

ORISSA HIGH COURT : C U T T A C K

O.J.C. No.7134 of 2001

*An application under Article 226 & 227 of
the Constitution of India, 1950*

Maheswar Nayak

: Petitioners

-Versus-

***The Commissioner of
Land Records & Settlement & Ors.***

: Opposite Parties

For Petitioner

: Mr. N.K. Sahu

For Opposite Party Nos.1 to 3

: Mr. S. Ghose,
Addl. Govt. Adv.

For Opposite Party Nos.4 to 18

: None

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 10.11.2022

1. Heard the submission of learned counsel for both the parties.
2. This Writ Petition involves a challenge to the impugned order at Annexure-1 so far it relates to Revision Case No.3972 of 1997 arising out of Appeal Case No.2299 of 1983 involving a common disposal of the above revision together with R.P. Case No.3664 of 1997 and R.P. Case No.3666 of 1997. Order involving R.P. Case No.3664 of 1997 and R.P. Case No.3666 of 1997 is of

course not impugned herein. Both the cases appear to be under the provision of the Odisha Survey & Settlement Act, 1958 hereinafter in short be reflected as “The Act, 1958”.

3. In the commencement of hearing of the proceeding, keeping in view the restrictions through the provision at Section 32 of the O.S.S. Act as well as through paragraph 111 of the Mutation Manual, Petitioner here raises technical objection on the entertainability of the revision itself. For the involvement of a serious issue on the entertainability of the revision this Court feels it appropriate to first decide the question framed herein before deciding any other issues involved herein; “For the restriction in the Section 32 of the Act, 1958, if a revision under the provision of Section 32 of the Act, 1958, since there already involved an appeal U/s.22(2) of the Act, 1958 herein is maintainable?”.

4. Advancing his submission Mr. Sahu, learned counsel for the Petitioner while disclosing the undisputed fact involved herein, took this Court to the provision at Section 32 of the Act, 1958 and reading the provision at Section 32 of the Act, 1958 together with the paragraph no.111 of the Mutation Manual, attempted to convince this Court that in the above legal scenario there is no possibility of undertaking a revision exercise by the Board of Revenue and/or the Commissioner, Land Records and Settlement, Orissa, Cuttack. Mr. Sahu, learned counsel for the Petitioner thus claims for setting aside of the impugned order involving R.P. Case No.3972 of 1997 vide Annexure-1.

5. Mr. Ghose, learned State Counsel though did not dispute to the consequence involving the legal provisions operating in the field,

however, taking this Court to the grounds in disposal of the revision involved contested the case on the premises that there has been valid grounds in disposal of the revision involved and claims there is no requirement of interference in the impugned order and thus objected entertainability of the writ petition.

6. Considering the rival contentions of the parties and as both the parties relies on the provisions at Section 32 of the Act, 1958 and paragraph no.111 of the Mutation Manual, this Court here takes note of both the provisions, which read as follows:-

Section 32 of the O.S.S. Act, 1958

“Section – 32 . Power to call for and revise proceedings of Revenue Officers. - The Board of Revenue may call for the record of any Proceeding [any Officer] from whose decision no appeal lies if such Officer appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise a jurisdiction so vested or while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits where such contravention has produced a serious miscarriage of justice and the Board of Revenue after hearing the parties if they attend, shall pass such order as it deems fit.

Paragraph No.111 of the Mutation Manual

111. Under Sec. 32 of the Act, the Board of Revenue have powers, with or without petition, to call for and revise any proceedings before any Officer from whose decision no appeal lies. The fact that the Board of Revenue have been vested with this power of revision of any proceedings at any time does not mean that any party to a mutation proceeding can, as a matter of course, move the Board for changing an order passed by a subordinate authority. The statutory rule does not provide for a second appeal or revision after the first appeal and in the absence of such a specific provision the general powers conferred by Sec. 32 cannot be invoked to utilise the Board of Revenue as a Court of second appeal. Powers of control and supervision by the superior authority are discretionary and the authorities exercising such powers are not ordinarily disposed to interfere except in the following classes of cases, namely:

- (a) where a subordinate officer has improperly refused to exercise a jurisdiction vested in him, or
- (b) where such officer in the exercise of the jurisdiction has failed in his duty or has contravened some express provision of law affecting the decision on the merits, and where such contravention has produced a serious miscarriage of justice, or
- (c) generally where it is necessary for the purpose of preventing gross abuse or gross injustice.”

7. Reading through the provisions at Section 32 of the Act, 1958, this Court finds, in the Section 32 of the Act, 1958 power lies with the Board of Revenue or the Commissioner and for the notification therein such power is to be exercised only involving the proceedings undertaken by the Revenue Officers. Section 32 further discloses that the Revision power is to be exercised involving the proceedings of the Revenue Officer, but however, where there is no scope of appeal. Similarly reading through the provision at paragraph no.111 of the Mutation Manual this Court again finds, there has been further clarification to the provision involving revisional power of the Board of Revenue or any authorized Officer. For there is raising of doubt, whether a proceeding U/s.22(2) of the O.S.S. Act, 1958 will be an appeal in the eye of law or an original proceeding? This Court here takes into account the provision at proviso (c) of the rule 59 of the O.S.S. Rules, 1962, which reads as follows:-

“(c) Proceedings relating to publication of the combined draft record-of-rights and Settlement Rent Roll, filing of objections to any entry therein or omission therefrom, disposal of such objections, revision of rent by the Assistant Settlement Officer, sanction of the settled rent and modification of order of the Assistant Settlement Officer, by the Settlement Officer shall be carried on in accordance with provisions of Sections 21 and 22 and Rules 26 and 27:

Provided that an application under Clause (b) of Sub-section (2) of Section 22 shall be deemed to be an appeal under Section 12-A and no separate appeal shall lie under the said section.

This Court for the clarification through the proviso (c) of Rule 59 of the O.S.S, Rules, 1962 finds, there should be no doubt that the proceedings undertaken in exercise of power under Sub-section 2 of Section 22 is appeal.

8. Reading both the provisions and keeping in view that undisputedly the original proceeding is already taken care of in appeal vide Appeal No.2299 of 1983 under the provisions of Section 22(2) of the Act, 1958, this Court is of the clear opinion that there was no scope for undertaking a revision exercise U/s.32 of the Act, 1958.

In the circumstance, this Court finds, the revision itself is not entertainable. Impugned order involving the Revision No.3972 of 1997 arising out of Appeal No.2299 of 1983 remains void and unenforceable. For the decision of this Court holding the revision *per se* not entertainable, there is no necessity to go to any other aspect involving challenge to the revision order.

9. The Writ Petition succeeds with setting aside of the impugned order at Annexure-1 so far it relates to R.P. Case No.3972 of 1997 arising out of Appeal Case No.2299 of 1983. There is, however, no order as to costs.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 10th day of November, 2022//
Ayaskanta Jena,
Senior Stenographer