

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20001 OF 2018

Udayanath Jena and another

.... Petitioners

Mr. S.S.Rao, Advocate

-versus-

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

.... Opp. Parties

Mr. Swayambhu Mishra
Additional Standing Counsel

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

**ORDER
21.03.2022**

Order No.

10. 1. This matter is taken up through hybrid mode.
2. Consent memo filed by Mr. Rao, learned counsel for the
 Petitioners in Court today is taken on record.
3. Order dated 25th July, 2017 (Annexure-3) passed in
 Revision Case No. 124 of 2016 filed by the Petitioners under
 Section 36 of the Orissa Consolidation of Holdings and
 Preventions of Fragmentation of Land Act, 1972 (for short 'the
 Act') is under challenge in this writ petition, whereby the
 Commissioner, Consolidation, Odisha, Bhubaneswar holding
 that the Assistant Consolidation Officer passed the order in the
 year, 1988, which was not challenged in appeal and that a first
 appeal in respect of land in question is pending since 2016,
 refused to entertain the same.
4. Mr. Rao, learned counsel for the Petitioners submits that
 the order under Annexure-2 has been passed by the Assistant
 Consolidation Officer on 29th December, 1988 purportedly on
 compromise. Neither the Petitioners were served with any

notice nor they were given opportunity of hearing before the Assistant Consolidation Officer. Assailing the same, the Petitioners had filed a Civil Suit and by the time, the Consolidation revision was taken up for hearing, an appeal under Section 96 of the Civil Procedure Code was pending.

5. It is his submission that the order passed by the Assistant Consolidation Officer is without jurisdiction, as no such compromise was entered into between the parties before the Assistant Consolidation Officer.

6. It appears that the Assistant Consolidation Officer, basing upon the report of the Amin has passed the impugned order which is not sustainable. The Commissioner without recording his own finding in the matter and analyzing rival contentions of the parties refused to entertain the revision petition holding that simultaneous proceeding in respect of land in question cannot continue in two courts. Hence, he prays for setting aside the impugned order under Annexure-3 and to remit the matter back to the Commissioner to adjudicate the matter afresh by passing a reasoned order.

7. Mr. Mishra, learned Additional Standing Counsel submits that although there is an *inter se* dispute between the private parties but the revision petition under Section 36 of the Act is not maintainable as no order under Section 12 of the Act has been assailed in the said revision. He further submits that an order of *status quo* appears to have been passed on 26th July, 2016 in I.A. No.143 of 2016. Thus, the Commissioner has committed no error in not entertaining the revision.

8. Taking into consideration the submissions made by learned counsel for the parties, this Court finds that revision

petition was filed under Section 36 of the Act. A revision under Section 36 of the act is only maintainable against the order passed by the Director, Consolidation under Section 12 of the Act. Thus, a revision petition under Section 36 of the Act assailing the order under Section 10 of the Act is not maintainable.

9. Mr. Rao, learned counsel for the Petitioners, however, submits that this Court has ample jurisdiction to entertain the writ petition treating the impugned order to have been passed under Section 37 of the Act, when the illegality is apparent on the face of record. On verification of the record, it is not clear as to whether any illegality has been committed by the Assistant Consolidation Officer. The correctness to the order passed by the Assistant Consolidation Officer may be challenged either under Section 12 of the Act or by filing a revision under Section 37 of the Act, as the case may be. Thus, in no circumstance, a revision under Section 36 is not maintainable. Accordingly, this writ petition is dismissed.

10. However, dismissal of the writ petition will not preclude the Petitioner to work out the remedy in accordance with law.

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

(K.R. Mohapatra)
Judge