

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 24130 OF 2019

Milan Kumar Nath

.... Petitioner

Mr. Pabitra Kumar Nayak,
Advocate

-versus-

***Additional Commissioner,
Consolidation and Settlement,
Sambalpur and others***

.... Opp. Parties

Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos. 1 to 3)

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

**ORDER
04.04.2022**

Order No.

4.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 20th July, 2015 (Annexure-4) passed by the Additional Commissioner, Consolidation and Settlement, Sambalpur- Opposite Party No.1 in Consolidation Revision Case No.1806 of 2004, whereby he allowed the revision filed by Opposite Party Nos. 4 to 6 under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act').
 3. Office note indicates that A.D. from Opposite Party Nos. 4 to 6 returned after valid of service of notice. However, none has entered appearance on behalf of Opposite Party Nos. 4 to 6.
 4. Mr. Nayak, learned counsel for the Petitioner submits that the land in question pertains to Chaka Khata No.92, Plot No.274 to an extent of Ac.0.35 decimals (Patita) situated in Mouza Pardhiapali in the district of Sambalpur (for short 'the case land').

The recorded tenants, namely, Shyama Kumar Biswal, Dulamani Biswal, Haripriya Pradhan, Rukmuni Barik and Snehalata Sahoo sold the case land to one Bipin Behari Meher vide Registered Sale Deed No.1393 dated 24th June, 1988 under Annexure-1 and delivered possession to him. Said Bipin Behari Meher sold the case land to the Petitioner vide Registered Sale Deed No.1415 dated 27th January, 2005 under Annexure-2 and delivered possession to him. During consolidation operation, R.O.R. under Section 22(2) of the Act was published in the name of the Petitioner under Annexure-5. But, the Opposite Party Nos. 4 to 6 claiming to be the legal heirs of the recorded tenants and that the case land fell to their share in a mutual partition in the family, filed Consolidation Revision Case No.1806 of 2004 without impleading the present Petitioner as a party to the said revision. The Additional Commissioner, Consolidation and Settlement, Sambalpur-Opposite Party No.1 without verifying the relevant records allowed the revision vide order dated 20th July, 2015 under Annexure-4 directing the Additional Sub-Collector-cum-Consolidation Officer to record the case land separately in favour of Opposite Party Nos.4 to 6 as mentioned in the revision petition. Assailing the same, this writ petition has been filed.

5. It is the submission of Mr. Nayak, learned counsel that since R.O.R. under Section 22(2) of the Act has been prepared in the name of the Petitioner, he is a necessary party to the aforesaid revision. But the impugned order under Annexure-4 has been passed without impleading him as a party for which he could not defend his case. Hence, he prays for setting aside the impugned order under Annexure-4 and to remit the matter back to the

Opposite Party No.1 for fresh adjudication giving opportunity of hearing to the parties concerned.

6. Mr. Mishra, learned Additional Government Advocate submits that although it *prima facie* appears that the Petitioner was not made a party to the Consolidation Revision Case No.1806 of 2004, but in absence of the entire order sheet of the revision case, it is very difficult to ascertain as to whether the Petitioner was given opportunity of hearing to the said revision or not. The issue raised by Mr. Nayak, learned counsel for the Petitioner requires factual adjudication. Hence, interest of justice will be best served, if the Petitioner makes an application before the Additional Commissioner, Settlement and Consolidation, Sambalpur for recall of the order dated 20th July, 2015, which can be considered in accordance with law giving opportunity of hearing to the parties concerned.

7. Taking into consideration the submissions made by learned counsel for the parties, this Court finds that there is force in the submission of Mr. Mishra, learned Additional Government Advocate. In absence of the entire order sheet of Consolidation Revision Case No.1806 of 2004, it is very difficult to ascertain as to whether the Petitioner was, in fact, given opportunity of hearing or not.

8. In that view of the matter, the Petitioner before approaching this Court ought to have moved the Additional Commissioner, Consolidation and Settlement, Sambalpur-Opposite Party No.1 by filing an application to recall the order dated 20th July, 2015 and give him an opportunity of hearing.

9. Hence, this writ petition is disposed of with a direction that in the event the Petitioner files an application before the Additional Commissioner, Consolidation and Settlement, Sambalpur-Opposite Party No.1 to recall the order dated 20th July, 2015 under Annexure-4 within a period of two weeks hence along with certified copy of this order, he shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned.

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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