

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 20087 OF 2016

Ranjana Majhi and another ***Petitioners***

Mr. Sidhartha Mishra, Advocate

-versus-

The Commissioner of ***Opp. Parties***
Consolidation, Bhubaneswar and
others

Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 and 2)

CORAM:
JUSTICE K.R.MOHAPATRA

ORDER
22.02.2022

Order No.

12. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 11th March, 2016 (Annexure-2) passed by the Commissioner, Consolidation, Bhubaneswar in R.C. No. 616 of 2014 filed by them under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act') to record Hal Plot Nos. 6146, 6177 and 6203 to an extent of Ac.0.09 decimals, Ac.0.19 decimals and Ac.0.34 decimals respectively under Khata No. 530 of mouza Patapur in the district of Puri.
3. Mr. Mishra, learned counsel for the Petitioners submits that the property in question stood recorded in the name of Ghana Swain and Mana Swain. The Petitioners are daughters of Jatadhari Swain, who was the adopted son of Mana Swain. As such, the Petitioners are legal heirs of Mana Swain, whereas Opposite Party No.3 is the

son of Ghana Swain. Since the final R.O.R. under Section 22 of the Act was published in the name of Chandrasekhar Swain alone, who is the Opposite Party No.3, the Petitioners filed a revision case under Section 37(1) of the Act for correction of the R.O.R. It is his submission that without considering the case of the Petitioners in its proper prospective and without conducting any enquiry with regard to the veracity of the averments made in the revision petition, the impugned order has been passed under Annexure-2. Earlier the Opposite Party No.3 had moved this Court in W.P.(C) No.15641 of 2016 assailing the order passed by the revisional court recalling the order under Annexure-6. This Court while disposing of the writ petition vide order dated 2nd November, 2016 granted liberty to the parties to assail the order under Annexure-2 before the appropriate forum. Accordingly, this writ petition has been filed.

4. It is his contention that the impugned order is a cryptic and non-speaking one. Hence, the same is not sustainable in the eyes of law. The Petitioners were also not given opportunity of hearing. Hence, he prays for setting aside the impugned order under Annexure-2 and to remit the matter back to the Commissioner, Consolidation, Bhubaneswar for fresh adjudication giving opportunity of hearing to the parties concerned.

5. Although the Opposite Party No.3 is represented through his counsel, but none appears for him at the time of call.

6. Mr. Mishra, learned Additional Government Advocate submits that the claim of the Petitioners is that their father is the adopted son of Mana Swain. But apparently no document is available on record. The Petitioners are relying upon the sale deed

executed by Opposite Party No.3 as well as gift deed executed by Mana Swain in favour of Jatadhari stating that he is the adopted son of said Mana Swain. The materials available on record are quite insufficient to establish the so called adoption of Jatadhari by Mana Swain. Hence, the Commissioner, Consolidation, Bhubaneswar has committed no error in passing the impugned order.

7. Mr. Mishra, learned counsel for the Petitioners submits that had the Petitioners been given an opportunity, they could have produced materials in support of adoption of Jatadhari by Mana Swain. He further submits that since the impugned order is a cryptic and non-speaking one, the same should be set aside.

8. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that the Commissioner, Consolidation, Bhubaneswar has not discussed the facts and materials available on record. He straight away jumped to the conclusion holding that the Opposite Party No.3, who was Opposite Party No.1 in the revision petition, is the only nephew of Mana Swain. As the son of Mana Swain (Bhramar) is dead, his nephew, namely, Chandrasekhar Swain (Opposite Party No.3), the successor of their joint family, is entitled to the share of Mana Swain in the joint family property. Since the Commissioner has not made any endeavour to discuss the rival contentions of the parties and the materials available on record to arrive at the aforesaid findings, the impugned order under Annexure-2 is not sustainable.

9. Accordingly, the impugned order under Annexure-2 is set aside and the matter is remitted back to the Commissioner, Consolidation, Bhubaneswar for fresh adjudication by giving

opportunity of hearing to the parties concerned to produce documents in support of their respective claims and take part in the hearing of the case.

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

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

(K.R. Mohapatra)
Judge



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