

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9886 of 2003

***Krushna Chandra Meher and
others***

....

Petitioners

Mr. A. Mohanty, Advocate

-Versus-

***Joint Commissioner, Settlement
and Consolidation, Sambalpur
and others***

....

Opp. Parties

None

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK**

**ORDER
17.02.2022**

Order No.

R.K.Pattanaik, J

07. 1. The Petitioners have approached this Court by invoking its writ jurisdiction under Article(s) 226 and 227 of the Constitution of India assailing the legality and judicial propriety of the impugned order dated 5th April, 2003 (Annexure-1) passed in Consolidation Revision No.100 of 1989 filed under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (here-in-after referred to as 'the OCH&PFL Act') by the Joint Commissioner, Settlement and Consolidation, Sambalpur (O.P.No.1) on various grounds claiming it to be unsustainable in law and therefore, deserves to be quashed.

2. Heard Mr. A. Mohanty, learned counsel for the Petitioners, whereas, none appears for the Opposite Parties.

3. As per the Petitioners, (a) O.P.No.1 committed error in settling 50% of the disputed lands on the principle that settlement in favour of one of the co-sharers enures to the benefit of all which is without jurisdiction; (b) the so-called co-sharers as objectors had contested the proceeding under Section 8(3) of the Orissa Estate Abolition Act, 1951 (shortly as 'OEA Act') and it was rejected in OEA Case No.12 of 1974 (Annexure-2); (c) O.P.No.1 ignored the decision of the Civil Court in T.S. No.46 of 1989 (Annexure-3), wherein, their title was not disturbed which was again not challenged before any higher forum; and (d) the objectors did not question their non-inclusion in the Land Register under Section 9 of the OCH&PFL Act which also remained unaffected after a claim under Section 18(2) thereof was rejected by the Consolidation Officer under Annexure-4.

By raising the above grounds, the Petitioners apparently questioned the tenability of the impugned order under Annexure-1.

4. Mr. A. Mohanty, learned counsel for the Petitioners contended that in spite of the fact that the objectors' claim was rejected in OEA Case No.12 of 1974 and statutorily interest was settled under Section 8(3) of the OEA Act which stood unchallenged by any of the parties and the fact that the rayati

status was confirmed and the holding stood recorded vis-à-vis their vendor in the status of '*Kumbhari Maufi*' and subsequently, they having acquired the right, title and interest in respect of the subject in question duly settled during consolidation and ROR (Annexure-8) was prepared and published, the challenge to which under Section 18(2) of the OCH&PFL Act was unsuccessful and when the possession was declared in a proceeding under Section 145 Cr.P.C., in under such circumstances, ignoring overwhelming materials in that respect, O.P.No.1 could not have unsettled it under Annexure-1 by exercising the revisional power under Section 37 (1) of the OCH & PFL Act.

5. None represented O.P.Nos.3 to 6 who are the real contestants opposing the claim of the Petitioners.

6. The allotment of 50% share of the lands in favour of the objectors was allowed by O.P.No.1 and it was on the ground that the subject was solely recorded in favour of the vendor of the Petitioners which ought to have been in favour of all the co-sharers and therefore, settlement vide Annexure-2 was erroneous. No doubt, under Section 37(1) of the OCH&PFL Act, the Revisional Authority does have the power to exercise in order to satisfy itself as to the regularity of any proceeding or to the correctness of any order passed by any such authority. As to the present case, by exercising such jurisdiction, O.P.No.1 said to have made the necessary

correction as to the record of rights by providing 50% share in favour of objectors, whose interests are succeeded by O.P.Nos.3 to 6.

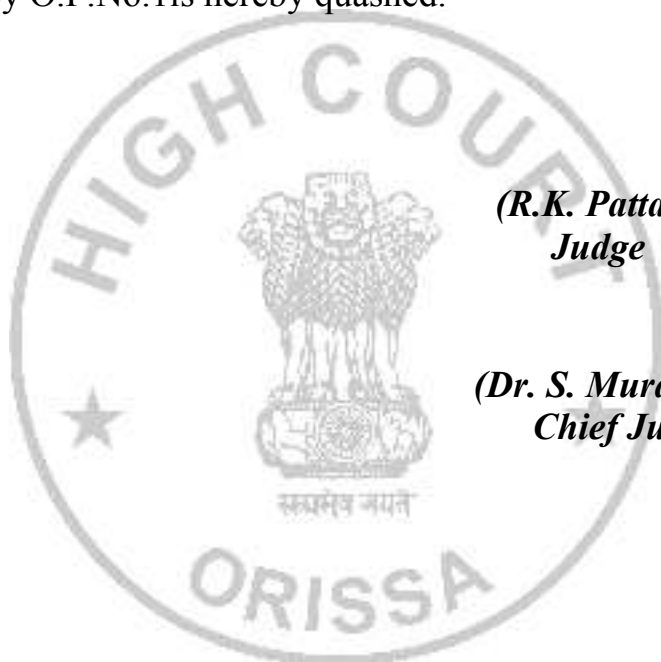
7. The Petitioners, as earlier mentioned, are the vendees having purchased the subject which was originally provided by the ex-Ruler in favour of one Uddhav Rana who had been bestowed with some lands for supplying earthen pots to the deities and the officers of the Ruler and a copy of the '*Bandobasti Jamanbandi*' (Annexure-5) has been produced to show that a personal grant was issued in his favour, the fact which is claimed to have been never challenged at any point of time and recording also continued in subsequent settlement recognizing the same. In fact, from Annexure-2 it is made to understand that the objectors had contested the rival claim in OEA Case No.12 of 1974 and it was rejected as the OEA authority held that the vendor of the Petitioners to be the service provider confirming the title in terms of Section 8(3) of the OEA Act and it remained unchallenged and thus, binding to the parties. Accordingly, as the Petitioners being the vendees mutated the lands in question and obtained record of rights (Annexure-6 series) and paid rents (Annexure-7 series). The aforesaid aspect seems to have been lost sight of by OP No.1 while unsettling the record of rights published during consolidation under Annexure-8. Furthermore, the objectors did not challenge the recording in terms of Section 9 of the OCH&PFL Act and as such, their claim stood barred under

Section 14 thereof. The challenge to the Petitioners claim before the consolidation authority yielded no result in a proceeding under Section 18(2) of the OCH&PFL Act and it was again ignored by OP No.1. Besides the above, a suit was instituted in T.S. No.46 of 1989 by the objectors in order to declare the findings and order of the O.E.A. Collector, Sonepur passed in OEA No.12 of 1974 as illegal and arbitrary but the same was dismissed after a detailed discussion of course with an observation that the Commissioner of Consolidation has the jurisdiction to take a call vis-à-vis right, title and interest in respect of the suit lands and simultaneously held the claim to be barred under Section 39 of the OEA Act.

8. Notwithstanding the above, when the settlement under the OEA Act could not be disturbed, rather, achieved its finality and the title was confirmed as per Section 8(3) of the OEA Act and thereafter, the objection during the settlement in a proceeding under Section 18(2) of the OCH & PFL Act met with no result, besides the end result in T.S. No.46 of 1989 and also ignoring the fact that in a proceeding under Section 145 Cr.P.C., the possession of the Petitioners was declared even in presence of the objectors by a final order dated 27th February, 1980, a certified copy of which is enclosed as Annexure-9 and the fact that such possession of the Petitioner No.1 was certified in Revenue Misc. Case No.101 of 1984 dated 8th May, 1984 (Annexure-10), OP No.1 ought not to have exercised revisional jurisdiction in order to unsettle the record

of rights, which in the considered view of this Court, was unwarranted and cannot, therefore, be sustained in law. In other words, the claim of the Petitioners vis-à-vis the subject must have to prevail and accordingly, it is ordered.

9. Resultantly, the writ petition stands allowed. As a necessary corollary, the impugned order dated 5th April, 2003 under Annexure-1 passed in Consolidation Revision No.100 of 1989 by O.P.No.1 is hereby quashed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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