

(1999) 01 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 15198 of 1998

Laxman Sahu and Others

APPELLANT

Vs

Director of Consolidation and Another and Ramesh Chandra
Sahu and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

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

Citation : (1999) 2 OLR 554

Hon'ble Judges : R.K. Patra, J; Pradipta Ray, J

Bench : Division Bench

Judgement

1. In the present writ application the petitioners have challenged the judgment and order dated June 23, 1998 passed by the Director of Consolidation, Orissa, Cuttack in Revision. Case No. 4148/97 u/s 37(2) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (hereinafter referred to as the "Consolidation Act").

2. The disputed land originally belonged to one Benga Bewa wife of one Lokanath Behera. In 1961 she transferred the said land to one Paramananda Sahu. By a registered deed of sale dated October 16, 1973 Paramananda again re-transferred the disputed land to Benga Bewa. During consolidation operation Benga Bewa filed an application before the Assistant Consolidation Officer u/s 15 of the Consolidation Act to record her name in respect of the disputed land. The Assistant Consolidation Officer rejected the said prayer on the ground that Paramananda did not file any affidavit stating that he did not have any ceiling surplus land at the time of sale in favour of Benga Bewa and directed to record the disputed land in favour of Paramananda. Prahalad, the son of Paramananda sold the entire disputed land to the present petitioners by a registered sale deed dated January 123, 1989. Benga left two sons. Sankar and Siba. The disputed land was partitioned between Sankar and Siba equally. Sankar died leaving son Debaraj and a daughter Pramila. Debaraj and Pramila transferred their 50%

share in favour of opp. party No. 2 by a registered sale deed dated March 15, 1989. Tahasildar recorded the disputed land in favour of the present petitioners on the basis of their purchase from Prahalad, the son of Paramananda. Opp. party No. 2 filed Title Suit No. 37/81(1) in the Court of Civil, fudge. Senior Division. Bhubaneswer for declaration of her title, confirmation of possession and in the allcrnaliu recovery of possession. In the said suit the present petitioners raised the question of maintainability of the suit in view of Section 51 of the Consolidation . Act. Opp. party No. 2 thereafter filed an application before the Director of Consolidation for invoking his powers u/s 37(2) of the Consolidation Act. By the impugned judgment and order the Director of Consolidation set aside the order of the Assistant Consolidation Officer and directed the disputed land to be recorded in the name of opp. party No. 2.

3. In support of the writ application Mr. Das. learned Advocate for the petitioners has submitted that the opp. party No. 2 or her predecessors not having filed any appeal against the order of the Assistant Consolidation Officer, the Director could not have exercised his sun motu power at the instance of opp. party No. 2. after almost 19 years. Mr. Das has referred to Section 14 of the Consolidation Act which bars any objection in respect of right, title and interest in land when such questions had not been raised u/s 9 of the Consolidation Act. Mr. Das also relies upon the decision of the Full Bench in Gulzar Khan Vs. Commissioner of Consolidation and Others, and a Division Bench decision in Bharat Sahu v. State of Orissa and Ors. reported in 1994 (II) OLR 225.

4. Section 37 of the Consolidation Act has conferred power and authority on the Consolidation Commissioner and the Director of Consolidation to call for and examine the records of any case decided or proceedings taken up by any subordinate authority and to rectify if the subordinate authority has committed any substantial illegality or infirmity. This power is not controlled by any other provisions in the Act. The Statute has not put any limitation on this power so that this power can be exercised at any stage to prevent perpetration of any illegality and to promote, the interest of justice. It is obvious that the power must be exercised to further the interest of justice and to prevent abuse of the process of law. A Division Bench of this Court in Maguni Pradhan Vs. Commissioner of Consolidation and Others, has already made the position clear.

5. Besides. Section 37 has not provided for any remedy to any party as of right. It. in fact, does not contemplate making of an application by an aggrieved party. However, it has been settled that an aggrieved person may draw the attention of the Commissioner to any gross illegality. The Commissioner has the absolute discretion to decide whether he will exercise his sun motu power or not. Thus delay by itself is no bar to exercise sue motu power though long unexplained delay is definitely a factor to be taken into account whether sun motu power should be exercised or not.

6. In the present case it is clear and apparent that the Assistant Consolidation Officer committed gross illegality in not accepting a registered sale deed on the

ground of absence of an affidavit by the vendor. It was the incumbent duty of the Assistant Consolidation Officer to make appropriate enquiry and to find out whether Paramananda, the vendor, had any ceiling surplus land at the relevant point of time. Before the Commissioner as well as before us document has been produced to show that Paramananda had no ceiling surplus land at the relevant point of time. Such being the situation we are of the view that this was a fit case where "suo motu" power u/s 37 of the Consolidation Act could be exercised and accordingly we do not find any reason to admit this writ application.