

Trilochan Biswal and ors. Vs. Commissioner, Land Reforms and Settlement, Board of Revenue and ors.

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Court : Orissa

Decided On : Oct-26-2006

Reported in : 2006(II)OLR817

Judge : P.K. Mohanty and; R.N. Biswal, JJ.

Appellant : Trilochan Biswal and ors.

Respondent : Commissioner, Land Reforms and Settlement, Board of Revenue and ors.

Judgement :

R.N. Biswal, J.

1. The petitioners, all of whom are residents of village Khairapali, under Ranpur Police Station of Nayagarh district, call in question the legality of the order in dropping the proposal for transfer of Ac.16.80 decs, of Pahal land appertaining to Bhalukhiya Mundia hill recorded in the name of village Giridharpur to their village and communicating the same to the opp. pt No. 3 through letter No. 7165 LRS dated 22.7.1997 of the Additional director, Land records and Survey by opp. party No. 1.

2. The case of the petitioners in nub is that in terms of Section 36 of the Orissa Survey and Settlement Act the Government vide Revenue Department Notification No. 42032/R dated 6.9.1990 ordered for survey, preparation of R.O. Rs. and settlement of land records simultaneously in respect of the land under Ranpur Police Station. In course of the second round of survey, the petitioners filed a petition before opp. party No. 3 for change of boundary of their village by amalgamating Ac.16.80 decs, of land out of Bhalukhiya Mundia hill on the basis of Bhaluria Settlement, 1896 and accordingly opp. party No. 3 directed the Assistant Settlement Officer, KKK Camp, Ranpur to conduct a preliminary enquiry in this regard. Accordingly he conducted the preliminary enquiry in presence of the villagers of village Khairapali and Giridharpur and submitted his report dated 24.2.1994 to the opp. party No. 3 stating that Bhalukhiya Mundia hill was wrongly amalgamated in village Giridharpur in the 1952 settlement. The opp. party No. 3 in turn forwarded the report to opp. party No. 2, who in terms of the power vested on him under Rule 61(3) of the Orissa Survey and Settlement Rules (hereinafter referred to as 'the Rules') authorized Sri Gandharb Charan Sahu, OSCS & ASO, Ranapur to conduct local enquiry and submit his report. Accordingly, he conducted the local enquiry and submitted a detailed report proposing to carve out Ac. 16.80 decs, of land from Bhalukhiya Mundia hill, wrongly recorded in the revenue village of Giridharpur and include the same in the area of village Khairapali. On the basis of this report, on 13.10.1995 opp. party No. 2 recommended the proposal (Annexure-1) to the Commissioner, Land Records and Settlement, Board of Revenue, Orissa, Cuttack (opp. party No. 1) for necessary orders, but, without applying its mind opp. party No. 1 illegally dropped the proposal for transfer of Ac.16.80 decs, of land appertaining to Bhalukhiya Mundia hill, recorded in the name of village Giridharpur to village Khairapali, without notice to any of the villagers of village Khairapali. Hence the writ petition.

3. Opp. party No. 3 in her counter affidavit admitted that on 24.12.1993 some of the villagers of village Khairapali submitted a petition before her for amalgamation of Ac. 16.80 decs, of land in the their village carving out the same from village Giridharpur and that she directed the A.S.C., Ranpur to hold a preliminary enquiry in this regard and accordingly he conducted the enquiry and submitted his report vide letter No. 461 dated 24.2.1994 to her. It is also admitted that Sri Gandharb

Charan Sahu, A.S.O., Ranapur was authorized statutorily by opp. party No. 2 on 16.7.1994 to enquire about the boundary dispute in detail and submit his report. Accordingly Sri Sahu issued statutory notice vide PR No. 52 dated 6.8.1994 to the villagers of both village Khariapali and Giridharpur and all adjacent villages, besides issuing notice to the Collector and D.F.O., Nayagarh and Tahasildar, Ranapur inviting objection within 30 days and after expiry of the said period conducted enquiry in presence of the villagers of village Giridharpur and Khairapali on 18.3.1994. The A.S.O, in his report dated 13.4.1995 suggested that Ac. 16.80 decs, of land in Bhallu Mundiya nill marked as 'Ka' in his trace map should be amalgamated in revenue village of Khairapali on transferring the same from village Giridharpur which was endorsed by opp. party No. 2 to Opp. party No. 1. In its letter No. 1798/LRS dated 16.2.1992 Opp. party No. 1 objected to the said proposal. In terms of order dated 12.7.1996 in the B.C.P. case record opp. party No. 2 authorised Sri Babaji Charan Das, A.S.O., Camp-Kedartangi to enquire about the matter since Sri Sahu had already retired in the meantime. A.S.O. Sri Das requested the Collector, Nayagarh vide letter dated 17.10.1996 to offer his view on the matter with copy to the Tahasildar, Ranpur. He again issued notice on 12.8.1996 to the villagers of Giridharpur, Khairapali and Tahasildar, Ranpur to attend the enquiry. Some objections were received from village Khairapali, whereas no objection or suggestion was received either from the Collector, Nayagarh or the concerned Tahasildar. After completion of enquiry the A.S.O. submitted his report on 3.1.1997 holding that Bhalukhiya Mundia hill with total area of Ac.45.42 decs, situates within the sabik boundary of Giridharpur and has been recorded as such in the present settlement in Abada Ajogya Anabadi Khata of the said village and as such suggested not to transfer the said land from village Giridharpur to Khairapali. The report of the A.S.O. was endorsed on 24.1.1997 by opp. party No. 2 to opp. party No. 1 and after careful consideration the latter in its letter No. 7165/LRS dated 22.7.1997 (Annexure-2) ordered to drop the proceeding. Hence opp. party No. 3 pressed to dismiss the writ petition.

4. Learned Counsel appearing for the petitioners adverted our attention to Rule 61(5) of the Rules submits that opp. party No. 1 was either to sanction the proposal with or without amendment or to return the same for revision by opp. party No. 2 or for further enquiry, but it has no authority to drop the proposal. He

further submits that in terms of the proviso to Rule 61(5) of the Rules opp. party No. 1 must have given a chance of being heard to the petitioners before dropping the proposal. Since it has not been done so, the order under challenge deserves to be quashed on this score also. Learned Additional Government Advocate averts the submission of learned Counsel for the petitioners by contending that opp. party No. 1 has authority to drop the proceeding and that it is not bound to hear the objection in each and every case before passing final order under Rule 61(5) of the Rules.

5. Rule 61(5) of the rules reads as follows:

On receipt of the proposals from the Settlement Officer, the Board of Revenue may sanction it with or without amendment or may return the same for revision by the Settlement Officer or for further enquiry: Provided that before passing final orders on the proposal of the Settlement Officer, the Board of Revenue may, if it considers necessary give a hearing to any person or persons who have filed objections in response to the notice under Sub-rule (3)

Because of the order we are going to pass we do not express our opinion as to whether opp. party No. 1 was duty bound to sanction the proposal with or without amendment or to return the same for revision by opp. party No. 2 or for further enquiry or he had authority to drop the proceeding. As per the proviso to Rule 61(5) of the Rules if the Board of Revenue considers it necessary to give a hearing to any person or persons who had filed objection in response to the notice under Rule 61(3) it may hear him/them before passing of final order. In the decision *Suryamani Mohanty and Ors. v. Secretary to Government of Orissa, Panchayatiraj Department and Ors.* 2000 (II) OLR 777 this Court held that even though the proviso contemplates that the Board of Revenue may, if it considers necessary, give a hearing, principle of natural justice requires that such opportunity should be given to the objectors unless for weighty reasons, it is decided by the Board of Revenue not to afford such opportunity of hearing. Since in the present case no such opportunity was given to the objectors nor any reason was assigned for not affording such opportunity to them, the impugned order deserves to be set aside and the case heard afresh.

In the result, the writ petition is allowed and the order under Annexure 2 is set aside. The case is remitted back to Opp. Party No. 1 with direction to afford opportunity of hearing to the petitioners who had filed objection in response to the notice under Rule 61(3) of the Rules and thereafter dispose of the same in accordance with law at an early date.

The writ application is disposed of accordingly.

P.K. Mohanty, J.

I agree.

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