

(2006) 11 OHC CK 0023
In the Orissa High Court
Case No : Writ Petition (C) No. 95 of 2006

Siba Prasad Sahu and Another	Vs	APPELLANT
Revenue Divisional Commissioner, (Central Division) and Others		RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Survey and Settlement Act, 1958 — Section 12B, 15

Citation : (2007) 1 OLR 281 Supp

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : P.K. Routray, B.G. Mishra, N.K. Deo, R.K. Rout and A. Routray, for the Appellant; Additional Government Advocate, L. Samantray, U.K. Barik, R. Pradhan and B. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—Heard Shri P.K. Routray, learned Counsel for the Petitioners, and Shri L. Samantray, learned Counsel for O.P. No. 4 and learned Addl. Govt. Advocate for the O.P.-State.

2. The Petitioners by this writ petition under Articles 226 and 227 of the Constitution of India challenge the legality and validity of the order dated 12.8.2005 passed by the Revenue Divisional Commissioner, Central Division, Cuttack, in R.P. Case No. 1 of 2004, vide Annexure-7, remanding the matter to the Tahasildar, Baripada, with a direction to verify all the relevant documents, possession of the revision Petitioner over the suit land and dispose of the case in accordance with law, within a period of three months, after hearing both the parties. The Petitioner has also challenged the notice issued by the Tahasildar, Baripada, vide Annexure-8, pursuant to the order of the Revenue Divisional Commissioner (R.D.C.) in Annexure-7.

3. As it appears, the main ground basing upon which the order passed by the

R.D.C. is impugned, according to the Petitioners, is that the R.D.C. could not have remanded the matter back to the Tahasildar with the directions as indicated above. According to the Petitioner, Section 15 of the Orissa Survey and Settlement Act, 1958 (hereinafter "the Act") mandates that the Board of Revenue may in any case direct, inter alia, revision of the record-of-rights within one year from the date of final publication u/s 12B of the Act. The learned Counsel for the Petitioners in this regard relies upon a decision of this Court in the case of Sarat Chandra Sahu v. Commissioner of Land Records and Settlement 82 (1996) C.L.T. 321, wherein the Court dealing with the scope of Section 15(b) held thus

.... u/s 15(b), the Commissioner has been given the authority to decide the grievance of the parties in relation to final publication of record-of-rights. A statutory power by a statutory authority has to be exercised in a proper manner so that the litigants have a sense of satisfaction that their grievance, have been appropriately dealt with. The Commissioner should have done well to address himself on the merits of the case. But instead of doing so he passed the order of remand....

4. The further grievance of the Petitioners is that the R.D.C. should not have condoned the delaying entertaining the revision u/s 15(b) of the Act after a long lapse of time of 18 years and in doing so, he has committed an illegality in passing the impugned order.

But in the interest of justice, I am not inclined to accept the submission of the learned Counsel for the Petitioners that the R.D.C. has committed any illegality in condoning the delay in filing the revision. In my considered opinion, there is no illegality or irregularity in the order passed by the R.D.C. condoning the delay in filing the revision, but the R.D.C. should have given a finality to the dispute between the parties by deciding the matter himself instead of remanding the same to the Tahasildar. In my considered opinion, and in view of the judgment cited above, it would be in the interest of parties if the R.D.C. re-hears the matter on merits and dispose of the same by passing a reasoned order thereby giving a finality to the dispute between the parties.

5. Accordingly, the order passed by the R.D.C. in R.C. No. 1/2004, vide Annexure-7, so far as it relates to remand of the matter to the Tahasildar, is quashed. Resultantly the proceeding initiated by the Tahasildar by issuing notice under Annexure-8 is also quashed. The R.D.C. shall now re-hear the matter and take a decision after hearing both the parties. I make it clear that I have not entered into the merits of the matter as well as the factual dispute as I leave it to be decided by the R.D.C.. Till a decision is taken by the R.D.C., both the parties are directed to maintain status quo of the disputed property. Let both the parties appear before the R.D.C. on 11th December, 2006. The R.D.C. shall act upon production of the certified copy of this order.

6. The Writ petition is disposed of with the above order. No cost.