

(2005) 06 OHC CK 0040
In the Orissa High Court
Case No : Writ Petition (C) No. 9979 of 2003

Satsang

APPELLANT

Vs

Akshaya Kumar Khatua and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

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

Citation : (2005) 100 CLT 440 : (2005) 2 OLR 285

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B.N. Ratho, for the Appellant; Govind Das, for Opp. Party No. 2 and Manoj Misra, for Opp. Parties 7-16, for the Respondent

Judgement

A.S. Naidu, J.—Fraud, collusion or misrepresentation nullify any order passed by any authority. The allegations of the petitioner in the present Writ Petition are to the same extent.

2. The lands in dispute are situated in Mouza-Sindurpank in the district of Sambalpur. Certain dissensions cropped up inter se between the parties centering round the order passed by the Tahsildar in Mutation Case No. 1176 of 2003. It was alleged by the petitioner that on enquiry it was found that opposite party No. 1 had clandestinely obtained certain orders in his favour from the Tahsildar in consonance with the direction issued by the Consolidation authority in Consolidation Revision Case No. 291 of 2003 behind the back of the Petitioner. The aforesaid Consolidation Revision alleged to have been filed by opposite party Nos. 1 and 2 invoking jurisdiction of the Commissioner of Consolidation, Sambalpur u/s 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as "the Act"). The Joint Commissioner who disposed of the Revision Case without properly appreciating the facts and circumstances involved therein and without affording opportunity of hearing to the petitioner remanded the said case (Consolidation Revision Case

No. 291/03) to the Consolidation Officer, Sambalpur. Thereafter no notice was issued to the petitioner by the Consolidation Officer, and the latter by his order dated 24.5.2003, vide Annexure- 12, disposed of the said case ex parte. On the basis of the aforesaid ex parte order of the Consolidation Officer, the Tahsildar, Sambalpur vide his order dated 27.5.2003, Annexure-13, disposed of Mutation Case No. 1176 of 2003. Coming to know all these facts, it is submitted, the petitioner filed a Misc. Case before the Joint Commissioner to recall the ex parte order passed by him in Consolidation Revision Case No. 291/03 but said petition was dismissed by the said authority vide order dated 16.8.2003, Annexure-17. All the aforesaid orders are impugned in this Writ Petition.

3. After receiving notice, the contesting opposite parties have filed counter-affidavits repudiating the averments made and allegations levelled by the petitioner. It is submitted that due notice had been issued to the petitioner before order was passed by the Consolidation. Officer but they chose not to contest.

4. Mr. Ratho, learned counsel for the petitioner, forcefully submitted that though the disputed land was recorded in the Major Settlement in the name of the vendors of the petitioner and the same was allotted to them in the concerned consolidation proceeding in 1991, the Consolidation Officer while deciding the Remand Revision Case No. 291/03 did not give notice to the vendors of the petitioner, thereby violating the principles of natural justice and equity. According to him, the Consolidation Officer disposed of the case hurriedly without conducting proper enquiry.

5. Though several grounds were raised by the learned counsel for the respective parties, as this Court feels that the Writ Petition can be disposed of only on the ground of non- issuance of notice by the Consolidation Officer to the necessary parties as also on the ground of violation of natural justice, it will be redundant to probe into other grounds lest it may amount to pre-judging the issues.

6. Admittedly after the Mouza in which the disputed lands are situated came within consolidation operation, the authorities concerned recorded the lands in consonance with the provisions of the Act and the Rules framed thereunder as long back as in 1991. It appears that the contesting opposite parties in this Writ Petition filed Consolidation Revision Case No. 291/03 u/s 37(1) of the Act before the Consolidation Commissioner, Sambalpur in the year 2003 which was heard and disposed of by the Joint Commissioner, Sambalpur. The Joint Commissioner remanded the case to the Consolidation Officer, Sambalpur for fresh disposal. It appears from the impugned order passed by the Joint Commissioner that all the parties who had right to the property in question were not impleaded in the said case. But then the Joint Commissioner refused to recall his order passed in the aforesaid Revision Case remanding the case to the Consolidation Officer only on the ground that the Consolidation Officer had issued notice to all the parties who had interest in the property. A perusal of the order Annexure- 13 passed by the Consolidation Officer reveals that the said order had been passed ex parte on the

ground that though notice had been served on the parties, none appeared. According to the petitioner, no notice was ever served on it and an ex parte order was passed. For the aforesaid reason, the Joint Commissioner ought to have considered as to whether notice was at all issued to the petitioner which admittedly had some interest in the disputed lands. In absence of any notice to the petitioner, the order passed by the Consolidation Officer has become vulnerable and cannot be sustained.

7. In the aforesaid facts and circumstances and in order to avoid multiplicity of litigations, this Court feels that it is a fit case where the impugned ex parte order dated 24.5.03, Annexure-12, passed by the Consolidation Officer, Sambalpur in Remand Revision Case No. 291 of 2003 should be quashed, and I direct accordingly. I further direct that the Consolidation Officer, Sambalpur shall issue notice to the petitioner and all other persons who have any semblance of interest in the land in dispute and dispose of the aforesaid Remand Revision Case in consonance with law. It is made clear that this Court has not expressed any opinion with regard to the merit of the claim of any of the parties.