

IN THE HIGH COURT OF ORISSA AT CUTTACK

WA. No. 184 of 2009

***Sri Jameswar Deb, Bije Bhubaneswar* *Appellant*
Marfatdar Lord Lingaraj Mohaprabhu
*Trust Board***

Mr. A. Mohanta, Advocate

-versus-

***Pratap Pattnaik (Dead) and* *Respondents*
Represented by his Legal
*Representatives and others***

Mr. Bansidhar Baug, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
06.04.2022**

Order No.

06. 1. The challenge in the present appeal is to an order of the learned Single Judge, dated 24th July, 2009 in OJC No.14702 of 1999 whereby writ petition filed by the Opposite Parties challenging an order dated 19th July 1997 of the Commissioner, Consolidation and Settlement, Orissa in Consolidation Revision Case No.90 of 1995 was quashed.
2. At the outset, it must be noted that the principal ground, on which the aforementioned writ petition was allowed was that there was an inordinate delay in the present Petitioner preferring the aforementioned revision petition under Section 37(1) of the Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972 ('Act'). It was specifically noted that the Commissioner had interfered with an order passed under the said Act by the Assistant Consolidation Officer after a passage of nearly twenty years.

3. It requires to be noted that in the present appeal which was filed way back on 30th October, 2009, there has been no interim order till date.

4. The background facts are that Opposite Party No.1 purchased a piece of land in Mouza Mohabhoi Sasan in an auction sale, conducted by the Assistant Commissioner of Endowments pursuant to the permission accorded by the Commissioner of Endowments in proceedings under Section 19 of the Orissa Hindu Religious Endowments Act (OHRE Act). The endowment in question is a public endowment of Bharati Math.

5. Originally the land was recorded in favour of Toponidhi Sudarsan Bharati, the then Mahant of Bharati Math. Pursuant to the notification dated 18th March 1974, issued under Section 3(1) of the Orissa Estate Abolition Act (OEA Act), the land vested in the State. Sri Toponidhi Bharati filed a claim application under Sections 6 and 7 of the OEA Act which was registered as OEA Case No.49 of 1975 (T).

6. By an order dated 21st July 1975, the OEA Collector, after holding an enquiry, settled the land in question in favour of the said Mahant. It is stated that the said settlement was not challenged and became final. Consequent upon such settlement, a rent schedule was issued by the OEA Collector in favour of the trustee.

7. When the land came within the consolidation operation, the trustee filed an objection for recording the land in consonance with the order of settlement in OEA Case No.49 of 1975(T). This application was allowed by the Assistant Consolidation Officer by an order dated 15th April 1977. This too has been challenged by the present Petitioner in OEARP No.1 of 2009.

8. The learned Single Judge found that there was no valid explanation for the inordinate delay in preferring the revision petition under Section 37(1) of the Act. Learned Single Judge referred to the decisions in ***Ghasiram Rana v. State of Orissa 81 (1996) C.L.T. 279*** and ***Sri Abhaya Charan Mohanty v. State of Orissa 2003 (Supp) OLR 882***. Since the order of the settlement passed by the OEA Collector in favour of the vendor of Opposite Party No.1 was never challenged by the present Appellant, it was not open to the revisional authority to entertain the revision.

9. It was further noted that the sale in favour of Opposite Party No.1 had been challenged in OJC No.6538 of 1991. The order seeking to exercise suo motu power in those proceedings was quashed by this Court noting that Opposite Party No.1 volunteered to pay a further amount of Rs.1 Lakh over and above the consideration money already paid.

10. Learned counsel for the Appellant with a view to explaining the inordinate delay in exercising the revisional power under Section 37(1) of the Act place reliance on the Judgment in ***Siba Muduli vs. Director, Consolidation 2021 SCC OnLine Ori 1632***. According to him, since the order passed by the Assistant Commissioner was inherently without jurisdiction, the Commissioner was justified in exercising the revisional power in Consolidation Case No. 90 of 1995 under Section 37(1) of the Act.

11. It must be noted here that in the background of the above facts where there have been several rounds of litigation including OJC Case No.6538 of 1991 and the OEARP No.1 of 2009, there was no valid justification for the present Appellant to have waited for twenty years to question the order of the Assistant Commissioner

under Section 37(1) of the Act. The Court is not satisfied that there is justification for the inordinate delay. What applies here is principle of laches and the learned Single Judge has correctly followed the earlier orders in ***Ghasiram Rana (Supra)*** and ***Sri Abhaya Charan Mohanty (Supra)*** in setting aside the order passed by the Commissioner entertaining the revision petition under Section 37(1) of the Act although it was delayed by more than twenty years.

12. No grounds have been made out for interference. The appeal is accordingly dismissed.

S. Behera

