

HIGH COURT OF ORISSA : CUTTACK

O.J.C. NO.4353 OF 1997

An application under Articles, 226 and 227 of the Constitution of India.

Pradeep Kumar Behera & others Petitioners.

Versus.

Commissioner of Land Records &
Settlement, Orissa & others opp.parties.

For Petitioners : Mr. J.R. Dash.

For opp.parties : M/s. N.P. Parija, S.R.Patnaik,
L. Mishra & K.K.Jena.
(opp.party no.2).

Amicus Curies : Mr. N.K. Sahu & U.K. Samal,

PRESENT

THE HON'BLE SHRI JUSTICE B.K.NAYAK

Date of hearing : 20.10.2014 : Date of judgment: 28.11.2014

B.K.NAYAK, J. Order dated 27.01.1997 (Annexure-4) passed by the Commissioner, Land Records & Settlement, Orissa, Cuttack in R.P. Case No.3437 of 1995 under Section 15 of the Orissa Survey and Settlement Act, 1958, has been assailed in this writ application.

2. The present opposite party nos.2 to 5 filed R.P. Case No.3437 of 1995 under Section 15 of the Orissa Survey and Settlement Act challenging the correctness of R.O.R. published under Section 13 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act in respect of land under Khata No.577 of mouza-Nuapada, Tahasil-Cuttack Sadar since in the R.O.R. the lands were recorded in favour of Subash Chandra Behera, the predecessor-in-interest of the writ

petitioners to the exclusion of opposite party nos.2 to 5. By the impugned order, the revision was disposed of directing Tahasildar, Cuttack to include the names of the present opposite party nos.2 to 5 jointly with Subash Chandra Behera.

3. The learned counsel for the petitioners only challenges the jurisdiction of the Commissioner, Land Records and Settlement to entertain the revision and pass the impugned order. Undisputedly the R.O.R. in question was published under Section 13(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act and soon thereafter an order by the State Government under sub section (1) of Section 5 of the Consolidation Act was published cancelling Government notification under Section 3(1) of the said Act whereby the village in question had been brought under consolidation operation.

The contention of the learned counsel for the petitioners is that even though in terms of sub-section (4) of Section 13 of the Consolidation Act, the R.O.R. published under sub-section (1) of the said section be deemed to have been made under the Orissa Survey and Settlement Act because of order of de-notification issued under Section 5(1) of the Consolidation Act, since the R.O.R. has been published on determination of right, title and interest by the competent authorities under the Consolidation Act, it was only the Commissioner, Consolidation or the Director, Consolidation, who could have revisional jurisdiction under Section 37 of the Consolidation Act to decide the correctness, legality and propriety of the R.O.R. and the Commissioner of land records and settlement could not have entertained the revision since the

authorities under the Orissa Survey and Settlement Act have no jurisdiction to decide the question of right, title and interest in land. His submission is that the deeming provision of Section 13(4) of the Consolidation Act does not confer jurisdiction on the Settlement Commissioner to decide the correctness of the R.O.R. published under Section 13(1) of the Consolidation Act. Extending his argument he submits that in view of Section 51 of the Consolidation Act investing jurisdiction on the Consolidation authorities and ousting the jurisdiction of the Civil Court to decide the question of right, title and interest in the land within the consolidation area and a publication of the R.O.R. under Section 13 of the Consolidation Act is based on the decision of the question relating to right, title and interest by the consolidation authorities, the Settlement Commissioner cannot sit on judgment over the said R.O.R. Drawing analogy from Section 22 of the Consolidation Act, he submits further that a final consolidation R.O.R. published under sub-section (1) of Section 22 of the Consolidation Act is also deemed to be an R.O.R. prepared under the Orissa Survey and Settlement Act as per sub-section(4) of Section 22 but the correctness of such R.O.R. can be subjected to scrutiny only by the revisional authority under the Consolidation Act and, therefore, for the same reason an R.O.R. published under Section 13(1) of the Consolidation Act may be scrutinized by the revisional authority under the said Act and not by the revisional authority under the Orissa Survey and Settlement Act. He also submits that issuance of an order of de-notification of consolidation under Section 5(1) of the Consolidation Act does not obliterate the decision of the

consolidation authorities with regard to right, title and interest in land which has culminated in publication of R.O.R. under Section 13(1) of the Act inasmuch as such publication is made after hearing of objections, appeals and revisions with regard to right, title and interest in land. He further logicises his contention stating that even after issuance of a notification under Section 41 of the Consolidation Act closing consolidation operation in an area the revisional authorities under the Consolidation Act continue to have jurisdiction with regard to orders passed by sub-ordinate authorities under the Act and for the same reason even after de-notification of consolidation by publication of order under Section 5(1) of the Act, the revisional authorities under the Consolidation Act will continue to have jurisdiction.

4. Learned counsel for opposite party no.2, on the other hand, submits that issuance of order under Section 5(1) of the Consolidation Act de-notifying consolidation operation not only has the effect of stopping the consolidation proceeding in the consolidation area, but also has the effect of obliterating all orders passed by the consolidation authorities deciding right, title and interest in the land in the consolidation area and that since the consolidation proceeding in the area is stopped from being brought to its logical end, the preparation of the R.O.R. under Section 13(1) of the Act is only for the purpose of having consequences attached to publication of an R.O.R. under the Orissa Survey and Settlement Act, by virtue of the deeming provision of Section 13(4) of the Consolidation Act. Therefore, the Settlement Commissioner in exercise of its revisional jurisdiction under Section 15 of the Orissa Survey and Settlement Act can

examine the correctness of the entries made in the R.O.R. published under Section 13(1) of the Consolidation Act.

5. Mr. N.K. Sahu, the learned amicus curiae supports the contentions raised by the learned counsel for the petitioners. Mr. U.K. Samal, the learned amicus curiae while supporting the contention of the learned counsel for opposite party no.2 to the extent that publication of de-notification order under Section 5(1) of the Consolidation Act obliterates and sets at naught all orders and actions of the consolidation authorities in respect of their decisions on right, title and interest in land, further contends that neither the revisional authorities under the Consolidation Act nor the authorities under the Orissa Survey and Settlement Act can have power or jurisdiction to examine the correctness of the entries made in the R.O.R. and that any person aggrieved by any entries made in any such R.O.R. shall have to take recourse to the common law forum by instituting a civil suit.

6. The question that falls for consideration is whether the correctness of R.O.R. published under Section 13(1) of the Consolidation Act before issuance of order under Section 5(1) of the said Act de-notifying consolidation operation in respect of the village concerned can be examined by the revisional authority under the Consolidation Act or the revisional authority under the Orissa Survey and Settlement Act ?

In order to answer the question, necessarily we have to decide the effect of an order published under Section 5(1) of the Consolidation Act de-notifying consolidation operation in the concerned area. If Section 5(1) notification has the effect of obliterating or setting at naught all

orders passed and action taken by the Consolidation Authorities under the Act prior to the issuance of such notification including orders passed determining right, title and interest in the land, then the revisional authorities under the Consolidation Act will have no power and jurisdiction to examine the correctness of the R.O.R. published under Section 13(1) of the Act. If the revisional authority under the Consolidation Act will have no jurisdiction, the further question would be whether the revisional authority under the Orissa Survey and Settlement Act will have the jurisdiction to examine the correctness of the R.O.R. published under Section 13(1) of the Consolidation Act by virtue of the deeming provision of sub-section (4) of Section 13 of the said Act.

7. In order to answer the question, it is necessary to examine the scheme of the Orissa Consolidation Act and the Orissa Survey and Settlement Act and some relevant provisions thereof.

8. The Orissa Survey and Settlement Act, 1958 was enacted by the State Legislature to consolidate and amend the laws relating to survey, preparation of record of rights and settlement of rent on land holdings in the State of Orissa. Different parts of the State, prior to the enactment of the Orissa Survey and Settlement Act 1958 (in short 'OSS Act') were being governed by different tenancy laws for the purpose of survey, record of rights and settlement of rent, such as the Bengal Survey Act, the Orissa Tenancy Act, the Madras Survey and Boundaries Act, the Madras Estates Land Act, the C.P. Settlement Act, the C.P. Tenancy Act etc. Under the OSS Act survey includes all or any other operations incidental to the determination, measurement and record of a boundary

or boundaries. Record of Rights under the Act are prepared having particulars and entries including the name of the tenant or occupant, the class to which each tenant belongs and the nature of interest, extent of the land held by each tenant or occupant, name of the landlord and/or proprietor of each tenant, the rent and charges for irrigation payable by each proprietor or landlord, tenant or occupant and the special conditions or incidents of the tenancy, etc. as envisaged in Rule-21 of the OSS Rules. Settlement with reference to the OSS Act means settlement of rent to be payable by a tenant, rayat or sub-tenant to the landlord in respect of the land held. Chapter-IV of the OSS Act deals with settlement of rent whereas Chapter-II deals with survey. Chapter-III of the Act deals with record of rights (ROR). Proceedings with regard to survey, record of rights and settlement of rent are taken up separately by order of Government passed to that effect from time to time under different provisions of the Act. However, Section 36 of the OSS Act authorizes the Government to make order directing simultaneous proceedings to be taken up in respect of survey and preparation of R.O.R; preparation of R.O.R. and settlement of rent; or survey, preparation of R.O.R. and settlement of rent with respect to any local area.

The OSS Act provides for different hierarchy of officers and personnel and vested them with power and jurisdiction for conducting different works and passing appropriate orders.

Section-11 of the OSS Act makes provision empowering the State Government to order for preparation of R.O.R. After an order by the Government is passed, the Assistant Settlement Officer shall proceed to

prepare the R.O.R. in the prescribed manner. For the purpose of preparation of R.O.R. in respect of any local area, there shall be prepared in the prescribed manner a map showing all such particulars as may be considered necessary for the purpose of R.O.R. The Assistant Settlement Officer shall first prepare draft R.O.R. and shall publish the same in the prescribed manner and shall receive and consider any objection, which may be made to any entry therein or any omission there from, during the period of publication in accordance with the provision of Section 12 of the Act. Any order passed by the Assistant Settlement Officer on any objection made to the draft R.O.R. is appealable before the Settlement Officer under Section 12-A of the Act. As per Section 12-B of the Act, after disposal of objections and appeals, the Assistant Settlement Officer shall finally frame the R.O.Rs incorporating all such alterations giving effect to the order passed on objections and appeals and shall cause it to be finally published in the prescribed manner. Section 15 of the Act vests the Board of Revenue with jurisdiction to revise any record of rights of its own motion at any time or on application made within one year from the date of final publication of R.O.R., but not so as to affect any order passed by the Civil Court under Section 42 of the Act. Under sub section (3) of Section 13 of the OSS Act every entry in a final published R.O.R. shall be presumed to be correct until it is proved by evidence to be incorrect.

9. It is trite law that R.O.R. does not create or extinguish title and the settlement authorities lack the jurisdiction to adjudicate upon disputed questions of title. For the purpose of revenue records, the R.O.R. is prepared and the law attaches the presumption of correctness to the

entries made therein. [Decision in 62 (1966) CLT 322, 39 (1973) CLT 1013 and 1989 (II) OLR-135 may be seen].

10. In order to increase agricultural production in the country by consolidating scattered holdings and re-arranging the holdings among various landowners and to make them more compact, the State Government legislated the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short “the Consolidation Act”) and to implement the same created different authorities under the said Act. For starting consolidation operation in a village or group of villages, the State Government shall have to issue a notification to that effect under sub section (1) of Section 3 of the Consolidation Act. Public notice of such notification has to be given in the prescribed manner by the Consolidation Officer. Section 4 of the Consolidation Act enumerates the effect of notification published under Section 3(1) of the Act. The effect of notification under Section 3(1) remains valid or continues till the publication of notification under Section 41 or under sub-section (1) of Section 5, as the case may be. Sub-sections (1), (3) and (4) of Section 4 of the Act, which are relevant for our purpose, are extracted hereunder :

“4. Effect of notification-Upon the publication of the notification issued under Sub-section (1) of Section 3 in the *Official Gazette* the consequences as hereinafter set forth, shall, subject to the provisions of this Act, ensue in the consolidation area till the publication of notification under Section 41 or Sub-section-(1) of Section 5, as the case may be-

- (1) The consolidation area shall be deemed to be under consolidation operations and the duty of

preparation of record of rights and map of each village comprised in the area shall be performed by the Assistant Consolidation Officer who shall prepare them in the manner hereinafter provided.

(2)

(2-a)

3. Every proceeding, relating to survey, preparation and maintenance of record-of-rights and settlement of rent shall stand abated after publication of the notification under Sub-section(1) of Section 6 ; and

(4) Every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal reference or revision shall, on an order being passed in that behalf by the Court before which such suit or proceeding is pending stand abated:

Provided that no such order shall be passed without giving the parties concerned an opportunity of being heard:

Provided further that on the issue of a notification under Sub-section (1) of Section 5 in respect of the said area or part thereof-

(a) every order passed by the Court under Clause(4) in relation to the lands situate in such area or part thereof, as the case may be, shall stand vacated, and

(b) all such suits and proceedings as are referred to in Clause(3) or Clause(4) which relate to lands situate in such area or part thereof, as the case may be, shall be proceeded with and disposed of in accordance with the law as if they had never abated:

Provided also that such abatement shall be without prejudice to the right of the person affected to agitate the right or interest which formed the subject-matter of the said suit or proceeding before the consolidation authority in accordance with the provisions of this Act or the rules made thereunder.”

Section 6(1) of the Consolidation Act provides that after publication of notification under Section 3(1), the Director of Consolidation shall issue a notification constituting under and initiating preparation of maps and land register in respect of each unit which shall be published at a conspicuous place of the village for a period of not less than fifteen days, whereupon the Assistant Consolidation Officer shall prepare the map of each village in the consolidation area and prepare a register known as “Land Register” showing particulars of the lands, interests therein, rent and cess settled therefor and such other details as may be prescribed. The Assistant Consolidation Officer shall also determine in consultation with the consolidation committee the valuation of lands and houses etc taking into consideration different factors and also determine the shares of individual land owners in joint holdings for the purpose of effecting partition to ensure proper consolidation.

Section 7 of the Act empowers the A.C.O and the C.O. to effect partition of the joint holdings on application of the interested parties. They have also power to settle the fair and equitable rent and cess payable in respect of any land, notwithstanding anything contained in any other law for the time being in force.

After publication of notification under Section 6(1) of the Act, the A.C.O. in consultation with the consolidation committee prepares in respect of the each Unit under the consolidation operation a statement of principle to be followed in carrying out the consolidation operation in the Unit.

As per Section 9 of the Act, the copy of the map, Land Register and other records, if any, prepared under Section 6 together with the Statement of the principles, shall be published in the Unit in the prescribed manner. Notices containing relevant extract from the land register are to be sent to the land-owners mentioned in the land register under sub-section (3) of Section 9. Any person interested may within the stipulated period file before the A.C.O. objection on the correctness of entries in the records and the extract furnished therefrom or relating to partition.

Section 10 of the Act provides that objections relating to right, title and interest in the land which can be disposed of by conciliation among the parties concerned shall be disposed of by the A.C.O. Objections which can not be disposed of by conciliation shall be forwarded by the A.C.O. to the C.O. for disposal. In terms of Section 11, objections forwarded by the A.C.O. shall be heard by the C.O. after giving

the parties concerned opportunity of hearing and after such local inspection as may be deemed necessary.

Any person aggrieved by an order of the A.C.O. or the C.O. has a right of appeal to the Director of Consolidation under Section 12 of the Act. Appellate orders of the Deputy Director can be challenged in revision by the aggrieved party before the Consolidation Commissioner under Section 36(1) of the Act, which shall be final.

On the basis of orders passed under Sections 10, 11 and 12, the map and land register prepared under Section 6 shall be revised and be published for a period of fifteen days in the unit for information of all concerned as per provision of sub-section(1) of Section 13.

11. Section 13 of the Consolidation Act provides as under :

“13. Revision of map and land register-(1) The map, land register and other records, if any, prepared under Section 6 shall be revised, if necessary, on the basis of the orders passed under Sections 10, 11, and 12 and shall be published for a period of fifteen days in the unit for information of all concerned.

(2) *[Deleted]*

(3) The map, land register and other records, if any, may thereafter be maintained from time to time on the basis of orders passed by competent authorities under the relevant provisions of this Act.

(4) Where in respect of any village an order is published under Sub-section(1) of Section 5 at any time after the publication of the map and land register under Sub-section(1), the map and the

record-of-rights prepared on the basis of such land register shall, for all intents and purposes, be deemed to have been prepared under the Orissa Survey and Settlement Act, 1958 (Orissa Act, 3 of 1959), provided they are published in the same manner as required by Sub-section (2) of Section 22 and extracts of the record-of-rights are supplied to the land-owners at the time of such publication.”

12. At this stage, it is apposite to see the provision of Section 5 of the Consolidation Act, which is extracted hereunder :

“5. Cancellation of notification-(1) It shall be lawful for the State Government at any time to cancel, by publication of an order to that effect in the *Official Gazette*, the notification made under Sub-section(1) of Section 3 in respect of the whole or any part of the area specified therein.

(2) Where a notification has been cancelled in respect of any area under Sub-section (1), such area shall cease to be under consolidation with effect from the date of the cancellation.”

13. Section 15 of the Consolidation Act provides as under:

“15. Decision of matters relating to changes and transactions affecting right or interest recorded in revised records-(1) All matters relating to changes and transfers affecting any of the rights, title and interest recorded in the land register published under Section 13 for which cause of action arose after the publication of records under Section 9 may be raised before the

Assistant Consolidation Officer as and when they arise but not later than the date of publication of the order, if any, under Sub-section(1) of Section 5 or the date of confirmation of the scheme under Sub-section(1) of Section 21, whichever is earlier:

Provided that it shall also be competent for the Assistant Consolidation Officer to consider such cases *suo motu*.

(2) The provisions of Sections 6 to 12 shall, *mutatis mutandis*, apply to the hearing and disposal of any matter raised under Sub-section(1) as if it were a matter raised under the aforesaid sections.”

14. Under Section 17 of the Act, the Assistant Consolidation Officer shall after publication of map and land register under Section 13(1) prepare a provisional consolidation scheme on the basis of map and land register published under Section 13 and as revised under the provisions of the Act. The A.C.O. is also empowered to prepare provisional consolidation scheme by exchange of lands of different land owners or land of the Government with that of any land owner. The provisional consolidation scheme prepared by the A.C.O. shall be published in the Unit in the prescribed manner and extracts thereof shall be sent to the land-owners. Any person interested and affected by the provisional consolidation scheme may file an objection before the C.O. as per Section 18 of the Act and such objections are disposed of by the C.O. under Section 19 after hearing the parties and consolidation committee. Any

person aggrieved by the order of the Consolidation Officer may appeal to the Director, Consolidation under Section 20 of the Act.

After disposal of the objections and appeals under Sections 19 and 20, the Director, Consolidation shall confirm the provisional consolidation scheme with such modifications as may be necessary in the interest of proper consolidation. The confirmed consolidation scheme becomes final except as otherwise provided under the Act.

15. After confirmation of the provisional consolidation scheme final map and record of rights are prepared and published under Section 22 of the Act, which runs as under :

“22. Preparation and publication of final map and record-of-rights and coming into force of the final consolidation scheme-

(1) (a) As soon as may be after confirmation of the Provisional Consolidation Scheme the Consolidation Officer shall cause to be prepared for each village in the consolidation area a final map and record-of-rights on the basis of the Consolidation Scheme so confirmed.

(b) The map and the record-of-rights shall contain such particulars as are required under the Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959) with such modifications as may be prescribed and shall also show the rent and cess determined under Sub-section(3) of Section 7.

(2) The map and the record-of-rights prepared under Sub-section (1) shall be published in the prescribed manner and the Final

Consolidation Scheme shall come into force from the date of such publication.

(3) The relevant extract of the record-of-rights shall be supplied to the land-owners at the time of publication.

(4) The map and the record-of-rights published under Sub-section(1) shall, subject to alterations and modifications made in pursuance of orders passed under Section 15 or 36 or orders referred to in Sub-section(3) of Section 41, for all intents and purposes be deemed to have been prepared under the Orissa Survey and Settlement Act,1958.”

As per Section 23 of the Act, on an after the date of publication of the map and record of rights under sub-section (2) of Section 22, a land-owners shall be entitled to enter into possession of the land allotted to him.

Section 25 provides that on an application made within sixty days from the date of coming into force of the final consolidation scheme by the land-owner who is unable to enter into possession of the land allotted to him under the Scheme, the A.C.O. may put the land-owner into actual physical possession of the lands so allotted. Under sub-section(3) of Section 25 in the absence of any application by the land-owner, the A.C.O. may on his own motion at any time before the issue of notification under sub-section(1) of Section 41 put the land-owner into actual physical possession of the allotted lands, if he has reason to believe that the land-owner has not entered into possession. Under sub-section

(2) of Section 25 on expiry of six months from the date on which the land-owner becomes entitled to enter into possession of the lands in accordance with Section 23 or where an application has been made to the A.C.O. under sub-section (1), on the expiry of six months from the date of such application, the land owner shall, if not entered into possession earlier, be deemed to have entered into actual possession of the land.

16. Section 31 of the Consolidation Act provides for consequences to ensue on land-owner entering into possession. The said Section is extracted hereunder :

“31. Consequences to ensue on land-owner entering into possession-With effect from the date on which a land-owner enters or is deemed to have entered into possession of the Chaka allotted to him in accordance with the provisions of this Act, the following consequences shall ensue-

(1) The right, title, interest and liabilities of every land-owner in respect of his original holding shall cease:

Provided that where the land-owner is allotted his original holding either wholly or in part in the Final Consolidation Scheme his right, title, interest and liability in such holding or part thereof, as the case may be, shall remain unaffected;

(2) Every landowner shall have the same right, title, interest and liabilities in the “Chaka” allotted to him as he had in the original holding and the rights and interests of all other persons in respect of such original holdings shall stand transferred to the said “Chaka” or to such part

thereof as specified in the Final Consolidation Scheme.”

17. Section 36 of the Consolidation Act gives the Consolidation Commissioner powers of revision against any decision of the Director of Consolidation. Section 37 confers suo motu power of revision on the Consolidation Commissioner and the Director, Consolidation and in doing so those authorities may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by any such authority.

18. Section 41 of the Consolidation Act provides for closure of consolidation operation which shall be after preparation and publication of final R.O.R. under Section 22, though the operation of the provisions of Chapter-IV relating to enforcement of the final consolidation scheme as contained in the final R.O.R. may continue. Section 41 of the Act is quoted here in below:

“41. Closure of consolidation operations-(1) As soon as may be after the final maps and the records have been prepared under Section 22, the State Government shall issue a notification to the effect that the consolidation operations have been closed in the unit and then the village or villages forming part of the unit shall cease to be under the consolidation operations:

Provided that the issue of a notification under this section shall not affect the operation of the provisions contained in Chapter IV.

(2) Notwithstanding anything contained in Sub-section(1), consolidation operations shall not be deemed to have been closed in respect of any case or proceeding pending under the provisions of this Act on the date of issue of notification under Sub-section(1).

(3) The orders passed by the competent authorities in matters referred to in Sub-section (2) shall be given effect to by such authorities as may be prescribed.”

19. Section 51 of the Consolidation Act bars the jurisdiction of the Civil Courts to decide the question relating to right, title and interest in land lying within the consolidation area and confers on the authorities under the Act power to decide such question subject to provisions of Section 4(3) and Section 7(1) of the Act.

20. From the aforesaid provisions it is clear that with effect from the date of publication of notification under Section 3(1) of the Consolidation Act, a village or group of villages, as mentioned in the notification, is brought under consolidation operation, whereupon the authorities under the said Act become competent to exercise jurisdiction and powers conferred on them under the Act and by virtue of provision of Section 51 such authorities become competent to decide the question of right, title and interest in land and the jurisdiction of the civil court to decide such question gets ousted. Even where questions of right, title and interest in land brought under consolidation operation are pending before the civil court, they stand abated on an order being passed to that effect by the court in accordance with the provision of sub-section(4) of Section

4. However, consequent upon issue of cancellation notification under Section 5(1) of the Act as per second proviso to sub-section(4), orders of abatement of suits involving questions of right, title and interest in land automatically stand vacated and all such suits shall proceed and be disposed of by the court as if they had never abated. It is also seen that as per provision of sub-section (3) of Section 4 every proceeding relating to survey, preparation of record of rights and settlement of rent, which might be pending before the authorities under the OSS Act shall also stand abated after publication of notification under sub-section (1) of Section 6 by the Director, Consolidation initiating preparation of map and land register in respect of the consolidation area. This otherwise means that thenceforward maps and land register in respect of each unit in the consolidation area shall be prepared by the consolidation authorities, particularly, the A.C.O. It is abundantly clear from sub-section(2) of Section 6 that the land register would show the particulars of the lands, nature of interest of person in such land and the rent and cess settled therefor. Objections to any entry in the land register which may relate to right, title and interest in the land or the rent and cess settled for the same have to be decided by the authorities under the Consolidation Act. The legislature, therefore, has in its wisdom enacted the provision of abatement of suits in civil court relating to right, title and interest and the proceedings of survey and record of rights and settlement of rent pending before the authorities under the OSS Act in order to avoid conflicting decisions. Therefore, clause (b) of the second proviso to sub-section(4) of Section 4 of the Consolidation Act also provides for vacation of abatement

of proceedings pending before the settlement authorities on publication of order of cancellation of consolidation operation under Section 5(1) of the Act.

21. Under Section 5 of the Consolidation Act, it is competent for the State Government at any time to cancel the notification made under Section 3(1) by publication of an order in the official Gazette. This, in other words means that the Government may issue an order of de-notification of consolidation operation by publishing the same in the official Gazette at any time and as per sub-section (2) of Section 5, on publication of the order, consolidation operation started in a particular area in pursuance of notification under Section 3(1) of the Act shall cease with effect from the date of cancellation or de-notification. Though this Section empowers the Government to issue cancellation order “at any time”, it has been held by this Court in the decision reported in **1989 (I) OLR 367: Govinda Chandra Tripathy and others v. The State of Orissa represented by the Secretary to Government of Orissa, Revenue Department and others** that the power to issue order of cancellation can be exercised only before publication of final map and R.O.R. under Section 22(1) of the Act.

22. It has been argued by the learned counsel for the petitioner and Mr. N.K. Sahu, the learned Amicus curie that since the consolidation operation ceases with effect from the date of cancellation order, record of right (Land Register) prepared and published under Section 13 (1) of the Consolidation Act amounts to final decision on question of right, title and interest of the land-owner in the land after hearing of objection cases and

appeals of the aggrieved person, any grievance to the entries made in such R.O.R. can be agitated before either the Consolidation Commissioner or the Director, Consolidation under Section 37 of the Act and not before the Settlement Commissioner under Section 15 of the OSS Act inasmuch the Settlement Commissioner has no power or jurisdiction to decide the questions of right, title and interest in land. It is further argued that where the R.O.R. under Section 13(1) of the Act is published during pendency of appeal or revision under Sections 12 and 36 of the Act, even after publication of cancellation order under Section 5(1), such appeal or revision shall continue to be heard and disposed of by the authorities under the Act. It is also argued that even where R.O.R. is published under Section 13(1) on the basis of any order passed in objection or appeal and soon thereafter cancellation notification is published under Section 5(1) of the Act, the party aggrieved by the original or appellate order cannot be deprived of his right to appeal, which is a vested right. In this respect reliance has been placed on the decision of the apex Court reported in ***AIR 1957 (SC) 540 :Garikapati Veeraya v. N.Subbiah Choudhry and others***, and similar other decisions. The cited decision will have no application inasmuch as it related to question of abolition of the appellate forum in respect of a proceeding by amendment of law. Therefore, the Hon'ble apex Court held that right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or

proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. It was further observed that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides, expressly or by necessary intendment and not otherwise.

In the instant case, we are not confronted with any change of forum of appeal or taking away the right of appeal by way of amendment of Statute. Rather, we are confronted with the cancellation of consolidation operation and the effect thereof, which has nothing to do with amendment of law with regard to forum of proceeding.

23. The provision of Section 15 of the Consolidation Act makes it manifestly clear that no finality is attached to the R.O.R. prepared and published under Section 13(1) of the Act since it is subject to change and modification on the happening of the circumstances enumerated in Section 15. Since under the Consolidation Act the authorities thereunder apart from deciding in question of right, title and interest in land in the consolidation area also decide the matter of settlement of rent and cess and preparation of R.O.R. indicating the nature of interest, the legislature thought it fit to attach some finality to the record of rights published under Section 13(1) of the Act as if the record of rights was published under the OSS Act, by incorporating the deeming provision under subsection(4), though consolidation operation was cancelled as further continuance of the operation was found unnecessary and undesirable. The intention was that the matter of settlement of rent and preparation of R.O.R. which has reached the final stage should not stand cancelled as

allowing matter of preparation of R.O.R. and settlement of rent to be taken up afresh or to be continued from the stage where it stood abated under Section 4(3) of the Act, would amount to duplication of work. The deeming provision in Section 13(4) of the Consolidation Act to treat the R.O.R. for all intents and purposes to have been prepared under the OSS Act has been incorporated with the intention of avoiding such duplication where the consolidation operation was no more desired to be undertaken.

24. The publication of cancellation order under Section 5(1) must be held to have the effect of obliterating and setting at naught all decisions of the consolidation authorities with regard to right, title and interest in land for the reason that for want of notification under Section 3 (1) of the Act, the authorities under the Consolidation Act cannot continue to exercise the power and jurisdiction under the Act within the consolidation area. Section 3(1) notification is the starting point that entitle the authorities under the Act to exercise the power and jurisdiction in respect of the area brought under consolidation. Once the Section 3(1) notification is cancelled, the authorities under the Act become disentitled to exercise their power in respect of the de-notified area.

25. The matter can be looked into from another angle. As has been seen earlier, upon issuance of notification under Section 3(1) of the Consolidation Act, the authorities under the Act become entitled to exercise power to decide the question of right, title and interest in land within the area covered under the said notification and if any suit relating to right, title and interest in respect of any such land is pending before the civil court on the date of such notification, on order being passed to

that effect, such suits abate and thereafter the question of right, title and interest in respect of the land in question is to be decided by the authorities under the Consolidation Act. We have seen earlier that as per clause (b) of the second proviso to sub-section (4) of Section 4 of the Act, on the issue of cancellation notification under Section 5(1) of the Act the suit which got abated because of notification issued under Section 3(1) of the Consolidation Act, shall be proceeded and disposed of by the civil court, as if it had never abated. In case we hold that by publication of R.O.R. under Section 13(1) of the Act prior to publication of Order under Section 5(1) has the effect of attaching finality to decisions on questions relating to right, title and interest in land covered under the R.O.R., the law enacted in the second proviso to Section 4(4) of the Act would create an anomalous and incongruous position, meaning thereby, that the consolidation authorities will continue to have power and jurisdiction to hear appeal or revision under Sections, 12, 36 and 37 of the Act and at the same time, the civil court will also continue to proceed with the suit, which had earlier abated but revived due to publication of cancellation order under Section 5(1) of the Act and decide the question of right, title and interest in respect of the very same land, resulting in conflicting decision by two forums. It can never be assumed that legislature intended to create such anomalous situation, which would have the effect of leading to inconsistent decisions being passed by two forums in respect of the same subject matter.

It is a salutary principle of interpretation of statute that the provision of an Act should be read harmoniously so as to avoid anomaly

and conflict. Hence, in view of the provisions of the Consolidation Act and OSS Act as discussed above, it must be held that the Consolidation Commissioner or Director of Consolidation has no authority to examine in exercise of revisional power under Section 37 of the Consolidation Act, the correctness of R.O.R. published under Section 13(1) of the Act and preceded by publication of cancellation order under Section 5(1) of the Act. In view of the deeming provision of Section 13(4) of the Consolidation Act an R.O.R. published under Section 13(1) before publication of cancellation notification under Section 5(1) shall have all the consequences attached to the R.O.R. as if it is one published under the OSS Act and, therefore, correctness thereof can be examined by the Settlement Commissioner under Section 15(b) of the said Act. By exercising power under Section 15 of the OSS Act, the Settlement Commissioner does not decide right and title in the land. For the reasons aforesaid, contention of the learned counsel for the petitioner fails and the writ petition is dismissed.

Before parting, this Court puts on record sincere appreciation for the painstaking assistance rendered by Mr. N.K. Sahu and Mr. U.K. Samal, the learned Amicus curies.

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B.K.Nayak,J.