A.F.R

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.17358 of 2022

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

Laxmi Sahu ***: Petitioner***

-Versus-

State of Odisha & Ors. ***: Opposite Parties***

For Petitioner : Mr. S. Dash

For Opposite Parties : Mr. S. Mishra,
Additional Standing Counsel

J U D G M E N T

CORAM :
JUSTICE BISWANATH RATH

Date of hearing: 17.02.2023 :: Date of Judgment : 27.02.2023

1. This writ petition involves a challenge to the order dated 17.06.2022 passed by the learned Revisional Authority i.e. the learned Revenue Divisional Commissioner (S.D.), Berhampur in exercise of power under the provisions of Section 15(b) of the Orissa Survey & Settlement Act, 1958 hereinafter in short be reflected as "the Act, 1958" thereby rejecting the Section 15(b) application vide OSSAR Case No.18 of 2017.

2. Factual backdrop involved in this case is that Petitioner being aggrieved by the wrong preparation of the record of rights involving the disputed land by the Settlement Authority filed an appeal U/s.22(2) of the

Act, 1958 being registered as Appeal Case No.11 of 2016 on the file of the Additional Sub-Collector, Kandhamal. It is alleged that the appellate authority without proper verification of the records and without examining the matters from its right prospective and further also on misconception of facts and law, dismissed the appeal by order dated 27.02.2016 vide Annexure-1. Being aggrieved by such order Petitioner preferred a Revision U/s.15(b) of the Act, 1958 on the file of the R.D.C (S.D.), Odisha, Berhampur being numbered as OSSAR Case No.18 of 2017. Such Revision appears to have been dismissed by the order dated 17.06.2020 as appearing at Annexure-2. Hence the present Writ Petition.

3. While challenging the revisional order on demerits involved therein a serious allegation has been brought in filing the present writ petition alleging that when hearing of the matter was concluded on 23.03.2019, the judgment in such revision has been pronounced on 17.06.2020 i.e. almost after one year and three months. It is in this premises Mr. Dash, learned counsel for Petitioner by way of primary objection on the maintainability of such judgment argued that for the hearing in the revision got concluded on 23.0322019, judgment in such matter ought to have been passed within a reasonable period and in the worse at least within a period of one month time. Taking this Court to the provisions at Order 20 Rule 1 of C.P.C. and reading through such provision Mr. Dash, learned counsel for Petitioner contended that for the clear provision therein after hearing of the case either the judgment shall be pronounced in an open Court, either at once or, as soon thereafter as may be practicable and if there is pronouncement of judgment on some future day, the Court concerned shall have to fix a day for that purpose. Mr. Dash, learned counsel for Petitioner reading through the aforesaid provision again contended that there is also prescription, in the event there is no pronouncement of judgment within thirty days from the date

of which hearing of the case was concluded and if delivery of judgment is not practicable on exceptional and extraordinary circumstances, the Court shall fix a future day for pronouncement of judgment. Mr. Dash, learned counsel for Petitioner further contended that in no case delivery of judgment shall exceed beyond sixty days from the date of which hearing of the case was concluded.

4. In the circumstance Mr. Dash, learned counsel for Petitioner taking this Court to a judgment of the Hon'ble apex Court in the case of ***Anil Rai*** *Vrs.* ***State of Bihar*** reported in (2001) 7 SCC 318 and reading through the prescription therein contended that Hon'ble apex Court time and again has deprecated the delayed pronouncement of judgment. It is in this circumstance and for the admitted delay of one year & three months' time in the pronouncement of judgment Mr. Dash, learned counsel for Petitioner prayed for interference of this Court in the judgment/order dated 17.06.2020 vide Annexure-2 and remanding the matter for fresh hearing and pronouncement of judgment with a stipulated time.

5. Mr. Mishra, learned State Counsel, however, in his attempt to support the impugned order at Annexure-2 taking this Court to the discussions therein contended that for there is a merit order passed dealing with the case at hand by the authority concerned, there is no scope for interfering in such order. Mr. Mishra, learned State Counsel further also contended that looking to the nature of the proceeding involved therein, if the Petitioner is still aggrieved by such order, nothing prevented the Petitioner to find-out common law forum for redressal of his further grievance. Mr. Mishra, learned State Counsel, however, has no dispute with regard to the provision in the Code of Civil Procedure, 1908 referred to hereinabove ensuring pronouncement of judgment within 60 days from the date of conclusion of hearing. Mr. Mishra, learned State

Counsel has also no possibility to oppose the judgment of the Hon'ble apex Court relied on by the Petitioner.

6. Considering the rival contentions of the parties this Court finds, undisputedly the proceeding involved action of the Quashi Judicial authority in exercise of power U/s.15(b) of the Act, 1958. Undisputedly neither the Orissa Survey & Settlement Act, 1958 nor the Orissa Survey & Settlement Rules, 1962 prescribe any time limit for disposal of such matters.

7. Be that as it may, keeping in view the provisions made in the Order 20 Rule 1 of C.P.C. giving the required time frame as to when the judgment should be pronounced, this Court likes to quote the provision at Order 20 Rule 1 of C.P.C herein below:-

> "**Order 20 Rule 1**. Judgment when pronounced.- (1) the Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:
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> Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.
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> (2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the court on each issue and the final Order passed in the case are read out and it shall not be necessary for the court to read out the whole judgment.
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> (3) The judgment may be pronounced by dictation in open court to a shorthand writer if the Judge is specially empowered by the High Court in his behalf:

> Provided that, where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record."

8. Reading the aforesaid provision and keeping in view the serious allegation involved herein, this Court finds, there is specific time framed for delivery of judgment. In the first instance upon completion of hearing there might be pronouncement of judgment at once; secondly on failure of pronouncement of judgment at once, it should be made soon thereafter as may be practicable and the Court shall have to fix a day for that purpose, for which due notice shall be given to the parties or their pleaders. For the proviso therein there is a 3rd scope, which prescribes, if the judgment is not pronounced within the two frame workings indicated hereinabove and the Court finds, there is delay on exceptional and extraordinary circumstances, there has to be fixing of a future day for pronouncement of judgment and if the pronouncement of judgment goes to 3rd stage, there is no scope of pronouncement of a judgment even beyond sixty days from the date of which hearing of the case was concluded. It is, at this stage of the matter, this Court takes into account the provision at Section 29 & 30 of the Act, 1958 dealing with the jurisdiction of the Court and application of the provision at Code of Civil Procedure, 1908 to the proceedings under the Act, 1958. In the process this Court finds, the followings are in the provisions at Section 29 & 30 of the Act, 1958:-

> "29. [Jurisdiction of Courts. - (1) All authorities hearing an application, appeal or revision under any of the provisions of this Act shall do so as Revenue Courts.
> (2) Save as otherwise provided in this Act when an order has been made under Sections 3, 11, 18 or 36 no Court shall entertain any application or suit in respect of any matter for determining or deciding which provisions made

> in the Act and all proceedings in respect of any such matter pending on the date, such order is made shall be stayed till the final publication of records under Section 6-C, 12-B or 23 as the case may be.]
> (3) [* * *]
> 30. Application of Code of Civil Procedure, 1908 to proceedings under this Act. - The Government may from time to time make rules consistent with this Act declaring that any provisions of the Code of Civil Procedure, 1908, shall not apply to applications, appeals or other proceedings under this Act in any Revenue Court or to any specified classes of such applications, appeals or shall apply to them subject to modification and additions specified in the rules."

9. In the circumstance this Court has no hesitation to hold that the judgment should have been delivered at the maximum within sixty days from the date of conclusion of hearing. It is here reading the judgment impugned herein this Court finds, the adjudicatory authority though indicated the date of hearing to be 23.03.2019, however did not disclose at all either the exceptional or extraordinary circumstance creating delayed delivery of judgment. For the opinion of this Court, in the event there is approval of such delayed disposal, then the purpose of hearing of the matters involved gets frustrated as the adjudicatory authority is unable to remember the submission of the respective parties after so much loss of time. Secondly if such mode is accepted, then disposal of such matters providing opportunity of hearing may not be a requirement and it may be opened to the adjudicatory authority to decide the matter accordingly on the basis of pleadings and objection, if any, of the respective parties, which is never the intention in setting up the Quashi Judicial authority.

10. This Court here also takes into account certain decisions of the Hon'ble apex Court. In the process this Court finds, in the case of ***R.C. Sharma*** *Vrs.* ***Union of India*** : 1976(3) SCC 574 involving the question

of expediting the delivery of judgment, the Hon'ble Court has observed as follows:-

> "Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments."

Similarly the Hon'ble apex Court in the case of ***Madhav Hayawadanrao Hoskot*** *Vrs.* ***State of Maharashtra*** : 1978 (3) SCC 544, has observed as follows:-

> "That the procedure contemplated under Article 21 of the Constitution means "fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness — not primitive processual barbarity nor legislated normative mockery. Right of appeal in a criminal case culminating in conviction was held to be the basis of the civilised jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraught (sic fraud) by protracting the pronouncement of judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and circumstances attributable to the State is understandable but once the entire process of participation in the justice delivery system is over and the only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part III."

11. Similarly involving the issue of requirement of delivery of judgment within a time framed and for there is delivery of judgment within six months to ten months, different High Courts through AIR 1942

Cal 225, AIR 1948 Pat 414 and 1961 BLJR 282 had held that such judgments are bad in law and set them aside. Again for there was serious complications in non-delivery of judgments within the reasonable time, there was undertaking of exercise by the Arrears Committee constituted by the Government of India on the basis of recommendation of the Chief Justices' Conference in its report 1989-90 and in the Chapter VIII the Committee recommended that reserve judgment should ordinarily be pronounced within six weeks from the date of conclusion of argument. Further, however, if a reserved judgment is not pronounced for a period of three months from the date of conclusion of arguments therein, the Chief Justice was recommended to be authorized to either post the case for delivery of judgment in open Court or withdrawal of the case and post it for disposal before an appropriate Bench.

12. Similarly in the case of ***Anil Rai*** *(supra)* the Hon'ble apex Court in paragraph no.10 has framed the following guidelines:-

> "**10.** Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for the present, are as under:
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> (*i*) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.
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> (*ii*) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.
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> (*iii*) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the

> Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.
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> (*iv*) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.
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> (*v*) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances."

13. It is, in the whole background of the above legal developments as well as the recommendation of the Arrears Committee, looking to the provisions in the Code of Civil Procedure, 1908 taken note hereinabove, further the provisions in Section 29 & 30 of the Act, 1958 making the provisions for procedures of the Code of Civil Procedure, 1908 to be followed involving the disputes under the Act, 1958, this Court has no hesitation to hold that there has been unnecessary and unexplained delay in delivery of judgment herein. Further the judgment impugned is also passed after one year and three months from the date of conclusion of hearing without even indicating therein the exceptional and extraordinary ground of delay in delivery of judgment belatedly. In the process this Court finds, judgment impugned herein ought to be interfered with and

set aside. In the result, for the interest of justice and for there is requirement of fresh adjudication of the revision involved by the adjudicatory authority after entering into fresh hearing to the parties involved and delivery of judgment within a reasonable time keeping in view the indications hereinabove, this Court while setting aside the order dated 17.06.2020 passed in OSSAR Case No.18/17 at Annexure-2, remits the matter back to the R.D.C (S.D.), Odisha, Berhampur-Opposite Party No.2 for fresh determination of the case.

14. Writ Petitions succeeds. There is, however, no order as to costs.

15. Let a copy of this judgment be sent to the Secretary, Law Department, Government of Odisha for communication of the same to all Quashi Judicial Authorities through learned Member, Board of Revenue, Odisha as well as with a copy to the Registrar (Judicial) of this Court for communicating it to the Civil Courts functioning in the State through their respective District and Sessions Judges.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 27th day of February, 2023//
Ayaskanta Jena, Senior Stenographer