

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4309 OF 2021

Nikunja Kishor Das and others

Petitioners

Mr. Bibekananda Bhuyan, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

02.05.2022

Order No.

- 8.
1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition pray for a direction to the Opposite Parties to demarcate the land as per RORs (Annexure-1 series) published under Section 22(2) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for convenience, referred to as 'the Act') and to handover physical possession of Chakas to the respective land owners of village Chinnapada situated under Tirtol Tahasil in the district of Jagatsinghpur.
 3. Mr. Bhuyan, learned counsel for the Petitioners submits that after final publication of R.O.Rs. on 24th July, 2013 (Annexure-1 series) under Section 22(2) of the Act, the Assistant Consolidation Officer is not taking any step to demarcate the land and deliver physical possession of Chakas to the respective land owners under Annexure-1 series. It is his submission that proviso to Section 41(1) of the Act makes it clear that even after publication of notification under the said provision declaring closure of consolidation operation

in the village, the Assistant Consolidation Officer continues to retain the power to demarcate and handover physical possession of Chakas as per the R.O.R, as it remains unaffected. Chapter-IV of the Act deals with 'Enforcement of the Scheme', which includes delivery of possession under Section 25 of the Act. Thus, the Assistant Consolidation Officer being the competent authority, should take steps to demarcate the land and deliver physical possession of Chakas as per Annexure-1 series.

4. Mr. Mishra, learned Additional Standing Counsel submits that after closure of the consolidation operation and publication of the notification under Section 41(1) of the Act, it is the concerned Tahasildar, i.e., the Tahasildar, Tirtol in the instant case, has power to demarcate and deliver physical possession of Chakas under Section 41(3) read with Rule 36 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Rules, 1973 (for convenience, referred to as 'the Rules'), if not delivered to the land owners. Since the writ petition [W.P.(C) No. 7458 of 2019] was pending before this Court, the Tahasildar, Tirtol could not proceed to demarcate and deliver possession of Chakas. Moreover, no such application as required under Section 25(1) of the Act has yet been made to the Tahasildar, Tirtol. However, the said writ petition has been disposed of by separate order of the even date. Hence, there will be no impediment on the part of the Tahasildar, Tirtol to proceed with the matter for demarcation and delivery of possession of Chakas to the land owners as per the R.O.R. published under Section 22(2) of the Act, if application is made in that regard.

5. Section 41 of the Act reads as under:

“41. Closure of consolidation operations. - (1) As soon as may be after the final maps and the records have been prepared under Section 22, the State Government shall issue a notification to the effect that the consolidation operations have been closed in the unit and then the village or villages forming part of the unit shall cease to be under the consolidation operations :

Provided that the issue of a notification under this section shall not affect the operation of the provisions contained in Chapter IV.

(2) Notwithstanding anything contained in Sub-section (1), consolidation operations shall not be deemed to have been closed in respect of case or proceeding pending under the provisions of this Act on the date of issue of notification under Sub-section (1).

(3) The orders passed by the competent authorities in matters referred to in Sub-section (2) shall be given effect to by such authorities as may be prescribed.”

6. Proviso to Section 41 of the Act clearly envisages that issuance of notification under Section 41 of the Act shall not in any manner affect the operation of the provisions contained in Chapter-IV, which deals with ‘*Enforcement of the Scheme*’. Section 25 of Chapter-IV of the Act deals with delivery of possession, which reads as under:

“25. Delivery of possession. - (1) On an application made within sixty days from the date of coming into force of the final Consolidation Scheme by the land-owner who is unable to enter into possession of the lands allotted to him under the said Scheme, the Assistant Consolidation Officer may, within six months from the date of the application, put the land owner in actual physical possession of lands so allotted, and in doing so, shall have all the powers as are exercisable by a Civil Court in execution of decree for delivery of possession of immovable property:

Provided that the delivery of possession as aforesaid shall not affect the right of the person from Whom possession is transferred to tend and gather the crops standing on such lands or part thereof on the date

of the delivery unless the Assistant Consolidation Officer decides, for reasons to be recorded, that possession of the crops shall be delivered.

(2) On the expiry of six months from the date on which the land-owner becomes entitled to enter into possession of the lands allotted to him in accordance with Section 23 or, where an application has been duly made under Sub-section (1), on the expiry of six months from the date of such application, the concerned land-owner shall, if he has not entered into possession earlier, be deemed to have entered into actual physical possession of lands to him.

(3) Notwithstanding the provisions contained in Sub-section (2) where no application is made under Sub-section (1) by a land-owner and, the Assistant Consolidation Officer has reasons to believe the land-owner has not entered into possession of the land allotted to him, he may, on his own motion and at any time before the issue of a notification under Sub-section (1) of Section 41, put the landowner in actual physical possession of the lands so allotted in the same manner and; subject to the same conditions as specified in Sub-section (1).

(4) The powers conferred on the Assistant Consolidation Officer under Sub-section (3) shall, in like manner and in like circumstances be exercisable by the Tahasildar having jurisdiction after the issue of notification under Sub-section (1) of Section 41."

7. Section 25 of the Act deals with a situation prior to publication of notification under Section 41(1) of the Act declaring closure of the consolidation operation. After publication of the R.O.R. under Section 22(2) of the Act, the land owner in whose name the R.O.R. has been published becomes entitled to enter into possession of the land/Chaka recorded in his name. If, for any reason, a land owner cannot enter into possession of the Chaka, he can make an application under Section 25(1) of the Act within sixty days from the date of publication of the final consolidation scheme

under Section 22 of the Act and the Assistant Consolidation Officer in that event is competent to put the land owner in possession of the land/chaka. But, after publication of the notification under Section 41(1) of the Act, the power conferred under Section 25(3) of the Act shall be exercised by the concerned Tahasildar.

8. Section 25(4) of the Act makes it amply clear that power conferred on the Assistant Consolidation Officer under Sub-section (3), i.e., with regard to entertaining an application under Sub-section (1) of Section 25 of the Act made by a land owner for delivery of possession of the land allotted, shall be exercised by the Tahasildar having jurisdiction in like manner and in like circumstances. Thus, after publication of the notification under Section 41(1) of the Act, the concerned Tahasildar assumes jurisdiction to entertain an application under Section 25(1) of the Act, if filed by the land owner in the like manner and in the like circumstances as provided under Section 25(3) of the Act. Proviso to Section 41(1) of the Act protects the interest of the land owners in enforcing their right under Chapter-IV of the Act, which deals with '*Enforcement of the Scheme*', even after publication of notification under Section 41(1) of the Act. But, Section 25(4) of the Act makes it clear that power so conferred on the Assistant Consolidation Officer shall be exercised by the Tahasildar having local jurisdiction after publication of notification under Section 41(1) of the Act. Hence, the submission of Mr. Bhuyan learned counsel to the effect that the Assistant Consolidation Officer has the jurisdiction to exercise power under Section 25 of the Act, even after publication of the notification under Section 41(1) of the Act, is not sustainable. Proviso to Section 41(1) of the Act only

protects the right of the land owner to make an application under Section 25(1) of the Act. But, it no manner protects the power of the Assistant Consolidation Officer to entertain such an application. Thus, this Court has no hesitation to hold that the Tahasildar, Tirtol has jurisdiction to entertain application for demarcation and delivery of Chaka to the Petitioners in respect of their land published under Annexure-1 series.

9. Accordingly, this writ petition is disposed of with a direction that in the event the Petitioners make individual applications to the Tahasildar, Tirtol-Opposite Party No.6 under Section 25(1) of the Act for demarcation of land and delivery of possession to their Chaka as per Annexure-1 series within a period of four weeks hence, the same shall be considered in terms of Section 25 of the Act and action pursuant thereto shall be taken as expeditiously as possible preferably within a period of eight months (instead of months as provided) from the date of filing of such application along with certified copy of this order. The petitioners are directed to cooperate with the Tahasildar, Tirtol for demarcation and delivery of Chaka as per Annexure-1 series.

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

(K.R. Mohapatra)
Judge

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