

(2017) 01 OHC CK 0028

In the Orissa High Court

Case No : 10732 of 2010

Radha Govinda Bhattacharya & Another

APPELLANT

Vs

State of Orissa, represented through Secretary, Revenue
Department, Bhubaneswar & Others

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Orissa Survey and Settlement Act, 1958, Section 15, Se

Citation : (2017) 01 OHC CK 0028

Hon'ble Judges : Biswanath Rath

Bench : SINGLE BENCH

Advocate : N.P. Parija, S.K. Rout, A.K. Mohanty, Gajendranath Rout, R.K. Dash,
J.P. Das, S.K. Mishra, T.K. Swain

Final Decision : Dismissed

Judgement

1. These writ petitions have been filed by the petitioners assailing the impugned orders dated 10.8.2009 passed by the Commissioner, Land Records & Settlement, Orissa, Cuttack in R.P. Case Nos.2067 of 1994, 2068 of 1994 & 2346 of 1994 filed under Section 15(b) of the Orissa Survey & Settlement Act, 1958 vide Annexure-4 to these petitions.

2. All the above three cases pertain to the claim of the petitioners for recording their names as against the individual plots indicated in detailed in the respective cases. Considering the basis of claim involved in all the three cases, stand of petitioners being common in all the cases but involving three different sets of opposite parties in three separate judgments appearing at Annexure-4 in the respective cases. The Commissioner, Land Records and Settlement while dismissing the R.P. Cases at the instance of the present petitioners had a common view that after merger of the disputed land with the State, there has been fresh individual lease of the disputed land in respect of some of the ex-

intermediaries but not all the intermediaries particularly not involving the present petitioners more specifically in favour of the Niranjan Bhattacharya involving W.P. (C) No.10732 of 2010, Satyaranjan Bhattacharya and Niranjan Bhattacharya involving W.P.(C) No.10733 of 2010 and Satyaranjan Bhattacharya alone involving W.P.(C) No.10734 of 2010 and such lease cannot enure to the benefit of the petitioners.

3. In assailing the impugned orders, Sri N.P. Parija, learned counsel for the petitioners in the respective cases made a claim that the properties are ancestral properties till vesting it remained in jointness and there has been wrong recording in the Hal records indicating the names of the particular persons other than the petitioners. They have a case under Section 15 of the Orissa Survey and Settlement Act. To substantiate their case, the petitioners in all the cases have also referred to copy of the Sabik Settlement Record of Right, Hal Settlement Records of Right as well as the copy of the Parcha to establish the Sabik Hal correlation of the plots. It is alleged that in spite of all these materials available on record, the Commissioner Land records and Settlement has failed to visualize the rights of the petitioners and thereby, arrived at impugned wrong decisions. Petitioners cited a decision as reported in AIR 1991 Orissa 66 to substantiate their case.

4. The contesting opposite parties on their appearance, though admitted that the land was originally under the control of ex-intermediaries but at a subsequent stage, the disputed land got vested with the State on coming into effect the Orissa Estate Abolition Act and after merger of the land with the State, on the basis of long possession Nityananda involving W.P. (C) No.10732 of 2010 and W.P. (C) No.10734 of 2010 filed a lease case bearing No.503 of 1976, similarly Niranjan Bhattacharya and Satyaranjan Bhattacharya being the son of Nityananda filed another lease case bearing No.505 of 1976 involving W.P.(C) No.10733 of 2010. These opposite parties further claimed that for the decisions in the lease cases in their favour stand unchanged, they are the rightful owner of the disputed land and therefore, there is no wrong recording in the land records leaving any scope for interfering in the impugned orders.

5. Learned counsel for the private opposite parties also claimed that since there is no challenge to the order passed by the OEA authority involving the lease cases, the order remained final and in absence of challenge to the same, there was no question for interference in the same by the Settlement Authority. Private opposite parties also cited some decisions as reported in 1988(1) OLR 520 and 2005(Supl.) OLR 950 to substantiate their case.

6. Learned State Counsel simply followed the line of argument by the private opposite parties.

7. Considering the rival contentions of the parties, this Court finds, there is no dispute that originally the land belongs to ex-intermediary. There is also no dispute that the land subsequently got vested with the State for the provisions

contained in the O.E.A. Act. Scan of the records further reveals that pursuant to the vesting of the land, there has been initiation of the lease proceedings by or at the instance of the private opposite parties involving the lease case Nos.503 of 1976 and 505 of 1976 respectively. Authority under the Orissa Estate Abolition Act also passed the order in the lease cases, which not only favours the private opposite parties but also remains unchallenged as on date. Consequently, the records have been corrected favoring the private opposite parties. 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. In the case in between Srimati Malati Mishra versus Srimati Basanti Devi and others as reported in 1988 (I) OLR 520 this Court held one must challenge the orders passed by the authority under the OEA Act and ought to be challenged within the time limitation prescribed therein and further such orders also otherwise enure to the applicants therein only. Similarly in the case in between Prafulla Chandra Muduli and others versus State of Orissa and others as reported in 2005 (Supp.) OLR 950, this Court has already held that an order passed by the OEA Authority cannot be interfered by an authority under the Orissa Survey and Settlement Act. This Court finds, both the above decisions have a direct bearing on the private opposite parties' case and support the findings arrived at by the Commissioner. 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.

8. Accordingly, all the three writ petitions stand dismissed. No cost.