

ORISSA HIGH COURT : C U T T A C K

OJC NO.14457 OF 1996

In the matter of an Application under Articles 226 & 227 of the Constitution of India.

Niranjan Ojha & ors.

: *Petitioner*

-Versus-

***Siba Prasad Sahoo since dead, his legal heirs,
Banita Sahoo & ors.***

: *Opp.Parties*

For Petitioner : Mr.S.K.Dash, Adv.

For Opp.Party Nos.1 to 13 : None

For Opp.Party Nos.14 to 16 : Mr.R.P.Mohapatra, AGA

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & Judgment : 16.02.2022

1. Background involving the case is that the land Register in respect of L.R. Plot No.2525/2799 measuring an area Ac.0.02 decs. was prepared in the name of the deceased father of Petitioner No.1, namely, Dhaneswar Ojha and others based on the Record of Rights published by the Major Settlement Authority. There was no objection to such recording. However, O.Ps.1 & 2 raised objection under Section 9 of the O.C.H. & P.F.L. Act, 1972 (herein after called as “Act, 1972) by way of Objection Case No.889/1981 asking the Authority for changing the

classification of the said Plot from Gharabari to Rasta and to note their easementary right of pathway over the same by claiming that the said piece of land is the only passage to approach their Plot No.2527 from the public road. This Objection Case was disposed of by the Competent Authority observing the right claimed by the Parties, particularly O.Ps. 1 & 2 had in fact no such easementary necessity but however directed the land to be recorded as Sarbasadharan Khata. Being aggrieved by the direction for particular recording, the Petitioners preferred an Appeal before the Deputy Director of Consolidation registered as Consolidation Appeal No.74 of 1982. In disposal of the said Appeal, the Appellate Authority set aside the order of the Original Authority. Being aggrieved by this order of the Appellate Authority, O.Ps.1 & 2 herein preferred a Revision before the Commissioner, Consolidation. The Revisional Authority while setting aside the order of the Appellate Authority in finality of the Revision confirmed the order passed by the Original Authority constraining the Petitioners to approach this Court by way of O.J.C. No.711 of 1983. This Writ Application came to be disposed of on contest by judgment of this Court on 12.1.1990 where this Court while setting aside the orders passed by the Consolidation Authorities remitted the matter to the Original Authority, i.e., Consolidation Officer to decide

the matter afresh but however preventing all the Parties to lead any fresh evidence.

2. Mr.S.K.Dash, learned counsel for the Petitioners contended here that looking to the nature of the direction, it appears, this Court in remitting the matter for fresh disposal of the Consolidation Officer had specifically formulated the Issue and asked the Consolidation Officer to answer only in respect of such direction in fresh disposal of the consolidation proceeding. It is pursuant to the remand order of this Court, the original proceeding was commenced. In continuance of the original proceeding and after remand order, it appears, O.Ps.3 to 13 herein in the guise of Villagers filed an Application for their intervention in the main proceeding. This Application having been rejected by the Consolidation Officer, O.P.4, the order of O.P.14 was set aside in the Appeal and O.Ps.3 to 13 in remand of the proceeding were added as O.Ps. In disposal of Objection Case by order dated 14.2.1994, the Original Authority while rejecting the claim of O.Ps.3 to 13 by final order also rejected the claim of O.Ps.1 & 2 as finds place at Annexure-2. It is being aggrieved by order dated 14.2.1994 passed by the Consolidation Officer, O.Ps.1 & 2 filed Consolidation Appeal No.45 of 1994 on the file of O.P.5, Deputy Director, Consolidation. Learned counsel for the Petitioners claimed, this Appeal was only at the instance of O.Ps.1 & 2 and there was no challenge

to such order any further by O.Ps.3 to 13 construed the claim of O.Ps.3 to 13 to come to an end with an order of rejection of their claim. It is in hearing of the Appeal, Mr.Dash, learned counsel for the Petitioners taking this Court to the appellate order contended that when the Appellate Authority came to confirm the order of the Consolidation Officer in respect of the claim of O.Ps.1 & 2 has involved itself in a third case, particularly a case of none involved in the Appeal and thereby entering into confusion in the closure of the Appeal remitted the matter to the Consolidation Officer to come to find the status or title over the Parties additional land of Ac.0.01 dec. awarded in favour of the Petitioners. Taking this Court to the clear direction of this Court in disposal of the Writ Application and the end direction of the Appellate Authority, Mr.Dash, learned counsel for the Petitioners contended that the Appellate Authority not only exceeded the limitation in the disposal of the Objection Case for the end direction of this Court but the Appellate Authority even entered into a third case. It is here learned counsel for the Petitioner objected to such finding of the Appellate Authority being contrary to even direction of the High Court in disposal of the Writ Petition. This part of the finding of the Appellate Authority in his challenge in the Revision and the Revisional Authority dismissed the Revision No.650/1995 without appreciating the challenge by the

Petitioners on the Appellate Authority's order being contrary to the direction of this Court. Taking this Court to the direction part of this Court, learned counsel for the Petitioners contended that once the High Court has remitted the matter giving specific direction and the manner of disposal, the Appellate Authority has no business to exceed the same. It is contended that after confirming the order of the Consolidation Authority, the Appellate Authority ought to have stopped its hand there. It is in the circumstance, Sri Dash, learned counsel for the Petitioners contended, both the appellate order and the Revisional order become bad for being contrary to the direction of this Court. It is in the above view of the matter, learned counsel for the Petitioners requested this Court for allowing the Writ Application thereby setting aside the particular part of the Appellate Authority's order and setting aside the revisional order in allowing the Writ Application.

3. Mr.R.P.Mohapatra, learned Additional Government Advocate appearing for O.Ps.14 to 16 even though attempted to justify the order appellate order and the revisional order but unable to differ from the claim of the Petitioners that once the High Court has directed the Original Authority to adjudicate the proceeding in a particular manner, there was no scope for the Appellate Authority or the Revisional Authority to

decide contrary and/or beyond the scope available under the remand order.

4. Considering the rival contentions of the Parties and on perusal of the remand order of this Court in disposal of O.J.C. No.711 of 1983, this Court finds, the Division Bench of this Court in remand of the matter to the Original Authority has specifically framed the question of determination, i.e., “as to whether O.P.Nos.1 and 2 have any right of easement of necessity over Plot No.2799”. This Court here also finds, while remitting the matter, this Court in the said judgment has also come to observe that fresh adjudication of the matter will have a clear restriction and to decide such question within the available materials. It be stated disposal of the Writ Application, this Court had made it clear that its judgment will not in any way restrict any member of the Public to agitate the question regarding the land being a public road if they are otherwise entitled to do so. It is for this observation only, it appears, there has been Application for Intervention by private Opp.Party Nos.3 to 13 but however the claim of the Intervenors having been rejected by the Original Authority and being confirmed by the Appellate Authority, there is no such issue surviving.

5. It is coming back to the Issue involved, particularly, the challenge to the Appellate Authority’s order in exceeding its exercise to

the direction part of this Court, this Court reading through the observation herein above and the end part of the direction in the judgment and particularly keeping in view the decision of the Original Authority, the Consolidation Officer, vide Annexure-2 finds, there is no difficulty in the exercise of jurisdiction by the Consolidation Officer, which is well within the restriction by this Court in disposal of the Writ Application. However in reading the appellate order under Annexure-3 challenged herein above, particularly to the extent if the Appellate Authority is justified in entering into the third case and giving a direction to the trial court to find out the status and title over the extra measuring Ac.0.01 dec. of land awarded to the Respondents, the present Petitioners, this Court for the discussions herein above finds, the Appellate Authority was restricted to exercise its jurisdiction only on the Issue remitted by this Court. It is thus observed, the direction with regard to the Consolidation Officer finding the status and title over the extra land of Ac.0.01 dec. awarded to the present Petitioners was a non-Issue and there has been unnecessary entering into such issues by the Appellate Authority. This Court finds, the observation and/or direction with regard to finding out the status and title over the extra measuring Ac.0.01 dec. of land being unwarranted not sustainable. Here taking into consideration the allegation also involving the Revisional Authority, for the observation of this Court herein above, this

Court finds, the Revisional Authority failed in exercise of its duty in deciding a very important issue involved therein. For this Court already setting aside the particular part of the appellate order, the revisional order must go.

6. It is thus while confirming the part of the order of the Appellate Authority in confirmation of the order of the Consolidation Officer, this Court interferes with the part of the direction issued by the Appellate Authority to examine the status and title over the extra measuring Ac.0.01 dec. of land awarded to the present Petitioners. This Court also sets aside the judgment under Annexure-4.

7. The Writ Application thus succeeds. There is however no order as to cost.

Sd./-

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 16th February, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

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