

(2023) 05 OHC CK 0069

In the Orissa High Court

Case No : Writ Petition (C) Nos.24053, 24056 and 24057 Of 2022

Parul Bhattacharya And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa Survey and Settlement Act, 1958 — Section 15B
Orissa Estates Abolition Act, 1951 — Section 38B

Citation : (2023) 05 OHC CK 0069

Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J

Bench : Division Bench

Advocate : Avitjit Pal, A. K. Sharma, Deepak Kumar Pani

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. On moving of the writ petitions it was submitted that petitioners had challenged impugned decision dated 3rd June, 2022 in OEA Revision Case no.2 of 2019. Their contention in revision was rejected on finding that judgment dated 3rd January, 2017 made by a Single Judge of this Court had reached finality on no further challenge thereto.

2. It was submitted, in paragraph 7 of common judgment dated 3rd January, 2017 in, inter alia, WP(C) no.10732 of 2010 (petitioner's own case) it was said, inter alia, there was Lease Case no.503 of 1976 and 505 of 1976. Orders had been made therein. In the circumstances, there was no illegality in order impugned therein, rejecting the petition under section 15(b) of Orissa Survey and Settlement Act, 1958. In the circumstances, petitioners had moved the authority under Orissa Estates Abolition Act, 1951, for revision in terms of provision in section 38-B. The revision case stood rejected by impugned decision, without application of mind as the section 15-B proceeding under the Orissa Survey and Settlement Act, 1958 was misconceived.

3. State was represented and there had been direction for issuance of notice on private opposite party nos.4 to 8. Counters have been filed. The writ petitions have come up for hearing.

4. Mr. Pal, learned advocate appears on behalf of petitioners and submits, scope of section 15(b) and section 38-B, respectively in the Survey and Abolition Acts, operate in different fields. The former is for revision against an order regarding entry made in the Record of Rights (RoR). The latter provides for revision of any decision or order made under the Abolition Act.

5. There is no dispute that his clients are claiming under the intermediaries. The land stood vested. Pursuant to the vesting private opposite parties applied for and obtained settlement. Settlement was also available to his clients. They sought to assert their rights by, he reiterates, initiating proceeding under section 15(b) of the Survey and Settlement Act.

6. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State. He submits, there should be no interference. Petitioners had never applied for settlement. In the facts and circumstances, the proceeding under section 15(b) was correctly dealt with. This was confirmed by dismissal of three revision petitions by the common judgment dated 3rd January, 2017 (supra). Pursuant thereto, the revision preferred by petitioners under section 38-B deserved to be rejected and was correctly rejected on impugned decision.

7. Mr. Pani, learned advocate appears on behalf of private opposite party nos.4 to 8. He draws attention to paragraph 7 in said judgment dated 3rd January, 2017 (supra). It was held therein that order of settlement enure to applicants for the lease only. His clients had applied for settlement. They got settlement by lease. The settlement, therefore, is exclusive to his clients, under view taken in said judgment. That view was in following earlier same view taken by a Division Bench of this Court in *Srimati Malati Mishra vs. Srimati Basanti Devi*, reported in 1988 (I) ORL 520.

8. Relying on *Srimati Malati Mishra* (supra) Mr. Pani submits further, the Division Bench, in paragraph 4 of the judgment clearly said that in their opinion, the principle that a settlement in favour of one of the co-sharers would enure to other co-sharers will have no application. The settlement stands on the footing of individual application to the owner, for lease. The fiction that application by one and settlement in favour of him would enure to all, cannot apply and accordingly force was found in the contention. He submits further, petitioners are in effect seeking co-tenancy. Such claim made in this round about way should not be entertained and was not entertained by the Board of Revenue. Furthermore, interference would amount to review / appeal of said judgment dated 3rd January, 2017 (supra) of the learned single Judge. The writ petition be dismissed.

9. Judgment dated 3rd January, 2017 (supra) made by the learned single Judge stood accepted by petitioners. We reproduce penultimate paragraph from the judgment.

“Under the circumstances, this Court finds, there is no infirmity in the impugned orders, leaving any scope for interfering in the same in exercise of power under Article 227 of the Constitution of India.”

(emphasis supplied)

It was made on the Court having been moved under article 227 in the Constitution. There was no Special Leave Petition preferred against said judgment, for leave to file appeal therefrom. No question arises of review or modification or otherwise of the judgment in appeal, by us.

10. In judgment dated 3rd January, 2017 (supra) the learned single Judge said, inter alia, as would appear from a passage extracted from paragraph-7 and reproduced below.

“From the submissions of the learned counsel for the petitioners, it is also apparent that there has been no challenge to the order passed by the competent authority in the lease proceedings referred to hereinabove, which remained confirmed as on date. In absence of any challenge to the proceedings in the lease cases bearing Nos.503 of 1976 and 505 of 1976 respectively, this Court finds, the Settlement Authority in exercise of power under Section 15(b) of the Act had no other option than to dismiss the claim of the petitioners in the above cases.”

(emphasis supplied)

It is clear that the writ Court was moved against order passed under section 15(b) under the Survey and Settlement Act. Scope of the revision was regarding entries in the RoR. The revision authority found that the entries were made following order by the settlement authority. In the circumstances, the writ Court did not find illegality nor material irregularity in disposal of the revision case against petitioners. True it is that the learned single Judge did not observe, in the judgment, that petitioners could find remedy elsewhere.

11. We reproduce below first sentence in paragraph-1 of impugned decision.

“1. This revision has been brought u/s 38 of Orissa Estate Abolition Act, 1951 challenging the order of Tahasildar- cum-OEA Collector, Jajpur passed in O.E.A Lease Case No.505 of 1976.”

(emphasis supplied)

It does not appear from materials before us and we have also ascertained, impugned decision was made on the first revision application against the order of settlement passed in the lease case of 1976. The learned single Judge in said judgment dated 3rd January, 2017 (supra) referred to an earlier decision of this Court in Prafulla Chandra Muduli v. State of Orissa, reported in 2005 (Supp) OLR 1950 to say that it had already been held, an order passed by the OEA authority cannot be interfered by the authority under Orissa Survey and Settlement Act. That is why, the section 15(b) proceeding was decided against petitioners, who

are seeking to assert their right to settlement. This assertion of right is beyond the scope of adjudication under the Survey and Settlement Act. We are in agreement with the decision under said judgment dated 3rd January, 2017 (supra) that petitioners' revision petitions under article 227 in the Constitution of India, deserved to be dismissed.

12. We have looked at section 38-B. It does not provide for a period of limitation, as a bar. Petitioners had already applied under the provision but, the revision case was dismissed on finding the issues stood earlier decided in the section 15(b) proceeding, which was confirmed by said judgment dated 3rd January, 2017 (supra). This view taken in impugned decision militates against view taken in said judgment dated 3rd January, 2017 (supra) as also Prafulla Chandra Muduli (supra). Result is that petitioners have not been heard on their contention that they are entitled to settlement.

13. Impugned decision is set aside and quashed. The revision is restored to opposite party no.2, for being dealt with expeditiously. We make it clear that there was no occasion for us to go into merits of the claim of petitioners, for settlement or contention of private opposite parties that petitioners are in effect claiming co-tenancy.

14. The writ petitions are disposed of.

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