(1991) 10 OHC CK 0024

In the Orissa High Court

Case No : O.J.C. No''s. 390, 1431 and 1924 of 1984

Modern Fabricators, firm and Others — APPELLANT

Vs

Rajendra Harichandan and Others
 Rajendra Harichandan and Kalikesh Narayan Singh Deo and Others Vs Consolidation Officer and Others — RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 14, 15, 37, 38, 9

Citation : (1992) 73 CLT 217 : (1992) 1 OLR 322

Hon'ble Judges : R.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.M. Patnaik, S. Misra 2 and S.K. Padhi in OJC No. 390/84, P.K. Misra, in OJC No. 1431/84 and R.K. Mohapatra, in OJC No. 1924/84, for the Appellant; R.K. Mohapatra and P.K. Misra and Addl. Standing Counsel in OJC No. 390/84, B.M. Patnaik and S.K. Padhi and Addl. Standing Counsel in OJC No. 1431/84 and B.M. Patnaik and Addl. Standing Counsel in OJC No. 1924/84, for the Respondent

Judgement

A. Pasayat, J.—These three writ applications are interlinked and the points involved being common are disposed of by this common judgment. Though the parties are mostly common, their positions in the writ application being different, names along with their positions in the writ applications are indicated below.

2. Abhimanyu Misra opp. party No. 6 in all the writ applications sold 3-200 acres of land to Manoranjan Das opp. party No. 5 in OJC No. 390 of 1984 and opp. party No. 7 in other two writ applications along with 2 decimals of land out of plot No. 769 under khata No. 49 in village Basuaghai on 7-5-1977 the said sale deed was cancelled by Abhimanyu. On 1-8-1978 Abhimanyu Misra sold 2.500 acres of land to Sukanta Chandra Samantaray and a similar area was also sold to Dhuleswar Samantaray on the said date. They are opp. party Nos. 7 and 8 OJC No. 390 of 1984 and opp. party Nos. 10 and 11 in OJC No. 1924 of 1984 but

they are not parties in OJC No. 1431 of 1984. On 28-3-1979 Abhimnyu sold Ao. 700 decimals of land to Rajendra Harichandan, Opp. party No. 1 in OJC No. 390 of 1984 and petitioner in OJC No. 1431 of 1984. He is not a party in OJC No. 1924 of 1984. On 9-3-1979 M/s. Modern Fabricators. Satyabrata Mohanty, Arati Mohanty and Sangram Kishori Mohanty (hereinafter referred to as Modern Fabricators group) purchased 3.200 acres of land from Manoranjan by two registered sale deeds. On 21-12-1981 Dhuleswar Samantaray slod his land to Minakshi Devi and Sukanta Chandra Samantaray sold his land to Kalikesh Narayan Singh Deo and Manmath Bijoy Singh Deo. These three purchasers are hereinafter referred to as Singh Deo group. On 1-2-1978 land registered under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short ''the Act'') was prepared u/s 6 and published u/s 9 (1) thereof in the name of Abhimanyu Sabik plot No. 55/1977 was converted to three plots, viz ; L. R. plot Nos. 294, 195 and 296 measuring 0. 700, 1.250 and 1.100 acres of land respectively. No objection was filed by Manoranjan u/s 9 (3) of the Act and accordingly action u/s 13 of the Act was taken. Notification u/s 13 was published on 28-1-1981. On 21-4-1981 Rajendra Harichandan filed an application u/s 15 of the Act for recording his name in respect of the land purchased by him which was allowed. Similarly Dhuleswar and Sukanta also filed applications u/s 15 which were allowed by order dated 15-7-1981. Modem Fabricators group filed six objection cases u/s 15 stating that they were bona fide purchasers from Manoranjan and therefore, their names should be recorded. By order dated 25--1982 objections filed by Rajendra Harichandan and Singh Deo group were allowed. On 4-6-1982 objections filed by Modern Fabricators group were also allowed for 3.050 acres of land. In appeal, by order dated 29-10-1982, the Deputy Director set aside the conclusions in favour of Modern Fabricators group on the ground that the sale made by Abhimanyu in favour of Manoranjan was a fraud on registration and therefore, was hit by Section 28 of the Registration Act, 1908. The matter was carried in revision by Modern Fabricators group in Revision Case Nos. 127 to 132 of 1983. On 30-3-1983 the Consolidation Commissioner allowed their prayer on the ground that the consolidation authorities have no jurisdiction to set aside the sale deed executed by Abhimanyu in favour of Manoranjan on the ground of fraud and the Tahasildar had no jurisdiction to effect mutation in the name of any party after consolidation notification u/s 3 was issued in the year 1973. It was also held by the Commissioner that the second sales effected by Abhimanyu and his vendees do not divest Modern Fabricators group''s title under the sale deed executed by Abhimanyu in favour of Manoranjan. By order dated 16-1-1984, the Member; Board of Revenue, allowed the revision filed by Rajendra Harichandan u/s 38 of the Act on the ground that the sale by Abhimanyu to Manoranjan was a fraud on registration as A0.002 decimals of land of plot No.768 in village Basuaghai sold along with the case land was non-existent and therefore, the Sub-Registrar had no jurisdiction to register the sale deed.

3. Singh Deo group and Rajendra Harichandan, petitioners in OJC Nos. 1924 and

1431 of 1984, challenge the correctness of the order passed by the Consolidation Commissioner on the ground that though the decision has been rendered by the Member. Board of Revenue in their favour, yet there being doubt about his jurisdiction to entertain the matte as an abundant caution the writ applications have been filed. Modern Fabricators group have filed OJC No. 390 of 1984 challenging correctness of the order passed by the Member, Board of Revenue and according to them the order passed by the Consolidation Commissioner was in order.

4. In order to resolve the controversy, primarily three questions are involved.

(1) Whether the objections filed by Modern Fabricators group u/s 15 of the Act were entertainable and if not, whether the Consolidation Commissioner was justified in deciding in their favour ?

(2) Even if it is held that they had no scope to raise any objection u/s 15 of the Act, whether they can seek relief u/s 37 of the Act ? and

(3) Whether the sale deed executed in favour of Manoranjan was a fraud on registration, and therefore, the sale deed was void and subsequent transfers by Manoranjan Fabricator group were also void in the eyes of law ?

5. At this stage, we feel it appropriate to deal with the question whether Member, Board of Revenue had jurisdiction to entertain the revision, in our view, u/s 38 the power of superintendence Is limited to administrative actions and cannot be exercised in respect of orders of adjudication by authorities under the Act. The Member had, therefore, no jurisdiction to entertain the revision application against the order of the Consolidation Commissioner.

6. Parties have agreed that if it is decided that the objections filed by Modern Fabricators group u/s 15 were entertainable in law and/or remedy u/s 37 was available to them, then the question whether there was fraud on registration shall be academic. At this stage, it is necessary to refer to Section 14 and 15 of the Act. Section 14 bars entertainment of any objection in respect of right, title and interest in land partition of joint holdings: or valuation of lands, houses, structures, trees, wells and other improvements, where the same is sought to be raised by a land owner recorded in the land register prepared u/s 6 which question might or ought to have been raised u/s 9 but has not been raised. It is in appropriate to raise an objection, and even if the same is raised, the same shall hot be heard at any subsequent stage of the consolidation proceedings, in respect of aspects indicated above. This bar, however, is subject to the provisions contained in Section 15. Sub-section (1) thereof permits raising of all matters relating to charges and transfers affecting any of the rights, title and interest recorded in the land register published u/s 13, for which cause of action arose after publication of records u/s 9. These can be raised as and when they arise but not later than the date of publication of the order, if any, under Sub-section (1) of Section 5 or the date of confirmation of the scheme under Sub-section (1) of Section 21, whichever is earlier. It is also provided that the Assistant

Consolidation Officer is competent to consider such cases suo motu. Under Sub-section (2), the provisions of Section 6 to 12 are made applicable mutatis mutandis to the hearing and disposal of any matter raised under Sub-section (1) as if it were a matter raised under the aforesaid sections.

7. The crucial question is whether the cause of action arose after publication of records u/s 9. Undisputedly neither Abhimanyu Misra nor Manoranjan Das raised any dispute or objection relating to recording the name of Abhimanyu Misra. No action u/s 9 (3) was taken. As provided thereunder, objection was to be filed within thirty days of receipt of notice or of the publication under Sub-section (1) of the copy of map land register and other records, if any prepared u/s 6 together with the statement of principles prepared u/s 8. Section 14 bars entertainment of any objection in respect of questions which ought to have been or might have been raised u/s 9. After expiry of the period prescribed u/s 9 (3), it was not open to Manoranjan to raise any dispute about matter indicated in Section 14. The vendees from Manoranjan cannot question the propriety of any action which transpired prior to their purchase. u/s 15 they cannot question correctness of any entry in the land register recorded prior to the purchaser if their vendor had not raised objection at the appropriate time. It is submitted on behalf of Modern Fabricators group that their vendor might not have raised any objection u/s 9 (3); but that did not take away the statutory right to raise a dispute if the cause of action arose only after their purchase. This submission overlooks one pertinent factor that their vendor might or ought to have raised objection to the correctness of the entry in the land register wherein Abhimanyu Mishra''s name have been recorded. He having not done so, bar provided u/s 14 operates and therefore, sequentially and consequentially they have no scope for raising an objection. Any other construction of Section 14 would render the provision nugatory, because the person who comes into possession by transfer can get over the prohibition and avail the opportunity of raising an objection u/s 15. That is certainly not the legislative intent. A person who might or ought have raised an objection cannot get over the prohibition by making a collusive transfer, even if he had not taken appropriate action timely. Therefore, in view of bar u/s 14, objections filed by Modern Fabricators group were not tenable and maintainable in the eye of law.

8. The next question is whether notwithstanding the rider to raise objection at an appropriate time, the petition fried by Modern Fabricators group before the Consolidation Commissioner can be treated as one u/s 37. According to them, wide and unbridled power is given u/s 37, and in the interest of justice the Consolidation Commissioner could have granted the reliefs. Strong reliance is placed on a decision of this Court in Nikunja Kishore Das and Others Vs. Consolidation Officer and Another, wherein it was held while considering a case u/s 18 of the Act, that a person should not be left remediless, Prima facie the contention appears to be fascinating and attractive, but on a close scrutiny we find that there is nothing in the said decision which furthers their case. 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 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 bar9 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 availed have to be considered by the Consolidation 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 were not acceptable in law. They had not moved Commissioner u/s 37. If they do so, the same shall be considered on its own merit, and we do not e press any opinion on the maintainability or entertainability of the motion.

9. The residual question is whether there was fraud on registration. Before us an attempt has been made to show that in fact that khata No. was a mistake and in reality khata No. 50, plot No. 769 measuring Ao. 225 was recorded in the names of Guri Harichandan and Kelu Harichandan who sold 10 decimals out of it to Abhimanyu Mishra by an oral sale on 19-3-1962. Such a plea was not taken by either Modern Fabricators group or Abhimanyu at any stage before the authorities below. For the first time in the rejoinder affidavit filed in OJC No. 390 of 1984 such a plea has been taken. We do not find any scope for entertaining this factual assertion at this stage, particularly when at an earlier stage such a stand was taken. In view of our conclusions above, the question whether there was fraud on registration is merely academic.

10. In the result, the order dated 30-3-1983 passed by the Consolidation Commissioner in Revision Case Nos. 127 to 132 of 1983, which is Annexure-3 in OJC No. 1431 of 1984 and OJC No. 1924 of 1934 is quashed. The said two writ applications are allowed. The order dated 16-1-1984 passed by Member, Board of Revenue, annexed as Annexure-5 to OJC No. 390 of 1934 is vacated as without jurisdiction. But in view of our conclusion that the order dated 30-3-1983 passed by the Consolidation Commissioner is indefensible, no relief can be granted to the petitioners of the said writ application. The same is dismissed. No order as to

costs in any of the three writ applications.

R.C. Patnaik, J.

11. I agree.

