

(2007) 03 OHC CK 0037
In the Orissa High Court

Bhagaban Jena and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

ORISSA CONSOLIDATION OF HOLDINGS AND PREVENTION OF FRAGMENTATION OF LAND Act, 1972 — Section 37

Citation : (2007) 103 CLT 803 : (2007) 1 OLR 598

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—The petitioner in the present writ application seeks to challenge the Order dated 8.12.2003 passed by the Commissioner, Consolidation, Cuttack rejecting Consolidation Revision Case No. 159 of 2002 filed u/s 37(1) of the Consolidation Act, 1972, seeking correction of errors in the Hal map, pertaining to Plot No. 832, under Hal Khata No. 314 corresponding to Sabik Plot No. 666, measuring an area of Ac.0.180; on the ground of delay.

2. Learned Counsel for the petitioners submitted that the disputed land pertaining to Hal Plot No. 832 under Khata No. 314, stands recorded in the names of the petitioners who are landless Scheduled Caste persons. The petitioners have constructed their homestead on the said land and the Hal R.O.R. for the aforesaid plot has also been issued in favour of the petitioners. It is submitted that although necessary R.O.R. has been issued in the names of the petitioners, later on, while comparing the sabik and Hal map of the suit land, they noticed that the Hal map has not been prepared in conformity with the sabik map. As a consequence of such wrong recording in the Hal map, the petitioners' varendah, latrine as well as certain valuable trees planted by them have been shown in the Hal map, in an adjoining plot. Therefore, the petitioners filed an amendment petition before the Consolidation authorities to effect necessary correction in the Hal map and, therefore, filed a revision application u/

s 37(1) of Consolidation Act.

3. From the impugned order it is noted that the Commissioner, Consolidation, did not condone the delay of more than 19 years in filing of the revision application by holding the said delay to be not reasonable and, therefore, rejected the revision as "it is miserably barred by limitation".

4. Learned Counsel for the petitioners submits that the case laws relied upon by the Commissioner to reject the Revision petition, if read in their proper context, would in fact, on the contrary, support the contention of the petitioners. In the case of *Gulzar Khan v. Commissioner of Consolidation and Ors.* 1993 (I) OLR 194 and in the case of *Ghasiram Rana v. State of Orissa and Ors.* 81 (1996) C.L.T. 279, this Court has categorically indicated that Section 37 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the Consolidation Act, 1972) does not prescribe any period of limitation and, therefore, at the outset, learned Counsel of the petitioner submits that the finding of the learned Commissioner of Consolidation that the revision petition was barred by limitation, is wholly unjustified and incorrect.

5. In the case of *Ghasiram Rana (supra)*, this Court came to hold that even though no period of limitation is prescribed, power has to be exercised in a reasonable manner, which inheres the concept that it must be done within a reasonable time and while noting in the said Judgment that the term "reasonable time" cannot be specifically defined and a Division Bench of this Court led by Hon"ble A. Pasayat, J. (as His Lordship then was) has laid down that the principle of "reasonable time" is to be determined by the following test.

However, one thing is clear, it applies to sense of right reason, propriety or fairness.

In the case of *Gulzar Khan (supra)*, the Full Bench of this Court by way of majority decision, rendered by Hon"ble the Chief Justice B.L. Hansaria (as His Lordship then was) speaking for the majority has come to hold as follows:

The aforesaid being the position, it is apparent that a forum has to be available to a person who was to be aggrieved after Section 41 notification has been issued, with any order having, been passed or anything having been done during the consolidation operations affecting his right, title and interest. As stated in the opening sentence of this judgment, there cannot be a right without any remedy; and, according to us, the remedy can be made available principally by Section 37 of the Act. As to when such a situation may arise need not be spelt out; indeed, it cannot be; the probability of such a situation arising cannot obviously be ruled out. The power being unfettered, we cannot put any fetter; any such action of ours would render some really hard pressed people without a remedy. May we repeat that we are not at the question as to when power u/s 37 would be or should be exercised. As already pointed out, this power shall be available only under compelling circumstances, but on compelling circumstances existing, we

cannot shut out the invocation of the power. May we also observe that though Section 37 has conferred an unfettered power it is settled law that every power, be it administrative or judicial, has as to be exercised in a reasonable manner, and the reasonable exercise of power inheres in its exercise within a reasonable time as stated at pp.1245-6 of *Mansaram Vs. S.P. Pathak and Others*, . This apart no power is really unfettered; every power has to be exercised according to rules of reason and justice not according to private opinion; according to law, and not according to humour. The exercise of discretionary power cannot be arbitrary, vague and fanciful: it has to be legal and regular.

6. While taking guidance from the principle laid down in the Judgments referred hereinabove, it is important now to take note of the findings of the Commissioner, in the revisional order, which are as follows:

So far as the merit of the revision is concerned it is revealed that the disputed hal plot No. 832 Ac.0.180 corresponds to hal L.R. Plot No. 1360 Ac.0.180 under L.R. Khata No. 340/ka and further corresponds to sabik plot No. 666 Ac.0.180 and suit land has been recorded in favour of Maguni Ch. Jena, S/o. Banamali, Bhagaban Jena S/o. Laxmidhar Jena, Caste-Pana in sthitiban status and hal area has been correctly recorded in conformity with sabik area. But on comparison of sabik & hal map I find that final consolidation plot No. 832. Ac.0.180 and 833 Ac.0.020 correspond to petitioner's sabik plot No. 666 Ac.0.180 but in the consolidation working! record hal plot No. 833 Ac.0.020 is mentioned as part of sabik plot No. 665 which belongs to O.Ps. By putting wrong reference hal plot No. 833 Ac.0.020 which would have been recorded in favour of the petitioners, has been wrongly recorded in favour of the O.Ps. This fact of wrong plotting of map of hal plot No. 832 & 833 has been admitted by the C.O., Kendrapara in his parawise report.

The petitioners have contended that since petitioners are illiterate Scheduled Caste persons they were not able to know such wrong plotting of map as area was kept in fact in the final R.O.R. & they have also alleged that due to such wrong plotting they are going to lose varendra of their residential house, valuable trees & latrines. So admittedly the claim of the petitioners has merit to consider.

But despite having come to the aforesaid conclusion as noted hereinabove, the Commissioner refused to entertain the revision application on the ground of "unreasonable delay" and on his understanding that the application u/s 37(1) was barred by limitation.

7. On conjoint reading of the Judgments, relied upon by the Commissioner, which have been referred hereinabove, it is absolutely clear that the power u/s 37 is "unfettered" and putting any fetter on such powers would amount to, rendering some really hard pressed people without remedy. In the present case, the petitioners who are landless Scheduled Caste persons and possess land of Ac.0.180 on which they have constructed their homestead, ought not be left remedyless and in my view, it is to meet such consequence that power u/s 37

has been vested in the Commissioner of Consolidation, i.e., to come to the aid of such "hard pressed people without remedy."

I am of the view that this is a fit case where the Commissioner ought to have exercised the authority vested in him u/s 37 in favour of the petitioners, even though the delay in making the revision application was 19 years, since he was already convinced and has noted in the impugned order that the claim of the petitioners has merit. Therefore, as laid down in Ghasiram Rana's case (supra), this is a clear case where the term "reasonable time" once applied to the facts of the present case, makes one thing clear, that the period of delay ought not to have been treated as unreasonable and the Commissioner should have dealt with the same with a "sense of right reason, propriety or fairness."

8. In the facts and circumstances of the present case, I am of the view that the delay in filing the revision was not unreasonable and the Commissioner having failed to exercise its authority u/s 37 and this matter having been prolonged for more than 20 years, in my considered opinion, no real purpose would be served by remanding the matter to the Commissioner. Since the Commissioner has already reached a finding on merits of the case in favour of the petitioner, I dispose of the present writ application quashing the order of the Commissioner to the extent of holding the revision application to be barred by limitation but at the same time, affirming the order of Commissioner to the extent as noted hereinabove in Paragraph-6 of this Judgment.

The authorities are directed to carry out necessary correction in the hal map in consonance with the observation of the Commissioner noted in paragraph-6 of this Judgment within three months from the date of communication of this Judgment.

The writ application is allowed.