

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5272 OF 2018

Pramod Kumar Sahoo and others* *Petitioners

Mr. D.K. Pradhan, Advocate

-versus-

***Harapriya Sahoo @ Hara Priya Sahoo* *Opp. Parties*
and others**

Mr. Goutam Mishra, Senior Advocate
along with Mr. Anupam Dash, Advocate
(For Opp. Party No.1)

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

**ORDER
15.03.2022**

Order No.

12. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 18th December, 2017 (Annexure-1) passed in Consolidation Revision No. 229 of 2014, whereby the Commissioner, Consolidation, Odisha, Cuttack-Opposite Party No.2 allowed the revision filed under Section 36 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Act') filed by Haripriya Sahoo @ Hara Priya Sahoo-Opposite Party No.1.
3. Relevant facts necessary for proper adjudication of the case are that Sabik Plot No.3164 to an extent of Ac.1.63 decimals under Sabik Khata No.462 of Mouza Gualsingh was recorded in the name of Sk. Muziulla and others. The recorded tenants of the said Sabik Khata sold the entire area to different persons. By virtue of Registered Sale Deed No.2298 dated 15th April, 1978, the Opposite Party No.1 purchased a part of Sabik Plot No.3164 measuring an area

of Ac.0.170 decimals, which corresponds to Hal Plot No.4097. The Opposite Party No.1 got the land mutated measuring an area of Ac.0.170 decimals in her name in Objection Case No.872 of 1985.

4. One Ajaya Sandha along with Bijaya Sandha had also purchased an area of Ac.0.17.4½ decimals vide RSD No. 5574 dated 23rd September, 1978 from the recorded tenants of the aforesaid Sabik Plot No.3164 which corresponds to Hal Plot No.4098. Bijaya Sandha alienated his eight annas interest in the property to Ajaya Sandha, his brother, vide RSD No.6731 dated 3rd December, 1979. Subsequently, Ajaya Sandha filed R.P. No.2993 of 2001 under Section 37(2) of the Act before the Director, Consolidation for recording his purchased area measuring Ac.0.17.4½ decimals in his name. The matter was remanded to the Consolidation Officer for adjudication. Upon receipt of the record, the Consolidation Officer initiated Remand Revision No.2993 of 2001 on his file.

5. Taking into consideration the materials on record, the Consolidation Officer vide his order dated 31st December, 2004 directed to record an area of Ac.0.160 decimals in Hal Plot No.4098. Challenging the same, Ajaya Sandha filed Appeal Case No.66 of 2005 under Section 12 of the Act before the Deputy Director, Consolidation, Kendrapara.

6. During pendency of the appeal, Ajaya Sandha alienated the land in Hal Plot No.4098 under Hal Khata No.1272 to one Jagar Sahoo (father of the Petitioner) vide RSD No.3076 dated 26th October, 2005. Upon purchase, said Jagar Sahoo moved the Director, Consolidation under Section 37(2) of the Act in R.P. No.4479 of 2005.

7. In the meantime, Appeal Case No.66 of 2005 was dismissed for default vide order dated 12th May, 2006. Neither any application

was filed to restore the appeal nor the order dated 12th May, 2006 was challenged in the higher forum. As such, the order dated 12th May, 2006 passed in Appeal Case No. 66 of 2005 attained its finality. Thereafter, the R.O.R. under Section 22(2) of the Act was published in respect of Plot No.4098 maintaining an area of Ac.0.160 decimals.

8. In the interregnum, the Revision Case No.4479 of 2005 filed by Jagar Sahoo, was remitted back to the Consolidation Officer vide order dated 26th May, 2007 (Annexure-2) passed by the Director, Consolidation. The Consolidation Officer accepting the Amin's report directed to record Hal Plot No.4098 in favour of Jagar Sahoo to an extent of Ac.0.160 decimals instead of Ac.0.17.4 ½ decimals. Being aggrieved by the order under Annexure-2, said Jagar Sahoo filed Appeal Case No.5 of 2008 before the Deputy Director, Consolidation, Kendrapara.

9. During pendency of the said appeal, said Jagar Sahoo also moved the Tahasildar for demarcation of Plot No. 4098. However, Deputy Director, Consolidation vide his order dated 30th November, 2010 remitted the matter back to the Consolidation Officer-cum-Additional Sub Collector, Kendrapara for fresh adjudication. The Consolidation Officer vide his order dated 4th July, 2013 (Annexure-3) directed to enhance the area in Hal Plot No.4098 from Ac.0.160 decimals to Ac.0.190 decimals, as against the claim of said Jagar Sahoo for enhancement of the area in Plot No.4098 to Ac.0.17.4 ½ decimals. At the same time, the Consolidation Officer reduced the area of Plot No.4097 of the Opposite Party No.1 from Ac.0.170 decimals to Ac.0.150 decimals.

10. Challenging the same, the Opposite Party No.1 preferred Appeal No.87 of 2013 before the Deputy Director, Consolidation, Kendrapara. The Appellate Authority vide his order dated 15th April,

2014 (Annexure-4) directed to enhance the area of Plot No.4097 from Ac.0.150 decimals to Ac.0.170 decimals without directing for correction of map of the plot numbers of the present Opposite Party No.1 and Jagar Sahoo. Assailing the same, the Opposite Party No.1 preferred Revision Case No.229 of 2014 before the Commissioner, Consolidation, Odisha, Cuttack- Opposite Party No.2, who by order dated 18th December, 2017 (Annexure-1) allowed the revision directing the Additional Sub Collector-cum-Tahasildar, Kendrapara to maintain the Hal R.O.R. and map in respect of Hal Plot No.4097 as Ac.0.170 decimals in favour of the Opposite Party No. 1 and Hal R.O.R. and map in respect of Hal Plot No.4098 as Ac.0.160 decimals in favour of Jagar Sahoo. Assailing the order under Annexure-1, this writ petition has been filed.

11. Mr. Pradhan, learned counsel for the Petitioner referring to the order passed by the Deputy Director, Consolidation, Kendrapara in Appeal No.87 of 2013 (Annexure-4) submits that admittedly, the total area of Sabik Plot No.3164 is Ac.1.63 decimals. The recorded tenants sold different parcels of land to different persons.

12. During consolidation operation, different Hal Plots have been created and recorded in different Khatas under different R.O.Rs. The Opposite Party No.1-Haripriya Sahoo had purchased an area of Ac. 0.170 decimals of land and the same was maintained in her name in Hal Plot No.4097 as she was in possession over the same. On the other hand, the father of the present Petitioners, namely, Jagar Sahoo had purchased an area of Ac.0.17.4 ½ decimals out of Hal Plot No.4098 and thereafter, an area of Ac.0.015 decimals from Hal Plot No.4099. As such, he is entitled to be recorded with an area of Ac. 0.190 decimals which is in his possession. Plot Nos. 4097, 4098 and 4099 are adjacent to each other.

13. Taking into consideration the materials available on record, the Consolidation Officer after verification of the records and conducting field enquiry by comparing Sabik and Hal map as well as R.O.Rs. prepared, reduced the area of Plot No.4097 from Ac.0.170 decimals to Ac.0.150 decimals as against the claim of Ac.0.170 decimals of the Opposite Party No.1. Since title is the basis of preparation of land records, reduction of area of said Jagar Sahoo in Plot No.4098 was not proper and genuine. Considering the same, the area of Plot No.4098 should be kept intact with an area of Ac.0.170 decimals. This fact was not taken into consideration by the Revisional Authority. Only taking into consideration that the sale deed of Opposite Party No.1, which was earlier to that of said Jagar Sahoo and that the purchaser cannot have better title as that of the vendor, passed the impugned order under Annexure-1, which is not sustainable in the eyes of law.

14. Mr. Mishra, learned Senior Advocate vehemently opposing the same submits that the Petitioner purchased the land from Ajaya Sandha. In Remand Revision Case No.2993 of 2001, a direction was issued to keep the area of Hal Plot No.4098 to be Ac.0.160 decimals. Although Ajaya Sandha assailed the said order in Appeal No.66 of 2005, the same was subsequently dismissed for default on 12th May, 2016. Neither any petition for restoration of the appeal was filed nor the said order was ever challenged in higher forum. Thus, the area of Plot No.4098 remained as Ac.0.160 decimals, which attained its finality. That being not challenged and that the Petitioner cannot have a better title than that of their vendor, the Commissioner appears to have not committed any error in passing the impugned order under Annexure-1. Hence, he prays for dismissal of the writ petition.

15. Taking into consideration the contentions of learned counsel for the parties and the facts discussed above, it is apparent that in Remand Revision Case No. 2993 of 2003, the Consolidation Officer directed to keep the area of Hal Plot No.4098 at Ac.0.160 decimals. Although the said order was challenged in Appeal No.66 of 2005 by Ajaya Sandha, the vendor of the present Petitioners, the said appeal was dismissed for default on 12th May, 2006. As such, the area of Plot No.4098 to an extent of Ac.0.160 decimals attained its finality. The father of the Petitioners having purchased the land during pendency of the Appeal No.66 of 2005 cannot have a better title than that of his vendor, namely, Ajaya Sandha.

16. The Commissioner taking into consideration the aforesaid facts and circumstances of the case directed to reduce the area of Plot No.4098 to Ac.0.160 decimals and to maintain the Hal R.O.R. area and map in respect of Hal Plot No.4097 as Ac.0.170 decimals. Thus, I find no infirmity in the impugned order under Annexure-1.

17. Accordingly, this writ petition being devoid of any merits stands dismissed. In the circumstance, there shall be no order as to costs.

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

(K.R. Mohapatra)
Judge

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