

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4834 OF 2018

Chandamani Bej

Petitioner

Mr. Niranjana Lenka, Advocate

-versus-

Commissioner of Consolidation and Settlement, Odisha, Cuttack and others ***Opp. Parties***

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 and 3)

Mr. S.S.K. Nayak, Advocate
(For Opp. Party No.3)

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

**ORDER
05.05.2022**

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 30th March, 2012 (Annexure-7) passed by the Commissioner Consolidation and Settlement, Odisha, Cuttack- Opposite Party No.1 in Revision Petition No.91 of 2009, by which the matter was remanded to the Tahasildar, Rajkanika for disposal as per law.
 3. Mr. Lenka, learned counsel for the Petitioner submits that Plot Nos.148 and 148/706 to an extent of Ac.0.02 decimals each (in total Ac.0.04 decimals) under Hal Khata No.51 situated in village Kalikapur under Rajkanika Tahasil in the district of Kendrapada (for short, 'the case land') stand recorded in his name. After publication of final R.O.R., the Opposite Party No.3, namely, Purna Chandra Rath filed R.P. Case No.7668 of 2002 for correction of area of his recorded

land in Plot No.149 under Khata No.100 of the same mouza. Plot No.149 recorded in the name of the Opposite Party No.3 is adjacent to the aforesaid land of the Petitioner. But, the revision petition under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short, 'the Act') was filed without impleading the present Petitioner as a party. However, the said revision petition was allowed on 4th December, 2002 remitting the matter back to the Tahasildar, Rajkanika for adjudication in accordance with law. While adjudicating the matter, the Tahasildar, Rajkanika issued notice to the Petitioner from which he came to know about filing of R.P. Case No.7668 of 2002. However, due to non-participation of the Opposite Party No.3, the said revision could not be disposed of. While the matter stood thus, the Opposite Party No.3 after lapse of seven years, filed another revision in R.P. Case No.91 of 2009 under Section 15(b) of the Act and considering the same, the impugned order under Annexure-7 has been passed.

4. Mr. Lenka, learned counsel for the Petitioner submits that in view of the ratio decided in the case of ***Smt. Bijaya Chatterjee -v- Commissioner, Land Records and Settlement, Orissa and others***, reported in 2000 (II) OLR 349, the Commissioner, while exercising power under Section 15(b) of the Act, has no jurisdiction to remit the matter back to the Tahasildar to decide it in accordance with law. If necessary, he may call for report from the Tahasildar and decide the matter himself.

5. In view of the above, the Petitioner filed Misc. Case No.11 of 2017 before the Commissioner, Consolidation and

Settlement, Odisha, Cuttack to recall the impugned order under Annexure-7 and to adjudicate the matter afresh in accordance with law. Since the said Misc. Case was not taken up for a considerable period, the Petitioner finding no other alternative has filed this writ petition.

6. Mr. Nayak, learned counsel appearing for Opposite Party No.3 submits that the Petitioner cannot maintain two parallel proceedings for the self-same litigation. Since he has filed an application in Misc. Case No.11 of 2017 before the Commissioner, Consolidation and Settlement, Odisha, Cuttack. He has to pursue the same. Thus, the writ petition is not maintainable. Further, after remand of the matter pursuant to the impugned order under Annexure-7, the Petitioner is diligently pursuing the matter before the Tahasildar, Rajkanika and such material fact has been suppressed before this Court. In that view of the matter, this writ petition is misconceived and is liable to be dismissed.

7. Mr. Mishra, learned Additional Government Advocate though conceded the position of law as settled in **Smt. Bijaya Chatterjee** (supra), but submits that since the Petitioner has filed Misc. Case No.11 of 2017 before the Commissioner, Consolidation and Settlement, Odisha, Cuttack for recall of the impugned order under Annexure-7, he should have pursued the same. He, therefore, prays for dismissal of the writ petition.

8. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that since the Petitioner has filed Misc. Case No.11 of 2017 for recall of the

impugned order under Annexure-7, interest of justice will be best served if he pursues the same before the revisional Court.

9. Accordingly, the writ petition is disposed of with a direction that on production of certified copy of this order, the Commissioner, Consolidation and Settlement, Odisha, Cuttack-Opposite Party No.1 shall do well to consider and dispose of Misc. Case No.11 of 2017 in accordance with law giving opportunity of hearing to the parties concerned keeping in mind the ratio decided in **Smt. Bijaya Chatterjee** (supra). The Commissioner shall also make an endeavour for early disposal of the Misc. Case No.11 of 2017 preferably within a period of four months from the date of first appearance of the parties.

10. In order to avoid delay, the parties are directed to appear before the Commissioner, Consolidation and Settlement, Odisha, Cuttack-Opposite Party No.1 on 16th May, 2022 along with certified copy of this order to receive further instruction in the matter.

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

(K.R. Mohapatra)
Judge