

(2021) 06 OHC CK 0095

In the Orissa High Court

Case No : Writ Petition (Civil) No. 13011 Of 2019

Sri Dandapani Dash

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 25-06-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2021) 06 OHC CK 0095

Hon'ble Judges : Dr. S. Muralidhar, CJ; S. K. Panigrahi, J

Bench : Division Bench

Advocate : S.N. Moharana, D.K. Mohanty, Amitav Tripathy

Final Decision : ?Disposed Of

Judgement

Dr. S. Muralidhar, CJ.

1. This petition seeks a direction to the Opposite Party Nos. 1 to 4 which includes the Commissioner-cum-Secretary, Department of Revenue and

Disaster Management, Government of Odisha (Opposite Party No.2) and the Direction Consolidation, Odisha (Opposite Party No.3), to record the

â??Chakaâ?? in respect of the land to the extent of Ac.04.925 dec. in three plot numbers 32,796 and 1388, under Rayati Khata No. 71 in Mouza

Ripiti Palli under Bhanjanagar P.S. and Ghumusar Tahsil in the district of Ganjam in sabik settlement (â??the property in questionâ??) by disposing of

the Petitionerâ??s representation in that behalf dated 30th October, 2015.

2. The Petitioner has also questioned the validity of the action of Opposite Party No.2 in recording the names of the private parties, i.e. Opposite

Parties 5 and 6, in respect of the property in question without cancelling the

allotment of the said plot in favour of the Petitioner under the Ex-Service Jawan Quota.

3. The background facts are that the Petitioner being an ex-serviceman having the rank of LAS Army had applied for allotment of a plot under the Scheme of Jawans-Grant of concession of land. He was found eligible for such allotment for the concession of land by letter dated 5th May, 1967 of the Home Department.

4. It is stated that in 1984 the Petitioner was allotted the property in question for which, as proof, he has enclosed a photo copy of the sabik record of rights (ROR). He says that in the last consolidation record finally published in 1991, the ROR was found to be in the names of Opposite Parties 5 and

6 with Rayati status. The Petitioner then filed a revision petition under Section 37(1) of the Orissa Consolidation of Holding and Prevention of

Fragmentation of Holding Act, 1972 before the Joint Commissioner of Settlement and Consolidation, Berhampur.

5. The said revision petition being CRP No. 06 of 2007 was allowed by the Joint Commissioner by order dated 5th May, 2010 and a direction was

issued to the Tahasildar, Bhanjanganar as well as Consolidation Officer, Bhanjanagar for recording the Chaka in favour of the Petitioner.

6. Pursuant thereto, a letter was sent by the Additional Sub-Collector-cum-Consolidation Officer, Bhanjanagar on 3rd September, 2011 to the Tasildar,

Bhanjanagar to do the needful. When no steps were taken, the Petitioner submitted a representation dated 30th October, 2015 to the Minister of

Revenue and Disaster Management, Odisha, who in turn by a letter dated 21st December, 2015 asked for an inquiry to be conducted by the Director

Consolidation, Odisha. When despite all of the above steps no action was taken the present petition was filed in which the notice was issued on 9th

December, 2019. When Opposite Parties 5 and 6 not served with the notice, the Court ordered a fresh notice on 2nd March, 2021. The Office report

is that the Opposite Party No. 5 has expired.

7. In the meanwhile I.A. No. 8030 of 2021 has been filed by one Manju Swain, wife of Purusottam Swain of Bhanjanagar stating, inter alia that the

Intervenor has purchased the property in question from Opposite Parties 5 and 6 by a registered Sale Deed dated 26th March, 2010 in the Office of

the Registering Officer, Ghumusar Ganjam. According to the Intervenor it is only

after verifying the ROR that she purchased the property in question.

According to her, the Opposite Parties 5 and 6 had purchased the property in question from one Simanchal Sahu by register sale deed dated 21st

March, 1983. The Intervener claims to be doing pisciculture in the property in question since the date of her purchase and also to have availed a loan

from Andhra Bank, Bhanjanagar for a fishery project. According to the Intervener, the Joint Commissioner in the order dated 5th May, 2010 only

directed the Tahasildar to consider the case of the Petitioner and no mandamus is issued for recording the ROR in his favour.

8. This Court has heard the submissions of learned counsel for the parties. It appears to the Court that too many disputed questions of fact which

make it difficult for the Court to entertain this petition and issue the directions as prayed for. In the first place, it now appears that the RoR recorded in

favour of Opposite Parties 5 and 6 never got corrected. This RoR was even according to the Petitioner recorded long prior to 1991. This is consistent

with the contention of the Intervener that Opposite Parties 5 and 6 had purchased the property in question by registered sale deed on 23rd March,

1983 itself.

9. The Intervener traces her title through Opposite Parties 5 and 6 and she too claims to have purchased the property in question by a registered sale

deed on 26th March, 2010.

10. Therefore there are two registered sale deeds coming in the way of the present Petitioner asserting rights, title and interest on the property in

question. Unless the Petitioner is able to overcome these difficulties, it is simply not possible for this Court to issue any directions to the Opposite

Parties 1 to 4 to record any 'Chaka' in respect of the property in question in favour of the Petitioner. At the same time, with the disputed

question of fact converging, it is not going to be possible for this Court to resolve those issues since it would require evidence to be laid by the parties.

11. Leaving it open therefore to the Petitioner to seek other appropriate remedies, as may be available including instituting proceedings in the civil

court, this Court declines to interfere in the present writ petition to grant any of the reliefs as prayed for.

12. This writ petition is disposed of in the above terms.

13. As the restrictions due to resurgence of COVID-19 situation are continuing,

learned counsel for the parties may utilize a printout of the order

available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

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