

2024 (I) ILR-CUT-874

**B.P. ROURAY, J.**

W.P(C) NO.16187 OF 2012

**JADUNATH MALLIK & ORS.**

.....Petitioners

-V-

**THE ADDL.COMMISSIONER, SETTLEMENT  
& CONSOLIDATION, BALASORE & ORS.**

.....Opp.Parties

**ORISSA CONSOLIDATION OF HOLDING AND PREVENTION OF FRAGMENTATION OF LAND ACT, 1972 – Sections 3, 12, 36, 37 – The objection case filed U/s. 9(3) of the Act was dismissed in the year 1996 – No Appeal U/s. 12 or Revision U/s. 36 of the Act has been filed – The Opp.Parties filed Revision U/s. 37(1) of the Act – Whether application U/s. 37(1) without availing the remedy in Appeal U/s. 12 is admissible? – Held, No – Directly invoking the Jurisdiction U/s. 37(1) bypassing the appeal provision is found unjustified.**

**Case Laws Relied on and Referred to :-**

1. AIR 1983 Ori 31 : Gopinath Deb Vs. Budhia Swain & Ors.
2. 1994 (II) OLR 225 : Bharat Sahu Vs. State of Orissa & Ors.
3. 2000 (90) CLT 412 : Brundaban Sahoo Vs. Antaryami Sahoo & Ors.
4. 1971 (37) CLT 897 : State of Orissa Vs. Member, Sales Tax Tribunal & Anr.
5. 1977 (43) CLT 681 : Mahurilal Agarwalla Vs. Dusan Sahu & Ors.
6. 1984 (57) CLT 1 : Radhamani Dibya & Ors. Vs. Braja Mohan Biswal & Ors.
7. AIR 1980 Andhra Pradesh 149 : P. Satyanarayana Vs. Land Reforms Tribunal.
8. 2003 (II) OLR 189 : Divisional Manager, Oriental Insurance Co. Ltd. Vs. Nirupama Mallick & Ors.
9. AIR 2000 SC 1165 : United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors.
10. (1992) 73 CLT 217 : 1991 SCC OnLine Ori 118 : M/s. Modern Fabricators Firm Rep. by Satyabrata Mohanty & Ors. Vs. Rajendra Harichandan & Ors.
11. 1993 SCC OnLine Ori 220 : Gulzar Khan Vs. Commissioner of Consolidation & Ors.
12. 1994 (II) OLR 225 : Bharat Sahu Vs. State of Orissa & Ors.
13. 1995 (I) OLR 516 : Basanta Kumar Sahu v. Bhikari Charan Sahu & Ors.
14. 1997 SCC OnLine All 505 : Smt. Shivraji & Ors. Vs. Dy. Director of Consolidation, Allahabad & Ors.
15. 1982 SCC OnLine Ori 74 : Gopinath Deb Vs. Budhia Swain & Ors.
16. (2019) 9 SCC 416 : Naresh Kumar & Ors. Vs. Government (NCT of Delhi).

For Petitioners : Mr. N.K. Sahu

For Opp.Parties : Mr. U.K. Sahoo, ASC & Mr. S.K. Dwivedy

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**JUDGMENT**

Date of Judgment : 19.01.2024

***B.P. ROURAY, J.***

1. Heard Mr. N.K. Sahu, learned counsel for the Petitioners, Mr. S.K. Dwivedy, learned counsel for Opposite Parties 4, 5 & 7 to 9 and Mr. U.K. Sahoo, learned ASC for State – Opposite Parties. It is submitted that Opposite Party No.6 died in the meantime.

2. The Petitioners have challenged the orders under Annexure-12 and 13 of the Additional Commissioner of Settlement and Consolidation, Balasore.

3. The brief facts of the case are that the Collector in Misc. Case No.716 of 1935-36 while approving exchange of land in CS Khata No.67, Plot No.176 measuring area Ac.0.84 dec. of village Tentuliapada granted the land in question in favour of Ex-Zamindar and pursuant to the order, an agreement was executed between the State and the Ex-Zamindar on 31st January 1936. On 12th September 1945, the Ex-Zamindar issued "Chirasthayee Rayati Amalanama Patta" in respect of 60 decimals out of Plot No.176 in favour of Sadhu Charan Panda for cultivation on receipt of Salami. Then upon vesting of estate the land was settled in favour of Sadhu Charan Panda and subsequently the settlement officer in Objection Case No.5042/41 passed order in favour of said Sadhu Charan Panda in MS Plot No.206/429 under MS Khata No.75. In 1969, upon publication of MS record, the name of Sadhu Charan Panda was recorded under Stitiban status measuring area Ac.0.62 dec. In the year 1993, Sadhu Charan Panda sold Ac.0.05 dec. of land each in favour of three Petitioners and their names were subsequently mutated in the RoR. During the consolidation proceeding in 1994, Opposite Parties 4 to 9 filed Objection Case No.575/94 under Section 9(3) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as 'OCH & PFL Act') being aggrieved with recording of the land in favour of the Petitioners as well as their vendor. The objection case was rejected on 24th February 1996. Thereafter without filing any appeal against the same or regular revision, Opposite Parties 4 to 9 approached the Commissioner of Consolidation under Section 37(1) of OCH & PLF Act in R.P. Case No.63 of 1997. Said revision case was also dismissed on 22<sup>nd</sup> June 1998. Neither party challenged the same before any higher forum. But after lapse of 14 years, i.e. in the year 2011, Misc. Case No.2 of 2011 was filed before the Commissioner, Consolidation and Settlement seeking review of order dated 22<sup>nd</sup> June 1998. The Additional Commissioner in the said Misc. Case allowed the Review by recalling order dated 22<sup>nd</sup> June 1998 and then on 9<sup>th</sup> February 2012 passed a fresh order by allowing the Review petition in favour of Opposite Parties 4 to 9. The said order passed in the Review petition and subsequent order dated 9<sup>th</sup> February, 2012 are subject matters of challenge before this court.

4. Mr. Sahu, learned counsel for the Petitioners submits that entertaining Review petition in absence of any statutory prescription by the Commissioner is beyond his jurisdiction and as such, the orders passed by the Commissioner including consequential order dated 9th February 2012 are liable to be set aside. He further submits that the power under Section 37 to entertain a review by bypassing the provisions of appeal and regular revision under Section 36 is also an illegality on the part of the authority and the impugned orders are liable to be set aside on that score only. In support of his submission, Mr. Sahu relies on the decisions in the case of *Gopinath Deb v. Budhia Swain and Others*, AIR 1983 Ori 31, *Bharat Sahu v. State of Orissa and Others*, 1994 (II) OLR 225, *Brundaban Sahoo v. Antaryami Sahoo and Others*, 2000 (90) CLT 412, *State of Orissa v. Member, Sales Tax Tribunal and Another*, 1971 (37) CLT 897, *Mahurilal Agarwalla v. Dusan Sahu and Others*, 1977 (43) CLT 681 & *Radhamani Dibya and Others v. Braja Mohan Biswal and Others*, 1984 (57) CLT 1.

5. Conversely, Mr. Dwivedy, learned counsel for Opposite Parties 4 to 9 submits that order dated 22nd June 1998 of the Joint Commissioner of Consolidation was a fraud committed on record and therefore, recalling of the same in the Review petition at the instance of the Opposite Parties are very much sustainable since the orders taken from court by playing fraud is always subject to recall and no express power in the statute for the same is at all required. In support of his argument he relies on the decisions in the case of *P. Satyanarayana v. Land Reforms Tribunal, AIR 1980 Andhra Pradesh 149, Divisional Manager, Oriental Insurance Co. Ltd. v. Nirupama Mallick and Others, 2003 (II) OLR 189 & United India Insurance Co. Ltd. v. Rajendra Singh and Ors., AIR 2000 SC 1165.*

6. As seen from the above narration of facts the publication of RoR and recording of the land in Stitiban status in favour of Sadhu Charan Panda, the vendor of the Petitioners, remains undisputed. The lands in question concerning all three Petitioners are measuring to the extent of Ac.0.15 dec. in total, i.e. Ac.0.05 dec. in favour of each Petitioners. It is also true that after dismissal of the objection case filed under Section 9(3) of the OCH & PFL Act on 24th February, 1996 the same was not questioned either in appeal under Section 12 or Revision under Section 36 of the said Act. But Opposite Parties have directly preferred the Revision before the Commissioner invoking the jurisdiction under Section 37 of the Act. The power under Section 37 is intended for further interest of justice and it is a broad jurisdiction vested on the part of the Commissioner. This court in the case of *M/s. Modern Fabricators Firm represented by Satyabrata Mohanty and Others v. Rajendra Harichandan & Others, (1992) 73 CLT 217 (1991 SCC OnLine Ori 118* have held as follows:-

*“8. The next question is whether notwithstanding the rider to raise objection at an appropriate time, the petition filed by Modern Fabricators group before the Consolidation Commissioner can be treated as one under section 37. According to them, wide and unbridled power is given under section 37, and in the interest of justice the Consolidation Commissioner could have granted the reliefs. Strong reliance is placed on a decision of this Court in 66 (1988) C.L.T. 182 Nikunja Kishore Das v. Consolidation Officer, wherein it was held while considering a case under section 18 of the Act, that a person should not be left remediless. Prima facie the contention appears to be fascinating and attractive but on a close scrutiny we find that there is nothing in the said decision with further their case. Section 37 is not intended to get over the specific prohibitions contained in other provisions. A revision application filed under section 36 rejected at the initial stage on the ground that either it was barred by time or suffered from such other defect which rendered it liable to be rejected, the Consolidation Commissioner cannot exercise suo mom power in the matter subsequently. That would be against legislative intent. Section 37 is intended to further the interest of justice and is not intended to act as a camouflage to get over statutory bars and prohibitions. Where the Commissioner finds that there were genuine grounds for which there was non-prosecution of the remedies available, in order to prevent abuse of the process of law and to nullify illegalities the power may be exercised. This should not be exercised in a routine manner to re-provide remedies which have been statutorily taken away or restricted. If a person has not raised any objection under section 9(3), to entertain an application under section 37 permitting filing of objection, without compelling and/or extenuating circumstance would be improper. It would all depend on facts and circumstances of the case, background facts have to be fathomed and the reasons for*

which statutory remedies could not be availed have to be considered by the Consolidation Commissioner. However, such power is to be exercised with care, caution and circumspection, and any liberal construction would take away the rigours imposed by the statute.

The principles as settled in the case of *M/s. Modern Fabricators* (supra) was referred to a Larger Bench and in *Gulzar Khan v. Commissioner of Consolidation and Others, 1993 SCC OnLine Ori 220* and the same was also approved. The relevant portion reads thus:-

“4. Before we proceed to examine the question referred to us, it would be opposite to observe that availability of the power under section 37 of the Act despite a notification having been issued as contemplated by section 41(1) of the Act is an altogether different question from the exercise of that power. Even though a power is available, the exercise of the same may be restricted and may depend upon facts and circumstances of each case. We have mentioned this aspect at the threshold because arguments have been advanced from the Bar that section 37 having not mentioned, inter alia, about any period of time within which the power can be exercised, the same is liable to be misused. As to this, we would state that misuse of power is altogether a different aspect”, and if it is so done, the same can be challenged in appropriate forum including this Court. It may also be stated that section 37 power having been conferred on the Consolidation Commissioner, who is a very high revenue authority, there is a presumption that he would not misuse the same; and if he does, as already stated, the aggrieved person would not be remediless. That may not, however, be a ground to deny the availability of the power, with which question we are concerned. In this context it would be useful to refer to (*Modern Fabricators v. Rajendra Harichandan*) 73 (1992) C.L.T. 217, in which a Bench of this Court while dealing with the power under section 37 stated that the same has to be exercised with care, caution and circumspection and any liberal construction would take away the rigours imposed by the statute. The Bench further observed that there ought to be compelling and/or extenuating circumstances for the exercise of this power. This decision was cited with approval by another Bench in *O.J.C. No 2763 of 1984: (Lingaraj Mohanty v. Janaki Ballav Sahu)* disposed of on 7-4-1992.

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44. 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.

**G.B. Patnaik, J.:-** I agree.

**K.C. Jagadeb Roy, J.:-** 39. The question before this Full Bench is whether the power conferred by section 37 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter called ‘the Act’) will be available for exercise after the notification has been issued under section 41(1) of the Act to the effect that the consolidation operation have been closed in the unit and then the village or villages forming part of the unit have ceased to be under the consolidation operation. This is a matter which Has a very wide effect on almost every one in the State because the areas throughout the State have been subjected to the consolidation operation except few non-consolidable areas and reply to the question required deep consideration. After going through the views given by my Lord the Chief Justice, I agree with the analysis of the case, but could not accept his Lordship’s ultimate finding that despite closure of consolidation operation which is the result of the operation under section 41 of the Act, the power under section 37 would still be available to be exercised in particular cases as

*may be decided by the Commissioner of Consolidation depending on the facts and circumstances of those cases.”*

7. Further in the case of ***Bharat Sahu v. State of Orissa and Others, 1994 (II) OLR 225***, this Court have held that, non-preferring of an appeal under Section 20 though does not oust the jurisdiction of the Commissioner under Section 37(1), but the power of Commissioner under Section 37(1) should be exercised with circumspection and only when the Commissioner comes to conclusion that there has been a gross injustice by the subordinate authority in the matter of carrying out the application under the statute. In the said case it is further explained that without availing the remedy in the appellate forum, the power under suo motu jurisdiction of the Commissioner under Section 37(1) should not have been invoked and the Commissioner was not right to interfere with the order of the Consolidation Officer.

8. In the case of ***Basanta Kumar Sahu v. Bhikari Charan Sahu and Others, 1995 (I) OLR 516***, it is held that the provisions under Section 37(1) is intended to further ends of justice and not to act as camouflage to get over statutory bars and prohibitions and this power should not have been exercised in routine manner.

9. In the instant case, as stated earlier, Opposite Parties 4 to 9 have approached the Commissioner directly under Section 37(1) of the OCH & PFL Act without availing their remedy of appeal. Further it is found that though the order was passed on 22nd June 1998 by the Revisional Authority but the Petitioners did not question the same, of course due to dismissal of the same. As seen from the facts of the case, it is not that there was compelling circumstances to entertain the revision under Section 37 without availing the remedy in appeal under Section 12 of the Act. No apparent genuine ground is seen in favour of the Opposite Parties to directly invoke the jurisdiction under Section 37(1) by bypassing the appellate provisions. Therefore, in the opinion of this court such power exercised under Section 37 to entertain the revision in favour of the Opposite Parties is found unjustified.

10. Coming to the other ground as put forth by the Petitioners that entertaining the Revision application after lapse of 14 years even in absence of any express power thereof in the Act, is also found with substance. It is no more res integra that the power of Review without any express provision cannot be exercised by the quasi judicial authority that too resulting recall of order. It is explained in the case of ***Smt. Shivraji and Others v. Dy. Director of Consolidation, Allahabad and Others, 1997 SCC OnLine All 505***, (which is a Larger Bench of 3 Judges), as follows:-

*“2. Initially the case was listed before a single Judge of this Court (B.K. Roy, J.). The question referred by the single Judge to the Division Bench was formulated as under.*

*“Whether it is open for the Consolidation authorities to review/recall their final orders exercising inherent powers even though the U.P. Consolidation of Holdings Act, 1953 does not vest them any review jurisdiction?”*

In the case of ***Gopinath Deb v. Budhia Swain and Others, 1982 SCC OnLine Ori 74***, this court (Division Bench) have held as follows:-

*“7. The term “review” means a judicial re-examination of the case in certain specified and prescribed circumstances. The power of review is not inherent in a Court or Tribunal. It is creature of the statute. A court or Tribunal cannot review its own decision*

*unless it is permitted to do so by statute. The Courts having general jurisdiction like Civil Courts have inherent power. But the Courts or Tribunal of limited jurisdiction created under special statutes have no inherent power – vide (1971) 37 Cut LT 897: (1972 Tax LR 1735). (State of Orissa v. Member Sales Tax Tribunal). The learned O.E.A. Collector (O.P. No.14) could not exercise inherent powers under Section 151, C.P. Code to review his own order.*

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In the case of **Naresh Kumar and Others v. Government (NCT of Delhi), (2019) 9 SCC 416**, the power of review has been explained as follows:-

*“13. It is settled law that the power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the statute concerned, such power of review cannot be exercised by the authority concerned. This Court in Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808], has held as under: (SCC pp. 445-46, paras 12-14)*

*“... 12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar, AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh, AIR 1966 SC 641.)*

*13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji, (1971) 3 SCC 844, Chandra Bhan Singh v. Latafat Ullah Khan, (1979)1 SCC 321, Kuntesh Gupta v. Hindu Kanya Mahavidyalaya , (1987) 4 SCC 525 : 1987 SCC (L&S) 491, State of Orissa v. Commr. of Land Records & Settlement, (1998) 7 SCC 162 and Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537 this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.*

*14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.”*

11. The decisions cited on behalf of the Opposite Parties are no doubt speaks that the power of review can be exercised when a fraud has been played upon a court. What is explained by the Opposite Parties that two orders have been mentioned in the order-sheet besides the separate order dated 22nd June 1998 itself speaks commission of fraud with the court, is not found justified. It is for the reason that perusal of the order-sheet though shows existence of another order in the order-sheet regarding adjournment of the case but the order passed in the separate sheet in consonance with the first order-sheet that the case was disposed of as per the separate order is not disputed. Therefore, subsequent order mentioned in the order-sheet which is creating confusion may be for some other reason and in view of presence of order in the separate sheet, the same is ignored. In the circumstances and

facts of the case, the order dated 22nd June 1998 cannot be said as a fraud played upon the court to attract the power of review and recall of the original order.

12. In view of the discussions made above, the impugned orders under Annexure-12 and 13 to review and recall the original order after lapse of fourteen years and to pass a fresh order then, are quashed being found illegal and without jurisdiction.

13. The writ petition is allowed.

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