

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6760-6761 OF 2003

RAGHABENDERA BOSE & ORS.  
t(s)

Appellan

VERSUS

SUNIL KRISHNA GHOSH & ORS.  
t  
(s)

Responden

(With Office Report)

Date: 28/01/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. Janaranjan Das, Adv.

Mr. Swetaketu Mishra, Adv.

Ms. Moushumi Gahlot, Adv.

Mr. B.C. Pattnaik, Adv.

For Respondent(s)

Mr. V.K. Tankha, Sr. Adv.

Nos. 1 & 2

Mr. B.K. Satija, Adv.

Mr. H.K. Upadhyaya, Adv.

Mr. Harsh Pathak, Adv.

For 3 to 5

Mr. Radha Shyam Jena, Adv.

UPON hearing the Court made the following

O R D E R

Appeals are disposed of in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6760 - 6761 OF 2003

Raghbendra Bose & Ors.

.....

Appellants

- Versus -

Sunil Krishna Ghose & Ors.

.....Respondents

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 since 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.

.....J.

(ASHOK BHAN)

.....J.

(A.K. Mathur)

New Delhi;

January 27, 2005