

Debendranath Pradhan Vs. State of Orissa, Represented by the Secretary, Department of Revenue and ors.

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Court : Orissa

Decided On : Sep-06-1995

Reported in : 1995(II)OLR545

Judge : A. Pasayat and ;P.C. Naik, JJ.

Acts : Orissa Land Reforms Act, 1960 - Sections 60

Appeal No. : O.J.C. No. 3182 of 1992

Appellant : Debendranath Pradhan

Respondent : State of Orissa, Represented by the Secretary, Department of Revenue and ors.

Advocate for Def. : Addl. Govt. Adv. for opp. party Nos. 1 to 4 and ;B.K. Mall, Adv. for opp. party No. 5

Advocate for Pet/Ap. : A.R. Das, R.K. Das and N. Lenka

Disposition : Application allowed

Judgement :

A. Pasayat, J.

1. The order passed by Member, Board of Revenue, Orissa on a reference made by Land Reforms Commissioner, Orissa under Section 59 (2) of the Orissa Land Reforms Act, 1960 (in short, the 'Act') is the subject-matter of challenge. The Member while remitting the matter back to the Tahasildar for fresh consideration in view of several procedural infractions, gave certain observations on merits also.

2. Mr. A. R. Das, learned counsel for petitioner submitted that the order passed by the Member suffers from various infirmities. It is submitted that the Revenue Officer passed the order by virtually reviewing his earlier order and that is not permissible in view of limited scope of Section 60 of the Act. Additionally it is submitted that when the matter was being remitted to take care of procedural aspects, no finding on merits should have been recorded.

Mr. N. Prusty, learned counsel for State supported the order stating that the material aspects on which the Tahasildar was to act have been indicated by the Member. Learned counsel for opp. party No. 5 adopts the stand of petitioner.

3. We shall first deal with the grievance relating to the power of review exercisable by the Revenue Officer.

The review is a reconsideration of the same plea by the same Court or forum. The power to review must be conferred by law either specifically or by necessary implication. It is a power entirely different from the power which an authority exercises while disposing of a matter either originally or in appeal. It is well-settled that the power of review is not an inherent power. (See *Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsinghli*: AIR 1970 SC 1273). There may be cases where Court finds that on account of an error committed by it one of the parties before it suffered injury and in such a case a question may arise whether the Court itself would undo the mischief. That is because of the accepted principle that no act of the Court should prejudice a party before it, and it is bounden duty of the Court to see that if a person is prejudiced by mistake of the Court, he should be restored to the position he would have occupied but for the mistake. (See *Jang Singh v. Brij and Ors.* : AIR 1966 SC 1661). That aspect has no relevance so far as the case at hand is concerned. Review was not sought for on the ground that the Court committed a mistake by acting in a manner violative of the mandatory

provisions of the Act or the Rules relating to the procedure.

4. Power of review under Section 60 of the Act is restricted to clerical mistake or error. While dealing with an almost identical case under Rule 83 of the Orissa Sales Tax Rules, 1947 (in short, the Rules') read with Section 152(1) of the Code of Civil Procedure, 1908 (in short, the 'CPC'), it was observed by the apex Court in *Master Construction Co. (P) Ltd. v. State of Orissa and Anr.* : AIR 1966 SC 1047, that the rule in question empowers the authority to correct any arithmetical or clerical mistake or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him or it was observed that the jurisdiction of the authority under the said rule is limited and is confined only to the correction of mistake or omissions mentioned therein. An arithmetical mistake is a mistake of calculation a clerical mistake is a mistake in writing or typing. An error arising out of or occurring in an accidental slip or omission is an error due to careless mistake or omission unintentionally made. But such a power cannot be exercised in case where a first look at the materials or the point involved is necessary.

5. The meaning of the word 'review' as given in Aiyar's Law Lexicon is a 'review is a proceeding which exists by virtue of statute. It is in its nature a new trial of the issue previously tried between the parties, the cause of action being brought into Court again for trial by a new petition.' The proceeding in some respects resembles a writ of *error* and also a new trial. A 'review' means : (1) a second examination of a matter (Bowiver's Law Dictionary, 3rd Edition) : (2) to re-examine judicially; a reconsideration; second view or examination (Black's Law Dictionary, 6th Edition). Where a special enactment confers a power of review to a tribunal of its creation, it is implicit that the power cannot be enlarged or extended beyond the statutory restrictions, in the guise of an inherent power. Provisions, if any, in the Act or the Rules framed thereunder are definitive of the limits within which a review is permitted. Tribunals created by special statutes do not have larger powers than what the statute chooses to confer upon them. As a general rule no Court or Judge has power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up respectively. (See Halsbury's Laws of England, Vol. 19, page 260). In *Drew v. Hills. Ex-parte Martin* : (1891) 1 OBD 650, It was stated by

Lord Esher MR, 'No Court has such a power of setting aside an order which has been properly made, unless it is given by statute'. The same view was expressed in *Hossion v. Jones* : (1914)2 KB 421. This rule is based on the principle of finality of litigation. (See *Flower : Dloyd* : (1879) 10 Ch. D 327. This rule is subject to some qualification, i. e., after the judgment or order has been entered or drawn up or signed, there is power to correct any clerical mistake or error arising from any accidental slip or omission so as to do substantial justice and given effect to the meaning and intention.

6. Added to that, we find that while remitting the matter to the Revenue Officer for fresh consideration on the ground, of procedural infractions, the Member observed about entitlement of several persons. Since the matter was being remitted back on the ground of procedural infractions, any observation on merit was not warranted. A case is remanded to rectify errors, omissions and defects which unless rectified would result in serious miscarriage or failure of justice. The effect of an order of remand is entirely to nullify the first decision and to re-open the whole case and parties can adduce all available evidence unless remand is for some restricted purpose. In such a case lower forum has to form its own conclusions. It is duty bound to analyse evidence and materials afresh and give its own conclusions independently. Though the Tahasildar was free to act independent of the observations made in the order of remand, it would not have been unusual for him to feel bound by the observations of the higher authority. When a matter is remitted for fresh consideration, observation which are likely to weigh with the adjudicating authority should not be made. While, therefore, upholding the order of remand, we make it clear that the Tahasildar shall consider the case of the parties afresh after following the procedure as prescribed in law. While adjudicating the matter afresh he shall take note of all relevant objections and contention, to be raised by the parties, without being influenced in any manner by any view expressed by the Member.

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

P.C. Naik, J.

7. I agree.

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