

State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others

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SooperKanoon Citation : sooperkanoon.com/661173

Court : Supreme Court of India

Decided On : Aug-27-1998

Reported in : AIR1998SC3067; JT1998(5)SC662; 1998(4)SCALE682; (1998)7SCC162; [1998]Supp1SCR130

Judge : S.B. Majmudar and; M. Jagannadha Rao, JJ

Acts : Orissa Survey & Settlement Act, 1958 - Sections 6D, 12B, 15, 25, 32, 33 and 42; [Indian Forest Act, 1927](#) - Sections 20A and 27; Orissa Gram Panchayat Act, 1964 - Sections 3; Orissa Forest Act, 1972 - Sections 27 and 29; Orissa Board of Revenue Rules, 1959 - Rules 3, 4, 5 and 9; Bihar and Orissa Board of Revenue Act, 1913; Madras Board of Revenue Act, 1894; Orissa Revenue Commissioners' (Regulation of Functions) Act, 1948 - Sections 2, 4, 8 and 10; Bengal Survey Act, 1875; Madras Survey and Boundaries Act, 1923; [Madras Estates Land Act, 1908](#); [Orissa Tenancy Act, 1913](#); CP Settlement Act, 1929; CP Tenancy Act, 1898; CP Tenancy Act, 1920; CP Land Revenue Act, 1881; CP Land Revenue Act, 1917; Bihar and Orissa Municipal Survey Act, 1920; Trade Marks Act, 1940; Administration

Appeal No. : C.A. Nos. 6335-37 of 1995

Appellant : State of Orissa and Others

Respondent : Commissioner of Land Records and Statement, Cuttack and Others

Advocate for Pet/Ap. : Sri. P.N. Misra

Judgement :

M. Jagannadha Rao, J.

1. The main point that arises for consideration in these appeals is whether the delegate of the revisional powers of the Board of Revenue, Orissa under an Act of 1958 can also exercise the general powers of review conferred on the Board under an earlier Act of 1951. Incidentally the question arises whether the order of the delegate is to be treated as the order of the Board or as an order of the delegate in his own right and whether the Board can revise or review the order of the delegate?

2. In both these appeals, the State of Orissa, the officials of the Forest Department and the District Collector of the area-concerned, are appellants. The 1st respondent is the Commissioner of Land Records & Settlement, Cuttack (hereinafter called the 'Commissioner'). The second respondent is the vendee from the 3rd respondent. The 3rd respondent is the person in whose favour entries were made in the record of rights in the settlement of 1956 and in whose favour the revenue authorities granted patta. The Commissioner, to whom the revisional powers of the Revenue Board Under Section 15 of the Orissa Survey and Settlement Act, 1958 (hereinafter called the 'Act of 1958') were delegated, initially passed orders in favour of the Forest Department on 28.07.1981 setting aside the entries in the name of the 3rd respondent's father in the record of rights. He treated the land as Reserved Forest. But his successor-commissioner passed the latter order dated 19.06.1985 setting aside the order dated 28.07.1981 of his predecessor, while purporting to exercise powers of review of the Board of Revenue conferred by a general Statute, namely, the Orissa Board of Revenue Act, 1951 (hereinafter called the 1951 Act). Under the latter order dated 19.06.1985 the Commissioner restored the name of the 3rd respondent's father Mayadhar Singh and refused to treat the land as Reserve Forest.

3. The latter order dated 19.06.1985 of the Commissioner passed in review was challenged in two writ petitions, one in a public interest case filed by one

Bhagaban Kamil Das (O.J.C. 3662 OF 1987) and another in O.J.C. No. 1485 of 1988 filed by the State and its officers in the Forest Department. The High Court of Orissa dismissed both writ petitions by judgment dated 08.01.1993. A review petition filed in another OJC No. 783 of 1983 relating to grant of transit permits was dismissed on 09.03.1994 and the Forest Department was directed to issue transport permits in favour of 2nd respondent, the vendee from the 3rd respondent. The main judgment of the High Court dated 08.11.1993 and the order dated 09.03.1994 are challenged in these appeals wherein special leave has been granted. Pending disposal of the appeals the orders of the High Court have been stayed by this Court on 13.01.1995 and stay has been continued by order dated 17.07.1995.

4. The subject-matter in dispute is Ac. 146.41 in Binikapadar village and the land contains tree and forest growth and is located in Khata No. 4 of 1955-56 Settlement of Mouza Binikapadar. This land according to the State and its Forest Department is and is deemed statutorily to be part of the Nehala Reserved Forest under the Kalahandi Forest Division. The appellants contend that from 1942 and at any rate from the date when the [Indian Forest Act, 1927](#) was amended by Orissa Act of 1954, the land is to be deemed to be Reserve Forest and the 1956 Record of Rights entry in favour of Mayadhar Singh treating the land as part of the Revenue village is illegal and without jurisdiction and the orders passed by the Commissioner on 19.06.85 in review are also illegal and without jurisdiction.

5. The case of the appellants is as follows: The village Binikapadar was no doubt a revenue-village to start with but by 1922, on account of tiger menace in the area, it was abandoned. There has been no human habitation ever since. Even the 1971 Census Report and the notification (SRO 749 of 1983) dated 14.10.1983 issued Under Section 3 of the Orissa Gram Panchayat Act, 1964 show that it was an uninhabited village (UI). The village was described as abandoned in the Dangarla Khasra and Zamindari Register of the Ex-State of Kalahandi within Pragana Patbarka, Bhawanipatna, Sadar P.S. area, as noted by the Dewan in his letter dated 05.06.1922 (Annexure-A), In the 1932 Settlement Records, it was recorded on 15.05.1932 that the village of Binikapadar was an 'abandoned village' even by the date of the previous settlement due to tiger menace. It was also identified as

being located West of village Dengchuan. That it was so abandoned was accepted by the Dewan in 26.08.1932 who agreed that the village was 'lying waste' (Annexure-B). After 1932 the then Ruler Sri P.K. Deo prepared working plans to include earlier Dangarlos in the Reserved Forest by demarcation and survey. In 1934-35, one such working plan was prepared by Dr. H.F. Mooney and he recommended that the land in this village Binikapadar consisting of Sal and bamboo be treated as Reserved Forest. This recommendation was accepted by the Ruler. This village was accordingly included in the total area of 5760 acres of the Nehala Reserved Forest. The survey of India Maps of the Government of India of 1936-37 for Kalahandi State (Maps 65M/1 and 65M/2)(Annexure-C) do not show Binikapadar village at all. By superimposing the Estate plans and these plans, it is clear that this area was treated as waste and is lying to the West of Dengchuan village. This area included in the Reserve Forest in these plans is none other than Binikapadar village and thus absorbed into the Reserved Forest. Dr. Mooney's report was accepted by the Dewan on 05.12.1942 and by the Ex-Ruler Sri P.K. Deo on 14.12.1942 (Order No. 3104)(Annexure-E). Dr. Mooney prepared further working plans in 1948. The above is the case of the appellants.

6. Sri P.N. Misra, learned counsel for the appellants strongly relied upon the Orissa Amendment to the [Indian Forest Act, 1927](#) by Orissa Act XI of 1954 by which Section 20A was inserted w.e.f. 21.05.1954. Under Section 20A, it is pointed out that apart from giving effect to any orders of the ruler before merger in regard to inclusion of fresh areas in the Reserved Forest, other lands even if they were described either as 'forest land' or as 'waste land' in any administration reports or working plans or registers, were to be deemed to be reserve Forest land. The appellants contend that because of the working plans and the reports and the statutory 'fiction' created by Section 20 A, even if the village was a revenue village before 1942, it became a Reserve Forest later in fact and in law under the Amending Act of 1954. This fiction was also carried into the Orissa forest Act, 1972. Once the revenue village consisting of forest growth or waste land was deemed to be part of the existing reserve Forest even if it be from 1954, the settlement authorities could not have treated this as a revenue village in 1956 and included the name of Sri Mayadhar Singh in the record of rights. The village could become a Revenue Village again only by dereservation Under Section 27 of

the India Forest Act or Under Section 29 of the Orissa Forest Act, 1972. In fact, on 14.03.1959, the Forest Department issued notification treating this land as forest land.

7. The learned counsel for appellants Sri P.N. Misra further contended that in the Record of rights proceedings initiated by the Revenue Department in 1949 which culminated in 1956, the facts prior to 1949 were not taken into account, that facts subsequent to 1949 were inadmissible and were irrelevant, and that no notice was given to the Forest Department when a Gountia patta was issued on 14.10.1950 in favour of late Mayadhar Singh, father of respondent No. 2. Even Clause 22 of that patta shows the existence of 'teak, Sal, Bija, Sisu, Bandhan, Harida and Kusum trees' by 1950 in the village itself assuming that Clause 23 thereof showed the village to be a little away from the reserve forest near the village. In view of the working plan & reports prior to 1954, the statutory effect of Section 20A introduced in 1954, was to deem this land in Binikapadar also as part of the Reserve Forest near the village, even if it was not a part of the Reserve forest earlier. The entries of the village in the records as 'waste land' and the description as such in the working plans and administrative reports prior to merger, were sufficient for purposes of Section 20A. There was no order of dereservation after 1954. There has been no cultivation of lands ever since 1922. The above pleas are raised on merits. Learned counsel contends that the entries of 1956 in the record of rights were rightly revised by the Commissioner on 28.07.1981 in exercise of suo motu powers Under Section 15 of the Settlement Act, 1958 delegated to him. No plea of unreasonable delay in the exercise of suo motu revisional powers was raised before the commissioner. The latter order of the successor-Commissioner dated 19.06.1985 in favour of restoring the entries of 1956 is without jurisdiction for yet another reason, namely that the Commissioner did not have any statutory powers of review. His findings on merits on the question of possession and incidentally on the question of title of Mayadhar Singh and his order for restoration of 1956 entry in Record of Rights are vitiated on account of non-consideration of the above facts. In any event, the entries in Record of rights are only of presumptive value and subject to final decision by Civil Court. Now the suit of the State filed in 1991 (T.S.76/91) is pending in Civil Court and the findings in the review order are not binding on the Civil Court.

8. On the other hand, Sri T.L. Viswanatha Iyer, learned senior counsel for respondents No. 2 & 3 contended that the land was part of the Revenue village of Binikapadar, that the said character continued thereafter, that though public notice was given in 1962 by the Revenue Department the Forest Department did not file objections and the settlement proposals of 1956 were confirmed in favour of Mayadhar Singh on 15.10.1963 and patta was directed to be distributed on 02.04.1973. Patta for occupancy rights was conferred on that basis on Mayadhar Singh on 01.05.1973. The entries in the Record of Rights of 1956 made by the revenue authorities in favour of Mayadhar Singh were valid. These are the submissions on merits. It was also contended that the Commissioner wrongly interfered with the same in exercise of his revisional powers Under Section 15 of the 1958 Act on 28.07.1981. It was contended that the successor-Commissioner was entitled to exercise the powers of review vested in the principal i.e. the Board of Revenue Under Section 7 of 1951 Act. The Commissioner, while exercising review powers, had considered all the relevant facts and rightly set aside the order of his predecessor dated 28.07.1981. Learned senior counsel referred to several provisions of the 1958 Act, the Rules & Regulations made thereunder as also the rules made under the 1951 Act, in this connection. It was pointed out that in the latter order dated 19.06.85 the Commissioner held that there was no proper correlation between what was declared as Forest land by the Ex Ruler in 1942 and this land in village Binikapadar. It was pointed out that this land was rightly treated as part of the revenue village in subsequent land-ceiling proceedings, (which are still pending) and also in several orders passed by the High Court in writ jurisdiction while granting transit permits to respondent 2. The forest authorities were impleaded in those proceedings before the High Court. Again, the Civil Court, in the pending suit of 1991 filed by the State, had, at the instance of the respondents, passed orders on 19.12.94 vacating the interim injunction orders passed earlier in favour of the State. No doubt, the High Court had granted stay in the public interest case.

9. In reply, the appellants' counsel Sri P.N. Misra contended that the orders of the High Court granting transit permits and the order of the Civil Court vacating the injunction were based on the latter orders dated 19.06.1985 of the Commissioner and on the present impugned judgment dated 08.11.1993. These orders have not

reached any finality as the review order of the Commissioner and the High Court judgment dated 08.11.1993 are in question before us now, and therefore the latter orders of the High Court and Civil Court depend upon the result of these appeals. In any event, all the orders which treated the land as part of revenue village were without jurisdiction as there was no dereservation order after 1954.

10. In view of the above pleas on facts and law, the following points arise for consideration:

(1) Whether the commissioner, to whom powers of revision of the Board Under Sections 6D, 15, 25 and 32 of the Settlement Act, 1958 were delegated, could exercise the powers of review conferred on the Board by Section 7 of the 1951 Act?

(2) Whether the orders passed by the Commissioner as delegate of the Board of Revenue in respect of the Board's revisional powers under the 1958 Act could be revised by the Board in exercise of its revisional powers Under Section 15 of the 1958 Act or reviewed Under Section 7 of the 1951 Act?

(3) Assuming that the commissioner while acting under the 1958 Act could exercise review powers under the 1958 Act, whether it was competent for the Commissioner in his review orders dated 19.06.85 to go into factual issues concerning title and possession in respect of which findings had already been given in the earlier revisional orders of his predecessor on 28.07.81?

(4) Whether the matters concerning title and possession as recorded in the Record of Rights entries of 1956-57 can all be left open for decision by the Civil Court in civil suit T.S. 76/91 now pending?

Points 1 & 2:

11. We shall initially refer to the relevant provisions of the 1958 and 1951 Acts.

The 1958 Act:

12. Under sub-clause (a) of Section 15 of the Orissa Survey & Settlement Act, 1958, the Board of Revenue has suo motu revisional powers conferred on it. That

section reads:

'S. 15:Revision by Board of Revenue: The Board of Revenue may, in any case, direct-

(a) of its own motion the revision of any record-of-rights, or any portion of a record-of-rights, at any time after the date of final publication Under Section 12-B but not so to affect any order passed by a Civil Court Under Section 42.

(b)

Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.'

similar suo motu powers of revision are found in sections 6D, 25, and 32 of the said Act.

13. There is no dispute that by Notification of the Government of Orissa (Revenue Department) dated 16.10.1971 and 17.02.1972, the above revisional powers of the Board of Revenue Under Sections 6D, 15, 25 and 32 have been delegated to the Commissioner, Under Section 33 of the Settlement Act, 1958. That section reads as follows:

'S.33: Delegation of Powers : The Government may by notification, delegate the powers of the Board of Revenue to an Officer not below the rank of Revenue Divisional Commissioner.'

Therefore, the Commissioner could, as delegate of the Board, exercise revisional powers of the Board of Revenue falling Under Section 15.

14. So far as the powers of review are concerned, it is admitted that in the Settlement Act, 1958, there is no provision vesting power of review on the Board of Revenue in respect of orders passed by it Under Section 6D, 15, 25, & 32 of that Act. It is true in the Rules, namely Rule 43, there is provision for review of orders passed by 'officers' on ground of mistake or error apparent on the face of the record. Having regard to the scheme of the Act and Rules and the hierarchy of officers, it must be held that the word 'officer' in Rule 43 cannot include the Board.

In fact Section 32 confers powers of revision on the Board against order of any 'officer'. Thus, 'officers' referred to in Rule 43 are those subordinate to the Board of Revenue. Again, it is also true Rule 3 which deals with 'conduct of proceedings under the Act', states that proceedings conducted by every 'officer', shall be summary and shall be governed, so far as may be practicable, by the provisions of the Civil Procedure Code. But even this Rule refers only to 'officers' and not to the Board of Revenue. Thus these provisions are not helpful to conclude that the Board has review powers under the 1958 Act/Rules.

The 1951 Act:

15. We have then to see if the 1951 Act confers such a power of review on the Board or its delegate. Now Section 7 of the Orissa Board of Revenue Act, 1951 refers to the powers of review of the Board of Revenue, and reads as follows:

'S. 7: Power of Board to review any order: (1) The Board may review on its own motion or on the application of any person aggrieved by any order of the Board, review any order passed by itself and pass such order in reference thereto as it thinks fit.'

16. Thus this Act of 1951 clearly confers powers of review on the Revenue Board. Rule 5 of the Orissa Board of Revenue Rules, 1959 states that while hearing matters under the provisions of Rules 3 and 4, the Board shall be deemed to be a Court and it shall give its decision in the form of a judgment signed and sealed by the Member. Sub-Clause (xi) of rule 9 permits the Board of Revenue to exercise the functions relating to the 'conducting Survey and Settlement and consolidation of Holdings operations'. The Regulations, which are called the Board of Revenue Orissa Regulations, 1963 refer to the procedure relating to presentation of review applications. Thus the Board of Revenue has powers of review under the 1951 Act.

Whether Board can resort to Section 7 of 1951 to review its revisional orders passed under the 1958 Act?

17. It is, at the outset, important to note that there is no power in the said 1951 Act enabling delegation of the power of review vested in the Board of Revenue to any other authority. Nor is there, as stated earlier, any express provision of review by the Board of Revenue in the Settlement Act, 1958.

18. Question arises whether, in such a situation, the Board can resort to its powers of review Under Section 7 of 1951 Act for reviewing orders passed under the 1958 Act in revision Under Section 6D, 15, 25 and 32?

19. For deciding the above issue, it is necessary to notice that the 1951 Act is a general statute dealing with powers of Board of revenue and not a special statute dealing with land and rights annexed thereto. The Board of Revenue Act, 1951 is an act intended to constitute a Board of Revenue for the State of Orissa. The Act repeals earlier statutes of different States operating in various parts of Orissa, - namely, the Bihar and Orissa Board of Revenue Act, 1913; the Madras Board of Revenue Act, 1894, the Madras Board of Revenue Regulation, 1803 and the Orissa Revenue Commissioners' (Regulation of Functions) Act, 1948. Learned senior counsel for the respondents Sri T.L. Viswanatha Iyer has taken us through the above four statutes and pointed out that these Acts related only to the Constitution of the Boards of Revenue or creation of posts of commissioners, Northern Division and Commissioner of Excise or Food Commissioner and that they do not deal with any rights relating to land. Thus in 1951 a new Revenue Board has been created for Orissa. Section 3 of the 1951 Act deals with 'construction of references to former Boards', Section 4 refers to the duties of the Board, Section 8 deals with the administrative functions of the Board and Section 10 with the 'jurisdiction of the Board'. Section 10 states that the Board of Revenue for Orissa, as constituted Under Section 2 shall have, in respect of the territories for the time being included in the State of Orissa, all such original, appellate and other jurisdictions as under the law in force immediately before the date of commencement of the 1951 Act - [as amended by the Orissa Board of Revenue (Amendment) Act, 18 of 1957] - is exercisable in respect of the said territories or any part thereof by the Revenue Commissioner, Orissa and the Commissioner, Northern Division - functioning as a Board of Revenue. The reference to the 'laws in force' is merely a reference to the four statutes referred to above which were

repealed under the 1951 Act and which dealt with Board of Revenue or Officers of equal rank. A look at these four statutes would show that those statutes did not relate to the rights of the agriculturists, or of landlords and tenants nor to record of rights, nor survey or settlement. Those matters were governed naturally by the special revenue statutes even before 1951, in the various territorial regions of the State of Orissa.

20. The State legislature wanted to consolidate the laws relating to survey, settlement and record of rights and for that purpose passed the Settlement Act, 1958. By that Act, several earlier statutes which occupied the field of survey, settlement and record of rights - namely, the Bengal Survey Act, 1875, the Madras Survey and Boundaries Act, 1923, the [Madras Estates Land Act, 1908](#), the [Orissa Tenancy Act, 1913](#) (ch. XI & XII), the CP Settlement Act, 1929, the CP Tenancy Act, 1898, the CP Tenancy Act, 1920, the CP Land Revenue Act, 1881, the CP Land Revenue Act, 1917 and the Bihar and Orissa Municipal Survey Act, 1920 (to the extent mentioned in the schedule of the 1958 Act) - were all repealed. Now under those statutes, the concerned Board of Revenue or Commissioner (Northern Division) etc. were exercising revisional powers before 1958. Those powers were transferred to the newly constituted Board of Revenue under the 1951 Act. Under the 1958 Act, so far as revisional powers of the Board were concerned, they were incorporated in sections 6D, 15, 25 and 32 of the 1958 Act.

21. Between 1951 and 1958, the revisional powers exercised by the Board under various statutes were certainly reviewable by the Board Under Section 7 of the 1951 Act. Likewise, after 1958, the Board - if it passed any orders Under Sections 6D, 15, 25 and 32 of the 1958 Act - those orders became reviewable by resort to Section 7 of the 1951 Act. That is how the Revenue Board, when it exercised powers of revision under the 1958 Act, became entitled to review those orders by resort to Section 7 of the 1951 Act. Learned senior counsel for the respondent 2, Sri T.L. Vishwanatha Iyer argued that the same conclusion can be reached by the application of another well-known principle, namely, that if a Court is constituted by law and matters go before it under a special law, then that Court can also exercise various other general powers attached to that Court by other statutes. In *National Sewing Thread Co. Ltd., Chidambaram v. James Chadwick & Bros. Ltd.*, :

[1953]4SCR1028 it was held by this Court that once a matter under the Trade Marks Act, 1940, comes before the High Court, the powers available to the High Court under Letters Patent can also be exercised by the High Court to correct errors in orders passed by learned Single Judges of that Court. The same principle, it is contended, will apply to quasi-judicial tribunals also. Once the revision goes to the Board Under Section 15 of the 1958 Act, the Board can, it is contended, exercise its review powers under the 1951 Act. This submission, in our view, is correct and is required to be accepted as an additional ground to support the review powers of the Board.

22. Thus, the Board would be certainly entitled to exercise review powers Under Section 7 of the 1951 Act in respect of orders passed in its revisional jurisdiction Under Sections 6D, 15, 25, and 32 of the 1958 Act. To this extent we approve the judgment of the Orissa High Court in Ramakanta alias Ramesh Chandra Jagdebrai and Anr. v. Gaji Pratap Singh and Ors., (1974) 40 CLT917.

Can the Board revise orders passed by its delegate, the Commissioner?

23. We have to note that the Commissioner when he exercises power of the Board delegated to him Under Section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in Roop Chand v. State of Punjab : AIR 1963 SC1503 . In that case, it was held by the majority that where the State Government had, Under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it Under Section 21(4) to an 'officer', an order passed by such an officer was an order passed by the State Government itself and 'not an order passed by any officer under this Act' within Section 42 and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State Under Section 42 of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled Under

Section 42 to call for the records of the case which was disposed of by an officer acting as its delegate.

24. A like question came up for consideration before a Bench of this court in *Behari Kunj Sahkari Awas Samiti and Anr. v. State of U.P. and Ors.*, : AIR 1997 SC3123 to which one of us (Majmudar, J.) was a party. In that case the Custodian General under the Administration of Evacuee Property Act, 1950 acting Under Section 55 could delegate his powers to the Deputy or Assistant Custodian General. The Custodian passed an order on 11.11.1982 and submitted the same for approval of the Assistant Custodian - the delegated authority. The latter approved the same. Against the said order of approval passed by the delegate, the State of U.P. filed a revision Under Section 27 of the Act before the Custodian General. The Custodian General held that he could not pass any order as the impugned order was one passed by his delegate. The High Court disagreed with that view and remanded the case to the Custodian General. This Court allowed the appeals and held the Custodian General was right in holding that the revision to him Under Section 27 was incompetent. It was held that if a revision were to be entertained, it would tantamount to exercising a power of review which did not flow from Section 27. In that case, this Court followed *Roop Chand v. State of Punjab* (supra).

25. The basis of the above cases is that the order of the delegate is to be treated, for all intents and purposes, as an order of the principal itself here, the Board of Revenue and hence the Board cannot revise an order passed by the delegate, the Commissioner.

Can the Board review an order passed by its delegate, the Commissioner?

26. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to 'review' of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available to his successor.

27. The decision of the Privy council in *Maharajah Maheshur Singh v. The Government of India* 7 M.L.A. 283 = 3 SWR 45 decisions to which reference was made by learned senior counsel Sri T.L. Vishwanatha Iyer is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council (p.47):

'It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear, from all these Regulations that the primary purpose of granting a review was reconsideration of the same subject by the same Judge, as contrasted to an appeal which is a hearing before another tribunal.

Their lordships added:

'We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge Who made the decisions from reviewing it: but we do say that such exceptions are allowable only *ex necessitate*. We do say that in all practicable cases, the same Judge ought to review...'

28. It is, therefore, clear that the same Judge who disposes of a matter, if available, must 'review' the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities.

29. In the light of the above, it is therefore clear that the Board of Revenue which never heard the case cannot review the order of the Commissioner, its delegate, passed Under Section 15 of the 1958 Act. In fact, if it does so, that will amount to the exercise of an indirect power of revision by the Board which is not permissible in the light of the rulings in *Roop Chand's case* and the case in *Behari Kunj Sahakari Awas Samithi* referred to above.

30. Before we go into the question of review powers of the delegate, we shall summarise the result of the above discussion. Firstly if the Board has passed an

order in revision Under Sections 6D, 15, 25 and 32 of the Settlement Act, 1958 it can resort to Section 7 of the 1951 Act to review its own order. If the Government has delegated the revisional power of the Board under the sections 6D, 15, 25 and 32 to the Commissioner by virtue of Section 33 of the 1958 Act, then the delegate, the commissioner when he exercises those powers of the Board and passes orders, those orders will have to be treated as orders of the Board of Revenue and will not be revisable on the principle that the Board cannot revise its own orders. Those orders passed by the delegate are also not reviewable by the Board because it was not the Board that passed the orders.

Can the delegate, the Commissioner, exercise the review powers of the Board under the Act of 1951, in respect of orders passed in revision under the 1958 Act?

31. This is the crucial question. We have noticed that the Board of Revenue, if it has itself passed orders in exercise of its revisional jurisdiction under the 1958 Act, it can review those orders by resort to Section 7 of the 1951 Act. Can this power be denied to the delegate?

32. It may be noticed that if the delegate, the Commissioner is to be denied such a facility to correct obvious errors in the orders passed by him Under Sections 6D, 15, 25 and 32 of the 1958 Act as delegate of the Board's revisional powers, a serious anomaly can arise.

33. Now it is well settled that the principal does not lose his powers merely because those powers have been delegated to another body. Take a case where in respect one piece of land, the Board itself exercises revisional jurisdiction under the 1958 Act. Take another case of the very adjacent land where the Board's delegate, commissioner exercises revisional jurisdiction of the Board. If the appellants' contention is to be accepted then a review will lie only in the former case and not in the latter. This will be anomalous and may even give scope for a plea of discrimination. Further if a superior authority is enable to correct its obvious mistakes on the premise that sometimes its decisions can go wrong, the need for denying the same facility of correction -to an officer immediately below in the hierarchy does not appear to be logical. We, therefore, hold that the Commissioner while exercising revisional powers of the Board under the 1958 Act is also

certainly clothed with the review powers of the Board Under Section 7 of the 1951 Act. In other words, when the delegate personifies his principal and his orders are to be treated as orders of his principal, all other powers attributable to the personality which he personifies, will be exercisable by him.

34. Thus the appeals cannot be allowed on the ground that the commissioner could not have exercised powers of review.

35. Points 1 and 2 are decided against the appellants and in favour of the respondents Nos. 2 and 3.

Points 3 and 4:

36. The first question here is as to the scope of the power of review of the Board Under Section 7 of the 1951 Act.

37. The Board of Revenue while reviewing earlier orders passed in exercise of jurisdiction Under Sections 6D, 15, 25 and 32 is certainly not acting as an appellate authority but is acting only as a revisional authority. It is true that Section 7 of the 1951 Act which is the source of the power of review states that the Board may 'review' its orders and 'pass such orders in reference thereto as it thinks fit'. We are aware that this Court has held, while explaining the words 'as it thinks fit', that those words are to be given a wide meaning. But in the context of review jurisdiction these words cannot, in our opinion, be treated as equal to an appellate or even revisional jurisdiction. Particularly when we are dealing with review of orders passed in revisional jurisdiction, it is obvious that the review power should be something less than the revisional jurisdiction. We have noticed that Under Rule 43 of the Rules made under the 1958 Act, the 'officers' who are conferred powers of review can exercise them only in case of 'mistakes or errors apparent on the face of the record'. In our considered opinion, the Board's review powers under the 1951 Act are also intended for correction of 'mistakes or errors apparent on the face of the record'. On that basis the powers of the Board's delegate, namely the Commissioner, while exercising review powers of Board under the 1951 Act, must be held to be equally circumscribed. We disagree in part with the decision of the Orissa High Court in Ramakanta (supra) when it stated that the

power of revision Under Section 7 of the 1951 Act is wider than Order 47 Rule 1 CPC.

38. Proceeding on the above basis, we come to the last point. The question is whether the Commissioner, while passing his orders of review on 19.06.1985, exceeded his powers of review?

39. On this aspect we have heard learned counsel on both sides elaborately. Most of the contentions on merits have already been set out at the beginning of this judgment. It is common ground before us that the suit T.S. No. 76/91 filed by the State, which is now pending, is not a suit merely to set aside the entries in the record of rights. The suit by the State is based on title and is not barred by sub-clause (2) of Section 29 of the 1958 Act nor by any other provision of the Act or Rules. In such a situation, the question arises whether this Court should express its views on the merits of the contentions raised before us, - even in a prima facie fashion. Any opinion that we might express is likely to seriously prejudice the case of the appellants or the case of the respondents in the suit. After considerable deliberation we have decided that we should not go into the merits of the contentions of the parties on title and also on possession. We therefore leave open the finding given and the observations made by the commissioner in his initial order dated 28.07.1981 and also in his review order dated 19.06.1985. We also leave open the questions decided by the High Court on the merits of the case. We leave all these questions free to be decided by the Civil Court in the pending suit T.S. 76/91 in accordance with law on the basis of such evidence that may be produced by the respective parties uninfluenced by the observations of the High Court in the impugned judgment and also of the Commissioner in the revisional and review order. We direct accordingly.

40. In the meantime, that is, pending suit, the status quo on the spot will be maintained by both parties and we further direct that the tree and forest growth in the land which is the subject matter of suit shall not be interfered with by either parties and there is also no question either of permitting the cutting of the trees or the removal of the forest produce and there is equally no question of transport thereof. The above restraint on both parties shall be in force pending disposal of

the suit points 3 and 4 are disposed of accordingly. The suit shall be decided by the trial Court expeditiously and at any rate, on or before 31.03.1999.

41. In the result, these appeals are disposed of in the light of the above directions. There shall be no order as to costs.

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