

SANJU PANDA, J.

OJC. NO.8613 OF 2000 (Decided on 29.09.2010)

DR. MANMATH KUMAR MOHAPATRA Petitioner.

. Vrs.

**REGISTRAR, ORISSA HIGH COURT,
CUTTACK & ORS.** Opp.Parties.

CIVIL PROCEDURE CODE, 1908 (ACT NO. 5 OF 1905) – SEC.151.

For Petitioner - M/s. B.H.Mohanty, D.P.Mohanty, B.Das,
R.K.Nayak & T.K.Mohanty.

For Opp.Party No.1 - Mr.Bijan Ray.

SANJU PANDA, J. In this writ petition, the petitioner has challenged the order dated 23.8.2000 passed by the learned District Judge, Cuttack in Misc. Case No.15 of 1982 under Section 151 of the Civil Procedure Code (in short, “the Code”) arising out of Misc. Appeal No.42 of 1982, an appeal under the Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (in short, “the OPP Act”).

2. The facts, as narrated in the writ petition, are as follows:

Opposite party no.1 as respondent no.2 in Misc. Appeal No.42 of 1981 filed an application under Section 151 of the Code for setting aside the ex parte judgment dated 10.9.1981 passed in the said appeal and prayed for hearing of the appeal as he would be highly prejudiced.

From the record, it appears that the disputed land was acquired by the State Government under Section 17(1) of the Land Acquisition Act for the purpose of construction of quarters for the staff and officers of the High Court of Orissa. After due notification under Sections 6 and 9(3) of the said Act, possession of the said land was delivered to opposite party no.1 on 6.1.1976. It appears that the present petitioner encroached upon a portion of the aforesaid land claiming to have purchased the same through a sale deed dated 24.5.1976. To evict the encroacher, the present opposite party no.1 initiated a proceeding under the OPP Act before the Estate Officer & Addl. District Magistrate, Cuttack in Eviction Proceeding No.11 of 1979. On 1.5.1981, the Estate Officer, after hearing the parties, directed the eviction of the present petitioner from the encroached land. The petitioner challenging the said order of the Estate Officer filed Misc. Appeal No.42 of 1981 before the learned District Judge, Cuttack making Estate Officer & Addl. District Magistrate, Cuttack, Registrar, Orissa High Court and the State of Orissa represented through Collector, Cuttack, as opposite parties. The said appeal was admitted on 2.7.1981. However, no notice was served on the Registrar, Orissa High Court who was respondent no.2 in the said appeal. The record reveals that the appeal was heard on 8.9.1981 and 9.9.1981. The appellate court on 10th September, 1981 set aside the order of the Estate Officer. Opposite party no.1 filed an application on 19.2.1982 under Section 151 of the Code to set aside the judgment dated 10.9.1981 passed by the learned District Judge in Misc. Appeal No.42 of 1981 on the ground that no notice was issued

to him in appeal and he was not heard in the matter and when the judgment dated 10.9.1981 came to his knowledge, he took steps to set aside the said ex parte judgment passed against him as he was interested party and if the ex parte judgment was not set aside he would be highly prejudiced. The present petitioner filed his objection to the said application raising the question that the applicant had sufficient knowledge of pendency of the appeal and subsequently its disposal on 10.9.1981. Therefore, the petition was grossly barred by time and was liable to be dismissed. He also raised the question that opposite party no.1 was not a necessary party and the land was never validly acquired by the Government nor physical possession of the same was handed over. The learned District Judge heard the said misc. case and by the impugned order dated 23.8.2000 allowed it on contest without costs, set aside the judgment dated 10.9.1981 and restored the appeal to file.

During pendency of the misc. case, Section 9 of the OPP Act was amended. As per the amended provision, the appellate jurisdiction was conferred on the Revenue Divisional Commissioner to decide the appeal arising out of Section 9 of the OPP Act by deleting the District Judge as appellate authority. Therefore, Misc. Appeal No.42 of 2000 along with LCR of Misc. Case No.11 of 1979 was transferred by the learned District Judge, Cuttack to the Revenue Divisional Commissioner (Central), Cuttack for disposal in accordance with law fixing the date of appearance of the parties to 25.9.2000. The said order is impugned in the present writ petition.

3. Learned counsel for the petitioner submitted that the application under Section 151 of the Civil Procedure Code to set aside the order dated 10.9.1981 passed in the misc. appeal is not maintainable as the proceeding is one under the OPP Act and a person in whose favour the land is acquired is not a necessary party even if he is impleaded as a party to the appeal. Therefore, the said party is not entitled to a notice in view of Section 8(2) of the OPP Act. He further submitted that Exts.A, B and C are the documents which reveal that the disposal of the appeal was within the knowledge of the said opposite party no.1. Therefore, it cannot be assumed that the party had no knowledge about the pendency of the appeal as well as the order passed in the said appeal prior to 18.2.1982 and the application to set aside the appellate order was barred by limitation. Therefore, the impugned order is liable to be set aside.

4. Learned counsel for the opposite party no.1, however, supported the order passed by the learned District Judge and submitted that opposite party no.1 was added as respondent no.2 in Misc. Appeal No.42 of 1981 and the land in question was acquired for the purpose of construction of staff quarters of the Orissa High Court and the possession thereof was delivered to the Registrar of this Court. In the appeal, though he was a party, no notice was served on him. The order was passed in the absence of the Government pleader on the second date which reveals from the order of the appellate court dated 10.9.1981. Therefore, the appellate court rightly set aside the ex parte order. Hence, the same need not be interfered with.

5. Considering the rival submissions of the parties and the points raised by them, this Court has to decide (i) whether the appellate court can set aside the order under Section 151 of the Civil Procedure Code; and (ii) whether the present opposite party no.1 who is admittedly respondent no.2 in the appeal was to be heard in the appeal as the land in question was acquired for its benefit.

6. Law is well settled that every Court is constituted for the purpose of doing justice according to law and must be deemed to possess as a necessary corollary and inherent power in its very constitution all or such power as may be necessary to do the right and to undo a wrong in course of administration of justice. The inherent power is to be exercised where the prejudice would be such that the same cannot be eradicated by any alternate mode. The inherent power can be exercised by a Court or Tribunal to recall or set aside its earlier order and a judgment which was rendered in ignorance of the fact that a necessary party had not been served notice at all or had died and the estate was not represented.

7. The Courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court as held by the apex Court in the case of **M/s. Jaipur Mineral Development Syndicate, Jaipur v. The Commissioner of Income Tax, New Delhi** reported in **AIR 1977 SC 1348,**)

8. In view of the above position of law, in the present case even if the proceeding is under the OPP Act, the appellate court can adopt the procedure prescribed in the Civil Procedure Code if it feels that a party is going to be prejudiced and he can exercise the inherent power and eradicate injustice. Therefore, the answer to question no.(i) is positive and the application under Section 151 of the Civil Procedure Code is maintainable to set aside the ex parte order.

9. So far as the answer to the second question is concerned, the admitted fact is that the land in question was acquired for construction of staff quarters of the Orissa High Court and possession thereof was delivered by the Land Acquisition Officer and the appellant impleaded present opposite party no.1 as respondent no.2 in the appeal as the said respondent is to be heard in the matter. From the impugned order, it appears that though the Government pleader was heard in the matter on the first date of hearing from the judgment, he was absent on the second date of hearing of the appeal. Therefore, it cannot be assumed that he fully participated in the hearing of the appeal. Therefore, the court below should have given him a chance of being heard in the matter instead of passing the order on merits. Therefore, the order passed by the said appellate court is an ex parte order and the learned District judge after analyzing the facts set aside the said order. Since during pendency of the application, the amendment of the OPP Act came into force and the jurisdiction of the appellate authority was changed conferring it on the Revenue Divisional Commissioner, Central, Cuttack, the learned District Judge rightly transferred the appeal to him to hear the same afresh.

10. Exts.A, B and C, as pointed out by the petitioner, are communications made by the opposite parties in due discharge of the official duties regarding status of the pendency of the cases by the lower court to the High Court. It is not possible on the part of opposite party no.1 to remember that he was a party to a particular appeal and he had not been received notice in the said appeal and also not participated in the hearing of the said appeal. Therefore, it cannot be assumed that it was within the knowledge of opposite party no.1 that such an appeal was pending and the same was heard in his absence (as he had not received any notice in the said appeal) and the said appeal in the meantime having been disposed of, it also cannot be assumed that the disposal of the appeal was within his knowledge. When it came to his

knowledge that such an order was passed prejudicial to his interest, he examined the order and immediately took steps for setting aside the same.

11. The Court has, in many cases, where the circumstances so require, acted upon the assumption of possession of an inherent power to act ex debito justitias, and to do real and substantial justice for the administration, for which alone the Court exists. The law cannot make express provisions against all inconveniences such that their dispositions express of the cases that may possibly be covered. Therefore, it is the duty of a Judge to apply them, not only to what appears to be regulated by their express provisions, but also to all the cases to which they can be justifiably applied. Hence, Section 151 of the Civil Procedure Code only indicates that there is a power to make such orders as may be necessary for achieving the end of justice and also to prevent an abuse of process of the Court. (Emphasis supplied)

12. Since there is no illegality or irregularity in the impugned order, this Court is not inclined to interfere with the same.

Accordingly, the writ petition is dismissed.

Writ petition is dismissed.