

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.92 of 2018

Babaji Khuntia

....

Appellant

Mr. Sachidananda Sahoo, Advocate

-versus-

State of Orissa and others

....

Respondents

Mr. M.K. Khuntia, A.G.A. for the State

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

Order No.

ORDER
26.10.2022

04. 1. This writ appeal is directed against an order dated 17th January 2018 passed by the learned Single Judge allowing the writ petition i.e., OJC No.16459 of 1997 filed by Respondent Nos.4 to 6 herein, against Respondent Nos.1 to 3, 7 to 12 and the present Appellant challenging a common order dated 3rd May 1997, passed by the Commissioner, Consolidation, Bhubaneswar in Revision Case Nos.583 of 1996 and 1 of 1997.
2. By the impugned order, the learned Single Judge has set aside the aforementioned order of the Commissioner, Consolidation and remanded the matter to the Commissioner, Consolidation for a fresh adjudication in terms of the observations made by the learned Single Judge. The parties were directed to appear before the Commissioner on 16th February 2018, and the Commissioner was

asked to disposed of the matter by a reasoned order expeditiously after affording the parties an opportunity of being heard.

3. It must be noticed at the outset that although the present appeal was listed on 31st October 2019 and 8th November 2019, no effective orders were passed on either date. In fact, today is the first time that the appeal is being listed for hearing and it has been listed in its usual turn. In effect, therefore, there has been no stay of the impugned order of the learned Single Judge for well over four years now. Despite this, according to learned counsel for the Appellant, the proceedings on remand are still pending before the Commissioner, Consolidation.

4. The background facts are that the aforementioned Revision Case No.583 of 1996 was filed, on behalf of the villagers of Alisa Samili Basanta Diha, P.S.-Gop-Kakatpur, Puri District stating that in the year 1927 settlement Plot No.1146 admeasuring Ac 0.16 dec. was recorded in the name of Balia Khuntia in Khata No.271. Of this piece of land, an area admeasuring Ac 0.13 dec. was acquired by the Irrigation Department. The remaining extent of Ac.0.03 dec. adjoining the village road, was sold by Balia Khuntia in favour of Manguli Barik. It was stated that the ACO had recorded AC.0.01 dec. in favour of Respondent Nos.7 to 12 herein (Opposite Party Nos.4 to 9 in the writ petition) without any basis.

5. The connected revision petition i.e., R.P. No.1 of 1997 was filed by the present Appellant contending that in 1927 settlement Plot

No.1146 to an extent of Ac.0.16 dec. was recorded in the name of Fakir Poojapanda who sold the said land to Bali Khuntia by a registered sale deed dated 4th January, 1961. Babaji Khuntia, the present Appellant, claimed to be the successor-in-interest of Bali Khuntia and to be in possession of the land in question. The case was that the Irrigation Department had acquired an extent of Ac 0.09 dec. and an extent of Ac 0.03 dec. were sold to Manguli Sahoo. It was plain that the balance extent of Ac.0.04 dec. was under the possession of the present Appellant Babaji Khuntia. It was contended that the corresponding disputed LR plot No.1418/2528 had been wrongly recorded in favour of Respondent Nos.7 to 12 herein and excess area had wrongly been recorded in the name of Irrigation Department.

6. In both the revision cases, the Opposite Parties did not participate and were set *ex parte*. According to the Commissioner, Consolidation in the impugned order dated 3rd May 1997, there was no excess area remaining with Babaji Charan Khuntia to the western side of the canal and recording the said extent in his name would be against the evidence available on record. It was further held that the remaining area to which the present Appellant was laying claim was to an extent of Ac 0.01 dec. and had already been recorded in the name of Respondent Nos.7 to 12 herein without any basis. Accordingly, the order of the ACO was set aside and it was directed that the land be recorded in name of the present Appellant on the basis of the above registered sale deed dated 4th January, 1961. While Revision Case No.583/1996 was dismissed,

Revision Case No.1 of 1996 was remanded to the Consolidation Officer, Gop-Kakatpur for correction of the map and records after field visit.

7. The plea of Respondent Nos.4 to 6, in their aforementioned OJC No.16459 of 1997 was that Respondent Nos.7 to 12 had in connivance with the consolidation officials succeeded in getting Ac 0.01 dec. of land recorded in their names thereby encroaching the public road in spite of strong opposition of the villagers including Respondent Nos.4 to 6. It was pleaded that the public road which was being used was in existence since long and this was also proved by the village map of the sabik settlement of 1927. It was claimed that Respondent Nos.7 to 12 herein (Gopal Sahoo and others) had absolutely no right, title or interest over the extent of Ac 0.01 dec. which had been recorded fraudulently in their names.

8. The learned Single Judge noted that the above aspect of the case had not been considered. No finding had been given by the Commissioner, Consolidation in relation to the contention of the villagers that no land was available on record in the name of present Appellant or his vendees. The learned Single Judge observed that the Commissioner, Consolidation should have deputed a Survey Knowing Commissioner and obtained a report whether such land of Ac.0.01 dec. was in fact available and stood recorded in the names of Respondent Nos.7 to 12 herein. However, not only the Commissioner failed to do so, but also did not render any finding thereon.

9. It was in the above circumstances the learned Single Judge remanded the matter to the Commissioner, Consolidation for a fresh examination and for a clear finding on the above aspects.

10. Mr. Sachidananda Sahoo, learned counsel appearing for the Appellant, first contends that the learned Single Judge overlooked the fact that the writ petition i.e., OJC No.16459 of 1997 was in fact barred by the principles of *res judicata*. In other words, it is submitted that initially OJC No.16459 of 1997 was dismissed for non-prosecution by the learned Single Judge on 8th January, 2004. Thereafter, another group of three villagers claiming to be the representatives of village Basantadiha filed Revision Case No.41 of 2004 praying for same relief as was prayed for in Revision Case No.583 of 1996. The said Revision Case No.41 of 2004 was dismissed by the Commissioner by the order dated 29th April, 2005. This was challenged in W.P.(C) No.15300 of 2005 which stood disposed of by this Court on 7th February 2008, confirming the order of the Commissioner. Thereafter, the Petitioners in W.P.(C) No.15300 of 2005 again filed Revision Petition No.462 of 2008 under Section 37 (1) OCH & PFL Act for the same relief. By an order dated 17th June 2009, the Commissioner remanded the matter to the lower court for adjudication under Section 11 of the Act. The above order dated 17th June 2009, was challenged before this Court in W.P.(C) No.20262 of 2009 which was allowed by this Court on 11th February, 2011.

11. It is alleged that the forging certain signatures of some of the writ Petitioners, CMAPL No.36 of 2013 was filed for restoration of

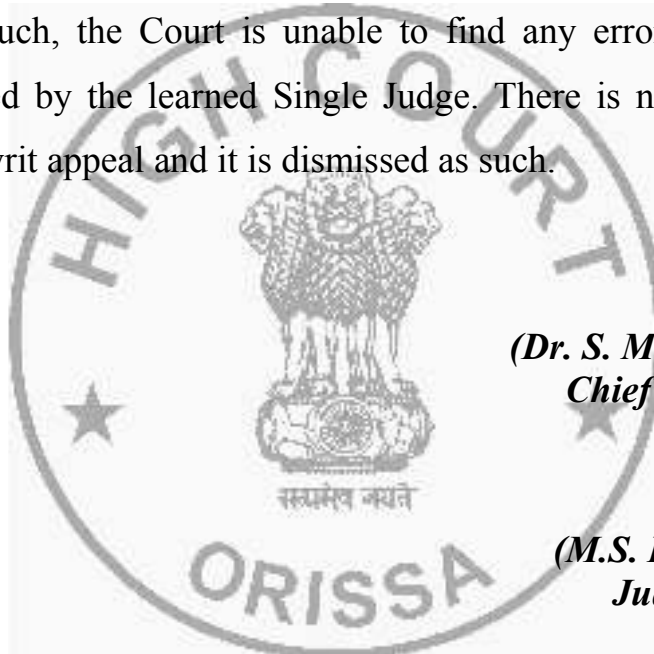
OJC No.16459 of 1997 which had earliest stood dismissed on 8th January, 2004. The said CMAPL was allowed by an order dated 20th December 2013 and OJC No.16459 of 1997 was restored to file. Of the seven original Petitioners, four were deleted from the cause title. These were the Petitioners who claimed that their signatures had been forged. The remaining three continued as Petitioners. It is thus contended that the earlier orders in writ petition and revision petition filed by certain other villagers was not brought to the notice of the learned Single Judge who passed the impugned order.

12. As far as the above plea is concerned, it is seen that even on the Appellant's own admission, the earlier two writ petitions i.e., W.P.(C) No.15300 of 2005 and W.P.(C) No.20262 of 2009 were not by the present villagers i.e., Respondent Nos.4 to 6, but by another set of villagers. Therefore, the question of OJC No.16459 of 1997 being hit by the principles of *res judicata* did not arise.

13. It is next contended that the Commissioner was right in holding that the land to the extent of Ac 0.01 dec. had been wrongly recorded in the name of Respondent Nos.7 to12 herein. However, as pointed out by learned Single Judge, the specific case of the revision Petitioners was not addressed by the Commissioner. As pointed out the contention of the villagers that there was no land available in the name of the present Appellant or his vendees was not even verified by the Commissioner by deputing a Survey Knowing Commissioner and obtaining a report.

14. Having heard learned counsel for the Appellant, the Court does not see the impugned orders causing any prejudice whatsoever to the present Appellant. Indeed, the facts had to be thoroughly investigated by the Commissioner and this could have happened only by deputing a Survey Knowing Commissioner and asking him to submit a report. It is for this purpose that the matter has been remanded to the Commissioner, Consolidation by the learned Single Judge.

15. As such, the Court is unable to find any error having been committed by the learned Single Judge. There is no merit in the present writ appeal and it is dismissed as such.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin