

**(1996) 04 OHC CK 0016**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 9011 of 1995

Smt. Binapani Sethi and Another

APPELLANT

Vs

Sri Bijay Kumar Sahoo and Others

RESPONDENT

**Date of Decision :** 23-04-1996

**Acts Referred:**

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —  
Section 34, 35

**Citation :** (1997) 2 OLR 399

**Hon'ble Judges :** A. Pasayat, J;A. Deb, J

**Bench :** Division Bench

**Advocate :** B.P. Das, B. Pr. Das, B.M. Sarangi and . D.N. Mohanty, for the Appellant; M.R. Panda and Bilasini Patnaik, for o.p.. No. 1 and S. Mohanty, N.C. Sahoo and S.P. Panda for o.p. 4 to 8, for the Respondent

**Final Decision :** Dismissed

## Judgement

A. Pasayat, J.—Petitioners call in question legality of orders passed by the authorities under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short, "the Act"). The authorities were of the view that there was contravention of provisions contained in Sections 34 and 35 of the Act and the two sale-deeds executed in favour of the petitioners by opposite parties 4 to 8 were void.

2. The background facts essentially are as follows :

Each of the petitioners purchased land by sale-deed dated 28.9.1993 from opposite parties 4 to 8. Opposite party No. 1 filed an application before the Collector, Cuttack, which was registered as Consolidation Misc. Case No. 1 of 1994, alleging that the areas transferred by "he sale-deeds were , less than one acre each, thereby attracting rigors of Section 34. The matter was carried before this Court and direction was given to the Collector of finalise the proceeding by 15.10.1995. As no petition was filed before the Tahasildar as directed by the Collector by his order dated 29.7.1995, the matter was finally disposed of by the

Collector by order dated 10.10.1995. A direction was given to the Tahasildar to consider, whether permission can be granted by the Tahasildar keeping in view the fact that the petitioners were husband and wife and they may not fragment the Chakas, and cultivate the land jointly. The Collector held that the sale-deeds were executed in contravention of the provisions contained in Sub-section (3) of Section 34 of (he Act, and Rule 32 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Rules, 1973 (in short, "the Rules") as prior permission had not been obtained. The sale-deeds were accordingly declared to be void. Final order of the Collector dated 10.10.1995 (Annexure-6) is the subject-matter of challenge.

3. In support of the writ application, petitioners and opposite parties 4 to 8 submitted that the subject of enacting Section 34 is to prevent fragmentation and, there being no scope for fragmentation, as the purchasers were husband and wife, who would cultivate the lands. jointly a too technical view should not have been taken. Further it is stated that a family could purchase land. There being no definition of "family" given in the Act, definition of "family" as contained in the Orissa Land Reforms Act, 1960 (in short, "the OLR Act) would be applicable; and in terms of Section 37 of the OLR Act there Was no embargo on the purchase. The locus standi of opposite party No.1, on whose motion the proceeding has been initiated has been questioned.

4. Mr. M. R. Panda appearing for opposite, party No. 1 submitted that in case any person intends to sell a parcel of land which would create a fragment, the owners of contiguous Chakas are given option to purchase. In that view of the matter, he had locus standi.

5. Sections 34 and 35 are relevant for the purpose of this case. They read as follows :

"34. Prevention of fragmentation :

(1) No agricultural land in a locality shall be transferred or partitioned so as to create a fragment.

(2) No fragment shall be transferred except to a land-owner of a contiguous Chaka :

Provided that a fragment may be mortgaged or transferred in favour of the State Government, a Co-operative Society, a scheduled bank within the meaning of the Reserve Bank of India Act, 1934 (2 of 1935) or such other financial institution as may be notified by the State Government in that behalf as security for the loan advanced by such Government, Society, Bank or institution, as the case may be.

(3) Where a person, intending to transfer a fragment, is unable to do so owing to restrictions imposed under Sub-section (2), he may apply in the prescribed manner to the Tahasildar of the locality for this purpose whereupon the Tahasildar shall, as far as practicable within forty-five days from the receipt of the application determine the market value of the fragment and sell it through an

auction among the land-owners of contiguous Chakas at a value not less than the market value so determined.

(3-a) Any person aggrieved by an order of the Tahasildar under Sub-section (3) may, within sixty days from the date of such order, prefer an appeal in the prescribed manner before the concerned Sub-divisional Officer, whose decision thereon shall be final.

(4) When the fragment is not sold in course of the auction it may be transferred to the State Government and the State Government shall, on payment of the market value determined under Sub-section (3), purchase the same and thereupon the fragment shall vest in the State Government free from all encumbrances.

(5) Nothing in Sub-sections (1) and (2) shall apply to a transfer of any land for such public purposes as may be specified by notification in this behalf by the State Government."

"35. Consequences of transfer or partition contrary to provisions of Section 34 -

(1) A transfer or partition in contravention of the provisions of Section 34 shall be void.

(2) A person occupying or in possession of any land by virtue of a transfer or partition which is void under the provisions of this Act, may be summarily evicted by the Collector."

Section 34 deals with "prevention of fragmentation". The "fragmentation" is defined in Section 2(m) of the Act and reads as follows :

"2 (m) "fragmentation" means a compact parcel of agricultural land held by a land-owner by himself or jointly with others comprising an area which is less than -

(i) one acre in the districts of Cuttack, Puri, Balasore and Ganjam and in the Anandpur Sub-division in the district of Keonjhar; and

(ii) two acres in the other areas of the State."

6. Admittedly, the parcels of land sold separately and collectively measure less than one acre, which is the minimum area prescribed for the district of Cuttack. Therefore, there was clear contravention of Section 34. Consequences of transfer contrary to provision of Section 34 are contained in sub-section (1) of Section 35. It clearly lays down that such a transfer is void. Even if it is accepted, as pleaded by learned counsel for the petitioners, that person includes a family and husband and wife would constitute a family, that is really of academic interest, because the total area of land sold by the two sale-deeds was less than one acre. Therefore, the Collector was justified in his conclusion that the transactions were void. The object of stringency underlying Section 34 is clearly in line with the spirit of enacting the Act. It aims to provide for consolidation of holdings and

prevention of fragmentation of land for development of agriculture in the State. Basic object is to give inducement and incentive to the cultivators, by consolidation of scattered holdings and rearrangement of holdings including fragmented holdings among various land owners; so that the holdings become compact and future fragmentation of holdings is prevented.

7. Coming to the question of locus standi of contiguous Chaka owners, it has to be noticed that only when a person intends to transfer a fragment and is unable to do so in view of the restriction imposed under Sub-section (2) of Section 34, he has to apply in the prescribed manner to the Tahasildar of the locality, who is required to determine the market value of fragment and sell it through an auction among the land owners of contiguous Chakas at a value not less than the market value so determined. The land owners of the contiguous Ghakas come into picture when a person intends to transfer a fragment, and is unable to do so in view of the restrictions imposed and applies to Tahasildar for permission. If there is no intention to transfer a fragment, obviously, the land owners of contiguous Chakas would not come into picture.

There is no infirmity in the order of the Collector. The writ application fails and is dismissed. No cost.

A. Deb, J.

8. I agree.