

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23038 OF 2016

State of Odisha and others

.... Petitioners

Mr. Arun Kumar Mishra,
Additional Government Advocate

-versus-

Anadi Charan Patra and others

.... Opp. Parties

Mr. Ramakanta Mohanty,
Senior Advocate being assisted by
Ms. Sumitra Mohanty, Advocate

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

**ORDER
06.04.2022**

Order No.

13. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek for a direction to set aside the order dated 14th May, 2014 (Annexure-1) passed by the Additional Commissioner, Settlement and Consolidation, Sambalpur (hereinafter referred to as 'the Commissioner') in R.P. No.280 of 2012 filed by Opposite Parties under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (hereinafter referred to as 'the Act').
3. Mr. Mishra, learned Additional Government Advocate referring to the order sheet in R.P. No.280 of 2012 at Annexure-2 submits that the matter was posted to 6th March, 2013. As the S.R. was not back and the Tahasildar, Anandapur prayed for time, the matter was adjourned to 3rd April, 2013 on which date the Commissioner without providing any opportunity of hearing to the Petitioners-State only accepted the written submission filed by the Opposite Parties (Petitioners therein) and posted the matter to

24th April, 2013 for delivery of orders. Since the order was not ready on 24th April, 2013, the matter was again adjourned to 14th May, 2014 on which date the impugned order was passed. The impugned order itself discloses that the representative of the State was not heard in the matter. Only upon hearing learned counsel for the Opposite Parties, the impugned order has been passed.

4. It is his submission that after receipt of the impugned order under Annexure-1 along with an application filed by one Sri Kirtan Bihari Patra, son of late Ratnakar Patra of Village Anandapur, for correction of R.O.R. in his name on the basis of the direction in the impugned order and another application for mutation of the land filed simultaneously on 29th December, 2014 to prepare the ROR in favour of the legal heirs of late Bhabana Patra, communication was made to the Member, Board of Revenue, Odisha, Cuttack vide letter No.468 dated 30th January, 2015 praying *inter alia* to prefer an appeal against the impugned order under Annexure-1 on the ground that the present status of the land is coming under *Abada Jogya Anabadi Khata* recorded in Government khata and the land in question is a valuable piece of Government land situated within the urban area of Anandapur Municipality. If the order under Annexure-1 is complied with, the Government will lose a valuable piece of land. After receipt of instruction from the Member, Board of Revenue, Odisha, Cuttack vide letter No.469 dated 16th May, 2015 for filing of the writ petition, the Tahasildar, Anandapur moved the Collector, Keonjhar vide letter No.3253 dated 17th July, 2015 to impart necessary instruction for filing of the writ petition. After examining the record, the Collector, Keonjhar authorized the

Tahasildar, Anandapur to file the writ petition before this Court vide his Letter No.162 dated 21st January, 2016. The Tahasildar, Anandapur thereafter vide his Letter No.931 dated 16th February, 2016 submitted a proposal to the learned Advocate General, Odisha for filing of the writ petition before this Court. He also vide Letter No.6182 dated 21st December, 2016 requested the Commissioner to issue certified copy of the entire order sheet of R.P. No.280 of 2012, which was granted on 22nd December, 2016. After due discussion with learned State Counsel, the writ petition was filed on 23rd December, 2016. As such, the delay occurred in filing the writ petition was due to the official formalities, which was necessary for filing of the writ petition. Hence, Mr. Mishra, learned Additional Government Advocate submits that the impugned order under Annexure-1 is liable to be set aside and the matter should be remitted back to the Commissioner for fresh adjudication giving opportunity of hearing to the parties concerned.

5. Mr. Mohanty, learned Senior Advocate referring to the counter affidavit filed by the contesting Opposite Parties submits that the Petitioners-State of Odisha was given ample opportunity of hearing in the revision petition. In fact, the Tahasildar, Anandapur had entered appearance on behalf of the State and sought for adjournment on 6th May, 2013. The representative of the State also participated in the hearing of the revision. Thus, it cannot be said that the State was not provided with opportunity of hearing.

6. Inordinate delay in filing the writ petition is also not explained properly. The explanation offered is also not acceptable

in view of the ratio decided in the case of *Post Master General & Others -vrs.- Living Media India Ltd. & Anr.*, reported in (2012) 3 SCC 563 and *Anchal Bihari Pattnaik & another –v- (M/s.) Indian Oil Corporation Ltd.*, reported in 2015 OLR (Supp-II) 853. It is his submission that all throughout the Petitioners had knowledge of the impugned order under Annexure-1, which is apparent from the pleadings at paragraphs-11 and 12 of the writ petition. After disposal of the revision petition on 14th May, 2014 under Annexure-1, the LR's applied before the Tahasildar, Anandapur on 29th November 2014 to prepare the R.O.R. in their name pursuant to direction of the Commissioner in R.P. No.280 of 2012. Since no action was taken, one of the legal heirs, namely, Kirtan Kumar Patra-Opposite Party No.8, filed a grievance petition before the Principal Secretary to Government in Revenue and Disaster Management Department on 30th November, 2015. The State Government in Revenue and Disaster Management Department vide its Letter No.23356 dated 2nd December, 2014 directed the Collector, Keonjhar for consideration of the grievance petition of Kirtan Bihari Patra. But, no action was taken for which one of the legal heirs, namely, Anadi Charan Patra-Opposite Party No.1 sought for information regarding action taken in the mutation case filed by him under Right to Information Act, 2005. Thereafter, W.P.(C) No.23217 of 2015 was filed by Opposite Party No.9 and others challenging the inaction of the Tahasildar, Anandapur in not correcting the R.O.R. pursuant to the order under Annexure-1. During adjudication of the case, learned State Counsel made a statement that he has no objection, if a direction is made to the Tahasildar, Anandapur to comply with the order

under Annexure-1. Accordingly, the writ petition was disposed of on 10th March, 2016 directing the Tahasildar, Anandapur to comply with the order passed by the Commissioner, within a period of three months from the date of production of certified copy of the said order. In spite of the same, the order under Annexure-1 was not complied with for which CONTC No.1430 of 2016 was filed. The said contempt petition was disposed of on 3rd December, 2016 directing the Tahasildar to comply with the order passed in W.P.(C) No.23271 of 2015 within a period of three months. It is only after that this writ petition has been filed assailing the order under Annexure-1 taking a plea of non-compliance of principles of natural justice. It is further submitted by Mr. Mohanty, learned Senior Advocate that at no point of time, after passing of the order under Annexure-1 any objection with regard to non-compliance of principles of natural justice was raised by the Petitioners-State. For the first time, such a plea has been taken in the writ petition with an intention to circumvent repeated directions of this Court in earlier writ petition as well as in the contempt petition. Thus, the ground taken in this writ petition is not sustainable. This writ petition has been filed only in order to protract the litigation and to unsettle a settled position conferring a valuable right on the Opposite Parties. Hence, this writ petition is liable to be dismissed.

7. Upon hearing learned counsel for the parties, this Court finds that this writ petition is filed to reopen the proceedings in R.P. No.280 of 2012 alleging non-compliance of principles of natural justice. On perusal of the averments made in paragraphs- 11 and 12 of the writ petition as well as counter affidavit filed by

the contesting Opposite Parties, it is crystal clear that the concerned Tahasildar, Anandapur as well as other functionaries of the State had definite knowledge of the impugned order under Annexure-1 soon after the said order was passed. At no point of time before filing of this writ petition, the Petitioners raised any objection with regard to non-compliance of principles of natural justice by the Commissioner while adjudicating R.P. No. 280 of 2012. Further, direction in W.P.(C) No.23271 of 2015 and CONTC No.1430 of 2016 was never challenged and it attained its finality. For the first time, in this writ petition, plea of non-compliance of principles of natural justice has been taken. When Tahasildar, Anandapur appeared before the Commissioner and participated in the proceeding, it is not understood in what manner principles of natural justice has been violated. The State authorities and functionaries are represented by their counsel in every proceeding before any authority or Court to which they (State counsel) are attached. There is no material available on record to the contrary to support the claim of the Petitioners. Mr. Mishra, learned AGA submits that the Commissioner did not at all discuss the case of the State in the impugned order under Annexure-1. On a close scrutiny of the impugned order under Annexure-1, it reveals that the Commissioner has discussed in detail the materials available on record produced before him, to arrive at the conclusion. Only because the Commissioner recorded the submission made by learned Counsel for the Opposite Parties (Petitioners therein), it cannot be said that the impugned order has been passed only relying upon the case of the Opposite Parties, more particularly when the Commissioner appears to have

examined the record available before him and passed the impugned order. Mr. Mishra, learned AGA could not also make out the grounds on which the State-Petitioners seek to assail the impugned order on merit. He submits that the impugned order has been passed only relying upon the sabik ROR, which appears to be not correct. The Commissioner has also taken into consideration the sabik ROR prepared in the name of the predecessors of the Opposite Parties along with other materials on record. Law is well settled that principles of natural justice is not an empty formality. The party alleging its non-compliance must establish how such non-compliance has caused prejudice to it (*see (2005) 5 SCC 337 and (2000) 7 SCC 529*). In the instant case, the Petitioners failed to establish prejudice, if any, caused to it, for such alleged non-compliance.

8. It also appears that the impugned order under Annexure-1 was passed on 14th May, 2014 and the writ petition was filed on 26th December, 2016, i.e., after more than two and half years. Explanation of the cause of delay set out in paragraphs-11 and 12 of the writ petition reflects that delay occurred due to observance of official formalities in filing the writ petition. The Hon'ble Supreme Court has time and again held that delay occurred due to observance of official formalities cannot be a ground to condone the delay. The State Government cannot claim a special status in the matter of condonation of delay. It has to be treated as a common citizen while dealing with the matter for condonation of delay.

9. In the case of *State of Madhya Pradesh-v- Bherulal* reported in *(2020) 10 SCC 654*, the Hon'ble Supreme Court has

categorically observed that condonation of delay should be used as an exception and not as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. The same view was also taken by this Court in the case of ***State of Odisha and Another -v- Miss. Sumitra Das and Others*** reported in ***2021 (II) CLR 333***, wherein it is held as follows;

“3.(13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

In view of the settled position of law the explanation offered by the Petitioners-State is not at all acceptable, more particularly when they had knowledge about the impugned order under Annexure-1 at least from the date of receipt of the said order by the Tahasildar, Anandapur and this Court time and again directed to comply with the direction under Annexure-1 within stipulated time, as discussed by the writ petitioners.

10. Taking into consideration the discussions made above, this Court is of the considered opinion that the plea taken by the State-Petitioners alleging non-compliance of principles of natural justice as well as for condonation of delay in filling the writ petition is not sustainable.

11. Accordingly, this writ petition stands dismissed, but in the circumstances, there shall be no order as to costs.

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

(K.R. Mohapatra)
Judge

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