

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4646 of 2022

Prasan Kumar Mohanty ***Petitioner***

Mr. Dayananda Mohapatra, Advocate

-versus-

State of Odisha and others

.... ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.03.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 30th November, 2021 (Annexure-10) passed in Misc. Case No.5 of 2021, whereby Assistant Settlement Officer, Rental Colony, Bhubaneswar-Opposite Party No.6 (now functioning at Major Settlement Office, Jobra, Cuttack) (for short, 'ASO'), rejected the claim of the Petitioner to record the land in question in his name.
3. Mr. Mohapatra, learned counsel submits that the Petitioner had earlier approached this Court in W.P.(C) No.35897 of 2020 assailing the order dated 25th July, 2013 passed by the ASO in Rent Case No.819 of 2012, which was disposed of vide order 22nd December, 2020, setting aside the order dated 25th July, 2013 and directing the ASO to consider the case of the Petitioner taking into consideration the order passed in Mutation Case No.1996 of 2009 and OLR Case

No.770 of 2009 and pass necessary orders in accordance with law.

3.1 The ASO accordingly took up the matter by initiating Misc. Case No.5 of 2021 and vide his order dated 30th November, 2021, rejected the claim of the Petitioner holding that the Petitioner is not cooperating for early disposal of the Misc. Case, inasmuch as he could not produce the lease sanction order, map of the leasehold land and lease confirmation order of the ADM, Bhubaneswar etc. It is further observed that although the Tahasildar as well as ADM, Bhubaneswar was requested to supply the status of the leasehold land they did not supply the same. The case of the Petitioner was accordingly rejected.

4. Mr. Mohapatra, learned counsel submits that although Petitioner is all throughout diligently contesting the case before the ASO and has complied with the directions made from time to time, but it is due to non-cooperation of the concerned authorities, claim of the Petitioner was rejected. It is his submission that although this Court directed the ASO to taking into consideration the order passed in Mutation Case and OLR Case referred to above, he directed the Tahasildar, Bhubaneswar to implement the orders of this Court in that regard. Hence, the impugned order under Annexure-10 is not sustainable in law. The ASO has not gone into merit of the case of the Petitioner and hence, the impugned order is liable to be set aside. None of the documents produced by the Petitioner was taken into consideration by the ASO while passing the impugned order under Annexure-10. Hence, he prays for setting aside the impugned order.

5. Mr. Mishra, learned ASC submits that from the observation made by the ASO, it is apparent that the Petitioner did not cooperate him for expeditious disposal of the Misc. Case. However, the impugned order is appealable one under Section 22(1) of the Odisha Survey and Settlement Act, 1958 (for short, 'the Act'). Allegations made by the Petitioner being factual in nature can only be gone into by the Settlement Officer and he can effectively adjudicate the matter.

6. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that since the impugned order under Annexure-10 is passed under Section 21 of the Act, the same is appealable under Section 22 of the Act.

7. In that view of the matter, I am not inclined to entertain the writ petition. The same is accordingly disposed of with an observation that the Petitioner if so advised, may file appeal assailing the impugned order under Annexure-10.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge