

(1969) 08 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 271 of 1965

Sk. Jahuri

APPELLANT

Vs

The Revenue Divisional Commissioner Central Division and
Others

RESPONDENT

Date of Decision : 28-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Tenancy Act, 1913 — Section 204(1), 61(1), 61(3), 63(1)

Citation : (1969) 35 CLT 1122

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : R. Das and B. Dagara, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner filed an application u/s 61(3) of the Orissa Tenancy Act (hereinafter to be referred to as the Act) for fixation of fair and equitable rent on the ground that waste land had been reclaimed by him under Sub-section (1) of that Section. This application was enquired into and dismissed by the Deputy Collector exercising the powers of "Collector" under the Act. The Petitioner filed an appeal before the Additional District Magistrate, Balasore, who allowed the Petitioner's prayer. Against that order a revision was filed before the Revenue Divisional Commissioner, Central Division, Orissa, who allowed the revision saying that no appeal lay to the Additional District Magistrate. Against this order of the Revenue Divisional Commissioner, the writ application has been filed under Articles 226 and 227 of the Constitutional.

2. Mr. Dall for the Petitioner contends that the Revenue Divisional Commissioner has not been vested with any revisional powers under the Act and as such his order setting aside the appellate order of the Additional District Magistrate is Void and is liable to be quashed. The aforesaid contention raises two questions : (1)

whether the Revenue Divisional Commissioner has revisional jurisdiction under the Act and, (ii) whether any appeal lay to the Additional District Collector against the order of the Deputy Collector.

The second question is of considerable importance as, if the Additional District Collector had no appellate jurisdiction, we would refrain from interfering with the order of the Revenue Divisional Commissioner even though he might not have revisional jurisdiction.

3. Section 204(1) of the Act runs thus:

204(1) Except as otherwise expressly provided in this Act, an appeal from an order or decree passed under the Act shall lie in the following manner:

Every order passed by a Collector, not being

- (a) a judgment in a suit,
 - (b) an order passed in the course of a suit and relating to the trial thereof, or
 - (c) an order passed after decree and relating to the execution thereof, shall be appealable
- (i) to the Commissioner, or,
 - (ii) if passed by a Deputy Collector exercising the power of a Collector, to the Collector:

Provided that no second appeal shall lie to the Commissioner from an order passed by the Collector under sub-clause (ii) of Clause (c).

It would be clear from the aforesaid provision that the impugned order of the Deputy Collector does not come within any of the exceptions prescribed in Clauses (a)(b) and (c). An order on an application for fixation of fair and equitable rent u/s 63(1) is not a judgment in a suit, nor an order in the course of a suit and relating to the trial thereof : neither is it an order passed after decree and relating to the execution thereof. There is no other provision of the Act brought to our notice expressly providing that such an appeal did not lie to the Additional District Collector. We are therefore satisfied, on a close analysis of Section 204(1) that the appeal before the Additional District Magistrate and Collector was competent.

4. It is conceded by the learned Advocates for both sides that there is no provision in the Act giving revisional powers to the Revenue Divisional Commissioner against an order passed in appeal by the Additional District... Collector, u/s 204(1). The order of the Revenue Divisional Commissioner is therefore, without jurisdiction and is void and must be quashed.

5. In the result the writ application is allowed and the impugned order is quashed, but in the circumstances there will be no order as to costs.

R.N. Misra, J.

6. I agree.