

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 23976 OF 2015

Sanjukta Behera and others ***Petitioners***
Mr. Jateswar Nayak, Advocate

-versus-

Commissioner, Consolidation and Settlement, Sambalpur and another ***Opp. Parties***

Mr. Dillip Kumar Mishra,
Additional Government Advocate
Miss Pratyusha Naidu, Advocate
(For Opp. Party No.3)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
02.05.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 6th May, 2011 (Annexure-3) passed by the Commissioner, Consolidation and Settlement, Sambalpur in R.P. No. 76 of 2011 filed by Opposite Party No.3 under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short 'the Act').
3. Mr. Nayak, learned counsel for the Petitioners submits that although the Petitioners were arrayed as Opposite Parties to the revision petition, but they were never served with the notice. Referring to the copy of notice under Annexure-2 series, he submits that service of notice on the present Petitioners is not proper and cannot be treated to be sufficient. Although the sale deed was in respect of one plot, but the Opposite Party No. 3 has claimed to record the land in respect of three plots, i.e. Plot Nos. 402, 514 and 514/1120 under Hal Khata No. 10 corresponding to Sabik Plot

No.47(P) under Sabik Khata No. 4 to an extent of Ac.0.80 decimals on the basis of the said registered sale deed. The Commissioner without discussing the materials on record has passed the impugned order. Hence, the impugned order under Annexure-3 is not sustainable in the eyes of law and is liable to be set aside.

4. Miss Naidu, learned counsel for the Opposite Party No.3 submits that the Petitioners have never disputed the execution of the sale deed in favour of Opposite Party No.3. They, however, assail the manner in which notices were served. Since the allegation/objection requires factual adjudication, they have to raise such objection before the revisional authority in terms of the ratio decided in the case of *Alekh Chandra Rath and others –v- Commissioner of Land Records and Settlement, Odisha and others*, reported in 1989 (2) OLR 135. He, therefore, prays for withdrawal of the writ petition.

5. Mr. Mishra, learned Additional Government Advocate submits that allegation of the Petitioners made in this writ petition requires factual adjudication. Thus, the Petitioners ought to have approached the revisional authority before filing of this writ petition assailing the impugned order Annexure-3.

6. Taking into consideration the submissions of learned counsel for the parties and in view of the ratio decided in the case of *Alekh Chandra Rath* (supra), this Court is of the considered opinion that since the Petitioners allege non-compliance of principles of natural justice and non-service of notice, they should have filed a properly constituted petition for recall of the impugned order before the revisional authority before approaching this Court.

7. Accordingly, this writ petition is disposed of with an observation that the Petitioners, if so advised, may file an application for recall of the impugned order under Annexure-3. In the event such an application is filed within a period of three weeks hence along with certified copy of this order, the Commissioner, Consolidation and Settlement, Sambalpur-Opposite Party No.1 shall do well to consider the same on its own merit providing opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge

bks

