

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5229 of 2022

Arun Kumar Mohanty and another* *Petitioners

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. Petitioners in this writ petition seeks to assail the order dated 30th November, 2021 (Annexure-14) passed in Misc. Case No.69 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 Petitioners had earlier approached this Court in W.P.(C) No.20855 of 2021 assailing the order dated 29th June, 2013 passed by the ASO in Objection Case No.3806 of 2013, which was disposed of vide order 29th July, 2021, setting aside the order dated 29th June, 2013 and directing the ASO to consider the case of the Petitioners in accordance with law giving opportunity of hearing to them and pass necessary orders in accordance with law.

3.1 The ASO accordingly took up the matter by initiating Misc. Case No.69 of 2021 and vide his order dated 30th November, 2021, rejected the claim of the Petitioners holding that the Petitioners are not cooperating for early disposal of the Misc. Case, inasmuch as they 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 Petitioners was accordingly rejected.

4. Mr. Mohapatra, learned counsel submits that although Petitioners are 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 Petitioners was rejected. It is his submission that although this Court directed the ASO to take into consideration the case of the Petitioners in accordance with law giving them opportunity of hearing, he directed the Tahasildar, Bhubaneswar to implement the orders of this Court in that regard. Hence, the impugned order under Annexure-14 is not sustainable in law. The ASO has not gone into merit of the case of the Petitioners and hence, the impugned order is liable to be set aside. None of the documents produced by the Petitioners was taken into consideration by the ASO while passing the impugned order under Annexure-14. 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 Petitioners

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 Petitioners 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-14 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-14.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge