
(2008) 08 OHC CK 0082
In the Orissa High Court

Umakanta Samal and Another

APPELLANT

Vs

Sakuntala Sahoo and Others

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2008) 106 CLT 874 : (2008) 2 OLR 742

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, C.J.—This writ appeal has been filed challenging the judgment and order dated 17.8.2005 passed by the learned Single Judge by which the order dated 2.1.2004 passed by the Collector, Bhadrak in OLR Revision Nos. 2 and 3 of 1999 has been set aside.

2. The facts and circumstances giving rise to this case are that the appellants filed two applications u/s 9(1) of the Orissa Land Reforms Act, 1960 (hereinafter called "the Act") before the Revenue Officer, Chandbali for declaring them tenants in respect of certain land situate in mouza Balabhadrapur. Both the applications were taken up together by the Revenue Officer. For deciding the cases, the following three issues were framed:

(1) Whether the petitioners are tenants or raiyats with respect to the case land within the scope and purview of the OLR Act ?

(2) Whether the petitioners are in khas possession of the case land ?

(3) Whether the petitioners have obtained permission express or implied from the landlord for construction of a house on the case land and built such house on this, with his own expenses ?

3. To determine the said issues the Revenue Officer heard the Advocates appearing for both the parties at length, verified the documents produced by the

parties, went through the written arguments filed by the counsel for the parties and scrutinized the field inquiry report submitted by the R.I., Motto. The Revenue Officer himself conducted the field visit and prepared memorandum thereof. After considering all the pros and cons the Revenue Officer allowed both the applications vide his judgment and order dated 16.6.1999 and passed an order allowing the petitions and declaring that the opposite party landlord was entitled to compensation from the said tenants equal to ten times the fair and equitable rent payable for the site.

4. Being aggrieved, the landlord (respondent herein) filed Revision/ reference Case Nos. 2/99 and 3/99 u/s 59(2) of the Act. While deciding the said cases, the Reference/Revisional Authority made reference to the facts and abruptly reached the conclusion as under:

...There is nothing wrong in the order of the Revenue Officer, Chandbali. There is no omission or irregularities in the proceeding which has detracted from the objective of land reforms....

The above conclusion is evident from the judgment and order of the Reference/ Revisional authority dated 2.1.2004.

Being aggrieved, a writ petition being W.P.(C) No. 9509 of 2004 was filed in this Court which was allowed by the learned Single Judge by judgment and order dated 17.8.2005 referring both the aforesaid judgment and orders. Hence this appeal.

5. The writ petition arose out of a judgment and order passed by the Reference/ Revisional Authority wherein after making reference to the facts of the case the authorities reached the conclusion abruptly without recording any reason whatsoever. For this ground alone the judgment and order of the Reference/ Revisional Authority cannot be sustained in the eye of law.

6. In Krishna Swami Vs. Union of India and another, , the Apex Court observed that "reasons are the links between the material, the foundation for these erections and the actual conclusions. They would also administer how the mind of the maker was activated and there rational nexus and syntheses with the facts considered and the conclusion reached. Least it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21 of the Constitution.

7. Similar view has been taken by the Supreme Court in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ; Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, ; and Rameshwari Devi Vs. State of Rajasthan and Others,

8. It is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the Apex Court has observed as under:

Every such action may be informed by reason and if follows that an act uninformed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always.

9. In *Life Insurance Corporation of India v. Consumer Education and Research Centre* (1995) 2 SCC 480, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Supreme Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, ; and *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, .

10. In *State of West Bengal Vs. Atul Krishna Shaw and Another*, the Supreme Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

11. In *S.N. Mukherjee Vs. Union of India*, , it has been held that the object underlying the rules of natural justice is to prevent mis-carriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in case where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decisions.

12. In *Krishna Swami Vs. Union of India and another*, , the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that "reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21."

13. Similar view has been taken by the Supreme Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, ; *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, Similar view has been taken by this Court in *Rameshwari Devi Vs. State of Rajasthan and Others*, . In *Vasant D. Bhavsar Vs. Bar Council of India and Others*, , the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in *Indian Charge Chrome Ltd. and Anr. v. Union of India and Ors.* AIR 2003 SCW

440 : 2003 (1) OLR (SC) 619; Secretary, Ministry of Chemicals and Fertilizers Government of India Vs. Cipla Ltd. and Others, ; and Union of India (UOI) and Another Vs. International Trading Co. and Another, .

14. In the catena of judgments of the Hon"ble Supreme Court, it has categorically been held that an appointment dehors the rules cannot be enforced and in such a case even the principles of natural justice are not attracted nor their continuity in office for long would change the legal position. (Vide Smt. Ravindra Sharma and Anr. v. State of Punjab and Ors. (1995) 1 SCC 183; Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions; State of M.P. and Others Vs. Shyama Pardhi etc. etc., ; AIR 1998 91 (SC); Kishorilal Charmakar and Another Vs. Distt. Education Officer and Another, ; Patna University and Another Vs. Dr. Amita Tiwari (Mrs.), ; M.P. Electricity Board Vs. S.S. Modh and Others, ; Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, ; Upen Chandra Gogoi Vs. State of Assam and Others, ; and R.K. Trivedi and Others Vs. Union of India (UOI) and Others,).

15. In such a fact situation, as there had been no reason before the learned Single Judge to examine the correctness of the order of the Reference/Revisional Authority, we are of the concerned opinion that no fruitful purpose would be served only by setting aside the judgment and order of the learned Single Judge. The matter required to be remitted to the Reference/Revisional Authority for hearing afresh for the simple reason that Reference/Revisional Authority has to satisfy itself regarding correctness of the judgment and order of the Revenue Officer, Chandbali u/s 9 of the Act and in case it is found that the order suffers from illegality, he will refer the matter to the Board of Revenue for proper adjudication and determination of the issues on factual controversy, as the issues involved are as to whether the appellants herein can be held to be raiyats or tenants of the land and as to whether they had been permitted by the landlord to raise construction and whether construction was raised by applicants on their own expenses on the said land.

16. In view of the above, we allow the appeal, set aside the judgment and order of the learned Single Judge dated 17.8.2005 and of the Reference/Revisional Court dated 2.1.2004 and remit the case to the Reference/Revisional Authority for fresh decision after giving opportunity of hearing to the persons concerned and indicating reasons for the same. No costs.

B.N. Mahapatra, J.

17. I agree.