

THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.47 of 2009

Sri Barendra Das & others.....

Appellants

-Versus-

**Joint Commissioner,
Consolidation, Balasore & others.....**

Respondents

For the Appellants : **Mr. Pradipta Kumar Mohanty, Sr. Advocate**

For the Respondents : **Mr. S.S. Kanungo,
Additional Government Advocate
Mr. Soumya Mishra, Advocate**

CORAM:

**THE HONOURABLE SHRI JUSTICE S. TALAPATRA
THE HONOURABLE SHRI JUSTICE B. P. ROUTRAY**

सत्यमेव जयते

**JUDGMENT
23rd December, 2022**

S. Talapatra, J. This intra-court appeal is directed against the judgment dated 11.02.2008, delivered in O.J.C. No.3376 of 1998 dismissing the petition of the appellants observing that while exercising the supervisory jurisdiction, the Court cannot act as a Court of appeal. In the cases, where the error of law is apparent in the face of the records or where it appears that while recording the finding of fact, admissible

material evidence have been ignored or inadmissible evidence have been accepted, a writ of certiorari can be issued.

2. None of the aforesaid ingredients is satisfied in the case in hand. The conclusion arrived at by the succeeding revisional authority is on the basis of admissible facts and there is no error apparent in the face of the records. Consequently, learned Single Judge has declined to exercise its supervisory power, which has been invoked after a long delay.

3. It has been further observed in the said judgment dated 11.02.2008 that the appellants-the petitioners in O.J.C. No.3376 of 1998 had participated in the hearing of the revision and did not raise any objection before the revisional authority that he had no jurisdiction to hear the matter after the revision petition was disposed of.

4. It has been, therefore, observed that ***“all the parties were under the impression that the earlier order disposing of the revision on technical grounds are not on merit, had been recalled and the case was heard on merit, as in the meanwhile, the defect had been cured”***.

5. After *de novo* hearing, the Commissioner in Consolidation Revision Case No.438 of 1996 (arising from the case No.760 of 1996, as registered before the Consolidation Officer), has come to a categorical inference that as one road is existing and the same caters to the needs of the villagers, no further infra-road is necessary.

6. It has been observed in the judgment dated 11.02.2008 as challenged in this appeal that ***the said finding of fact is based on valid reasons and is supported by the decisions of 8 members (out of total 13 members) of the Village Consolidation Committee (VCC).***

7. According to the learned Single Judge, who passed the judgment dated 11.02.2008, except the appellants, other villagers, who were impleaded as the opposite parties, objected to construction of another infra-road over Plots No.541, 543 & 882/1014, as referred to, belonging to one Kartik Parasad Jena, the respondent No.4 in this appeal. On assigning those reasons, learned Single Judge dismissed the petition of the appellants by the impugned judgment.

8. For the purpose of appreciating the challenge, we need to introduce the essential facts briefly at the outset.

9. The appellants No.1 to 6 and the deceased father of the appellants No.7(a), 7(b), 7(c) & 7(d) filed the Original Objection Case bearing No.760 of 1993 where the order dated 21.10.1994 was passed by the Consolidation Officer, Basta recommending a new infra village road over the Plots No.543, 541, 882/1014, hereinafter would be referred to as the proceeding land. The said order of the Consolidation Officer, Basta is quite elaborate.

10. The Consolidation Officer considered three issues for adjudicating the objection, those are:

(I) Whether the alleged road is badly necessary for the villagers to carry on their day-to-day business more conveniently than the other road existing in the village and will it be the shortest one ?

(II) Whether the alleged road over the suit plot will cause irreparable loss to the defendant No.1 (*the Respondent No.4 herein*) ?

(III) Whether any provision of Act, Rule or Manual of consolidation provides adequate scope to adjudicate and to decide the matter in absence of consent of the land owner ?

11. On due field enquiry, the Consolidation Officer prepared the inquiry memorandum dated 05.09.1994. On the basis of the said enquiry memorandum, he came to the conclusion that the infra village road will be the shortest and convenient to the villagers.

12. In answer to the issue No.2, it has been observed by the Consolidation Officer that the land required for the proposed road can be collected from the land owners by raising contribution as required under Section-8(2)(6) of the Odisha Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972 (OCH & PFL), hereinafter referred to as the Act.

13. It has been observed further by the Consolidation Officer that the land owner, the respondent No.4 herein, is one of the big land holders of the village and he is well placed and hence, a piece of land he can part with for the benefit of the villagers. It has also been observed that there is adequate provision for compensation for the losses suffered for reservation of the land.

14. It may be noted that Section-8 of the Act deals with the statement laying down the principles, the details of the land and redress for its collateral damages in the event of reserving the land for any public purpose. There cannot be any amount of doubt that the statement of principle is approved by the Consolidation Officer with such modification as deems necessary.

15. While answering to the issue no.3, the Consolidation Officer has observed that one document has been filed by the petitioner (the appellant herein) wherefrom it can be gathered that 9 members of the VCC requested the Assistant Consolidation Officer for alignment of the new infra road. He has casually mentioned that there were dissenting views, but finally based only on his field enquiry memorandum, he came to the finding that the majority of the VCC members and the land owners had opined for alignment of infra village road.

16. The Consolidation Officer has observed that considering the necessity of an infra village road connecting the main PWD road for

the villagers of Kalanda as a whole, the order of the Assistant Consolidation Officer may be modified for the purpose of reserving/acquiring the proceeding land from the land owners. The contribution for the public purpose and the quantum of contribution in the S.O.P. thus was ordered to be modified. Against the said order dated 21.10.1994, a statutory appeal under Section-12 of the said Act was preferred by the respondent No.4 being Appeal Case No.23 of 94(S) before the Deputy Director, Consolidation of Holdings, Balasore.

17. All the issues were revisited in the appeal and after consideration of the relevant records, it has been observed as follows:

“From the arguments of the parties, it is established that there is a conflict between the villagers for construction of an infra-village road from Kalanda to Irda for quite a long time. Under consolidation scheme, as per Section-8(1)(a) of the Act read with Rule-17(1) of the Rules, land may be reserved for public purposes. As per paragraph-156 of the Orissa Consolidation Manual Vol.I, the width of a village road may be between 12 ft. to 15 ft. The Consolidation Officer, Basta has ordered to reserve land for construction of the proposed infra-village road with a width of 20 links which confirms to the instructions laid down in O.C.M. Vol.I. He has also ordered to

compensate the affected land owner from the contribution by the other land owners for this purpose. As per the provisions contained in Section-8(3) of the Act, the S.O.P. in respect of a village is approved by the C.O.”

18. With the modification as noted above, the Consolidation Officer, Basta had conducted the field enquiry, consulted the Village Consolidation Committee (VCC) members and the land owners of the village and after that he came to the conclusion that the proposed infra-village road was in the best interest of the villagers.

19. The appellant had argued that the majority of the VCC members did not agree for the proposed infra-village road, but the Consolidation Officer, Basta has found during enquiry that majority Village Consolidation Committee members and the land owners favoured the road. From this, we may observe that the VCC members are changing their opinions frequently. The most important consideration that had been taken is that whether the proposed infra-village road is beneficial to the villagers. In the conflict between the individual interest and the community interest, it is observed that the community interest takes precedence. At the same time, it is to be seen that the individual interest is not ignored. In the appeal, it has been further observed that the appellant [the respondent No.4] will get compensation for loss of his land that would be reserved for the

proposed road. The road will be constructed from the contribution of the land owners of the village during the preparation of P.C.S., as ordered by the Consolidation Officer, Basta in the objection case. The land will not be taken away from the appellant without compensation. He will get compensation of equal value for his loss during preparation of P.C.S. The other grievance of the appellant that the proposed village road would create water-logging in his plots was found not convincing as that can be taken care of by constructing field drainage channels or culvert on the road. Moreover, the appellant has not raised this point in the lower court.

In view of the above discussion, the appellate authority held that no compelling reasons have surfaced to interfere with the orders of the lower court. Hence, the appeal was dismissed and the order of the lower court was affirmed.

20. But the said order dated 31.08.1996 by which the appeal filed by the respondent No.4 was dismissed was challenged by the respondent No.4 by preferring a revision, being Consolidation Revision Case No.430 of 1996 under Section-36 of the Act. The said revision was also dismissed by the Judgment dated 31.12.1996 by the Joint Commissioner, Bhubaneswar.

21. While dismissing the revision, it had been observed *inter alia* that absence of the necessary parties in the appeal was relevant. But

when the appellant failed to implead relevant parties, then he was not supposed to take the advantage of non-impleadment in the revision.

22. Be that as it may, the respondent No.4 filed an application before the Joint Commissioner, Settlement and Consolidation, Bhubaneswar, being Misc. Case No.45 of 1995 in Consolidation Revision Case No.438 of 1996 after its disposal for recalling the order dated 31.12.1996, as delivered in Consolidation Revision Case No.438 of 1996.

23. The successor Joint Commissioner, Settlement and Consolidation, Bhubaneswar issued notice and finally, by the order dated 08.08.1997, the prayer for impleadment was allowed. Thereafter, the revision was re-heard. It has been observed in the judgment dated 31.12.1997 which was passed on recall that the proceeding land belonging to the respondent No.4 herein (the revision petitioner) is a compact and contiguous area measuring 12.00 acre over which there are houses, shallow tube well points and big trees etc. Keeping in view of the compactness of the area, the petitioner had claimed before the consolidation authorities to convert the land as non-consolidable by nature vide the objection case bearing No.697/93 which was, as stated, disallowed by the Consolidation Officer. In another case filed by the appellants herein being Case No.760/93 before the Consolidation Officer, the Consolidation Officer had ordered to provide a new infra

village road over the proceeding land. Conspectus of facts has been noted briefly in the said order.

24. Having referred to the field enquiry memorandum, the Joint Commissioner, Settlement and Consolidation, Bhubaneswar observed that there is no unanimous opinion to have an infra-village road over the proceeding plots. That aspect was slighted by the Consolidation Officer. Finally, it has been observed by the Joint Commissioner thus:

“If the said road will be constructed over the suit land, it will go against the settled principles of law under Section-16(5) of the Act. Secondly, when there is existing road, there is no need of another road. Further 8 out of 13 existing VCC members also opined not to provide a new infra road over the suit plot. A link road has already been provided by the father of the petitioner (respondent No.4) over the Plots No.543 & 544 and the villagers are using this road since 1994.”

It has been also observed that the aims and objects of the Act are consolidation of compact and contiguous areas. It (the Act) is against the fragmentation of holdings. This is the cardinal principle of consolidation. Thus, the order dated 31.08.1996 passed in the appeal was interfered with and set-aside with observation that the link road

provided by the father of the petitioner over L.R. Plots No.543 & 544 (350 links length and 20 links width) may be reserved in the S.O.P. as 'Rasta' for public purpose. The said order as passed in the Consolidation Revision Case No.438 of 1996 has been challenged in O.J.C. No.3376 of 1996 [under Article-226 & 227 of the Constitution of India].

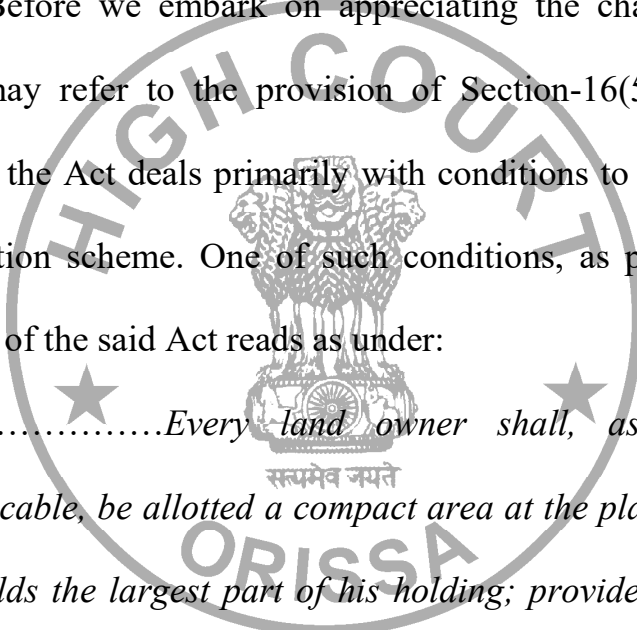
25. The appellants herein has challenged the said revisional order primarily on two grounds viz. **(a)** the order of recall was completely illegal, as the succeeding Joint Commissioner cannot recall the order in as much as to recall the order, any authority has to exercise the power of review. The power of review cannot be taken up by invoking the provisions of Section 151 of the C.P.C. The said provision also cannot be availed by the Joint Commissioner for Consolidation and Holding and as such, the order of recall as mentioned above, is to be set-aside; **(b)** It has been contended that against the fact finding of the Consolidation Officer and the appellate authority, the revisional authority ought not have visited the facts afresh for coming to a different conclusion.

26. By the impugned order, the learned Single Judge has discarded the pleas on assigning the reasons as quoted above. At the cost of repetition, we would reiterate that, as the appellants did not raise any objection and participated in the hearing, they cannot be allowed to

do a turn around after their cause has been rejected by the revisional authority.

27. That apart, it has been held that the opinion of the majority of the members of the VCC has to be given due consideration, as the consultation with the Consolidation Committee is mandatory in terms of the provisions of Section-8(1) of the Act. This is not a mere window-dressing.

28. Before we embark on appreciating the challenge in this appeal, we may refer to the provision of Section-16(5) of the Act. Section-16 of the Act deals primarily with conditions to be fulfilled by the consolidation scheme. One of such conditions, as provided under Section-16(5) of the said Act reads as under:



.....Every land owner shall, as far as practicable, be allotted a compact area at the place where he holds the largest part of his holding; provided that no land-owner shall be allotted more than three "Chakas" in any unit.

An explanation is provided below the said sub-section. We reproduce the same below:

Explanation—For the purposes of this clause, the expression "land-owner" shall not include-

*(a) a land-holder in respect of lands held by raiyats
or service tenure-holders under him, and*

(b) a tenant-

The revisional authority, having referred to the aims and object, observed that the consolidation is to maintain more compact and contiguous area against the fragmentation of holding.

29. Mr. Mohanty, learned Senior Counsel appearing for the appellants has quite succinctly submitted that the learned Single Judge has returned perverse finding, as he has failed to appreciate that the Joint Commissioner, who has passed the order dated 31.12.1996 reviewed the order dated 31.12.1996 passed by his predecessor Joint Commissioner without any authority of law vested in him.

30. There is no provision under the Act for review of the order except Section-48 of the Act. Section-48 of the Act provides only for correction of clerical and arithmetical mistakes.

31. For the purpose of reference, Section-48 is reproduced hereunder:

*“48. Correction of clerical and arithmetical mistake –
Notwithstanding anything contained in any law for the
time being in force, if at any time before the issue of a
notification under Section 41 of the Consolidation Officer
or Assistant Consolidation Officer is satisfied that a*

clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provision of this Act, he shall, either on his own motion or on the application of any person interested correct the same after giving to the parties concerned a reasonable opportunity of being heard”.

32. Mr. Mohanty, learned Senior Counsel for the appellants has rightly contended that the power to correct clerical or arithmetical mistake does not confer the power to recall the order considering error and to set-aside the same. There is no dispute that there is no power of review in the Act and it is well settled that the quasi-judicial authority cannot review its own order unless the power of review is expressly conferred on it by the relevant statute.

33. In this regard, reference has been made to **Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (UP) & others: AIR 1987 SC 2186**. The following passages from the said judgment are extracted for reference:

11. It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an

order of dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The said order of the Vice-Chancellor dated March 7, 1987 was nullity.

12. The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Sec. 68 of the U.P. State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 of the

Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Art. 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant under Sec. 68 of the U.P. State Universities Act.”

34. Mr. Mohanty, learned Senior Counsel has not failed to point out that the Misc. Petition that was filed after the revision petition was disposed had primarily brought amendment in the original revision petition by impletion of the parties. Even though the said petition was not for recalling the order, fresh notice was issued on the impleaded parties and thereafter, the order dated 31.12.1996 was wholly recalled and substituted by the new order dated 31.12.1997.

35. According to Mr. Mohanty, learned Senior Counsel, when the question arises as to the jurisdiction, it is immaterial whether any objection was raised at the appropriate time or not. If we have correctly

understood the submission of Mr. Mohanty, learned Senior Counsel, his contention is that, mere participation in the proceeding cannot operate as estoppel in questioning the order of recall in the context like the present one. Estoppel cannot operate against law. He has also stated that there is no infirmity in the order dated 31.12.1996. That order dated 31.12.1996 could not have been interfered on merit.

36. No court can wield the review jurisdiction unless that is conferred by the statute. Even the review jurisdiction cannot be invoked in a regular manner. It can only be invoked in the exceptional cases, when the mistake committed by the Court is gravely palpable and if the same is left without remedy, would cause substantial injury.

37. Mr. Mohanty, learned Senior Counsel has made a reference to **S.K. Jawahar vs. State of Odisha and others: 2015 (ii) OLR 697** where this Court has laid down the principle that the power to recall is not available, if not conferred by the statute. If some of the parties are not impleaded or ignored and the order is passed all the time that will not be liable to be revisited. Only in the case of serious prejudice or grave injury, the Court may exercise the jurisdiction of that nature. According to Mr. Mohanty, learned Senior Counsel, the impugned judgment is liable to be set-aside and as consequence thereof, the judgment dated 31.12.1997 as delivered by recalling the earlier

judgment dated 31.12.1996 is to be set-aside and the judgment dated 31.12.1996 needs be restored.

38. Mr. S.S. Kanungo, learned Addl. Government Advocate has, in support of the judgment, stated that when the necessary parties are not impleaded, failure of justice is deducible.

39. That apart, the power of revision as available under Section-36 of the said Act is quite differently contoured. For the purpose of reference, let us reproduce the provision of Section-36 of the Act.

“36. Revision – (1) The Consolidation Officer may, on an application by any person aggrieved by any decision of the Director of Consolidation within ninety days from the date of the decision, revise such decision and for the said purpose, he may call for and examine the records:

Provided that no such order shall be passed without giving the parties concerned a reasonable opportunity of being heard.

(2) All orders passed under this section shall be final and shall not be void in question in any Court of law.”

40. Mr. Kanungo, learned Addl. Government Advocate has, having reference to Section-36 of the Act, contended that providing adequate and reasonable opportunity to the necessary parties is *sine qua*

non. As the statutory authority is bound by the fundamental principles of justice, the succeeding revisional authority has only extricated *fraud* and hence, such order cannot be termed as illegal.

41. That apart, it has been contended by Mr. Kanungo, learned Addl. Government Advocate that the primary object of the Act as reflected in Section-16(5) cannot be overlooked or by-passed by any Consolidation Officer. The Consolidation Officer, in the case in hand, has overlooked the aspect of fragmentation which the respondent No.4 is apprehensive of. As such, the order dated 31.12.1997 passed by the revisional authority recalling its earlier order dated 31.12.1996 cannot be stated to have caused failure of justice.

42. Mr. Kanungo, learned Addl. Government Advocate has further submitted that while exercising the supervisory power under Article-227 of the Constitution of India, the High Court should not act as an appellate court on Tribunal. It will not review or re-weigh the evidence as recorded by the court below or the tribunal. It purports to see whether there was any failure of justice.

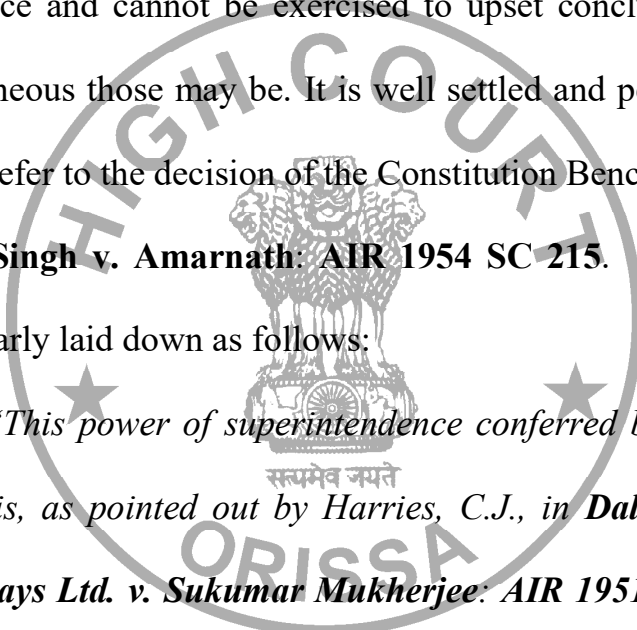
43. Primarily, what has to be examined is that whether there is any material irregularity or illegality in exercising the jurisdiction or whether the process had been carried out in tune with the principles of natural justice or whether the procedure adopted by it is in consonance with the procedure established by the law.

44. Reference has been made to **Mohd. Yunus vs. Mohd. Mustaquim & others: (1983) 4 SCC 566** where it has been observed by the apex court as follows:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

45. Mr. Kanungo, learned Addl. Government Advocate has further contended that the power under Article 227 is that of the judicial

superintendence and cannot be extended beyond its jurisdictional limit. Mr. Kanungo, learned Addl. Government Advocate appearing for the opposite parties No.1 to 3 has placed his reliance on **M/s. India Pipe Fitting Co. vs. Fakruddin M. A. Baker and another: (1977) 4 SCC 587** where it has been succinctly observed that the power under Article 227 of the Constitution is not unbridled power. It is regulated by circumspection. The power under Article 227 is one of the judicial superintendence and cannot be exercised to upset conclusion of facts, however erroneous those may be. It is well settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in **Waryam Singh v. Amarnath: AIR 1954 SC 215**. The principles have been clearly laid down as follows:


 “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in **Dalmia Jain Airways Ltd. v. Sukumar Mukherjee: AIR 1951 Cal 193** to be exercised most sparingly and only in appropriate cases in order to keep the sub-ordinate Courts within the bounds of their authority and not for correcting mere errors.”

[Emphasis added]

46. Having appreciated the submissions of the counsel appearing for the parties and scrutinized the records and also considering the decision as relied by the counsel for the appellants viz.

State of Punjab vs. Gurdev Singh: (1991) 4 SCC 1, State of Kerala vs. M.K. Kunhikannan Nambiar Manjerimanikoth, (1996) 1 SCC 435, Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.: (1996): 5 SCC 550 and Inderjit Singh Grewal vs. State of Punjab & another: (2011) 12 SCC 588, we find that the process of recalling is quite unique, in as much as there was no formal application for recalling the order. The change has been introduced only by the petition for impletion of the necessary parties.

47. Having scrutinized the records, we have witnessed that due notice was issued on the parties before the amendment for the purpose of impletion was allowed and thereafter *de novo* hearing took place. No challenge was made against the impleadment, as stated.

48. According to Mr. Mohanty, learned Senior Counsel, this is nothing sort of exercising the power under the review jurisdiction in disguise, and as such, the order/s passed by the Joint Commissioner, Consolidation and Holdings posterior to the Judgment dated 31.12.1996 is illegal, being passed without jurisdiction.

49. According to Mr. Mohanty, learned Senior Counsel, the orders of the Consolidation Officer and the appellate authority are concurrent in nature. The revisional authority by the order dated 31.12.1996 did not interfere in the finding. The revisional authority by the said order dated 31.12.1996 had affirmed the order of the

Consolidation Officer and the appellate authority. But what is noticeable that the aspect of fragmentation in view of Section-16(5) of the Act was not at all considered in the judgment dated 31.12.1996. The members of Village Consolidation Committee, who are indubitably the necessary parties, were not brought on records. The finding relating to their opinion was not legally scrutinized. This suppression initiates the proceeding.

50. Substantively we agree with the contention of Mr. Mohanty, learned Senior Counsel that for all purposes, the succeeding Joint Commissioner, Consolidation & Holdings, Bhubaneswar cannot exercise the power of review, but in view of Section-36 of the Act, non-impleadment may amount to fraud. Such fraud has been implied by the succeeding revisional authority.

51. We have already reproduced the provisions of Section-36 in respect of exercising the power of revision. From the provisions, it transpires that the revisional jurisdiction is wide and expandable and is unlike the usual law of revision.

52. We do not find that the order dated 31.12.1997 has caused any miscarriage of justice. Moreover, the superintending power as conferred by Article-227 of the Constitution may extend to examination of the records of the proceeding as a whole. If failure of justice is noticed, that can be cured without reference to any order whether that is

challenged or not challenged. On such examination, the High Court may pass any appropriate order, even the order of affirmation.

53. We do not propose to hold that exercise of the jurisdiction was legally tenable. Jurisdiction under Article-227 of the Constitution is a wide supervisory jurisdiction. As there had been no consideration of fragmentation of land, the order dated 31.12.1996, *ex facie* has caused failure of justice. The mandate of law vis-à-vis Section-16(5) of the Act has been totally ignored. But that aspect was considered in the subsequent order dated 31.12.1997.

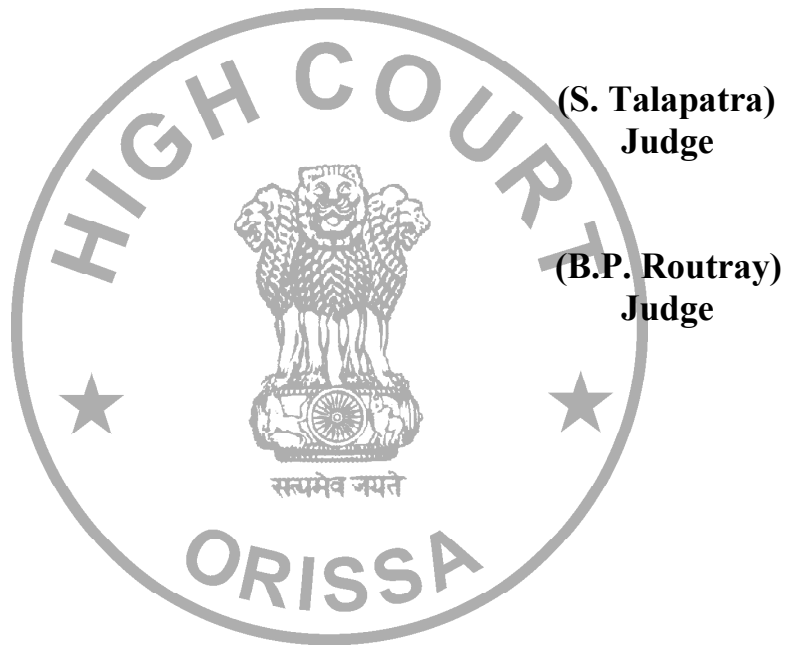
54. Hence, we are not inclined to interfere with the impugned order dated 11.02.2009, delivered in O.J.C. No.3376 of 1998 affirming the said judgment dated 31.12.1997.

55. That apart, we are constrained to observe that from reading of the judgment dated 11.02.2009, we are totally satisfied that the learned Single Judge has exercised the jurisdiction only under Article-227 of the Constitution of India, as apparent from his judgment. Any order or judgment passed under Article-227 is not amenable to intra Court appeal and hence, this appeal ought to have been dismissed at the threshold.

56. We are constrained to observe further that a practice has developed - While filing the petition, it is written casually *under Article 226/227 of the Constitution of India*. These Articles attract two distinct

jurisdictions. There may be some overlapping area. But those cannot be invoked simultaneously in as much as Article-227 of the Constitution is exclusively the supervisory or superintending jurisdiction, whereas Article-226 is exclusive jurisdiction for judicial review. This practice should come to an end.

57. Having observed thus, this Writ Appeal stands dismissed. However, in the circumstances, there will be no order as to cost.



Orissa High Court, Cuttack.
The 23rd December, 2022/Subhasis Mohanty, P.A.



