
(2014) 03 OHC CK 0045
In the Orissa High Court
Case No : W.P.(C) No. 11134 of 2005

Sailabala

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Orissa Survey and Settlement Act, 1958 — Section 15, 15(b)

Citation : (2014) 1 ILR 1129 : (2014) 2 OLR 401 Suppl. : (2014) 2 OLR 401

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.R. Dash, J.—Petitioner has impugned the order dated 23rd June, 2004 passed by the Commissioner, Consolidation & Settlement, Cuttack in Revision Petition No. 322 of 2003 dismissing the revision on the ground of limitation. Late Sarada Parida is the mother of the present petitioner and opposite party Nos. 4, 5 and 6. Hal Khata No. 261 containing plot No. 227 measuring Ac.0.14 decimals, plot No. 21 measuring Ac.0.20 decimals and plot No. 22 measuring Ac.0.09 decimals stands recorded in the name of aforesaid Sarada Parida. The Hal Record of Rights was finally published on 05.02.1988 in favour of the aforesaid Sarada Parida so far as the land in question is concerned. By that time Sarada Parida was dead. The petitioner, on 26.09.2003 preferred the revision with a prayer to record the land in the name of the petitioner herself and opposite party Nos. 4, 5 and 6. It was further prayed before the revisional authority to delete the "forcible note of possession" made in the Hal R.O.R. in favour of present opposite party Nos. 7, 8, 9 and 10. Learned revisional court dismissed the revision solely on the ground of delay, as there was delay of more than 15 years in preferring the revision. Before the revisional court all the opposite parties were set ex parte except opposite party No. 6 (present opp. party No. 9). So far as the present writ petition is concerned, though notice was issued to opposite party Nos. 4 to 10, they refused to accept notice and the same was served through affixture on their refusal.

Notice having been served through affixture on refusal by opposite party Nos. 4 to 10, service of notice is to be held as sufficient. In spite of such service of notice, opposite party Nos. 4 to 10 have chosen not to appear in the case.

2. Learned counsel for the petitioner making a comparative analysis of Section 15 of the Orissa Survey and Settlement Act, 1958 ("the Act" for short) and Section 5 of the Limitation Act, 1963, submits that the language of both the Sections being different and there being scope of entertaining a revision u/s 15 of the Act even after one year of the publication of the R.O.R., learned revisional court should not have thrown away the revision solely on the ground of delay when it has been held in paragraph 5 of the impugned order that the case has some merit. Learned counsel for the petitioner relies on the case of *Krushna Chandra Mahakul Vs. State of Orissa and Others*, and *Parikhita Das Vs. Commissioner Consolidation and Another*, to substantiate his contention.

3. Mr. Siddharth Mishra, learned Addl. Govt. Advocate on the other hand supports the impugned order and submits that, by no stretch of imagination the revision can be said to have been filed within a reasonable time, as the same has been filed after about 15 (fifteen) years of the final publication of the R.O.R.

4. This Court, in the case of *Krushna Chandra Mahakul (supra)*, on a comparative analysis of Section 15 of the Orissa Survey and Settlement Act, 1958 and Section 5 of the Limitation Act, 1963, has held thus:-

Whereas u/s 5 of the Limitation Act, 1963, the applicant has to show sufficient cause for not preferring the appeal or making the application, as the case may be, within the period prescribed, u/s 15(b) of the Orissa Survey and Settlement Act, 1958, there is no such requirement. Hence, even if the petitioner has not been able to explain sufficiently the entire period of delay of four years, eight months and twelve days in filing the revision, his revision should not be thrown out only on the ground of delay in filing the revision beyond the period of one year. In each case, the authority hearing the revision will have to consider as to whether ends of justice require entertaining the application for revision beyond the period of one year or as to whether any valuable right has accrued to some other party on account of delay in filing the application for revision on account of which the revision petition should not be entertained beyond the period of one year.

(emphasis supplied)

On the aforesaid analysis, this Court condoned delay of about four and half years in preferring the revision solely on the ground that there is no finding by the Commissioner in the impugned order that on account of delay in filing the revision petition, someone else has acquired a valuable right to the land. This Court, in the case of *Parikhita Das (supra)* has held that, as the delay in filing the revision does not prima facie show that the same has resulted in accruable interest of any other person over the property involved in the case, the revision should not have been dismissed on the ground of delay. Going further, this Court

has observed thus:-

Moreover, since maintaining of Record of Rights, after preparation of the same, is done by the State, for collecting land revenue from the respective land owners, it should be always seen that correct records are maintained by the revenue authorities. The petitioner, who claims to be tenant over the disputed property, should have been afforded an opportunity to substantiate his right before the Commissioner so that in the event the Record of Rights published finally reflects an incorrect statement, the same should have been corrected to facilitate maintenance of correct Record of Rights for collection of revenue and for reference for the posterity.

5. If the present case is examined in the light of the aforesaid two decisions, it is found that the Commissioner himself, in paragraph-5 of the impugned order, has observed that the case of the petitioner has some merit. Learned Commissioner was constrained to observe as such perhaps for the reason that the R.O.R. has been published in favour of a dead person, i.e. late mother of the petitioner and opposite party Nos. 4, 5 and 6. There is nothing in the impugned order to show that for the delay in filing the revision by the petitioner, some right/interest has accrued in favour of any other person over the property involved in the case. The dictum of the aforesaid two decisions makes it clear that a revision can be entertained even after one year of the publication of the R.O.R., if entertaining the revision shall be for the ends of justice and delay has not resulted in accrual of right over the property in question in favour of any other person. In the case of Parikhita Das (supra), on the basis of such analysis, this Court has thought it proper to condone the delay of about 13 (thirteen) years in preferring the revision. In view of the discussion supra, I am of the considered view that the impugned order dismissing the revision filed by the petitioner on the ground of delay only cannot be sustained and the same is accordingly quashed. The matter is remitted back to the Commissioner, Consolidation and Settlement, Odisha, Cuttack (opp. party No. 1) for disposal of the same on merit afresh after affording opportunity of hearing to all the parties concerned. The revision petition shall be disposed of on merit by the end of this year. The writ petition is accordingly allowed.