

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 6092 OF 2022

Subarna Panda

....

Petitioner

Mr. Abhilash Mishra, Advocate

-versus-

***Addl. Commissioner of Settlement and
Consolidation, Sambalpur and others***

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

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
16.03.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 23rd June, 2021 (Annexure-7) passed by the Additional Commissioner, Settlement and Consolidation, Sambalpur in Settlement Revision No.1446 of 2017 and consequential correction of the R.O.R. vide order dated 13th August, 2021 made by the Tahasildar, Sadar, Sambalpur in RMC No. 178 of 2021.
3. The main ground of challenge as submitted by Mr. Mishra, learned counsel is that the Petitioner was not given an opportunity of hearing in Settlement Revision No.1446 of 2017. It is his submission that although the Petitioner was a party to the Settlement Revision No.1446 of 2017 and was impleaded as Opposite Party No.1, but she was not served with any notice in the revision. Although the decree has been passed in C.S. No.131 of 2009 allotting 1/7th share each in Schedule 'B' land and 1/14th share each in Schedule 'A' land to the parties to the suit in which the Petitioner as well as private Opposite Parties have been impleaded as parties, the said decree is under challenge in RFA No.10 of 2017

and RFA No.14 of 2017 in the court of learned District Judge, Sambalpur filed by the present Petitioner and Opposite Party No.3 respectively. The Opposite Party No.3, who was the Petitioner before the revisional court, suppressing the material facts filed the revision and the Additional Commissioner without verifying the records accepted the contention of Opposite Party No.3 and allowed the revision. In that view of the matter, the impugned order under Annexure-7 is not sustainable in the eyes of law and is liable to be set aside. Consequently, correction of the R.O.R. pursuant to the order under Annexure-7 is also not sustainable and is liable to be set aside.

4. Mr. Mishra, learned Additional Standing Counsel submits that though it is an *inter se* dispute between the Petitioner and private Opposite Parties, but mere pendency of the First Appeals against the judgment and decree passed in C.S. No. 131 of 2009 will not be a bar for the revisional court to proceed with the revision under Section 15(b) of the Orissa Survey and Settlement Act, 1958. He further submits that if the Petitioner has not been given an opportunity of hearing in the revision, she could have moved the revisional court by filing an application for recall of the impugned order under Annexure-7 in terms of the ratio decided in the case of ***Alekh Chandra Rath and others –v- Commissioner of Land Records and Settlement, Odisha and others***, reported in 1989 (2) OLR 135. Hence, this writ petition merits no consideration.

5. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that since the Petitioner alleges violation of the principles of natural justice, she should have approached the revisional court itself for recall of the impugned order under Annexure-7 and for fresh

adjudication of the revision providing her an opportunity of hearing.

6. In view of the above, this Court disposes of this writ petition with a direction that in the event the Petitioner files an application for recall of the impugned order under Annexure-7 passed in Settlement Revision No.1446 of 2017 within a period of two weeks hence along with certified copy of this order, the Additional Commissioner, Settlement and Consolidation, Sambalpur-Opposite Party No.1 shall do well to consider such petition in accordance with law giving opportunity of hearing to the parties concerned keeping in mind the ratio decided in the case of *Alekh Chandra Rath* (supra),

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

