(1974) 07 OHC CK 0023

In the Orissa High Court

Case No : O.J.C. No. 198 of 1972

Ramakanta alias Ramesh Chandra Jagdebrai and Another APPELLANT

Vs

Gaji Pratap Singh and Others RESPONDENT

Date of Decision : 05-07-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227
Orissa Board of Revenue Act, 1951 — Section 7(1)
Orissa Survey and Settlement Act, 1958 — Section 12B, 15, 42

Citation : (1974) 40 CLT 917

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Advocate : J.B. Patnaik, for the Appellant; K.C.J. Ray, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The only point urged before us is whether the Member, Board of Revenue (opposite party No. 4) can exercise power of review conferred upon him u/s 7(1) of the Orissa Board of Revenue Act, 1951 (Orissa Act XXIII of 1951) (hereinafter to be referred to as the 1951 Act) in respect of-art order passed by him in exercise of his revisional jurisdiction u/s 15(b) of the Orissa Survey and Settlement Act. 1958 (Act 3 of 1959)(hereinafter to be referred to as the 1958 Act).

Facts relevant to the aforesaid point need only be stated without going into merits. By Annexure 1 dated 22nd of January, 1968, opposite party No. 4 passed the following order:

The result therefore would be that with regard to raiyati khata, the Petitioner''s name will be recorded in place of Dinabandhu Bairisal and with regard to sikmi khata the name of Jadumoni Jena, only the name of Jadumoni Jena be deleted leaving the remaining Khata intact. Subject to the above observation, the revision is partly allowed.

Sd. V. Ramanathan

Member, Board of Revenue, Orissa.

On 25-3-1968 the Petitioners filed on application (Annexure 2) for review of the order passed in Annexure 1. By Annexure 3 dated 10-8-1968 the review application was rejected by the following order:

Heard the Advocate.

A review is not provided in the S & S Act. Besides the settlement officer''s report shows Dinabandhu Bairisal appearing before Assistant Settlement Officer with regard to this case. Other matters are on merits. As the judgment has already been passed, I decline to accept the review petition.

Sd. V. Ramanathan.

Member, Board of Revenue.

The writ application has been filed under Articles 226 and 227 of the Constitution of India for quashing Annexures 1 and 3.

2. The sale question for consideration is whether the Board of Revenue has power to review its order in Annexure 1.

3. Annexure 1 was passed in exercise of the powers of the Board u/s 15(b) of the 1958 Act which runs thus:

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

(a)xxxx

(b) on application, made within two years 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 two years 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.

4. There is no dispute that there is no provision for review of any order passed under the 1958 Act.

5. The Board of Revenue has, however, power of review u/s 7(1) of the 1951 Act. Section 7(1) runs thus:

7.(1) The Board may either on it''s own motion or on the application of any person aggrieved by any order of the Board, review any order passed by itself and pass such order in reference thereto as it things fit:

Provided that no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order.

The power conferred upon the Board of Revenue is very wide and is not restricted by any limitations. The power is wider than the power conferred under Order 47, Rule 1, Code of Civil Procedure.

6. The only question is whether the power to be exercised by the Board of Revenue u/s 7(1) of the 1951 Act attends to orders passed under different statutes which do not specifically provide for review of the orders passed by the Board., Legal position is settled that a power of review cannot be exercised unless the statute expressly confers such power. In this case, the 1958 Act confers no powers of review while the. 1951 Act confers such power of review on the Board of Revenue without any restriction or limitation that it cannot be invoked when orders are passed under other statutes where there is no provision for review. Reading the 1951 Act and the 1958 Act together, there can be no escape from the conclusion that power of review conferred by the 1951 Act can be exercised in respect of orders passed under the 1958 Act. Such a construction does not result in any inconsistency or absurdity. We are, therefore, satisfied that ,the Member, Board of Revenue failed to exercise jurisdiction vested in him u/s 7(1) of the 1951 Actin refusing to accept the review application. We express no view on merits. In other words, it is not necessary for us to examine whether on merits the review application would have succeeded. The judgment in the case is confined to the consideration of the question whether the Member, Board of Revenue had power of review.

7. No authorities are necessary in reaching the aforesaid conclusion. We are, however, supported by on unreported decision of the Nagpur High Court delivered on Pundlik and Ors. v. Surendra and Ors. Misc. Civil Case No. 105 of 1952-D/24-12-1953.

8. Reliance was placed by Mr. Jagdev Rayon Anantha raju v. Appu Hegade AIR 4919 Mad. 244, State of Uttar Pradesh Vs. Ratan Shukla, and Brijmohan Lal Vs. Election Tribunal Allahabad and Others, . After having carefully gone through those decisions we are satisfied that they do not deal with the point in issue. It is unnecessary to enlarge the body of this judgment by elaborately referring to them.

9. In the result, Annexure 3 is liable to be quashed by issue of a writ of Certiorari and the writ be accordingly issued. The Board of Revenue is directed to entertain the review application and apply his mind to the facts of the case after giving full opportunity to the Advocates to place their respective points of view. The writ application is allowed; but in the circumstances, without costs.

B.K. Ray J.

10. I agree.

