IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.9300 OF 2009

Smt.K.Kantamma & ors. .... ***Petitioners***

Mr.A.P.Bose, Adv.

-versus-

Revenue Officer and Tahasildar, Bheden & ors. .... ***Opposite Party(s)***

Mr.S.Mishra, ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
13.12.2022

Order No.

9. 1. Heard learned counsel for the Parties.

2. The Writ Petition involves the following prayer :-

> "It is therefore most humbly prayed that this Hon'ble Court be graciously pleased to admit the writ application, issue Rule Nisi calling upon the opp. parties to show cause as to why the prayer made hereunder be not allowed and upon showing insufficient/no cause make the said rule absolute by issuing writ/writs in the nature of :
>
> (i) Certiorari quashing the order under Annexure-4;
>
> (ii) Mandamus directing opp. party No.1 not to distribute the case land to opp. party Nos.3 to 8 or to any one else and further direct the opp. party No.1 to allow the Petitioners to remain in possession over the case land;
>
> And further be pleased to pass such other order/orders as deem just and property."

3. Undisputed fact remains, the husband of Petitioner No.1 and father of Petitioner Nos.2 to 5 purchased a piece of land, vide R.S.D.

No.1765 dated 6.3.1966 from the original land owner. OLR Case No.2530/77 pending consideration, the original land owner having not disclosed the sale in favour of the predecessor of the Petitioners herein, the Petitioners were compelled to bring an objection in OLR Case No.2530/77 for exclusion of the land schedule finds place at Pages-28 & 29 of the Brief. It appears, in consideration of the claim of the original applicant, the Revenue Officer, Bheden came to dispose of OLR Case No.2530/77 after obtaining the R.I. report directing in exclusion of the property in the schedule at Pages-28 & 29 of the Brief. It is at this stage, it appears, nobody challenged this order except the Petitioners filed an Appeal before the Appellate Authority requesting for working out the direction of the Revenue Officer though such an Appeal was not per se not maintainable.

4. Taking this Court to the appellate order at Pages-32 & 33 of the Brief, it is claimed, the Appeal was remanded to the Tahasildar, Bheden for consideration of the case of the Appellant before distributing the case land indicated therein. It is in the further hearing of the matter, the Revenue Officer/Tahasildar, Bheden came to dispose of the negativing the case of the Petitioners on the premises that he has no jurisdiction to consider the claim of the Petitioners at that level. It is being aggrieved by such order, the Writ

Petition has been brought in challenge of the impugned order at Annexure-4.

5. Mr.S.Mishra, learned Additional Standing Counsel for O.Ps.1 & 2, however, looking to the impugned order involved herein since appealable, challenged the maintainability of the Writ Petition. There is however no denial that in the first round of litigation in disposal of OLR Case No.2530/77, vide Annexure-2, there has been already determination of the fate of the Petitioners. It is at this stage, taking this Court to the grounds of remand in the appellate order perhaps providing the Revenue Officer to re-adjudicate the issue on the re-opening of the matter, Mr.Mishra, learned Additional Standing Counsel contended, there is no illegal exercise of power by the Revenue Officer, Bheden and thus requested for dismissal of the Writ Petition.

6. Considering the rival contentions of the Parties and keeping in view the undisputed fact that the sale involved herein taking effect on 6.3.1966. The land involved therein was to remain excluded from the ceiling proceeding following the provision of Section 39(b) of the OLR Act. Be that as it may, this Court here finds, the dispute involving exclusion of property involved again involved in OLR

Case No.2530/77 determining the issue, it appears, the Revenue Officer being competent issued the following directions :-

> "In view of this the land is excluded from the ceiling proceeding which is detailed below.
>
> | M.S.Khata No. | Plot No. | Area |
> |---|---|---|
> | 168 | 30(P) | 0.84 dec. |
> | | 42 | 0.72 dec. |
> | | 212(P) | 3.55 dec. |
> | | 213(P) | 0.65 dec. |
> | | 220(P) | 1.22 dec. |
> | | | 6.98 dec. |
>
> The order is pronounced in the open court today the 24th day of July, 90."

7. It is at this stage, taking into account the effect of the direction of the Appellate Authority, this Court finds, the Appeal Authority in disposal of the Appeal directed as follows :-

> "…..Considering the above facts, in my considered opinion, it will be proper and judicious to provide an opportunity to the present appellant to put forth his case before the Tahasildar, Bheden. Hence, the case is remanded back to the Tahasildar, Bheden for consideration of the case of the appellant before distributing the case land schedule below among the beneficiaries and dispose of the case as expeditiously as possible as per provision prescribed in the OLR Act.
>
> Land Schedule
>
> | M.S.Khata No. | Plot No. | Area |
> |---|---|---|
> | 168 | 30(P) | Ac.0.84 dec. |
> | | 42 | Ac.0.72 dec. |
> | | 212(P) | Ac.3.55 dec. |
> | | 213(P) | Ac.0.65 dec. |
> | | 220(P) | Ac.1.22 dec. |
> | | | Total Ac.6.98 dec." |

8. Reading the merit direction of the Revenue Officer, Bheden, this Court observes, there is already determination of the request of the Petitioners. It is at this stage, looking to the direction of the Appellate Authority, for the opinion of this Court and reading through the direction of the Appellate Authority, this direction can maximum be construed to be a direction to exclude the property claimed by the Petitioners looking to the distribution of such land schedule involved therein. There is clear statement from the Bar that the land involved herein has not been distributed. If the land involved herein was not distributed, the Revenue Officer had the only authority to protect the interest of the Petitioners in working out the order in disposal of OLR Case No.2530/77.

9. In the circumstance, this Court finds, the direction of the Revenue Officer, Bheden in the fresh disposal of the matter available at Page-36 of the Brief becomes bad and as an outcome of misreading of the direction of the Appellate Authority. The matter is remitted to the Revenue Officer & Tahasildar, Bheden for protecting the case of the Petitioners being governed by the direction in disposal of OLR Case No.2530/77. There is no obstruction in preparation of Record keeping in view the direction already there in Annexure-2.

10. The Writ Petition thus stands disposed.

(Biswanath Rath)
Judge

M.K.Rout