

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.6551 of 2009

Premananda Lenka & Ors.

....

Petitioner(s)

Mr.U.K.Samal, Adv.

-versus-

*Commissioner, Consolidation &
Settlement Orissa & Ors.*

....

Opp.Party(s)

Mr.S.Ghose, AGA
Mr.A.K.Mohanty-A, Adv.

CORAM:

JUSTICE BISWANATH RATH

ORDER

08.12.2022

Order

No.

3.

1. Heard learned counsel appearing for the parties..
2. This writ petition involves a challenge to the order of the Revisional Authority in exercise of power under Section 37(1) of the O.C.H. & P.F.L. Act, 1972 vide Annexure-1. Mr.Samal, learned counsel appearing for the petitioners in reference to the submission in the writ petition disclosing that the objection case initiated under the provision of Section 9(3) of the O.C.H. & P.F.L. Act registered as Objection Case No.587/2708 did not involve the suit plot. It is through this pleading in the writ petition, an attempt is made to satisfy the case of the petitioner that there has been wrong consideration in the issue involved.
3. Mr.Ghose, learned Additional Government Advocate appearing for the State in his objection submits that looking to the plea of the petitioner before the competent authority in the exercise of proceeding under Section 37(1) of the Act, the petitioner is making out a different case in the writ petition, not being available for consideration of the Commissioner. Mr.Ghose, thus claims dismissal of the writ petition.
4. Considering the rival contentions of the parties and looking to the discussions on the case of the petitioner in the first paragraph of the impugned order dated 23.06.2008, this Court

finds the Revisional Authority has taken note of the case of the petitioner as follows:

“In Revision Case No.219/2006 filed U/s 37(1) of the OCH and PFL Act, 1972 (shortly called as the Act) relating to village Ayaba, P.S/Dist. Kendrapara, the petitioners Premananda Lenka and his two brothers have claimed to record hal suit plot no.1799 in hal Khata no.124 of village Ayaba in their names.

2.0. The learned counsel for the petitioners has contended that originally sabik plot no.1451 of village –Ayaba was belonged to Krushna Chandra Lenka the predecessor of the petitioners as per Yadasta No.1047. During preparation of land register sabik plot no.1415 has been recorded as plot no.1799 in favour of Krushna Lenka, Govinda Lenka and Madha Lenka vide L.R.khata No.225. The present petitioners are entitled to succeed the same property. The petitioners remained under the impression that final record of rights shall be prepared according to L.R. record. Final ROR has been published on 22.4.1993 and hal Khata no.124 has been prepared in favour of the petitioners but suit plot was found missing. The petitioners came to know that as per orders passed on 25.6.87 by the C.O. in Objection Case No.587/2708 suit plot has been recorded in favour of OP-1. This is an erroneous order. OP-1 has never filed objection but during hearing of objection case, order has been passed to delete the petitioners plot and record the same in favour of OP-1 behind the back of the petitioners and without their knowledge. Hence, the revision to delete the suit plot from Khata of O.P. and record the disputed plot no.1799 in final Khata No.124.”

5. Reading the plea of the petitioners in the proceeding under Section 37(1) of the O.C.H. & P.F.L. Act, 1972, this Court finds petitioners have a clear statement by way of claim petition under Section 37(1) of the Act in the involvement of the suit plot in Objection Case No.587/2798. It is at this stage, taking to the pleading in the writ petition claimed Objection Case No.587/2708 did not involve the suit plot, this Court has a clear view that petitioner is making a case through the writ petition other than his own case in the proceeding under Section 37(1) of the Act, which is not available for consideration of the authority exercising power under Section 37(1) of the Act.

6. In the circumstance, this Court finds no error in the impugned order. Petitioners, if suffered, for their own plea taken in the proceeding under Section 37(1) of the Act only. In the circumstances, this court finds no merit in the writ petition which is dismissed accordingly.

(Biswanath Rath)
Judge