



2. The dispute between the parties relates to Sabik Khata No. 20 corresponding to Hal Khata Nos. 246, 215 and 227 of Mouza Badaphogal under the consolidation jurisdiction of Kendrapara. The case of the petitioners is that one Bholanath Satpathy, predecessor-in-interest of the opposite parties having been adopted by one Maguni Satpathy and renamed as Narayan Satpathy, ceased to have any right, title and interest over the property of his natural father, namely Laxmidhar Satpathy.

During consolidation operation, several objection cases under Section 9(3) of the O.C.H. & P.F.L. Act, 1972 were instituted being Objection Case Nos. 2180/83, 1615/339 and 1768/110. The Consolidation Officer, Kendrapara, by orders dated 28.06.1983, 03.10.1983 and 29.09.1983 held that Bholanath Satpathy was the adopted son of Maguni Satpathy and therefore, not entitled to inherit the property of Laxmidhar Satpathy.

Said orders were challenged in Consolidation Appeal No. 225/83 before the Deputy Director, Consolidation, Kendrapara, which were dismissed by order dated 10.06.1985. Thereafter, revisions under Section 36 of the Act bearing Nos.



2210/81 and 1577/89 were preferred before the Commissioner, Consolidation, Cuttack which were also dismissed by orders dated 08.11.1996 and 29.09.1997, thereby confirming the order of the Consolidation Officer.

Subsequently, a revision under Section 37(1) of the Act being Revision Case No. 221/89 was filed which was allowed by order dated 02.03.1994 by Commissioner, Consolidation & Settlement, Cuttack remanding the matter to the Consolidation Officer for fresh disposal. Upon remand, the Consolidation Officer by order dated 05.07.2001 again held that Bholanath Satpathy was not entitled to any share in the property of Laxmidhar Satpathy. However, the legal heirs of Bholanath Satpathy without preferring any appeal under Section 12 of the Act filed Revision Case No. 900 of 2001 under Section 37(1) of the Act before the Commissioner, Consolidation & Settlement, Cuttack. Commissioner. By order dated 16.10.2009, the Commissioner allowed the revision and directed that 1/3rd share be carved out and allotted in favour of the opposite parties. Said order is under challenge in the present writ petition.



3. Counter Affidavit has been filed by Opposite Party Nos. 5 to 8 stating that the present writ petition is filed without any cause of action. It is stated that the petitioners have suppressed material facts and that late Bholanath Satpathy was never adopted by Maguni Satpathy and continued to remain the natural son of Laxmidhar Satpathy.

It is also stated that the orders passed by the consolidation authorities in the earlier round of litigation were without appreciation of evidence and in violation of procedure particularly in deciding questions relating to status and title. Further, the previous two revisions preferred were dismissed for default. In regard to the impugned order it is stated that the order was passed upon due consideration of the materials on record and in exercise of jurisdiction conferred on the Commissioner under Section 37 of the Act.

4. Heard Mr. S.Mishra, learned counsel appearing for the Petitioner; Mr. R.P Sutar, learned counsel appearing for the Opposite party nos. 5 to 8 and Mrs. J. Sahoo, learned Additional Standing Counsel for the State.



5. Mr. S.Mishra would submit that the impugned order is without jurisdiction as statutory remedies were not exhausted by the revision petitioner. He argues that since order dated 05.07.2001 was not challenged under Section 12 of the Act, the same cannot be directly challenged under Section 37. He further submits that the issue with regard to the status of Bholanath Satpathy, his adoption by Maguni Satpathy and his disentitlement to inherit the property of his natural father, Laxmidhar Satpathy have already been adjudicated in earlier proceedings and being affirmed, cannot be heard on the same issue as it would be hit by *res-judicata*.

He also contends that the opposite parties by suppressing the earlier proceedings and by claiming themselves as legal heirs of Bholanath Satpathy of Laxmidhar Satpathy have approached the revisional authority without clean hands.

6. Mr. R.P Sutar would submit that late Bholanath Satpathy was never adopted by Maguni Satpathy and continued as the natural son of Laxmidhar Satpathy, thereby having a lawful right over the disputed property. He further submits that the findings recorded by the consolidation authorities in the



earlier proceedings suffer from non-consideration of material evidence and procedural irregularities, particularly in adjudicating issues relating to status and title. He also argues that the earlier revisions under Section 36 of the Act were dismissed for default and not on merits, and therefore, the principle of res judicata would not apply.

He further submits that the Commissioner, while exercising jurisdiction under Section 37(1) of the Act has appreciated the materials on record and rectified the illegality committed by the subordinate authorities by granting 1/3rd share in favour of the opposite parties.

7. Mrs. J. Sahoo would submit that the Commissioner, Consolidation & Settlement, while exercising revisional jurisdiction under Section 37(1) of the O.C.H. & P.F.L. Act, 1972, is vested with ample power to examine the legality and propriety of any order passed by the subordinate authorities. She submits that the impugned order has been passed upon due consideration of the materials available on record and after affording opportunity of hearing to the parties and no jurisdictional error has been committed.



8. After hearing learned counsel for parties and upon perusal of the case records this Court finds that the primary issue involved is, whether the Commissioner exercising power under Section 37(1) of the O.C.H. & P.F.L. Act, 1972 was legally justified in interfering with the order passed by the Consolidation Officer under Section 9(3) of the Act.

9. It is evident from the records that the question relating to the status of Bholanath Satpathy, namely, whether he was the adopted son of Maguni Satpathy and thereby disentitled to inherit the property of his natural father Laxmidhar Satpathy was the subject matter of adjudication in earlier proceedings under Section 9(3) of the Act. Said issue was decided by the Consolidation Officer and subsequently affirmed in appeal as well as in revisions preferred under Section 36 of the Act.

10. Ordinarily, such adjudication having attained finality would attract the principles of *res judicata* and preclude reopening of the same issue. Section 36(2) of the Act also confers finality to orders passed in revision under the said



provision. However, the scope and ambit of the power conferred under Section 37 of the Act stands on a different footing.

11. Section 37 vests the Commissioner with supervisory jurisdiction to call for and examine the records of any case decided by subordinate authorities to satisfy himself as to the legality and correctness of such orders. Said power is not restricted by the limitations applicable to appellate or revisional remedies and is intended to prevent miscarriage of justice.

12. In the present case, it appears that initially the Commissioner, upon examining the materials on record found the central issue involved was not correctly decided by the subordinate authorities for which, by order dated 02.03.1994 in Revision Case No. 221 of 1989 remanded the matter to the Consolidation Officer for fresh adjudication. Said order was never challenged further and hence, must be treated as final. This Court therefore, does not intend to examine the correctness of the order of remand.

13. In the instant case, the matter being remanded was decided afresh by the Consolidation Officer and disposed of by



order dated 05.07.2001. Though the proceeding was nomenclatured as Remand Revision Case yet having regard to the scheme of OCH & PFL Act, it must be held to be an order passed under Section 9(3) of the said Act. Admittedly, no appeal under Section 12 or revision under Section 36 was preferred by the petitioner thereafter but the power of revision under Section 37 was directly invoked. Much has been argued as regards the wide powers conferred upon the Commissioner under Section 37 of the Act. The provision is reproduced below for immediate reference.

“37. Power to call for records - (1) The Consolidation Commissioner 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 such authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard make such order as he thinks fit.

(2) The power under Sub-section (1) may be exercised by the Director of Consolidation in respect of authorities subordinate to him.”

14. Mr. Mishra has argued that the Commissioner enjoys plenary powers and can interfere with any order passed by any subordinate authority. A judgment passed by a Division Bench of this Court in the case of ***Prafulla Kumar Routray and Ors. vrs. Commissioner of Consolidation, Orissa and Ors., and***



others¹ is cited. Reading of the judgment reveals that the power of the Commissioner, both under Sections 36 and 37, has been discussed in the following words;

“Under the provisions of the Consolidation Act, two different nature of revisional powers have been conferred upon the Consolidation Commissioner. Power of revision under Sec. 36 is exercisable against any decision of the Director of Consolidation, who is the appellate authority in respect of an order passed by the Assistant Consolidation Officer or the Consolidation Officer under Sec. 10 or 11 of the Act. Secs. 10 and 11 of the Act speak of final orders passed by the Assistant Consolidation Officer or the Consolidation Officer. No appeal has been provided for against an interlocutory order passed by the Consolidation Officer or the Assistant Consolidation Officer. As the power exercisable under Sec. 36 is available only against the orders passed by the Director of Consolidation, there cannot be any revision under Sec. 35 against any interlocutory order passed by the Consolidation Officer or the Assistant Consolidation Officer.

5. Section 37 (1) of the Consolidation Act is reproduced below-

"The Consolidation Commissioner may call for and up by any subordinate authority for the purpose of satisfying himself as to the regularity of the correctness, legality or propriety of any order passed by such proceedings or as to the authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard, make such order as he thinks fit"

From the language of Sec. 37 it is clear that the Consolidation Commissioner has been given a much wider power to determine the correctness, legality or propriety of "any order passed by including the power to any subordinate authority" in any case or proceeding under the Consolidation Act. The word "any order" is wide enough to include interlocutory/interim order passed by such subordinate authorities under the Consolidation Act. Accordingly, we are of the view that the Consolidation Commissioner committed error in failing to appreciate the

¹ 1997 (I) OLR 138



scope of Sec. 37 of the Consolidation Act and in dismissing the revision.”

15. There can be no quarrel with the proposition so laid but the question that the Division Bench was seized with related to an interlocutory order of the Consolidation Officer rejecting an application for amendment. It was thus held that the expression ‘any order’ is wide enough to include interlocutory/interim orders passed by the subordinate authorities. The facts of the present case stand on different footing. Here, we are concerned with the legality of exercise of revisional jurisdiction by the Commissioner under Section 37 in the absence of prosecution of available statutory remedies against the order sought to be revised. Before proceeding further, it would be apt to briefly refer to another judgment passed by a Division Bench of this Court in the case of ***Laxman Sahu and others v. Director of Consolidation, Orissa, Bhubaneswar and another***², wherein referring to the power under Section 37, it was held as follows:

“4. Section 37 of the Consolidation Act has conferred power and authority on the Consolidation Commissioner and the Director of Consolidation to call for and examine the records of any case decided or proceedings taken up by any subordinate authority and to rectify if the subordinate authority has committed any substantial illegality or infirmity This power is not controlled by any other provisions in the Act. The Statute has not put any

² 1999 (II) OLR 554



limitation on this power so that this power can be exercised at any stage to prevent perpetration of any illegality and to promote the interest of justice. It is obvious that the power must be exercised to further the interest of justice and to prevent abuse of the process of law A Division Bench of this Court in *Maguni Pradhan v. Commissioner of Consolidation, Orissa and others* reported in 1992 (1) OLR 246 has already made the position clear.

5. Besides, Section 37 has not provided for any remedy to any party as of right. It, in fact, does not contemplate making of an application by an aggrieved party. However, it has been settled that an aggrieved person may draw the attention of the Commissioner to any gross illegality. The Commissioner has the absolute discretion to decide whether he will exercise his suo motu power or not. Thus delay by itself is no bar to exercise suo motu power though long unexplained delay is definitely a factor to be taken into account whether suo motu power should be exercised or not.”

16. While the wide power of the Commissioner under Section 37 has been generally acknowledged in ***Laxman Sahu (Supra)***, special note must be made of two prior judgments rendered by two Division Benches of this Court, namely, in ***M/s Modern Fabricators Firm represented by Satyabrata Mohanty and others vrs. Rajendra Harichandan and others***³ and ***Antaryami Lenka and others vrs. Chaturbhuja and others***⁴.

17. In ***Anataryami Lenka (supra)*** it was held as follows:

“The said question again came up for consideration recently before a Bench of this Court in the case of *M/s.*

³ 73 (1992) CLT 217

⁴ 1993 (II) OLR 464



*Modern Fabricators Firm represented by Satyabrata Mohanty and Ors. v. Rajendra Harichandan and Ors. ** 73(1992) CLT, 217, to which one of us (brother Pasayat, J.) was a party. Having considered the object and scope and the legislative intention, it was held in the aforesaid case that Section 37 was intended to further the interest of justice and was not intended to act as a camouflage to get over statutory bars and prohibitions. It was also held that the Commissioner if finds that there were genuine grounds for non-prosecution of the remedies available under the statute and it is necessary to prevent the abuse of the process of law to exercise his power Under Section 37, then the power could be exercised, but it should not be exercised in a routine manner to re-provide the remedy which had been statutory taken away or restricted. It was also held in the aforesaid case that in a given case whether power Under Section 37 of the Act could be exercised or not would depend upon the facts and circumstances of the case and the reasons for which the statutory remedies could not be availed of. But a word of Caution has been indicated therein that the said power should be exercised with care, caution and circumspection and the rigours imposed by the statute should not be obliterated. Applying the ratio of the aforesaid two Cases the facts and circumstances of the present case, as indicated earlier, we have no hesitation to conclude that opposite party No. 1 was not entitled to invoke the power of revision of the Commissioner Under Section 37of (1) the Act and the Commissioner had no jurisdiction to exercise his suo motu power Under Section 37(1) of the Act and nullify the orders passed by the consolidation authority which have become final by not being assailed in any higher forum by opp. party No. 1. In the aforesaid premises, we hold that the order of the Consolidation Commissioner is without jurisdiction and we accordingly quash the said order which has been annexed as Annexure 5. But we make it clear that the order that has been passed by the Consolidation Officer in favour of opp. party No. 1 in Objection Case No. 32/10 must be given effect to and the right of opp. party No. 1 declared therein is not to be tampered with in any manner notwithstanding the order of the Assistant Consolidation Officer passed in objection Case No. 1305/102.”*

18. In a relatively recent case, a single Judge of this Court in the case of **Basudev Pradhan vrs. Pahali Pradhan and**



Ors.⁵ decided a more or less identical matter. The issue involved in the said case was crystalised in the following words-

“
xxx xxx xxx
For the statutory remedy of revision available to the parties to objection case as well as appeal case under section 36 of the O.C.H. & P.F.L. Act, 1972, once aggrieved part decides not to challenge the order of the appellate authority in revision U/s.36 of the Act amounts to acceptance of the order of the appellate authority and such aggrieved party is debarred to avail the remedy under Section 37(1) of the O.C.H. & P.F.L. Act, 1972.

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Thereafter, the Court held as follows:

6. *This Court already recorded that the writ petitions confine to Objection Case No.2139, 2140 and 2141 of 1986 consequently Appeal Case Nos.301, 302 and 303 of 1987 respectively. This Court here finds, undisputedly there is no revision under Section 36 of the O.C.H. & P.F.L. Act, 1972. For the relevancy of the provisions at Section 36 & 37 of the Act, 1972, this Court takes note of the provisions at Section 36 & 37(1) of the O.C.H. & P.F.L. Act, 1972 which reads hereunder.*

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7. *Reading both the provision, this Court finds, the provisions at Section 36 of the Act provides opportunity to the aggrieved party involving objection case and the appeal order to prefer revision to the Commissioner within 90 days. Further reading of the provisions under Section 36 of the Act, 1972, these provisions also clearly prescribe, all orders passed under this Section shall be final. Undisputedly, there is no revision U/s.36 of the Act, 1972. It is now, reading of Section 37(1) of the Act, 1972, this Court finds, this is a provision provided to the Consolidation Commissioner to call for and examine 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 proceeding or as to the correctness, legality or propriety of any order passed by such authority. This being the legal position, this Court observes, the power of revision under Section 37(1) of the Act is simple and only vested with the Commissioner*

⁵ (OJC Nos. 3029, 6489 and 6490 of 1999)



authorizing him to initiate suo motu proceeding. Further looking to the statutory provisions under section 36 of the Act, 1972, this Court observes, once a party has a statutory remedy under Section 36 of the Act to challenge the order passed by the appellate authority, decides not to prefer any revision under Section 36 of the Act cannot bring a proceeding under Section 37(1) of the Act and the order of the appellate authority in such situation will be deemed to have been final and accepted by the aggrieved party even.

9. This Court here takes into consideration certain decisions of this Court on the particular aspect which reads as hereunder:

(i) In the case of *Smt. Manimala Bose Versus Rajendra Prasad Bose and others* as reported in 72 (1991) C.L.T 553, another Division Bench of this Court in paragraph no.7 therein came to observe as follows:

“7. So far as the second question is concerned, the Consolidation Commissioner in exercise of his power under Section 36 of the Consolidation Act can entertain a revision against any decision of the Director of Consolidation when moved by any person aggrieved. Obviously, the said power has not been invoked as the order under Annexure-4 is not an order of the Director of Consolidation. Under Section 37 of the Act the Consolidation Commissioner has power to 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 or an order passed by such authority in the case or proceedings. This obviously is a suo motu power conferred the Consolidation Commissioner who can call for any records of any subordinate authority in any consolidation proceeding for his satisfaction with regard to the correctness, legality or propriety of the order passed. Since the order under Annexure-4 is not by an authority under the Consolidation Act, the Commissioner has no power to interfere with that order under Section 37(I) of the Consolidation Act. In that view of the matter, the Consolidation Commissioner had no jurisdiction to interfere with the order dated 15-1-1980 (Annexure-4) and the Commissioner rightly refused to entertain the revision in his order dated 7-4-1982, annexed as Annexure-5. In this view of the matter, there is no error of jurisdiction or of the law in the order of the Commissioner in Annexure-5 so as to be interfered with by this Court in exercise of jurisdiction under Article 226 of the Constitution.”



(ii) In the case of Antaryami Lenka and another Versus Chatrubhuja alias Bhuja Lenka and others as reported in 1993(II) OLR 464 a Division Bench of this Court in paragraph no.5 therein has come to observe as follows:

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This Court here observes, there can be exercise of the power where the Commissioner finds, there were genuine grounds for nonprosecution of remedies to prevent abuse of process of law and not in a routine manner. Undisputedly, the case at hand did not involve such claim.

xxx xxx xxx”

19. After analysing the statutory provisions, including the judgments passed in ***Antaryami Lenka (supra)*** it was held that there can be exercise of power under Section 37 where the Commissioner finds there are genuine grounds for non-prosecution of remedies to prevent abuse of process of law and not in a routine manner. Thus, the point of law, as has been settled by the above cited judgments of this Court is that while the power of the Commissioner under Section 37 is wide and without any limitation yet, such power is not to be invoked or exercised routinely. Further, on the face of statutory remedies being available, the revisional Court should not exercise the power under Section 37 bypassing such remedies unless it is satisfied that there were genuine grounds for non-prosecution of such remedies. Of course, whether there were genuine



grounds or not is to be decided on facts and circumstances of each case.

20. Having noted the legal position as above, this Court finds that the question of maintainability of the revision was also raised before the Commissioner and framed as one of the points to be decided in the revision, being as follows:

“ (i) whether this revision is maintainable under Section 37 of the Act”.

21. Upon a careful reading of the impugned judgment, this Court is unable to find any cogent or convincing ground as to why the statutory remedy of appeal under Section 12 and of revision under Section 36 was bypassed. The Commissioner under para-4.4 of the impugned judgment at page 26 has observed as follows:

*“ xxx
no appeal was preferred against such order by the present petitioner. Though preferred this revision before this Hon’ble Court for remedy as the matter involves so many facts and laws
xxx”*

It is elsewhere held under the same paragraph at page 27 as follows:

“While deciding RC No. 04/87 this Court (Commissioner, 221/89 Consolidation) has clearly viewed that the Assistant Consolidation officer has no jurisdiction to decide right, title and interest u/s 15 (1) objection Case No. 405/85 (due to bar u/s 14 of the Act) and, therefore, the said order



was set aside, The orders passed in 9 (3) objection case No. 1974/82 by the learned CO., Kendrapara deciding the share of Bholanath @ Narayan Satapathy (the then Objector as 4 Annas for the schedule of the properties appertaining to sabik Khata no. 20 was still in force. After the death of Nilamani his 4 Aanas interest devolved on their 3 brothers and therefore, the share of Bholanath @ Narayan and others became 1/3rd each. There is no records available that the said order has been challenged and decided by the learned Appellate Court, Appeal No, 25/83 filed u/s 12 of the Act by Benudhar Satupathy and Bholanath @ Narayan Satapathy challenging the orders of CO., Kendrapara passed in Objection Case No. 1768/88 has been dismissed for lack of merit wad maintainability. In view of the above circumstances, since the learned Trial Court has not dealt with the matter properly and Appeal has not been filed by either of the parties with specific claim relating to the matter, and the orders of the Consolidation Officer passed in objection cases filed by 9 (3) of the Act has not been set aside by proper Court of law, subsequent decision in the matter by Consolidation officer/Assistant Consolidation officer being illegal and without jurisdiction, held the present revision is said to be bald maintainable. Accordingly, the question No. (1) is decided affirmatively and question no. (11) is answered negatively.”

22. This Court is constrained to observe that the above reasoning cannot stand the scrutiny of law. Firstly, the Commissioner has himself stated that the matter involves several facts. If such is the case, then the remedy of appeal being nothing but a continuation of the original forum, is the proper course to be adopted were facts can be examined extensively. The appellate Court also has the power to decide the questions of law. The statute provides specific remedy of revision against the decision of the appellate authority, where



the correctness of the findings based on fact and law by the subordinate authority can be tested. It would be relevant to note here that legislature in its wisdom has provided specific remedies in the form of Section 12 and Section 36. The provision under Section 37 cannot be interpreted in a manner to justify bypassing the said remedies. If such were to be the interpretation then, the very provisions of Section 12 and Section 36 would be rendered otiose and redundant. Needless to mention, this could never have been the intention of the legislature. Secondly, the Commissioner has not recorded his satisfaction as to the reasons for bypassing the statutory remedies by the petitioner while entertaining the revision. From the quoted portion of the impugned judgment, this Court finds that the Commissioner himself has embarked upon a factual analysis akin to an appellate Court and somewhat abruptly held that the prior Court has not dealt with the matter properly, without satisfying the legal requirements for such exercise. In view of the foregoing discussion in the backdrop of the settled position of law, the Commissioner's reasoning as above cannot be countenanced.



23. Thus, from a conceptus of the analysis of facts, law, contentions raised and discussions made, this Court finds considerable force in the contentions advanced by the petitioner that the impugned order passed by the Commissioner cannot be sustained in the eye of law, for which the same warrants interference.

24. In the result, the writ application is allowed. The impugned order is set aside. Dismissal of the writ application, however will not stand as a bar for the affected parties to seek appropriate legal remedy against the order passed by the Consolidation Officer, if so advised.

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**Sashikanta Mishra,
Judge**