

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No. 4390 & 4965 of 2000

Prabhat Nayak and others ***Petitioners***
Mr. Baibaswata Panigrahi, Advocate
on behalf of Mr. B.K. Sahoo, Advocate

-versus-

Krushna Singh Malana (since dead) ***Opp. Party***
his LRs Shanti Malana @ Indra
Malana and others

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

Mr. Sidhartha Mishra, Advocate
on behalf of Mr. J.N. Rath, Advocate
(For Opposite Party Nos.1 and 2)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
07.03.2022

Order No.

23. 1. This matter is taken up through Hybrid mode.
2. Since both the writ petitions arise out of common order passed in Revision Petition Nos. 110 of 1994 and 2 of 1996 filed by predecessor of private Opposite Party No.1 and Opposite party No.2 under Section 37(1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Consolidation Act') relating to common subject matter of dispute, those are taken up together for final disposal.
3. At the outset, Mr. Panigrahi, learned counsel for the Petitioners prays for impleading Joint Commissioner of Consolidation, Berhampur, Ganjam as Opposite Party No.3 to both the writ petitions.

4. The prayer is allowed. Mr. Panigrahi is permitted to make necessary correction in the cause title of both the briefs in the Court.

5. In both the writ petitions, Petitioners assail the common order dated 28th February, 2000 passed in Revision Petition Nos.110 of 1994 and 2 of 1996. The disputed property situates in village Hinjilipalli and Chikarada under Konisi tahasil in the district of Ganjam and the ROR under Section 22(2) of the Consolidation Act was published in the name of the father of the Petitioners, namely, Prahallad Nayak and Abhimanyu Nayak in the year 1976.

5.2 During consolidation operation, the Opposite Party Nos. 1 (since dead his legal heirs) and 2 filed Objection Case No.1509 of 1992 under Section 9(3) of the Consolidation Act and the same was referred to by the Consolidation Officer, Berhampur under Section 10(2) of the said Act, but the same was dismissed for default on 22nd January, 1993. However, no petition for restoration of said Objection case was filed. But subsequently, the Opposite Parties filed Objection Case No.196 of 1993 under Section 15(1) of the Consolidation Act, which was also dismissed for default on 27th December, 1993. Assailing the same, the private Opposite Parties preferred Appeal Case No.4 of 1994 under Section 12 of the Consolidation Act. The said Appeal was disposed of vide order dated 26th February, 1994 (Annexure-3) without interfering with the order in the Objection Case holding that the final consolidation ROR under Section 22 of the Consolidation Act had already been published by then. Thus, the private Opposite Parties preferred the aforesaid two Revisions before the Joint

Commissioner, Consolidation, Berhampur-Opposite Party No.3.

5.3 Assailing the impugned order, Mr. Panigrahi, learned Counsel for the Petitioners submits that the impugned order suffers from non-application of judicial mind and the same is also cryptic and non-speaking one. It is his submission that although the Joint Commissioner recorded the submission of learned counsel for Opposite Parties, but did not discuss the same and passed the impugned order directing to record the land in question in the name of Opposite Parties 1 and 2. It is his contention that Opposite Party Nos.1 and 2 have also throughout participated in the consolidation operation, but failed in their attempt to record the land in their names. Thus, Revisions under Section 37(1) of the Consolidation Act were not maintainable.

5.4 Moreover, the impugned order has been passed against dead persons, namely, Pramod Nayak. Instead of directing the Opposite Parties 1 and 2, who were revision-petitioners to substitute them, the revisional Court found fault with the present Petitioners for not bringing them on record. Again, Prabhat Nayak who was alive was not impleaded as an Opposite Party to the revision petitions. Hence, the revision petitions are incompetent. In that view of the matter, Mr. Panigrahi, learned counsel for the Petitioners, prays for setting aside of the impugned order in both the writ petitions.

6. Mr. Mishra, learned counsel for Opposite Party Nos.1 and 2, vehemently objected to the submission made above. It is his submission that the Petitioners' father and Uncle, namely, Prahallad Nayak and Abhimanyu Nayak being the recorded

tenants and having right, title over the land in question, had sold their property to one Harihara Panda. The Opposite Party Nos. 1 and 2 have purchased the land in question from said Harihara Panda. The Opposite Party Nos. 1 and 2 were not provided with reasonable opportunity to produce the registered sale deeds either before the Consolidation Officer or before the Deputy Director, Consolidation. Further, both the Objection cases were not entertained on merit and were dismissed for default and Appeal Case No.4 of 1994 preferred under Section 12 of the Consolidation Act was also dismissed as the ROR had already been published when the appeal was taken up for hearing. The Joint Commissioner-Opposite Party No.3, taking into consideration the registered sale deeds executed in favour of Opposite Party Nos.1 and 2, directed to record the land in question in their names. Thus, the Joint Commissioner has committed no error in passing the impugned order. As such, he prays for dismissal of the writ petitions. Besides, Mr. Mishra, also raised the question of limitation, as there is delay in filing the writ petitions and submits that the writ petitions are barred by limitation.

7. Mr. Mishra, learned AGA along with Mr. Swayambhu Mishra, learned ASC submits that since it is an *inter se* dispute between the Petitioners and the Opposite Parties 1 and 2, they have nothing to add to the submissions of learned counsel for the parties.

8. Taking into consideration the submissions of learned counsel for the parties and on perusal of the impugned order in both the writ petitions, it appears that the Joint Commissioner, Commissioner, Consolidation, Berhampur, after discussing the

rival contentions of the parties straightaway jumped to the conclusion by directing to record the land in question in the name of the Opposite Parties 1 and 2. It further appears that Opposite Parties 1 and 2 are claiming to record the land in question by virtue of registered sale deeds executed by said Prahallad Nayak and Abhimanuyu Nayak in favour of Harihara Panda from whom they had purchased the land in question. It is, however, not clear as to whether the entire land recorded in the names of Prahallada and Abhimanyu under Section 22(2) of the Act was sold out in favour of Harihara Panda and Opposite Parties 1 and 2 have purchased the entire land recorded in the names of the Petitioner under Section 22 of the Act. The Revisional authority also failed to discuss the effect of non-impletion of legal heirs of dead persons and non-impletion of person(s) who admittedly had interest in the property in question.

9. Since issues raised by learned counsel for the Petitioners requires factual adjudication on the basis of the materials on record, I am of the considered opinion that the impugned order should be set aside and the matter should be remitted back to the Joint Commissioner, Consolidation, Ganjam, Berhampur-Opposite Party No.3 to adjudicate the same afresh in accordance with law giving opportunity of hearing to the parties concerned and I so direct.

10. Since the Revision Petitions are of 1994 and 1996, the Joint Commissioner shall make an endeavour for early disposal of the same, as expeditiously as possible, preferably by end of August, 2022 giving opportunity of hearing to the parties concerned.

11. In order to avoid further delay in the matter, learned counsel for the parties undertake to intimate the respective parties to appear before the Opposite Party No.3 on 4th April, 2022 along with certified copy of this order to receive further instruction in the matter.

12. With the aforesaid observation and direction, the writ petitions are disposed of.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

