

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20413 OF 2015

Brusabha Majhi

..... Petitioner

Mr. Arun Chandra Behera,
Advocate

-versus-

State of Odisha and others

..... Opp. Parties

Mr. Sarojananda Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 to 5)
Mr. D.K. Sahoo, Advocate
(For Opp. Party Nos.6 to 8)

**CORAM:
JUSTICE K.R. MOHAPATRA**

Order No.

**ORDER
18.04.2022**

**W.P.(C) No. 20413 OF 2015
& Misc. Case No.801 of 2016**

- 03.
1. This matter is taken up through hybrid mode.
 2. Misc. Case No. 801 of 2016 has been filed with a prayer to implead one Bibhishana Banchhor, in place of deceased Sripati Banchhor whose name was deleted from the cause list, stating that he had no issue. It is submitted by Mr. D. K. Sahoo, learned counsel for the Opposite Party Nos. 6 to 8 that Sripati Banchhor- Opposite Party No. 7 died leaving behind his son Sri Bibhisana Banchhor as his only legal heir. But, the name of Opposite Party No.7 was deleted from the cause title of the writ petition, stating that he died issueless, which is not correct. In support of his contention, Mr. Sahoo, learned counsel refers to the R.O.R. as well as voter list which discloses that Bibhisana is the son of deceased Opposite Party No.7. Hence, the petition has been filed.

2.1. Mr. Behera, learned counsel for the Petitioner submits that he has not been served with the copy of the petition. Hence, he has no instruction in the matter.

2.2. Taking into consideration the submission of learned counsel for the parties more particularly the public documents, in which Bibhisana has been described as the son of deceased Opposite Party No.7, the prayer to implead Bibhisana as Opposite Party No.7 is allowed.

3. Office is directed to carry out the correction in the cause title.

4. This writ petition has been filed assailing the order dated 28th October, 2015 (Annexure-3) passed by the Additional Commissioner, Settlement and Consolidation, Sambalpur in R.P. No.209 of 2012, whereby he dismissed the revision filed by the Petitioner under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short 'the Act').

5. Mr. Behera, learned counsel for the Petitioner submits that the name of forefather of the Petitioner, namely, Chere Jhankar, son of Thuguku Banchhor, was recorded in respect of the case land in the sabik R.O.R. under Annexure-1. Without considering the same, the Settlement R.O.R. was published in the name of Opposite Party Nos.6 to 8 in the year 1974-75 under Section 12-B of the Act. The Petitioner could not know about the publication of R.O.R. However, he is in cultivating possession over the land in question. The Addl. Commissioner without considering the same holding that the revision petition has been filed after more than 37 years, dismissed the revision petition. It is his submission that due to non-production of settlement order during settlement operation, the case land was recorded under *Bebandobasta* status

and subsequently, the Tahasildar, Titilagarh recorded the case land in favour of Opposite Party Nos. 6 to 8 vide order dated 10th April, 1990. Therefore, there is a delay of 22 years in filing the revision and not 37 years as observed by the Additional Commissioner in the impugned order. It is his case that forefather of the Petitioner was Jhankar of the village, who should have been settled with the land in question. These material aspects were not taken into consideration by the Revisional Court while adjudicating the revision. Hence, he prays for setting aside the impugned order under Annexure-3 and to direct the Tahasildar, Titilagarh to record the land in favour of the Petitioner.

6. Mr. Sahoo, learned counsel for Opposite Party Nos. 6 to 8 submits that although Sripati Banchhor died leaving behind his legal heir, namely, Bibhishana, the Petitioner knowingly deleted his name from the cause title of the writ petition. As such, the writ petition is incompetent due to non-joinder of necessary party. During adjudication of the revision petition, the Additional Commissioner on verification of the records has categorically observed that the Tahasildar-cum-Estate Abolition Collector vide Case No.268 of 1965 settled the case land in favour of Dhanmat Banchhor of village Adabahal, who was working as Jhankar of the said village. The said Jhankar was also granted "Sanand" for an extent of Ac.15.97 decimals by the District Magistrate, Patna on 5th November, 1936 in Revenue Misc. Case No. 7/104. After death of Dhanmat Banchhor, his brothers, namely, Arjun, Sripati and Richek Banchhor had succeeded him. Due to non-production of relevant records during settlement operation, the case land was recorded under Bebandobasta status and subsequently after due enquiry, the case land was recorded in the name of Opposite Party

Nos. 6 to 8 vide order dated 10th April, 1990. The Petitioner at no stage during settlement operation had raised any objection to record the land in his name. Subsequently, in connivance with Adivasi Kalyan Sangha, the Petitioner tried to take forcible possession of the case land. Since he could not succeed in his attempts, the revision petition was filed to harass the Opposite Party Nos.6 to 8. It is his submission that the Additional Commissioner taking into consideration the materials on record passed the impugned order, which warrants no interference.

7. Mr. Mishra, learned Additional Government Advocate supported the findings recorded by the Additional Commissioner in the impugned order under Annexure-3 and submitted that since the impugned order has been passed on verification of the relevant records, the same should not be interfered with.

8. Taking into consideration the rival contentions of the parties and on perusal of the record, this Court finds that the land in question was recorded in the name of Dhanmat Banchhor by the Tahasildar-cum-Estate Abolition Collector vide Case No.268 of 1965, as he was the Jhankar of the village. Beforehand a Sanand was also issued by the District Magistrate, Patna on 5th November, 1936 in Revenue Misc. Case No.7/104, as he was serving as Jhankar. The Petitioner claims right over the property by virtue of Annexure-1, the authenticity of which is doubtful. Moreover, at no stage of settlement operation, the Petitioner had raised any objection or claimed to record the land in his name. The Petitioner in this writ petition has admitted that R.O.R. was published in the year 1974-75 under *Bebandobasta* Status. The Petitioner, however, did not raise any objection to record the land in his name. On the other hand, upon consideration of objection

raised by the Opposite Party Nos. 6 to 8, the concerned Tahasildar allowed to record the land in their favour vide his order dated 10th April, 1990. The said order was also not challenged by the Petitioner. Further, the Petitioner has also not explained the inordinate delay of 37 years in filing the revision petition.

9. In that view of the matter, I find no infirmity in the impugned order as the same is a reasoned one.

10. Accordingly, this writ petition stands dismissed. In the circumstances, there shall be no order as to costs.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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