

## STATE OF ORISSA AND ORS.

v.

ARAKHITA BISOI

April 14, 1977

[M. H. BEG, C.J., A. C. GUPTA AND P. S. KAILASAM, JJ.]

**B** *Orissa Land Reforms Act, 1960 as amended by Act 13 of 1965 and Act 29 of 1976—Revisional powers u/s 59—Whether an order passed by the appellate authority u/s 44 of the Act which has become final u/s 44(2) is capable of revision by the Collector u/s 59 before the amendment Act 29 of 1976—Construction of S. 59.*

**C** Under Section 43 of the Orissa Land Reforms Act, the Revenue Officer determines the ceiling surplus and on the termination of the proceedings thereunder, the Revenue Officer u/s 44(1) confirms the draft statement; u/s 44(2) an appeal lies to the prescribed authority against the order under sub-section (1) and subject to results of such appeal, if any, order of the Revenue Officer shall be final. Section 58 provides a right of appeal to any person aggrieved by an order passed under any of the Sections enumerated in sub-section (1). Sub-section (1) of S. 59 provides that the Collector may revise *any order passed in appeal by any officer below the rank of a Collector under this Act*. Section 59(1) also empowers the Board of Revenue to revise *any order* passed by the Collector. Sub-section (2) enables the Collector or the Board of Revenue *suo motu* or on the application of the party concerned call for and examine the record in respect of any proceedings under the Act and modify, annual reverse or remit for reconsideration.

**D** In the proceedings u/s 38 of the Act the plea of the respondent landlord that there was a partition between him and his sons was rejected by the Revenue Officer who determined the surplus extent as 12.08 standard acres. The appeal preferred before the Sub-Divisional Officer having failed, the respondent filed a revision before the Additional District Magistrate. The **E** Additional Magistrate held that the appellate orders u/s 44 are final and that no revision lay to him. The writ petition filed against this order filed by the respondent was allowed by the Orissa High Court by its order dated 15-7-1976 holding that the Additional Magistrate had powers to revise an order of the appellate authority passed u/s 44 by virtue of the powers conferred on him under s. 59 of the Act.

'Dismissing the appeal by certificate, the Court,

**F** HELD : (i) The language of S. 59(1) of the Orissa Land Reforms Act is wide enough to enable the Collector to revise any order including an appellate order under S. 44 of the Act. [561 B]

(ii) In applying the rule of harmonious construction with a view to give effect to the intention of the legislature the court will not be justified in putting a construction which would restrict the revisionary jurisdiction of the Collector and the Board of Revenue. [560E]

**G** In the instant case, the Act is of expropriatory nature and the determination of the excess lands is done by the Revenue Officer. The legislature intended that any error or irregularity should be rectified by higher authorities like the Collector and the Board of Revenue. [560E]

*J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. & Ors.* [1961] 3 S.C.R. 185 held not applicable.

*The Bengal Immunity Company Ltd. v. The State of Bihar & Ors.* [1955] 2 S.C.R. 603 referred to.

**H** (iii) It cannot be said that there is any conflict between S. 44(1) and S. 58 inasmuch as S. 44(1) provides that the order of the Revenue Officer shall be final, subject to the result of appeal u/s 44(2), while no such finality

is mentioned in the case of an appeal u/s 58. The provision as to finality u/s 44(2) is provided for so that in the absence of the aggrieved party proceeding further in the matter, the consequences of the vesting of surplus lands u/s 45, the preparation of the Compensation Assessment Roll, the settlement of surplus lands etc. can be proceeded with. [559 D-F]

(iv) The amendment to S. 44(3) by the Amendment Act of 1975 making it clear that a right to revision is provided for orders passed u/s 44(2) does not make any difference. The amendment could not mean that S. 44(2) as it originally stood did not provide for power of revision to the Collector u/s 59. [560 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 903 of 1976.

Appeal from the Judgment and Order dated the 15-7-1976 of the Orissa High Court in O.J.C. No. 698 of 1976.

*G. Rath, Advocate General, Orissa, R. K. Mehta* for the Appellants.

*Vepa Parthasarthy and C. S. Rao* for Respondents.

The Judgment of the Court was delivered by

KAILASAM, J.—This appeal is by the State of Orissa represented by the Secretary, Revenue Department, against the judgment of a Bench of the Orissa High Court on a certificate of fitness granted by it.

The respondent herein is a land-holder whose ceiling surplus was determined by the Revenue Officer under section 43 of the Orissa Land Reforms Act, 1960, as amended by Act 13 of 1965 and subsequently by Act 29 of 1976.

The Revenue Officer rejected the plea of the respondent that there was a partition between him and his sons and determined the surplus extent as 12.08 standard acres. The respondent preferred an appeal before the Sub-Divisional Officer and the Sub-Divisional Officer confirmed the order of the Revenue Officer and dismissed the appeal. Against the order of the appellate authority the respondent filed a revision before the Additional District Magistrate, Ganjam. The Additional District Magistrate held that the appellate orders under section 44 were final and that no revision lay to him. The respondent thereupon filed a petition under Articles 226 and 227 of the Constitution challenging the order of the Additional District Magistrate rejecting the revision petition. A Bench of the Orissa High Court by an order dated 15th July, 1976, allowed the writ petition holding that the Additional District Magistrate had powers to revise the order of the appellate authority passed under section 44 by virtue of the powers conferred on him under section 59 of the Act. The High Court came to this conclusion that a revision was entertainable under section 59 by the Additional District Magistrate even before the amendment introduced by Orissa Act 29 of 1976. the details of which will be referred to later.

The only question that arises in this appeal is whether an order passed by the appellate authority under section 44 which has become

A final under section 44(2) is capable of revision by the Collector under section 59 before the amendment of the Act in 1976. Section 44 runs as follows :—

“44. (1) On the termination of the proceedings under Section 43, the Revenue Officer shall by order confirm the draft statement with such alterations or amendments as may have been made therein under the said Section.

(2) An appeal against the order of the Revenue Officer under sub-section (1) confirming the statement if presented within thirty days from the date of the order shall lie to the prescribed authority and subject to the results of such appeal, if any, the orders of the Revenue Officer shall be final.”

C Under section 44(1) the Revenue Officer confirms the draft statement and under section 44(2) an appeal lies to the prescribed authority against the order under sub-section (1) and subject to results of such appeal, if any, order of the Revenue Officer shall be final. Section 58 provides a right of appeal to any person aggrieved by an order passed under any of the sections enumerated in sub-section (1). As the decision in this case will depend upon the construction that is put upon section 59 we extract section 59(1) and (2) in full.

“59. Revision :

(1) The Collector may revise any order passed in appeal by any officer below the rank of a Collector under this Act and the Board of Revenue may revise any order passed by the Collector under this Act and the period of limitation for such revision shall be as may be prescribed.

(2) For the purposes of sub-section (1) the Collector or the Board of Revenue as the case may be may *suo motu* or on application of either party or any interested person call for and examine the record of any matter in respect of any proceedings under this Act as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed thereon and if in any case it appears that any such decision or order shall be modified, annulled, reversed or remitted for reconsideration, the Collector or Board of Revenue as the case may be, may consider accordingly.”

G Sub-section (1) provides that the Collector may revise any order passed in appeal by any officer below the rank of a Collector under this Act. It also empowers the Board of Revenue to revise an order passed by the Collector under the Act. Sub-section (2) enables the collector or the Board of Revenue *suo motu* or on the application of the party concerned call for and examine the record in respect of any proceedings under the Act and modify, annul, reverse or remit for reconsideration such a decision to the lower authority. The section as it stands does not put any restriction on the power of revision by the Collector or the Board of Revenue for it states that the Collector or the Board of Revenue may revise any order passed under this Act which would

include an order passed under section 44(2). Again sub-section (2) of section 59 provides that the Collector or the Board of Revenue may examine the record of any matter in respect of any proceedings under the Act which would include the proceedings under section 44(2).

The submission of the learned counsel for the appellant is that the power of revision under section 59 is restricted to an appeal that is disposed of under section 58 and is not available against an order passed under section 44(2). The learned counsel very strongly relied on the wording of section 44(2) which provides that the order of the Revenue Officer shall be final subject to the result of an appeal provided under section 44(2) and therefore submits that no other relief is available to the aggrieved party. The learned counsel in contrast referred us to section 58 where the order of the lower authority is not stated to be final subject to the result of the appeal. As no finality is provided for orders passed on appeal under section 58, the submission was that a revision under section 59 is available for those orders but orders passed under section 44(2) are final and they are not subject to revision under section 59.

There is no doubt that section 44(1) provides that the order of the Revenue Officer shall be final subject to the result of an appeal under section 44(2) while no such finality is mentioned in the case of an appeal under section 58. But this cannot conclude the matter for the powers of revision conferred under section 59 are very wide and empowers the Collector or the Board of Revenue to revise any order passed *under this Act* and sub-section (2) empowers the Collector and the Board of Revenue to set aside any irregularity in respect of any proceedings *under this Act*. As the power of revision is not restricted we are unable to accept the contention of the learned counsel that because of the wording of section 44(2) providing that the order of the Revenue Officer subject to the result of the appeal would be final, bars the revisionary jurisdiction of the Collector and the Board of Revenue as provided under section 59. We do not find any conflict between the two sections and the provision as to finality under section 44(2) is provided for so that in the absence of the aggrieved party proceeding further in the matter the consequences of the vesting of surplus lands under section 45, the preparation of the Compensation Assessment Roll, the settlement of surplus lands etc. can be proceeded with.

The learned counsel drew our attention to the amendment to the Orissa Act by Act 29 of 1976. The Orissa Land Reforms (2nd Amendment) Act, 1975, and submitted that the amendments introduced to section 44, 45 and 59 would make it clear that the legislature understood that the sections as they stood before the amendment did not enable the Collector to exercise revisional jurisdiction over orders passed by the appellate authority under section 44(2) of the Act. By the amending Act section 44, sub-sections (2) and (3) are amended. Sub-section (2) of section 44 as it originally stood provided that subject to the result of such appeal, if any, the orders of the Revenue Officer shall be final and sub-section (3) provided that the draft statement as confirmed or as modified in appeal shall be final and con-

A clusive. By the amendment sub-section (2) is recast and sub-section (3) provides that the draft statement as confirmed or as modified in appeal on revision shall be final and conclusive. The amendment specifically provides for a revision. The amended sub-section (1) of section 59 provides that on an application by party aggrieved by any order passed in an appeal under any provision of this Act filed within the prescribed period, the prescribed authority may revise such order.

B Though the amendment to section 44(3) makes it clear that a right to revision is provided for orders passed under section 44(2), we do not think that this could mean that section 44(2) as it originally stood did not provide for power of revision to the Collector under section 59. In our opinion, amendment does not make any difference.

C The learned counsel for the appellant submitted that section 44(3) is in the nature of a special provision and should be construed as an exception to section 59 on the principle of harmonious construction. In support of this plea the learned counsel referred to the decision in *The J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. & Ors.*<sup>(1)</sup> In construing the provisions of clause 5(a) and clause 23 of the G.O. concerned, this Court held that the rule of harmonious construction should be applied and in applying the rule the court will have to remember that to harmonise is not to destroy and that in interpreting the statutes the court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect, and a construction which defeats the intention of the rule-making authority must be avoided. This decision does not help the appellant for in our view in applying the rule of harmonious construction with a view to give effect to the intention of the legislature the court will not be justified in putting a construction which would restrict the revisionary jurisdiction of the Collector and the Board of Revenue. It may be noted that the Act is of expropriatory nature and the determination of the excess lands is done by the Revenue Officer and on appeal by the Revenue Divisional Officer. In such circumstances, it is only proper to presume that the legislature intended that any error or irregularity should be rectified by higher authorities like the Collector and the Board of Revenue. In our view, it will be in conformity with the intention of the legislature to hold that section 59 confers a power of revision of an order passed under section 44(2) of the Act. The learned counsel next referred to a decision of this Court in *The Bengal Immunity Company Limited v. The State of Bihar and Others.*<sup>(2)</sup> The rule of construction is stated at p. 791 in the following terms by Venkatarama Ayyar J. speaking for the Court :—

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H “It is a cardinal rule of construction that when there are in a Statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction. One application of this rule is that when there

(1) [1961] (3) S.C.R. 185.

(2) [1955] (2) SCR 603.

is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein." A

Construing section 59 as conferring a power of revision against an order passed under section 44(2) is not in any way contrary to the principle laid down in the above decision. B

We agree with the view taken by the Orissa High Court that the language of section 59(1) is wide enough to enable the Collector to revise any order including an appellate order under section 44 of the Act. In the result the appeal is dismissed with costs.

S.R.

*Appeal dismissed.*