

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 900 OF 2022

Narsingha @ Nrusingha Behera and others ***Petitioner***

Mr. Sudheer Kumar Sahoo, Advocate
-versus-

State of Odisha and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order dated 27th August, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Bhadrak in C.S. No.262 of 1996-I is under challenge in this CMP, whereby an application under Section 151 C.P.C. filed by the Plaintiffs-Petitioners to stay further proceeding of the suit till disposal of the consolidation appeals has been rejected.
3. Mr. Sahoo, learned counsel for the Petitioners submits that the suit land has already been settled in the name of the Petitioners under Section 36-A of the Odisha Land Reforms Act, 1960. In spite of the same, R.O.R. in respect of the suit land has been published in the name of the Government. Assailing the same, the Petitioners had filed O.S. No.30 of 1982-I before learned Sub-Judge, Bhadrak for declaration of their right, title, interest and permanent injunction. During pendency of the suit, consolidation operation started in the area. Accordingly, the

aforesaid suit stood abated in view of the provisions under Section 4(4) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act'). Since the Defendants created disturbance in the peaceful possession of the Plaintiffs-Petitioners, they were constrained to file C.S. No.262 of 1996-I for permanent injunction. In the meantime, the Consolidation Officer partly allowed the claim of the Petitioners. Assailing the said order, the Petitioners as well as the villagers have filed two appeals in Consolidation Appeal Nos.6 and 7 of 2020, which are pending before learned Additional District Magistrate-cum-Deputy Director, Consolidation and Holdings, Bhadrak. Due to pendency of the said appeals, the Petitioners filed an application under Section 151 C.P.C. for stay of further proceeding of the suit till disposal of the consolidation appeals. The same was rejected on a flimsy ground that the suit is of the year, 1996 and is pending since more than last twenty-five years.

4. It is submitted by Mr. Sahoo, learned counsel for the Petitioners that the impugned order is not sustainable in the eyes of law. The relief of injunction sought for in the suit is depending upon the result of the consolidation appeals, which are pending before learned Additional District Magistrate-cum-Deputy Director, Consolidation and Holdings, Bhadrak. Learned trial Court failed to appreciate the same and passed the impugned order under Annexure-4.

5. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that Consolidation Appeal Nos.6

and 7 of 2020 are pending before learned Additional District Magistrate-cum-Deputy Director, Consolidation and Holdings, Bhadrak. However, C.S. No.262 of 1996-I is filed for permanent injunction. Neither Section 4(4) nor Section 51 of the Act prevents continuance of a suit for permanent injunction during consolidation operation. It is because the Consolidation Authorities do not have any power to grant an order of injunction. It is trite law that during pendency of the consolidation proceedings, a suit for permanent injunction is maintainable. It further appears that the suit is of the year, 1996 and is pending for more than 25 years.

6. In view of the above, this Court is of the considered opinion that C.S. No.262 of 1996-I, which has been filed for permanent injunction, can proceed during pendency of Consolidation Appeal Nos.6 and 7 of 2020. Thus, I find no infirmity in the impugned order under Annexure-4.

7. Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

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