

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1909 OF 2022

Iswar Mallick

....

Petitioner

Mr. H.N. Mohapatra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

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

ORDER

21.03.2022

Order No.

3. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to set aside the order dated 3rd January, 2022 (Annexure-3) passed by the Tahasildar, Puri in Mutation Case No.2658 of 2020, whereby he directed to record the land in Hal Plot No. 18 to an extent of Ac.0.050 decimals out of Ac.0.070 decimals and Hal Plot No.18/582 to an extent of Ac.0.130 decimals out of Ac.0.220 decimals under Hal Khata No. 158 of mouza in Government khata (for short 'the case land').
3. Mr. Mohapatra, learned counsel for the Petitioner submits that the land has been directed to be settled in the name of the Petitioner pursuant to the judgment and decree passed by learned Civil Judge (Senior Division), Puri in T.S. No. 52/166 of 92/85 under Annexure-1. The said judgment and decree was never challenged and attained its finality. The settlement authority ought to have respected the judgment and decree passed by the learned civil court and recorded the case land in the name of the Petitioner. The Tahasildar, Puri without considering the same

rejected the mutation application vide order under Annexure-3 for which the Petitioner has filed this writ petition for the aforesaid relief.

4. Mr. Mishra, learned Additional Standing Counsel at the threshold submitted that the Petitioner has a remedy of appeal under Rule 42 of the Orissa Survey and Settlement Rules, 1962 (for short 'the Rules') to assail the order under Annexure-3. Mr. Mishra also refers to the counter affidavit filed by Opposite Party No.2-Tahasildar, Puri, the relevant portion of which is quoted as under:

*"Firstly in the Sabik Parcha, the land stood recorded in the name of the Puri Municipality. Hence, it is obvious that the Petitioner or his ancestors were never owners or in possession of the scheduled land. Secondly the State of Odisha represented through the Collector, Puri was never a party in the Civil Court and a decree was passed on the basis of a compromise. It further means that the learned Civil Court while the decree was being passed did not have analysed evidence as to who is actual owner of the said property. Hence, such a decree only binds the parties of the suit and is not a declaration **in rem**. Further, when the Sabik records are clear that the land never belonged to the Petitioner in the first place and State was the actual owner throughout and the Hal ROR shows illegal note of possession of the family members of the petitioner, the Tahasildar could not have mutated Government land in favour of the encroachers. Hence, though the Government pleader opinion was the basis of adjudication, even otherwise as per actual field status and settled legal position, the land could not have been mutated in favour of the petitioner."*

5. Referring to the counter affidavit filed by the Tahasildar, Puri, he submits that in T.S. No. 52/166 of 92/85, the State Government was not made a party. Hence, the judgment and

decree passed therein is not binding on the State Government. The Petitioner by suppressing the material facts had filed the aforesaid title suit. As such, the Tahasildar, Puri has committed no error in rejecting the mutation application.

6. Upon hearing learned counsel for the parties and on perusal of the record, it transpires that the ground on which the mutation application was rejected is not reflected in the impugned order under Annexure-3. It is trite law that the grounds of passing of the impugned order cannot be supplemented by filing an affidavit in Court. On perusal of the impugned order under Annexure-3, it transpires that the Tahasildar, Puri rejected the mutation application stating that the impugned order was passed only basing upon the opinion of the Government Pleader, Puri, which reads as under:

“In this connection, the Govt. Pleader, Puri was requested to submit view for correction of R.O.R. in favour of the petitioner. In reply, the Govt. Pleader, Puri has submitted his view vide letter No.56 dt. 03.09.2021. As per his view “the mutation should not be done in the name of the petitioner-Iswar Mallick”. In view of the above fact the case is rejected.”

Such a ground of rejection is not sustainable in the eyes of law.

7. True it is that the impugned order under Annexure-3 is appealable under Rule 42 of the Rules. But, taking into consideration the discussions made above, no fruitful purpose will be served by relegating the Petitioner to file an appeal under Rule 42 of the Rules.

8. In that view of the matter, the impugned order under Annexure-3 is set aside and the matter is remitted back to the

Tahasildar, Puri to adjudicate the Mutation Case No. 2658 of 2020 afresh in accordance with law giving opportunity of hearing to the parties concerned by passing a reasoned order.

9. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge

bks

