IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5108 of 2022

Urmila Sahoo ….. ***Petitioner***

Mr.Ajit Chandra Mohapatra, Advocate

-versus-

Member, Board of Revenue, Odisha and others …. ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1and 2)

Mr. P.K.Praharaj, Advocate
(For Opposite Party Nos.3 and 4)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.04.2022

Order No.

2.

1. This matter is taken up through Hybrid mode.

2. Petitioner in this writ petition seeks to assail the order dated 7th January, 2022 passed by learned Member, Board of Revenue, Odisha, Cuttack, whereby he allowed an application filed by Opposite Party Nos.3 and 4 basing upon the submission made by learned Standing Counsel to the effect that Sabik ROR in respect of the land in question was recorded in the name of the Government.

3. Mr. Mohapatra, learned counsel for the Petitioner submits that Revision under Section 32 of the Odisha Survey and Settlement Act, 1958, is not maintainable as no appeal under Rule 43 of the Odisha Survey and Settlement Rules, 1962 (for short, 'the Rules') assailing the order passed in Mutation Case No.2044 of 1996 passed by the Tahasildar, Sadar Cuttack was filed. Further, objection of the Petitioner against condonation of delay was not taken into consideration and the

delay of about 23 years was condoned without assigning any reason thereof and without recording objection made by the Petitioner. Hence, he prays to set aside the impugned order under Annexure-1.

4. Mr. Praharaj, learned counsel for Opposite Party Nos. 3 and 4 stated that the Petitioner, who was Opposite Party No.1 in the Revision, had objected to the petition for condonation of delay and considering that the impugned order has been passed. The land in question was recorded in the name of the Government under Sabik Khata. Thus, the Petitioner has no semblance of right, title or interest over the land in question. Learned Member, Board of Revenue has ample power under Section 32 of the Act to entertain the objection, if factual and /or material irregularity is found in any proceeding or order passed by its subordinate authority.

5. Mr. Mishra, learned ASC submits that since the revision in OSS Revision No.795 of 2019 is still pending before learned Member, Board of Revenue, the Petitioner who has been arrayed as Opposite Party No.1 can contest the said Revision and raise objection with regard to its maintainability. Although learned Member, Board of Revenue has not recorded the objection made by the Petitioner while adjudicating the petition under Section 5 of the Limitation Act, but fact remains the land in question was recorded in Government Khata under Sabik ROR. Thus, finding prima facie case in favour of Opposite Party Nos.3 and 4, learned Member Board of Revenue has condoned the delay in filing the revision petition and has posted the matter for final adjudication. As such, this Court should not

interfere with the impugned order under Annexure-1 at a stage when the revision petition is still pending for consideration.

6. Upon hearing learned counsel for the parties and on perusal of the materials on record, more particularly Annexure-1, it appears that although learned Member, Board of Revenue has noted that Opposite Party No.1 has objected to the limitation petition, but failed to discuss the objection so raised by her. The order impugned in the revision petition was passed in the year 1996 by the Tahasildar, Sadar, Cuttack in Mutation Case No.2044 of 1996. Although remedy under Rule-43 of the Rules is available, but it prima facie appears that no such appeal has been filed. Further, there is delay of more than 22 years in filing the revision petition. As such, learned Member, Board of Revenue was required to record his satisfaction for condonation of such a huge delay in filing the revision petition. The same is conspicuously absent in the impugned order under Annexure-1.

7. As such, the impugned order being a cryptic and non-speaking one is not sustainable. Accordingly, the order under Annexure-1 is set aside. The matter is remitted back to learned Member, Board of Revenue to adjudicate the petition under Section 5 of the Limitation Act filed by Opposite Party Nos.3 and 4 afresh giving opportunity of hearing to the parties concerned and dispose of the same by a reasoned order.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy