

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 38440 of 2021

Birajini Devi @ Padhy

.... Petitioner

Mr. Prasanta Kumar Panda,
Advocate

-versus-

Collector, Ganjam and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.03.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. On the oral prayer of Mr. Panda, learned counsel for the Petitioner, he is permitted to implead the Joint Commissioner, Settlement and Consolidation, Berhampur as Opposite Party No.5 to the writ petition in Court.
 3. The Petitioner in this writ petition prays for a direction to restrain the Opposite Parties from proceeding with the construction over Hal Plot No. 473 under Khata No. 859 situated in mouza Jaradagada under Patrapur Tahasil in the district of Ganjam during pendency of CRP No. 93 of 2008 filed by the Petitioner under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act').
 4. Mr. Panda, learned counsel for the Petitioner submits that the Petitioner is the rightful owner of the property in question by virtue of the Registered Sale Deed dated 6th

February, 1971. She is in possession over the land by exercising her right, title and interest thereon. During consolidation operation, the land in question was recorded in Government Khata under 'Abada Jogya Anabadi' status for which the Petitioner has filed CRP No. 93 of 2008, which is pending before the Joint Commissioner, Settlement and Consolidation, Berhampur. Very recently, the Opposite Parties, more particularly the Opposite Party No.4 proceeded to make construction of a house over the land in question for Women's Self Help Group. The Joint Commissioner, Settlement and Consolidation, Berhampur does not have any jurisdiction to entertain application for injunction. Hence, the Petitioner finding no other alternative has approached this Court for the aforesaid relief.

5. It is his contention that although the revision petition filed under Section 37(1) of the Act is pending before the Joint Commissioner, Settlement and Consolidation, Berhampur since 2008, no step is being taken by him for early disposal of the same. On the other hand, the Opposite Party No.4 is contemplating to make construction of a house over the land in question for Women's Self Help Group. If the construction is allowed to continue, the Petitioner will be highly prejudiced and it may lead to further litigation. He, therefore, prays for a direction to the Joint Commissioner, Settlement and Consolidation, Berhmapur to dispose of CRP No. 93 of 2008 at an early date and till disposal of the same, the interim order passed by this Court on 7th December, 2021 in I.A. No. 17879 of 2021 may continue.

6. Mr. Mishra, learned Additional Standing Counsel submits that he has no objection if a direction is issued to the Joint Commissioner, Settlement and Consolidation, Berhampur for early disposal of CRP No. 93 of 2008, but if the interim order passed by this Court is allowed to continue till disposal of the revision, the money sanctioned for construction of a house for Women's Self Help Group, may lapse. Hence, the interim order restraining the Opposite Parties to proceed with the construction over the land in question should not be passed.

7. Taking into consideration the rival contentions of the parties, this Court finds that the revision petition filed by the Petitioner under Section 37(1) of the Act is pending before the Joint Commissioner, Settlement and Consolidation, Berhampur since 2008. The Joint Commissioner has no power to entertain application for injunction.

8. In that view of the matter, parties to the revision petition should maintain the status quo over the property in question till disposal of the said revision and not to create any further interest till disposal of the revision to avoid further litigation. As the Joint Commissioner does not have any power to pass any interim order of injunction, the Petitioner has approached this Court seeking for the aforesaid relief.

9. Taking into consideration the facts and circumstances of the case, this Court is of the considered opinion that interest of justice will be best served, if a direction is made for early disposal of CRP No.93 of 2008 and status quo over the land in question is maintained till disposal of the revision.

10. Accordingly, this Court disposes of this writ petition with a direction to the Joint Commissioner, Settlement and Consolidation, Berhampur-Opposite Party No. 5 to dispose of CRP No. 93 of 2008 as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order. Till disposal of CRP No. 93 of 2008, there shall be no construction over Plot No. 473 under Khata No. 859 situated in mouza Jaradagada under Patrapur Tahasil in the district of Ganjam. Parties are directed to cooperate with the Joint Commissioner, Settlement and Consolidation, Berhampur for early disposal of CRP No. 93 of 2008.

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

(K.R. Mohapatra)
Judge

bks