. He has subsequently changed it to 21-7-75. Page 3 of the order-sheet though not torn has been pasted to some extent and particular care has been taken to cover the date" of the order. We had brought these features to the notice of the Revenue Officer when he was examined and he told us that he does not remember as to why and when the order-sheet was pasted by a white paper. Looking at the original date of the order against light through the pasted sheet, it is clear that there has been a correction. This order of 23-7-1975 (which has been corrected as 21-7-75) had also been signed with the date 23-7-75 and that date has been corrected to 21-7-75. The change in the date became necessary because after the Revenue Officer passed the order on 21-8-1975 to which we shall presently refer, he found that if the earlier order was dated 23-7-75, there would not be a gap of thirty days in between as required by law.

On 21-8-1975, he has indicated that the notice has been duly served and one objection has been received from the petitioner. While this is so, as we have already noted, there is no material to support the stand of the Revenue Officer that petitioner was present on 21-8-1975 and was given a hearing. There is no indication at all in the order of that day that petitioner was heard. The order purporting to be dated 21-8-1975 must, therefore, be held to have been passed without affording any opportunity of hearing to the petitioner. Since the order is a vital one in the proceeding and an objection having been filed, law provided for a hearing and hearing has not been granted, the order dated 21-8-1975 must be deemed to be non est.

This is not all. We have a feeling that there was no order on 21-8-1975. The Revenue Officer at his Choice has passed several orders in the record and has put dates according to his convenience. In fact, he has categorically admitted that he interpolated an order purporting to be dated 2-10-1975 as while checking up the record at a later stage he found that such an order was wanting to complete the record. The several alterations in the dates (for instance, orders dated 3-7-1975, 23-7-1975, 10-10-1975 and 26-10-1975), the admission of interpolation and a further attempt to cancel the date put by the Revenue Inspector below his signature in Ext. 4, leave no doubt in our mind that the Revenue Officer has conducted the proceeding in an absolutely arbitrary manner and has not behaved as a quasi-judicial tribunal. Having watched his demeanour when he appeared before us for examination, having looked at the record with care and anxiety and having read his explanation for the drawbacks in his order-sheets, we are satisfied that the enquiry conducted and decision made by the Revenue Officer is anything but an honest representation of a judicial proceeding. It surpasses our imagination that a judicial officer with the experience as the Revenue Officer claims to have was capable of manufacturing order-sheets and did not shirk to meddle with the judicial record. Though he was the statutory authority entrusted with the duty of deciding a dispute where substantial rights of parties are involved, he did not hesitate to wipe out the rights of parties by the mischievous process adopted by him and by freely altering the dates and interpolating the record, he attempted to give an impression that he had disposed of the dispute in a fair way and judicial manner.

5. We were inclined to take a very serious view of the matter and in fact, at one stage we were thinking of issuing a notice of contempt and at the same time requiring Government to take other departmental action against the Revenue Officer. We were also feeling inclined to call upon Government not to place this Revenue Officer in any place of importance where he may have an occasion to deal with rights of parties, but on second thought, we have not chosen to take any such action as we are of the view that the blame lies more upon the superior authorities and the anxiety shown by Government that the proceedings contemplated under the Act should be disposed of with utmost haste so that surplus lands may be found out for distribution to the landless for other oblique purposes. Those who are entrusted by the Legislature to administer the Statute must not lose sight of the fact that they are expected to work, as trustees and discharge the trust placed on their shoulders in an honest way. The Legislature has prescribed that there should be an appropriate proceeding, reasonable hearing should be granted to the land-holder, such enquiries as are due and legitimate should be conducted and there should be a determination in a fair way of what the ceiling, should be and what should emerge as surplus meant to be dealt with as contemplated by the Statute. The Legislature has nowhere provided that property should be taken away from raiyats and land-holders without affording them an opportunity of being heard or by concocting records and depriving the citizens of their legitimate right to property without even the

minimum of enquiry and hearing. Those who have been entrusted with the administration of the statute are not entitled to conduct themselves in such manner, throw the concept of the Rule of Law to the winds and create a state of confusion and thereby harass the people in the manner as clearly exhibited by this case. Petitioner's counsel suggested to us that this is not the only case where injustice has been done. In fact, according to him most of the cases have been disposed of in such a manner. We only wish that the aspersion thrown by the learned counsel for the petitioner is not true and citizens have indeed not been treated in the dastardly fashion as the present case exhibits. Every statutory officer must not forget that he is bound to administer the statute according to the dictates of the statute and the law and no instruction, however high and dignified its source may be, can supersede the doctrine of the Rule of Law which the country has accepted as the ultimate principle to govern.

We repeat that we have not taken action against this Revenue Officer for his derelictions for the reasons we have indicated above, but we hope there would be no recurrence of such an unfortunate situation and we must warn those who fail to discharge the legislative trust imposed upon them and deviate from acting in accordance with the Rule of Law that serious consequences await them as and when the same would come to light. It is proper that we quote a brief note from the funeral oration on Mr. Justice Story when it was said:--

"Justice is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race."

The Revenue Officer should not have forgotten that he too was a court and should not have acted from within to bring dishonour to the temple. We may also recall what the great jurist, Benjamin Cardozo in his classic book "The Nature of the Judicial Process" had said:--

"The Judge is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in social life."

We expect that quasi-judicial Tribunals entrusted with the administration of the statute would take appropriate steps to see that the statute is administered in accordance with law and there is no undue haste; rights of parties are not wiped out; injustice is not rendered and the doctrine of Rule of Law avoided.

6. For the reasons we have already indicated, the impugned orders must stand quashed and we direct that present Revenue Officer to dispose of the return filed by the petitioner u/s 40-A of the Act in accordance with law from the stage the proceeding was on 20th of August, 1975. The petitioner must now be given a hearing on his objection. The writ application is allowed with costs. Hearing fee is assessed at rupees two hundred and fifty.

Das, J.

7. I agree.