

Pitambar Panda Vs. Surendranath Panda and ors.

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Court : Orissa

Decided On : Dec-01-2008

Reported in : 107(2009)CLT45; 2009(I)OLR247

Judge : B.S. Chauhan, C.J. and; B.N. Mahapatra, JJ.

Appellant : Pitambar Panda

Respondent : Surendranath Panda and ors.

Disposition : Appeal dismissed

Judgement :

B.S. Chauhan, C.J.

1. Both these appeals have been filed against a common Judgment and Order Dated 22nd July, 2008 passed by the Learned Single Judge in O.J.C. No. 3648 of 1994 by which the Writ Petition filed by the Respondent No. 1 has been allowed setting aside the Judgment of the revisional as well as the Appellate authority under the Orissa Land Reforms Act, 1960 (hereinafter called 'the OLR Act').

2. The facts and circumstances giving rise to both the appeals are that Respondent No. 1-Surendranath Panda had filed an O.L.R. Case No. 2377 of 1975 under Section 36-A of the OLR Act before the Court of Addl. Tahasildar, Puri. The said proceedings were concluded ex parte qua the landlord Sri Laxmidhar Panda, vide Judgment and Order Dated 29.04.1986. It was held therein

that Surendranath Panda (Respondent No. 1) was a tenant (Bhag Chasi) under the landlord-Laxmidhar Panda (in W.A. No. 159 of 2008) and as he had not entered, appearance in spite of service of notice, vide Order Dated 20.12.1985 he had been set ex parte. The said order of the Addl. Tahasildar, Puri was challenged in an Appeal (OLR Appeal No. 33 of 1986) by Sri Pitamber Panda, who had been allowed to intervene as Respondent No. 2 by the Addl. Tahasildar before the Court of the Officer on special duty (Land Reforms), Puri. However, the landlord-Laxmidhar Panda did not prefer any appeal against that order of the Addl. Tahasildar. The appeal was allowed vide Judgment and Order Dated 29.01.1989 and the case was remanded to be decided afresh by the Revenue Officer. The above order was challenged before the Revisional Authority A.D.M. (Land Records) by filing OLR Revision Case No. 9 of 1989, which was rejected vide Judgment and Order Dated 12.03.1993.

3. The said order of remand was challenged before the Learned Single Judge by filing W.P.(C) No. 3648 of 1994 by Surendranath Panda. The writ has been allowed and the orders of remand passed by the revisional as well as the Appellate authority have been set aside, after recording the finding of fact that the information furnished by the Addl. Tahasildar to the queries of the said Petitioner-Surendranath Panda it was apparent that no village committee had been formed and thus, there was no question of consultation by the Revenue Officer with the village committee and therefore, the findings recorded by the Courts below were bad. In both the appeals, it has been contended that this was not the information furnished to Respondent No. 1 and the Learned Single Judge in paragraph 7 of the Judgment has referred to the same as under:

It appears that the Petitioner during the pendency of the Writ Petition sought for information from the concerned Tahasildar as to whether any such village committee in the concerned village had been consulted for the period of 1984-86 and 1986-89 and if so, to provide the names of the member of such committee and it appears that in response to such query the Tahasildar has replied by stating that from his records it was ascertained that no such record are available in his office and necessary information obviously was not provided.

4. In view of the above, finding of fact so recorded by the Learned Single Judge is perverse, which is not based on evidence and information furnished by the Addl. Tahasildar was only to the extent that no record was available and therefore, it could not furnish any information as to whether any village committee was in existence and if so whether consultation took place with the said committee. In view of the above, both the appeals deserve to be allowed.

5. At this juncture, Learned Counsel for the Respondent-1 raised a legal issue that Sri Pitamber Panda cannot be heard before the Tahasildar after remand because he was not a necessary party.

6. A Constitution Bench Judgment of the Hon'ble Supreme Court in Cumbum Roadways (P) Ltd., Madurai v. Somu Transport (P) Ltd. : [1966]3SCR7 , wherein the Hon'ble Apex Court observed as under:

On principle, therefore, it does not appear right that the High Court should set aside orders in appeal passed by the Appellate Tribunal when the parties to those appeals do not bring-up the matter before the High Court, simply because as the matter of convenience the Appellate Tribunal deals with all the appeals relating to one route by the consolidated order. Therefore, we are of the opinion that the remand should only be confined to those parties which came to the High Court and not extend to others, as the High Court would have no jurisdiction to interfere with the orders of the Appellate Tribunal either in favour or against the parties which have not come to it.

7. Similar view had been taken by the Hon'ble Supreme Court in Hanuman Transport Corporation v. Meenakshi G. Ramabhai, Civil Appeal No. 794 of 1963, decided on 20.02.1963. A similar view has been reiterated in the Anamalais Bus Transports (P) Ltd., Pollachi v. Sri Tiruppurkarur Transports (P) Ltd., Tirppur and Ors. AIR 1966 Mad 470. The same view has been taken by the Rajasthan High Court in Rajasthan Barytes Ltd. and Anr. v. State of Rajasthan and Ors. (1999) 2 RLW 835.

8. Therefore, the contention so raised cannot be accepted at this stage, as Sri Pitambar Panda had been a party through out the proceedings even before the

Appellate authority and the revisional as well as in these authority and even before the Learned Single Judge a appeals. Therefore, such an argument is not tenable in law.

9. In view of the above, the Appellants succeed, the appeals are allowed and the Judgment and Order Dated 22.07.2008 passed by the Learned Single Judge is hereby set aside. The Revenue Officer may proceed to give effect to the order of the revisional as well as the Appellate authority and conclude the proceeding expeditiously, preferably within a period of four months from today. Parties shall appear before the Revenue Officer on 16th December, 2008 along with certified copy of this Judgment/order so that the proceedings can be concluded expeditiously.

10. Writ appeals are disposed of accordingly.

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