

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.1793 of 2011

Krushna Naik.

....

Petitioner

M/s. Sandeep Parida,
D. Mohapatra, Advocates

-versus-

State of Orissa & others.

....

Opposite Parties

Addl. Government Advocate – For the State

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
13.05.2022**

**Order
No.**

09. **1.** The writ petitioner seeks for quashing of the proceeding in Land Encroachment Appeal No.26 of 2010 pending before the opposite party no.3 which has been preferred purportedly under Section 12 of the Odisha Prevention of Land Encroachment Act, 1972, for short “the OPLE Act”, by the opposite party no.4 against his own order dated 30.07.2008 passed under Section 7 of the said Act in Encroachment Case No.97 of 2008 allowing settlement of Plot No.796/3732 under Khata No.89 of Mouza-

Athagharia in favour of the petitioner with allotment of a new Khata bearing No.86/320.

2. Heard the learned counsel for both the sides and perused the relevant papers on record.

3. The opposite party no.4 has preferred the appeal before the opposite party no.3 on the grounds as follows:-

“1. That the land settled vide E.C. No.97/08 by the Tahasildar, Aska is erroneous.

2. That the Sarpancha of Rugumu was not served with the General Notice as provided in OPLE Act.

3. That a tank (which was settled) is a public property and excavated out of State exchequer, prior to its settlement in E.C. 97/08.

4. That the G. Memo, R.I. report and spot enquiry report about Plot No.797/3732 whereas, while final orders passed the plot no. no changed to 796/3732 and as such the G.N. published is void in the eyes of law.

5. That the appeal preferred can be accepted as a clerical error can be rectified at any time.

6. That B.D.O. Dharakote who invested money through concerned G.P. was in dark about settlement of Govt. property.

7. That Sarpancha of Rugumu G.P. filed objection when the beneficiary did not allow public to utilize the tank.

That, the respondent has applied for settlement of encroached land in Plot No.797/3732 but not for 796/3732.

8. That Revenue Inspector, Baradabilli, Rev. Supervisor, Dharakote, Tahasildar, Dharakote have enquired the allegation of the Sarapancha and found truth on the allegation of the Sarapancha, Rugumu.”

4. The petitioner challenges the legality and maintainability of the appeal on the grounds, inter-alia, that the opposite party no.4 can not challenge his own order which has been passed upon proper enquiry following the due procedures under the OPLE Act, and the appeal is also barred by limitation under Section 13 of the Act. It is further submitted by him that there is no documentary proof to show the case land to have been settled with Rugumu Gram Panchayat or excavation of the tank at the instance of the said Gram Panchayat. It is further contended by the petitioner that the settlement of the case land can not be taken as an outcome of clerical error, inasmuch as there being no plot bearing No.797/3732 available in Mouza- Athagharia, correct

land particular, i.e., Plot No.796/372 was indicated in the final order dated 30.07.2008 passed by the opposite party no.4.

5. The learned counsel appearing for the State, on the other hand, questions maintainability of the present writ petition on the ground that the petitioner without exhausting the forums available under the OPLE Act can not seek to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution. It is his submission that points raised by the petitioner could have been agitated before the appellate forum under Section 12 of the said Act. As to the question of limitation, it is his argument that the opposite party while admitting the appeal has impliedly condoned the delay.

6. As it appears, the bar of limitation for preferring an appeal under Section 12(1) of the OPLE Act is not absolute, inasmuch as, as per the proviso to sub-section (2) of Section 13, an appeal can be

admitted after expiry of the period of limitation if the appellate authority is satisfied about the cause of the delay. The Tahasildar-appellant has cited the ground that although the petitioner had sought for settlement of Plot No.797/3732, owing to clerical error plot No.796/3732 was directed to be settled. He has also asserted that the Plot No.796/3732 was not permissible to be settled in favour of the petitioner, inasmuch as there was a public tank pertaining to the said plot, out of the money invested by BDO, Dharakote through the concerned Gram Panchayat. The factual controversy so raised needs to be delved into by the appropriate forum under the OPLE Act.

7. Be that as it may, the scheme of the OPLE Act though empowers the Tahasildar to evict a person in unauthorized occupation of a land belonging to Revenue Department or any other Department of the State of Odisha, but in appropriate cases settled the land, so also in some cases referred the matter for settlement to the Sub-Divisional Officer. If any person

is aggrieved by the decision of the Tahasildar, he has a right to prefer appeal under Section 12 of the OPLE Act to the Sub-Divisional Officer and any person aggrieved by the decision of the Sub-Collector as appellate authority or exercising the original jurisdiction under Section 7 or Section 8-A of the OLR Act can prefer a revision before the Collector concerned, as revealed Section 12 of the OPLE Act. However, so far as the land of the revenue is concerned, when the Tahasildar himself being the Revenue Authority while in seisin over the matter in an encroachment proceeding has settled the land, no appeal is contemplated under Section 12 of the OPLE Act by the Revenue itself, more less by the Tahasildar to challenge the same before the Sub-Collector in an appeal. If the Tahasildar or the Sub-Collector, as the case may be, in exercise of their jurisdiction vested on them regarding settlement of the land in favour of a person illegally or unauthorizedly and the land belongs to the Revenue, the only remedy available to the Revenue is by way of a suo-motu revision as

contemplated in sub-section (3) of Section 12 of the OPLE Act and correct the same. In this case, therefore, the appeal being incompetent at the instance of the Revenue much less by the Tahasildar, the Sub-Collector could not have exercised such jurisdiction against such order how so ever it illegal or irregular may be, inasmuch as it is incompetent to exercise such appellate authority on the decision of the Tahasildar regarding settlement of a revenue land, even if it is not settleable.

8. In the result, this writ petition is allowed. Consequently, the order of the Sub-Collector stands quashed. But, the aforesaid should not stand on the way of the Revenue, if so desire, to avail of the appropriate remedy to him under the OPLE Act. In the circumstance, there shall be no order as to costs.

(S.Pujahari)
Judge