(2008) 12 OHC CK 0077

In the Orissa High Court

Sudarsan Sahu and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 05-12-2008

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

Citation : (2009) 107 CLT 179 : (2009) 1 OLR 396

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The Petitioner in this writ application has sought to challenge the Order Dated 15th July 1995 passed by the Member Board of Revenue, Orissa in O.L.R. Revision Case No. 40 of 1994. In the impugned revisional order, the Member Board of Revenue purportedly sought to exercise its revisional jurisdiction vested in it u/s 59(2) of the O.L.R. Act, 1960 on a reference made by the Learned Additional District Magistrate, Angul against the orders passed by the Learned Revenue Officer, Chhendipada dated 17.10.1990 and 8.7.1993 in O.L.R. case No. 39 of 1973.

2. The Member Board of Revenue has sought to exercise its revisional jurisdiction over the orders passed by the Revenue Officer, Chhendipada in O.L.R. Case No. 39 of 1973, purportedly on two grounds:

i) That the enquiry conducted by the Revenue Officer on 10.10.1990 is contrary to the direction of this Court passed in O.J.C. No. 877 of 1984 dated 4.1.1990.

ii) That the Revenue Officer had examined the evidence as well as the report of the local enquiry made on 26.8.1976 and having found that the land in question were in joint cultivation, such a finding binds the parties and the later enquiry conducted by the Revenue Officer in 1990 holding that Sudarsan Sahoo was living separately from his father, cannot be accepted.

3. Mr. Mohanty, Learned Counsel appearing for the Petitioners, inter alia, contended that neither of the grounds on which, the Learned Member Board of Revenue sought to exercise his revisional jurisdiction can be justified in law. In this respect, it is submitted that O.J.C. No. 877 of 1984 came to be disposed of by this Court by Order Dated 4.1.1990, by which, this Court quashed the orders of the Revenue Officer, Appellate authority and revisional authority under Annexures 1, 2 and 3 respectively and directed as follows:

The matter will now go back to the Revenue Officer to the stage as it was prior to 27.8.1976. It is made clear that the Petitioner will not be afforded any further opportunity of adducing evidence, but will only be heard in the matter and, thereafter, the final order will be passed.

4. Learned Counsel for the Petitioner submitted that this direction of this Court was followed both in letter as well as in spirit. The Revenue Officer, on remand by this Court, perused the order sheet maintained by him in O.L.R. Case No. 39 of 1973. In the said order sheet, it appears that by Order Dated 10.5.1976, the Revenue Officer had directed to put up the matter on 15.5.1976 for local enquiry. On 15.5.1976 the Revenue Officer being otherwise busy, adjourned the matter to 16.7.1976. On 16.7.1976, the Revenue Officer noted that various documents had not been produced by the objector and directed the Amin to carry out a spot visit and directed the matter to be put up on 22.8.1976. On 22.8.1976, the Revenue Officer perused the report of the Amin and directed that he shall carry out the local enquiry on 26.8.1976. The order sheet does not indicate any order and has been passed on 26.8.1976 or as to whether any local enquiry was conducted by the Revenue Officer or not and instead, the Order Dated 27.8.1976 was the final order by which the Revenue Officer disposed of the objection made by the Petitioner.

Learned Counsel for the Petitioners drawing attention of the Court to the aforesaid orders of the Revenue Officer stated that since this Court in O.J.C. No. 877 of 1984 directed that the matter will go back to the stage as it was prior to 27.8.1976 and from records, the Revenue Officer having found that in fact, no enquiry had taken place by the Revenue Officer, therefore, in compliance of the directions of this Court, consequently conducted the local enquiry on 10.10.1990 and passed final orders thereto on 17.10.1990.

5. Sri Mohapatra, Learned Counsel for the Petitioner further submitted that in terms of Section 43(2) of O.L.R. Act, 1960, the Revenue Officer has the authority in law to make "such enquiries as he may deem necessary" and since the earlier Revenue Officer had passed final orders on 27.8.1976 without conducting the local enquiry on 26.8.1976 as he had himself directed, after the Revenue Officer''s Order Dated 27.8.1976 was quashed by this Court in O.J.C. No. 877 of 1984, the Revenue Officer not only required to comply with the order of the High Court but also to act in terms of the Section 43(2) of the O.L.R. Act for the purpose of conducting an enquiry. Therefore, Mr. Mohapatra submitted that no objection could have been raised against the enquiry being conducted by the

Revenue Officer after the order of remand of the High Court.

The next point advanced by Mr. Mohapatra was that, it was the duty of Revenue Officer to ascertain as to whether there has been any "separation in status" in the family of the ceiling holder. In this respect, Mr. Mohapatra placed reliance upon the Judgment of this Court in the case of Ramnarayan Ram and Ors. v. Revenue Officer-cum-Tahasildar, Darpan and Ors. (1991) 71 C.L.T. 843, in which this Court came to observe as follows:

In a ceiling surplus proceeding, it is the duty of the Revenue Officer to find out the extent of excess land held by the ceiling-holder on the commencement of President''s Act 17 of 1973 which came into force on 2nd October 1973. In so deciding, he is to exclude the land hold by the major married and separated sons of the ceiling-holder who were separated by partition or otherwise by 26th September, 1970 and if it is a case of partition, what land fell to their share in the partition would be excluded.

6. Mr. Swain, Learned Addl. Govt. Advocate on behalf of the State, on the other hand, submitted that the father of the present Petitioner No. -1 Sri Bidyadhar Sahu had passed away in the year 1986, i.e. after the filing of the of 1984 O.J.C. 877 but much before its disposal by the High Court on 4.1.1990. Learned Counsel submitted that it was the obligation of the legal heirs of Late Bidyadhar Sahu (present Petitioners) to have brought this fact to the notice of this Court but on remand from this Court, the legal heirs and successors of Late Bidyadhar Sahu (present Petitioners) entered appearance before the Revenue Officer and the Revenue Officer was required to act as per the direction given by this Court in the earlier writ application and not to conduct any enquiry, instead of re-hearing the matter based on evidence already on record.

7. In consideration of the submissions made by the Learned Counsel for the parties, I am of the considered view that the Judgment of this Court in O.J.C. No. 877 of 1984 clearly directed the Revenue Officer to go back to the stage as it was prior to 27.8.1976. On a perusal of the order sheet maintained in O.L.R. Case No. 39 of 1973 fey the Revenue Officer, it is clear that although the Revenue Officer had himself decided to conduct a local enquiry by an Order Dated 22.8.1976 scheduled to be held on 26.8.1976, no evidence on record exists as to whether such an enquiry was in fact carried out or not, nor do any record exists any such enquiry. On the other hand, on the very next day, i.e., 27.8.1976 final orders were passed by the Revenue Officer which had been quashed by this Court in the earlier O.J.C. Therefore, the true import of the direction of the High Court was to put the case back to the stage prior to 27.8.1976, i.e., 26.8.1976. 6.8.1976 was the date in which enquiry was originally scheduled to be held but admittedly, was not held. Therefore, on remand, I am of the view that the Revenue Officer by further Order Dated 10.10.1990 visited the spot; contacted the head of the family; offered an opportunity of hearing; contacted other persons of the locality and came to the conclusion that the earlier report of the Amin which had been filed before him on

12.9. 1990 was in order and was therefore, affirmed with regard to the genealogy. Further in Order Dated 17.10.1990, finding orders were passed holding that the landholder is entitled to 18 standard acres according to the number of family members and, therefore, there was no ceiling surplus land in this proceeding and accordingly, was dropped. Thus, I find that the Revenue Officer has acted in consonance with the earlier directions of this Court.

8. From Section 43(2) of the O.L.R. Act, 1960 it is further clear that the Revenue Officer has the authority in law vested in him to make such enquiries as he may deem necessary. I am of the view that this authority vested in the Revenue Officer, cannot in any manner to be given a restrictive meaning but deserves to be allowed to be exercised in the widest manner.

9. In the present case, the Revenue Officer at first directed the Amin to carry out an enquiry vide Order Dated 17.8.1990 and after the report of the Amin was submitted before the Court and prior accepting the Amin''s report, the Revenue Officer made personal enquiry at the spot and interviewed the head of the family as well as neighbours in the locality and accordingly, affirmed the Amin''s report with regard to genealogy. Hence, I find no error or any violation of statutory obligations on the part of the Revenue Officer to warrant any interference whatsoever and far less to warrant any interference under Sections 59(2) of the O.L.R. Act, 1960. In so far as the issue of partition is concerned, it would be necessary to note herein that the finding of "prior partition" by the "Revenue Officer" is a matter of fact and record and based on the Amin''s report as well as the Revenue Officer''s own local enquiry. No evidence whatsoever to the contrary was pointed by the Learned Addl. Govt. Advocate to controvert such a fact. Reliance placed by the Member Board of Revenue, on an observation made in an Order Dated 29.6.1978 (which has been quashed earlier by this Court in O.J.C. No. 877 of 1984), cannot be much relevance, especially since, as noted hereinabove, no enquiry had been conducted by the earlier Revenue Officer on 26.8.1976 as had been directed by him and, therefore, any findings reached earlier must be deemed to have been based on no evidence, and cannot serve any useful purpose at all.

10. Accordingly, the writ application is allowed and the order of the Member Board of Revenue dated 15th July, 1995 in O.L.R. Revision Case No. 40 of 1994 is quashed and the order of the Revenue Officer, Chhendipada dated 17.10.1990 in O.L.R. Case No. 39 of 1973 is affirmed.

11. No costs.

