
(2009) 07 OHC CK 0082
In the Orissa High Court

Sri Pratap Patnaik

APPELLANT

Vs

Commissioner, Consolidation and Settlement and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 37(1), 41(1)

Citation : (2009) 108 CLT 644 : (2009) 2 OLR 257 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner, who is the purchaser of a piece of land situated in mouza - Mohabhol Sasan, which is in close proximity to the city of Bhubaneswar in an auction sale conducted by the Assistant Commissioner of Endowments in pursuance of a permission accorded by the Commissioner of Endowments in a proceeding u/s 19 of the Orissa Hindu Religious Endowments Act, calls in question the legality & propriety of the Order Dated 19.7. 1997 passed by the Commissioner, Consolidation, Bhubaneswar in Revision Case No. 90 of 1995 (Annexure-11) in exercise of power conferred upon him u/s 37 (1) of the Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972 (for short, the Act"). By the impugned order, the Commissioner interfered with the order passed by the Assistant Consolidation Officer after passage of nearly 20 years.

2. A skeletal delineation of the background fact, which has bearing on factual adjudication of the present case, in short, is that the land in question is a public endowment of Bharati Math, a public religious institution, within the meaning of O.H.R.E. Act, 1951 & is under the supervision & control of the Commissioner of Endowments. The land was recorded in favour of Toponidhi Sudarsan Bharati, the then Mahant of Bharati Math under Khata No. 57 (Annexure-1). Pursuant to the notification dated 18.3.1974 issued u/s 3 (1) of the O.E.A. Act, the said land

vested in the State. The then trustee, namely, Shri Toponidhi Sudarsan Bharati filed claim application under Sections 6 & 7 of the O. E.A. Act, registered as O.E.A. Case No. No. 49 of 1975 (T). The O.E.A. Collector, after causing enquiry, by Order Dated 21.7.1975 settled the land in question in favour of the said Mahant & the then trustee of Bharati Math. The said statutory settlement has not been challenged by any person & became final. Consequent thereto, a rent schedule was issued by the O.E.A. Collector in favour of the trustee. When the land came under consolidation operation, the trustee filed an objection case for recording of the land in consonance with the order of settlement passed in O.E.A. Case No. 49 of 1975 (T). The said prayer was allowed by Order Dated 15.4.1977 by the Assistant Consolidation Officer. Final land records were prepared & published by the consolidation authorities in favour of the said trustee, which remained unchallenged. On an application filed by the trustee for grant of permission u/s 19 of the O.H.R.E. Act to transfer the said land, which was necessary & beneficial for the institution, the Commissioner of Endowments caused an enquiry & finding that such transfer is beneficial for the institution directed disposal of the property through public auction. Accordingly, the Assistant Commissioner of Endowments, pursuant to the said Order Dated 23.9.1986 of the Commissioner of Endowments, held the public auction on 14.11.1986 in which the Petitioner was the highest bidder. His bid was accepted & the land was transferred in favour of the Petitioner under four registered sale deeds dated 19.11.1986, 21.11.1986, 26.11.1986 & 3.12.1986 (Annexure-6 series). Appeals were preferred before the Secretary, Law Department against the order passed by the Commissioner, Endowments which were dismissed as found to be barred by limitation. But, however, the Appellate authority exercising suo motu revisional power set aside the order passed by the Commissioner. Challenging the said order passed by the Secretary, Law Department, the trustee & the present Petitioner filed O.J.C. No. 6538 of 1991 before this Court. This Court by Judgment dated 13.4.1995 (Annexure- 7) holding that the Secretary, Law Department could not have exercised suo motu revisional power after expiry of ninety days from the date of the order passed by the Commissioner, quashed the said order passed by the Secretary, Law Department. This Court further recorded that the Petitioner volunteered to pay further amount of Rs. 1.00 lakh over & above the consideration amount already paid by him. The Petitioner also filed mutation proceeding to mutate his name, which upon being allowed, the name of the Petitioner has been recorded in the Record of Rights (Annexure-8). The Petitioner also filed application for conversion of the status of the land, which has been allowed by the Revenue Officer in O.L.R. Case No. 24 of 1989 (Annexure-10).

3. After about 18 years from the date of passing of the orders by the Assistant Consolidation Officer, the Opp. Party No. 6 - Shri Jameswar Dev Bije marfatdar Lord Lingaraj Mohaprabhu Trust Board, represented through the Executive Officer, Bhubaneswar, District - Khurda , whose description, status & interest over the said land is intriguing, invoked the jurisdiction of the Commissioner,

Consolidation u/s 37 (1) of the Act by filing Revision Case No. 90 of 1995, The Commissioner, Consolidation by the impugned order under Annexure-11 allowed the revision petition. Being aggrieved, the Petitioner has approached this Court with a prayer to quash the said order passed by the Commissioner, Consolidation.

4. The Petitioner has challenged the impugned order passed u/s 37 (1) of the Act, inter alia, contending as follows:

(I) Exercise of revisional power by the Commissioner u/s 37 (1) of the Act after passage of about nearly twenty years is arbitrary, improper & without jurisdiction.

(II) The order of settlement passed under Sections 6 & 7 of the O.E.A. Act which is a statutory settlement, but has been illegally ignored by the "Commissioner, Consolidation, more so, when the said order has not been challenged either by Lord Lingaraj Mohaprabhu or the deity Jameswar Dev or any other person.

(III) After vesting of the estate, no application having been filed by Lord Lingaraj or the deity Jameswar Dev, their rights, if any stood extinguished by operation of law & they have no semblance of right, title or interest in respect of the land in question after vesting of the estate on 18.3.1974.

(IV) Upon vesting of the estate all pre-existing rights of the intermediary came to an end & by virtue of the order of settlement passed by the O.E.A. Collector, the Mahant acquired a new & independent title derived on the basis of the statutory settlement under Sections 6 & 7 of the O.E.A. Act.

(V) The Commissioner having of Endowments granted the to trustee permission on an application filed 19 of the u/s O.H.R.E. Act, & the trustee having executed the sale deeds in favour of the Petitioner, who became the highest bidder in the auction sale conducted by the endowment authorities & the validity of the orders passed by the endowment authorities having been confirmed by this Court in O.J.C. No. 6538 of 1991, it was not permissible Commissioner, for the Consolidation to unsettle the entire position by passing the impugned order after a long delay.

5. It was contended by the Opp. Party No. 6 - Shri Jameswar Dev Bije that admittedly, the land stood recorded in the name of Shri Lingaraj Mohaprabhu Bije, Bhubaneswar in Khewat No. 1, B. Register No. 14407, G. No. 1370, which was the trust estate & the same was published In the Orissa Gazette Extraordinary dated 22.9.1963, serial No. 71 (Annexure-B/6). From the above, It is clear that Shri Lingaraj Mohaprabhu was the intermediary & not Toponidhi Sudarsan Bharati, who was enjoying the property rent free as he was rendering service to Shri Jameswar Dev, the subsidiary deity of Shri Lingaraj Mohaprabhu , It was, therefore, contended that after vesting of the estate on 18.3.1974, Toponidhi Sudarsan Bharati, though a tenant, but describing himself as the ex-intermediary, made application under Sections 6 & 7 of the O.E.A. Act & the O.E.A. Collector solely basing on the report of the Revenue Inspector, by his Order Dated 21.7.1975 allowed the claim of the tenant illegally.

6. The questions that emerge, In the facts & circumstances of the case for adjudication, are basically regarding the question of exercising the power u/s 37 (1) of the Act after passage of a long period & the power of the consolidation authorities to ignore a settlement made by the O.E.A. Collector after vesting of the estate. The further point to be determined is that, when the property has been purchased by the Petitioner in an auction conducted by the Commissioner of O.H.R.E., who granted permission u/s 19 of the O.H.R.E. Act for sale of the said land, can it be held that the religious endowment (institution), which applied for permission u/s 19 of the O.H.R.E. Act had no title over the property, by the Consolidation Authorities.

7. In the case of *Ghasiram Rana v. State of Orissa and Ors.* 81 (1996) C.L.T. 279, this Court while dealing with a situation Where there was no period of limitation prescribed for exercising of power under the Orissa Land Reforms Act held as follows:

As has been rightly submitted by Learned Counsel for the parties, the legality of the order passed by the R.D.C. has to be tested on touchstone of reasonableness of time, Even though no period of limitation is prescribed, power has to be exercised in a reasonable manner which inheres the concept that it must be done within a reasonable time. Absence of a provision prescribing a period of limitation is an assurance to exercise the power within caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or misuse or abuse of the power by lower authorities. It is true that when benefit has been obtained by fraud, it does not lie in the mouth of the party to the fraud to plead limitation to get away with the order. Lapse of time no excuse to refrain the authority exercising statutory powers to unravel fraud & set the matter right. (See *State of Orissa v. Brindaban Sharma*). The facts & circumstances of each case would indicate what would be the reasonable time. In certain cases, this Court has held that the action initiated after lapse of 5 or 6 years is unreasonable (See *Labanyabati Devi and Others Vs. Member, Board of Revenue and Others*, . Reasonable is that which stems from reason; which is riot arbitrary or capricious. Reasonableness has a wide connotation. It has to be understood both objectively & subjectively. An act is reasonable when it is comfortable or agreeable to reason. The expression "reasonable" means rational, according to the dictates of reason, & not excessive or Immoderate". Terms like "reasonable", "fair" "just" deprive their significance from the setting in which the impugned action has taken place. The action is called reasonable which an informed intelligent, just-minded, person could rationally favour. The concept of "reasonable" is relative. It is a question of degree, dependent upon the facts & circumstances of each case. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusion according to the idiosyncrasy of the individual & the times & circumstances in which he thinks. It has been said that an attempt to give a specific meaning to the word "reasonable" is trying to "count what is not number, & measure what is not space. However, one thing is clear, it applies to sense of right reason, propriety or fairness. Chief Baron Pollock has said "reasonable time"

means as soon as circumstances will permit. It is such length of time as may fairly, & properly be allowed or required having regard to the nature of the act or duty & to the attending circumstances. In the case at hand, we find that action was taken nearly after lapse of 14 years. By no stretch of imagination & judged by any standard, it cannot be said to be reasonable time within which action was taken. Fraud was not the basis for Impugned action. In that view of the matter, we quash the order passed by the R.D.C. (Annexure-1). There is no order as to costs.

In the case of Sri Abhaya Charan Mohanty v. State of Orissa and Ors. 2003 OLR 882, considering a delay of 12 years, this Court held as follows:

...In the instant case, the final publication u/s 41 (1) of the Act was made on 14.7.1988, but the revision was filed on 7.1.2000. It is, therefore-clear that near about twelve years after final publication u/s 41 (1) of the Act, the revision had been filed by the Petitioner. This shows the laches on the part of the Petitioner in Invoking the jurisdiction u/s 37 (1) after a long lapse of time. The Full Bench in the aforesaid decision, in my considered view, never expressed that at any time after final publication u/s 41 (1) of the Act, a revision can be entertained. Had such a revision been filed within a reasonable period of time, the same could be entertained, but here the revision had been filed near about twelve years after final publication u/s 41 (1) of the Act.

8. Applying the ratio of the aforesaid decisions to the facts of the present case as well as considering the facts & circumstances of the present case, it is seen that as the order of settlement passed by the O.E.A. Collector in favour of the vendor of the Petitioner was never challenged by the Opp. Party No. 6 & further in previous Writ Petition, where the sale in favour of the Petitioner was in question, i.e., in O.J.C. No. 6538 of 1991, this Court holding that the Secretary, Law Department could not have exercised suo motu power after expiry of ninety days from the date of the order passed by the Commissioner of Endowments, quashed the said order noting that the Petitioner has volunteered to pay a further amount of Rs. 1.00 lakh over & above the consideration money already paid, the period after which the revision was preferred u/s 37 (1) of the Act, i.e., after about two decades, cannot be said to be a reasonable period & thus, it cannot be said that it was open for the revisional authority to entertain the revision.

9. Since this Court is of the view that exercise of revisional power by the Commissioner u/s 37 (1) of the Act after passage of about nearly 20 years, in the facts of this case, is improper & without jurisdiction, this Court is not inclined to enter into the other questions raised by the respective parties.

10. In the result, the impugned Order Dated 19.7.1997 passed by the Commissioner, Consolidation & Settlement, Orissa, BBSR in Consolidation Revision Case No. 90 of 1995 under Annexure 11 is quashed.

The Writ Petition is allowed, but in the circumstances without cost.