

CASE NO.:
Appeal (civil) 6760\0266761 of 2003

PETITIONER:
Raghbendra Bose & Ors.

RESPONDENT:
Sunil Krishna Ghose & Ors.

DATE OF JUDGMENT: 27/01/2005

BENCH:
ASHOK BHAN & A.K. Mathur

JUDGMENT:
JUDGMENT
O R D E R

Appellants in these appeals have challenged the composite order passed by a Division Bench of the High Court of Orissa at Cuttack in AHO No. 243 of 2001 arising from the order passed by the learned Single Judge of the High Court in OJC No. 691 of 2001 and OJC No. 2884 of 2002.

In AHO No. 243 of 2001 the Division Bench has set aside the order passed by the learned Single Judge in OJC No. 691 of 2001 and restored that of the Revenue Division Commissioner (Central), Cuttack (hereinafter referred to as the "Commissioner") passed in Khasmahal Lease Appeal No. 2 of 1994 reviving the same on an application moved by the Respondent Nos. 1 and 2 after obtaining a probate from the High Court of Calcutta in PLA No. 257 of 1997 decided on 17.5.2000. Earlier Khasmahal Lease Appeal No. 2 of 1994 had been dismissed by the Commissioner as Respondent Nos 1 and 2 had failed to obtain a probate of the Will executed by Asit Kumar Ghose.

In OJC No. 2884 of 2002 the High Court has partly set aside the order passed by the Collector, Puri dated 11.2.2002 after the remand of the case by the High Court. The order of the Collector holding that the land in dispute can be kept by the Government sine no one had a right to have the settlement. The order of the Collector in so far as it rejected the claim of opposite party Nos. 4 to 6 (appellants herein) was upheld and it was observed that they did not have the right to the land. Respondent Nos. 1 and 2 herein have been permitted to move an application before the Collector for permanent settlement of the land in their favour under the Orissa Government Land Settlement Act, 1962 and the said application shall be decided by the Collector after noticing the appellants herein. It has been specifically stated that the appellants herein should be made a party before the Collector in the application to be filed by respondent Nos. 1 and 2 herein for seeking permanent settlement of the land in their favour.

The High Court in the impugned order has directed the Revenue Divisional Commissioner to decide the Khasmahal Lease Appeal No. 2 of 1994 in accordance with law keeping in view the observations made in the impugned order. Similarly, the Collector has been directed to decide the application to be filed by respondent Nos. 1 and 2 herein keeping in view the observations made in the impugned order. We find that the observations made by the High Court in the impugned order touch on the merits of the dispute. Counsel for the appellants apprehends that the observations made by the High Court would influence the mind of the Commissioner as well as the Collector while deciding the case and the application filed by respondent Nos. 1 and 2 herein. We find substance in this submission.

Accordingly, we uphold the order of the Division Bench of the High Court in setting aside the order of the learned Single Judge as well as partly set aside the order of the Collector but set aside the order of the High Court in so far as it directs the Commissioner and the Collector to decide the appeal as well as the application to be filed by respondent Nos. 1 and 2 in the light of the observations made by the Division Bench as these observations touch on the merits of the dispute. We, therefore, direct that the Commissioner and the Collector shall decide the appeal and the application to be filed by respondent Nos. 1 and 2 in accordance with law without being influenced by any of the observations made by the Division Bench or the learned Single Judge in their orders on merits of the dispute. All contentions are left open to be raised by the parties before the Commissioner or the Collector.

Appeals are disposed of in the above terms.
No costs.