

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

**W.P.(C) No. 6144 of 2021**

***Nidhi Parida***

.....

***Petitioner***

Ms. Deepali Mahapatra, Advocate

*-versus-*

***State of Odisha and others***

....

***Opp. Parties***

Mr. Arun Kumar Mishra,  
Additional Government Advocate  
(For Opposite Party Nos.1 to 4)

None

(For Opposite Party Nos. 5 to 9 & 11 to 13)

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

**ORDER  
24.02.2022**

**Order No.**

9. 1. This matter is taken up through Hybrid mode.
2. Heard Miss Mahapatra, learned counsel for the Petitioner and Mr. Mishra, learned AGA. None appears for private Opposite Party Nos. 5 to 9 and 11 to 13 although represented through their counsel.
3. Petitioner in this writ petition seeks to assail the initiation of proceedings in Mutation Appeal No.70 of 2020 by the Sub-Collector, Puri-Opposite Party No.2 under Rule 42 of the Odisha Survey and Settlement Rules, 1962 (for short, 'Settlement Rules').
4. The sole question that arises for consideration in this writ petition is 'whether order dated 23<sup>rd</sup> March, 1999 passed

*by the Consolidation Officer in Objection Case No.849 of 1993 can be assailed in an appeal under Rule 42 of the Settlement Rules?'*

5. Brief description of facts necessary for adjudication of this case is that Consolidation Officer, Astaranga in Objection Case No.849 of 1993 directed to record the land in question in favour of the Petitioner. Being aggrieved by the said order, Tahasildar, Astaranga preferred Appeal Case No. 61 of 1999 before the Deputy Director, Consolidation, Puri under Section 12 of the Odisha Consolidation of Holdings and Prevention of Land Act, 1972 (for short, 'Consolidation Act'). The appeal being allowed, the Petitioner herein preferred Revision Case No.610 of 1999 under Section 36 of the Consolidation Act. The said Revision Case was dismissed vide order dated 28<sup>th</sup> May, 2001 for which the Petitioner preferred OJC No.13164 of 2001. The said writ petition was allowed vide order dated 8<sup>th</sup> July, 2019 with the following order.

*"6. In the circumstances, this Court finds the appeal No. 610 of 1999 at the instance of the Tahasildar, Kakatpur since not maintainable, the proceeding involving Appeal No. 610 of 1999 and the order at annexure-7 became nullity. As a consequence, Annexure-8 also becomes bad. Both orders at annexure-7 as well as Annexure-8 are interfered and quashed.*

*7. in the circumstance, this Court interfering in both the orders at Annexures 7 and 8, sets aside the same and thereby revives the order of the original authority in(sic) Objection Case No. 849 of 1993.*

*8. In the result, the writ petition succeeds. However, there is no order as to costs."*

6. The predecessor of the private Opposite Party Nos. 5 to 13 were parties, namely, Akrura Gochhayat was a party to the

Revision Petition No. 610 of 1999. During pendency of the writ petition in OJC No.13164 of 2001, said Akrura Gochhayat died for which the Opposite party Nos.5 to 13 were impleaded as parties in his place. The order passed by the learned Single Judge in OJC No.13164 of 2011 was assailed before the Hon'ble Division Bench of this Court in WA No.364 of 2019 by private Opposite Party Nos.5 to 13. The Writ Appeal was dismissed vide order dated 17<sup>th</sup> December, 2020 upholding the order of the learned Single Judge.

6. After disposal of the OJC No.13164 of 2001, ROR was also prepared in the name of the Petitioner under Annexure-3. Subsequently, the Opposite Party Nos. 5 to 13 filed Mutation Appeal No.70 of 2020 assailing the order passed in Objection Case No.849 of 1993. Upon receipt of notice, the Petitioner filed this Writ Petition contending that initiation of proceeding in Mutation Appeal No.70 of 2020 is an abuse of process of Court. The order in Objection Case No.849 of 1993 being passed under Section 11 of the Consolidation Act, the same could not have been challenged in appeal, i.e., Mutation Appeal No.70 of 2020 filed under Rule 42 of Settlement Rules.

7. The matter was listed on 11<sup>th</sup> February, 2022, on which date, Mr. Manas Ranjan Behera, learned counsel for private Opposite Parties sought for an adjournment to get prepared and make argument on the issue framed by this Court. For ready reference, order dated 11<sup>th</sup> February, 2022 is reproduced here under:-

*"1. This matter is taken up through Hybrid mode.*

2. *In course of hearing, it reveals that ROR under Annexure-3 has been prepared pursuant to order passed in Objection Case No.849 of 1993 under Section 11 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. This Court in OJC No.13164 of 2001 also confirmed the said order. In pursuance thereof, ROR under Annexure-3 has been issued. Thus, the question that arises for consideration in this case is as to whether an appeal under Rule 42 of Odisha Survey and Settlement Rules, 1962 is maintainable assailing the order passed by Tahasildar, Astaranga while executing the order passed by the consolidation authority.*

3. *Mr. Behera, learned counsel for private contesting Opposite Parties prays for adjournment to get prepared in the matter.*

4. *As last chance, put up this matter on 18<sup>th</sup> February, 2022. Interim order dated 24<sup>th</sup> February, 2021 passed in IA No.2889 of 2021 shall continue till then."*

8. None appears for private Opposite Parties in spite of repeated calls.

9. Mr. Mishra, learned AGA referring to the counter affidavit filed by Opposite Party No.4 submits that since the Petitioner has already received notice in Mutation Appeal No.70 of 2020 he could have appeared and raised the issue of maintainability before the said authority. But without responding to the notice issued in Mutation Appeal No.70 of 2020, the Petitioner has straightway come to this Court by filing the present writ petition, which is not maintainable. It is further submitted that the origin of the claim of title over the land in question is on the basis of an unregistered Hata Pata, which is under consideration in the Mutation Appeal filed by the private Opposite Parties. Thus, the Petitioner should appear before the appellate authority and put forth his case with regard to his claim of title over the land in question on the basis of an

unregistered Hata Pata. He, therefore prays for dismissal of the writ petition.

10. Upon hearing learned counsel for the parties and on perusal of materials on record, it is apparent that the order under challenge in Mutation Appeal No.70 of 2020 was passed in Objection Case No.894 of 1993 in exercise of power under Section 11 of the Consolidation Act. Thus, the person aggrieved can only challenge the said order under the provisions provided in Consolidation Act. Section 12 of the said Act makes a provision of appeal to challenge an order passed under Section 11 of the Consolidation Act. Apparently, the Mutation Appeal No.70 of 2020 was not filed under Section 12 of the Consolidation Act. The authorities under the Survey and Settlement Act are vested with power to entertain proceeding provided under the Settlement Act and Rules framed there under. An appeal under Rule 42 of the Settlement Rules can be maintained against an order passed under Rule-34 of the said Rules. Thus, Sub-Collector, Puri is not competent to entertain the Mutation Appeal No.70 of 2020 under Rule 42 of the Settlement Rules, as the order impugned therein was not passed under any provision of the Settlement Act or Rules framed there under. Further, Mr. Mishra, learned AGA could not justify as to how an appeal under Rule 42 of the Settlement Rules will be maintainable against an order passed under Section 11 of the Consolidation Act, which has already been upheld by this Court in OJC No.13164 of 2001.

11. True it is that the Petitioner can appear before the Sub-Collector, Puri and raise the question with regard to maintainability of an appeal by filing appropriate

application/objection to the said appeal. But, this Court in exercise of power under Article 227 is not precluded from entertaining the writ petition when there is apparent abuse of process of Court.

12. In view of the above, this Court holding the proceedings in Mutation Appeal No.70 of 2020 to be not maintainable quashes the same.

13. The writ petition is allowed to the aforesaid extent.

Issue urgent certified copy of the order on proper application.

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



*s.s.satapathy*