

(2023) 02 OHC CK 0094
In the Orissa High Court
Case No : Writ Petition (C) No.11776 Of 2012

Anil Kumar @ Kausal Kishore Khandelwal	APPELLANT
Vs	
State Of Odisha & Ors	RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 36

Citation : (2023) 02 OHC CK 0094

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : P.K. Routray, B.G. Mishra, N.K. Deo, A. Routray, J.B. Huyan, A. Routray, S. Mishra, A.K. Sarangi, A.C. Sarangi, P. Sarangi, K. Panda, S. Panda, N. Tripathy, A.B. Patnaik

Final Decision : Disposed Of

Judgement

Biswanath Rath, J

1. Heard the submissions of learned counsel for respective parties.
2. Petitioner through this writ petition challenging the impugned orders at Annexures-9, 12 & 14, prays for a direction for recording the disputed land in question in the name of the Petitioner as well as Opposite Party Nos.5 & 6.
3. This case has a checkered history but for decision of the Consolidation Officer revolving on Petitioner's failure in establishing that he is a successor to Nanakram to continue with the litigation on reopening of the original proceeding by virtue of remand order by the appellate authority, this Court thus at this stage moves to first decide the matter on the above aspect only.
4. Undisputedly in the second round of litigation in allowing the Consolidation Appeal Case No.8 of 1999 the appellate authority interfering in the order of the Consolidation Officer, remitted the proceeding to the Consolidation Officer for its

disposal in accordance with law. By the order dated 29.03.2000 as appearing at page 42 of the brief the appellate authority directed as follows:-

"The direction of appellate Court in appeal case No.8/99(B), 9/99(B), 10/99(B) was that Muralidhar Dash objector of case no.608/97 will implead all the successors of late Nanakram Khandewala R.T. of M.S. khata no. 82 and get notice served on the successors of late Nanakram Khandelwala and Khandelwala family members who claims to be – successors of original owner of L.R. Khata No.258 must prove the same and the lower court is to decide whether to retain or modify the L.R. and also decide the original issue regarding increase of area under L.R. khata no.258 and parties of above appeal cases will appear on 9.5.2000 before lower court."

5. The further proceeding involving the O.C. No.598 of 1997 was undertaken and came to be disposed of by the order vide Annexure-9. Thereafter an appeal was preferred and for the Appeal No.5 of 2001 being dismissed revisional exercise U/s.36 of the O.C.H. & P.F.L. Act, 1972 was undertaken. Revision also got dismissed by the order of the competent authority dated 1.06.2012 vide Annexure-14 thereby giving rise to the present litigation. From the direction of the appellate authority and as taken note hereinabove, it appears, there is clear direction to consider, if the appellants were the legal heirs of the person in whose favour the earlier Objection case was decided. Getting into the merit in the further consideration, the Consolidation Officer has come to dispose of the proceeding by the order vide Annexure-9 on the aspect of successorship as claimed by the Petitioner on the death of the deceased Nanakram and at page 57 and it has come to opine as follows:-

"I have visited the spot and found that on the front side of the case land there stands a temple. Godown and some shop complexes managed by Brij Mohan and of family members. Therefore it comes to my mind that Brij Mohan has captured the case land. Another factor which strengthened my doubt that case land is unclaimed for is like this. When advocates of Orissa went on strike and cases were posted to 4.1.2001, 8.1.2001 and 20.1.2001 the OPs such as Radheshyam and his brothers did not appear. Hence it can be safely concluded that after death of Nanakram the case lands have been lying being unclaimed as Nanakram had died without legal heirs whatever may be adduced in form of affidavit as regards the legal heirs of late Nanakram."

6. In view of the above, this Court finds, there is substance in the submission of learned State Counsel that Petitioner himself failed in at least bringing him to the fold of successor of said Nanakram, which finding has also been affirmed by the appellate authority.

This Court from the above finds, there was scope to the Petitioner through objection proceeding to at least establish his claim by bringing him to the fold of successor of said Nanakram. There is no material to establish the successorship aspect, except Petitioner herein has produced voter cards through Annexures-10

& 11. It is, at this stage of the matter, this Court taking into consideration the documents at Annexures-10 & 11 (series) observes, the voter card can never be a document to establish successorship of the Petitioner through Nanakram. In such event this Court finds, there is no material at all to establish that Petitioner is the legal heirs of Nanakram. This Court here finds, appeal and revision also got to be disposed of by confirming the above view of the Consolidation Officer.

7. In the circumstance, this Court finds, there is no error in either of the orders involved herein requiring interference in the same. But for the dismissal of the proceedings for the Petitioner not being able to establish the successorship through the original land owner, taking into consideration the request of the learned counsel for Petitioner to provide opportunity to the Petitioner to move competent authority for ascertainment of successorship through Nanakram, this Court observes, in the event Petitioner has any such opportunity, it may be open to him to initiate appropriate proceeding. This Court here observes, the matter since decided on failure of the Petitioner on successor aspect even though there has been raising of so many grounds, however this Court finds, for failure of the Petitioner in the above aspect, there is no requirement to look into other issues involved herein.

8. Writ Petition stands disposed of with the above order. There is, however, no order as to costs.

9. In view of disposal of the writ petition, interim order passed earlier stands vacated.

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