

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.4711 OF 2016

A F R

Debendra Prasad Nayak & ors.

....

Petitioners

Mr.S.S.Rao, Sr.Adv.

-versus-

**Commissioner, Consolidation, BBSR
& ors.**

....

Opposite Party(s)

Mr.S.Mishra, ASC
Mr.D.Tripathy, ADV.
Mr.B.Baug, Adv.

CORAM:

JUSTICE BISWANATH RATH

ORDER

13.7.2022

Order

No.

8.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the impugned order at Annexure-10 passed by the Revisional Authority in exercise of power under Section 36 of the OCH & PFL Act, 1972.
3. Taking this Court to the background of the case, Mr.S.S.Rao, learned senior counsel for the Petitioners contended that the Revision emanated from a proceeding under Section 9 of the OCH & PFL Act, 1972 was rejected and the Appeal proceeding under Section 12 of the OCH & PFL Act, 1972 being allowed, the private O.Ps. herein went in Revision. It is alleged, since the Revision was under Section 36 of the OCH & PFL Act, 1972, consideration involved therein should have been intra-Parties but it appears here the Revisional Authority while deciding the contest of the Parties

involved therein has made out a third case and while rejecting the Revision, has directed for recording the land involved in the name of the Government. It is in the premises, Mr.Rao, learned counsel for the Petitioners sought for interference in the impugned order and setting aside the same.

4. In his opposition, Mr.S.Mishra, learned Additional Standing Counsel for O.P.1 taking this Court to the findings of the Revisional Authority through Paragraph-9 submitted, the ultimate direction of the Commissioner is based on his conclusion came through Paragraph-9 and for the Revisional Authority having a wider power has passed the order remaining within his jurisdiction. In the circumstance, Mr.Mishra, learned Additional Standing Counsel defended the impugned order and sought for dismissal of the Writ Petition. There is, however, no dispute by the learned State Counsel that power of the competent authority under Sections 36 & 37 of the Act is quite distinguishable.

5. There is also appearance for the private O.Ps. where learned counsel appearing for them toed the submission of Mr.S.S.Rao, learned senior counsel for the Petitioners.

6. Considering the rival contentions of the Parties, this Court finds, there is no denial by the Parties involved that the Revision exercise was undertaken by the Commissioner under the provision

of Section 36 of the OCH & PFL Act, 1972. For relevancy of the provision at Sections 36 & 37 of the OCH & PFL Act, 1972, this Court takes note of both the provisions, which read as follows :-

“36.Revision- (1) The Consolidation Commissioner 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 an examine the records.

37. Power to call for records- (1) The Consolidation Commissioner may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard make such order as he things fit.

(2) The power under Sub-Section (1) may be exercised by the Director of Consolidation in respect of authorities subordinate to him.”

Reading through the provision at Section 36 of the OCH & PFL Act, 1972, this Court finds, the proceeding under Section 36 of the Act is an intra-party dispute. It is up to the Revisional Authority based on its own conclusion either to allow the Revision or dismiss the same but in no circumstance, the Commissioner can exercise its power available under Section 37 of the OCH & PFL Act, 1972 while conducting a case under Section 36 of the Act. This Court here further finds, in the event the Revisional Authority comes to observe that there is involvement of a third party case, nothing prevented the Commissioner, Consolidation to ask the Party to involve such Party

and decide the matter in terms of Section 37 of the OCH & PFL Act, 1972 providing full opportunity to the Parties likely to be affected and in absence of which this Court finds, the Revisional Authority has exceeded its jurisdiction beyond the provision of Section 36 of the OCH & PFL Act, 1972.

7. In the circumstance, this Court interfering with that part of the impugned order of the Commissioner directing the Tahasildar to prepare the Record of Rights sets aside the same. Revisional order, so far dismissal of the Revision otherwise, stands confirmed.

8. The Writ Petition succeeds but to the extent as indicated herein above. No cost.

(Biswanath Rath)
Judge

M.K.Rout