

9. 25.2.2015 1. In this writ application, petitioner challenges an order passed by the Commissioner, Consolidation, Orissa, Bhubaneswar in Revision Petition No. 154/2002 confirming the order of the Deputy Director, Consolidation, Puri passed in Appeal Case No. 98/2000. The Deputy Director, Consolidation, Puri has set aside the order passed by the Consolidation Officer with regard to configuration of Chakas.

Petitioners case is that he is the owner of Chaka No. 163 consisting of Chaka Plot No. 236 of village Jantrana under Gop Police Station and opp. party no. 1 is the owner of Chaka No. 164 consisting of Chaka Plot No. 237 to the adjoining north of the petitioners Chaka. During confirmation of provisional consolidation scheme under Section 21 of the Act, opp. party no. 1 filed an objection petition to modify that narrow shaped chaka being unfit for cultivation. The matter was then taken up from the field level by the Asst. Consolidation Officer. The said Chakas were modified. After final publication under Section 22(2) of the Act, the petitioner filed revision petition No. 859/88 under Section 37(1) of the Act. The matter was remanded back to the Consolidation Officer under section 19 of the Act. Then the Consolidation Officer allowed the R.R.C. No. 859/88 restoring the Chakas published under Section 18 (1) of the Act. So Misc. Appeal was filed by opp. party no. 1, wherein the order of Consolidation Officer was set aside. Revision being preferred by the petitioner, the order of the appellate authority has been upheld.

2. It is submitted by the learned counsel for the petitioner that such ultimate creation of Chakas as has been done by the order of the appellate and revisional authorities is in proper and unjustified as also not in accordance with law. It is his contention that the Consolidation Officer had rightly done so looking at the Amin report and as suggested therein.

Learned counsel for the opp. parties vehemently refuting the above submission contends that looking at the very objective of creation of Chakas for better cultivation with proper facilities in that regard, the formation of Chakas of the petitioner and opp. party no. 1 in the present case, as per the order of the appellate and revisional authorities is just a proper and in consonance with the legal provision.

3. Perusal of the order of the Consolidation Officer reveals that simply basing on the suggestion of the Amin for modification of Chakas as per the trace map, he had passed the order. But strangely enough when the Amins report referred to by the Consolidation Officer is perused, it is seen that no such suggestion is given and simply the Amin has stated about the position of the Chakas as it was existing and the field situation. Thus, the order of the Consolidation Officer appears to have been passed without a careful reading being given to the report of the Amin and stating to have been based upon it, is unsustainable.

4. Next coming to the order of the appellate authority, it is seen that opp. party no.1s real hardship in cultivating the land even being not in a position to properly plough the land has been realized and stated and on the other hand, it has also been considered that the petitioner would not have any such disadvantage if his Chaka is made little L-shape on the back side while widening the Chaka of opp. party no. 1 instead of keeping it in a narrow strip. It has also been discussed that the petitioner would be having further advantage as his Chaka would be adjoining the road and enjoying the irrigation facility, facing no such problem for cultivation. The Commissioner as it appears has further gone deep into the matter. It has been stated that this petitioner had originally no land in the vicinity and has been shifted to the place from another place in exchange whereas opp. party no. 1 was having the land earlier at that place. Thus, having so found that provisional consolidation scheme displacing the opp. party no. 1 from his original place and allotting a long narrow shape Chaka completely different from his original L.R. plot to the north of the petitioners Chaka where the opp. party no. 1 did not originally have an inch of land and when the petitioner had been allotted another Chaka having earlier no land in the vicinity, the provisional consolidation scheme has been held to be not in conformity with the provision of Section 16(5) of the Act. So, the Commissioner has found the order of the appellate authority to be in conformity with law in saying that the order of the Consolidation Officer has been rightly set aside. In view of that he has refused to interfere with the order after 14 years of final publication of the ROR under Section 22 (2) of the Act.

5. During hearing, learned counsel for the petitioner has not been able to controvert any of the factual aspects as indicated in the order of the Commissioner, Consolidation that the petitioner was originally having no land in the vicinity; that the Chaka originally created in favour of opp. party no. 1 was a narrow strip, not fit for even proper ploughing as stated in the order and that opp. party no. 1 having his original land there, had been allotted with the Chaka of narrow strip in a completely different place.

6. The appellate as well as revisional authorities having made threadbare discuss

ion of all those required aspects for the purpose have rightly passed the orders.

The appellate and revisional authorities have passed the orders upon due applications of mind keeping in view the provisions of law holding the field, the objective behind such formation of Chakas and considering the facts and circumstances that the petitioner is in no way placed in a disadvantageous position while repelling his assertion for restoring the shape of his Chaka as per the order of the Consolidation Officer that it is highly detrimental to the opp. party no. 1 in rendering his strip land unfit for cultivation and thereby frustrating the very objective behind the formation of Chakas. This in fact gets reinforced when the Amins report as referred to above is glanced at which finds mention that this opp. party no. 1 was then not cultivating the land and that was lying fallow.

In view of all the aforesaid, this Court finds no such infirmity or illegality in the order of Commissioner, Consolidation confirming the order of the appellate authority so as to interfere with the same.

7. Accordingly, the writ petition is dismissed.

No order as to cost.

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D.Dash, J.

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