(1972) 02 OHC CK 0009

In the Orissa High Court

Case No : Original Jur. Case No. 715 of 1970

Sobhanapuram Mohan Rao and Others APPELLANT

Vs

Trinath Biswalo and Others RESPONDENT

Date of Decision : 14-02-1972

Acts Referred:
Orissa Land Reforms Act, 1960 — Section 59(2)

Citation : AIR 1972 Ori 271 : (1972) 38 CLT 285

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Advocate : Y.S.N. Murty, for the Appellant; A.G. and C.V. Murty, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioners filed an application u/s 1(5 (1) (c) of the Orissa Land Reforms Act (hereinafter to be referred to as the Act) for eviction of opposite parties 1 to 7 who are admittedly tenants under the petitioners. This application was dismissed for default on 2-12-1968 by the order of the Revenue Officer (Annexure 1). The petitioners filed an appeal before the S. D. O., Parlakhemedi, u/s 58 of the Act; the appeal was allowed and the case was remanded to the Revenue Officer for disposal on merits. Against the appellate order opposite parties 1 to 7 filed a revision application u/s 59 (1) of the Act The A. D. M. (Executive), Ganjam held that an appeal against the order of the Revenue Officer did not lie u/s 58 and so also a revision was not maintainable u/s 59. In the penultimate paragraph of his judgment he, however, examined the merits of the case and came to the conclusion that the order of dismissal passed by the Revenue) Officer cannot be challenged under the provisions of the O. L. R. Act. It is against this order (Annexure 3) that the writ application has been filed under Articles 226 and 227 of the Constitution.

2. The order of the A. D. M., Executive, (Annexure 3) is wholly confused and is the outcome of ignorance of law-An order of eviction passed u/s 15 (1) (c) of the

Act is appealable u/s 58 of the Act which runs thus:--

"58. Appeal:-- (1) Any person aggrieved by an order passed under any of the following sections may prefer an appeal to the prescribed authority, namely Sections 4, 9(4). 10, 12(2), 15. 16, 17, 18, 19(1) (c). 20, 21, 22(1). 23(2). 27, 28. 34-A, 35, 42. 52 and 56-A,

(2) x x x x x"

Clearly Section 15 is one of the sections which is appealable. The appeal before the S. D. O. Parlakemedi, was competent.

3. Section 59 prescribes the revisional authority and power. It runs thus:

"59. Revision:-- CD The Collector may revise any order passed in appeal by any officer below the rank of a Col-lector under this Act and the Board of Revenue may revise any order passed by the Collector under this Act, and the period of limitation for such revision shall be as may be prescribed.

(2) For the purposes of Sub-section (I) the Collector or the Board of Revenue as the case may be may suo motu or on application of either party or any interested person call for and examine the record of any matter in respect of any proceedings under this Act as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed thereon and if In any case it appears that any such decision or order shall be modified, annulled, reversed or remitted for reconsideration, the Collector or Board of Revenue as the case may be, may pass orders accordingly.

(3) Disposal of matters under this section shall be as may be prescribed:

Provided that no orders in revision under this section shall be passed with-out giving the parties a reasonable opportunity of being heard".

Sub-section (2) makes It clear that the revisional jurisdiction is not restricted as, it is u/s 115 of the Civil P. C. It is not confined to the realm of exercise of jurisdiction. The power conferred is of wide amplitude and the re-visional authority would fully go into the merits of the matter.

The learned A. D. M. (Executive) exercised jurisdiction illegally in holding that no revision was competent

4. His observation in the penultimate paragraph of his order is contrary to law. As. he rejected the revision application on the ground that no revision lies his further observation is obiter and is to be ignored.

5. It is open to us to remand the case to the A. D. M. (Executive) to re-examine the matter on the footing that a revision is maintainable; but we do not propose to further protract this litigation as no injustice is caused to opposite parties 1 to 7 when the matter would be heard on merits again by the Revenue Officer.

6. We accordingly quash the order of the A, D. M. (Executive) (Annexure 3) end

allow the writ application. A writ of certiorari be accordingly issued. In the circumstances parties will bear their own costs.

B.K. Ray, J.

7. I agree,

