

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.4742 of 2007

*An application under Article 226 & 227 of
the Constitution of India, 1950*

Narendra Behera

: Petitioner

-Versus-

Bhramarbar Sahoo & Anr.

: Opposite Parties

For Petitioner

: M/s. G. Mukherji
(Sr. Adv.),
P. Mukherji,
A.C. Panda,
S. Patra

For Opposite Party No.1

: Mr. T.K. Mishra,

For Opposite Party No.2

: Mr. S. Ghose,
Addl. Govt. Adv.

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 13.07.2022

1. This writ petition involves a challenge to the order of the revisional authority i.e. the second round of litigation.
2. Factual background involved in the first round of litigation is that for the parties attending to the revision, the Revisional Authority remitted the matter back to the Consolidation Officer for fresh adjudication of the

proceeding in terms of the materials and after conducting fresh field measurement. In disposal of the proceeding the Consolidation Officer allowed the objection case finally directing preparation of record of rights in the manner disclosed at page 20 of the brief. Appeal being preferred, the same was dismissed by the appellate authority. In the revision the revisional authority appears to have reversed the order of the Consolidation Officer and directed for correction of the Record of Rights vide Annexure-5 thereby making the Opposite Party No.1 herein to be entitled to an area Ac.0.03 $\frac{1}{5}$ decimals out of Sabik Plot No.301 and thereby observing that there is right preparation of the map and Record of Rights published U/s.22(2) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 hereinafter in short be reflected as “the Act, 1972”.

3. In his challenge to the revisional order Mr. Panda, learned counsel for the Petitioner referring to the basis involving the claim in the objection case i.e. the sale deed submitted that undisputedly the sale deed disclosed sale of an area Ac.0.03 $\frac{1}{5}$ decimals of land, while also disclosing the length & breadth of the disputed land to be 16 links X 160 links. It is at this stage taking this Court to the above un-denial aspect a claim is made that once the sale deed disclosures has any confusion inasmuch as there is no matching of extent of land sold with the measurement shown therein, the authorities under the Act, 1972 have no authority to interfere in such sale deed in order to satisfy the claim of objectors. A submission is also advanced in the writ petition that there was attempt for intervention of the parties involving the sale deed. It is contended that in the minimum an attempt could have been made for applying correction of the sale deed. It is accordingly contended that the

Consolidation Authority has to go strictly as per the information provided through the sale deed and in the event there was no outcome, taking into account the claim of the objector, the parties would have been left to undertake required exercise before asking for correction of the map and record of rights. Taking this Court to the discussions in the revisional order Mr. Panda, learned counsel for the Petitioners submitted that even though the revisional court admitted the fact disclosures on the area and extent of land and the land particulars involving length and breadth, however stepped into an aspect not under its jurisdiction.

It is, in the circumstance, Mr. Panda, learned counsel for the Petitioner requested for interfering in the revisional order at Annexure-5.

4. Mr. Mishra, learned counsel for the Opposite Party No.1 while not disputing the submission of the Petitioner and recordings made by all forums that the sale deed clearly disclosed extent of land sold by Ac.0.03 $\frac{1}{5}$ decimals and the land measured length and breadth by 16 links X 160 links, but however, taking into account the discussion and the finding of the revisional authority an attempt is made by the Opposite Party No.1 to justify the impugned order and a request is, accordingly, made for dismissing the writ petition.

5. Mr. Ghose, learned Addl. Govt. Adv. while supporting the stand taken by Mr. T.K. Mishra, learned counsel for the Opposite Party No.1 also attempted to justify the revisional order. Mr. Ghose, learned Addl. Govt. Adv. submitted that there is, however, no dispute on the recordings under the sale deed clearly disclosing the extent of land sold Ac.0.03 $\frac{1}{5}$ decimals and further disclosing the length and breadth therein by 16 links X 160 links and both the disclosures do not make any sense. Mr. Ghose, learned Addl. Govt. Adv., however, submitted that for there is glaring defect in the sale deed the Consolidation Officer even would not have

attempted for correction of record of rights on the basis of such discrepancies.

6. Considering the rival contentions of the parties, this Court on perusal of the copy of the sale deed finds, the sale deed has clear disclosures with regard to the sale of extent of land to be Ac.0.03 $\frac{1}{5}$ decimals and at the same time the sale deed also discloses sale of land in length and breadth to be 16 links X 160 links. This Court also perused the discussions by the Consolidation Officer, the Appellate Authority as well as the Revisional Authority and finds, all the forums have no hesitation in disclosing the above aspect. For the un-denial disclosures involving the sale of area measuring Ac.0.03 $\frac{1}{5}$ decimals of land with further disclosures with regard to the length and breadth by 16 links X 160 links, this Court finds, there is practical difficulty in disclosures of the property sold and for the intention involved in the sale deed, correction does not come within the domain of the Consolidation Authority.

This Court, in the above circumstance, finds, the Consolidation Officer remains unjustified in directing for preparation of Map and Record of Rights taking into account the materials available on record, which information had no specific outcome. For the confusion in the sale deed remaining outside domain of the Consolidation Officer, the Consolidation Officer should have left the matter for undertaking appropriate recourse to both the parties by dismissing the Section-9 proceeding. This Court here finds, all the three forums have failed in appreciating this legal aspect and committed illegality. In the circumstance, this Court while interfering in the revisional order on the same premises also interfered in the Section 9 order as a consequence also in the appeal order and set aside all. Thus while dismissing the Section 9 proceeding for an impractical claim involved therein and for

clear discrepancy in the sale deed, this Court directs for maintenance of record of rights and map in the position prior to initiation of Section 9 proceeding. Parties have, however, liberty, if so advised, may attempt for correction/amendment in the sale deed through appropriate proceeding and proceed accordingly.

7. The writ petition succeeds, but to the extent directed hereinabove. There is, however, no order as to the costs.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 13th day of May, 2022//
Ayaskanta Jena,
Senior Stenographer

