

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14224 of 2016

Bhagaban Jena

..... Petitioner

Mrs. Sujata Jena, Advocate

-versus-

***Commissioner of Consolidation,
Odisha, Bhubaneswar and others***

.... Opp. Parties

Mr. Sarojananda Mishra,
Additional Government Advocate
(For Opposite Party Nos.1 and 2)

Mr. S. N. Satapathy, Advocate
(For Opposite Party Nos.3 to 5)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
29.04.2022**

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail order dated 1st September, 2015 (Annexure-2) passed in Revision Case No.128 of 2014, whereby Commissioner, Consolidation, Odisha, Bhubaneswar-Opposite Party No.1 (for convenience referred to as 'the Commissioner') directed the Additional Sub-Collector, Consolidation, Puri to modify the full chaka between the two parties according to the valuation of the land along with other directions.
3. It is the submission of Mrs. Jena, learned counsel for the Petitioner that the Opposite Party Nos.3 to 5 [being dead and substituted through their legal heirs, i.e., Opposite Party Nos.3(a) to 3(d), 4(a) to 4(e) and 5(a)] had purchased LR plot No. 260/1177 under Khata No, 291 to an extent of Ac. 0.18 decimals situated in village Panchupalla under Delanga P.S. in the district of Puri (for convenience referred to as 'the case

land) vide RSD No.3137 dated 31st March, 1969. After purchase, they reclaimed the property by filling earth and constructed their residential house thereon. During Settlement operation, the case land was recorded as '*Sarada Jala Dui*'. During consolidation operation, Nabaghana Pradhan filed Objection Case No. 176/62 before Consolidation Officer, Delanga not to include the case land under chaka stating that it was no more being used as an agricultural land. The objection was rejected and directed to include the case land under chaka describing it as '*Sarada Jala Dofasali*', The matter travelled up to the Commissioner in Revision Case No. 398 of 1983. While adjudicating the matter, the Commissioner directed Consolidation Officer, Delanga to conduct a field enquiry, who by his report dated 9th November, 1983 stating that although the case land was filled with earth long before the consolidation operation, but the house in question was constructed only one year prior to the field enquiry. However, the revision petition was rejected against which the Opposite Party Nos. 3 to 5 filed OJC No.1973 of 1985, which was disposed of on 30th March, 1992 remitting the matter back to the Commissioner for fresh adjudication in accordance with law. Accordingly, the Commissioner after hearing both parties remanded the matter back to the Additional Sub-Collector, Puri for disposal of the matter in accordance with law. It is her submission that the dispute involved is with regard to kism of a land. The case of Opposite Party Nos. 3 to 5 before the Additional Sub-Collector, Puri was that the land in question was earlier recorded as '*Sarad Jala Dofasali*'. The said plot was purchased by the father of Opposite Party Nos. 3 to 5. From the report of the

Consolidation Officer, it is clear that during consolidation operation, the Opposite Party Nos. 3 to 5 have changed the classification of the case land. But, the Commissioner, without taking into consideration these material aspects and without assigning any reason whatsoever, passed the impugned order. Thus, the Petitioner being aggrieved has filed this writ application. Hence, she prays for setting aside the impugned order under Annexure-2 and to remand the matter back to the Commissioner, Consolidation for fresh adjudication in accordance with law.

4. Mr. Satapathy, learned counsel for the legal heirs of Opposite Party Nos. 3 to 5 vehemently objects to the above submission and contends that the case land was initially recorded in the name of ancestors of the Opposite Party Nos.3 to 5, who purchased it from one Janu Dei, daughter of Hata Pradhan vide RSD No.3172 dated 21st March, 1969. On purchase of the case land, they (ancestors of Opposite Party Nos.3 to 5) reclaimed the land fully by filling sand and planted some tress, which is proved from the technical report. Thus, it has become a non-consolidable land under Section 2(f) of the Act. The Commissioner considering this material aspect has passed the impugned order. As such, the writ petition merits no consideration and is liable to be dismissed.

5. Mr. Mishra, learned AGA though defends the impugned order, but fairly concedes that the same is unreasoned one.

6. Upon hearing learned counsel for the parties and on perusal of record, it appears that the Commissioner, Consolidation, after discussing submissions of learned counsel for the parties and recording the observation of the village

committee as well as report of the Consolidation Officer, Technical, Board of Revenue, straightway jumped to the conclusion directing for change of classification of the land in question to non-consolidable one. It is apparent from the impugned order that the Commissioner has not scrutinized in detail the materials available on record. The observation of this Court in OJC No. 1973 of 1985 was also not taken note of at the time of adjudication of the revision case.

7. As such, the impugned order under Annexure-2 is not sustainable and hence, the same is set aside. The matter is remitted back to the Commissioner of Consolidation, Odisha, Bhubaneswar-Opposite Party No.1 for fresh adjudication of the lis determining the classification of the case land, giving opportunity of hearing to the parties concerned.

8. In order to avoid delay in disposal of the revision, this Court directs the parties to appear before the Commissioner, Consolidation, Odisha, Bhubaneswar on 16th May, 2022 along with certified copy of this order to receive further instruction in the matter.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge