

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4659 of 2015

Dr. Bailochan Jena

.....

Petitioner

Miss Deepali Mahapatra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

30.03.2022

Order No.

9. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 7th May, 2013 (Annexure-7) passed by Settlement Officer, Jajpur in Appeal Case No.3575 of 2012 filed by State of Odisha under Section 22(1) of the Odisha Survey and Settlement Act, 1958 (for short, 'the Act').
3. At the outset, Miss Mahapatra, learned counsel for the Petitioner submits that the relief claimed in the writ petition is squarely covered by the order dated 18th June, 2021 passed in W.P.(C) No.13253 of 2017 by which, the writ petition was disposed of.
4. This Court, vide order dated 4th March, 2022, directed learned State Counsel to verify as to whether the order passed in W.P.(C) No.13253 of 2017 has been challenged in any higher forum. Mr. Mishra, learned ASC on instruction submits that said final order has not yet been challenged.
5. Short narration of fact necessary for proper adjudication of the case is that, one Jogi Mallick being a landless person was

settled with Sabik Plot No.1/491 under Khata No.126 to an extent of Ac.1.00 decimal in mouza Umapada under Vyasagar tahasil in the district of Jajpur (for short 'leasehold property') in Lease Case No.58 of 1963-64. Said Jogi Mallick executed a gift deed in favour of his son-in-law, namely, Sri Hrusikesh Mallick on 23rd January, 1974 in respect of the lease hold property and delivered possession thereof to him. Due to legal necessity, said Hrusikesh Mallick after obtaining permission from the competent authority under Section 22 of the Orissa Land Reforms Act, 1960 (for short, 'the OLR Act') alienated different portions of the leasehold property. The Petitioner purchased Plot No.52 measuring Ac.0.310 decimal and Plot No.53 measuring Ac.0.070 decimal under Khata No.223 (for short 'the case land') out of the leasehold property vide RSD dated 11th November, 1974 (Annexure-3). Accordingly, the Petitioner got the property mutated in his name in Mutation Case No.16 of 1974 (Annexure-4).

5.1 During settlement operation, draft ROR was published in the name of the Petitioner under Annexure-6. After the rent roll was prepared, State of Odisha preferred Appeal Case No.3575 of 2012 under Section 22(1) of the Act, which was allowed by the Settlement Officer, Cuttack-Opposite Party No.3 vide order dated 7th May, 2013 under Annexure-7 directing to record the case land in Government khata. The said order is under challenge in the present writ petition.

6. Miss Mahapatra, learned counsel for the Petitioner submits that the grounds on which the Appeal Case was allowed are not sustainable in view of observations made in order dated 18th June, 2021 passed in W.P.(C) No.13253 of

2017. She verily relied upon the observation made by this Court in paragraph-7 of the said order, relevant portion of which is reproduced hereunder for ready reference;

“7. Heard learned counsel for the parties at length and scrutinized the materials on record. On perusal of the impugned order under Annexure-8, it appears that the Additional Sub-Collector, Jajpur-opposite party No.3 while adjudicating Suit No.101 of 2017 filed by the petitioners under Section 22 of the Settlement Act, has categorically stated that he has verified the Jamabandi No.311 stood recorded in the name of Pravakar Mishra, Registered Gift Deed bearing No. 451 dated 23.01.1974 executed by lessee, said Jogi Mallick in favour of his son-in-law, namely, Hrusikesh Mallick in respect of Sabik Plot No.1/491(P) to an extent of Ac.1.00 decimals. He also verified the Registered Sale Deed No.4088 dated 06.05.1974 executed by Hrusikesh Mallick in favour of the father of the petitioners, namely, Pravakar Mishra, the tenants’ ledger, page 222 of which discloses that it has been prepared in the name of Pravakar Mishra in respect of Khata Nos. 126/10/2 to an extent of Ac.0.20 decimals. He has also verified the death certificate of said Pravakar Mishra dated 20.06.2011 as well as the legal heirs certificate issued in favour of the petitioners. He further verified the rent receipt in respect of Jamabandi No.126/10/2 of the year 1988-89. On verification of the same, he found the documents to be valid under law. Thus, the plea taken by Mr. Mishra, learned Additional Government Advocate for the State to the effect that by practicing fraud, the petitioners managed to get their names recorded in settlement record, is unfounded. Further, such a plea was also not taken before the Additional Sub-Collector, Jajpur during adjudication of Suit No.101 of 2017. It further appears that the plea taken by Mr. Mishra to the effect that the case land does not co-relate to the lease hold property of said Jogi Mallick is also without any basis, as the Additional Sub-Collector, Jajpur on verification of the documents, found Hal plot No. 113 to an extent of Ac.0.200 dec. with ‘Gharabari’ kisam corresponds to Sabik Plot No. 1/491(p), the Jamabandi No.126/10/2 to an extent of Ac.0.20 decimals has been validly prepared in the name of said Pravakar Mishra. There is no whisper in the impugned order under Annexure-8 to the effect that the case land was recorded as jungle kissam of land. Such a plea is taken by the State Government for the first time in the counter affidavit before this

Court without any supporting materials to that effect. True it is that, a document purportedly issued by the Tahasildar, Vyasagar on 30.12.2017 (Annexure-C/4) to the counter to show that Sabik Khata No.126 was recorded under Anabadi jungle kissam, but said document does not inspire any confidence as it reveals that author of the letter could not verify the Sabik R.O.R. in respect of the land in question as it was mutilated. He relied upon Amin report No.58, which is also not a part of the case record. It is also not known under what circumstances such an Amin report, if any was prepared. Further, no appeal under Section 12-A of the Settlement Act being filed assailing the draft Record of Right published under Section 12 of the Settlement Act in the name of the father of the petitioners, the same remained un-assailed. Further, no objection case could have been entertained by the Assistant Settlement Officer under Annexure-8 after publication of the draft R.O.R. under Section 12 of the Settlement Act. As such, the Assistant Settlement Officer has acted without jurisdiction in entertaining Objection Case No.6842 on the basis of letter No.1027 dated 21.02.1991 issued by the Tahasildar, Sukinda. Thus, the Settlement Authority has no other option than to publish the final R.O.R. in respect of the case land in favour of Page 14 of 15 the father of the petitioners and after his death in the name of the petitioners under Section 12-B of the Settlement Act.”

6.1 It is her submission that since no appeal under Section 12-A of the Act was filed, the Settlement Authority had no other option than to publish the final ROR under Section 12-B of the Act. It is further submitted that the Petitioner in the said writ petition was one of the purchasers from Hrusikesh Mallick, who is the son-in-law of the lessee. As the lease granted in favour of Jogi Mallik and transaction made by said Hrusikesh Mallick in favour of the Petitioner in the said writ petition was held to be valid there is no reason to dispute or raise any objection with regard to any other transaction made by him (Hrusikesh Mallick) including one in favour of the present Petitioner from out of the said leasehold property.

6.2 In view of the above, she prayed for setting aside of the impugned order under Annexure-7 and to direct the Assistant Settlement Officer (ASO) to record the case land in favour of the Petitioner and to issue final ROR under Section 12-B of the Case in his favour.

7. Mr. Mishra, learned ASC, relying upon the observations made by the Settlement Officer under Annexure-7 as well as averments made in the counter affidavit, submitted that since the case land was recorded as jungle kism in the Sabik ROR, the same could not have been recorded in favour of said Jogi Mallick, the lessee. Further, the leasehold property was never settled in favour of said Jogi Mallick under Section 8 of the Odisha Estate Abolition Act, 1951. It is his submission that settlement records were prepared on the basis of jamabandi available in the tahasil office. Mere preparation of jamabandi in favour an individual does not entitle him to be recognized as a tenant as held in *State of Orissa and others-vrs.- Brundaban Sharma* reported in (1995) Suppl.(3) SCC 249. Thus, the lessee could not have derived any title over the leasehold property. Accordingly, the Petitioner cannot derive any title in respect of the case land.

7.1 He, therefore, submits that the Settlement Officer has committed no error in entertaining the appeal and passing the impugned order under Annexure-7. Accordingly, he prays for dismissal of the writ petition.

8. Taking into consideration the rival contentions of the parties and comparative assessment of facts of this case with that of W.P.(C) No.13253 of 2017, it appears that passing of the leasehold property from the hand of lessee to the ultimate

purchaser is similar in both the writ petitions. In the appeal (Suit No.101 of 2017) filed by the Petitioners in the said writ petition, the Additional Sub-Collector, Jajpur upon examination of records has already held that the lease in favour of Jogi Mallik, registered gift deed executed by him in favour his son-in-law, namely, Hrushikesh Mallik are genuine. Thus, Hrushikesh Mallik derived valid title in respect of the leasehold property. Due to his legal necessity, he sold different portions of the leasehold property to different persons obtaining prior permission of the competent authority. The alienation made by Hrushikesh Mallik was also not disputed. Considering all these aspects, this Court in W.P.(C) No.13253 of 2017 directed to record the land in question in favour of the Petitioners therein and to issue final ROR in their favour.

8.1 In the instant case, the Settlement Officer directed to record the case land in government khata in '*rakhit*' status under classification of *jungle* on the finding that in view of the ratio decided in the case of **Brundaban Sharma** (supra) opening of '*jamabandi*' in favour of private individual maintained at Tahasil level does not entitle him to be acknowledged as a tenant for the said land. The Settlement Officer further held that the land in question was required to be settled with said Jogi Mallick under Section 8 of the OEA Act, with prior confirmation of the Board of Revenue. He further held that the Act 1 of 1948 strictly prohibits of any settlement of any communal land kept for the interest of public in favour of any private individual. Such findings recorded by the Settlement Officer are not sustainable in view of discussions made in the preceding paragraphs as well as findings arrived at

by Additional Sub-Collector in Suit No. 101 of 2017, holding the lease in favour of Jogi Mallik as well as registered gift deed executed by him in favour of Hrushikesh Mallik in respect of the leasehold property to be genuine and has been approved of by this Court in W.P.(C) No.13253 of 2017. Hence, this Court does not want to take a different view in this writ petition, more particularly when the order passed in W.P.(C) No. 13253 of 2017 remained unchallenged. It further appears that the Petitioner was 80 years old at the filing of the writ petition in the year 2015.

9. In view of the foregoing discussions made and findings arrived at by this Court in W.P.(C) No.13253 of 2017, no fruitful purpose will be served by remitting the matter to the Settlement Officer to hear the Appeal Case No.3575 of 2012 afresh. Moreover, in similar situation, this Court has already directed to publish the final ROR in favour of the Petitioners in W.P.(C) No.13253 of 2017.

10. Accordingly, this Court by setting aside the impugned order under Annexure-7, directs that final ROR under Section 12-B in respect of the case land shall be issued in favour of the Petitioner, as expeditiously as possible, preferably within a period of one month from the date of production of certified copy of this order.

11. The writ petition is allowed to the extent indicated above.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge