

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 2923 OF 2019**

***Sk. Jaffarulla***

....

***Petitioner***

Mr. S.P. Moharana, Advocate

*-versus-*

***Sk. Aminulla and others***

....

***Opp. Parties***

Mr. Swayambhu Mishra,  
Additional Standing Counsel  
(For Opp. Party No.8)

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

**ORDER  
21.03.2022**

**Order No.**

- 4.
1. This matter is taken up through hybrid mode.
  2. The Petitioner in this writ petition seeks to assail the order dated 15<sup>th</sup> April, 2018 (Annexure-5) passed by the Tahasildar, Cuttack in Mutation Case No. 1681 of 2018, whereby he dropped the mutation case observing that the Petitioner should file a revision under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short 'the Act').
  3. Mr. Moharana, learned counsel for the Petitioner submits that C.S. No. 89 of 1989 filed by the present Petitioner was decreed on compromise vide order dated 7<sup>th</sup> March, 1990 passed by the learned Civil Judge (Senior Division), 1<sup>st</sup> Court, Cuttack. By virtue of the compromise decree, it was directed that an area of Ac.0.014 decimals from Plot No. 602 under Khata No.79 and Ac.0.012 decimals from Plot No.603 under Khata No.92 of mouza Mirkamal Patna in the district of Cuttack be allotted to the Petitioner. Accordingly, a part of the land was recorded in the name of the Petitioner in Khata No.23 D1 in the final R.O.R.

published on 8<sup>th</sup> January, 1999, but the rest part of the land was not recorded in the name of the Petitioner for which he filed Mutation Case No.1681 of 2018 before the Tahasildar, Cuttack. Although the Petitioner is entitled to be recorded in respect of the land in question, the Tahasildar, Cuttack without giving any weightage to the civil court decree dropped the mutation case vide order dated 15<sup>th</sup> April, 2018 observing that the decree was in respect of Sabik records. Hence, the Petitioner should file a revision under Section 15(b) of the Act. He further submits that the impugned order under Annexure-5 is an outcome of non-application of judicial mind and non-consideration of the materials on record. When the part of the land was already recorded in the name of the Petitioner by virtue of the civil court decree, there is no reason as to why the rest part of the land in question should not be recorded in the name of the Petitioner. Hence, he prays for setting aside the impugned order and to direct the Tahasildar, Cuttack to record the rest part of the land in question in the name of the Petitioner.

4. Mr. Mishra, learned Additional Government Advocate refuting the same contended that the decree was passed on 7<sup>th</sup> March, 1990 i.e. prior to publication of the Hal Settlement R.O.R. It is his submission that Hal Settlement R.O.R. was published on 8<sup>th</sup> January, 1999. Thus, the correctness of the entries in the R.O.R. can only be challenged by filing a revision under Section 15(b) of the Act. As such, the Tahasildar, Cuttack has committed no error in passing the impugned order under Annexure-5. It is further submitted that the Tahasildar, Cuttack

is not made a party to the writ petition for which the same is liable to be dismissed.

5. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that after pronouncement of the judgment and decree in T.S. No. 89 of 1989 on 7<sup>th</sup> March, 1990, final R.O.R. under Section 12-B of the Act has already been published in respect of mouza Mirkamal Patna on 8<sup>th</sup> January, 1999. Thus, the mutation case filed in the year, 2018 will not be maintainable as the correctness of the entries in the R.O.R. can only be assailed in a revision under Section 15(b) of the Act.

6. In view of the above, this writ petition merits no consideration. Accordingly, the same is dismissed.

7. It is, however, open to the Petitioner to work out his remedy in accordance with law.

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

**(K.R. Mohapatra)**  
**Judge**

bks