

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 12589 OF 2017

Rabindranath Samal.

....

Petitioner

Mr. P.K. Satapathy, Advocate

-versus-

***Commissioner, Land Records and
Settlement, Odisha, Cuttack and others***

....

Opp. Parties

Mr. Manoj Kumar Mohanty, Advocate
Opp. Party

Mr. Sarojananda Mishra,
Additional Government Advocate
(For Opp. Party Nos. 1 & 2)

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

ORDER

17.02.2022

Order

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 14th April, 2017 (Annexure-1) passed by the Commissioner, Land Records and Settlement, Odisha, Cuttack in Consolidation Revision Case No. 150 of 2015 filed by Opposite Party No.3 under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act').
3. The sole contention of Mr. Satapathy, learned counsel for the Petitioner is that the Petitioner was not provided with an opportunity of hearing in the revision case. The Petitioner, who was Opposite Party No.1 in the revision petition, was served with the notice of the revision case and the date of appearance was fixed to 23rd February, 2017. On the said date, the P.O. was on election duty for which no court was held. It is submitted that the Dealing Assistant intimated

the next date of posting of the revision petition to be 18th May, 2017. Believing the same to be correct in good-faith, Mr. Satapathy, learned counsel for the Petitioner, who was appearing in the revision petition, left the Court. However, when Mr. Satapathy, learned counsel for the Petitioner appeared before the Commissioner on 18th May, 2017, he came to know that the revision petition has already been disposed of since 14th April, 2017. It is his contention that subsequently he applied for certified copy of the order and came to learn that on 23rd February, 2017, the revision case was adjourned to 23rd March, 2017 as the P.O. was on election duty. Since the date of posting of the revision case was not within the knowledge of the learned counsel for the Petitioner, his non-appearance was *bona fide* and not intentional. Hence, the party should not suffer for any negligence of his learned counsel, which was done in good-faith. He, therefore, prays for setting aside the impugned order and to remit the matter back to the Commissioner, Land Records and Settlement, Odisha, Cuttack for adjudication of the revision case afresh on merit giving opportunity of hearing to the parties concerned.

4. Mr. Mohanty, learned counsel for Opposite Party No.3, who was the Petitioner in the revision case, vehemently objected to the same and submitted that in order to justify his lapses the writ Petitioner has annexed the notices to the writ petition as Annexures-3 and 7, which are out and out forged ones. No Vakalatnama was also filed on behalf of the writ Petitioner in the revisional court, who was Opposite Party No.1 before the Commissioner in the revision case. On the other hand, the order sheet filed by Opposite Party No.3 as well as the Petitioner clearly discloses that the revision

petition was taken up on merit following due procedure of law. It is his submission that the Petitioner is also pursuing another revision petition for correction of the map for the self-same land in R.C. Case No. 2 of 2015. Thus, the writ Petitioner is aware of the court proceedings and in order to harass the Opposite Party No. 3, who was the Petitioner in the revision case, he has adopted a practice, which is not recognized under law. Hence, he prays for dismissal of the writ petition.

5. Mr. Mishra, learned Additional Government Advocate submits that since it is an *inter se* dispute between the Petitioner and Opposite Party No.3, he has nothing to say in the matter. But the order sheet of the revision case available on record clearly discloses that the revision case has already been disposed of vide order dated 14th April, 2017 following due procedure of law by giving ample opportunity of hearing to the parties concerned.

6. Taking into consideration the submissions made by learned counsel for the parties, it is apparent that the writ Petitioner was the contesting Opposite Party No.1 in the revision case. It is also not in dispute that for some reason or other the Petitioner could not defend his case before the revisional court. It further appears that a revision case pertaining to the self-same land is pending before the revisional court in R.C. No. 2 of 2015 for correction of the map. Thus, taking into consideration the facts and circumstances in its totality, this Court is of the considered opinion that the writ Petitioner should be given another opportunity of hearing in R.C. Case No. 150 of 2015. However, the writ Petitioner is liable to compensate the Opposite Party No.3 adequately for his suffering.

7. Accordingly, the impugned order under Annexure-1 is set aside subject to payment of cost of Rs.3000/- (Rupees three thousand) to the Opposite Party No.3 (Petitioner in the revision petition) either personally or through his counsel. The cost shall be paid by the writ Petitioner to the Opposite Party No.3 before the revisional court on the date of their first appearance.

8. In order to avoid further delay in the matter, this Court directs the parties to appear before the Commissioner, Land Records and Settlement, Odisha, Cuttack on 14th March, 2022 along with certified copy of this order to receive further instruction in the matter. It is further observed that since both R.C. Case No.150 of 2015 and R.C. Case No. 2 of 2015 relate to the self-same subject matter of dispute, the Commissioner shall do well to make an endeavour for early disposal of both the revision cases analogously.

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/ms