
(1992) 09 OHC CK 0002

In the Orissa High Court

Case No : Criminal Jurisdiction Case No. 3426 of 1988

Raghunath Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Orissa Prevention of Land Encroachment Act, 1972 — Section 8A

Citation : AIR 1993 Ori 77

Hon'ble Judges : S.C. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : R.P. Mohapatra, B. Senapati, K.B. Panda, Biswanath Rath and S.N. Mohapatra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Petitioner has prayed in this application under Article 226 of the Constitution of India to quash the orders (Annexures-6, 7 and 8) arising out of a proceeding under the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as "the Act").

2. In the year 1965, Tahasildar, Balliguda (opp. party No. 5) initiated a proceeding under the Orissa Prevention of Land Encroachment Act, 1954 (hereinafter referred to as "the Repealed Act"). In the said proceeding, petitioner claimed that he has purchased land in two instalments from Srimukh Patra and Kunti Patra by two un-registered deeds of sale. When the proceeding was pending, the Orissa Prevention of Land Encroachment Act, 1972 was enacted repealing the 1954 Act. u/s 18(2) of the 1972 Act, continuance of the proceedings was protected. In the year 1975. Tahasildar renumbered the pending proceeding as Encroachment Case No. 3 of 1975. On enquiry, Tahasildar came to the conclusion that possession of vendors and of petitioner being tacked, by the time the proceeding was initiated in the year 1965 petitioner had been in possession for more than 30 years. By the time the order was being made in

1988, Section 8A was inserted to 1972 Act. Accordingly, Tahasildar made a reference to the Sub-divisional Officer, Balliguda u/s 8A(1) of the 1972 Act for settlement of the land with the petitioner. Before the Sub-divisional Officer, three witnesses were examined by the petitioner. In view of the discrepant statements, Subdivisional Officer came to the conclusion that petitioner is in possession of hardly for four years after his purchase and not 30 years, Accordingly, he directed the Tahasildar to make fresh enquiry. Petitioner not being satisfied with the order of Sub-divisional Officer, preferred an appeal and not being successful, preferred revisions as provided under the 1972 Act. Not being successful to avoid fresh enquiry, petitioner has filed this application for quashing the orders of the Sub-Divisional Officer and other higher forums.

3. Mr. B. Rath, learned counsel for the petitioner submitted that u/s 8A(2) of the Act. Sub-divisional Officer is required to give notice to the concerned department of the State Government to show cause why the land should not be settled and, thereafter, he is to make further enquiry as he deems necessary as provided u/s 8A(2) of the Act. No notice having been sent to the concerned department, order of Sub-divisional Officer is vitiated.

4. It is true that order of the Tahasildar is a reference to Section 8A(I) of 1972 Act. If Sub-divisional Officer would have settled the land with petitioner without complying with the statutory requirement, such settlement would have been vitiated as the precondition was not satisfied. When there is no settlement as yet, petitioner cannot be prejudiced if department of the Government has not been given notice. While observing that statutory authorities should exercise powers as provided in the statute and in the manner as provided therein, in the present case we are not inclined to accept the petitioner's contention about absence of notice of show cause to the department of the Government has vitiated order of the Sub-divisional Officer since he has directed further enquiry by Tahasitdar.

5. On the materials on record, Sub-divisional Officer has found that the witnesses have not been able to speak correctly whether sale deeds were executed or not and the nature of possession of the disputed land by the person who transferred the same. Accoridngly, he came to the conclusion that the possession of petitioner alone is to be taken into consideration which is not 30 years. If Sub-divisional Officer would have concluded the matter by finding that the petitioner's possession along with the vendors was not for a period more than 30 years, question might have been different. We, however, find that the Sub-divisional Officer was in doubt, for which he remitted the matter back to the Tahasildar for further enquiry, petitioner cannot be said to have been prejudiced by this order. Since the matter was remitted back for further enquiry, we are of the opinion that the higher forums were justified by not interfering with the order of the Sub-divisional Officer.

6. Mr. Rath lastly submitted that observation of the Sub-divisional Officer that the petitioner is not in possession for 30 years may prejudice the Tahasildar to come

to an independent conclusion. As we have earlier observed, this is only an observation to indicate that the materials as they are on record do not support the fact that the petitioner was in possession for more than 30 years along with his vendor. For coming to such a conclusion possession of the vendors and his own possession are to be proved by clear evidence. We have no doubt that the petitioner would be given full opportunity by the Tahasildar for proving this aspect of the matter. On the materials being proved, Tahasildar shall consider whether the period of possession of the vendors as well as that of petitioner can be considered together for the purpose and on that basis appropriate order can be passed by the Tahasildar.

7. In view of the clarification made by us, the order of remand by the Sub-divisional Officer does not need any interference at this stage. Accordingly, the writ application is dismissed. However, there shall be no order as to costs.

A. R. Padhi, J.

8. I agree.