

(2005) 01 OHC CK 0017

In the Orissa High Court

Case No : Original Jurisdiction Case No. 736 of 1996

Surendra Kumar Patjoshi and Others

APPELLANT

Vs

Member, Board of Revenue and Another

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 37, 59(2)

Citation : (2005) 99 CLT 728 : (2005) 1 OLR 248

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Srinivas Mishra-2, S. Mohanty, R.C. Rath and A.K. Sharma, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

L. Mohapatra, J.—This writ application is directed against the decision of the Member, Board of Revenue, Orissa, dated 29th December, 1995 in O.L.R. Revision Case No. 17 of 1995 accepting the reference made by the Collector and remitting the matter back to the Revenue Officer, Dharamgarh, for fresh inquiry in the case of the ceiling surplus land holder petitioner Nos. 1, 2, 3 and 7.

2. A ceiling surplus proceeding under the provisions of the Orissa Land Reforms Act, 1960 was started against one Paramananda Patjoshi of village Tumura in the district of Kalahandi in the month of May 1974. The said Paramananda Patjoshi having died in the year 1968 prior to the appointed date i.e. 26.9.1970 ceiling surplus proceeding cases were again initiated against the sons and widow of late Paramananda Patjoshi individually. All the ceiling surplus cases were tagged with the original case record and the Revenue Officer disposed of the ceiling surplus cases in December 1976 allowing the entire family eight separate ceilings. Each of the ceiling surplus land holder was allowed 19.85 acres of land. Against the said order passed by the Revenue Officer, the Collector, Kalahandi, made a reference to the Member, Board of Revenue, in the year 1983 in O.L.R. R.C. No. 153/83. In the said reference a ground was taken by the Collector, Kalahandi, that the age of some of the sons of late Paramananda had been manipulated in

the School Admission Register to show them major on the appointed date i.e. 26.9.1970 so as to make them entitled to separate ceilings u/s 37 of the Act. The aforesaid reference made by the Collector was not accepted by the Member, Board of Revenue and the revision was dismissed by order dated 31.12.1984. The Collector, Kalahandi, again made a reference in the year 1995 which gave rise to the present O.L.R. Revision Case No. 17 of 1995 before the Member, Board of Revenue, Orissa. In the reference in question, the Collector has challenged the legality of the order passed by the Revenue Officer allowing the ceiling surplus land holders to retain 18 standard acres of land each though in fact they are entitled to 10 standard acres of land. The said reference was again entertained by the learned Member, Board of Revenue and in the impugned order the reference was accepted in respect of four ceiling surplus land holders as stated earlier. Shri S. Mishra-2, learned counsel appearing on behalf of the petitioners challenged the impugned judgment passed by the Member, Board of Revenue on the ground that once a reference made u/s 59(2) was entertained and disposed of by the Member, Board of Revenue, a second reference is not maintainable and the Member, Board of Revenue is also left with no jurisdiction to entertain such a reference. Reliance is placed on a decision of this Court in the case of Surya Kumar Behera v. Board of Revenue, Orissa, Cuttack, and Ors., reported in 1992 (1) OLR-384. The learned Addl. Government Advocate appearing on behalf of the State submitted that the first reference made by the Collector, Kalahandi, which gave rise to O.L.R. Revision Case No. 153/83 was on an issue relating to some interpolations made in the School Admission Register concerning the age of some of the ceiling surplus land holders. In the second reference the Issue was different and, therefore, the same was entertained by the Member, Board of Revenue.

3. In the case of Surya Kumar Behera v. Board of Revenue, Orissa, Cuttack, and Ors., this Court held as follows :-

The question that arises for consideration in the present case, however, is slightly different namely that whom the Board exercises the suo motu power once under Sub-section (2) of Section 59, is it empowered to exercise that power again ? The answer to this question, in our considered opinion, must be in the negative. Sub-section (2) of Section 59 authorises the Board of Revenue on being moved in that behalf by the Collector of a district or by the Land Reforms Commissioner to revise any order passed by any authority under the Act. Once the Board exercises the said power and passes an order, the same becomes the order of the Board of Revenue itself. In other words, the original or appellate order passed by the subordinate authorities loses its identity and it is the revisional order of the Board that remains operative. There is no provision under the Act and Sub-section (2) of Section 59 of the Act cannot be construed to confer a power on the Board itself to review its own earlier order passed in a revision case in exercise of power under Sub-section (2). In this view of the matter as an analysis of Sub-section (2) of Section 59 of the Act, we are of the considered opinion that the Collector of the district or the Land Reforms Commissioner may

move the Board of Revenue to rectify any mistake committed by the subordinate authorities under the Act; but once the Board acts upon the said reference and passes an order which becomes a revisional order of the Board under Sub-section (2) of Section 59, thereafter neither the Collector nor the Land Reforms Commissioner has any power to make any further reference nor the Board has any power to pass any further order under Sub-section (2) of Section 59 of the Act."

In view of what has been decided in the aforesaid decision, a second reference u/s 59 (2) of the Act is not permissible and therefore the same cannot be entertained by the Member, Board of Revenue and the principles of res judicata operate. The submission of the learned counsel for the State is also not acceptable as in the first reference made by the Collector the issue in question in the present case could also be raised and the Collector having not raised such an issue no further reference u/s 59(2) of the Act could be made by him. In my view, the ratio laid down by this Court in the aforesaid decision has full application to the facts of the present case.

4. I accordingly, allow the writ application, set aside the impugned judgment and order dated 29th December, 1995 passed by the Member, Board of Revenue, Orissa, in O.L.R. Revision Case No. 17 of 1995 under Annexure-1.