

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2644 of 2022

Kishor Kumar Badajena and another* *Petitioners

Mr.Nityananda Behuria, Advocate

-versus-

Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar and others* *Opp. Parties

Mr. D.K.Pani,
Additional Standing Counsel
(Opposite Party No. 1)

Mr. Bidyadhar Pradha, Advocate
(For Opposite Party Nos. 1 to 9)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
04.03.2022**

Order No.

2.
 1. This matter is taken up through Hybrid mode.
 2. Mr. Bidyadhar Pradhan, learned counsel for Caveators files Vakalatnama on behalf of Opposite Party Nos. 1 to 9 in Court, which is taken on record.
 3. Petitioners in this writ petition seek to assail the order dated 29th July, 2021 (Annexure-1) passed by Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar in RC Case No.93 of 2011 filed by private Opposite Parties under Section 37(1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Act').
 4. The main grievance of the Petitioners is that although they were made parties to the Revision Petition and notices were issued, but the same never served on them. Hence, they could not defend their case before the revisional court. It is the submission of Mr. Behuria, learned counsel that the impugned order has been

passed without verifying the case record available with the revisional authority. In a partition between successors of Haribandhu and Anama before the Consolidation Officer, the land in question was recorded separately and the ROR was accordingly published in the year 1978. The same was challenged in the year 2011 by filing the aforesaid revision petition. The delay in filing the revision has also not been properly explained. Therefore, he prays for setting aside the impugned order under Annexure-1.

5. Mr. Pradhan, learned counsel for private opposite parties submits that although notices were duly served on the Petitioners they preferred not to contest the revision. Further, the plea of partition between successors of Haribandhu and Anama before the Consolidation Officer is not a fact. Partition, if any does not relate to the land in question. He, however, prays for an adjournment to file detailed counter affidavit on the factual aspects of the writ petition.

6. Mr. Pani, learned ASC submits that since notices have been issued in the correct address of the Petitioners, it is presumed to have been served. However, the Petitioners preferred not to contest the revision case. As such, present writ petition should not be entertained.

7. Taking into consideration the rival contentions of the parties, this Court finds that the contentions of learned counsel for the parties hinges around service of notices of the Revision Case No.93 of 2011. The same requires factual adjudication. If the contention of learned counsel for the Petitioners found to be correct they should be given an opportunity to defend their case before the revisional court.

8. In that view of the matter, this Court, without expressing any opinion on the merit of the case of either of the parties, disposes of the writ petition with an observation that if the Petitioners file an application for recall of order under Annexure-1 and to provide them opportunity of hearing within a period of two weeks hence stating the grounds therein, the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar-Opposite Party No.1 shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned and proceed with the matter in accordance with law.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

