

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11627 of 2012

Bindu Prasad Sahu (Since dead), ***Petitioners***
represented by his LRs.

Mr. A. P. Bose, Advocate

-versus-

Collector, Sundergarh and others ***Opposite Parties***
Mr. Pravat Kumar Muduli, Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

Order No.

ORDER
01.08.2022

I. A. No.6119 of 2019

09. 1. For the reasons stated therein, this application for substitution vice deceased Petitioner is allowed.
2. The legal representatives (LRs) of the deceased Petitioner as indicated in the schedule to the application are brought on record.

W.P.(C) No.11627 of 2012

3. The deceased Petitioner challenged an order dated 5th August, 2011 passed by the Collector, Sundargarh as Revisional Authority in RR Case No.5 of 2011 whereby the revision petition filed by the Petitioner was dismissed and the appellate order of the Sub-Collector dated 7th July, 2011 was affirmed.

4. The facts are that the Tahasildar, Rajgangpur had passed an order on 24th June, 2011 in Encroachment Case No.185 of 2011 for Hal

Plot No.545 pertaining to Hal Khata No.128 of village Liploi on the allegation that the Petitioner was constructing a house over the said Anabadi plot. According to the Petitioner, he came to know of the said proceedings only when he learnt of the eviction order on 2nd July, 2011. He claims that no show-cause notice was served on him prior to the said order being passed.

5. Aggrieved by the above order, the Petitioner preferred an appeal to the Sub-Collector, who by an order dated 7th July, 2011 remanded the case to the Tahasildar, Rajgangpur on the following grounds:

- i. The Petitioner had to deposit the assessment and penalty amount in terms of the order dated 24th June, 2011;
- ii. He had to undertake to demolish the construction;
- iii. The Tahasildar had to impose a fine of Rs.50/- and a daily fine of Rs.10 for every day till removal of unauthorized construction.

He further directed that after compliance of the above directions, the Petitioner would be released from jail custody. If, he did not demolish construction, the Tahasildar was to remove it and realize the cost of removal from the Petitioner.

6. According to the Petitioner, on the very next day i.e. on 8th July, 2011, the Tahasildar, Rajgangpur released him from custody and asked him to demolish the construction by 2nd August, 2011.

7. Aggrieved by the above order, the Petitioner filed the aforementioned RR Case No.5 of 2011 before the Collector, Sundargarh along with an application for interim stay. When no stay was granted by the Collector, the Petitioner approached this Court

with W.P.(C) No.20222 of 2011 in which an order dated 29th July, 2011 was passed by this Court requiring the Collector to hear and dispose of the petition on 5th August, 2011 and till such time, not to undertake demolition of the premises in question.

8. Pursuant thereto, the Collector passed the impugned order on 5th August, 2011 and rejected it on the following grounds:

“a. No procedural irregularities have committed either by the Sub-Collector, Sadar, Sundargarh or Tehsildar, Rajganpur.

b. The petitioner has not availed of the opportunities given by the Tehsildar, Rajgangpur to file show cause reply and put forth his case though the notices were duly served on him.

c. The plea of the petitioner that the case land is royati land cannot be adjudicated in this court in absence of documentary evidence and as the Settlement Authorities have recorded the land in Hal Settlement ROR in Govt. Khata No.128 (Anabadi) showing Ram Kishore Sahu, father of the petitioner in unauthorized occupation.”

9. It is pointed out by Mr. A. P. Bose, learned counsel for the Petitioners that there were two grounds on which the original Petitioner resisted the encroachment proceedings—

(I) It was that his father had purchased the land in question under a Registered Sale Deed dated 8th June 1972, which document was produced before the authorities below, but was not examined by them. It is enclosed with the present petition at Annexure-1.

(II) Consequently, he submits that a specific plea had been taken in terms of Section 8-A of the Orissa Prevention of Land

Encroachment Act, 1972 (OPLE Act) making an alternative plea that the Petitioner had continued in the land in question for well over 30 years and if such occupation was to be considered to be 'unauthorized' or 'encroachment', then since he had continued as such over more than 30 years, he was entitled to in terms of Section 8-A(1) of the OPLE Act to claim that the land to be settled in his favour subject to enquiry by the Sub-Divisional Officer as contemplated in the said provision. He submits that although the Collector in the impugned order noticed the above submissions under Section 8-A of the OPLE Act, it was actually not dealt with by the Collector.

10. Mr. Pravat Kumar Muduli, learned Additional Government Advocate refers to the fact that the alternative plea of the Petitioner may be inconsistent with each other.

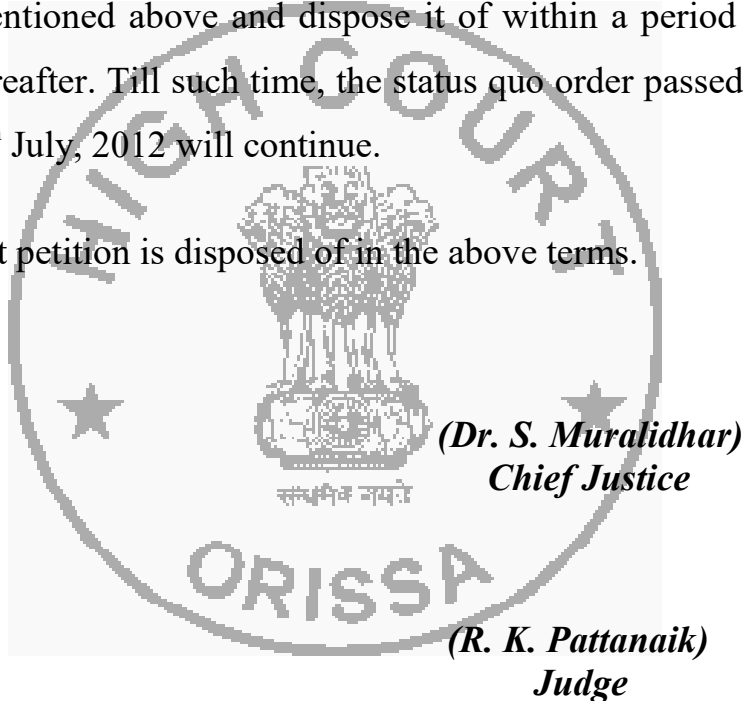
11. Nevertheless, the Court finds that neither of the pleas of the Petitioner has actually been examined by the Collector in the impugned revisional order. It is not correct that the Petitioner had not produced any document whatsoever since a copy of the Registered Sale Deed dated 8th June, 1972 was certainly on record. Secondly, even assuming that the said document was unacceptable, the alternative plea under Section 8-A of the OPLE Act ought to have been examined.

12. Consequently, the Court sets aside the impugned order dated 5th August, 2011 of the Collector, Sundargarh and restores RR Case No.5 of 2011 to the file of the Collector, Sundargarh to be disposed of afresh after hearing the LRs of the original Petitioner and in

particular, after examining the copy of the Registered Sale Deed dated 8th June, 1972 and also the alternative plea under Section 8-A of the OPLE Act.

13. The LR's of the original Petitioner will appear before the Collector, Sundargarh on 6th September, 2022 with the downloaded copy of this order. Thereafter, the Collector will proceed in accordance with law in the said RR Case No.5 of 2011 after hearing the LR's of the Petitioner, and examining the documents, and the pleas as mentioned above and dispose it of within a period of four months thereafter. Till such time, the status quo order passed by this Court on 5th July, 2012 will continue.

14. The writ petition is disposed of in the above terms.



M. Panda