

ORISSA HIGH COURT, CUTTACK.

O.J.C. No.5711 of 1997

*In the matter of an application under Articles 226 & 227 of
the Constitution of India.*

Laxmidhar Behera & others

... Petitioners

Versus

**Commissioner, Settlement & Consolidation,
Bhubaneswar and others**

... Opposite parties

For Petitioners	:	M/s. S.K. Nayak-2, B.K. Rout, Miss. A. Nayak, S.K. Nayak
For opposite party Nos.1 to 3	:	Learned Additional Standing Counsel
For opposite party Nos.4 to 7	:	M/s. Akshaya Kumar Sahoo, S.B. Das, Sarbeswar Sahoo, Kishor Kumar Sahoo.

PRESENT :

THE HONOURABLE MR. JUSTICE BISWANATH RATH

Date of hearing: 11.01.2017 Date of Judgment : 31.01.2017

Biswanath Rath, J. This writ petition has been filed as against the orders passed by the Consolidation authorities in exercise of power under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 as available under Annexures-2 & 4 to this petition.

2. Short background involved in this case is that one Panu Behera was the common ancestor having two sons namely Nilamani and Ramachandra. After death of Nilamani his wife Aparti Dei and thereafter his son Gourahari succeeded to his branch. At the same time, petitioners

belong to the other branch Ramachandra. Disputed land involving the petitioners and the opposite parties situates in Mouza Panchapada, M.S. Khata No.188 corresponding to L.R. Khata No.134, L.R. Plot No.994, 995, 996 & 997 measuring Ac.0.03 decimals. The disputed land was gifted by Sajan Sahoo, Bhajan Sahoo, Madan Sahoo, Padma Charan Sahoo being the sons of Darsani Sahoo by virtue of a registered deed bearing No.1411 dated 12.11.1930 to Aparti Dei W/o-Nilamani Behera and Ramachandra Behera, son of Panu Behera. Petitioners' case is that they being the successor of Ramachandra have possessed the aforesaid land alongwith the opposite party No.4 since 1930 with exclusive possession of 50% share from the disputed land. It is the further case of the petitioners that the father of the opposite party No.4 since was serving at Calcutta, the rent of the land was being paid by the mother of the opposite party No.4. Aparti Dei, sometimes in the name of the father and sometimes in her own name. In the year 1966 the tenancy ledger was exclusively prepared in favour of Aparti Dei against khata No.134/2. Therefore, during the major settlement operation the petitioners filed objection case No.5365/78/262/99 before the Assistant Settlement Officer, Rent Camp, Chandbali to record the schedule of land jointly. The aforesaid objection case was allowed by the Assistant Settlement Officer by his order dated 19.7.1980 directing for correction of the record.

3. It is the further case of the petitioners that notwithstanding anything with the order vide Annexure-1 final record of rights was published in the name of the mother of the opposite party No.4 exclusively. In the meantime, the petitioners filed mutation case basing on the outcome in the objection case indicated hereinabove bearing Mutation Case No.155 of 1985, which was unfortunately rejected by the order dated 25.7.1987. The Consolidation operation was started in the locality and finding recording of the land in favour of the opposite party No.4, the petitioners filed another objection case bearing No.1601/92 under Section 9(3E) of the

OCH & PFL Act claiming title over the said land. The opposite party No.4 filed an objection case bearing No.1667 of 1992 claiming recording of Ac.0.44 decimals of land instead of Ac.0.43 decimals of land. It reveals that both the objection cases were rejected by the Consolidation Officer by a common order dated 30.6.1994.

4. Being aggrieved by the said order involving the objection case at the instance of the petitioners (Objection Case No.1601 of 1992) the petitioners preferred appeal vide Appeal No.39/1994. The appeal was allowed by the Deputy Director, Consolidation by his order dated 18.10.1995 after holding that the petitioners being the legal heirs entitled to a share in the suit land and after holding that the major settlement of record of rights was not prepared correctly. The record of right was prepared as previously.

5. Being aggrieved by the order vide Annexure-3 passed in the appeal referred to hereinabove, learned counsel for the opposite party No.4 filed Consolidation Revision No.254 of 1995. The Consolidation Revision was allowed by the judgment dated 5.11.1996 appearing at Annexure-4 setting aside the order passed in the appeal.

6. In assailing the impugned order, learned counsel for the petitioners submitted that the observations of the revisional authority that the right, title and interest of the petitioners decided by the appellate authority on the basis of tenant ledger and major settlement R.O.R. is improper, is not the correct position of law. Learned counsel for the petitioners further contended that the disputed plot being purchased by both the parties i.e. Apari Dei and Ramachandra Behera jointly and for the reasons that the disputed plot have not been partitioned between the petitioners and the opposite party No.4 the surviving branch presently, there was no question of recording the disputed land exclusively in favour of the

mother of the opposite party No.4. The Consolidation Officer and the Joint Commissioner have held that when the suit land was recorded in the name of Gourahari Behera in the tenant lazor and M.S. R.O.R. hence it is presumed that there has been a partition between the parties. It is also claimed that above observation and the finding of the revisional Court as well as the Consolidation Officer run contrary to the materials available on record.

7. In referring to a decision as reported in **AIR 2014 (SC) 2665**, learned counsel for the petitioners submitted that the entries in the Major Settlement as well as in the Tenant Lazor are for the purpose of payment of rent and it cannot convey any title in respect of any party and claimed that both the forums below have thus failed even to appreciate the above legal position.

8. Learned State Counsel defending the impugned orders contended that for the observations and findings made therein, there is no error in the impugned order leaving any scope for interfering in the same.

9. Considering the rival contentions of the parties and after perusal of the documents attached to the writ petition, this Court finds, there is no dispute with regard to the position of the parties that the petitioners as well as the opposite party No.4 both belong to the original branch. Scan of record further reveals that the disputed properties are the gifted properties by Sajana Sahoo, Bhajana Sahoo, Madan Sahoo and Padana Ch. Sahoo by virtue of a registered sale deed No.1444 dated 12.11.1930 in favour of the mother of the opposite party No.4 and Ramachandra, son of Panu Behera in the other branch. The petitioners and the private opposite parties are the successors of the Aparti Dei and Ramachandra. The record also further reveals that during Major Settlement, the Objection Case No.5365/78/262/99 at the instance of the petitioners

requesting for recording of the scheduled land jointly was allowed by the A.S.O by his order dated 19.7.1980. There is no dispute that the order passed in the aforesaid objection case has not been assailed any further and thus remain confirmed. Going through the observations in the impugned order and after considering the contentions raised by the learned counsel for the petitioners, this Court observes that mere appearance of name of mother of opposite party in the Tenant Ledger as well as M.S. R.O.R.in existence of the order of the competent Court in Objection Case No.5365/78/262/99 under Annexure-1 is of no use. This Court finds, both the authorities deciding the matter under Annexures-2 & 4 have failed in appreciating this legal aspect and thus, have arrived at a wrong and erroneous findings and conclusion. Further looking to the decisions cited by the learned counsel for the petitioners as reported in **AIR 2014 (SC) 2665**, this Court finds the decision has a great support to the petitioners' case. The impugned orders remaining contrary to the above legal position cannot be sustained.

Under the circumstances, this Court finds, the impugned orders under Annexures-2 & 4 are not sustainable in the eye of law. Consequently, while setting aside the orders under Annexures-2 & 4, this Court restores the order passed by the appellate authority under Annexure-3 and directs the competent authority to work out the direction contained in Annexure-3 within a period of one month hence.

10. As a result, the writ petition stands allowed. However, there is no order as to cost.

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Biswanath Rath, J.

Orissa High Court, Cuttack.
 The 31st day of January, 2017/Ayas.