

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 8717 OF 2010

Nabaghan Swain and others

.... ***Petitioners***

Mr. Samir Kumar Mishra,
Advocate

-versus-

State of Odisha and others

.... ***Opp. Parties***

Mr. B.K. Nayak, Advocate
(For Opp. Party No.4)
Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
30.03.2022

Order No.

- 13.
1. This matter is taken up through hybrid mode.
 2. At the outset, learned counsel for Opposite Party No.4 submits that the Petitioner Nos.1 and 2 have died in the meantime.
 3. Mr. Mishra, learned counsel for the Petitioners submits that since the Petitioner Nos.1 and 2 are representing the villagers, their name may be deleted.
 4. Prayer is allowed.
 5. The Petitioners in this writ petition seeks to assail the order dated 19th September, 1998 (Annexure-2) passed by the Commissioner, Consolidation, Bhubaneswar in R.P. No.59 of 1996 as well as consequential order dated 11th August, 1999 (Annexure-3) passed by the Consolidation Officer, Gop-Kakatpur in Remand Revision Petition No.59 of 1996 directing to record the land in question in favour of Opposite Party No.4.
 6. The main contention of learned counsel for the Petitioners is that in Sabik R.O.R. the land in question was 'Gochara' and 'Gadia'

kissam of land and was recorded in the name of the Government. The Opposite Party No.4 claims right over the property on the basis of an unregistered Hata Patta and he was never settled with the land by the O.E.A. authority. He further submits that the land being 'Gochara' and 'Gadia' kissam of land was being used by the villagers. Since the Petitioners were not made parties either before the revisional court or before the Consolidation Officer (after remand), they could not know about the impugned order orders under Annexures-2 and 3. It is his submission that no general proclamation was made in the village before recording of the land in question in the name of Opposite Party No.4. Hence, he prays for setting aside the impugned orders under Annexures-2 and 3.

7. Mr. Mishra, learned Additional Standing Counsel, on the other hand, submits that although it is submitted by Mr. Mishra, learned counsel for the Petitioners that the Petitioners are representing the villagers, but no such declaration is made either in the cause title or in the body of the writ petition including the affidavit. Thus, in absence of the same, they can pursue their matter only in their individual capacity. Neither they filed any objection under Section 9(3) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act') nor at any subsequent stage of the proceeding to record the land in question in the name of the Government. As such, this writ petition is not maintainable.

8. Learned counsel for the Opposite Party No.4 supporting the submission of Mr. Mishra, learned Additional Standing Counsel submits that the impugned order Annexure-3 is appealable one under Section 12 of the Act. Hence, this writ petition is not maintainable.

9. Taking into consideration the submissions of learned counsel for the parties, this Court is of the considered opinion that since the Petitioners allege that they are espousing the cause of the villagers and

are representing the villagers, they should have followed due procedure to espouse a general cause of the village. Neither any authorization on behalf of the villagers nor any averments or affidavit to that effect has been filed by the Petitioners.

10. However, it appears from the submission of Mr. Mishra, learned counsel for the Petitioners that the main grievance of the Petitioners is with regard to non-compliance of the principles of natural justice either before the Commissioner or by the Consolidation Officer.

11. In that view of the matter, the Petitioners should have approached the authorities before whom they could have raised the issue of non-compliance of natural justice, before approaching this Court. Having not exhausted the remedy available to them, this writ petition will be incompetent inasmuch as the factual allegation with regard to their interest over the property cannot be adjudicated in the present writ petition receiving evidence from the parties.

12. In view of the discussion made above, I am of the considered opinion that this writ petition is not maintainable and the same is accordingly dismissed.

13. However, dismissal of the writ petition shall not preclude the Petitioners to avail the remedy for redressal of their grievances in accordance with law.

14. The interim order dated 29th June, 2010 passed in Misc. Case No. 7803 of 2010 stands vacated.

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

(K.R. Mohapatra)
Judge

bks