
(2004) 01 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 5543 of 2001

Sk. Abdul Fakir

APPELLANT

Vs

Charulata Kapandia and Others

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes)
Regulations, 1956 — Regulation 3A
Orissa Survey and Settlement Act, 1958 — Section 15

Citation : (2004) 97 CLT 400 : (2004) 1 OLR 251

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : B. Das, S.K. Mallick, B. Singh and S.P. Barik, for the Appellant; B.N. Mohanty-2, S.N. Mishra and M.R. Samal for O.P. 1 and Somadarshan Mohanty, for O.P. 2, for the Respondent

Judgement

P.K. Tripathy, J.—Heard learned counsel for the petitioner, learned counsels appearing for each of opposite parties 1 and 2 so also learned Standing Counsel and the writ petition stands disposed of in the following manner.

2. Opposite Party No. 1 filed an application under Regulation 3-A of Orissa Scheduled Areas Transfer of Immovable property (by Scheduled Tribes) Regulations, 1956 (in short "the Regulation") claiming that she is the owner of the property of Plot No. 28 in Mouza Bentakarpada measuring an area of Ac. 1.40 decimals on the basis of registered deed of sale executed on 19.3.1987 by the true owner i.e., the opposite party No. 2. Since her husband is serving outside the Mouza, she went and stayed with him and taking advantage of her absence the writ petitioner laid a false claim, initiated Mutation Case No. 634 of 1991 and got mutated in his favour an area of Ac. 1.15 decimals from that plot i.e., the Scheduled "B" land and on that basis he is in illegal and unauthorised occupation of the Schedule "B" land. Accordingly, she prayed for eviction of the petitioner and restoration of possession of Scheduled "B" property in her favour in accordance with the provision in Regulation 3-A of the Regulation. Opposite

party No. 2 i.e., the vendor of the opposite party No. 1 did not contest the case. Petitioner contested that case advancing a conflicting claim of right, title and interest and validity of the order of Mutation. On consideration of contention of the parties, in Regulation II case No. 1 of 1999, learned Sub-Collector, Panchapir, Karanjia on 11.9.2000 recorded the finding that petitioner is in unauthorised occupation of the land and, the same should be restored to the opposite party No. 1. He further observed that the order of mutation in favour of the petitioner being illegal, therefore, if the opposite party No. 1 applies appropriately then the "B" Schedule land be recorded in her favour. Petitioner preferred Regulation II Appeal No. 6 of 2000 in the Court of Additional District Magistrate, Mayurbhanj as against the above noted order. The appellate Court after a thread bear discussion of the facts, evidence and contention of the parties recorded his concurrence to the finding and conclusion to the order of the Sub-Collector.

3. It appears from the order of the appellate Court that both the parties afresh filed documents in support of their respective contention and that includes the registered sale deed of the year 1987 on which the opposite party No. 1 relies and the registered deed of sale of the year 1965 on which the petitioner relies. The appellate Court on due reference to such registered sale deeds, corresponding settlement entries of the relevant plots, corresponding revenue records and Amin Bother etc. recorded the finding that the land purchased by the petitioner in 1965 is not the same land which the opposite party No. 1 claims to be her and seeks for recovery. Learned Addl. District Magistrate recorded the finding that opposite party No. 1 purchased Ac. 1.40 decimals, vide Hal Plot No. 28 of Hal Khata No. 26, corresponding Sabik Khata No. 28 and Sabik Plot No. 47/129. On the other hand, petitioner purchased Ac. 1.84 decimals vide Hal Plot No. 29 and Hal Khata No. 27, corresponding to Sabik Khata No. 30 and Plot No. 47/131.

4. While challenging to the impugned orders, learned counsel for the petitioner states that petitioner filed Amin Bother and the position of the case land respecting the plot No. and khata No. in the Sabik and Hal settlements, as noted in that Amin Bother, is different than the conclusion derived by the Courts below. He argues that notwithstanding such circumstance learned Addl. District Magistrate neither rejected the evidentiary value nor considered implication and acceptability of that document and arrived at a wrong conclusion. He further argues that in course of enquiry in the Mutation Proceeding the Tahasildar after being satisfied about identity of the present disputed case land as the land purchased by the petitioner under the registered deed of sale of the year 1965 allowed the application for mutation and that aspect was also not considered properly by the Courts below. His further contention is that when the order of mutation is not challenged by the opposite party No. 1 that order is binding on her and the Courts below should have proceeded with the proceeding accordingly. He further argues that as against the settlement entry petitioner has filed a revision which is pending before the Revenue Divisional Commissioner (Central Division) Cuttack, in which he has prayed to correct the Record of Right

in accordance with the Amin Bother. Learned counsel for the petitioner, however, states that such application for revision has been filed by the petitioner after passing of the impugned order by the appellate Court. Placing such argument, learned counsel for the petitioner proposes that to avoid any further conflict between the parties, the matter may be remanded to the Court of the Sub-Collector for fresh adjudication by providing opportunity of further hearing. In support of the aforesaid contention, petitioner refers to and relies on the cases of Krushna Chandra Mahakul Vs. State of Orissa and Others, ; Harihar Mohapatra and Others Vs. Commissioner of Land Records and Settlement and Others, and Trilochan Singh and Anr. v. Commissioner of Land Records and Settlement, Orissa and Ors. 79 (1995) CUT 507.

5. Opposite party No. 2, has filed a rejoinder conceding to the contention of the petitioner and admitting to correctness in his claim. Learned counsel for the opposite party No. 2 advances argument accordingly.

6. While not acceding to the aforesaid contention of the petitioner for a remand, learned counsel for the opposite party No. 1, argues that when the revenue record according to the settlement, supports the stand of the opposite party No. 1, when the factum of genuineness of the sale deed of the year 1987 is not in dispute between the opposite parties 1 and 2 and when learned Tahasildar had no jurisdiction to entertain an application for mutation from the petitioner to correct the entries in the record of rights, therefore, the whole claim of the petitioner is misconceived and non-sustainable. While not admitting to the facts noted in the Amin Bother, learned counsel for the opposite party No. 1 further argues that the order of mutation and the Amin Bother have no statutory force to supersede the Record of Rights prepared under the Orissa Survey and Settlement Act, 1958 and therefore at best such documents have the effect of showing the factum of possession. When title has passed to the opposite party No. 1 on the basis of the sale deed of the year 1987 and possession was delivered to her, therefore, she is entitled to claim for recovery of possession in accordance with regulation 3-A of the Regulation. He relies on the ratio in the case of Harihar Mohapatra (supra).

7. The above noted facts and circumstances, the relevant evidence which has been brought on record, the findings recorded by the Courts below and the contention of the parties as noted above, leads to the situation that there is a registered deed of sale of the year 1965 in favour of the petitioner and of the year 1987 in favour of the opposite party No. 1. Both the parties lay their claim of title and possession with respect to the disputed property on the basis of respective registered sale deeds. When the record of right prepared under the Survey and Settlement Act, 1958 supports the stand of the opposite party No. 1, the order of mutation and the Amin Bother supports the claim of the petitioner. Though learned Additional District Magistrate did not refer to the Amin Bother and the order of mutation but with due reference to the revenue records he has recorded positive factual finding that the land purchased by the petitioner is

different than the case land and that the opposite party No. 1 is the purchaser of the case land. The position of law is very clear that a Record of Right prepared by the Survey and Settlement Authority cannot be corrected by the Tahasildar nor the Amin Bother can supersede the same. In that context, in the case of Harihar Mohapatra (supra) a Division Bench of this Court has propounded that :

"... It cannot be certainly legislative intent that a person who fails to file an objection and/or prefer an appeal can overcome prescription of time prescribed for the aforesaid purpose, by resort to Rule 34. Therefore, Rule 34 cannot be resorted to by making an application in respect of a cause of action which arose prior to the publication of ROR. To that extent, executive instruction (Annexure-5) permitting correction of ROR in terms of Rule 34 for cause of action which arises before preparation of ROR cannot be maintained."

Therefore, at present, as it appears the documents relied on by the petitioner have no effect of superseding to the entry in the settlement records so as to defeat the claim of the opposite party No. 1. As noted above, petitioner states that he has filed a revision application u/s 15 (b) of the Orissa Survey and Settlement Act for correction of the Record of Right. Until a decision is taken contrary to the position of revenue record, entry in the relevant Record of Right shall hold the field. In that view of the matter, this Court finds no illegality in the impugned order.

8. It may be noted that, the other two citations relied on by the petitioner are of no relevance for adjudication of the present dispute in as much as in the case of Krushna Chandra Mahakul (supra) a Division Bench of this Court have been pleased to hold regarding non-applicability of the provision in Section 5 of the Limitation Act to an application u/s 15(b) of the Orissa Survey and Settlement Act. It appears that provisions in Section 34 and 35 of the Orissa Survey and Settlement Act were perhaps not placed before the Court. Be that as it may, that ratio is of no relevancy when such a question of limitation is not involved in the present case. In the case of Trilochan Singh and Anr. (supra) the issue under consideration was, as to whether the authority under the Survey and Settlement Act can ignore an order passed by the Collector under the Orissa Estates Abolition Act, 1951 on the ground that the order of the O.E.A. Collector is without jurisdiction. Such is not the case in the present case, in as much as while dealing with the case for recovery of possession under Regulation 3-A claim of title can be ascertained by the revenue authority with reference to the relevant document relied on by parties and at that stage the Sub-Collector can go into validity or invalidity of an order of mutation.

9. While not interfering with the impugned order at this stage, this Court, as pleaded by the petitioner, thinks it necessary in the ends of justice to make the observation that the facts discussed and the inference drawn in this judgment shall not stand on the way of the revisional authority under the Orissa Survey and Settlement Act to consider the revision in accordance with law with due verification of relevant records. Since an order of restoration of possession has

been granted in favour of opposite party No. 1 as per the impugned orders of the Courts below (Sub-Collector, Panchapur, Karanjia and the Additional District Magistrate, Mayurbhanj), therefore, if the petitioner co-operates for early service of notice at his cost on all concerned including the opposite party No. 1 then the revisional authority may do well to expedite hearing of the revision and to dispose of the same at the earliest possible and preferably within a period of two months from the date of receipt of a copy of this order. Under such circumstance, restoration of possession of the case land in favour of the opposite party No. 1 as per the impugned orders be deferred by the Sub-Collector for a period of three months from today. If the Settlement Revision shall be allowed recording the case land or any part thereof in favour of the petitioner, then to that extent there shall not be restoration of possession to the opposite party No. 1 so long that order remains valid and binding. If the Settlement Revision is not disposed of within the said period, then the concerned Court may restore possession of the case land to the opposite party No. 1 in accordance with the order passed in the proceeding under the Regulation. In the event the Settlement Revision ultimately terminates in favour of the petitioner at a subsequent stage, then petitioner, if so legally advised, may seek for recovery of possession in accordance with the provision of law but in appropriate forums.

The O.J.C. is disposed of accordingly.