

(2005) 06 OHC CK 0016
In the Orissa High Court
Case No : OJC No. 1143 of 1995

Smt. Rebati Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 36, 9(3)

Citation : (2005) 100 CLT 509 : (2005) OLR 779 Supp

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

Bench : Single Bench

Advocate : B.R. Sarangi, for the Appellant; P. Kar, for O.P. Nos. 5-9, 11 and 13-17, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J

1. The order dated 9.8.1994 (Annexure-4) passed by the Addl. Commissioner of Settlement and Consolidation, Orissa Bhubaneswar in Revision Case Nos. 295-299 of 1998 confirming an order passed by the Consolidation Officer, Kheranga in the district of Balasore in Objection Case Nos. 225-229 of 1991 and 190 of 1990 setting aside the order dated 16.4.1993 passed by the Deputy Director of Consolidation in Appeal Case Nos. 42-46 of 1999 is assailed in this Writ application invoking jurisdiction of this Court under Articles 226 & 227 of the Constitution of India.

2 Petitioner Rebati Rout claiming to be the daughter of one late Dasarathi Rout put forth her claim on the disputed land which stood recorded in favour of Dasarathi Rout along with his co-sharers in the Major Settlement After the Mouza in question came within the fold of consolidation operation in consonance with the notification issued under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as "the Act"), the

land register was prepared in which the disputed land was recorded in the name of Sanatan Rout who claimed to be the son and successor of late Dasarathi Rout. Thereafter petitioner Rebati Rout filed four Objection Cases being numbered as 225-229 of 19991 challenged the said recording inter alia on the ground that she being the daughter of late Dasarathi Rout, Sanatan was not the only legal heir and the lands are to be recorded in her name also. Objection Case No. 190 of 1990 was filed by one Ananda Barik claiming his title over one of the disputed plots by virtue of a registered sale deed dated 24.4.1979. The Consolidation Officer who heard the Objection Cases after discussing all the facts and circumstances of the case and the evidence adduced in the case both oral and documentary came to the conclusion that petitioner Rebati Rout had totally failed to substantiate her claim that she was the daughter of late Dasarathi Rout In view of the aforesaid conclusion the Objection cases filed by Rebati Rout were dismissed and the disputed lands were directed to be recorded in the name of Sanatan. Being aggrieved by the order of the Consolidation Officer, petitioner Rebati Rout preferred Appeal Case Nos. 42-46 of 1991 before the Deputy Director of Consolidation, Bhadrak. The Deputy Director, however, relying upon an enquiry report made by the Sub-Inspector of Schools to the effect that Rebati Rout was the daughter of Dasarathi came to the conclusion that Rebati Rout being the daughter in consonance with the Hindu Succession Act she had a right to succeed to her father's property The appellate authority accordingly directed that the lands should be recorded in the names of both Rebati Rout and Sanatan Rout jointly. The said order of the appellate authority was challenged by Sanatan Rout in four Revisions filed u/s 36 of the Act before the Addl. Commissioner, Settlement and Consolidation, Bhubaneswar who after hearing the counsel for the parties declined to rely upon the enquiry report of the Sub-Inspector of Schools on the ground that the said report had not been made in consonance with direction issued by any authority, nor any judicious procedure had been followed. Discussing the materials available, the Commissioner came to the conclusion that Rebati Rout had failed to adduce any evidence excepting the report of the Sub-Inspector of Schools which was inadmissible and failed to prove that she was the daughter of Dasarathi Rout. On the basis of such conclusion, the revisions were allowed. The order passed by the Deputy Director was set aside and the findings and conclusions arrived by the Consolidation Officer were confirmed.

3. After receiving notice, a counter-affidavit has been filed by the contesting opposite parties repudiating the averments made and allegations levelled by the petitioner in the Writ Petition.

4. Mr. Kar, learned Counsel appearing for the contesting Opp. Parties, took a preliminary objection to the effect that one Writ Application challenging the orders passed in four Objection cases, four Appeals and four Revision Cases is not maintainable and the Writ application should be dismissed on that ground alone. According to him, Rebati Rout did not produce her school leaving certificate nor did adduce any evidence worth-the-name to prove that she was

the daughter of late Dasarathi Rout and the Consolidation Officer had rightly rejected all the Objection Cases filed by her u/s 9(3) of the Act. According to Mr. Kar, the so-called enquiry report of the Sub-Inspector of Schools was a nullity in the eye of law inasmuch as neither Sanatan nor any other contesting opposite parties were examined in course of the enquiry. No notice was given to them and the entire episode culminated in submission of the report by the Sub-Inspector of Schools, behind the back of the contesting opposite parties and thus the same cannot be accepted as a piece of evidence. It was further submitted that neither the author of the said report was examined nor any material was produced to reveal the source of it. According to them, the report being an inadmissible piece of document the Commissioner had rightly rejected the same.

5. Mr. Sarangi, learned Counsel for the petitioner, at the other hand forcefully submitted that the report of the Sub-Inspector of Schools coupled with the School Admission Register and other documents reveal that there was an attempt by Sanatan and others to destroy the school records so as to obliterate the parent-hood of Rebati Rout. Such attempt has been frustrated by the report of the Sub-Inspector of Schools and he being a responsible Government officer, his report could not be ignored at the very threshold. According to Mr. Sarangi, after considering the entire circumstances of the case the Deputy Director had accepted the report and found the petitioner to be the daughter of Dasarathi Rout. Rebati Rout had also filed a suit being Title Suit No. 176/95 and got a decree declaring that she was the daughter of Dasarathi Rout. In view of the said decree of civil court the conclusion arrived at by the Commissioner can no more stand.

6. I have heard learned Counsel for the parties at length and have perused the materials on record. The submission of Mr. Sarangi that in the meanwhile the Civil Court has declared Rebati Rout as daughter of Dasarathi needs to be examined first. It appears that Rebati had filed the suit much after the dispute cropped up between her and Sanatan. The suit was one for declaration of her title over the disputed property. Surprisingly in the suit the State was impleaded as the only defendant. The land being admittedly private land, the State Government had no role to play. Rebati for reasons best known to her did not implead Sanatan in the said suit. Admittedly the dispute cropped up in the year 1990 and the specific case of Sanatan was that Rebati was not the daughter of late Dasarathi Rout. In view of the aforesaid dispute filing of the suit in the year 1995, and that too without impleading the person disputing the daughtership of Rebati and obtaining an ex parte order, appears to be a camouflage attempt to ventilate her ill motive. The suit being one for declaration of title, the decree passed will not be binding upon a person who was not a party to the suit. Thus the claim put forth by the petitioner on the strength of the said decree cannot be accepted. At the other hand, it reveals that the petitioner had not come to Court with clean hands and somehow or other managed to obtain an ex parte decree without impleading the necessary parties. The Consolidation Officer discussed all the material evidence adduced before him and arrived at the conclusion that

Rebati had totally failed to prove that she was the daughter of Dasarathi. The said finding gets fortified from the voluminous documents produced before the authority by the contesting opposite parties. The revisional authority has not committed any illegality or irregularity in discarding the report submitted by the Sub-Inspector of Schools who was neither examined as a witness nor his report was in consonance with any judicial order. The enquiry was also conducted behind the back of the contesting opposite parties and is therefore not binding on Sanatan.

7. In the facts and circumstances of the case and in view of the conduct of the petitioner as discussed above, this Court is not inclined to interfere with the conclusions arrived at by the Consolidation Officer which have been confirmed by the revisional authority. Law is well settled that this Court while exercising certiorari jurisdiction under Article 227 of the Constitution of India does not act as an Appellate Court and unless the finding of an authority below is palpably illegal, grossly contrary to law and/or shocking to common sense, the same should not be interfered with. Examining the materials available on record on the aforesaid principle, this Court finds that neither the Consolidation Officer nor the revisional authority have committed any illegality or irregularity in passing their orders and their orders do not suffer from non-consideration of any admissible evidence on record nor is there any error of law apparent on the face of the records. Accordingly this Court is not inclined to interfere with the impugned order Annexure-4 passed by the revisional authority. The Writ Application is, therefore, dismissed. Parties to bear their own cost.