

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.5928 of 2004

*An application under Article 226 & 227 of
the Constitution of India, 1950*

Sri Pramoda Kumar Bhadra

: Petitioner

-Versus-

Aman Charan Parida (dead)&Ors.

: Opposite Parties

For Petitioner

: Mr. M. Mohanty

For Opposite Party Nos.1(a) to 1 (c)

: Mr. R.N. Mohanty,
Advocate

For Opposite Party Nos.2 to 4

: Mr. U.K. Sahoo,
Addl. Standing Counsel

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 11.10.2022

1. This Writ Petition involves a challenge to the order dated 19.10.1995 passed by the learned Deputy Director, Consolidation of Holdings, Kendrapara in Appeal Case Nos.63/95 and 65/95 under the O.C.H & P.F.L. Act, 1972 vide Annexure-7.

2. Background involved in this case is that four parcels of properties were purchased under the registered sale deed at Annexure-1. It is on

commencement of consolidation operation in the particular area, the Petitioner being the purchaser of the property initiated the Objection Case No.4897 of 1985 and the private Opposite Parties also simultaneously initiated the Objection Case No.4950 of 1985. Undisputed fact remains; in respect of purchase of four parcels of land, three parchas were granted in respect of three properties involved but there is no grant of forth parcha as of now, though note of possession in respect of 4th property was maintained in favour of the Petitioner. Similarly the property involved in both the objection cases remains different. In the finality of both the proceedings together the Objection Case No.4897 of 1985 was allowed and there is dismissal of the Objection Case No.4950 of 1985. Two appeals were preferred. Both the appeals succeeded in reversal of the orders of the original authority, resulting filing of common revision. Finding appeals were disposed of in one common order the Revisional authority confirmed the orders in appeal. The order in appeal is at Annexure-7 and the order in Revision is at Annexure-8.

3. Mr. Mohanty, learned counsel for the Petitioner taking this Court to the admissions of the contestants in the Objection Case No.4950 of 1985 and party to object in Objection Case No.4897 of 1985 contended that there is clear admission by the private Opposite Parties in the Section 9(3) of the O.C.H. & P.F.L. Act proceeding that they have no objection in allowing the claim involving the Objection Case No.4897 of 1985 in favour of the Petitioner therein. Similarly memo has been filed in Objection Case No.4950 of 1985 at their instance, but however, mentioning that even though their claim does not belong to plot involved, but however, decision, as appropriate, may be passed. It is taking this Court to the documents at page 25 & 27 of the brief reading together with

the paragraphs at internal page 8 and running page 38 of the brief Mr. Mohanty, learned counsel for the Petitioner contended that the appellate Court has even failed to appreciate the existence of such admitted materials and passed appeal order in complete ignorance of clear admissions. The revision order is also challenged on the same premises.

4. In spite of appearance of a number of Counsels for the private Opposite Parties, nobody is present to contest the matter at the time of hearing today.

5. Mr. Sahoo, learned State Counsel, however, taking this Court to the reason assigned in the appeal order as well as in the revisional order attempted to support the view of the authorities and thus made a request to dismiss the Writ Petition. There is, however, no denial to the existence of the documents at page 25 & 26 of the brief as these two documents are filed by way of certified copy of the original applications issued by the competent authority.

6. Considering the rival contentions of the parties, this Court keeping in view the challenge to the order of the appellate authority as well as the order of the revisional authority particularly being passed in clear ignorance of the admission of both the Opposite Parties to the Objection Case No.4897 of 1985 & Objection Case No.4950 of 1985 and from the document at page 25 of the brief at Annexure-5 (series), this Court finds, this is a memo filed by the private Opposite Parties on 13.11.1990 in Objection Case No.4897 of 1985 clearly undertaking therein that they have no objection for recording of the land in favour of Sri Pramod Kumar Bhadra. Similarly so far as the memo in Objection Case No.4950 of 1985 as available at page 26 of the brief is concerned; this Court again finds, there is clear declaration of having no objection, in the event the property involved therein is recorded in the name of Sri Pramod Kumar

Bhadra-the Petitioner. It is, in view of the clear admission, this Court now proceeds to consider, if the appellant has resisted the appeal proceeding on this account or not.

7. On perusal of the appeal order at page 38 & 39 of the brief more particularly at internal page 8 & 9 therein, this Court finds, the counsel for the Respondents-the Present Petitioner has taken clear stand on admission of the private Opposite Parties being an impediment in maintainability of the appeal. On perusal of the entire appeal order this Court nowhere finds, the appellate authority has taken into account such aspect. For the opinion of this Court, once there is clear admission by the private Opposite Parties suggesting recording of the disputed plots in favour of the Petitioner, such admission binds all the parties in contest and there is no escape of the authority from such admission unless until such admission are taken away.

8. In the circumstance and as this Court finds, disposal of the appeals in clear ignorance of such admissions cannot sustain in the eye of law, this Court sets aside the appeal order at Annexure-7. As a consequence of non-consideration of the admitted materials available on record, the revisional order at Annexure-8 must also go. This Court at this stage of the matter even though finds a case for remand of the appeal for fresh disposal, however, taking into consideration the documents at Annexure-5 (series) this Court finds, no purpose will be served in remanding the matter for the existence of the documents at Annexure-5 (series). As a consequence this Court while allowing the Writ Petition also restores the order at Annexure-6 (series).

9. The Writ Petition succeeds. There is, however, no order as to the costs.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 11th day of October, 2022//
Ayaskanta Jena, Senior Stenographer

