
(2008) 08 OHC CK 0112
In the Orissa High Court

Parikhita Das

APPELLANT

Vs

Commissioner Consolidation and Another

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

ORISSA SURVEY AND SETTLEMENT ACT, 1958 — Section 15(b), 42

Citation : (2008) 2 OLR 385

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

2. In this writ application, the petitioner calls in question the order passed by the Commissioner, Consolidation, Orissa, Cuttack in R.P. No. 315 of 2003, whereunder the said Commissioner, while dealing with the Revision Petition filed by the petitioner u/s 15(b) of the Orissa Survey and Settlement Act, (for short, "the Act") rejected the said Revision Petition on the ground of limitation.

Section 15(b) of the Survey and Settlement Act is as follows:

15. Revision by Board of Revenue- The Board of Revenue may in any case direct--

(a) xxx xxx xxx

(b) on application made within one year from the date of final publication u/s 12-B the revision of record-of-rights or any portion thereof whether within the said period of one year or thereafter but not so as to affect any order passed by a Civil Court u/s 42:

Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

3. A bare reading of the said section clearly shows that an application u/s 15(b)

of the Act can be filed within the period of one year from the date of final publication of the Record of Rights. Though period for preferring the revision has been prescribed as one year but it has been provided that the Board of Revenue can revise the Record of Rights within one year from the date of publication of the Record of Rights or thereafter but not to affect any order of the Civil Court passed u/s 42 of the Act.

4. Mr. Nayak, learned Counsel for the petitioner relied upon the decision in the case of *Krushna Chandra Mahakul Vs. State of Orissa and Others*, and submitted that this Court clearly laid down in the aforesaid decision that an application for revision u/s 15(b) of the Act should not be thrown out on the ground of limitation as it involves valuable rights of the petitioner over immovable property provided the delay in filing the revision has not resulted in accruable interest of any other person over the said immovable property.

5. Mr. B. Dash, learned Counsel for the State, however, vehemently objects to the submissions made by the learned Counsel for the petitioner and contends that in the reported case cited above, the delay was about four years, but in the instant case, it is a longer period of 13 years. He further submits that under the Limitation Act the period prescribed to recover possession over a disputed property is 12 years and this revision has been filed beyond the period of 12 years. Therefore, the learned Commissioner has rightly rejected the Revision Petition by not condoning delay.

6. Considering the facts of the case, as I find that in the remarks column of the Record of Rights forcible possession of the petitioner has been noted, the period as prescribed under the Limitation Act for recovery of possession over immovable property, cannot be taken to be a measuring scale for holding that the revision should be dismissed on the ground of limitation only. As the delay in filing the revision does not, prima facie, show that the same has resulted in accruable interest of any other person over the property involved in the case, the revision should not have been dismissed on the ground of delay. Moreover, since maintaining of Record of Rights, after preparation of the same, is done by the State, for collecting land revenue from the respective land owners, it should be always seen that correct records are maintained by the revenue authorities. The petitioner, who claims to be tenant over the disputed property, should have been afforded an opportunity to substantiate his right before the Commissioner so that in the event, the Record of Rights published finally reflects an incorrect statement, the same should have been corrected to facilitate maintenance of correct Record of Rights for collection of revenue and for reference for the posterity.

7. In view of the discussions made above, I am of the considered view that the impugned order dismissing the revision filed by the petitioner on the ground of delay, cannot be sustained, which is accordingly quashed. The matter is remitted back to the Commissioner-opposite party No. 1, who shall hear the Revision Petition on merit and dispose of the same in accordance with law by affording

opportunity of hearing to the parties. The petitioner is directed to appear before the Commissioner on 27th August, 2008 and produce a certified copy of this order before him for enabling him to proceed with the matter in accordance with the direction issued above. The Revision Petition shall be disposed of by the end of December, 2008.

8. The writ petition is accordingly allowed.

Urgent certified copy of this order be granted on proper application.