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Court : Orissa

Decided On : Feb-07-1995

Reported in : 1995(I)OLR537

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : Survey and Settlement Act, 1952; [Orissa Estates Abolition Act, 1951](#)

Appeal No. : O.J.C. No. 4043 of 1992

Appellant : Trilochan Singh and anr.

Respondent : Commissioner of Land Records and Settlement and ors.

Advocate for Def. : Bibhudendra Das, Addl. Standing Counsel (for Opp. parties 1 and 2)

Advocate for Pet/Ap. : S. Misra (2), S.K. Misra and R.C. Rath

Judgement :

A. Pasayat, J.

1. Short point that arises for consideration in this case is whether authorities under Orissa Survey and Settlement Act, 1952 ('in short, the, Act') can ignore an order

passed under the Orissa Estates Abolition Act, 1951 (in short, 'Estates Act') on the basis that order passed under Estates Act was without jurisdiction.

2. The aforesaid question has come up for adjudication on the following background as portrayed by petitioners.

A.20.39 decimals of land belonging to the opp. party No. 3 deity was in forcible possession of petitioner No. 1's father, and thereafter by petitioner No. 1 himself. The said land was a part of a total area of A.207.21 decimals in Khata No. 14 of village Kamatharia. There was note of, such forcible possession in the record-of-rights of 1955. Several others were also recorded to be in such possession in respect of other lands. Vesting notification of Debettor Maufi interest under Section 3A of the Estates Act was promulgated on 29-9-1965. MJC No. 110 of 1966 under Section 13-C of the Estates Act was filed by opp. party No. 3 claiming that the entire khata land and other khata lands were part of its trust estate. Objections were filed on 18-6-1986 by father of petitioner No. 1, and others. Said MJC No. 110 of 1986 was dismissed by the learned Subordinate Judge-cum-O.L.R. Tribunal on 30-8-1968. Maufi Case No. 13 of 1969 was filed by petitioner No. 1's father under Section 7 read with Section 8-A and 13 plots were settled by order dated 30-6-1963. In Maufi Case No. 9 of 1972, one plot left out by mistake was also settled on lease principle by payment of salami and bank rent by the Tahasildar, acting as Collector under the Estates Act by order dated 31-3-1972. New Khata No. 169/33 from Sabak Khata No. 24 was prepared in the name of petitioner No. 1's father for A 20. 39 decimals of lands. Rent³ were paid at different points of time by petitioner No. 1's father and petitioner No. 1. In O.L.R. Misc. case No. 23 of 1976, by order dated 12-1-1977 opp. party No. 3 was declared as privileged raiyat of petitioners' settled raiyati land and other similar land of 57 riyats. By judgment dated 4-7-1987 in OJC No. 1576 of 1978 filed by all the 58 riyats, against the O.L.R. Tribunal, Collector, Kalahandi, Commissioner of Endowments and several deities including opp. party No. 3, it was held that as the riyats were neither parties nor heard in the O.L.R Misc. Case No. 23 of 1976, they were not bound by judgment dated 12-1-1977. By order dated 15-5-1989 14 Rent objection cases filed by opp. party No. 3 against petitioner No. 1 and other riyats, were dismissed by the Assistant Settlement Officer, on the finding that the

Settlement authorities are bound by orders in vesting cases. The opp. party No. 3 filed one appeal which was numbered as Rent Appeal No. 17 of 1990 against order passed in Rent Objection Case No. 5277 of 1986, relating to petitioner No. 1. By judgment dated 6:2-1992 it was allowed by the appellate authority with the finding that orders of the settlement authorities were without jurisdiction. The said order was confirmed by the revisional authority by order dated 28-4-1992. (Annexure-11), which is subject-matter of challenge in this writ application.

3. Mr. S. Misra (2), learned counsel appearing for petitioners submitted that the authorities acting under the Act have no jurisdiction to sit in judgment over any conclusion or order passed by a competent authority under another statute i.e. Estates Act. . It is submitted if orders were irregular or illegal as claimed, the same could have been assailed before a higher forum provided under the Estates Act. That having not been done, it was not open to the settlement authorities to treat the orders without jurisdiction and to ignore them. In spite of notice, there is no appearance on behalf of opp. party No. 3, though Mr. Padmanava Panda has filed vakalatnama on his behalf, when the matter was taken up. According to learned counsel for State, the order being without jurisdiction, it was open to the authorities under the Act to ignore them and not to take note of orders which were prima facie illegal.

4. Order of settlement in favour of petitioners could be set at naught in a proceeding under the Estates Act. The settlement having created a right in favour of petitioners, the same is presumed to be valid unless declared otherwise. It is, therefore, for the person assailing its validity to get such a declaration from a proper forum, in a proper proceeding. Unless that is done, order remains enforceable. The duty was therefore, clearly on the opp. party No. 3 to raise the plea of illegality of the order of settlement before an appropriate authority under the Estates Act. Unless the order is declared invalid at its instance, unenforceability of the order cannot be doubted. Similar view was expressed by apex Court in Shiv Chander Kapoor v. Amar Bose, AIR 1990 SC 325. The position was also elaborated by one of us (Pasayat. J.) in Hiradhar Patel v. Lalindra Gand alias Naik and Anr., 1993(1) OLR 4.

5. In the words of Lord Diplock, 'the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue.' In Wade's Administrative Law, 6th Edition, there is an illuminating discussion of this topic. It has been pointed out that 'void' is meaningless in an absolute sense, and unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset it will remain as effective for its ostensible purpose as the most impeccable of orders. The order of settlement has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In *Smith v. East Elloe Rural District Council*, (1956) AC 736 at page 769 Lord Redcliffe observed:

'An order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'

Appropos to this principle. Prof. Wade said:

'The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.'

The above passage was quoted and the principles indicated were approved by the apex Court in *State of Punjab and Ors. v. Gurdev Singh*. Ashok Kumar, AIR 1991 SC 2219.

6. The original order of settlement was passed by an authority who had jurisdiction to deal with the matter. The question whether settlement was in order has no relation with jurisdiction of the authority who has jurisdiction passes an order which

is improper or illegal, the same cannot be treated as void. It remains enforceable until it is set at naught in an appropriate proceeding by an appropriate authority. In that view of the matter, orders passed by appellate authority as well as revisional authority, vide Annexures 9 and 11 respectively cannot be sustained. Accordingly,, they are set aside. Revisional authority shall consider case of petitioner on its own merits afresh, on consideration of materials placed by the contesting parties. To avoid unnecessary delay, parties are, directed to appear before Revisional authority on 29-3-1995. Notice shall only be/issued to opp. party No, 3. for appearance on that date, because .there was no appearance on its behalf in this Court.

The writ application is allowed to the extent indicated above. No costs.

D.M. Patnaik, J.

7. I agree.

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