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W.P.(C). No.4602 of 2016

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Petitioner

Versus

...

Opposite Parties

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Mr.A.P.Bose, N.Hota, S.S.Routray,
V.Kar, D.J.Sahoo, S.S.Dash &
T.K.Ghose.

...

Mr. Sonak Mishra, Addl. Standing
Counsel.

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing:07.07.2022: Date of Judgment: 25.07.2022

Biswanath Rath, J. This writ petition involves a challenge to the quashing of orders under Annexures-1 and 2 and thereby affirming the order under Annexure-3.

2. Factual background involved in the case is that all the proceedings involved herein have been exercised by the competent authority under the provision of the Orissa Consolidation of

Holdings & Prevention of Fragmentation of Land Act, 1972 (for short "The Act, 1972"). These proceedings have also a bearing in the W.P.(C).Nos.4603, 4604, 4605, 4606 and 4608 all are of 2016 involving similar set of objection cases from very beginning. Fact reveals, initially 5 objection cases i.e. Objection Case Nos.2512, 1511, 2395, 2475 and 2629 all of 1981 were filed under Section 9 (3) of the Act, 1972 as seen from Annexure-2 involving the writ petition. Except one objection case i.e. Objection Case No.2395 filed by one Kasinath was partly allowed, all others were rejected. As a consequence of disposal of all 5 objection cases with allowing one objection case, 5 appeals under Section 12 of the Act, 1972 were filed. All the 4 appeals were allowed. This case however involves Appeal Case No.522 of 1981 arising out of Objection Case No.2511 of 1981 as appearing in Annexure-3 to the case at hand. Appeal vide Annexure-3 was allowed by judgment of the appellate authority also in a common judgment involving other 4 appeals i.e. Appeal Case Nos.522, 523, 524 and 525 again all are of 1981. One of the appeal being partly allowed against one of the objection case, as clearly borne in Annexure-3, judgment of appellate Court dated 30th January, it is reported that as a consequence of the same, there has been consequential preparation of record-of-right in favour of the petitioner herein. Consequential orders for correction in record-of-right were also passed in the other 4 items but the dispute involved in other 4 writs separately disposed of. It is pleaded that there has been no Revision against all these Appeal orders as provided under Section 36 of the Act, 1972. On the other hand almost after 13 years, 36 number of villagers filed one consolidation revision appears to be a Revision

under Section 37(1) of the Act, 1972 before the Commissioner, Consolidation, Bhubaneswar numbered as Revision Petition No.604 of 1995. It is stated here that there is one Revision involving all Appeal orders involving same prayer involving the properties involved in numbers of objection cases but, however, without assailing the Appeal orders already involved therein under Section 12 of the Act, 1972. The Revision was disposed of involving the petitioners in each of the writ petitions involved in each of the objection cases and appears to have been disposed of by the judgment of the Commissioner dated 14th July, 2015 vide Annexure-1 thereby setting aside all the Appeal orders and further also the order of the Consolidation Officer passed in the proceedings under Section 9 of the Act, 1972. In the disposal of the Revision, the Revisional authority directed all lands except Ac.0.26 decimals out of Ac.40.73 decimals shall stand recorded in the name of Government vide Annexure-1. This Court from the order-sheet finds on entertaining the writ petition, notice was issued to all the opposite parties including 36 villagers preferring the Revision. Even though notice has been served on each of them, none has appeared here to contest the proceeding. Thus, this matter is decided on contest of petitioner involving each writ petition and the State, who in an attempt defend the Revisional order. The Revisional order impugned herein has been assailed firstly on the ground of limitation for the Revision being filed after 13 years. Secondly on the premises that since the dispute has been settled under the provision of Section 12 of the Act, 1972, in absence of revision under Section 36 of the Act, 1972 a proceeding under Section 37 of the Act, 1972 was *per se* not maintainable, since it is

at the instance of private parties. Thirdly, the revisional authority failed in appreciating the case of occupiers on the basis of sale deed and there never exists a lease deed.

3. To support his case on the very grounds raised hereinabove, Mr.Bose, learned counsel appearing for the petitioner here also relies catena of decisions such as in the case of ***Bhramarbara Sahoo & Ors. Vs. State of Orissa, rep. thr. The Secretary, Revenue Office at Secretariat, Bhubaneswar & Ors,*** 2021 (II) OLR 1039, a judgment of this Court in the case of ***Ramgopal Khadiratna & another Vs. State of Orissa, represented through the Principal Secretary, Revenue Department & Others*** in W.P.(C).No.19172 of 2009 decided on 13.9.2019. Mr.Bose, learned counsel for the petitioner also relied on a decision of Hon'ble Apex Court in disposal of Appeal Case No.2464 of 2008 in the case of ***Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Ors.*** decided on 03.04.2008 and taken support the view thereof of the Hon'ble Apex Court in support of his claim on the Revision being barred by limitation. Written note is also filed on behalf of the petitioner to framework of the case history, grounds as well as the decision in his support. In the written notes, learned counsel for the petitioner also attempted to distinguish the citations at the instance of learned State Counsel.

4. In his opposition, Mr.Sonak Mishra, learned Additional Standing Counsel appearing for the State opposite parties while attempting to justify the revisional order took this Court to the provision at Section 37(1) of the Act, 1972 and attempted to explain that under the provision the Revisional authority has enormous power and such a proceeding can be initiated at any

stage of the matter and at any point of time. Further taking this Court to the discussions and findings of the Revisional authority, an attempt is also made to satisfy the Court that the Revisional authority since made an attempt to correct the irregularity, there is no harm in exercise of such jurisdiction as no illegality should be allowed to be perpetuated on the guise of technicalities. Taking this Court through a Division Bench decision of this Court in the case of ***Manas Ranjan Das And Ors. Vs. Consolidation Officer And Ors.*** Mr.Mishra, learned Additional Standing Counsel attempted to take support of the impugned order. An attempt is also made through the decision rendered in the case of ***Siba Muduli Vs. Director, Consolidation and Others.*** Mr.Mishra, learned Additional Standing Counsel taking help of the findings therein contended that the Division Bench held even proceeding initiated under Section 37 (2) of the Act, 1972 after 12 years permissible. It is finally under the premises that the proceeding involved an attempt of the petitioner to grab the Government land also a community land and further the impugned order involved the Revisional Authority was passed in complete compliance of the provisions of law guiding the field. Mr.Mishra, however has no dispute that the case decided by the Division Bench was a case under Section 37(2) of the Act, 1972 whereas the case at hand is under section 37(1) of the Act, 1972. Mr.Mishra, learned Additional Standing Counsel also contended that the Revisional authority was well justified in passing the order vide Annexure-1 and there is no need for interference in the same. Mr.Mishra, thus claimed that there is no need to interfere in the order vide Annexure-2. Mr.Mishra also in an attempt to justify the impugned

orders in his counter to the claim of the petitioner on the citations attempted to submit that the decision in the case of ***SantoshKumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale & Ors***, 2009 AIR SCW 6305 since stand on different footing has no application to the case at hand. Further, on the premises that for the clear pleading of the tribal people came to know about the order of the competent authority hardly in 1993 had no difficulty in filing the revision in 1995. In the above premises, Mr.Mishra, learned Additional Standing Counsel contended that there is no infirmity in the impugned orders nor there is any illegality in entertaining the Revision required to be interfered with.

5. Considering the rival contentions of the parties, this Court finds the moot questions required to be considered here are (i) In the existence of an order under Section 9(3) of the Act, 1972 reversed by Appellate Authority in exercise of power under Section 12 of the Act, 1972 if private parties aggrieved by such orders prefer Revision under Section 37(1) of the Act, 1972 in bypassing of the Revision under Section 36 of the Act, 1972?. (ii) Further the question required to be determined here is that the Revision under Section 37(1) of the Act, 1972 even though the provision at Section 37(1) of the Act, 1972 does not prescribe any time limit, if a Revision under Section 37 (1) of the Act, 1972 is entertained after 15 years?

6. It is needless to mention here that there has been divergent views expressed by different Single Benches of this Court. In some cases it is held that Revision of this nature for no time stipulation therein to be very much maintainable whereas in some case also held even there has been no time stipulation, yet the

Revision should be brought within reasonable time. One such matter was taken up in division Bench of this Court being referred by Single Bench to assess correctness between two judgments of this Court in the case of ***Abhaya Charan Mohanty Vs. State of Orissa***, 2003 Supp. OLR 882 and in the case of ***Bhagaban Jena Vs. State of Orissa***, (2007) 1 OLR 598. The Division Bench case taken help by learned State Counsel involved the case ***Siba Muduli Vs. Director, Consolidation & Ors.*** and referred to hereinabove in W.P.(C).No.3220 of 2019. This case involved purely a case applying or not applying the limitation to a Revision under Section 37 (2) of the Act, 1972. It be stated here that the Revision involved in W.P.(C).No.3220 of 2019 dealt by Division Bench in its judgment dated 07.10.2021 involved a Revision under Section 37(2) of the Act, 1972 whereas the case at hand involved a case under Section 37(1) of the Act, 1972. By the time, the order of the Division Bench came up on 7th October, 2021, this Court finds this High Court in a Single Bench in the case of ***Chaitanya Das(since dead) through L.Rs. Smt. Aladmani Das & others Vs. Bibhuti Charan Das & Ors.*** also dealt on same issue and in its judgment reported in (2017) 1 OLR 406 where this Court taking into account catena of decision including a decision of the Hon'ble Apex Court in ***Santosh Kumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale & Ors***, 2009 AIR SCW 6305, where the Hon'ble Apex Court dealing with a case if the statute is silent on the limitation aspect on Revision has come to hold that if time for preferring there is no prescription of time does not mean a Revision should come after unreasonable time. The Hon'ble Apex Court held to bring revision would be at least 3 years under

Sections 2, 5, 7 of Maharashtra Land Revenue Code_ and finally came to hold that exercise of Revisional power after lapse of 17 years cannot be construed to be a reasonable time.

7. Similarly, so far State relying on the decision in ***Siba Muduli Vs. Director, Consolidation & Ors.***, 2022 AIR CC 179, the Division Bench finally in paragraph-14 came to observe as follows:

“14. We further hasten to add here that this list is not exhaustive but is only illustrative. So, we answer the second point that “what is a reasonable time” in approaching the Court, is in fact a question of fact depending on the peculiar facts of each and every case and no strait jacket formula can be provided.”

This Court here observes even in the above case the question what should be the “reasonable time was left open to be considered. The question what should be reasonable time since already answered through Hon’ble Apex Court judgment in (2009) 9 SCC 352, the Division Bench though did not take the Supreme Court decision into consideration, in the circumstance it appears both the above decision rather supports the case of the petitioner in the case at hand and in no circumstance delay of fifteen years can be construed to be within reasonable time. This view of the High Court is also gets support through the case in between ***Kunvarjeet Singh Khandpur vs. Kirandeep Kaur & ors.*** decided on 03.04.2008 in Appeal (Civil) 2464 of 2008. Similarly the application of decision vide 1995 Sup. (3) SCC 249 as claimed by State is concerned, since the dispute involved a void order in the peculiar circumstance, the Hon’ble Apex Court after coming to observe the timing of noticing irregularity involving a void order came to observe delay does not come to play. This decision involves a different scenario, so not applying to the case at hand.

Considering the citation of the State through another Division Bench reported in 1999(1) OLR 649 to support its case, this Court finds Revision U/s. 37(1) of the Act, 1972 was filed by aggrieved party based on permission of this Court in disposal of OJC 390 /1984 in 1992 reported in 73 (1992) CLT 217 where High Court while quashing the order dated 30.03.1983 of the Commissioner however, observed since the party had not moved the Commissioner under Section 37 of the Act and in case they do so, the Commissioner will consider it on its own merit. As a consequence, a Revision under Section 37(1) was filed in 1995 (RC NO. KR 114/95) and was allowed on 18.10.1996. This Court here finds, the Revision under Section 37(1) of Act 1972 was filed in 1994 on being permitted by the High Court in the disposal of writ petition in 1992, thus there was no scope for getting into delay aspect, if any. Secondly, there was already exercise under Section 36 of the Act 1972 and even then the Division Bench in paragraph-9 of its judgment on entertainability of Revision came to observe “we may hasten to add that the Commissioner is not obliged to entertain all Revision under Section 37(1) of the Act. In a given case he may refuse to entertain such Revision but such order should be supported by valid reason. Further this view of the Division Bench again opposed to Hon’ble Apex Court judgment in (2009) 9 SCC 352, such decision cannot be applied any further.

8. This Court in the judgment in the case reported in 2017 (1) OLR 406 also referred to a Full Bench judgment of this Court in the case of **Laxminarayan Sahu Vs. State of Orissa**, 71 (1991) CLT 322 following a decision of the Hon’ble Apex Court in the case of **Mansram Vs. S.P.Pathak**, AIR 1983 SC 1239, this Court

dealing with a case of Revision entertained the revision under Section 19(2) of the O.L.R. Act also not providing time limit for preferring Revision came to hold even though there is no time stipulation in preferring a Revision under Section 19(2) of the OLR Act yet the Revision should have come within reasonable period of time. Similar observation is also made holding no Revision is entertainable after reasonable period of time also in exercise of power under Section 38-A of Odisha Estate Abolition Act. In the Full Bench, this Court finally came to hold that power of Revision under Section 12(3) of the O.P.L.E. Act could not have been invoked after 5 years. This Court in case of *Chaitanya Das Vs. Bibhuti Charan Das and others (supra)* also taken into account the case of ***Labanyabati Devi & Ors. Vs. Member, Board of Revenue 7 others***, a case under Section 37(B) of the O.L.R. Act reported in ***1993 (II) OLR 365***, this Court came to held that initiation of the proceeding against the petitioner therein after so much loss of time (12 years therein) remain unreasonable. It is in the support of the judgment referred to hereinabove, catena of other Single Bench judgments referred to hereinabove and on the decision of Hon'ble Apex Court referred to hereinabove, this Court deciding the case in *Chaitanya Das (supra)* dealing with the circumstances presently at hand held no Revision should have been entertained after 8 years of the order involved. This Court here finds in the proceeding before the Division Bench of this Court in the case of ***Siba Muduli Vs. Director, Consolidation & Ors. (supra)*** lost sight of all the above judgment. Further, the Division Bench in paragraph-14 finally answered on the question of limitation and observed what is the reasonable time in approaching the Court is

in fact a question of fact thus dependant on the peculiar facts of the each and every cases and no straight jacket formula can be provided. This Court also relies on the decision of the Hon'ble Apex Court in the case of ***Ajab Singh and Others Vs. Antram and Others, (2009) 11 Supreme Court Cases 53***, which also clearly support the view of this Court in the case at hand and opposes scope for consideration of such aspect through *Siba Muduli (supra)*. The case at hand also involved a serious question framed vide question No.1. In the process, this Court likes to take into account both the provisions under Section 36 and 37 (1) of Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, which are reproduced herein below:

“36. Revision-(1) The Consolidation Commissioner may, on an application by any person aggrieved by any decision of the Director of Consolidation within ninety days from the date of the decision, revise such decision and for the said purpose, he may call for and examine the records;

Provided that no such order shall be passed without giving the parties concerned a reasonable opportunity of being heard.

(2) All orders passed under this section shall be final and shall not be void in question in any Court of law.”

“37(1) The Consolidation Commissioner may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard make such order as he thinks fit.”

Reading both the provisions, this Court finds Section 36 makes a clear provision enabling the persons aggrieved by a decision of the Director, Consolidation prefer Revision but however within 90 days of such decision whereas Section 37(1) as taken note hereinabove gives a power to the Commissioner to suo motu take up a proceeding for the purpose of satisfying himself

under different headings mentioned herein. For the opinion of this Court once there is a clear statutory provision to challenge an order of the Director by the person aggrieved, looking to the cause title in the revision since it clearly disclosed that proceeding under Section 37(1) of the Act, 1972 was initiated by private personnel, for the opinion of this Court the proceeding under section 36 of the Act, 1972 would have been the right approach. In the event there was involvement of delay, nothing prevented such party for preferring revision under Section 36 of the Act, 1972 with an application for condonation of delay for consideration of the Revisional Authority. In no case a proceeding under Section 37(1) of the Act, 1972 would have been entertained in bypassing of clear statutory remedy of revision.

9. Considering the submission of Mr.Mishra, learned Additional Standing Counsel for ignoring the delay in preferring of Revision by the petitioners therein, this Court finds there involves a vital background in the case is that initially i.e. in the 1st stage there used to be a declaration and notification regarding consolidation in the particular area under the provisions of Section 3 of the Act, 1972. For the provision in Section 3 therein the Consolidation Officer shall cause public notice of the notification in the prescribed manner and the effect of notification the Consolidation area shall be deemed to be under Consolidation operation. Rule 4(3) of the Rules, 1973 if the notice is addressed to a number of persons or to persons in general, it shall be served in the manner prescribed for service of summons under the Code of Civil Procedure, 1908 or by proclamation and beat of drum and also by affixing a copy thereof in some conspicuous place in the village in

the presence of not less than two persons. Looking to the manner of notice indicated hereinabove, it is just difficult on one's part residing in same consolidation area to claim that he has no information of consolidation operation in his/their area. Further looking to the next stage of the matter, once there is preparation of statement of principles under Section 8 & 9 of the Act, 1972, there is publication of records and issue of extracts and notices containing relevant extracts from the land register, showing rights and interests of land owners in relation to the land, specific shares of individual land owners in joint holders were necessary to ensure proper consolidation and in the event there is multiple land owners notice shall be issued to land owners mentioned in the land register. It is needless to mention that the Consolidation proceedings involve a lot of involvement including area visit, area mapping in the involvement of local Amin and that too involvement of all interested in property under such consolidation. Since such action are very localised and when private Opposite Parties claim that they are in occupation of disputed land it is very difficult to appreciate their claim that they remain blind on the consolidation operation taking place involving such area/land. Further under Sub-section 3 of Section 9 there is scope for objection.

10. This Court here also takes note of Rule 19 dealing with manner of filing objection U/s.5(3), the Section 9 and dealings thereof which reads herein below :-

“ 19. Manner of filing objections under Sub-Section (3) of Section 9 or under Sub-Section (1) of Section 15.- (1) Objections, if any, to entry in or omission from land register and other records and the statement of principles shall be made in Form No. 6 and shall be received by the Assistant Consolidation Officer, and the objector shall, within such time as the Assistant Consolidation

Officer may direct, file as many copies of objections as may be necessary to be served on every person whose interest may, in the opinion of such officer, be affected.

(2) When an objection is received under Sub-rule (1), notice thereof in Form No. 7 along with a copy of the objection shall be served on every person whose interest may, in the opinion of the Assistant Consolidation Officer, be affected thereby and any such person and the objector shall be called upon to attend at such time and place, as the Assistant Consolidation Officer, in case of objections to be disposed of by him under Sub-Section (1) of Section 10, or the Consolidation Officer in case of objections to be disposed of under Section 11, as the case may be, may fix for disposal of such objection.

(3) On the date fixed for hearing of the objection or any other date to which the hearing may stand adjourned, the Assistant Consolidation Officer or the Consolidation Officer, as the case may be, shall, after making such enquiry as he considers necessary and after giving the parties present an opportunity of being heard, pass such orders as he may deem proper :

Provided that in deciding objections on the basis of conciliation, the Assistant Consolidation Officer shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee:

Provided further that while disposing of objections on valuation of land, houses, structures, trees, wells and other such improvements standing on land, the Consolidation Officer shall consult as many members of the Consolidation Committee as may be present in response to a notice to be issued to each of them for the purpose at least three days before the hearing of such objections.”

Here also this Court finds, the proceeding in considering the objection is at Section 9 stage also very cumbersome one and it is very difficult not to notice of such operation by a person so much interested in such land. In the particular scenario, there is no chance for occupiers to come to say that entire proceeding conducted behind such person(s).

11. In the circumstances, this Court finds there is strength in the submission of Mr.Bose, learned counsel appearing for the petitioner in his challenge to the Revisional order. This Court while answering both the question framed in favour of the petitioner and against opposite parties hold the Revision under

Section 37(1) of the Act, 1972 being entertained after at least 15 years further in available of a Revision under Section 36 of the Act, 1972, this Court declaring the order at Annexure-1 as bad, sets aside the same, as a consequence also sets aside the order at Annexure-2 thereby upholding the order of the appellate authority vide Annexure-3.

12. In the result, the writ petition succeeds. There is however no order as to cost.

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Biswanath Rath, J.

*Orissa High Court, Cuttack.
Dated the 25th day of July, 2022/SKS*

