
(2019) 02 OHC CK 0062

In the Orissa High Court

Case No : Writ Petition (Civil) No.22122 Of 2014

Kampal Behera (Since Dead) Through Lrs

APPELLANT

Vs

Commissioner Of Consolidation & Settlement, Kendrapara
And Others

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Orissa Survey And Settlement Act, 1958 — Section 15(b)

Citation : (2019) 02 OHC CK 0062

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Shyam Sundar Das, Swayambhu Mishra, Soumya Mishra

Final Decision : Disposed Of

Judgement

Dr. A.K.Rath, J

1. This writ petition challenges the order dated 02.08.2013 passed by the Commissioner for Consolidation and Settlement, Odisha, Cuttack, opposite

party no.1 (â??Commissionerâ??), in Revision Petition No.616 of 2008, whereby and whereunder, opposite party no.1 remitted the matter back to

Tahasildar, Pattamundai to give effect to unregistered partition deed of the year 1941 and conduct field enquiry on the basis of allotment of plots as

per the deed for correction of map.

2. Since the dispute lies in a very narrow compass, facts need not be recounted in details. Suffice it to say that opposite party no.3 and predecessor of

interest opposite party no.4 filed an application under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short â??the OSS Actâ??) for

correction of Record of Right impleading the predecessor in interest of the

petitioner nos.1 and 2, 1(a) and opposite party nos.5 and 6 as opposite parties. By order dated 02.08.2013, the Commissioner remitted the matter back to the Tahasildar, Pattamundai.

3. Heard Mr. Shyam Sundar Das, learned counsel for the petitioners, Mr. Swayambhu Mishra, learned A.S.C. for opposite party nos.1 and 2 and Mr.

Soumya Mishra, learned counsel for the opposite party nos.3 and 4.

4. Mr. Das, learned counsel for the petitioner submits that the Commissioner de hors its jurisdiction in remitting the matter back to Tahasildar,

Pattamundai, opposite party no.2 for de novo enquiry, He places reliance in the decisions of this Court in 82 (1996) CLT 321 and 1998 (II) OLR 495.

5. Per contra, Mr. Mishra, learned counsel for the opposite party nos.3 and 4 submits that the matter has been remitted back to the Tahasildar,

Pattamundai to cause an enquiry. The Commissioner has not remitted the matter back to the Tahasildar for final adjudication. Learned Additional

Standing Counsel supports the same.

6. The question does arise as to whether the Commissioner, Land Records and Settlement can remit the matter back to the Tahasildar, Pattmundai for

adjudication, instead of deciding the petition filed under Sec.15(b) of the OSS Act, 1958 on merit ?

7. The subject matter of dispute is no more res integra. This Court in Sarat Chandra Sahu Vrs. Commissioner of Land Records and Settlement,

Orissa, Cuttack and others, 82 (1996) CLT 321, the Division Bench of this Court held :

“Under Section 15(b) the Commissioner has been given the authority to decide the grievance of the parties in relation to final publication of record-of-rights. A

statutory power by a statutory authority has to be exercised in a proper manner so that the litigants have a sense of satisfaction that their grievance, have been

appropriately dealt with. The Commissioner should have done well to address himself on the merits of the case. But instead of doing so he passed the order of

remand. While we are of the view that the operative portion of the impugned order relating to remand is absolutely unsustainable, yet we feel in the interest of justice

the claim of the revisionist should be considered by the revisional authority within the parameter of revisional jurisdiction.”

8. In Smt. Bijaya Chatterjee Vrs. Commissioner, Land Records and Settlement,

Orissa and others, 2000 (II) OLR 34,9 this Court held that

in subsequent decision it has been clarified that though such remand is not contemplated, the Commissioner can call for a report from the Tahasildar.

9. In the instant case, the matter was finally disposed of by the Commissioner with a direction to the Tahasildar, Pattamundai to cause an enquiry. The

Commissioner de hors its power in remitting the matter back. The Commissioner is a creature of statute, namely, Orissa Survey and Settlement Act.

He has been vested with power to decide the matter finally. He cannot travel beyond the statute.

10. In the result, the impugned order dated 02.08.2013 is quashed. The matter is remitted back to the Commissioner for de novo hearing. To avoid

further delay, the parties shall appear before the Commissioner on 20.03.2019, on which date, the Commissioner shall fix the date of hearing and

dispose of the same within a period of three months thereafter. It is open to the Commissioner to call for the report from the Tahasildar, Pattamudani.

The petition is disposed of.

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