

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4890 of 2016

Surendra Tripathy and others ***Petitioners***
Mr. Ramakanta Mohanty, Senior Advocate
being assisted by Mrs. Sumitra Mohanty,
Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opposite Party Nos. 1 and 2)
Miss Pratyusha Naidu, Advocate
(For Opposite Party Nos. 3 to 5)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
14.02.2022

Order No.

1. This matter is taken up through Videoconferencing Mode.
2. Heard Mr. Mohanty, learned Senior Advocate being assisted by Mrs. Mohanty, learned counsel for the Petitioners, Miss Naidu, learned counsel for Opposite Party Nos. 3 to 5 and Mr. Mishra, learned AGA.
3. Petitioners in this writ petition seek to assail the order dated 25th January, 2016 (Annexure-1) passed by the Additional Commissioner, Settlement and Consolidation, Sambalpur-Opposite Party No.2 in RC No.84 of 2003 whereby he rejected an application filed by the Petitioners under Section 37(1) of Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Act').

4. In addition to his submissions on merit, Mr. Mohanty, learned Senior Advocate submits that a specific issue with regard to maintainability of the revision before the Director, Consolidation was raised, which was not answered by the revisional Court. Further, the revisional Court, although stated the fact in the impugned order, but failed to discuss the same and record any independent finding on merit dealing with rival contentions of the parties. Section 37(1) of the Act makes it clear that Consolidation Commissioner can 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 thinks fit. Thus, the impugned order under Annexure-1 is the outcome of total non-application of mind. It is also a non-speaking one. Hence, he prays for setting aside the impugned order under Annexure-1 and to remit the matter back to the revisional Court for fresh adjudication in accordance with law.

5. Miss Naidu, learned counsel for Opposite Party Nos. 3 to 5 files an affidavit in Court today raising certain factual disputes. She, however, submits that Additional Commissioner has dealt with the matter taking into consideration the rival contentions of the parties. She further submits that the Opposite Party Nos. 3 to 5 will file separate revision under Section 37(1) of the Act to establish their independent right and prays for a direction for hearing of both the revisions analogously, if the Court decides to remit the matter.

6. Mr. Mishra, learned AGA submits that since the Director,

Consolidation under Annexure-2 has dealt with the rival contentions of the parties in detail the same is not required to be reiterated by the Commissioner while exercising power under Section 37(1) of the Act. Thus, there is no infirmity in the impugned order under Annexure-1.

7. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that issues raised by Petitioners before the revisional authority was required to be answered by that Court itself. On perusal of the impugned order, it appears that the Commissioner has recorded the submission and jumped to the finding without discussing the same. It further appears that the maintainability of the Revision under Section 37(2) of the Act before the Director, Consolidation, though raised by learned counsel for the Petitioners, was not answered by the revisional Court.

7.1 Miss Naidu, learned counsel for Opposite Party Nos.3 to 5 by filing an additional counter affidavit seeks to bring certain facts to the notice of this Court for a direction to settle the land in question in their favour. The order impugned herein being passed in revision filed by the Petitioners, no relief can be granted to Opposite Party Nos. 3 to 5 with regard to settlement of the land in question in their name. Opposite Party Nos. 3 to 5, if so advised, may raise their grievances before the competent court of law in accordance with law.

8. In view of the discussions made above, the order under Annexure-1 impugned herein is not sustainable and is liable to be set aside. Accordingly, the order under Annexure-1 is set aside and the matter is remitted back to the Additional Commissioner, Settlement and Consolidation, Sambalpur- Opposite Party No.2 to

adjudicate RC No.84 of 2003 afresh giving opportunity of hearing to the parties concerned.

9. To avoid further delay in the matter, parties are directed to appear before the Opposite Party No.2 on 7th March, 2022 along with certified copy of this order to receive further instruction in the matter. Needless to mention that Opposite Party Nos. 3 to 5, if so advised, may file separate revision under Section 37(1) relating to the subject matter of dispute involved herein by that date. In that event, both the revision petitions shall be heard analogously giving opportunity of hearing to the parties concerned.

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

Issue urgent certified copy of the order on proper application.



s.s.satapathy