

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.3758 of 2000

Giridhari Rath

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Petitioner(s)
Mr.N.C.Panigrahi,
Advocate

-versus-

The Commissioner Consolidation & Ors.

Opposite Party(s)
Mr.S.Ghose, ASC
Mr.S.Mishra, Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
29.03.2022**

Order No.
12

1. Heard learned counsel appearing for the parties.
2. Background of the case is that, the petitioner claims to be a raiyat in respect to Ac.1.17 dec. of land appertaining to Hal Plot No.2214 corresponding to Sabik Plot Nos.1946 (Ac.01 dec.) 1947 (Ac.0.54) and (Ac.0.62 dec.) under Khata Mp.282 in Mouza Gualasingh under Kendrapara Police Station in Kendrapara district with stitiban status. Initially Sri Krushna Chandra Patra was inducted as Bhag tenant in respect to the land in question by Mahanta Biswakshan Ramanuj Das (of Samadhi Math, Puri) who was Marfatdar of the property. The latter executed Chirsthayee Patta in favour of the said Sri Patra on the 23rd day of Chaitra in the year, 1945. Later the land was settled in his name. He owned and possessed the land from the said date and duly paid salami, rent and cess etc. to the math and thereafter to State as appearing at Annexure-1. On 7.9.63, Krushna Chandra Patra sold the said land to the present petitioner vide registered sale Deed No. /069 dated 7.9.63. Since that date the petitioner and his sons have been processing and enjoying the land, with right, title and interest appearing at Annexure-2. After

execution of Sale Deed, the petitioner got his name recorded in the record of "Samadhi Math" of Puri by way of Mutation and paid rent to the Mahant. The suit land being intermediary interest vested in the State Govt. under the provisions of Orissa Estate Abolition Act, 1951.

After vesting the Mahant submitted the Zama Bandi (Ekpadia) in respect of the land in question including other lands to the Revenue Authorities-cum-Tahasildar, Kendrapara. During settlement operation after verifying the records the Revenue Officer, Kendrapara prepared the Zama Bandi registered (Expadia) in favour of petitioner's vendor Krushna Ch. Patra (Sl.No.97) of the Zama Bandi Register appearing at Annexure-3. During Settlement operation the Revenue Officer, Kendrapara also issued "Yaddast" in favour of the petitioner in respect of the suit land appearing at Annexure-4. The petitioner is in possession of the suit land from the date of purchase to till date and paying rent to the State Govt. and Annexure-5 Series are some of the rent receipts filed. Before the Settlement operation was completed, consolidation operation began in the area in 1980. Petitioner submitted all papers referred to above. On 28.11.80, the Asst. Consolidation Officer in consideration thereof and the enquiry report submitted by Amin ordered recording of the land exclusively in favour of petitioner. Draft Records of Rights was issued in favour of the petitioner under Section 9(1) O.C.H. & P.F.L. Act. On 21.12.80, the petitioner paid rent to Tahasildar as per tenancy Ledger. It is also claimed that Ac.0.07 dec. of land from same was covered by "Rastha" and as such the remaining Ac.1.10 dec. from same has been exclusively recorded in favour of this petitioner during consolidation operation and 'Parcha' in respect of same has also been issued in favour of the petitioner. These were done in consideration of the Ekpadia and other documents submitted by the revenue authorities which they had received from the Samadhi Math, Puri at the time of vesting. Petitioner also received compensation for the seven decimals covered under Rasta vide Annexure-8 (Order dtd.31.03.1994) U/s.9 of the Act, the Consolidation Officer by order dtd. 28.11.80 directed recording of the

petitioner's name over Ac.1.10 dec. of the suit land and the rest Ac.0.7 dec. has been included in the road. Petitioner filed objection case No.857/86 since the suit land was reduced before the Consolidation Officer and as no rent was accepted from the petitioner he filed O.E.A. Misc. Case No.344/93 before the Tahasildar, Kendrapara. In the said proceeding the Tahasildar directed the Revenue Inspector, Gualsingh who submitted report in favour of the petitioner on 5.7.92. After issuing public notice, the Tahasildar-cum-O.E.A. Collector assessed rent and Salami in favour of the petitioner. Accordingly rent schedule was also prepared in favour of the petitioner. The order of the Tahasildar fixing rent and salami in favour of the petitioner was also confirmed by the Sub-Collector, Kendrapara vide Annexure-8. On 2.11.92 this petitioner came to know that the suit land had been recorded in favour of Ghanashyam Sahoo (present O.P. No.5) vide order dtd.9.2.87 passed in Touzi Misc. Case No.255/1986 (filed by the said Ghanashyam Sahoo in the court of the Tahasildar and Revenue Officer, Kendrapara) passed by the Additional Tahasildar, Kendrapra vide Annexue-9. The petitioner filed appeal before the Sub-Collector, Kendrapara challenging the aforesaid order passed vide Annexure-9 in revenue Misc. Appeal No.2/92 which was allowed on 12.1.1994. This Court by order dtd.19.12.1994 in OJC No.947/1994 set aside the order dtd.12.01.94 in M.A. No.2/92 on the ground that the sub-Collector had no jurisdiction. The present petitioner filed OJC No.2267/95 directly before this Hon'ble Court to quash the order dtd.9.2.87 of the Additional Tahasildar passed in Touzi Misc. Case No.255/1986 fixing rent illegally in favour of the O.P. No.5 in respect of the suit land and the Hon'ble High Court after hearing parties by Judgment dtd.9.4.1997, was pleased to dispose of the writ petition on a finding that since consolidation operation is going on in the area and since the dispute involves declaration of right, title and interest between the parties, a direction was made to the petitioner to approach the consolidation authorities for adjudication of the dispute and in this background, the Hon'ble Court did not pass any order in merit

with regard to the validity of the order dtd.9.2.1987 of the Additional Tahasildar, Kendrapara which was challenged in the said writ application. As per the decision of this Court in the aforesaid judgment, the matter was agitated before the Consolidation Forum and the consolidation Officer by order dtd.27.8.97 held that the O.P. No.5 has no right, title and interest over the suit land and directed recording of the same in favour of the petitioner as appearing at Annexure-11. In the meantime in the 1st round of litigation it appears, the earlier order passed by the Consolidation Officer involved in the Appeal and Revision, the Revisional authority remanded the matter to the appellate authority and then the Appellate Authority remanded the matter to the Original Authority and in the process Annexure-1 came to be passed. In appeal the Deputy Director Consolidation allowed the appeal filed against the aforesaid order of consolidation officer and held that the Opposite Party No.5 was a tenant in respect of the suit land as appearing at Annexure-12. The Commissionerm Consolidation in R.C. No.1186/1999 filed by the petitioner challenging the aforesaid order passed in Annexure-12 dismissed the Revision and confirmed the order of the learned Deputy Director, Consolidation vide Annexure-13. The present writ petition i.e. OJC No.3758 of 2000 has been filed challenging the order of the Consolidation Authorities in Annexure-12 & 13. In a development in the course of hearing this Court finds, validity of Annexure-11 is also required to be considered keeping in view the direction of this Court in the previous writ petition.

2. Mr.Sidharth Mishra, learned counsel appearing for the opposite party while strongly disputing the claim of the petitioner, however, while not disputing the narration of facts indicated hereinabove, taking this Court to the order of competent authority at Annexure-9 and the order of this Court in disposal of the O.J.C. No.2267/1995 contended for High Court in disposal of writ by the petitioner vide Anenxure-10, though gave certain directions vide Annexure-9 remained confirmed and thus claimed for the right of the private opposite party created vide

Annexure-9 and confirmed by High Court in annexure-10 cannot be interfered any further. He however did not dispute that after the disposal of writ vide Annexure-10, in taking the decision the decision vide Annexure-11 it did not involve the consideration of case of the present petitioner seriously and thus the order at Annexure-11 passed by the Consolidation Officer is not in terms of the direction in O.J.C. No.2267 of 1995.

3. Mr.Ghose, learned Additional Standing Counsel for the State simply supported the stand of Mr.Mishra and attempted to justify the impugned orders on the basis of order already passed in the Tawazi Misc. Case vide Annexure-9 and prayed for dismissal of the writ petition.

4. In the above background of the case, this Court ultimately finds in disposal of O.J.C.No.2267 of 1995 at the instance of the present petitioner involving private opposite party No.5, considering the case of the present petitioner at length being informed on pendency of a consolidation proceeding, this Court from the disclosures finds the Consolidation proceeding was re-opened after the remand order being passed by the Sub-Collector involves involving an order at Annexure-8, the Division Bench of this Court though declined to interfere in the order of the Additional Tahasildar, Kendrapara dated 9.2.1987 appearing at Annexure-9, while keeping in mind the reopening of the Consolidation Proceeding felt it appropriate to direct the petitioner to approach the Consolidation Authority before whom the matter was pending at that point of time to seek appropriate relief. Looking to the direction of the Division Bench in disposal of O.J.C. No. 2267 of 1995, this Court finds only inference can be drawn to the fate of order dated 9.2.1987 being administrative order passed by the Additional Tahasildar, Kendrapara vide Annexure-9 was left open to be decided on adjudication of the consolidation proceeding pending then and disposed of vide Annexure-11. Perusal of order at Annexure-11 resulting impugned orders at Annexures-12 and 13, this Court finds the

proceeding recommenced pursuant to remand order of the appellate authority and disposed of on 27.8.1997. The judgment indicated hereinabove was passed on 9th April, 1997. Undisputedly, the proceeding recommenced before the original authority after disposal of the aforesaid writ petition. Perusal of Annexure-11, this Court finds even though there has been reference of this writ petition in the recommenced proceeding but, however, there is no consideration of the case of the opposite party no.5 already involved therein along with the case of the petitioner involved herein. The re-commenced proceeding appears to have been closed only with determination of the case of the opposite party no.5 and deciding against which even appeal and revision though was filed, appeal at the instance of the present private party was allowed vide Annexure-12, giving rise the present writ petition. All the three authorities appear to have failed in appreciating the direction of this Court in disposed of writ petition to be taken care of in the decision of the original authority. Once High Court directed the original authority to decide the consolidation proceeding also involving the dispute to be raised by the Petitioner, the same ought to have been decided in that manner only.

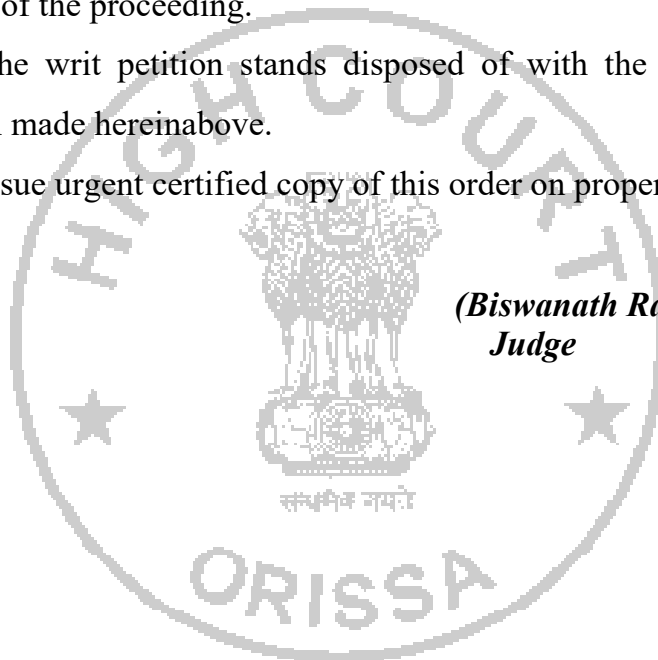
5. In the circumstance, this Court finds Annexures-12 and 13 not sustainable in the eye of law, but for mechanical disposal of the proceeding vide Annexure-11 and for the interest of justice, this Court since finds, the impact of direction of this Court vide O.J.C. No.2267 of 1995 has not been consider also sets aside the same. Further since the proceeding before the Consolidation Officer requires re-adjudication in terms of the direction in Annexure-10, this Court remits the matter for re-adjudication involving the petitioner as well as the opposite party no.5, but strictly in terms of the direction of this Court in O.J.C.No.2267 of 1995. The matter is remitted back to the Consolidation Officer to re-commence the proceeding vide Annexure-8 and also involved in Annexure-11 and decide the matter strictly in terms of the direction in disposed of writ petition indicated hereinabove. Parties, if

desire, may raise any further claim and objection in their favour along with citations, if any, in their support on their appearance before the Consolidation Officer concerned on 11th April, 2022 along with certified copy of this order. Fresh determination be made involving the parties involving the dispute re-opened by the direction of this Court and the proceeding also be concluded even within a period of six months thereafter. Looking to the interim protection continuing since 27.11.2000 in disposal of Misc. Case No.3713 of 2000 directing maintenance of status quo as on 27.11.2000 relating to possession of the disputed land to be maintained by both the parties to continue till disposal of the proceeding.

6. The writ petition stands disposed of with the observation and direction made hereinabove.

7. Issue urgent certified copy of this order on proper application.

(Biswanath Rath)
Judge



Sks