

**ORISSA HIGH COURT : C U T T A C K**

**WP(C) NO.11570 OF 2006**

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

***Braja Kishor Nanda***

**: *Petitioner***

***-Versus-***

***Commissioner, Consolidation, Orissa,  
Bhubaneswar & Others***

**: *Opp.Parties***

For Petitioner

**: M/s.S.P.Mishra, Sr.Adv.,  
S.Mishra, S.Dash, S.Nanda,  
B.Mohanty, B.S.Panigrahi,  
A.K.Dash & S.K.Mohanty**

For O.Ps.1 to 4

**: Mr.S.P.Panda, AGA**

For O.Ps.5 to 7

**: None**

**CORAM :  
JUSTICE BISWANATH RATH**

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Date of hearing & Judgment :: 15.07.2022

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1. The Writ Petition involves a challenge to the order passed by the Commissioner, Consolidation, Bhubaneswar involving Revision Case No.82 of 2004.

2. Background involving the case is that the case under Section 37(2) of the OCH & PFL Act initiated by the Petitioner was remanded to the Consolidation Officer, Puri with direction for undertaking appropriate exercise for consideration of the case of the Petitioner in the consolidation

operation going on there. It appears, based on such order, the Consolidation Officer undertook an exercise under Section 9 of the OCH & PFL Act and finally, vide order dated 22.4.2002 directed recording in favour of the Petitioner the land extending Ac.0.95 instead of Ac.0.82. An appeal being filed, the Appellate Authority interfered with the impugned order on two premises. Firstly, there was no challenge to the previous settlement recording and as such, the Consolidation Officer should have acted on the unchallenged Record of Right. The second ground of interference by the Appellate Authority being based on disposal of an O.E.A. Proceeding, vide O.E.A.No.1068/64. Mr.Mishra, learned counsel alleged, the Revisional Authority also accepted the findings of the Appellate Authority and thereby confirmed the order of the Appellate Authority in taking out the order of the Consolidation Officer.

3. Taking this Court to the observation in the appellate order, an attempt is made by the learned counsel for the Petitioner to justify that there was no recording to the effect that disclosure on particular land involving such proceeding. Further it is alleged, this O.E.A. Proceeding involved a private plot. In the circumstance, learned counsel for the Petitioner submitted that for there is no clear disclosure through the O.E.A. order, sufficient opportunity should have been provided to the Parties to satisfy their further case instead of unreasoned and unexplained

order passed by the Appellate Authority. Same allegation is made involving the conduct of the Revisional Authority. In the circumstance, Mr.Mishra, learned counsel prays this Court interfering with both the orders and remitting the matter to the appellate stage for at least a fair trial.

4. In spite of sufficiency of notice and appearance of a set of Counsel, nobody appeared on behalf of O.Ps.5 to 7.

5. Mr.S.P.Panda, learned Additional Government Advocate appearing for O.Ps.1 to 4, however, attempted to justify the appellate order as well as the revisional order.

6. Considering the rival contentions of the Parties and on perusal of the order of the Consolidation Officer, this Court finds, the Consolidation Officer in giving his conclusion at Page-23 of the Brief has come to observe as follows :-

“There is no dispute on record position but only dispute is on recording of area. On comparison and analysis. It is seen that suit plot 1814 ac.0.82 of petitioner and Plot 1813 Ac.1.60 O.Ps. situates in field map adjoining to each other. The petitioner’s plot 1814 Ac.0.82 corresponds to 1923-24 Plot 1819 Ac.0.80, 1977-78 Plot 1814 Ac.0.82. So also the O.Ps. Plot 1813 + 841 Ac.0.06 + 842 Ac.0.10 = 3 Plots Ac.1.24 which further corresponds to 1923-24 Plot 1817 Ac.0.23 + 1818 Ac.1.34 = 2 Plots Ac.1.57. the consolidation position is same as per 1977-78. In comparison between 1977-78 and 1910-11 petitioner’s Plot Ac.0.95 – Ac.0.82 = Less Ac.0.13 whereas in O.Ps. Case Ac.1.60 - Ac.1.24 = excess recorded than 1910-11. The point of dispute and wrong recording in area cause only due to one plot created in 1910-11 Map between Plot 829 and 840, but the

same Plot kept without any number i.e., “ “. The question is whether there is any number for this plot, whether the area for this “ “ including in Plot 829 or 840. On total verification, comparison super imposition and analysis, it is found that area of 1910-11 Plot 840 in subsequent steps has gone raising whereas the petitioner’s area for Pot 840 shows shortage on taking passing on “Acre comes” for 1910-11 Plot 829 + = total comes to the recorded area of Ac.0.95.

After detail verification and analysis, I am of the view that the area of “ “ i.e., included in 1910-11 Plot No.829. The Plot was deleted with settlement technical marks “S” which was left as clerical error. This Mistake has resulted to this citation and dispute...”

It is next coming to examine the allegation in consideration of the finding of the Appellate Authority and on perusal of the consideration by the Appellate Authority, this Court finds, in fact, there was no much light thrown through the O.E.A. order on the aspect of particulars of land in enjoyment of the Parties. Further there is also serious allegation that the O.E.A. proceeding since involved private land nothing to do with the case. It is on this premises, this Court finds, there is no clear appropriate exercise by both the Appellate and Revisional Forum in taking out the findings of the Consolidation Officer. The order of the Appellate Authority is ambiguous one. The Revisional Authority following the same finding has found to be a mechanical disposal therein.

7. In the process, this Court finds, the matter should go back to the Appeal stage. In the process, setting aside the orders at Annexure-4 & 5, this Court remits the matter to the Appellate Authority for re-disposal of

Misc. Appeal No.90 of 2002 taking into consideration the grounds taken in the Writ Petition as well as in involvement of the Parties likely to be affected at least within a period of four months. The Petitioner is directed to bring to the notice of the Appellate Authority the order of this Court at least within a period of ten days for re-opening of the appeal proceeding.

8. Considering there is sufficient delay in the ultimate disposal of the proceeding and since this judgment is passed in non-cooperation of the private O.Ps.5 to 7, this Court directs the Appellate Authority to issue notice to the private O.Ps. herein, the appellants therein, through Special Messenger at the cost of the Petitioner and the cost of notice be assessed and deposited within seven days of appearance.

9. The Writ Petition stands disposed of with an order of remand. No cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.  
The 15<sup>th</sup> July, 2022/MKR, A.R.-cum-Sr.Secy.