(2008) 01 OHC CK 0026

In the Orissa High Court

Rama Chandra Sishu APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) 1 OLR 471

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The petitioner is a land owner who is aggrieved by the incorrect recording of his land in the Hal record-of-rights. He intended to file a Revision before the Commissioner of Consolidation and Settlement at Cuttack, but as the Commissioner refused to accept his Revision Petition in view of the Notification dated 15th November, 2007 (Annexure-6) issued by the State Government he has been constrained to approach this Court.

2. For the sake of brevity and better appreciation the impugned Notification dated 15th November, 2007 is quoted hereinbelow:

GOVERNMENT OF ORISSA REVENUE & DISASTER MANAGEMENT DEPARTMENT NOTIFICATION Dated Bhubaneswar the 15th November, 2007

No. S-72/05-45030-R&DM. In exercise of the powers conferred by Section 47 of the Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959) and in partial modification of this Department Notification No. 59363-R, dated the 4th December, 1999; No. 46798 dated the 4th October, 2000 and No. 64141-R dated the 24th December, 2002, the State Govt. do further notify as follows:

1. Such officers appointed as Revenue Divisional Commissioners, Commissioner, Land Records and Settlement, Commissioner, Consolidation and Settlement, Commissioner Consolidation, Land Reforms Commissioner, Joint Commissioner, Consolidation and Joint Commissioner, Settlement, exercising powers and performing duties u/s 6-D, 15 and 25 of the said Act for the purpose of quick disposal of the revisional cases in respect of the areas assigned against each,

shall function under the administrative control and overall supervision of Member, Board of Revenue, Orissa, Cuttack.

2. All revisional cases are to be filed directly before Member, Board of Revenue, Orissa, Cuttack only.

3. After admission, such cases are to be allotted by Member, Board of Revenue, Orissa, Cuttack to the respective Commissioners and Joint Commissioners as per the area assigned to each. Keeping in view the administrative exigencies, any such cases can be withdrawn or reallotted at any time by Member, Board of Revenue, Orissa, Cuttack without assigning any reason.

4. Any such case and the Court work can be reviewed and any direction can be given by Member, Board of Revenue, Orissa, Cuttack to such Commissioner and Joint Commissioner.

Sd/- 15/11/07 Commissioner & Secretary to Government.

3. The aforesaid Notification deals with powers of different Revenue authorities morefully mentioned in Para-1 thereof who are exercising powers under Sections 6-D, 15 and 25 of the Orissa Survey and Settlement Act, 1958 (hereinafter referred to as "the Act").

Section 6-D of the Act relates to revision by Board of Revenue and stipulates:

The Board of Revenue may, in any case-

(a) of its own motion, at any time after the date of final publication u/s 6-C; or

(b) on application made within one year from the said date, direct the revision of any survey record or any portion thereof 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.

Section 15 of the Act also deals with revision by Board of Revenue and stipulates:

The Board of Revenue may in any case direct-

(a) of its own motion the revision of any record-of-rights, or any portion of a record-of-rights, at any time after the date of final publication u/s 12-B but not so to affect any order passed by a Civil Court u/s 42;

(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.

Similarly, Section 25 of the Act also deals with revision by the Board of Revenue and stipulates:

The Board of Revenue may, in any case-

(a) of its own motion, at any time after the date of final publication u/s 23; or

(b) on application made within one year from the said date direct the revision of the rent so settled, 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.

4. In the past, the Member, Board of Revenue was not in a position to handle all the revision cases filed under the aforesaid three Sections before him along with other multifarious responsibilities. Consequently there was straggering accumulation of cases, thereby causing immense difficulties to the litigant public. Realising such difficulty, the State Government in exercise of its powers u/s 33 of the Act notified on 7th March, 1992 that the officers on appointmenl as Commissioner of Land Records and Settlement, Cuttack; Commissioner of Consolidation and Settlement for Sambalpur at Bhubaneswar, and Land Reforms Commissioner of Orissa, Cuttack would exercise power and perform the duties under Sections 6-D, 15 and 25 of the Act in respect of the areas specified in the Notification. The said Notification was superseded by another Notification issued on 4th April, 1992 again exercising power u/s 33 of the Act. The State Government by the latter Notification directed that officers on appointment as Commissioner of Land Records and Settlement, Orissa, Cuttack; Commissioner of Consolidation and Settlement, Orissa, Bhubaneswar; and Land Reforms Commissioner, Orissa, Cuttack would exercise power and perform the duties under Sections 6-D, 15 and 25 of the Act in respect of the areas specified in the Notification. Thereafter another Notification was issued on 16th August, 1999 in modification of the earlier Notifications issued by Government of Orissa, Revenue and Excise Department, in exercise of powers u/s 33 of the Act to the effect that officers on appointment as Commissioner of Land Records and Settlement, Cuttack; Commissioner of Consolidation and Settlement, Sambalpur at Bhubaneswar; and Commissioner of Consolidation, Bhubaneswar would exercise power and perform the duties under Sections 6-D, 15 and 25 of the Act in respect of the areas specified in that Notification.

5. It is pertinent to mention here that as per the aforesaid Notifications, revisional powers exercised by the Board of Revenue were delegated and are being exercised by different Commissioners posted at different stations in respect of the specified areas. Consequently, the litigants had the privilege of filing revisions before the said authorities and due to bifurcation of powers exercised by different Commissioners, pendency of cases substantially reduced.

6. While matter stood thus, on 15th November, 2007, which is challenged in this

Writ Petition, was issued by the State Government in exercise of power conferred u/s 47 of the Act. Paragraph-2 of this Notification stipulates that all revision cases are to be filed directly before the Member, Board of Revenue, Orissa, Cuttack only. Paragraph-3 of the Notification stipulates that after admission such cases are to be allotted by the Member, Board of Revenue to respective Commissioners and Joint Commissioners as per areas assigned, and that keeping in view the administrative exigency any such case can be withdrawn and re-allotted at any time by the Member, Board of Revenue without assigning any reason, Paragraph-4 of the Notification stipulates that any such case and the Court work can be reviewed and any direction can be given by the Member, Board of Revenue to such Commissioner and Joint Commissioner at his discretion.

7. Learned counsel for the petitioner assail the said Notification dated 15th November, 2007 mainly on the ground that there is only one Member, Board of Revenue in the State of Orissa, and if as per this Notification all the cases which are to be filed by the litigants of the entire state are to be filed only before the Member, Board of Revenue, Orissa, Cuttack, it would cause immense difficulties as the litigants will have to travel all the way from nook and corners of the State to Cuttack for the purpose of filing the cases. It is further submitted that in consonance with the Notification after admitting a case the Member, Board of Revenue shall allot the said case to the respective Commissioner or Joint Commissioner as per areas assigned to them as per earlier Notifications. Thus the litigants will have to again appear before the assigned Court and engage advocate to fight out the litigation at that place, thereby they will not only be put to double jeopardy, but to extra expenditure which many poor farmers and land owners with their limited economic resources cannot afford. The Notification is also assailed on the ground that the Member, Board of Revenue had no authority to review an order passed by any Commissioner or Joint Commissioner and that random interference by him by withdrawing a case from a Commissioner or Joint Commissioner and entrusting the same to another Commissioner or Joint Commissioner would cause immense hardship to litigants who will be constrained to run from pillar to post. It is also submitted that the OCH & PFL Act and other Acts stipulate specific jurisdiction and in consonance with the provisions of the said Acts only the Commissioners have the right to deal with Consolidation revisions arising out of specified territories. Such statutory right cannot be taken away by the impugned Notification.

8. Learned Advocate-General, on the other hand, repudiated the submission of the learned counsel for the petitioners and stated that the power u/s 47 of the Act is very wide and in order to remove the difficulties with regard to implementation of the provisions of the Act, State Government has the power to issue Notifications as deemed just and proper. According to him, filing of cases before different Commissioners and Joint Commissioners created administrative problems and the Member, Board of Revenue who is the authority under the Act failed to exercise his power of superintendence in proper perspective. The other difficulties as well as irregularities in implementation also came to the knowledge

of the State Government and in order to streamline all those difficulties the State Government thought it just and proper to issue the impugned Notification in exercise of powers u/s 47 issued and therefore the same may not be interfered with.

9. It is further submitted that in spite of bifurcation, it was brought to the notice of the State Government that a number of revision cases filed under the aforesaid three sections have remained pending, and instances of filing of cases before two authorities with regard to same dispute were noticed which resulted in multiplicity of litigations leading to accumulation of cases. To remove all these difficulties the impugned Notification was issued so as to enable the Member, Board of Revenue to exercise exclusive power so far as revisions are concerned. Learned Advocate-General further submitted that the powers of the Commissioner under the OCH & PFL Act, 1972 has not been effected by the impugned Notification and, as such, the submission that statutory powers and jurisdiction have been interfered with is not correct.

10. This Court heard learned counsel for the parties patiently, perused the materials placed meticulously and considered the submissions diligently.

Section 33 of the Act states as to delegation of powers and reads as follows:

The Government may by notification, delegate the powers of the Board of Revenue to any Officer above the rank of a Settlement Officer.

In consonance with the aforesaid Section, the revisional power of the Board of Revenue under Sections 6-D, 15 and 25 has been delegated to the Commissioner, Land Records and Settlement and other authorities by Notification issued on 4th December, 1999 who are exercising the said power. Fact remains, the said Notification has neither been superseded nor modified.

Section 47 of the Act deals with removal of defects and reads as follows:

If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, do anything which appears to them necessary for purpose of removing the difficulty.

11. A close reading of Section 47 reveals that existence of any "difficulty" is the "sine qua non" for exercise of the power conferred under the said section. If such condition precedent is not satisfied as an objective fact, the power under the said section cannot be invoked or exercised at all. That apart, the difficulty contemplated must be in the implementation of the Act and not a difficulty aliunde or extraneous. Thus the State Government can exercise the power under this section only to the extent it is necessary to remove any difficulty caused for, for applying or giving effect to different provisions of the Act, and no further.

12. It appears that to keep pace with the rapid increase in filing of revisions, the State Government thought it just and proper to delegate the powers of the Board of Revenue, which is the Central authority to deal with the revisions to different

Commissioners and Joint Commissioners posted at different places of the State. Such action was aimed at the greater interest of the litigating public. Though counter-affidavit has been filed by the State in a similar case, the difficulties that were faced in implementation of the Act in view of delegation of revisional power have not been explained therein. That apart, after delegation of revisional power under the aforesaid sections to different Commissioners and Joint Commissioners, the said authorities are supposed to exercise all powers of the Member, Board of Revenue to deal with revision cases filed under the aforesaid three sections. A part of such power, i.e. receiving and admitting cases cannot again be vested in the Member, Board of Revenue as his powers under the said Sections have been stripped up and conferred on different Commissioners and Joint Commissioners by delegation. Law is well settled that after delegation of power, the original authority becomes defunct and only the delegated authority has to exercise such power.

13. Last but not the least, so far as paragraph-4 of the impugned Notification is concerned, law is well settled that power of review is a creature of the Act and unless the power is conferred by the Act, no authority can even review his own order. The impugned Notification however stipulates that the Member, Board of Revenue can review any case or Court work of any other Commissioner of Joint Commissioner. Such power of review so far as Court cases are concerned having not been conferred under the Act cannot be exercised by the Member, Board of Revenue as the same would be contrary to the provisions of the Act.

14. In view of the discussions made above, this Court feels that issuance of the impugned Notification u/s 47 of the Act to remove difficulties and thereby making the Notifications issued u/s 33 nugatory was not a right step and cannot be sustained. Accordingly this Court allows the Writ Petition and quashes the impugned Notification.

15. The Writ Petition is thus disposed of.

