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(2023) 04 OHC CK 0244

Orissa High Court

Case No: Writ Appeal No. 378 Of 2023

Premalata Patnaik		APPELLANT
	Vs	
Joint Commissioner, Settlement And Consolidation, Berhampur And Others		RESPONDENT

Date of Decision: April 24, 2023

Acts Referred:

- Orissa Survey and Settlement Act, 1958 - Section 15(b)
- Limitation Act, 1963 - Section 5

Hon'ble Judges: Dr. S. Muralidhar, CJ; G. Satapathy, J

Bench: Single Bench

Advocate: G.N. Sahu, Debakanta Mohanty

Final Decision: Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The challenge before the learned Single Judge in the writ petition by the Appellant was to an order passed by the Joint Commissioner, Settlement

and Consolidation, Berhampur dismissing her revision petition being SRP No.659 of 2017 under Section 15(b) of the Orissa Survey and Settlement

Act, 1958. Strangely, the revision petition questioned an order passed by the Tahasildar, Berhmpur which was even passed twenty-seven years earlier,

whereby the entry in the Record of Right (RoR) in respect of the land in question was made in favour of the Berhampur Municipality. In seeking to

explain the delay in approaching the Joint Commissioner, the Appellant filed an application under Section 5 of the Limitation Act where in para 2, she

stated as under:

Ã¢â‚¬Å“2. That the Petitioner being a Govt. employee working as a Teacher at Gopalpur-on-Sea is always residing away from the suit land and as such she could not able

to know the settlement operation convened in the locality where the suit land is situated and hence she could not produce the relevant documents before the

authority concerned for mutating the same in her favour.Ã¢â‚¬â€‹

2. In its reply to the SRP No.659 of 2007, the Berhampur Municipality pointed out that the Appellant had not challenged the RoR by filing any case in

any civil Court or the settlement Court, although thirty years had elapsed from the date of final publication of the RoR.

3. In an order dated 17th August, 2010 dismissing the above revision petition SRP No.659 of 2007, the Joint Commissioner noted that even on merits,

the Appellant failed to place documents to establish her title to the property in question.

4. The writ petition challenging the above order dated 17th August 2010 of the Joint Commissioner was filed only on 3rd February, 2013 i.e., nearly

three years after the order was passed. In the entire writ petition, no explanation was offered for the delay in filing the writ petition. Therefore, there

was delay at both stages, i.e., at the stage of filing the revision petition and again at the stage of filing the writ petition.

5. The learned Single Judge, has in the impugned order dated 30th January 2023, noted that with the initial proceedings itself being barred by limitation,

the condonation of delay of almost three decades would amount to unsettling a settled position. The learned Single Judge, therefore, declined to

examine the other grounds urged by the Appellant to assail the order of the Joint Commissioner.

6. Mr. G.N. Sahu, learned counsel appearing for the Appellant referred to the decision of the Supreme Court inT ukaram Kana Joshi v. M.I.D.C.

(2013) 1 SCC 353 to urge that the High Court must exercise its discretion judiciously and reasonably and Ã¢â‚¬Å“in the event the claim made by the

Applicant is legally sustainable, delay should be condoned.Ã¢â‚¬ He also relied on the decision of the learned Single Judge of this Court inB hagaban

Jena v. State of Orissa 103 (2007) CLT 803.

7. As far as the decision in Tukaram Kana Joshi v. M.I.D.C. (supra) is concerned, it arose from land acquisition proceedings where, as noted by the

Supreme Court in para 14 of the decision, the Appellants there Ã¢â‚¬Å“had been pursuing their case persistentlyÃ¢â‚¬ and were Ã¢â‚¬Å“illiterate and inarticulate

personsÃ¢â‚¬. Noting that the Appellants there were Ã¢â‚¬Ëœpoor farmersÃ¢â‚¬â„¢, the Supreme Court further noted that they belonged Ã¢â‚¬Å“to a class which did

not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihoodÃ¢â‚¬â€‹.

8. In the present case, the Appellant does not fall under any of the above categories. She has been a Teacher in a Government School and was in fact

not living on the property in question and not earning from it in any manner whatsoever. She filed the aforementioned revision petition twenty-seven

years after the entry was made in the RoR to reflect the ownership of the Berhampur Municipality over the land in question. The explanation offered

by her for the extraordinary delay of 27 years, as noted above, can hardly be said to be convincing.

9. The Court also notes from the order passed by the Joint Commissioner dismissing SRP No.659 of 2007 that even on merits, the Appellant had failed

to make out any case for questioning the entry in the RoR since there were no documents to substantiate her claim.

10. As far as the decision in Bhagaban Jena v. State of Orissa (supra) is concerned, there the learned Single Judge of this Court noted that the

Commissioner was Ã¢â‚¬Å“already convinced and has noted in the impugned order that the claim of the Petitioners has meritÃ¢â‚¬. In those circumstances, it

was of the view that the delay of nineteen years should not come in the way of the Petitioners in that case pursuing their remedy. In the present case,

however, as already noted, the Appellant failed to make out a case even on merits before the Joint Commissioner.

11. In the above circumstances, the Court is not satisfied that any ground has been made out for interference with the impugned order of the learned

Single Judge. The writ appeal is accordingly dismissed.

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