Premananda Moher Vs. Revenue Officer-cum-additional Tahsildar, Bargarh and ors.

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SooperKanoon Citation : sooperkanoon.com/525415

Court : Orissa

Decided On : Oct-29-1981

Reported in : AIR1982Ori77

Judge : N.K. Das and ;R.C. Patnaik, JJ.

Acts : Orissa Land Reforms Act, 1966 - Sections 43; Constitution of India - Article 226; Orissa Land Reforms Act, 1960 - Sections 43(2); Orissa Land Reforms (General) Rules, 1965 - Rule 30(2)

Appeal No. : Original Jurisdiction Case No. 579 of 1977

Appellant : Premananda Moher

Respondent : Revenue Officer-cum-additional Tahsildar, Bargarh and ors.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : B.K. Behura, Adv.

Disposition : Petition allowed

Judgement :

Patnaik, J.

1. In this writ application, the petitioner challenges the decisions of the revenue authorities under Chapter IV of the Orissa Land ReformsAct.

2. A suo motu proceeding under Section 43 of the Orissa Land Reforms Act (hereinafter referred to as the 'Act') was started by the Revenue Officer and notices were directed to issue to one Lambodar Moher in O. L. Rule Case No. 152 of 1975. Lambodar, however, had died in the year 1966. So, the petitioner, one of the sons of Lambodar. appeared before the Revenue Officer and filed his objection and affidavit. His brother, Pitambar. also filed an affidavit before the Revenue Officer, After holding an enquiry, the Revenue Officer, by his order dated 15-9-75 held that the petitioner (Premananda) and hisbrothers (Nityananda. Pitambar and Duryodhan), sisters (Shanti and Srimati) and mother (Tilottama) were each entitled to a separate ceiling area and all of them together were to retain 72 standard acres, the balance land was to vest in the Government as surplus land. On the basis of the said order, a draft statement was prepared and published on 30-9-75 under Section 43 of the Act showing the petitioner and 6 others as land-holders. Notice wag however, issued to the petitioner alone requiring him to file objections, if any, within the date specified. No notice was issued to the other 6 persons who were held as land-holders by order dated 15-9-75 and were shown as such in draft statement. In his objection the petitioner questioned the correctness of the land shown as surplus. He contended that certain lands which had been transferred long back were included and the classification was not correct. The case was adjourned from date to date until on 6-2-76 the Revenue Officer on the motion of the petitioner directed that verification of the land at the spot was necessary to ascertain the correct classification, and posted the matter for spot verification on 12-2-76. On that day. he went to the area along with the petitioner and the local Revenue Inspector. Some inhabitants of the area also gathered at the place. He verified the classification of certain lands, and also gathered from one Fakira Sand and other villagers that Lambodar Moher was dead, his sons Premananda and Nityananda were major, married and separated before the relevant date. i. e., 26-9-70 and the third son Pitambar, however, married in the year 1975. Statement of no other person except Fakira Sand was, however, recorded. Relevant portion of the order dated 12-2-76 reads as follows :--

'It is ascertained from Fakira Sand and other villagers that Lambodar Moher is dead. His son Premananda Moher is major, married and separated, the 2nd son Nityananda is also married and separated prior to 26-9-70. 3rd son Pitambar married in the year 1975. Put up on 26-2-76 for hearing party informed:'

3. At the hearing on 26-2-76, the petitioner objected to the procedure adopted by the Revenue Officer and contended that the order passed under Section 43 of the Act was not available to be reopened by the successor Revenue Officer in a proceeding for confirmationof draft statement The object of the notice under Section 43 (2) was to give notice to persons interested requiring them to file their objections to the statement contained in the draft statement and it was not open to the Revenue Officer to totally annihilate the draft statement under the garb of altering or amending all or any of the particulars specified in the draft statement.

Final order was passed on 19-3-76 holding that the successors of Lambodar Moher constituted three families and not seven as had been held by order dated 15-9-75 and were entitled to retain 32 standard acres of land instead of 72. An appeal carried by the petitioner was unsuccessful. The appellate authority, however, remanded the matter with certain directions namely, for exclusion of lands transferred before 26-9-70 etc. The revision carried by the petitioner was also unsuccessful. So, the petitioner has approached this Court making a grievance of denial of natural justice to him in the proceeding before the Revenue Officer and violation of mandatory provisions contained in the Orissa Land Reforms Act, 1960 and the rules framed thereunder.

4. Sri B. K. Behura, learned counsel for the petitioner, submitted the following for consideration by this Court :--

(a) The Revenue Officer on receipt of the return or after considering all relevant materials, is required by Section 43 to record his findings in a draft statement. The important findings must necessarily be who is the land-holder or raiyat, the classification of the area to be retained as ceiling area.

(b) On the basis of the findings, notices must be issued to persons interested.

(c) It is not open to the Revenue Officer to make a complete change of front in the subsequent stage of the proceeding under Sub-section (2) of Section 43.

(d) The Revenue Officer having posted the case for the sole purpose of spot verification of land for the purpose of ascertaining the proper classification, it was not open to him to record evidence from persons assembled at the spot on questions which had never been mooted, Or of which the petitioner had been given no notice; and

(e) Each of the persons held as landholders by order dated 15-9-75 was entitled to notice under Section 43 (2) read with Rule 30 (2) and notice to the petitioner alone and not to the rest, vitiated the proceeding and the order dated 19-3-76. There is much substance in the submissions of the learned counsel.

5. A cardinal principle of administration of justice in this country is: Justice must not only be done but seem manifestly to have been done. Not only should the judge administer justice according to law but it must also appear that the party or his cause is being dealt with justly and fairly. The principles of natural justice are the bedrock of rule of law to which our democracy is wedded. It behoves all authorities --high or low -- to bear the same in mind while dealing with citizens or their rights and obligations.

6. In the proceeding, after publication of the draft statement, the petitioner was called upon to file objection. His objections inter alia were to the classification of land and exclusion of lands transferred before 26-9-70- With a view to ascertain the correctness of the challenge, made by the petitioner to the classification, the Revenue Officer fixed a date for spot verification and for no other purpose. His previous order dated 6-2-76 reads as follows :--

'Advocate for Premananda Moher appears and stated that plots Nos. 849 (4.36), 1077 (0.70), 1310 (4-36), 1311 (1.08), 1312 (2.36), 1313 (1.85) and 1341 (2.45) though taken as Class I are not irrigated lands and prays for spot verification. Put up on 12-2-76 for spot verification. Ask R. I. to be present on the spot with the relevant records. Case to 12-2-76. Party informed'.

There could be no doubt that, at the spot, the only matter that could be taken up was verification of classification of land. Parties had been informed of that only and nothing more. Hence, it was not open to the Revenue Officer to make a roving enquiry at the spot about any other questions, nor was it open to the Revenue Officer to ascertain and collect information from persons gathered at the spot on the questions whether there was one family Or number of families details of members of the family of Lambodar, their age and status etc. The procedure adopted must have come to the petitioner as a surprise because no enquiry other than verification of classification was contemplated and the case was not posted for any other purpose. No impression had been conveyed to the petitioner that the enquiry could takeany different turn. The petitioner could legitimately complain that it was impossible for him to meet the unforeseen situation at the spot. He was not a person trained in law nor was he aware of the complexities and niceties of the various questions that might be involved. The provisions of the Orissa Land Reforms Act are technical in many respects and he was ill equipped to take up and discharge the job of a lawyer by cross-examining the witnesses examined at the spot.

7. We feel, the Revenue Officer offended against the principles of natural justice and violated the procedure by examining Fakira Sand at the spot and ascertaining from other villagers. The simple reason being that the case was not posted for taking evidence or gathering information from certain villagers and utilising the same as the basis for the decision. Gathering information and not keeping the same on record is unknown to judicial process. The names of the villagers from whom information was Rathered are not to be found within the folds of the record.

8. After the draft statement is prepered. Section 43 (2) enjoins, that the same should be published inviting objections from persons interested. Rule 30 (2) mandatorily requires the Revenue Officer to serve a notice on the person to whom the statement relates informing him that objections, if any, to any entry in or omission from the draft statement might be filed within 30 days from the date of publication. By order dated 15-9-75, the Revenue Officer held seven persons to be the land-holders. The draft statement contained the names of those seven persons. It was, therefore, incumbent on the Revenue Officer to serve notices on

all the seven and not only on one of them. Admittedly, the notice in this case was served on Prema-nanda alone. The procedure, therefore, offended the requirements of both Section 43 (2) and Rule 30 (2).

9. In view of our conclusions that theprocedure adopted by the Revenue Officer on 12-2-76 was contrary to theprinciples of natural justice and all thepersons interested had not been notified,it is not necessary to answer the thirdquestion raised by Mr. Behura. Thequestion will be considered oft an appropriate occasion.

10. In the result, the writ application is allowed, the order dated 12-2-1976 of the Revenue Officer and the appellate and revisional orders are quashed. The Revenue Officer is directed to dispose of the ceiling proceeding after issuing notice to all persons interested, according to law. No. costs.

Das, J.

11. I agree.