

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 12362 OF 2022

Kapila Charan Pradhan and others* *Petitioners

Mr. S.P. Mishra, Senior Advocate
along with Mr. Soumya Mishra, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

18.05.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. The Petitioners in this writ petition seek to assail the order dated 30th March, 2022 (Annexure-23) passed by the Commissioner, Consolidation, Bhubaneswar in Revision Case No. 65 of 2021, whereby he dismissed the revision petition holding it to be not maintainable.
3. 3. Mr. Mishra, learned Senior Advocate appearing for the Petitioners submits that assailing the order dated 29th November, 2016 (Annexure-9) passed by the Additional Sub-Collector, Puri in Remand Revision Case No. 371 of 2015, the Petitioners preferred an appeal under Section 12 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act') in Appeal Case No. 9 of 2017. It is his submission that although the Deputy Director, Consolidation, Bhubaneswar vide order dated 16th April, 2021 (Annexure-10) allowed the appeal filed by the Petitioners and remitted the matter back to the Additional Sub-Collector, Puri for fresh adjudication, but the

Petitioners were deeply aggrieved by the observation made at Paragraph-5(a) of the said order, which reads as under:

“5(a). Reopen the case, implead the necessary parties including the raiyats declared as raiyat in OLR Case Nos.906/74 and 908/74 or if dead their legal heirs and the Tahasildar, Nimapara who represents the State. Hear them and ask them to identify the exact location of the land claimed by parties to the Amin deployed for the purpose with supporting documents and thereafter measure it in presence of the parties and check the correctness with the map.”

4. Accordingly, the Petitioners filed Revision Case No.65 of 2021 under Section 37(1) of the Act taking a specific ground at Ground No.II of the revision petition, which reads as follows:

“(ii). For that the observation made by the appellate court to reopen the O.L.R. case is not sound in law as the consolidation court has no right to sit upon the order passed by the O.L.R. court but it is the duty of the consolidation authority to honor the order passed by the O.L.R. court.”

5. The revisional court without answering the same erroneously held that since the order of the appellate court was passed in favour of the Petitioners, the revision is not maintainable. Hence, this writ petition has been filed.

6. Mr. Mishra, learned Senior Advocate appearing for the Petitioners further submits that the predecessors of the Petitioners have been declared as raiyats in OLR Case Nos. 906 and 908 of 1974. By virtue of the aforesaid observation, the Deputy Director, Consolidation, Bhubaneswar has effectively directed to reopen the aforesaid OLR Cases, which is not permissible under law. Although this aspect was specifically raised by the Petitioners in the revision petition, the same was not taken into consideration and the

impugned order under Annexure-23 has been passed. Hence, he prays for setting aside the impugned orders.

7. Mr. Mishra, learned Additional Government Advocate, on the other hand, submits that there is no ambiguity in the observation made at para-5(a) of the order under Annexure-10 passed by the Deputy Director, Consolidation, Bhubaneswar in Appeal Case No. 9 of 2017. In order to identify the exact location of the land claimed by the Petitioners, the Deputy Director, Consolidation, Bhubaneswar has directed to implead the raiyats as well as the Tahasildar, Nimapara as party to the remand revision case. As such, neither the Deputy Director, Consolidation, Bhubaneswar nor the Commissioner, Consolidation, Bhubaneswar has committed any error in passing the impugned orders under Annexure-10 and 23 respectively. He, therefore, submits that the Deputy Director, Consolidation, Bhubaneswar has never directed to reopen the OLR Case Nos.906 and 908 of 1974. Hence, he prays for dismissal of the writ petition.

8. Taking into consideration the submissions made by learned counsel for the parties and the observation made by the Deputy Director, Consolidation, Bhubaneswar in para-5 of the order under Annexure-10, I find that there is no ambiguity in the observation made at paragraph-5(a).

9. On a close reading of observations made in Paragraph-5 including Paragraph-5(a) of the order under Annexure-10, it is clear that the Deputy Director, Consolidation, Bhubaneswar has directed to reopen the remand revision case only. There is no direction to reopen the OLR Case Nos.906 and 908 of 1974. Hence, I find force in the submission of Mr. Mishra, learned Additional

Government Advocate. Accordingly, I find no infirmity in the impugned orders under Annexure-10 and 23.

10. The writ petition is, accordingly, dismissed.

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

(K.R. Mohapatra)
Judge

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