

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21976 OF 2013

Damodar Behera

Petitioner

Mr. Sandeep Rath, Advocate
on behalf of Mr. Sankarsan Rath, Advocate

-versus-

Sudhakar Behera and others

.... Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opposite Party No.3)

Mr. S.S.K. Nayak, Advocate
(For Opposite Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
09.05.2022**

Order No.

8. 1. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 18th January, 2013 (Annexure-2) passed by Collector, Bhadrak-Opposite Party No.3 in OCH&PFL Misc. Case No.9 of 2012, whereby he allowed an application under Section 35 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Act') filed by Opposite Party No.1-Sudhakar Behera.
3. Mr. Sandeep Rath, learned counsel appearing for the Petitioner submits that although notice of the aforesaid Misc. Case No.9 of 2012 was served on the present Petitioner, who was arrayed as Opposite Party No.1 in the said misc. case, but due to his illness, he could not appear before the Collector, Bhadrak on

19th October, 2012 and on 21st December, 2012. However, the Collector, Bhadrak, without realizing the difficulty of the present Petitioner, proceeded further and passed the impugned order. It is his submission that the Petitioner is the contiguous Chaka owner. Thus, there is no fragment of Chaka within the meaning of Section 2(m) of the Act. It is further submitted that there is neither any averment to the effect that notification under Section 41(1) of the Act was made in the village nor any document to that effect produced. The Opposite Party No.1 has also filed a suit for partition in CS No.324 of 2005, which is pending for consideration before learned Civil Judge (Senior Division), Bhadrak. All these relevant factors were not taken into consideration while adjudicating the matter. Hence, the impugned order is not sustainable and is liable to be set aside.

4. Mr. Nayak, learned counsel for Opposite Party No.1 submits that the Petitioner has purchased a fragment of Chaka-73 under Khata No.117 (sthitiban) situated in mouza Jagulisahi without taking prior permission of the Consolidation authority. Although the Petitioner contends that he is the contiguous Chaka owner, there is no material on record to that effect. Further, pendency of C.S. No.324 of 2005 cannot be a bar to proceed with the application under Section 35 of the Act. It is his submission that notice was duly served on the Petitioner and he had entered appearance in the matter, but for the reasons best known to him, he preferred not to appear and contest the case. Hence, the impugned order warrants no interference.

5. Mr. Mishra, learned Additional Government Advocate referring to the impugned order submits that notice was duly

served on the Petitioner and he had, in fact, entered appearance through counsel and prayed for an adjournment. Accordingly, the matter was adjourned to 19th October, 2012. Although the Opposite Party appeared on that date, but the Petitioner did not appear for the reasons best known to him. However, time was allowed till 23rd November, 2012. Thereafter, the matter stood adjourned to 21st December, 2012. On all these occasions, Petitioner had neither appeared nor filed his objection. Thus, the Collector, Bhadrak has committed no error in passing the impugned order, which is a reasoned one being passed in accordance with law.

6. Taking into consideration the submissions of learned counsel for the parties, more particularly the submission of Mr. Rath, learned counsel for the Petitioner that the Petitioner is the contiguous Chaka owner, this Court feels that another opportunity should be given to the Petitioner to contest the case.

7. Accordingly, this Court, while setting aside the order dated 18th January, 2013 (Annexure-2) passed in OCH&PFL Misc. Case No.9 of 2012, remits the matter back to the Collector, Bhadrak to adjudicate the same afresh in accordance with law giving opportunity to the parties concerned to file objection and to participate in the hearing.

8. In order to avoid further delay in the matter, parties are directed to appear before the Collector, Bhadrak-Opposite Party No.3 on 23rd May, 2022 along with certified copy of this order to receive further instruction in the matter. Since the matter is of the year 2012, the Collector, Bhadrak shall do well to make an

endeavour for early disposal of OCH&PFL Misc. Case No.9 of 2012.

9. With the aforesaid observation and direction, this writ petition is disposed of.

10. A copy of this order shall be handed over to Mr. Mishra, learned Additional Government Advocate for information and compliance.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy