

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2052 of 2019

Himadree Kumar Mallik and another* *Petitioners
Mr. Gopinath Mishra, Advocate

-versus-

Sub-Collector, Dhenkanal and others* *Opp. Parties
Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1 and 2)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.03.2022

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. Petitioners in this writ petition seek to assail the order dated 28th June, 2012 (Annexure-9) passed by Sub-Collector, Dhenkanal in Mutation Appeal No.16 of 2012, whereby he allowed the appeal filed by Opposite Party No.3, namely, Sri Swarupananda Bihari holding that the Mutation Proceeding No.4565 of 2002 was filed on the basis of pre-settlement registered sale deed No.5841/76 and thus the Tahasildar had no jurisdiction to entertain a mutation proceeding.
 3. Mr. Mishra, learned counsel for the Petitioners submits that Mutation Appeal No.16 of 2012 was entertained ten years after the mutation made in favour of vender of the Petitioners, namely, Sri Swarupananda Bihari and though the Petitioners have purchased the property and are in possession over the same neither the Petitioners were made parties to the said

appeal nor they were served with any notice. Thus, the impugned order under Annexure-9 is not sustainable and the same is liable to be set aside.

4. Mr. Mishra, learned ASC, on the other hand, submits that on a bare perusal of the impugned order under Annexure-9, it is apparent that the vender of the Petitioners filed Mutation Case No.4565 of 2002 on the basis of the pre-settlement registered sale deed. Thus, no mutation petition could have been entertained by the Tahasildar, Dhenkanal for mutation of the land in question in favour of vender of the Petitioners. Since the Petitioners allege that they were not given opportunity of hearing they could have filed application under Rule 43 of the Odisha Survey and Settlement Rules, 1962 for review of the order. He accordingly submits that the writ petition is not maintainable.

5. Upon consideration of the rival contentions of learned counsel for the parties, this Court is of the considered opinion that the allegation of the Petitioners made in this writ petition requires factual adjudication. Further, the Petitioners claim to be necessary parties to the mutation appeal, who were not served with any notice. It is also contended that the mutation appeal was entertained ten years after the order in Mutation Case No.4565 of 2002 was passed. All these contentions can be looked into by the Sub-Collector, Dhenkanal on filing of proper application in that regard.

6. Accordingly, the writ petition is disposed of with an observation that the Petitioner, if so advised, may file an

application for review of the impugned order under Annexure-9 within a period of three weeks hence along with certified copy of this order and in that event, the Sub-Collector, Dhenkanal shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

