

10. 30.04.2015

These eleven petitioners being the villagers of Palli under Brahmagiri police station in the district of Puri have filed this writ application challenging the order of the Director, Consolidation for constitution of a new village by way of reduction of area of existing revenue village Budhanga from Ac.313.68 dec. to Ac.163.43 dec. and accordingly by changing its boundary and also reducing the area of revenue village Palli from Ac.536.44 dec. to Ac.469.59 dec. purporting to act under section 7(4) of the OCH&PFL Act, 1972 (hereinafter referred to as the Consolidation Act). The order thus relates to creation of new revenue village Harapada with an area of Ac.117.00 dec. by carving out portions from village Budhanga and Palli.

2. Notification was issued under the Consolidation Act bringing village Budhanga and Palli under consolidation operation. One hundred sixty two inhabitants of the hamlet Harapada under village Budhanga on 29.07.1993 made the prayer to declare the said hamlet a separate revenue village for administrative convenience carving out some portions from village Budhanga and village Palli. The followings have been specifically stated in the petition providing the justification:-

(i) Inhabitants of hamlet Harapada are residing in both the sides of common boundary of village Palli and Budhanga since the time of their ancestors and the agricultural lands belonging to them are in the surroundings to their homestead lands;

(ii) although their homestead as well as the agricultural lands are on the southern side of village Palli as well as on the northern of village Budhanga, they have no such link with the inhabitants of village Budhanga and Palli and they have been treating themselves to be one entity in observing social and other functions and celebrations on the festive occasions ;

(iii) the upper primary school stands inside the village Budhanga where their children used to read whereas there is separate school in village Palli and one middle english school is also there in the village Palli where children of Budhanga, the hamlet of Harapada and village Palli have been pursuing their education;

(iv) the hamlet Harapada, village Budhanga and Palli have separate lands for communal use; they have separate gocher lands, burial grounds, tank, water courses and roads.

(v) the sites of the hamlet Harapada, village Budhanga and Palli are situated at a distance of one and half kilometer from each other; and

(vi) the inhabitants of the hamlet Harapada are dependent on the villagers of Palli and Budhanga for receiving Government grant during the natural disaster such as flood, cyclone etc.

Altogether there are 97 households in the said hamlet Harapada and the population to be around 795 prior to reorganization of Panchayats, the hamlet Harapada was under Dimirisena Gram Panchayat but after reconstitution now a portion has remained under Kandagoda Gram Panchayat whereas the rest still remains under Dimirisena Gram Panchayat which creates conflicts amongst the inhabitants of the hamlet and many a times stands on the way when the question of showing solidarity comes.

4. The Consolidation Officer after receiving the application filed by one hundred and sixty two applicants out of whom two have been impleaded here as opposite party nos.7 and 8, made an inquiry under section 7(4) of the Consolidation Act read with Rule 16 of the OCH&PFL Rule (hereinafter referred to as the Rules). The Consolidation Officer after inquiry submitted his detail report by order dated 20.08.94 to the Director, Consolidation through proper channel for taking the final call. The Director upon perusal of the order of the Consolidation Officer as also the materials on record found the expressions made by the Consolidation Officer in his order dated 20.08.1994 to have been suffering from legal infirmities. He then directed the Consolidation Officer to hear the objectors and make filed inquiry before forming opinion in the matter. The Consolidation Officer upon receipt of the same complied with the direction. The relevant portions of his observation are the followings:

During enquiry it is seen that there runs one road touching 3 villages namely, Budhanga, Harapada and Palli locally called Delanga Brahmagiri road. Hamlet Harapada is in a distance of more than 1 km. from Budhanga and about 800 meters from Palli. This distance is in conformity with the report of Tahasildar, Puri. The population of hamlet Harapada is more than 560 covering 60 to 70 houses about half of the houses lies in the boundary line of Budhanga and rest half in the boundary of Palli. There runs one canal close to the Delanga Brahmagiri road touching all the villagers and there are separate outlet for all the 3 villages according to leveling of the field. This canal touches the river Ratnachira near village Budhanga which now remains in the proposed new boundary of village Budhanga. Hence from irrigation point of view those 3 villagers do not depend on each others. Western side of those villages are comparatively low than the eastern side. Hence excess water in rainy season drains to western wards in to the river Luna. Any rivalry among the villagers of these 3 villages will not create pr

problem for drainage of excess water. From the enquiry I come to the conclusion that the inhabitants of village Budhanga, Palli and Harapada have independent living cultivation communal land for public use and communication facilities. None of them depends upon other for any means.

During hearing the villagers of Budhanga claimed that in the proposed change, hamlet Harapada becomes bigger than Budhanga in total area. From the statement enclosed as per paragraph 129 of O.C.M., it is seen that out of total 313.68 acres, 150.25 (acres) i.e., less than 50 % has been transferred to the hamlet Harapada leaving 163.43 (acres) for the village. Due to inclusion of 66.85 acres from Palli, the total area of Harapada comes to 217.10. (acres) It is further seen that total Ac.13.76 of land owned by villagers of Budhanga comes under the proposed village Harapada and Ac.8.03 of land owned by the villagers of Harapada under Village Budhanga the proposed change. Hence this claim of the villagers of Budhanga deserves no merit as size of a village is considered from the point of population for Government aid not from the point of area. (Quoted in Verbatim)

At last his conclusion stands:- After hearing the parties, I come to the conclusion that the inhabitants of Harapada claim separate only for getting Government aid and to keep their unity as at present being kept in boundary of two villages and in administrative jurisdiction of two panchayats, they are being debarred of getting such facilities. (Quoted in Verbatim)

5. With all these, the record was placed before the Director for further order in accordance with law. The Director in the order having perused the report of the Consolidation Officer noted the gist of the proposal and found all statutory formalities as envisaged under the Rules to have been complied with. He also noted that the opinion of the Collector, Puri in the matter to be in affirmative. In view of the same, he has approved the boundary change proposal imparting further direction in the matter.

6. Learned counsel for the petitioners submits that the change in the existing village boundaries of village Bhudanga and Palli ought not have been ordered at the bidding of those applicants. He further submits that the Director, Consolidation in the case in hand has failed to discharge his duty as per the provision of section 7(4) of the Consolidation Act. He contends that the Director has not gone to form his own opinion and on the other hand has just put his hand and seal to the report of the Consolidation Officer and also the views collected. Therefore, he urges that such order is vulnerable.

Learned counsel for the opposite party nos.7 and 8 submits that since the Director, Consolidation after considering the opinion of the Collector, the inquiry report and other fact situations has come to the conclusion that the proposal for creation of village Harapada carving out a portions from village Bhudanga and Palli has its merit, the same is not liable to be interfered with in exercise of the writ jurisdiction by this Court. According to him, the guidelines submitted here has nothing to do with the exercise of statutory power under section 7 (4) of the Consolidation Act, read with rule 16 when it has also no reference to the provisions of the Consolidation Act.

7. At this stage, it is profitable to take note of the Division Bench decision of this Court in the case of Fanindranath Jena and another Vrs. Purna Chandra Samal, 1990 (I) O.L.R., 485. It has been held therein that the objects and reasons for enacting the Consolidation Act is for introducing a particular piece of legislation for improving agriculture production in the State. It has been held therein that the objects and reasons for which Consolidation Act intends to achieve consolidation of scattered holdings and rearrange the holdings including the fragmented holdings among various land owners to make them more compact to provide against future fragmentation. The enactment is for economic farming and applications of improved implements and methods of farming. It has emphatically held therein that since the objects and reasons for which Consolidation Act was enacted was to prevent fragmentation of holdings and rearrange the holdings of land in order to make them more compact, the authority which has been vested with the jurisdiction under section 7(4) of the Consolidation Act read with Rule 16 of the Consolidation Rules has to exercise such power in conformity with the objects and reasons of the Consolidation Act.

It has been held that :-                   xxx                   xxx

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Though no guideline has been indicated under section 7(4) of the Consolidation Act and rule 16 of the Rules and unbridled power has been bestowed with the Director of Consolidation to change boundaries of villages, in our opinion such powers can only be exercised when the reasons are compatible and have direct nexus with the aim and object of the Act.

8. Adverting to the case in hand, giving a plain reading to the order of the Director, Consolidation, it appears that independently he has not gone for consideration of the proposal received from the Consolidation Officer in passing the order impugned in this writ application. When specifically sub-rule (3) of rule 16 of the Consolidation Rules speaks that on receipt of the proposal from the Consolidation Officer, the Director, Consolidation shall consider the same and pass such order as he deems fit.

As already stated after describing the proposal in brief and having perused the report that there has been compliance of statutory formalities abruptly the Director has gone to approve the report relating to the boundary change and creation of new village. Thus, I find there has been no consideration of the proposal as mandated under sub-rule (3) of rule 16 of the Consolidation Rules by going to examine the same from different angles as are necessary for the purpose, keeping in view the objective sought to be achieved by the provision in the Consolidation Act also for providing such a provision empowering the Director to order of change of boundary of the villages and constitution of new village having felt that in the absence of the same it may so happen in some cases, that the aims and objective sought to be achieved under Consolidation Act may not be achieved at all. The examination thus ought to have been in the light of all those as to whether such a creation of new village by changing the boundaries of other two villagers is necessary for achievement of the objects and reasons behind the enactment as indicated in the aforesaid para. Nothing is indicated in the said order as to even why it is so necessary that the proposal of the Consolidation Officer would stand for approval. In fact, if we look at the provisions of the Act the power is vested with the Director, Consolidation as the competent authority to constitute new village by effecting changes of the boundaries existing village/villages and for the purpose the Rules have been made that with the proposal for such boundaries or to the proposed constitution of the new village objections are to be invited at the base level and only those received within 15 days of service of general notice would be considered by the Consolidation Officer along with the opinion of the Collector, if any, received during the said period and thereafter the Director, Consolidation shall consider the same and pass necessary order. As it is seen in the present case, the order of the Director does not reveal that there has been consideration of the said proposal even at his level prior to the passing of the final order. The word consider as indicated in sub rule (3) rule 16 of the Consolidation Rules cannot be said to have so meant that the Director is only required to examine from the angle of the observance of all the statutory formalities and upon said satisfaction alone would go to approve the same. The word approve means to give formal sanction or authoritatively confirm but that is simply on account of the authority being superior in position to give the stamp to it for being carried into action. The question of approval is foreign to the rule which mandates to consider, i.e., upon due application of mind keeping in view the aim and in the backdrop of the objectives sought to be achieved under the Consolidation Act containing the provision concerning this change of village boundary and constitution of new village for the purpose of furthering the achievement of the aims and objectives under the Consolidation Act. This is the reason in the provision of Section 4 of the Act, there is no indication as regards the administrative convenience or inconvenience and in relation to the Government grant etc. and any discrimination on that regard. The provision is intended for the purpose of achievement of the objective behind the enactment that when such changes stand imperative for the purpose the power is required to be exercised. The Legislature has clothed the power with the authority having felt that absence of the same may stand as deficiency in cases for proper implementation of the provisions of the Act in achieving its objectives.

9. Now coming to the submission of the learned counsel for the opposite parties that the petitioners had alternative remedy under section 36 of the Consolidation Act, in view of my opinion that the Director, Consolidation has not acted in conformity with the provisions of the Act by not going to consider the proposal as required under Rule 16(3) of the Consolidation Rules and has simply passed the order just putting his hand and seal to the report, the existence of alternative remedy is no bar to exercise the jurisdiction under Rule 226 of the Constitution of India. This has also been so held in case of *Fanindranath Jena and another* (supra).

10. For the forgoing reasons and discussions, in my opinion, the order of the Director, Consolidation (opposite party no.1) as per Annexure-6 dated 03.01.2002 is unsustainable and, therefore, is hereby quashed. The matter is remitted to the Director, Consolidation for consideration of the proposals afresh and pass necessary order thereon in accordance with law.

11. Resultantly, the writ application is allowed and in the facts and circumstances of the case, there shall be no order as to cost.

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