
(2008) 03 OHC CK 0009
In the Orissa High Court

Khetra Basi Pradhan

APPELLANT

Vs

Director, Consolidation and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 37, 37(2)

Citation : (2008) 105 CLT 697 : (2008) 1 OLR 728 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—In this application under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the Order Dated 16.10.2004 passed by the Director, Consolidation, Cuttack-Opposite Party No. 1 in R.P. Case No. 2494 of 2004, annexed to the writ application as Annexure 4.

2. To appreciate the contentions raised by the Learned Counsel for the respective parties, it is necessary to refer to the facts of the case in brief, which are as follows:

Revision Case No. 333 of 1993 was filed by the Writ Petitioner before the Commissioner, Consolidation u/s 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (herein after referred to as "the Act") praying for correction of the map prepared under the Consolidation Scheme in respect of Sabik Plot Nos. 346 constituting an area of Ac. 0.03 dec. and 347 constituting an area of Ac. 0.04 decs, under Sabik Khata No. 170 corresponding to Chaka Plot No 498 with an area of Ac. 0.07 decs, as per the Sabik map.

3. The Writ Petitioner in the said revision petition stated that though he is in possession over Chaka Plot No. 498 as per the Sabik map, but there is a

deviation in the Hal map prepared under the Act. Learned Commissioner after hearing the revision petition, remanded the matter to the Consolidation Officer- Opposite Party No. 2 with a direction to hear and dispose of the said application as per the after impleading necessary parties (Annexure-1). It may be mentioned here that in the said revision petition the Opposite Party No. 4 was not arrayed as a party. After remand of the case to the Consolidation Officer, an Amin was deputed by the said Consolidation Officer- Opposite Party No. 2 to give a report regarding possession of the parties on the field. The said Amin after making inquiry submitted a report from which it revealed that Chaka Plot No. 498 correspondence to Sabik Plot Nos. 346 and 347 and on comparison of the said Sabik and Hal map, he found that the Hal map in respect of Chaka Plot No. 498 belonging to the Petitioner has not been correctly reflected in the map as per the Sabik map. He further reported that the Petitioner is in possession of the disputed land strictly in accordance to the Sabik map for which the Hal map of Chaka Plot No. 498 needs slight correction with the adjoining plot No. 496 as per the Sabik map.

4. The Consolidation Officer referring to the said report of the Amin and finding that the land owner of Chaka Plot No. 496 was duly noticed but did not turn up in spite of repeated calls accepting the report of the Amin and directing the same to form a part of the record, allowed the claim of the Petitioner and issued (sic) for necessary correction of the map. The said order was passed on 26.06.1997.

5. About 7 (seven) years thereafter, the, Opposite Party No. 4 herein being one Sivaram Pradhan filed a revision petition being C.R. No. 2494 of 2004 before the Director, Consolidation- Opposite Party No. 1 u/s 37(2) of the Act making allegation that he is the owner of Chaka Plot Nos. 496 and 497 and the Chaka map prepared during the consolidation operation does not show the said plot correctly as per the Sabik map. The Opposite Party No. 4, therefore, in the said revision, prayed for correction of the Hal map in respect of Plot Nos. 496 and 497 as per the Sabik map claiming that he is in possession over the said lands as per the Sabik map. The Writ Petitioner was also impleaded as an Opposite Party in the said revision. The Director, Consolidation after hearing the parties by the impugned order again remanded the matter back to the Learned Consolidation Officer, Kujanga for disposal as per law in the light of the observations made in the said order.

6. The revision petition filed before the Director, Consolidation has been annexed to this writ application as Annexure-3 from which it is revealed that the Opposite Party No. 4, who was the revision Petitioner before the Director, in paragraph-3 of the said petition has categorically stated that the Writ Petitioner filed a revision being Revision Case No. 333 of 1993 before the Consolidation Commissioner u/s 37(1) of the Act impleading the said Opposite Party No. 4 as a party and the matter was remanded to Consolidation Officer, Kujanga for disposal. The Consolidation Officer, Kujanga having corrected the map in respect of Plot No. 498 belonging to the Petitioner, it has affected the lands of the

Opposite Party No. 4 as well as the building of the Opposite Party No. 4 standing thereon. It was specifically stated in the said petition that the Opposite Party No. 4 did not receive any notice from the Consolidation Officer and since he is illiterate, he did not contest the matter before the Consolidation Officer.

7. In the impugned order, the Director, Consolidation has made out a third case that the previous revision filed before the Commissioner of Consolidation involved Plot No. 498 and, therefore, the lands of the Opposite Party No. 4 being Plot Nos. 496 and 497 were not the subject matter of the said revision. On the basis of such finding, the Director came to the conclusion that the subject matter being different, the principle of *res judicata* will not apply. He further observed that no evidence was adduced before him to prove that the consent and presence of the Opposite Party No 4 either at the time of inquiry by the Amin or at the time of disposal of the case by the Consolidation Officer was there. He, therefore, concluded that the order passed by the Consolidation Officer prejudicing the interest of the Opp. Party No. 4 was not within his knowledge. On the basis of the above findings, he again remanded the matter to the Consolidation Officer, Kujanga.

8. Learned Counsel for the Petitioner submitted that the Opposite Party No. 4 having candidly admitted in the revision petition filed before the Director, Consolidation that he was aware of the previous revision filed by the Petitioner, the Director has acted erroneously in holding that principle of *res judicata* will not apply to the facts of the case.

9. From the order of the Consolidation Officer passed after remand of the Revision Case No. 333 of 1993, it is revealed that the Opposite Party No. 4- Sivaram Pradhan was impleaded as Opposite Party No. 4 by the Consolidation Officer pursuant to direction given in the remand order by the Commissioner. The Consolidation Officer has also recorded that though the Petitioner was present on the date of hearing, the Opp. Party No. 4 in spite of repeated calls did not appeal. He has also observed that during field inquiry, the Amin's report disclosed that though notice was served on the Opposite Party No. 4, he did not turn up at the spot.

10. It is found that the Opposite Party No. 4 in spite of notice issued by the Consolidation Officer after remand of the revision by the Commissioner chose not to appear before the said case. Under law, the present revision filed by the Opposite Party No. 4 before the Director would be barred by the principle of *res judicata*. It would have been apt on the part of the Director, Consolidation- Opposite Party No. 1 to call for the records of the Consolidation Officer in the Revision Case No. 333 of 1993 in order to ascertain as to whether notice to the Opposite Party No. 4 herein was duly served in the said remand case and as to whether notice was duly given to him by the Amin conducting the field inquiry. On verifying the record if it would have been found that no notice was served on the Opposite Party No. 4 either by the Consolidation Officer or by the Amin, the Director, Consolidation would have proceeded in the matter taking such facts into

consideration. Without doing so, it appears that the Director, Consolidation in the impugned order" put the onus of proving that notice was duly served on the Opposite Party. No. 4 of the Writ Petitioner.

11. This Court, therefore, finds that the Director, Consolidation has committed an error apparent on the face of the impugned order by holding that the principle of res judicata will not apply in the facts of the case even though he has not ascertained from the records as to whether notice was duly served on the Opposite Party No. 4 herein by the Consolidation Officer in the remand revision case. This Court, therefore, has no hesitation to quash the impugned Order Dated 16.10.2004 passed in R.P. Case No. 2494 of 2004 by the Director-Opposite Party No. 1 under Annexure-4 to the Writ Petition and the case is remanded to the Director, Consolidation-Opposite Party No. 1 to rehear the revision after issuing due notice to the parties and to verify the previous records of the Consolidation Officer regarding issuance of notice to the Opposite Party No. 4 as observed above and, thereafter, dispose of the case in accordance with law keeping the above observations in view.

The Writ Petition is accordingly allowed, but in the circumstances, without cost.