

AFR **IN THE HIGH COURT OF ORISSA AT CUTTACK**

W.P. (C) No.37915 of 2021

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Trailokyanath Beura & Ors. Petitioners

Versus

State of Odisha and others Opposite Party

For Petitioners ... Mr. S.Mishra, Advocate

For Opposite Parties ... Mr. S.Ghose, Additional
Government Advocate

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 06.12.2022

Biswanath Rath, J. On consent of parties and for there is already
filing of counter affidavit by Opposite Party Nos.2 and 4, this matter is
taken up for final hearing.

2. This Writ Petition involves the following prayer:-

“The petitioners, therefore pray that Your
Lordships may graciously be pleased to admit the
Writ Application, call for records from the opposite
parties and issue a writ/writs in the nature of

certiorari/mandamus directing the opposite parties to show cause as to why;

- (a) under what reason, the 1930 records will be corrected by starting settlement operation in the village,
- (b) within which time, the entire proceedings will be started and culminated;

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

3. Undisputed fact remains that there is no conclusion of consolidation operation in respect of the village of the Petitioners namely Dumuka, P.S.-Marshaghai, District-Kendrapara. Filing the Writ Petition the villagers of the village Dumuka seeking for recommencement of consolidation proceeding for preparation of an updated Record of Right involving the land of the villagers concerned. Further undisputed fact remains earlier, there was already issuing the notification under Section 3 in respect of a larger compact including the village involved herein under Section 3 of the O.C.H. & P.F.L. Act, 1972. For the reason indicated therein, Mr.Ghosh, learned State Counsel through Annexure-A/2 submitted in the consolidation proceeding initiated earlier there is recording of villagers of Dumuka village resisted the consolidation operation for which even though the consolidation operation was undertaken in respect of the larger compact but so far as Dumuka village concerned, the consolidation proceeding could not be continued. As a consequence, there was bringing in Section 5 notification.

4. In the circumstances indicated in the Writ Petition, Mr.Mishra, learned counsel for the Petitioners claims let there be recommencement of the consolidation proceeding from Section 3 of the O.C.H. & P.F.L. Act.

5. Considering the rival contentions of the Parties, this Court finds both the parties referred to Section 3, 5 and 13(4), this Court here likes to take reference of all these provisions which is recorded follows:-

“Section 3. Declaration and notification regarding consolidation- The State Government may, where they are of the opinion that any area, which shall comprise a village or group of villagers, may be brought under consolidation operations, issue a notification to that effect whereupon it shall become lawful for the Consolidation Officer or his subordinate or any other Officer acting under his authority.

(a) to enter upon and survey in connection with rectangulation or otherwise and to take levels of any land in such area, if necessary;

(b) to clear by cutting or removing any tree, jungle, fence, standing crop or other material obstruction during such survey or taking of levels; and

(c) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(2) The Consolidation Officer shall cause public notice of the notification issued under Sub-section (1) to be given in the prescribed manner.

(3) The Assistant Consolidation Officer shall tender compensation to the person concerned for any damage which may have been caused by any action taken under Sub-section 9(1) and in case of any dispute as to the assessment or payment of the amount so tendered, he shall refer the matter for decision by the Consolidation Officer whose decision thereon shall be final and shall not be questioned in any Court of law.

5. Cancellation of notification- (1) it shall be lawful for the State Government at any time to cancel, by publication of an order to that effect in the Official Gazette, the notification made under Sub-section (1) of Section 3 in respect of the whole or any part of the area specified therein.

(2) Where a notification has been cancelled in respect of any area under Sub-section (1), such area shall cease to be under consolidation with effect from the date of the cancellation.

13. Revision of map and land register- (4) where in respect of any village an order is published under Sub-section 9(1) of Section 5 at any time after the publication of the map and land register under Sub-section 9(1), the map and the record-

of rights prepared on the basis of such land register shall, for all intents and purposes, be deemed to have been prepared under the Odisha Survey and Settlement Act, 1958 (Odisha Act, 3 of 1959), provided they are published in the same manner as required by Sub-section (2) of Section 22 and extracts of the record-of-rights are supplied to the land-owners at the time of such publication.”

Looking to the provisions at Section 3 of the Act, this Court finds, this provision prescribes bringing a declaration of notification regarding consolidation operation in the particular area. Following Section 3 notification and the declaration, it appears, the area notified shall be deemed to have come under consolidation operation and there shall be preparation of Record of Right and village compromise in the area to be prepared by the Consolidation Officer, subject to however further requirement under Section 4 of the Act. Coming to Section 5 of the Act and reading through the provision this Court finds for the undisputed fact remain herein and as clearly disclosed Annexure-A/2, in the event of any disturbance or undertaking of exercise remain impracticable, it should not be construed to be a permanent closure of scope. This Court here observes preparation of the Record of Right is a lifeline to the occupier of the land. Further preparation of Record of Right may bring lot of inconvenience to the land owner. As a matter of fact there could not be consolidation operation in the area in 2000, which was taking place after several decades of earlier publication. In the meantime there have been several deaths requiring compulsory change in Record of Rights. Some transactions might have been taking place in the meantime. In the circumstance it becomes the duty of the State Government to recommence the Section 3 of the O.C.H. & P.F.L. Act exercise by bringing in notification made under Section 1 of the Section 3 in respect of whole or any part of the area specified therein.

6. It is in the circumstance looking to the development through Annexure-A/2 filed by the State Counsel, this Court finds that there is already publication of cancellation notification in respect of the part area of a larger compact undertaken under the consolidation exercise. Keeping in view of the above this Court observes, there is no obstruction in giving effect to the further exercise pursuant to notice under Section 3 of the Act. In such event this Court finds since a request has already come from the villagers of Dumuka village, there is even possibility of recommencing the consolidation operation involving the Dumuka village.

7. In this situation, this Court finds recommencement of consolidation operation should commence from the stage of Section 3, dependant on the request already there on behalf of the villagers of the village Dumuka and for the undisputed fact remains Dumuka village has not been undertaken in involvement of a consolidation exercise. State Government is to bring a notification on recommencement of the consolidation operation of village Dumuka. Let the notification be brought within a period of one month. This Court records the undertaking of the villagers, the Petitioners representing the villagers that they shall be cooperation in such operation.

8. The Writ Petition thus stands disposed of.

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BISWANATH RATH, J.