

(1987) 03 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1153 of 1979

Aparti Pradhan

APPELLANT

Vs

Dhobali Samantaray and Others

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Constitution of India, 1950 — Article 227

Orissa Tenancy Act, 1913 — Section 10, 10(1), 11, 116(2), 12

Citation : (1987) 64 CLT 214

Hon'ble Judges : K.P. Mohapatra, J;G. Patnaik, J

Bench : Division Bench

Advocate : B.K. Behura, for the Appellant; N. Patra and M.R. Mohanty, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The revisional order of the Consolidation Commissioner, opposite party No. 7 is being impugned in the present application.

2. Petitioner's case briefly stated is that the Petitioner is the owner in possession of an area of AO. 260 decimals in plot No. 567 of Khata No. 14 in Mouza Nabinpur under Bhubaneswar Police station in the district of Puri and he had been so recorded in the Record-of-Rights finally published on 23-3-1962 u/s 116 (2) of the Orissa Tenancy Act. After the said area came under consolidation operation under the provisions of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as 'the Act?'), the Assistant Consolidation Officer, while preparing the land register u/s 6 of the Act registered a dispute case on the rival claims of the Petitioner and opposite parties 1 to 3 and framed some issues and made some enquiries. Ultimately by order dated 30-8-1974, the said Assistant Consolidation Officer divided the plot No. 567 into three different plots as plot No. 567, 567/1270 and 567/1271 with area AO. 80, AO.140 and AO. 40 decimals respectively and he found the Petitioner to be in possession of Plot No. 567 with an area of AO. 80

decimals whereas opposite parties 1 to 3 to be in possession of Plot No. 567/1270 measuring an area of AO. 140 decimals. Recording plot No. 567/1270 in the names of opposite parties 1 to 3 is the subject matter of dispute in the present writ petition. The order of the Assistant Consolidation Officer has been annexed as Annexure-I. After the publication of the land register and the map as provided u/s 6 of the Act, the Petitioner filed his objection u/s 9 (3) of the Act against the recording of AO. 140 decimals of land pertaining to Plot No. 567/1270 in the names of opposite parties 1 to 3. Since the objection could not be disposed of by conciliation under Section 10 (1) of the Act, the same was forwarded by the Assistant Consolidation Officer to the Consolidation Officer for disposal? and the Consolidation Officer after duly giving the parties concerned reasonable opportunities of being heard and making an enquiry into the matter, disposed of the same by order dated 3-3-1977, annexed as Annexure-4 to the writ petition. The consolidation Officer directed that plot No. 567/1270 measuring an area of ?AO. 140 decimals be recorded in the name of the Petitioner. Against the said order, opposite parties 1 to 3 carried an appeal u/s 12 of the Act which was registered as Appeal case No. 10 of 1977 and was disposed of by the Deputy Director of Consolidations by order dated 22-8-1977 which has been annexed as Annexure-4 and the appeal was dismissed. The said opposite parties 1 to 3 carried a revision to the Commissioner u/s 36 of the Act which was numbered as Revision Case No. 99 of 1977 and by the impugned order dated 6-1-1979, the Commissioner allowed the revision. It is this order of the Commissioner which is being impugned in the present writ petition.

3. Mr. Behura? appearing for the Petitioner contends that the Assistant Consolidation Officer while preparing the Land Register u/s 6 of the Act was not authorised to frame issues and record findings and, therefore, entire proceeding is vitiated. We are not called upon to decide this issue since admittedly after notice being served u/s 9 (2) of the Act, the Petitioner filed an objection which was referred to the Consolidation Officer for disposal. The Consolidation Officer on the basis of materials produced before him came to the conclusion accepting the plea of the Petitioner. That order was upheld in appeal, but reversed in the revision. In the context of the legality of the revisional order, it is not necessary to decide the question whether the Assistant Consolidation Officer while preparing the Land Register u/s 6 of the Act was authorised to frame issue and take evidence and record findings. Since such a finding or materials produced before him will be of no consequence in the subsequent proceedings initiated before the ?Consolidation Officer u/s 10 of the Act.

4. Mr. Behura, the learned Counsel then urges that the impugned order of the revisional authority namely, the Consoli-dation Commissioner is based on non-consideration of the materials produced before the Section 10 enquiry and on consideration of the findings of the Assistant Consolidation Officer while preparing the Land Register and, therefore, such an order of the Revisional authority cannot be sustained.

Mr. Patra, the learned Counsel appearing for opposite parties 1 to 3 on the other hand contends that the revisional authority has considered the materials on record and there is no error of law apparent on the face of the order so as to be interfered with by this Court in a certiorari proceeding. On perusing the revisional order we do not find any force in the contention of Mr. Patra, the learned Counsel for opposite parties 1 to 3. The revisional authority appears to have considered the report from the Consolidation Officer, the finding of the Assistant Consolidation Officer while preparing the Land Register and has not considered the materials which were produced before the Consolidation Officer in the enquiry u/s 10 of the Act. When the Commissioner exercises his power of revision u/s 36 of the Act, he is supposed to call for and examine the records of the case and on consideration of the materials on record may confirm, vary or set aside the order of the lower authorities. In a revision, the Commissioner is not expected to consider some other materials which are not on records of the case and Consequently the Commissioner could not have based his finding on the basis of a report from the Consolidation Officer. Then again the Commissioner committed gross error in relying upon the findings of the Assistant Consolidation Officer made in course of preparation of Land Register, under Section 6 of the Act since after the preparation of Land Register and publication of Map, it is the objection of an aggrieved party which comes up before the Consolidation Officer for adjudication and in course of that enquiry, parties led evidence in respect of their respective claims. It is those matters which are required to be considered by the revisional authority to find out whether there has been any error by the lower Tribunals in passing any order. Consideration of the proceedings and findings of the Assistant Consolidation Officer while preparing the Land Register u/s 6 of the Act by the Commissioner in deciding the revision against the order of the Consolidation Officer u/s 11 of the Act amounts to consideration of inadmissible materials and? therefore, the findings based on such inadmissible materials cannot be sustained in law. That apart, the Commissioner has found that opposite parties 1 to 3 were in possession of plot No. 567/1270 since 1953-54 and the possession is continuous and peaceful. But there is no material for the aforesaid finding and the finding is, therefore, one based on no evidence. It is well settled that a finding of fact by a Tribunal if based on no evidence, constitutes an error apparent on the face of the record so as to be interfered with by the High Court in exercise of its power under Article 227 of the Constitution. In the premises as aforesaid, the order of the Consolidation Commissioner annexed as Annexure-4 cannot be sustained and is accordingly quashed.

5. Mr. Behura for the Petitioner further urges that in the peculiar facts and circumstances of the present case, the High Court should pass the final order instead of remanding the matter to the Commissioner for reconsideration. In a certiorari proceeding, the only appropriate order which the High Court should pass if it is satisfied that a Tribunal has committed some error apparent on the face of the record to quash the order of the Tribunal and remand the matter to the Tribunal for reconsideration in accordance with law. We are, therefore, not in

a position to accept the submission of Mr. Behura, the learned Counsel for the Petitioner.

6. In the net result, therefore, the order of the Consolidation Commissioner, opposite party No. 7 as per Annexure-4 is hereby quashed and the said opposite party No. 7 is directed to dispose of the revision afresh after giving opportunities of hearing the parties concerned in accordance with law and the observations made in this judgment. The writ application is accordingly allowed but in the circumstances, there would be no order as to costs.

K.P. Mohapatra, J.

7. I agree.