
(1991) 03 OHC CK 0030

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2607 of 1984

Sri Laxman Kanda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 38A

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(3)

Citation : (1991) 2 OLR 50

Hon'ble Judges : L. Rath, J;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : A.B. Misra, for the Appellant; H.K. Jena, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—An order having been passed by the opp. party No. 3, the Revenue Divisional Commissioner, Southern Division, on a reference made by the Collector in an encroachment case directing the land in question to continue under the Government Khata and for the petitioner to be evicted and such decision having been refused to be interfered with by the Board of Revenue (opp parly No. 4) in a further revision, the petitioner has approached this Court invoking its extraordinary jurisdiction.

2. The facts which are not disputed, in a nutshell are that the land is situate in the district of Kalahandi and the petitioner in the record-of- rights published in 1945 was shown in the remarks column thereof as possessing the land. An encroachment proceeding was started against him in respect of the land in the year 1971 but it was dropped A fresh proceeding was started on 14 10-1976 under the Orissa Prevention of Land Encroachment Act, 1972 (Act 6 of 1972) (hereinafter referred to as "the Act") In which order on 27-11-1976 was passed by the Tahasildar evicting the petitioner and imposing penalty of Rs. 3,992/- upon him. An appeal was carried by the petitioner before the Sub-Divisional

Officer which was allowed on 28-6-1977 remanding the matter to the Tahasildar for fresh enquiry and disposal. On remand, the Tabasildar held on 18-1-1978 the petitioner to be an encroacher since 1945 and as being in continuous possession of the land since thirty years for which he had perfected his title by way of adverse possession. He hence held the provisions of the Act to be not applicable and therefore directed dropping of the proceeding with the further direction to send intimation to the mutation section for starting a mutation case against the petitioner. A little before expiry of five years from the order passed on 18-1-1978 Reference was made by the Collector on 10-12-1982 to the Revenue Divisional Commissioner questioning the order passed by the Tahasildar. The Commissioner after hearing the petitioner passed orders on 22-4-1983 setting aside both the appellate order passed by the Sub-Divisional Officer on 28-6-1977 as also the order passed by the Tahasildar, on remand, on 18-1-1978 and passed the order impugned in Annexure-4.

3. Mr Misra, the learned counsel appearing for the petitioner, has urged, in assailing the order in Annexure-4, that since the petitioner has perfected title by way of adverse possession and was in possession of the land for more than thirty years by the date the proceeding started, it was incompetent ab initio and has also secondly contended that the power of revision available to the Revenue Divisional Commissioner u/s 12 of the Act could not only be exercised within a reasonable time and was not available to be invoked after expiry of more than four years. Resisting such submission it is the submission of Mr. Jena, the learned Additional Govt. Advocate, that question of the petitioner having perfected title by way of adverse possession does not arise in view of his admission that he was not in possession of the land since 1 "65 and that further there being no limitation provided for so far as exercise of the power of suo motu revision is concerned, a restrictive limitation cannot be read into the statute limiting the powers of the such revision.

4. As regards the factual aspect, the order of the Commissioner, which was not interfered with by the Board of Revenue in revision, shows him to have proceeded on the footing of the petitioner having made a petition on 2/-11-1976 of being not in. cultivating possession of the encroached land since 1965. From such fact he came to the conclusion that the petitioner could not plead to have remained in possession of the land for thirty years. The approach was erroneous as the admission of the petitioner was relied upon in a truncated manner. As a matter of fact, as the very order of the Commissioner discloses, the petitioner's case was that since 1965 not he but his sons were in possession of the land. It is not the Department's case that after 1.65 the petitioner had surrendered or abandoned the possession and that the State was in possession of the land. Had it been so, there would have been no necessity for initiation of encroachment proceeding. The very fact that an encroachment proceeding was initiated against the petitioner would show that the Government was not in possession of the land but that the land was in possession of the encroachers, be it the petitioner or his sons. If the authorities wanted to rely upon the statement of the petitioner that

not he but his sons were in possession of the land, obviously an order of eviction could not be passed against the petitioner for the simple reason that he was not in possession, a fact which was purported to be acknowledged by the authorities. If, on the other hand, they did not want to rely upon the admission of the petitioner that the land was in possession of his sons, and wanted to stick to their original case that the petitioner was encroacher in respect of the land, they had to proceed on the footing that he was continuing in possession since 1945. It is also not the case of the Department that after 1965 the State was at any time in possession of the land and thereafter the petitioner had re-encroached. In that view of the matter it must be held that the initiation of the encroachment proceeding against the petitioner was misconceived and was hit by Section 13 of the Act and that the conclusion in that regard reached by the Tahasildar on 18-1-1978 was unexceptionable. The order of the Commissioner in that respect is vitiated.

5. The second submission urged by Mr. Misra has equal force. True that Section 12(3) of the Act authorises the Revenue Divisional Commissioner to call for and examine the records of any proceeding under the Act before any officer in which no appeal or revision lies and that if the conditions as specified in Clauses (a), (b) and (c) thereof exist, the Commissioner may pass such order as he deems fit after giving the parties concerned a reasonable opportunity of being heard. Doubtless there is no time limit provided for in the Act during which such power has to be exercised by the Revenue Divisional Commissioner. Yet even if no limitation is provided for, it would hardly mean that the power can be exercised after lapse of any length of time. It is a fundamental concept of all judicial or quasi-judicial decisions that a power which inheres in the body deciding, has to be exercised with reasonableness and it would be highly unreasonable to assume that a suo motu power of revision in a case where right, title and interest in respect of immovable property are involved, can be exercised after any length of time. Such question engaged the attention of the Apex Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, where interpreting Secs 65- and 211 of the Bombay Land Revenue Code, it was held that a revision power of the Commissioner, where no period of limitation is prescribed, must be exercised within few months of the date of the Collector's order. In that case the revisional power exercised after lapse of one year was not found favoured with, it was held that the power of revision has to be exercised within a reasonable time. The decision was followed with approval in AIR 1985 SC 1239 (*Marvsram v. S P. Pathak*) with the observation that when power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and that exercise of the power in a reasonable manner inheres a concept of its exercise within a reasonable time. A full Bench of this Court observed in (191) CLT 322 (*Laxminarayan Sohu v. State of Orissa*) following AIR 1983 SC 12 (*supra*) that there can be no manner of doubt to hold that the power u/s 59(2) of the Orissa Land Reforms Act has to be exercised in a reasonable manner and necessarily stipulates that it should be exercised within a reasonable time and what is

reasonable time so as to be immune from the attack that the power has not been exercised in a reasonable manner would depend upon the facts and circumstances of each case. Section 59(2) of the Orissa Land Reforms Act vests authority in the Board of Revenue to revise any order passed by any authority under that Act, if moved by the Collector of the district or the Land Reforms Commissioner in that behalf. Even in a case arising under the Bengal Finance (Sales Tax) Act the Supreme Court held in *S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others*, to the same effect that the exercise of a suo motu revisional jurisdiction is to be made within a reasonable time and what is reasonable time is dependent upon facts of each case. In view of such overwhelming authorities, we cannot but repel the submission of the learned Additional Government Advocate that because of the wording of Section 12 the power was available to be exercised by the Commissioner at any time. But the question is as to what is reasonable time within which the power should be exercised. Though there is no intrinsic evidence in the Act itself as to what would be the reasonable time for exercise of suo motu power of revision, yet without going into that question it can be held on the authorities of the decisions (supra) that such reasonableness is dependent upon facts and circumstances of each case, including analysis of relevant provisions of the statute concerned. Section 38-A of the Orissa Estates Abolition Act is a pari materia statute as regards the vesting of the estates in the State and the settlement thereof, with the intermediaries or recognising the continuance of the tenants under the State. The provision empowers the respective authorities to review any order in a suo motu proceeding within one year from the date of the decision or the order. Even though we do not propose to hold a general view that the power of suo motu revision is to be exercised by the Commissioner under the Act within a year of the date of the order, yet so far as the present case is concerned, we feel that the order of the Tahasildar on 18-1-1978 was not available to be varied after lapse of nearly five years and as a matter of fact no move for a reference should have been made by the Collector after expiry of such period. Here is a case where the petitioner, a tribal, was in possession of the land since 1945 and even if it is his admission that since 1965 his sons are in possession of the land it does not alter the position that it is either the petitioner or his sons who are in possession. Ordinarily a person who has continued in possession for such length of time is not to be disturbed even if he is not a tribal and that more weightage is to be attached when the person concerned is one such. We would thus hold that the initiation of the proceeding against the petitioner was erroneous in law and hence cannot be sustained.

6. In the result, the writ petition is allowed and the impugned order of the Commissioner in Annexure-4 as well as that of the Board of Revenue in Annexure-5 are set aside, Hearing fee is assessed at Rs. 500/-.

K.C. Jagadeb Roy, J.

7. I agree.