
(2013) 08 OHC CK 0090

In the Orissa High Court

Case No : Writ Petition (C) . No. 13466 OF 2008

Shiva Pardia

APPELLANT

Vs

Rambha Mahananda and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0090

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : H.S. Mishra, T.K. Sahoo and A.S. Behera, for the Appellant; N.K. Sahu, B. Swain and N.K. Das for O.Ps 1, 2, 3, 4, 8, 14, 15 and 19, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—This petition has been filed for quashing the order dated 08.01.1999 passed in R.M.C. No. 12 of 1995 by the Collector, Sonepur under Annexure-11 and the order dated 2.8.2008 passed in Bhogra Appeal No. 1 of 1999 by the Revenue Divisional Commissioner under Annexure-13. The case of the petitioner, as averred in the writ petition, in brief, is that an area of Ac. 138.46 decimals of land in Khunti No. 1/1 of village-Menda under the ex-State of Sonepur was Khamar land by status. The then ruler, Maharaja of Sonepur was the owner in possession of the aforesaid property. The petitioner was appointed as a lessee in respect of the aforesaid entire area by the ruler in the year 1955-56 on payment of lease premium of Rs. 4200/- and from the date of lease, the petitioner was continuing in possession over the same as of right. The petitioner has further averred in the writ petition that some of the opp. parties had interfered with the possession of the petitioner over a portion of the disputed property and took away the paddy crops forcibly for which a proceeding u/s 145 Cr. P.C. was initiated in the year 1955-56. Thereafter, the petitioner filed Money Suit No. 10 of 1956 before the learned Subordinate Judge, Bolangir claiming recovery of a sum of Rs. 3484/- towards damages. It is further alleged that the

judgment passed in the aforesaid suit was subsequently challenged in Second Appeal No. 380 of 1959 in which this Court vide its judgment dated 17.8.1961 dismissed the appeal upholding the finding that the Yuvraj of Sonapur had Ac. 150.00 of Khamar lands and the petitioner took lease of the entire Khamar lands and also is in possession of the same by raising paddy crops. The petitioner has annexed the judgment passed in the Second Appeal No. 380 of 1959 as per Annexure-1 to the writ petition. It was further alleged in the writ petition that the petitioner had also filed Title Suit No. 130/17 of 1969-73 with a prayer to declare his title in respect of certain land and the said suit having been dismissed, he filed Title Appeal No. 18 of 1978 before the learned District Judge, Bolangir. The said appeal was allowed. Against the aforesaid judgment, Second Appeal No. 293 of 1974 was filed, which was dismissed holding therein that the petitioner was a lessee in respect of the suit land and has acquired the right of occupancy over the same. Apart from this, so many suits and second appeals have been referred to in the writ petition alleging that the present disputed property was a part of the Khamar land over which the petitioner had obtained the lease from the ex-ruler and, as such, he was/is continuing in possession of the same as per the decision rendered in the respective cases. By referring to the said judgments passed in different suits and second appeals, the petitioner claimed that he was inducted as a lessee in respect of the suit land, and, as such, the status of the land was "Khamar" and not "Bhogra" as held in the impugned order. The petitioner has further alleged that without calling for the records in Bhogra proceeding No. 93 of 1955-56, the finding of possession as recorded by the Collector as well as Revenue Divisional Commissioner in Bhogra Appeal No. 1 of 1999 is without any basis and not in conformity with the remand order dated 28.6.1980 passed in Bhogra Appeal No. 81 of 1963 under Annexure-6 to the writ petition.

2. The case of the opp. parties is that the land in dispute bearing Khunti No. 1 (holding) consisting an area of Ac. 138.46 decimals was the Bhogra land allotted to the village administrator of village-Mendha, hamlet Budhi Khamar by the Ex-ruler of Sonapur State before the merger of the ex-state with the Government by operation of the Merged States (Laws) Act. After merger of the ex-state, a press-note was issued by the Government on 2.2.1956 abolishing the Gountia system in the ex-state of Sonapur with effect from 1.4.1956. It was indicated in the said press-note that the Bhogra lands attached to the office of Gountia will be settled with occupancy rights therein in favour of raiyats with equitable rent who were in actual possession as on 1.7.1955 subject to reservation of a factum of Bhogra land in favour of the Grama Sabha in the manner as indicated in the press-note. After issuance of such press-note, the Maharaja of Sonapur, Shri Sudhanshu Sekhar Singhdeo submitted a surrender application to the Collector vide his application dated 25.2.1956 describing the status of Khunti No. 1/1 area Ac. 138.46 decimals of village-Menda-Budhi Khamar, the present disputed land as the Bhogra land and, accordingly, suggested therein that the persons who were in actual possession in respect of the aforesaid Bhogra land on the appointed

date, i.e., on 1.7.1955 should be recorded in respect of the respective lands in their actual possession. On the basis of the aforesaid surrender application submitted by the Ex-ruler admitting the status of the disputed land as Bhogra, the Collector, Bolangir started Bhogra conversion proceeding No. 93 of 1955-56 for recognition of occupancy tenancy of the persons, who were in possession on the appointed date, i.e., on 1.7.1955 by fixing fair and equitable rent. Though the predecessors of the present opp. parties were in possession of a portion consisting of about Ac. 47.00 of land out of the area of Ac. 138.46 decimals of holding No. 1/1 of village Menda (Budhi Khamar) on the appointed date, they could not appear in the aforesaid proceeding and behind their back out of the total area of Ac. 138.46 decimals, an area of Ac. 91.79 decimals were allowed to be settled in favour of the present petitioner. The rest area of Ac. 46.47 decimals was directed to be recorded in favour of Maharaja of Sonepur though the predecessors of the present opp. parties were continuing in actual possession. The admitted position of the case is that though the petitioner was a party in the Bhogra conversion proceeding, but he had not challenged the status of the land as Bhogra land, rather, by accepting the status of the disputed property as Bhogra, he put-forth his grievance for settlement of the entire land in his favour on the basis that he was continuing in possession over the entire land. The Collector passed the final order on 6.3.1963 coming to a finding that the disputed Khunti No. 1/1 of Budhi Khamar in village-Menda was Bhogra land. The petitioner, being aggrieved by the said order passed by the Collector preferred Revenue Bhogra Appeal No. 2 of 1964 challenging the order to the extent of settling Ac. 46.47 decimals in favour of the Maharaja of Sonepur. In the appeal memo filed by the petitioner, he had accepted the disputed land as Bhogra land.

3. The opp. parties further stated in their counter affidavit that the disputed property involved in the present case, i.e., Khunti No. 1, area Ac. 138.46 decimals in village-Menda is a part of that area, which was the subject-matter of dispute in O.T.R. Revision Case No. 1211 of 1962 where 11 different persons claiming to be the purchasers in respect of the entire Ac. 138.46 decimals claimed to be landlord on the basis of the alleged purchase from the then Raja. The claim of the aforesaid persons having been negated in the aforesaid O.T.R. case which was confirmed in revision, such persons have filed O.J.C. No. 2 of 1965 and O.J.C. Nos. 95 to 104 of 1965 before this Court. The aforesaid writ petitions ended in compromise entered into between the parties and accordingly, a compromise petition was filed before this Court on 2.5.1969 incorporating the present disputed properties in such compromise petition, describing the status of the same as Bhogra land. The present petitioner being opp. party in that batch of writ petitions has sworn an affidavit acknowledging the status of the land as Bhogra. While the position was continuing as such, the predecessors of the opp. party being in actual possession over Ac. 46.47 decimals of the disputed land out of the total area of Ac. 138.46 decimals being aggrieved by the order passed in Bhogra Conversion Proceeding No. 93 of 1955 filed Bhogra Appeal No. 81 of 1963 challenging the direction for settlement of aforesaid land in the name of the

Ex-ruler, i.e., Maharaja of Sonapur. In the said appeal, the present petitioner on 14.4.1966 filed an application to be impleaded as one of the respondents challenging the claim of the present opp. parties over the disputed land. In the said application for impletion of party, the present petitioner had also admitted the status of the land as Bhogra.

4. It is further submitted that after filing of the Bhogra Appeal No. 2 of 1964 by the petitioner and the Bhogra Appeal No. 81 of 1963 by the predecessors of the present opposite party, both the appeals were ordered to be heard analogously by the R.D.C. vide his order dated 2.3.1974. Though the order was passed for analogous hearing of both the appeals as aforesaid, but surprisingly, Bhogra Appeal No. 2 of 1964 filed by the present petitioner was taken up for hearing and behind the back of the present Opp. Parties, the Maharaja of Sonapur, who was respondent No. 2 in that appeal gave his consent for recording of the present disputed land i.e. Ac 46.67 decimals in favour of the present petitioner. It may be stated here that though the predecessors of the present opp. Parties had preferred Bhogra Appeal No. 81 of 1963 claiming their title over the disputed land referred to above and their appeal was pending for disposal, the order was passed on 24.5.1980 declaring the title of the petitioner in respect of the aforesaid land. The appeal filed by the predecessors of the present opp. Parties was taken up for hearing on 28.6.1980 where the present petitioner was impleaded as one of the respondents.

The plea advanced by the petitioner claiming the land as "Khamar land" was negatived by the appellate authority rightly.

5. With regard to the order passed in the appeal filed by Shiva Pardia, the petitioner, bearing Bhogra Appeal No. 2 of 1964, the learned appellate court has held that since there was an earlier order for hearing of both the appeals analogously, such order having not come to the notice of the court at the time the appeal was taken up for the hearing and the appellants hearing having the subsisting interest over the disputed property, the order passed in Appeal No. 2 of 1964 is modified to the extent of Ac. 46.47 decimals and the matters were remanded afresh to the Collector to examine the question, who were actually continuing in possession over the aforesaid disputed land on 1.7.1955.

6. O.J.C. No. 2073 of 1980 was preferred by the present petitioner challenging the remand order of the appellate authority. On 25.6.1991, the said writ petition was taken up for hearing. A Division Bench of this Court after examining the contentions raised by the petitioner observed as follows:-

....We are unable to accept this submission of the learned Counsel for the petitioner inasmuch as we were not shown any material on the basis of which the petitioner's claim can at all be entertainable. The so called Judgments of the Civil Courts are not on record nor the same have been filed in this proceeding. On the other hand, document filed, namely a compromise petition filed in this Court in O.J.C. No. 2 of 1965 clearly indicates that the disputed lands of 138.46 acres in

Village Menda have been described as Bhogra lands and the petitioner is a signatory to the said Compromise Petition. It has also been averred by the Opp. Parties that the petitioner himself in his Appeal Memo filed before the Revenue Divisional Commissioner has stated the land to be Bhogra land. In that view of the matter, it will be difficult for us to accept the submission of Sri Mukherjee, the learned counsel for the petitioner.

7. With regard to validity of the remand order passed by the R.D.C., this Court in the said writ petition (OJC No. 2073 of 1980) further held as follows:-

.....We do not find any infirmity in the same. The Revenue Divisional Commissioner has clearly indicated that the matter should be re-inquired into in respect of Ac. 46.47 acres of land and appropriate order should be passed on the finding arrived at in the said enquiry.

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Having applied our mind to the order passed by the Revenue Divisional Commissioner, we are of the considered opinion that there is neither any error of law nor error of jurisdiction apparent on the face of the said order so as to be interfered with by this Court in exercise of the extraordinary writ jurisdiction. In the circumstances, the Writ application fails and is accordingly dismissed....

After dismissal of the said writ petition with the aforesaid finding, the Bhogra case was pending for adjudication before the Collector, Sonepur. Since both the matters were not taken up for hearing for a long time, the present opp. parties preferred Misc. Case No. 12 of 1995 before the Collector for implementation of the remand order passed in the aforesaid appeal as well as the order of this Court passed in O.J.C. No. 2073 of 1980. After filing of the aforesaid Misc. Case, being Misc. Case No. 12 of 1995, the Collector took up the case for hearing and after conducting an independent enquiry by deputing the Tahasildar to the spot and after examining the settlement records, by taking into consideration the judgment passed by this Court in O.J.C. No 2073 of 1980 and the own admission of the petitioner in various judicial proceedings about the status of the land as "Bhogra", the Collector came to the conclusion that:

(i) Status of the land is Bhogra, and

(ii) the petitioners in Revenue Misc. Case No. 12 of 1995 were in possession over the disputed land on the appointed date and are continuing in possession over the same.

The present petitioner preferred Bhogra Appeal No. 1 of 1999 before the Revenue Divisional Commissioner (Northern Division), Sambalpur. The appellate authority after considering all the documentary evidence and by taking into consideration the clear admission of the present petitioner admitting the status of the land as "Bhogra" and by taking into consideration the note of possession recorded in the settlement record in favour of the opp. parties as well as the order passed in various proceedings u/s. 145 Cr.P.C. in favour of the present opp.

parties, dismissed the appeal filed by the present petitioner clearly holding therein that;-

(i) The status of the disputed land is "Bhogra".

(ii) The respondents were/are in possession over the disputed land.

Challenging the aforesaid confirming order passed by both the fact finding authorities, the aforesaid writ application has been filed by raising the following questions;-

(A) The finding recorded by the Collector as well as the Revenue Divisional Commissioner in the impugned orders that the status of the land is Bhogra land is not correct.

(B) The finding with regard to possession is not supported by any evidence.

8. On the basis of the aforesaid factual background, the following questions arise for consideration:

(A) Whether the order passed by the subordinate authority having the jurisdiction over the matter is at all required to be interfered with by this Court by exercising the jurisdiction under Article 226 of the Constitution of India?

(B) Whether the concurrent findings recorded by both the courts below with regard to the status of the land holding it to be "Bhogra land" is required to be disturbed by this Court?

(C) Whether the finding of possession recorded in favor of the opp. Parties by both the courts below can be characterized as perverse finding and based on no evidence so as to warrant this Court to interfere with such finding?

9. In answer to all the three questions framed above, it is to be examined as to whether it would be appropriate to issue a writ of certiorari quashing the aforesaid two orders as prayed for by the writ petitioner or setting aside the same by exercising the supervisory jurisdiction of this Court under Article 227 of the Constitution.

10. It is well settled that the Court issuing a writ of certiorari or exercising supervisory jurisdiction over a subordinate court or Tribunal does not act as an appellate court. The Writ Court will not review the findings of fact reached by the inferior court or Tribunal, even if, they may be erroneous. Writ of certiorari is not meant to take the place of an appeal. Its purpose is to determine on examining the record whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law, which, it was required to do. As a technical error, even though on the question of law, is not sufficient to attract the extraordinary jurisdiction, where the error of law, even if found, is not an error apparent on the face of the record, but is merely an error in appreciation of the evidence or affidavits or in drawing inferences or omission to draw inferences or in other words, error, which the court sitting on appeal only

could have examined and, if necessary corrected, cannot be interfered with by issuance of a writ of certiorari.

11. The Hon"ble Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, has also laid down that the Court of appeal only could have examined and, if necessary, corrected the wrong findings of fact by appreciating the evidence on record in exercise of its appellate jurisdiction. If it is shown that the appellate authority in exercising its power has disregarded any mandatory provision of law, jurisdiction under Article 226 can be exercised. On the other hand, if such contingencies do not exist, the case is not fit for exercise of jurisdiction under Article 226 of the Constitution.

12. Keeping this well settled position of law in view, as it is revealed from the impugned orders passed by the Collector as well as the Revenue Divisional Commissioner that both the authorities by considering the documentary and oral evidence adduced on behalf of the parties have come to the conclusion that the opp. party no. 3 is in possession over the disputed land on the appointed date, i.e., on 1.7.1955 and, as such, the said land is required to be settled with him. Whatever may be the defect in the impugned order of the Collector with regard to assessment of evidence on the question of possession, such defect having been cured in the order of the Revenue Divisional Commissioner under Annexure-13, who by taking into consideration the effect of the order passed in O.J.C. No. 2073 of 1980 as quoted above, the compromise petition filed in O.J.C. No. 2 of 1965, the order passed in Bhogra Appeal No. 2 of 1962 and Bhogra Appeal No. 81 of 1963 as well as the report submitted by the Tahasildar on 11.7.1966 under Annexure-9 to the writ petition, came to the conclusion that the status of the disputed land is "Bhogra" and not the private land of the ex-ruler as claimed by the petitioner. The said finding cannot be interfered with by exercise of jurisdiction under Article 226 of the Constitution, which is a finding of fact and cannot be said to be based on no evidence. It is further seen that the petitioner having admitted in various affidavits that the status of the land is "Bhogra", keeping the well settled position of law that an admission by a party is substantive evidence of the fact admitted and admissions duly proved are admissible evidence irrespective whether the party making them, appeared in the witness box or not and was confronted with those statement and, in case, it made a statement contrary to those admissions, it cannot be held at this stage that the status of the land was not "Bhogra", but "Khamar" as alleged by the petitioner. This fact is more fortified by the fact that the Maharaja of Sonapur after abolition of Gountia system in the ex-State of Sonapur had surrendered the disputed land to the State Government on 25.2.1956 describing the status of the said land as "Bhogra" and, accordingly, recommended settlement of the lands in favour of the persons, who were in actual possession on the appointed date, i.e., 1.7.1955. The Collector on the basis of the above surrender made by the ex-ruler has observed in the order that the surrender petition filed by the Gountia of the village as well as the Maharaja is accepted with effect from 1.4.1956. The said order was passed way back in the year 1963 on the basis of which, the

Government proceeded to conduct an enquiry for settlement of such land in favour of the respective persons, who were in actual possession. Hence, after such long lapse of time, the plea of the petitioner that the status of the land is "Khamar" cannot be accepted as there is no substance in support of such plea coupled with the admission of the petitioner that the said land was "Bhogra" land.

13. In view of the above findings, this Court is of the opinion that the finding of possession recorded in favour of the opp. parties by both the forums below can, by no stretch of imagination, be accepted as perverse being based on no evidence so as to warrant exercise of writ jurisdiction of this Court to interfere with the same. The writ petition, therefore, being devoid of merit, stands dismissed. There shall be no order as to costs.