

(1999) 04 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 12995 of 1996, 405 and 1837 of 1997

Manas Ranjan Das and Others

APPELLANT

Vs

Consolidation Officer and Others
 Deba Prasad Das
and Others Vs State of Orissa and Others
 Braja
Kishore Samanta Pattnaik Vs Modern Fabricators and Others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 36, 37

Citation : (1999) 1 OLR 649

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

Bench : Division Bench

Advocate : R.K. Mohapatra, B. Routray, S.K. Kanungo, B. Parida, B. Sarangi, A.K. Baral, Amiya Kumar Mohanty, Subrat Kumar Mohanty, S. Mohanty, S.K. Das and M.K. Das, Bijay Pal, A.K. Mishra, P.C. Panda, S.K. Ojha and P. Das, for the Appellant; Govind Das in O.J.C. No. 12995/1996, O.J.C. No. 2837/1997, S.K. Padhi in O.J.C. No. 12995/1996, O.J.C. Nos. 405 and 2837/1997, Deepali Mohapatra in O.J.C. No. 12995/1996, O.J.C. Nos. 405 and 2837/1997, S. Parida for O.Ps. 4 and 5 in O.J.C. No. 12995/1996, O.J.C. Nos. 405 and 2837/1997, G.C. Patnaik, S.R. Patnaik, N.P. Parija, S. Mohanty, K.K. Jena, L. Misra for O.Ps. 13 and 14, A.G.A. for O.Ps. 1 and 2 B.K. Sahoo for O.Ps. 9(a) and (b) in O.J.C. Nos. 405 and 2837/1997, Subrata Mohanty, Siva Mohanty and Santosh Kumar Das for O.P. 11, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Messrs Modern Fabricators and Smt. Arati Mohanty who are two of the opposite parties in these writ petitions, filed an application (vide R.C.No. KR 114 of 1995) u/s 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short, "the Act") before the Commissioner, Consolidation, Orissa, Bhubaneswar. By a speaking order dated 18.10.1996 the Commissioner has admitted the said revision for hearing on merits. The writ petitioners, who are arrayed as opposite parties in the said revision, have filed

these three writ petitions challenging the aforesaid order. According to the petitioners, the Commissioner erred in exercise of his jurisdiction in admitting the revision and he ought to have rejected it at the threshold.

2. In order to appreciate the contention of the counsel for parties, it is necessary to refer to the previous litigation between the parties which came to be decided in the common judgment of this Court in Modern Fabricators, firm and Others Vs. Rajendra Harichandan and Others, .

3. FACTS :

The disputed land measuring Ac. 3.200 decimals appertaining to plot No. 55/1877 is located in mouza Patrapada. One Abhimanyu Mishra was recorded as tenant in respect of it vide Lease Case No. 477/1966-67. During consolidation operation, it was subdivided into three plots, i.e. plot Nos. 294, 295 and 296. Abhimanyu Mishra while possessing the disputed land as exclusive owner sold it along with another piece of land measuring A. 0.02 decimals of plot No. 769 to one Manoranjan Dash by Registered Sale Deed No. 3285 dated 26.4.1976 for Rs. 3500/-. He later cancelled the aforesaid sale deed as per the Unilateral Registered Cancellation Deed No. 3299 dated 7.5.1977 alleging fraud and non-payment of consideration and received back the sale deed from the Registrar's Office. Out of the disputed land, he (Abhimanyu Mishra) transferred Ac. 1.250 decimals to one Sukanta Charan Samantray as per Registered Sale Deed No. 5924 dated 1.8.1978, Ac. 1.250 decimals to one Dhuleswar Samantray as per Registered Sale Deed No. 5925 and Ac. 0.700 decimals to one Rajendra Harichandan as per Registered Sale Deed No. 2560 dated 28.3.1979. The vendees, namely, Sukanta Charan Samantray, Dhuleswar Samantray and Rajendra Harichandan, immediately after purchase filed Objection Case Nos. 84/28, 83/27 and 80/24 respectively and land record was prepared in their names. The first vendee-Manoranjan Dash who had purchased the disputed land on 26.4.1976 by Registered Sale Deed No. 3285 transferred an area of Ac. 2.00 decimals to M/s. Modern Fabricators vide Registered Sale Deed No. 2073 dated 9.3.1979 and an area of Ac. 1.200 decimals to Smt. Arati Mohanty vide R.S.D.No. 2073 for Rs. 37,500/-. They being the bona fide purchasers of the suit land and being in possession of it, mutated their names vide Mutation Case Nos. 396 and 397 of 1979. In 1981, Sukanta Charan Samantray who had purchased an area of Ac. 1.250 decimals out of the disputed land from the original lease-holder sold it for the second time to Kailash Narayan Singh Deo and M.V.Singh vide R.S.D.No. 9354 dated 21.12.1981. Dhuleswar Samantray similarly sold an area of Ac. 1.250 decimals to Smt. Minakhee Devi vide Registered Sale Deed No. 9353 dated 21.12.1981. After publication of the land records, M/s. Modern Fabricators and Smt. Arati Mohanty filed Objection Case Nos. 316/207, 317/ 208, 318/209, 319/210, 320/21 1 and 321/212 before the Consolidation Officer to record their names. The Consolidation Officer after due inquiry by order dated 4.6.1981 directed to record the disputed land in favour of M/s. Modern Fabricators and Smt. Arati Mohanty. The aforesaid order was challenged by filing appeal before

the Deputy Director, Consolidation, Bhubaneswar, by Rajendra Harichandan, Kailash Narayan Singh Deo and Minakhee Devi in Appeal Nos. 44 and 45 of 1982, 47 and 48 of 1982 and 49 and 50 of 1982. The Deputy Director, Consolidation, by a common order dated 29.1.1982 allowed all the appeals. M/s. Modern Fabricators and Smt. Arati Mohanty challenged the order of the Deputy Director, Consolidation, by filing Revision Case Nos. 127 of 132 of 1983 u/s 36 of the Act before the Commissioner, Consolidation. The Commissioner after hearing by order dated 30.3.1983 allowed all the revisions by setting aside the order of the appellate authority. The aggrieved parties filed Revision Case No. 4 of 1983 before the Member, Board of Revenue, Orissa, who by order dated 16.1.1984 set aside the order of the Commissioner, Consolidation. This led the parties to file three writ petitions in this Court. M/s. Modern Fabricators and Smt. Arati Mohanty filed O.J.C.No. 390 of 1984, Rajendra Harichandan filed O.J.C.No. 1431 of 1984 and Kailash Narayan Singh Deo filed O.J.C.No. 1924 of 1984. All the aforesaid three writ petitions were disposed of by a Bench of this Court vide Modern Fabricators, firm and Others Vs. Rajendra Harichandan and Others, , the order of the Member, Board of Revenue, Orissa, was vacated. The order dated 30.3.1983 of the Commissioner, Consolidation, was also quashed. The Court, however, observed that Modern Fabricators had not moved the Commissioner u/s 37 of the Act and in case they do so, the Commissioner will consider it on its own merit.

The petitioners obviously being emboldened by the aforesaid observations of this Court have filed the revision; In the revision petition, they have taken different grounds including the following for invoking the jurisdiction of the Commissioner u/s 37 (1) of the Act.

"That, as per the observations of Hon"ble High Court referred above the petitioners filed the present case before the Hon"ble Court u/s 37 (1) of the O.C.H. and P.F.L. Act, 1972. That, the sale deed executed and registered in favour of O.P.No. 37 bearing No. 3285 dated 26.4.1976 being much earlier, the subsequent sale deeds executed by O.P.No. 38 in favour of O.P Nos. 1 and 2 must yield to the former as all are registered sale deed and it is principle of law in a competition between Registered Sale Deeds in respect of the same land by the same owner the earlier one would prevail and the later one must yield to the earlier. So, the sale deed bearing No. 3285 dated 26.4.1976 executed and registered in favour of O.P. No. 37 being the earlier one, the alienation made by O.P. No. 37 to the petitioners will prevail over the sale deeds executed by Abhimanyu in favour of O.P. Nos. 1,2 and 3 and the subsequent transfer by them to O.P. Nos. 4, 5 and 21 and again the sale deeds executed by the later 1999 (I) MANAS V. CONSOLIDATION OFFICER 653 in favour of O.P. Nos. 6 to 20 and 22 to 32 and 33 to 36 and as they are later sales and are of no consequence and cannot affect the title by any manner.

That, the O.P. No. 37 cancelled the sale deed dated 26.4.1976 by executing another unilateral cancellation deed on 7.5.1977 on the ground of fraud and non-

payment of consideration. But in case the sale deed dated 26.4.1976 has been obtained by practising fraud or non-payment of consideration, the same could have been set aside by proper Civil Court within three years of execution of the deed. That being the established principle of law since the registered sale deed bearing No. 3285 dated 26.4.1976 has not yet been cancelled, the title of the petitioners over the suit property remains unavailable.

That the petitioners being the bona fide purchasers from the lawful owner, unless they will be recorded in above stated property they will sustain irreparable loss.

That this is a fit case in which the Hon"ble Court will invoke jurisdiction u/s 37(1) of the O.C.H. and P.F.L. Act for the ends of justice, equity and conscience and adjudicate the dispute among the parties as per the observation of Hon"ble High Court."

4. Since the order of the Commissioner in admitting the revision for hearing on merits is assailed in this writ petition, we may refer to Sections 36 and 37 of the Act. Sub-section (1) of Section 36 of the Act provides that if a person feels aggrieved by any decision of the Director of Consolidation, he may file a revision within the time stipulated therein against such decision before the Consolidation Commissioner who may revise it after giving the parties concerned reasonable opportunity of being heard. For this purpose, the Commissioner is competent to call for and examine the records.

Section 37 of the Act with which we are concerned, reads as follows :

"37. Power to call for records - (1) The Consolidation Commissioner may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may after allowing the parties concerned a reasonable opportunity of being heard make such order as he thinks fit.

(2) The power under Sub-section (1) may be exercised by the Director of Consolidation in respect of authorities subordinate to him."

5. A close and careful reading of Sub-section (1) of Section 37 of the Act would show that the Commissioner has the discretion to call for and examine the records of any case decided or proceedings taken by any subordinate authority. Such discretion should not be arbitrary but should be judicious. The purpose for calling for and examining the records is also indicated in the provision itself. It is for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by the subordinate authority in the case or proceedings. The Commissioner thereafter may make such order as he thinks fit after giving the parties concerned reasonable opportunity of being heard.

6. The whole thrust of the arguments of counsel for the petitioners is that in the

instant case the Commissioner should not have entertained the revision filed on behalf of Modern Fabricators and it ought to have been rejected at the threshold. In support of the aforesaid submission, they heavily relied on the following observations of this Court in the case of Modern Fabricators (supra) :

".....Section 37 is not intended to get over the specific prohibitions contained in other provisions. A revision application filed u/s 36 rejected at the initial stage on the ground that either it was barred by time or suffered from such other defect which rendered it liable to be rejected, the Consolidation Commissioner cannot exercise suo motu power in the matter subsequently. That would be against the legislative intent. Section 37 is intended to further the interest of justice and is not intended to act as a camouflage to get over statutory bars and prohibitions. Where the Commissioner finds that there were genuine grounds for which there was non-prosecution of the remedies available, in order to prevent abuse of the process of law and to nullify illegalities, the power may be exercised. This should not be exercised in a routine manner to re-provide remedies which have been statutorily taken away or restricted. If a person has not raised any objection u/s 9 (3), to entertain an application u/s 37 permitting filing of objection without compelling and/or extenuating circumstances would be improper. It would all depend on facts and circumstances of the case, background facts have to be fathomed and the reasons for which statutory remedies could not be availed have to be considered by the Consolidation 1999 (I) MANAS V. CONSOLIDATION OFFICER 655 Commissioner. However, such power is to be exercised with care, caution and circumspection, and any liberal construction would take away the rigours imposed by the statute. At the present juncture, we are concerned with propriety of the order passed by the Consolidation Commissioner. On analysis made above, we find that there is no scope for maintaining the conclusion of the Commissioner. He has not considered it in the background of Section 37. Therefore, it has to be held that objections filed u/s 15 by Modern Fabricators group was not acceptable in law. They had not moved the Commissioner u/s 37....."

7. We have considered the rival contentions of the counsel for parties and took note of the aforesaid observations. It may be stated that this Court indicated in the aforesaid opinion as to under what circumstances the Commissioner may invoke the suo motu revisional jurisdiction under Sub-section (1) of Section 37 of the Act for passing final order. We may state that this Court while making the aforesaid observation has not fixed the bounds or limits of the Commissioner's power under Sub-section (1) of Section 37 of the Act to admit a revision for hearing on merits.

8. Sub-section (1) of Section 37 of the Act does not contain any prohibition on the Commissioner to entertain a revision for hearing. Statutes are in abundance in which the Legislature has placed embargo on the authority against entertainment of a matter. We may briefly indicate some instances. Section 80, C.P.C. provides that no suit shall be instituted against the Government or against

a Public Officer until expiration of two months next after notice in writing has been delivered to or left at the office of the Secretary of the Government or the Collector of the district, as the case may be. The condition precedent for filing of such suit is service of two months' prior notice. Section 197, Cr.P.C. provides that no Court shall take cognizance of an offence alleged to have been committed by a public servant not removeable from his office except with the previous sanction of the appropriate Government. Section 20 of the Prevention of Food Adulteration Act, 1954, states that no prosecution for an offence under the said Act shall be instituted except by or with the written consent of the designated authority. The aforesaid are some of the instances where the Statutes have put embargo before exercising power or taking action under the relevant law. Section 37 (1) of the Act does not contain any such embargo for entertaining a revision for final disposal. Parameters contained therein, however, must be satisfied by the Commissioner at the time of final disposal of the revision. We may here hasten to add that the Commissioner is not obliged to entertain all revision u/s 37(1) of the Act. In a given case, he may refuse to entertain such revision but such order should be supported by valid reason.

9. Now coming to the facts of the case, it would appear that Modern Fabricators had purchased the disputed land by a registered sale deed from Manoranjan Das on 9.3.1979 who had purchased the same by registered sale deed dated 26.4.1976 from Abhimanyu Mishra who had cancelled the sale deed dated 26.4.1976 in favour of Manoranjan Das alleging fraud and non-payment of consideration by executing registered deed of cancellation on 7.5.1977. Prima facie. Modern Fabricators has, therefore, a case to be examined by the Commissioner whether it has got title over the suit land. We need not further examine the factual aspect because any observation by us might prejudice either party.

10. For the aforesaid reasons, we have no hesitation to hold that the Commissioner has not erred in exercise of his jurisdiction in entertaining the revision for hearing on merits. The writ petitions are, therefore, dismissed. The Commissioner will dispose of the revision as early as possible preferably within six months of receipt of this order.

Lower Court records be sent back forthwith.

Pradipta Ray, J.

I agree.