

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 31459 OF 2021

Balunkeswar Sahoo and others ***Petitioners***
Mr. Hemanta Kumar Ratsingh,
Advocate

-versus-

Director, Consolidation, Odisha, ***Opp. Parties***
Cuttack and others

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.03.2022

Order No.

W.P.(C) NO. 31459 OF 2021
& W.P.(C) No. 5136 OF 2021

5. 1. This matter is taken up through hybrid mode.
2. Both the writ petitions arise out of a common order dated 29th July, 2016 (Annexure-1) passed by the Director, Consolidation, Odisha, Cuttack in Consolidation Revision No. 1127 of 2008.
3. In W.P.(C) No. 31459 of 2021, the legality and propriety of the order dated 29th July, 2016 passed by the Director, Consolidation, Odisha, Cuttack is under challenge and In W.P.(C) No.5136 of 2021, the Petitioner therein prays for a direction to the Tahasildar, Kujanga-Opposite Party No.2 to implement the said order.
4. On perusal of the case record, it appears that Consolidation Revision No.1127 of 2008 was initially filed before the Director, Consolidation, Odisha, Cuttack and vide order dated 5th December,

2009, the Director, Consolidation transferred the matter to the court of Land Reforms Commissioner, Cuttack for disposal. But, surprisingly the case record remained with the Director, Consolidation, Odisha, Cuttack and he proceeded to decide the matter on 29th July, 2016. On perusal of the impugned order, it further appears that final R.O.R. under Section 22(2) of the Act has already been published since 31st March, 1987 and the notification of closure of consolidation operation under Section 41 of the Act has been published since 6th October, 1989. In view of the fact that vide order dated 5th December, 2009, the case record in Consolidation Revision No. 1127 of 2008 was transferred to the court of Land Reforms Commissioner, Cuttack, the Director, Consolidation, Odisha, Cuttack lacks jurisdiction to adjudicate the same. Moreover, after final publication of the R.O.R. under Section 22(2) of the Act, the Director, Consolidation, Odisha, Cuttack does not have any power to entertain an application under Section 37(2) of the Act in view of the ratio decided in the case of **Arjuna Chandra Jena @ Arjuna Jena and others –v- Commissioner, Consolidation, Orissa, Cuttack and others**, reported in 2014 (I) OLR 263, wherein it has been held at paragraphs-7, 8 and 9 as follows:

“7.The question, therefore, arises as to whether a revision under Section 37(2) of the Act can be filed against a finally published R.O.R. under Section 22 of the Act which was confirmed by the Director under Section 21(1) of the Act.

8. The two questions raised by Mr. Mohanty on behalf of the petitioners are that (i) the Director while deciding the R.P. Case No. 4550 of 2004 has never issued notice to the petitioners and, therefore, the said order passed on 28.6.2005 is in gross violation of the principles of natural justice, and (ii) the Director has no jurisdiction under Section 37(2) of the Act to pass any order for revising the finally published R.O.R. under Section 22 of the Act. The further contention raised by Mr. Mohanty was that such

revision having been filed after about quarter of a century, the same should have been rejected in limine.

9. With regard to the first question raised, it is clear that the impugned order dated 28.6.2005 passed by the Director as quoted in paragraph-4 of the writ petition has been passed without affording due opportunity of hearing to the petitioners. On that ground alone, the said order is liable to be quashed. But, however, to bring a finality to the litigation, this Court considering the provision under Section 21 of the Act finds that the R.O.R. published under Section 22 thereof is only after confirmation made by the Director under Section 21(1) of the Act. Hence, exercising revisional power by the Director over the R.O.R. which was confirmed by him under Section 21(1) of the Act tantamounts to sitting in judgment over his own order which he was not authorized to do."

Admittedly, final R.O.R. under Section 22(2) of the Act was published on 31st March, 1987 and the notification of closure of consolidation operation under Section 41 of the Act has already been published since 6th October, 1989. As such, the Director, Consolidation, Odisha, Cuttack does not have any power to entertain a revision under Section 37(2) of the Act. Considering the same, the Director vide his order dated 5th December, 2009 transferred the revision petition to the court of Commissioner, Land Reforms, Cuttack for disposal placing reliance upon Notification No.64141-S-71/2000 (PT) R dated 24th December, 2002 issued by erstwhile Revenue Department, Government of Odisha, which was published in the extra ordinary Odisha Gazette dated 30th December, 2002 under SRO No.1027 of 2002. As such, he could not have entertained the revision petition and passed the impugned order under Annexure-1.

5. In that view of the matter, the order dated 29th July, 2016 passed by the Director, Consolidation, Odisha, Cuttack in Consolidation Revision No.1127 of 2008 is not sustainable in the eyes of law and the same is accordingly set aside.

6. As the order passed in Consolidation Revision No. 1127 of 2008 is set aside, question of implementation of the said order does not arise at all. Accordingly, W.P.(C) No. 31459 of 2021 succeeds and W.P.(C) No.5136 of 2021 stands dismissed. The case record in Consolidation Revision No.1127 of 2008 be transferred to the competent court for its disposal in accordance with law.

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

(K.R. Mohapatra)
Judge

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