

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 39816 of 2021

Bhikari Behera and another ***Petitioners***
Mr. Tusar Kumar Mishra, Advocate

-versus-

Jaripada Service Cooperative Society, ***Opp. Parties***
Jaripada and others

Mr. Sarada Prasad Dash, Advocate
(Opposite Party No.1)

Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opposite Party No.2 and 7)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.02.2022

Order No.

4.
 1. This matter is taken up through Hybrid mode.
 2. Petitioners in this writ petition seek to assail the order dated 30th July, 2021 (Annexure-3) passed by Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar-Opposite Party No.7 in RC No.133 of 2017 filed by Opposite Party No.1 under Section 37(1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (For short, 'the Act').
 3. Mr. Mishra, learned counsel for the Petitioner, in addition to his argument on merit of the case, vehemently argued on the issue of limitation and non-compliance of principles of natural justice. It is his submission that, vide Annexure-2, notices were issued to the Petitioners to appear before the Commissioner on 11th July, 2018 in the camp Court

of the Commissioner, held in the office of the Collector, Khordha. Thereafter, the Petitioners who were Opposite Parties in the said revision, diligently took steps in the revision petition. In course of the proceeding, the matter was posted on 26th June, 2019 on which date, both parties were directed to submit the original documents in support of their respective case on the next date and the matter was posted to 14th August, 2019. Referring to order sheet (Annexure-2 series), Mr. Mishra, learned counsel for the Petitioners submits that on 14th August, 2019 no court was held as the Commissioner was on election duty and the matter was adjourned to 25th September, 2019, on which date, no Court was held as the Commissioner was on leave. But, the next date of posting of the revision was never communicated to the Petitioners. All of a sudden, the matter was taken up on 22nd January, 2021 without serving notice on the Petitioners and thereafter on 9th July, 2021 the case was taken up for hearing and order was reserved. Accordingly, the impugned order under Annexure-3 was passed. It is his submission that on a bare perusal of the note sheets annexed to the petition, it is apparent that the Petitioners were not provided with opportunity of hearing.

4. He further submits that settlement ROR was published in the name of the father of the Petitioners on 11th April, 1962 (Annexure-5 series) and the consolidation ROR was published in the name of the Petitioners on 30th March, 1996 (Annexure-8). The Opposite Party No.1 had never challenged the ROR (Annexure-5 series) published by the settlement authorities. Although the consolidation ROR was published on 30th March, 1996, the revision petition was filed in the year 2017 without

explaining the delay. It is his submission that there is no period prescribed for filing of revision under Section 37(1) of the Act, but it should be filed within a reasonable period. Delay of 21 years cannot be said to be a reasonable Period. Hence, he prays for setting aside of the impugned order under Annexure-3 and remit the matter back to the Commissioner for fresh adjudication in accordance with law giving opportunity of hearing to the Petitioners.

5. Mr. Das, learned counsel for Opposite Party No.1 though refuted the submission made by Mr. Mishra, learned counsel for the Petitioners, but could not produce any material to show that delay of 21 years has been explained either in the revision petition or by filing a separate application for condonation of delay. He, however, submits that the Petitioners were participating in the proceeding. At no point of time they have raised objection with regard to limitation in filing the revision petition. Thus, the objection with regard to limitation is an afterthought and cannot be raised in the writ petition. It is his contention that Opposite Party No.1 is in possession of the land in question by virtue of RSD of 1961 executed by one Raghunath Ray, who was the son of a deemed tenant under the provision of OLR Act. Enquiry report also reveals that Opposite Party No.1 is in possession over the land in question since 1961. Since the Petitioners did not produce any document to the contrary establishing their right, title and interest over the land in question, the Commissioner has committed no error in directing to record the land in his favor by correcting the ROR under Annexure-8.

6. So far as the compliance of principles of natural justice is concerned, Mr. Dash, learned counsel for Opposite Party No.1, refers to order dated 9th July, 2021 in which it is recorded by the Commissioner that '*Counsel for the petitioner and Ops Addl Standing Counsel for the State is present*' on the date of hearing. The recording of the Commissioner is presumed to be correct unless it is found otherwise in accordance with law. He, therefore submits that principles of natural justice has been complied with in passing the order under Annexure-3 and prays for dismissal of the writ petition.

7. Mr. Mishra, learned AGA referring to counter affidavit filed on 9th February, 2022, submits that the Commissioner, while adjudicating the matter followed due procedure of law as well as principles of natural justice by affording adequate opportunity to learned counsel for the parties to put forth their case. It is his submission that Opposite Party No.1 is in possession of the case land pursuant to regd. sale deed executed in its favour (Annexure-9) and taking into consideration the same, the impugned order has been passed. Although the Petitioners were given ample opportunity of hearing, they did not file documents in support of their case. Hence, he prays for dismissal of the writ petition.

8. Taking into consideration the rival contentions raised by learned counsel for the parties and on perusal of the record, it is apparent that the matter was posted to 26th June, 2019 on which date, learned counsel for the parties were directed to produce the original documents in support of their case. It further appears that the Petitioners had appeared in the case through their counsel on the said date and the matter was posted to 14th

August, 2019 for hearing. On 14th August, 2019, no Court was held and the matter was posted to 25th September, 2019. The order sheet does not reveal as to what happened on 25th September, 2019. However, it appears from the order dated 22nd January, 2021 that the matter was adjourned to 24th February, 2021 awaiting PWR/SR. Order sheets annexed to the writ petition is silent about the proceedings from 25th September, 2019 to 22nd January, 2021. There is no material on record to come to a conclusion that the parties were aware of the posting of the case after 25th September, 2019, more particularly the present Petitioners. There is also no material on record to show that the Petitioners were aware of posting of the case to 22nd January, 2021.

8.1. Further, order dated 9th July, 2021 reads as under;

“The case record is taken up today. Counsel for the petitioner and Ops. Addl. Standing Counsel for State is present. Heard the documents filed by petitioner. Case reserve for order.”

The aforesaid order does not disclose that learned counsel for the Petitioners (herein) were present. It only discloses that learned Additional Standing counsel for the State-Ops was present.

9. Mr. Mishra, learned counsel for the Petitioners also submits that the Revision petition was filed by an incompetent person and he was not authorized by the Opposite Party No.1 to file the revision case.

10. Taking into consideration the matter in its totality, it is apparent that the Petitioners, who are Opposite Party Nos. 3 and

4 in the revision petition were not given an opportunity of hearing and to defend their case, both on limitation matter as well as on merit of the case.

11. It is apparent that although there is delay of 21 years in filing the revision, no explanation has been offered by Opposite Party no.1 for such delay either in the revision petition or by filing separate application for condonation of delay. True it is that there is no period prescribed for filing of revision petition under Section 37 of the Act, but it is the duty of the authority adjudicating such revision petition under Section 37(1) of the Act to find out as to whether the revision petition is filed without any unreasonable delay. In the revision petition, the Petitioner No.1 had not spelt out a single word explaining the delay in filing the petition 21 years after publication of ROR under Annexure-8. The Commissioner has also not recorded any finding with regard to the delay in filing of such revision petition.

12. In that view of the matter, the impugned order as at Annexure-3 is not sustainable and is hereby quashed. The matter is remitted back to the Commissioner, Consolidation and Settlement, Odisha, Bhubaneswar-Opposite Party No.7 to adjudicate the matter afresh giving opportunity of hearing to the parties concerned. It is made clear that the Commissioner shall give opportunity to Opposite Party No.1 to explain the delay and opportunity to the Petitioners to file objection to the same. Upon consideration of the limitation petition, if the Commissioner finds that there is justification for condonation of delay, he shall condone the delay and proceed with the

matter on merit of the case providing opportunity of hearing to the parties concerned.

13. In order to avoid delay, parties are directed to appear before the Commissioner (OP No.7) on 14th March, 2022 along with certified copy of this order to receive further instructions in the matter.

14. *Status quo* in respect of construction and possession over the land in Plot No.243 under Hal Khata No.4 in Jaripada mouza under Chilika tahasil in the district of Khordha, as directed vide order dated 7th January, 2022 passed in IA No.185 of 2021, shall be maintained till final disposal of the consolidation revision.

15. The writ petition is accordingly disposed of with observation and direction, as aforesaid.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge