

**ORISSA HIGH COURT : C U T T A C K**

**WP(C) NO.4595 OF 2021**

***A F R***

*In the matter of a Petition under Articles 226 & 227 of the Constitution of India.*

***Sudhakar Das & ors.***

***: Petitioners***

***-Versus-***

***State of Odisha & ors.***

***: Opp.Parties***

For Petitioners

: M/s.P.C.Mishra, S.K.Samal  
& B.P.Mishra

For Opp. Party Nos.1 to 3

: Mr.U.K.Sahu, ASC

For Opp.Party No.4

: M/s.S.K.Dwibedi & S.Hota

**CORAM :**

**JUSTICE BISWANATH RATH**

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Date of hearing & Judgment : 07.03.2022

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1. This Writ Petition involves a challenge to the order passed by the Collector, Kendrapara, vide Annexure-1 appears to be involving a direction of this Court in W.P.(C) No.12877/2019 disposed of on 6.9.2019.

2. For the submission of the learned counsel for the Petitioners that once Lease (OPLE) Case No.23/18 is initiated involving the Petitioners and not being disposed of in accordance with law, on the

approach of the Petitioners, vide W.P.(C) No.14907/2018, the Writ Petition is disposed of directing the Tahasildar for timely disposal of the Lease Case and after the Tahasildar disposes of such proceeding entering into due enquiry passing final order, vide Annexure-3 directing recording of the land in favour of the Petitioners and Record of Rights accordingly prepared, vide Annexure-5 series. The orders, vide Annexure-3 & 5 remain final not being challenged any further.

While the matter stood thus and in clear suppression of the development through Annexure-3 & 5, a group of persons from the same village approached this Court in W.P.(C) No.12877/2019 on a different premise and in clear suppression of facts that there has been already disposal of the Lease Case and presenting their case in the guise of a PIL Petition based on pendency of a representation at their instance before the Collector even making the present Petitioners as O.Ps., the Division Bench of this Court in disposing of the PIL at admission stage without involvement of the private Opposite Parties, the Petitioners herein likely to be affected directing the Collector concerned to consider the representation of the Petitioners and take decision as appropriate. As a result, the Collector in considering such representation in the existence of a settlement order being passed by the Tahasildar interfered with the order of the Tahasildar not by way of Revisional power but by way of

consideration of the representation. It is in the premises, learned counsel for the Petitioners prayed for setting aside the impugned order at Annexure-1 and passing appropriate order for an order involving exercising power in excess of jurisdiction.

3. Mr.Hota, learned counsel for the contesting O.P.4 taking this court to the decision of the Division Bench of this Court in disposal of W.P.(C) No.12877/2019 contended that for the direction of the Court, particularly the Division Bench in disposal of the above matter, the Collector was duty bound to consider the representation of the Petitioners and dispose of the same in accordance with law. Mr. Hota however did not dispute that the Collector in disposing of the representation was not exercising his revisional power, for there is already exercise by Competent Authority thus was required to dispose of the representation in accordance with law means maximum if necessary directing for challenging the order for change of Record of Rights before the Competent Authority in the ultimate disposal of the representation and certainly not interfering with the order of the Tahasildar. There is also no dispute at the instance of the contesting O.P.4 that there already existed a prior move of the Petitioners to this Court and based on disposal of W.P.(C) No.14907/2018, there is already a lawful outcome in the original exercise of power by the Tahasildar, which order has not been challenged

any further. Relying on the decision of the Division Bench of this Court, there is an attempt by the contesting O.P.4 to justify the order at Annexure-1.

4. Mr.U.K.Sahu, learned Additional Standing Counsel appearing for O.Ps.1 to 3 taking this court to the counter affidavit while attempting to justify the impugned order however did not dispute that there is already exercise of original power by the Tahasildar and as an outcome of the same, there is already an order of settlement. It is admitted that for the legal provision, in the event anybody feels aggrieved by such settlement order, there was no restriction in preferring Appeal.

5. There is however no dispute at Bar in the operation of settlement order passed by the Tahasildar under the provision of OPLE Act and no challenge to such order any further in the circumstance, in worse the Collector if directed by the Division Bench of this Court was required to consider the representation of the Petitioner, it was necessary on the part of the Collector while considering such issue after coming to know that there already exists a settlement order by the Competent Authority instead of interfering in such order would have directed the party aggrieved to find out other option available for the purpose in the disposal of the representation.

6. This Court considering the rival contentions of the Parties finds, in the first round of litigation on the approach of the Petitioners in W.P.(C) No.14907/2018, this Court passed the following order :-

“.....Considering the averments made in this petition and as this Court finds, the petitioners are facing Lease (OPLE) Case No.23/18, this matter stands disposed of with a direction to the Tahasildar, Aul, District-Kendrapara-opposite party no.3 to dispose of the Lease (OPLE) Case No.23/18 within a period of two months from the date of communication of a certified copy of this order by the petitioners. This Court records the undertaking of the petitioners through their counsel that they will cooperate the Tahasildar, Aul in timely disposal of the proceeding vide Lease (OPLE) Case No.23/18.”

It is after such direction, the Tahasildar, not only disposed of the Lease Case, vide Annexure-4 directing correction of Record of Rights in favour of the Petitioners but there is also preparation of Record of Rights and grant of same in favour of the Petitioners, vide Annexure-5. It is at this stage, taking into account the challenge of the Petitioners on the outcome on the basis of the order of the Division Bench of this Court, this Court on perusal of Records in W.P.(C) No.12877/19 finds, in the challenge by the present Petitioners by filing the PIL before the Division Bench have simply sought for intervention of this Court in clearing the obstruction by the private O.Ps. therein. In filing such a PIL, the contesting O.Ps. however brought to the notice of the Division Bench of this Court at the stage of fresh admission, the pendency of a representation at the instance

of the Petitioners, vide Annexure-10 therein required to be disposed of. It is surprise to note that neither the Petitioners nor the Public Authority brought to the notice of this Court on operation of order of the Competent Authority, vide Annexure-4 and publication of corrected Record of Rights, vide Annexure-5. It is probably keeping in view the pendency of representation, the Division Bench has come to close the Writ Petition with the following orders :-

“.....2. By way of this writ petition, in the nature of Public Interest Litigation, the petitioners have prayed for a direction to Tahasildar Aul-opposite party no.4 to evict opposite party nos.5 to 8 from Plot No.3176, Khata No.887 (the kissam of the said land is Rasta) in Mouza-Pitapada under Tahasil Aul, in the district of Kendrapara, which has been illegally encroached by them.

3. On perusal of record, it appears that in this regard petitioners have already made a representation dated 05.07.2019 (Annexure-10) before the Collector, Kendrapara O.P.No.2.

4. Considering the prayer made in this writ petition and without expressing any opinion on the merits of the case, the writ petition is disposed of directing the Collector, Kendrapara-O.P.No.2 to consider and dispose of the petitioners' representation dated 05.07.2019 under Annexure-10, as expeditiously as possible, preferably within a period of four months from the date of receipt of copy of this order.

However, liberty is granted to the parties to revive this petition within thirty days in case of any difficulty.

All the connected Misc. case(s)/I.A.(s), if any is/are accordingly disposed of.”

Looking to the nature of allegation vis-à-vis the direction of the Division Bench of this Court dated 6.9.2019 read together with the

development taking place, vide Annexure-3, 4 & 5, for clear application of the provision of the OPLE Act, this Court here finds, even assuming the Division Bench of this Court in disposal of the PIL has come to direct the Collector to consider and dispose of the representation of the Petitioner dated 5.7.2019, vide Annexure-10 therein, in the operation of order at Annexure-4 and publication, vide Annexure-5 both are not challenged in court of law, for the opinion of this Court, the Collector under the Orissa Prevention of Land Encroachment Act, 1972, being the revisional authority once comes to know the settlement of such land in favour of the Petitioners here by the competent authority operating in the field, in the worse in disposal of the representation of the Petitioners therein directed them to find out their remedies available involving the settlement order already operating, instead, the Collector here taking shelter of the Division Bench Order appears to have interfered with the order of settlement authority, i.e., the Tahasildar in absence of any Appeal or Revision undisputedly in illegal exercise of power as well as abuse of power, which is not permissible in the eye of law. The Collector involved herein appears to have misunderstood and misinterpreted in understanding the import of the Division Bench order and even failed in understanding his role under the OPLE Act, 1972.

7. In the circumstance, for wrongful exercise of power by the Collector, Kendrapara, a power not vested in him, this Court declaring the order at Annexure-1 bad in law sets aside the same.

8. The Writ Petition succeeds. There is no order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.  
The 7<sup>th</sup> March, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

