IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18031 of 2009

Raj Haldar .... ***Petitioner***

Mr. H. Tripahty, Advocate

-versus-

State of Orissa and others .... ***Opposite Parties***

Mr. Debakanta Mohanty, A.G.A.

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
19.07.2022

Order No.

08. 1. This is a writ petition challenging an order dated 14th September 2009 passed by the Board of Revenue, Orissa in OEA-RC No.17 of 2009 whereby the orders dated 27th January 1995 and 21st November 1996 of the Tahasildar, Puri in OEA (S) Case No.841 of 1991 have been set aside.

2. While directing notice to issue in the present petition on 8th February 2010, this Court directed status quo to be maintained. That interim order has continued since then.

3. It is seen that initially, the Tahasildar, Puri passed an order on 27th January 1995 settling the land in Khata No.771 Plot Nos.1426 and 1428 admeasuring Ac.0.152Decimals in favour of the Petitioner. Exercising *suo motu* revisional power, notice was issued by the Board of Revenue to the present Petitioner which was received by him on 14th May, 2009. As far as the Administrator of

the Lord Jagannath Temple and the Endowment Commissioner (who were Opposite Party Nos.2 and 3 respectively before the Board of Revenue), notices sent to them by Registered Post were not returned after expiry of the statutory period of 30 days and they were presumed to have been served.

4. The Member, Board of Revenue noted that while the counsel appearing for the Administrator, Lord Jagannath Temple appeared on 29th June 2009, none was present on behalf of the present Petitioner and the Endowment Commissioner on that date. The case was again posted on 20th July 2009 for hearing. Again none was present on behalf of the Petitioner.

5. On 7th August 2009, an application was received on behalf of the present Petitioner that he had fallen ill and he could not appear. The Board of Revenue noted that nothing prevented the Petitioner herein to file a written submission and original documents in support of his claim. Thus, it was concluded that the present Petitioner was deliberately avoiding appearing before the Board of Revenue.

6. It is seen that the impugned order of the Board of Revenue was passed only on 14th September, 2009. Having filed a Vakalatnama on behalf of the present Petitioner before the Board of Revenue on 7th August 2009 itself, step should have been taken by the lawyer engaged by him to appear and either plead for time or file the original documents. He, however, did not do that.

7. The Court is therefore not satisfied that there has been any denial of opportunity to the present Petitioner to appear before the Board of Revenue and therefore, the Board of Revenue cannot be faulted in proceeding to pass the impugned order *ex parte* against the present Petitioner.

8. It is then argued that a *suo motu* revisional power exercised nearly fourteen years after the initial order passed by the Additional Tahasildar and that there was no valid explanation for the delay. At the same time, learned counsel for the Petitioner acknowledges that notification permitting such *suo motu* revisional power does not prescribe any period of limitation within which it has to be exercised.

9. Mr. Debakanta Mohanty, learned Additional Government Advocate points out how the procedure prescribed in the circular for settlement of 'Bebandobasta' land has not been followed. The notice inviting objections did not bear any date. It only had the facsimile signatures of the Tahasildar. Names of two persons written on the backside of the proclamation did not bear their signatures. No notice was issued for conducting a local enquiry and no memorandum of local inquiry was prepared. It is therefore plain that the settlement by the Tahasildar in favour of the Petitioner in OEA (S) Case No.841 of 1991 was vitiated since admittedly the Petitioner is neither an ex-intermediary nor ex-service jagir holder or their transferee.

10. It is then argued by the learned counsel for the Petitioner that even if the Board of Revenue found some procedural irregularities, the matter ought to have been remanded to the Tahasildar for a fresh decision on the request of the Petitioner for settlement of the land in question in his favour.

11. The finding of the Board of Revenue is the proclamation inviting objections appears to have 'been fabricated within the Tahasil Office". In other words, the entire proceedings resulting in settling the land in favour of the present Petitioner appears to be vitiated by fraud. In that event, there cannot be any objection on the ground of limitation. Moreover, the notification itself of the Government does not particularly prescribe of the period of limitation for the exercise of the power of *suo motu* revision. IN such circumstances, the question of remanding the matter to the Tahasildar for a fresh determination does not arise.

12. For all of the aforementioned reasons, the Court finds no error having been committed by the Board of Revenue in passing the impugned order dated 14th September 2009 in OEA-RC No.17 of 2009. It is accordingly upheld and the writ petition is dismissed. The interim order stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin