

(2018) 04 OHC CK 0096
In the Orissa High Court
Case No : WP(C) No.1268 of 2015

NARESH BHALLA AND ANOTHER	Vs	APPELLANT
GOVERNMENT OF ODISHA AND OTHERS		RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 9, 12, 37, 37(1), 41

Citation : (2018) 04 OHC CK 0096

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : Sourya Sundar Das, Shibani Sankar Pradhan, Ram Prasad Mohapatra, Sukumar Ghosh

Final Decision : Allowed

Judgement

Dr. A.K.Rath, J Â

1. This petition challenges the orders dated 25.10.2013 and 21.11.2014, vide Annexure-9 and Annexure-13 respectively, passed by the Addl.

Commissioner Settlement & Consolidation, Sambalpur, opposite party no.4. By order dated 25.10.2013, opposite party no.4 allowed Consolidation

Revision Case No.1515 of 2013 filed by opposite party no.7 and directed the Addl. Sub-Collector, Bargarh for correction of plot number of

consolidation holding no.350/50 as 208 instead of 207 of village-Gadatiapali and issue patta, whereas by order dated 21.11.2014, opposite party no.4

rejected the petition of the petitioners to stay the order dated 25.10.2013 passed in Consolidation Revision Case No.1515 of 2013 and held that he has

lacked jurisdiction to entertain the petition. Â

2. Case of the petitioners is that one Chaliram Lokram was in unauthorised

occupation of land appertaining to major settlement Khata No.388, Plot No.2408, area Ac.0.450 dec. of Mouza-Godbhaga since time immemorial. He constructed a residential house over a part of the plot and resided therein. After death of Chaliram, his daughter Sabita Bhalla was in unauthorized occupation of the land. In Lease Case No.67 of 1987, a part plot no.2408, i.e., plot no.2408/3567 appertaining to Khata No.343/82 was leased out in favour of Sabita Bhalla, mother of the petitioners. Record-of-right was prepared in her name. Sabita renovated the old house and constructed few shop rooms. The land is non-consolidable. In consolidation operation, the land was recorded under Chaka Khata No.287, non-consolidable plot no.207, area Ac.0.04 dec. A portion of the residential house as well as shop rooms was recorded under Chaka Khata No.287, non-consolidable plot no.208, area Ac.0.03 dec. The mother of the petitioners was the recorded tenant in respect of non-consolidable plot no.207. Non-consolidable plot no.208 is Abad Jogya Anabadi land. She was in possession of the same. To press the legal necessity, the petitioners sold Ac.0.04 dec. to opposite party no.7 by means of a registered sale deed dated 29.12.2008. Since consideration was not paid, they cancelled the sale deed, vide Annexure-3. While the matter stood thus, opposite party no.7 filed Consolidation Revision Case No.11 of 2009 under Sec. 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short, OCH & PFL Act) before the Joint Commissioner Consolidation-cum-Settlement, Sambalpur praying, inter alia, for a direction to prepare the record-of-right in respect of non-consolidable plot no.207. By order dated 25.5.2009, Joint Commissioner Consolidation remanded the case to the Addl. SubCollector-cum-Consolidation Officer, Bargarh, opposite party no.5, for disposal in accordance with law. Pursuant to the notice, the petitioners appeared before the Addl. Sub-Collector-cumConsolidation Officer, Bargarh, opposite party no.5, and objected for preparation of ROR in favour of opposite party no.7 in respect of plot no.207 on the ground of non-payment of consideration amount and the cancellation of sale deed, vide Annexure-3. Opposite party no.4 held that it had no jurisdiction to cancel the deed. By order dated 23.11.2010, opposite party no.5 directed preparation of record-ofright in favour of opposite party no.7 till the sale deed is declared void in proper forum. Thereafter, the land was recorded in the name of

opposite party no.7. While the matter stood thus, the National Highway Authority of India (NHA) issued notices to the land owners for expansion of national highway indicating therein that the land appertaining to plot no.207 was to be acquired. Opposite party no.7 claimed compensation stating that he had purchased plot no.207 and he was the owner of the land. NHA disbursed an amount of Rs.82,473.60 towards compensation in favour of opposite party no.7, vide Annexure-7.

After receipt of the compensation, opposite party no.7 filed another Consolidation Revision Case No.1515 of 2013 under Sec. 37 of the OCH & PFL Act before the opposite party no.4 stating that plot no.207 purchased by him is not the correct description. M.S Plot No.2408/3567 was settled in the name of the mother of the petitioners. But then, during consolidation operation, due to erroneous recording of the land, plot no.207 came into being in place of plot no.208. Plot No.2408/3567 corresponds to consolidation plot no.208. He prayed for rectification of plot no.207 as 208. By order dated 25.10.2013, the revisional authority allowed the petition and directed the opposite party no.5 for correction of plot number and issue ROR. The petitioners filed an application on 13.6.2014 with a prayer to stay the final order dated 25.10.2013 on the ground that no opportunity of hearing was provided to them. The order was an infraction of principle of natural justice. Pursuant to the notice, opposite party no.7 entered appearance and filed a written note of submission. By order dated 21.11.2014, the revisional authority dismissed the petition dated 13.6.2014 filed by the petitioners stating, inter alia, that the order passed by the revisional authority has attained finality. It is open to the petitioners to take shelter before this Court.

3. Heard Mr. Sourya Sundar Das, learned Senior Advocate along with Mr. Shibani Sankar Pradhan, learned counsel for the petitioners, Mr. Ram

Prasad Mohapatra, learned Addl. Government Advocate for opposite parties 1 to 6 and Mr. Sukumar Ghosh, learned counsel for the opposite party no.7.

4. Mr. Das, learned Senior Advocate for the petitioners argued with vehemence that petitioner no.1 sold Ac.0.04 dec. of land appertaining to consolidation khata no.287, non-consolidable plot no.207 of Mouza-Gadatiapali (Godbhaga) to opposite party no.7 by means of a registered sale deed dated 29.12.2008, vide Annexure-2. The kissam of the land is Gharabari. Since

consideration was not paid, the petitioners cancelled the registered sale deed, vide Annexure-3. Opposite party no.7 filed Revision Case No.11 of 2009 stating that he had purchased Ac.0.04 dec. of land of Chaka Khata No.287, non-consolidable plot no.207 and prayed for a direction to prepare ROR in his favour. In the schedule appended to the petition, non-consolidable plot no.207 appertaining to khata no.287 has been mentioned. By order dated 23.11.2010, vide Annexure-5, opposite party no.5 allowed the revision and directed to record chaka plot no.207 in the name of opposite party no.7. The petitioner no.1 had received the compensation amount of Rs.82,473.60 from the NHA for acquisition of chaka plot no.207. Again, he filed Consolidation Revision Case No.1515 of 2013 stating that the lease was granted to the mother of the opposite parties (present petitioners) in respect of Ac.0.04 dec. appertaining to major settlement plot no.2048/3567, khata no.342/82. During consolidation operation, the same was recorded in her name under chaka khata no.287, non-consolidable plot no.207.

Opposite parties 1 and 2 (present petitioners) sold the land to the petitioner (opposite party no.7) by means of a registered sale deed dated 29.12.2008 and delivered possession.

It was stated that wrong comparison in major settlement and hal plot during consolidation operation, which is 'Nayanjori' kissam had been recorded in the name of the petitioner (opposite party no.7) in respect of chaka plot no.208. He is in possession of chaka plot no.208. Chaka plot no.208 was not sold to opposite party no.7. Sec. 37(1) of the OCH & PFL Act cannot be pressed into service for the self-same cause of action.

Opposite party no.4 de hors its jurisdiction in entertaining the second revision. Sec. 37 (1) is intended to find that there is genuine ground for non-prosecution of remedy. The Commissioner can exercise his power to prevent abuse of process of law. The same cannot be exercised in a routine manner. To buttress his submission, he placed reliance on the decisions of this Court in the case of Antaryami Lenka and another v. Ghatrubhujia alias Bhujia Lenka and others, 1993 (II) OLR 464 and Kasinath Das & after his death Basudev Das v. Commissioner of Consolidation, Board of Revenue, Orissa, Cuttack & others, 72 (1991) CLT 878.

5. Per contra, Mr. Ghosh, learned counsel for the opposite party no.7 strenuously contended that the petitioners executed the sale deed, vide

Annexure-2, in favour of opposite party no.7. In the writ petition, it is stated that non-consolidable plot no.207 was recorded in the name of their

mother, whereas non-consolidable plot no.208 was under her possession. During consolidation operation, no attempt had been made by the recorded

tenant or the petitioners seeking correction of plots with reference to major settlement khata number and plot number under Sec. 9 of the OCH &

PFL Act. Neither the mother of the petitioners nor the petitioners were the recorded tenants in respect Plot No.208. They cannot have any grievance

with respect to change of plot number, which has been recorded in favour of opposite party no.7, pursuant to the order dated 25.10.2013, vide

Annexure-9. Under Sec. 37(1) of the OCH & PFL Act, the Commissioner has jurisdiction to examine the record of any case or proceeding taken up

by the subordinate consolidation authority for the purpose of satisfying himself as to the correctness, legality and propriety for such authority. The

Commissioner has ample jurisdiction to decide the dispute between the parties. He further submitted that the notification under Sec. 41 of the OCH &

PFL Act was published in respect of the village, where the suit land falls, on 19.2.2016. The petitioners as plaintiffs instituted Civil Suit No.41 of 2012

in the court of learned Civil Judge (Senior Division), Bargarh for declaration that the registered sale deed dated 29.12.2008 as void and permanent

injunction. The suit was dismissed for nonprosecution. In view of the same, opposite party no.7 had no option than to approach the Commissioner

under Sec. 37(1) of the OCH & PFL Act. He cited the Full Bench decision of this Court in the case of Gulzar Khan v. Commissioner, Consolidation,

1993 (II) OLR 194.

6. Sec. 37 of the OCH & PFL Act, which is the hub of the issue, is quoted hereunder;

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.

7. In *Gulzar Khan* (supra), question arose whether power conferred by Sec. 37 of the OCH & PFL Act would be available for exercise after a

notification has been issued as contemplated by Sec. 41(1) of the OCH & PFL Act on the subject that consolidation operations have been closed in

the unit, the result of which is that the village or villages forming part of the unit cease to be under consolidation operations. The Full Bench of this

Court summarised the following principles.

36. We may conclude our views relating to Civil Court's jurisdiction by stating that the same would be available after closure of consolidation

operations only in any one of the following circumstances;

(i) The cause of action accruing after the closure of the consolidation operations.

(ii) If the consolidation authorities had taken the decision without complying with the provisions of the Act or had not acted in conformity with the

fundamental principle of judicial procedure (which would take within its fold the case of violation of natural justice).

(iii) Obtaining of order from the hand(s) of consolidation authorities by playing fraud on the party who seeks to approach the Civil Court. It was

further held that the power under Sec. 37 of the OCH & PFL Act being unfettered shall be available only under compelling circumstances. Despite

closure of the consolidation operation which would be result of the notification under Sec. 41 of the OCH & PFL Act, power under Sec. 37 would be

available; whether in a particular case the same would be exercised shall have to be decided by the Consolidation Commissioner depending upon the

facts and circumstances of that case.

8. Sec. 37 of the OCH & PFL Act was the subject-matter of interpretation in the case of *Kasinath Das* (supra). This Court held that the power under

Sec. 37(1) of the Act is vested with the Commissioner for the purpose of satisfying himself as to the regularity of the proceeding or as to the

correctness, legality or propriety of any order passed by such authority subordinate to him. Unless any order passed by a subordinate authority suffers

from such infirmities or unless the Commissioner is satisfied that the proceedings have been conducted irregularly, the order is not available to be

varied nor the proceeding is available to be quashed. Sec. 37(1) does not contemplate the Commissioner to function as an original authority. If

objections are raised at the section 9 stage, the party against whom the objections are raised gets an opportunity to rebut the objections, if necessary, by leading evidence. The decision of the original authority is also available to be challenged in appeal under Sec.12 of the Act. If the matter is agitated for the first time under Sec.37, the party against whom objection is raised is deprived of such opportunity and besides by adoption of such procedure the very purpose of the Act is defeated as by resorting to successive applications under Sec. 37(1), the entire consolidation operation may be effectively checked and the very finality which is intended to be achieved expeditiously would be frustrated.

9. Placing reliance on the decision in the case of M/s. Modern Fabricators Firm represented by Satyabrata Mohanty and others v. Rajendra

Harichandan and others 73 (1992) CLT 217, this Court in Antaryami Lenka (supra) held that Sec. 37 of the OCH & PFL Act was intended to further

the interest of justice and was not intended to act as a camouflage to get over statutory bars and prohibitions. It was held that the Commissioner, if

finds that there were genuine grounds for non-prosecution of the remedies available under the statute and it is necessary to prevent the abuse of the

process of law to exercise his power under Sec. 37, then the power could be exercised, but it should not be exercised in a routine manner to re-

provide the remedy which had been statutorily taken away or restricted. It was also held in the aforesaid case that in a given case whether power

under Sec. 37 of the Act could be exercised or not would depend upon the facts and circumstances of the case and the reasons for which the

statutory remedies could not be availed of. But a word of caution has been indicated therein that the said power should be exercised with care, caution

and circumspection and the rigours imposed by the statute should not be obliterated.

10. Reverting to the facts of the case and keeping in view the decisions cited supra, this Court finds that opposite party no.7 had filed Consolidation

Revision Case No.11 of 2009 for correction of ROR stating, inter alia, that he had purchased Plot No.207. The same was allowed by opposite party

no.5 on 23.11.2010, vide Annexure-5. Thereafter, he received the compensation amount of Rs.82,473.60. Once he received the compensation amount,

the question does arise as to whether he can invoke the jurisdiction of the Commissioner under Sec. 37(1) of the OCH & PFL Act for correction of

Plot No.208. Neither the sale deed nor consolidation map nor earlier petition revealed that the opposite party no.7 had purchased plot no.208. Opposite party no.4 proceeded on the premises that opposite party no.7 had purchased plot no.208 and allowed the revision. After receiving the compensation, opposite party no.7 filed another application in respect of plot no.208. Opposite party no.7 had taken prevaricating stand. This Court fails to understand as to how he had received the compensation amount of Rs.82,473.60 from NHAI in respect of acquisition of plot no.207. If the contention of opposite party no.7 is accepted, then the conclusion is irresistible that he had received the compensation in respect of a Government land by playing fraud. The power of Commissioner under Sec. 37(1) of the OCH & PFL Act cannot be exercised in favour of a person who had approached the Commissioner with a pair of unclean hands.

Opposite party no.4 fell into patent error in directing the correction of ROR in respect of plot no.208. The said plot has not been purchased by the opposite party no.7. Opposite party no.4 has travelled beyond its jurisdiction in granting declaratory reliefs. The power of the Commissioner is intended to further the interest of justice and is not intended to act as a camouflage to get over statutory bars and prohibitions. The Commissioner cannot make a declaratory relief, which the civil court can do.

11. As a sequel to the above discussions, orders dated 25.10.2013, and 21.11.2014, vide Annexure-9 and Annexure-13 respectively, passed by the Addl. Commissioner Settlement & Consolidation, Sambalpur, opposite party no.4, are quashed. The writ petition is allowed. There shall be no order as to costs.