

(2021) 10 OHC CK 0043

In the Orissa High Court

Case No : Writ Petition (Civil) No. 3220 Of 2019

Siba Muduli

APPELLANT

Vs

Director, Consolidation, Odisha, Cuttack And Others

RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Estates Abolition Act, 1951 — Section 17

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50B(4)

Limitation Act, 1963 — Section 6, 7, 8, 9, 18, 19

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 37, 37(1), 41(1), 57

Citation : (2021) 10 OHC CK 0043

Hon'ble Judges : S.K. Mishra, J;Savitri Ratho, J

Bench : Division Bench

Judgement

S.K.Mishra, J

1. This is a reference to the larger Bench to resolve the conflict between the reported cases of Abhaya Charan Mohanty v. State of Orissa and others; 2003 (Supp.) OLR-882 and Bhagaban Jena and others v. State of Orissa and others; 2007 (1) OLR-598. Apparently, both the aforesaid reported cases were decided by different Single Benches of this Court and there appears to be a conflict of opinion regarding delay in filing the application under Section 37 (1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short "OCH & PFL Act").

2. Noting this differences of opinion of learned single Judge in W.P.(C) No.3220/2019 as per order dated 27.2.2019 referred the matter to a larger Bench to decide the following questions:-

(i) Whether the Commissioner/Director, Consolidation can entertain the petition at any point of time, where no period of limitation has been prescribed for invoking jurisdiction of the Commissioner, Consolidation/ Director, Consolidation

under Section 37 of the OCH & PFL Act?

(ii) What is the reasonable time in approaching the court, when no period of limitation has been prescribed?

3. Admittedly Section 37 OCH & PFL Act do not provide for any limitation for filing an application under Section 37 of the OCH & PFL Act. It is also apparent from the provisions itself that the Consolidation Commissioner as well as the Director of Consolidation can suo motu examine the regularity of the proceeding or as to the correctness , legality or propriety of any order passed by such authority in the case or proceedings and may after allowing the parties concerned a reasonable opportunity of being heard make such order as it thinks fit.

4. Thus divergent opinion regarding the scope of Section 37 of the OCH & PFL Act, it was settled by the Full Bench Judgment of this Court in the case of Gulzar Khan v. Commissioner of Consolidation and others; 1993(II) OLR-194. In the case of Gulzar Khan, the question arose whether the Commissioner or the Director of Consolidation has the jurisdiction to call for records and pass appropriate orders under Section 37 of the OCH & PFL Act even after issuance of notification under Section 41(1) of the said Act. The Full Bench of this Court after taking into consideration various Full Bench Judgments pronounced earlier and also various other judgments at paragr-37 held as follows:-

"The aforesaid being the position, it is apparent that a forum has to be available to a person who was to be aggrieved, after Section 41 notification has been issued, with any order having been done during the consolidation operations affecting his right, title and interest. As stated in the opening sentence of this judgment, there cannot be a right without any remedy; and, according to us, the remedy can be made available principally by Section 37 of the Act. As to when such a situation may arise need not be spelt out; indeed, it cannot be; the probability of such a situation arising cannot obviously be ruled out. The power being unfettered, we cannot put any fetter; any such action of ours would render some really hard-pressed people without a remedy. May we repeat that we are not at the question as to when power under Section 37 would be or should be exercised. As already pointed out, this power shall be available only under compelling circumstances, but on compelling circumstances existing, we cannot shut out the invocation of the power. May we also observe that though Section 37 has conferred an unfettered power it is settled law that every power, be it administrative or judicial, has as to be exercised in a reasonable manner, and the reasonable exercise of power inheres in its exercise within a reasonable time as stated at pp.1245-6 of Manasaram v. S.P. Pathak: AIR 1983 SC 1239. This apart no power is really unfettered; every power has to be exercised according to rules of reason and justice, not according to private opinion; according to law, and not according to humour. The exercise of discretionary power cannot be arbitrary, vague and fanciful: it has to be legal and regular."

5. Thus, it is clear that Full Bench of this Court has held that the power under Section 37 of the OCH & PFL Act is unfettered and can be exercised to render justice to some really hard-pressed people who are without a remedy. The Full Bench further held that such power has to be exercised in a reasonable manner and reasonable exercise of power inheres in its exercise within a reasonable time as stated in the case of *Manasram v. S.P.Pathak* (supra).

6. In another case arising out of Orissa Estates Abolition Act, 1951 read with provision of the Land Acquisition Act, 1994 arising out of an order of this Court, the Hon'ble Supreme Court in the case of *State of Orissa and others v. Bbrundaban Sharma and another*; 1995 Supp (3) Supreme Court Cases 249, examined a case where after 27 years of grant of Patta, the Tahasildar has cancelled the same under the provisions of Orissa Estates Abolition Act was upheld by the Hon'ble Supreme Court by setting aside the order of this Court. Such view is taken by the Hon'ble Supreme Court mainly on the ground that when the original order was vitiated by illegality or impropriety committed by officer or authority or was passed due to suppression of the material facts or fraud, it is open to the Tribunal to reopen the same. The Hon'ble Supreme Court further held that limitation would start running from the date of the discovery of the fraud or suppression of material or relevant fact or omission thereof and an order under Section 17 of the Orissa Estates Abolition Act was not a bar to exercise suo motu revisional power.

7. In the case of *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy and others*; (2003) 7 Supreme Court Cases 667, the Hon'ble Supreme Court had the opportunity of examining the scope and ambit of Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and has held as follows:-

"In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. The use of the words "at any time" in Section 50-B (4) of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercise reckoning or staring from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. While exercising such power, several factors need to be kept in mind as such effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, under Section 50-B(4) the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights

of the parties. The expression "any time" in Section 50-B(4) cannot be rigidly read letter by letter. It must be read and construed contextually and reasonable and not in an unguided or arbitrary manner.

8. In the OCH & PFL Act, a provision regarding limitation has been provided in Section 57. It reads as follows:-

"57.Limitation - Subject to the provisions of this Act, the provisions of the Limitation Act, 1963 except Sections 6,7,8,9,18 and 19 shall apply to all applications, appeals revisions and other proceedings under this Act, or the rules made thereunder".

9. Thus, it is apparent from the record that the Orissa Legislative Assembly has made the provisions of the Limitation Act except those provisions mentioned above in the statute itself are applicable to all the applications, appeals, revisions and other proceedings under the Act.

10. However, the provision of Section 37 of the OCH & PFL Act is an enabling Section, which reads follows:

"37. Power to call for records - (1) The Consolidation Commissioner may call for and examine the records any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard make such order as he things fit.

(2) The power under Sub-Section (1) may be exercised by the Director of Consolidation in respect of authorities subordinate to him."

The power to call for records by the Director or Commissioner Consolidation has been provided to give relief to some persons who are hard-pressed having right but without effective forum of remedy. It is also provided that this power is a suo motu power and which can be exercised by the Commissioner or Director without any application or with an application of an aggrieved party.

11. So having considered all these cases, we are of the opinion that the questions referred to this Bench by the learned Single Judge are answered in the following manner:-

(1) The Commissioner/Director can entertain a petition at any point of time as there is no period of limitation has been prescribed for the same under Section 37 of the OCH & PFL Act.

(2) What is a reasonable time as it is seen from the reported cases referred to above that in appropriate case even after 27 years the Revisional Authorities have exercised their suo motu power to correct a grave error or injustice perpetuated.

12. We are of the firm opinion that reasonable time may extend even to 20 to 30 years also in cases where the facts of the case involved any of the following factual/legal aspects:-

(i) When the order impugned is passed on the basis of fraud or fraudulent misrepresentation made by a party or based on a fraudulent document;

(ii) When the order was passed is inherently without any jurisdiction or is passed by a person who has no authority to pass such an order;

(iii) When an order is passed adversely affecting the interest of a minor without being represented by legal guardian and it includes the perpetual minor like deity;

(iv) When any Government land or community land has been grabbed by an abuse of process of law; and

(v) When the order impugned before the Revisional authority is passed in complete disregard of the provisions of law guiding the field.

13. We further hasten to add here that this list is not exhaustive but is only illustrative. So, we answer the second point that "what is a reasonable time" in approaching the Court, is in fact a question of fact depending on the peculiar facts of each and every case and no strait jacket formula can be provided.

14. In that view of the matter both questions are answered in the manner narrated above. The matter may be placed before the assigned Bench for further hearing.

.....