

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 7337 OF 2008

Fakir Jena and others ***Petitioners***
Mr. Sambit Rath, Advocate

-versus-

Joint Commissioner, Settlement and ***Opp. Parties***
Consolidation, Balasore and others
Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
19.05.2022

W.P.(C) NO. 7337 OF 2008
& I.A. No. 10076 of 2020

4. 1. This matter is taken up through hybrid mode.
2. I.A. No. 10076 of 2020 has been filed to recall the order dated 10th December, 2008 passed by this Court in the writ petition.
3. This Court vide order dated 10th December, 2008 passed the following order:

“Postal requisites for issue of notice be filed by 12th December, 2008 as undertaken, failing which the writ petition shall stand dismissed without further reference to Bench.”

4. Office note discloses that instead of filing requisites by registered post with A.D., learned counsel for the Petitioner filed the same in Court process for which notice could not be issued to the Opposite Parties.
5. Mr. Rath, learned counsel for the Petitioner, however, submits that the Petitioners may be permitted to take out fresh

notice on the private Opposite Parties. It is ascertained from the record that the writ petition was filed on 14th May, 2008 and in the meantime, fourteen years have already elapsed. In order to entertain prayer made by the Petitioners, this Court requested the learned counsel for the parties to argue the matter on merit to which they agree.

6. This writ petition has been filed assailing the order dated 23rd May, 2007 (Annexure-3) passed by the Joint Commissioner, Settlement and Consolidation, Balasore in R.C. Case No. 341 of 2005, whereby the revisional court dismissed the revision filed by the Petitioners under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act').

7. Mr. Rath, learned counsel for the Petitioners submits that the Petitioners are members of Scheduled Tribe community and the land in question is a pond. The Petitioners being fishermen by profession are earning their livelihood from the said pond from the time of their ancestors. However, the Consolidation Authority relying upon two registered sale deeds vide RSD No.152 dated 4th February, 1941 in respect of C.S. Plot No.519 and RSD No.2276 dated 1st December, 1943 in respect of C.S. No.511 recorded the land in favour of Opposite Party Nos.2 to 7. When the Opposite Party Nos.2 to 7 disturbed the possession of the Petitioners, they came to know about recording of the land in question in the name of Opposite Party No.2 to 7 and filed the aforesaid revision. The Joint Commissioner without taking into consideration the long possession of the Petitioners over the land in question dismissed the revision only basing upon two registered sale deeds. It is his submission that one of the Opposite Parties had also moved the

learned Civil Judge (Junior Division), Bhadrak in C.S. No. 275 of 2005-I for permanent injunction. In the said suit, I.A. No.335 of 2005 was filed under Order XXXIX Rules 1 and 2 C.P.C. in which learned Civil Judge (Junior Division), Bhadrak finding a *prima facie* case in favour of the present Petitioners directed both the parties to maintain status quo over the suit property. These material aspects were not taken into consideration by the revisional court while passing the impugned order. Hence, he prays for setting aside the impugned order under Annexure-3 and to remit the matter back to the Joint Commissioner for fresh consideration of the revision petition giving opportunity of hearing to the parties concerned.

8. Mr. Mishra, learned Additional Government Advocate refuting the submission made by learned counsel for the Petitioners submits that the Petitioners effectively claim title over the land in question on the basis of long possession. The order of learned Civil Judge (Junior Division), Bhadrak under Annexure-4 relied upon by the Petitioners does not disclose that the Petitioners are in possession over the suit land. On the other hand, the private Opposite Party Nos.2 to 7 have valid title over the suit property through two registered sale deeds executed by the sabik recorded tenants. The Petitioners had never assailed the validity of the registered sale deeds in any competent court of law. Hence, the revisional court has committed no error in passing the impugned order.

9. Taking into consideration the rival contentions of the parties and the discussion made by the revisional court in the impugned order under Annexure-3, it appears that the Petitioners claim title over the property in question on the basis of their long possession.

On the other hand, the Opposite Party Nos.2 to 7 claim title over the same by virtue of two registered sale deeds vide RSD No.152 dated 4th February, 1941 and RSD No.2276 dated 1st December, 1943 respectively executed by the sabik recorded tenants. The order of the Civil Judge (Junior Division), Bhadrak under Annexure-4 relied upon by the Petitioners does not disclose that the Petitioners are in possession over the land in question. There is no material on record to show that the Petitioners are in possession over the land in question. In that view of the matter, this Court does not find any infirmity in the impugned order under Annexure-3. Accordingly, this writ petition being devoid of any merit stands dismissed.

10. The I.A. is accordingly dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

