

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 21296 OF 2017

Bauribandhu Sahoo and others* *Petitioners

Mr. Sidhartha Mishra, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Arun Kumar Mishra,

Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.02.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 23rd August, 2017 (Annexure-9) passed by the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar in R.C. No. 73 of 2014.
3. The grievance of the Petitioners lies in a narrow compass. It is the submission of Mr. Mishra, learned counsel for the Petitioners that R.C. No.73 of 2014 was filed by the Petitioners under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act') to record the land in respect of Plot No.563 to an extent of Ac.0.040 decimals under Khata No.177 corresponding to L.R. Plot No.702/009, L.R. Khata No. 197 of mouza Athantara in the district of Khurda. Likewise, the Executive Engineer, Irrigation Department also filed a revision case under Section 37(1) of the Act to record the self-same land in the name of the Irrigation Department. The revision case was registered as R.C. No. 112 of 2013. By order dated 3rd May, 2017 in R.C. No. 73 of 2014, the Commissioner directed both the revision

cases to be heard analogously. In course of the proceeding, both the revision cases were posted on 23rd August, 2017, but due to unavoidable circumstances, the case was adjourned to 30th December, 2017. Similar order was also passed in the revision case (R.C. No. 112 of 2013) filed by the Executive Engineer, Irrigation Department. But, most astonishingly by tampering the order sheet, the matter was taken up for hearing and an order was passed in the matter on the very same day in a separate sheet.

4. Mr. Mishra, learned counsel for the Petitioners further submits that the order dated 23rd August, 2017 makes it clear that the said order was tampered and the revision cases were posted to the very same day for hearing and orders. He also annexed a copy of the notice affixed on the notice board dated 23rd August, 2017 (Annexure-7), which discloses that the revision cases posted for hearing on 23rd August, 2017 were posted to 30th December, 2017. It is his submission that although a tampering of the order sheet was made, but the same was done without any application of mind for which the said order does not make any sense. He also read out the order, which reads as follows:

“23.8.17 - Due to some unavoidable circumstances the case is posted to 23.08.2017 for hearing and orders. Order given in separate sheet.”

5. In view of such irregularities and tampering of the order sheet, the Petitioners could not get any opportunity of hearing in the matter and the impugned order under Annexure-9 has been passed.

6. Mr. Mishra, learned Additional Government Advocate, on instruction, submits that R.C. No.73 of 2014 does not relate to the Petitioners, it relates to one Anam Charan Behera and the revision

petition has already been disposed of since 12th February, 2015. However, it appears that two cases have been registered under the same revision case number. He, however, fairly concedes that the order dated 23rd August, 2017 has been tampered and by scoring through the date of adjournment, the matter was taken up for hearing and the impugned order under Annexure-9 has been passed. By tampering the order sheet, the revision cases were posted on the very same date i.e. on 23rd August, 2017, hearing was taken up and the order was passed on the very same day. He further submits that he cannot justify such tampering in the order sheet.

7. Mr. Mohapatra, learned counsel for the Opposite Party No.6 submits that the Opposite Party No.6 was not made a party to the revision petition although he has interest in the property in question.

8. Taking into consideration the submissions of learned counsel for the parties, this Court finds that tampering of the order sheet has been made, which is a serious matter. The Commissioner, Consolidation and Settlement appears to have signed the order. But, it is a matter of enquiry as to whether such tampering is made before or after the order dated 23rd August, 2017 was signed. But then, the final order was passed on the very same day. Hence, this Court is of the prima facie opinion that a serious irregularity has been committed by the officials of the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar, which requires enquiry and proper action against the erring officials.

9. In view of the submission made by learned counsel for the Petitioners, which could not be rebutted by learned Additional Government Advocate, this Court is of the considered view that the impugned order under Annexure-9 cannot sustain for a moment.

Accordingly, this Court has no hesitation to set aside the same. The matter is remitted back to the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar for fresh adjudication of R.C. No. 73 of 2014 and R.C. No.112 of 2013 analogously, giving opportunity of hearing to the parties concerned. The Opposite Party No.6, namely, Ajit Kumar Paikaray, should also be given an opportunity of hearing in the revision petitions.

10. While parting with the order, this Court directs the Principal Secretary, Revenue and Disaster Management Department, Bhubaneswar to look into the matter and direct for an enquiry for such serious irregularity in tampering the case records. Action should also be taken against the erring officials at once. However, for such enquiry, parties in the litigation should not suffer.

11. In order to avoid further delay in the matter, learned counsel for the parties are directed to appear before the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar on 14th March, 2022 along with certified copy of this order to receive further instruction in the matter.

12. With the aforesaid observation and direction, this writ petition is disposed of.

13. A free copy of this order be supplied to Mr. Mishra, learned Additional Government Advocate for being communicated to the Principal Secretary, Revenue and Disaster Management Department, Odisha, Bhubaneswar for necessary action.

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

(K.R. Mohapatra)
Judge