

(2019) 03 OHC CK 0042

In the Orissa High Court

Case No : Writ Petition (Civil) No.19266 Of 2017

Sridhar Khilar And Others

APPELLANT

Vs

Addl. Commissioner, Settlement & Consolidation, Balasore
And Others

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Orissa Land Reforms Act 1960 — Section 22, 22(1), 22

Citation : (2019) 03 OHC CK 0042

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : R. N. Singh, R. P. Mohapatra

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This petition challenges the order dated 7.3.2017, passed by the Additional Commissioner, Settlement and Consolidation, Balasore, opposite party

no.1, in Consolidation Revision Case No.365 of 2015 as well as order dated 8.2.2018, passed by the Addl. District Magistrate, Balasore, in O.L.R.

Appeal No.5 of 2014. By order dated 7.3.2017, Annexure-8, the opposite party no.1 allowed the revision under Sec.37(1) the Orissa Consolidation of

Holdings and Prevention of Fragmentation of Land Act, 1972 (â??OCH & PFL Actâ?? for short), filed by opposite party no.4 herein, whereas, the

opposite party no.2 allowed the OLR Appeal No.5 of 2004 on 8.2.2018 filed under Sec.58 of the Orissa Land Reforms Act, 1960 (in short â??OLR

Actâ??).

2. Bereft of unnecessary details, the short facts of the case are that opposite

party no.4 is a Scheduled Caste person. His caste is Dhoba. His grandfather Budhi Sethi executed a registered deed of relinquishment on 9.11.1966 in favour of the predecessors of the petitioners without obtaining permission from the Revenue Officer u/s.22 of the OLR Act. He filed OLR Case No.1 of 2014 before the Sub-Collector, Balaswar, opposite party no.3, under Sec.23 of the OLR Act to declare the deed void and restore possession. The petition was dismissed on the ground of limitation. Felt aggrieved, he filed OLR Appeal No.5 of 2014 before the learned Addl. District Magistrate, Balasore. While matter stood thus, he filed an application under Sec.37 of the OCH & PFL Act before the Addl. Commissioner, Settlement and Consolidation, Balasore, opposite party no.1 to record the land in his favour. By order dated 07.03.2017, the Commissioner held that the deed of relinquishment has been executed by Budhi Sethi in favour of Faka Khilar, Purna Chandra Khilar, Ghanashyam Khilar, sons of Laxmidhara Khilar without obtaining prior permission from the Revenue Officer under Sec.22 of the O.L.R. Act, which is a mandatory requirement for transfer of the land belonging to Scheduled Caste persons to Non-Scheduled Caste persons. The deed is void. No title has passed. Held so, it directed the Tahasildar, Simulia, to record the land in favour of the opposite party no.4.

3. Heard Mr. R.N. Singh, learned counsel for the petitioners and Mr. R.P. Mohapatra learned AGA for the State.

4. Mr. Singh, learned counsel for the petitioners submits that the forefather of the petitioners were in possession of the land prior to 1966. Registered deed of relinquishment was executed on 09.11.1966. After lapse of 40 years, opposite party no.4 filed an application before the Sub-Collector, Balasore, for restoration of the land. The same having been dismissed, he filed OLR Appeal No.05 of 2014 before the A.D.M., Balasore. Thereafter, he filed revision u/s 37(1) of OCH & PFL Act before the Addl. Commissioner to record the land in his favour. The opposite party no.4 has not filed any application u/s.9 of the OCH & PFL Act. Long after publication of ROR, revision was filed. He further submits that no opportunity was provided to the opposite party no.4 while hearing the revision application.

5. Per contra, Mr. Mohapatra, learned AGA submits that Umakanta Sethi, opposite party no.4 is a scheduled caste person. No permission was accorded by the Revenue Officer before execution of the deed of relinquishment

and as such, the deed is a void one. No title has passed. He further submits that the Consolidation Authority has jurisdiction to decide the question as to whether the sale deed is void in view of Section 22 of the OLR Act. To buttress submission, he places reliance on the Full Bench decision of this Court in the case of Ranka Bhua and others Vrs. Jubaraj Saraf and others, AIR 1995 Orissa 16.

6. Sub-section (1) of Section 22 of Orissa Land Reforms Act envisages restriction on alienation of land by scheduled tribes. It provides:

22. Restriction on alienation of land by Scheduled Tribes

(1) any transfer of holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of

(a) a person belonging to a Schedule Tribe ; or

(b) A person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer;

Proviso to sub-section 1 stipulates that in case of a transfer by sale, the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser

belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

Sub Sec.5 of Sec.22 of OLR Act stipulates that the provisions contained in Sub-section (1) to (4) shall apply mutatis mutandis, to the transfer of a holding or part

thereof a raiyat belong to the Scheduled Caste.

7. Admittedly, opposite party no.4 is a scheduled caste person. His caste is Dhoba. No permission was accorded by the Revenue Authority to

transfer the land in favour of the predecessors of the persons, who are non-scheduled caste persons. Since the transfer of the land is in contravention

of sub-sec.5 of sec.22 of the OLR Act, the deed is void. No title has passed.

8. The land came under the purview of the consolidation operation. The opposite party no.4 belongs to the lower strata of the society. He could not

take steps, when the consolidation operation was in progress. After publication of consolidation ROR, he filed an application u/s.37 of the OCH &

PFL Act before the Additional Commissioner, Settlement & Consolidation, Balasore.

9. The seminal point that hinges for consideration is as to whether revision is maintainable?

10. The subject-matter of dispute is no more res integra. The same has been set at rest by the Full Bench of this Court in the case of Gulzar Khan

Vrs. Commissioner of Consolidation and others, 76 (1993) C.L.T. 161. The Full Bench held:

â??37.....It is apparent that a forum has to be available to a person who was to be aggrieved, after Section 41 notification has been issued, with any order having

been passed or anything having been done during the consolidation operations affecting his right, title and interest. As stated in the opening sentence of this

judgment, there cannot be a right without any remedy; and, according to us, the remedy can be made available principally by Section 37 of the Act. As to when such

a situation may arise need not be spelt out, indeed, it cannot be; the probability of such a situation arising cannot obviously be ruled out. This power being

unlettered, we cannot put any fetter; any such action of ours would render some really hard-pressed people without a remedy. May we repeat that we are not at the

question as to when power under section 37 would be, or should be exercised. As already pointed out, this power shall be available only under compelling

circumstances, but on compelling circumstances existing, we cannot shut out the invocation of the power. May we also observe that though section 37 has conferred

an unfettered power it is settled law that every power, be it administrative or judicial, has to be exercised in a reasonable manner, and the reasonable exercise of power

inheres in its exercise within a reasonable time as stated at pp.1245-6 of Manasaram v. S. P. Pathak : AIR 1983 SC 1239. This apart, no power is really unfettered ; every

power has to be exercised according to rules of reason and justice, not according to private opinion; according to law, and not according to humour. The exercise of discretionary power cannot be arbitrary, vague and fanciful; it has to be legal and regular.

38. We, therefore, answer the reference by saying that despite closure of the consolidations operation which would be result of the notification under section 41 of

the Act, power under section 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.â??

11. In view of the authoritative pronouncement of this Court in the case of Gulzar Khan, the petition before the Commissioner is maintainable.

Sufficient opportunity was provided to the petitioners to defend the case.

12. The next question crops up as to whether the Consolidation Authority has jurisdiction to decide the issue. In Ranka Bhua, the Full Bench held :

â??9. On consideration of the relevant provisions of the Act and Sections 22 and 23 of the O.L.R. Act, we are of the opinion that the consolidation authorities while disposing of the objection cases during the consolidation operations have the power to decide whether the transfer relied upon before them is void in view of the

prohibition contained in Section 22 of the O.L.R. Act.â?? (emphasis laid)

13. In the wake of the aforesaid, the petition sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.

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