

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17273 of 2015

Bijoy Mohapatra and others* *Petitioners

Mr. Upendra Kumar Samal, Advocate

-versus-

Commissioner, Consolidation and Settlement, Odisha, Cuttack and others* *Opp. Parties

Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opposite Party Nos.1 and 2)

Mr. S. S. Bhuyan, Advocate
(For Opposite Party Nos.3, 4 and 5)

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

**ORDER
05.04.2022**

Order No.

14. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition pray for a direction to set aside order dated 11th December, 2014 (Annexure-7) passed by Tahasildar, Mahakalapara in Misc. Case No.141 of 2014 (arising out of RP Case No.285 of 2008).
3. Mr. Samal, learned counsel submits that the Petitioners filed RP Case No.285 of 2008 before the Commissioner, Consolidation and Settlement, Odisha, Cuttack-Opposite Party No.1 to correct the ROR in respect of Hat Plot No.04 to an extent of Ac.24.55 decimals, Hal Plot No.05 to an extent of Ac.61.33 decimals, Hal Plot No.11 to an extent of Ac.23.02 decimals, Hal Plot No.15 to an extent of Ac.11.20 decimals, Hal Plot No.02 to an extent of Ac.47.63 decimals, Hal Plot No.06 to an extent of Ac.0.35 decimals, Hal Plot No.09 to an

extent of Ac.2.65 decimals, Hal Plot No.07 to an extent of Ac.0.32 decimals and Hal Plot No.08 to an extent of Ac.6.50 decimals under Khata No.01 situated in mouza-Thantapalanda under Mahakalapara tahasil in the ditrict of Kendrapara (for convenience referred to as 'the case land') on the basis of registered sale deeds executed in their favour. Initially, the matter was disposed of remitting it back to Tahasildar, Mahakalapara for adjudication of the matter in accordance with law, which was assailed by the Petitioners in W.P. (C) No. 5895 of 2011. This Court, while setting aside the order dated 26th March, 2010 passed in RP Case No.285 of 2008, directed the Commissioner, Consolidation and Settlement, Odisha, Cuttack-Opposite Party No.1 to adjudicate the revision afresh giving opportunity of hearing to the parties in accordance with law.

4. Pursuant to the said order, the matter was taken up by Opposite Party No.1 and disposed of by order dated 22nd March, 2013 (Annexure-5) remitting the matter back to the Tahasildar Mahakalapara to adjudicate the same as per law. The Tahasildar was also directed to pass appropriate order keeping in mind the observation made in the said order verifying relevant records, Sabik and Hal map, by conducting field enquiry after issuing notice to concerned parties and giving them an opportunity of hearing.

5. It is contended by Mr. Samal, learned counsel for the Petitioners that the Tahasildar, while adjudicating the matter, did not afford opportunity of hearing to the Petitioners to justify correction of the ROR in their names.

6. In course of hearing, Mr. Samal, learned counsel for the Petitioners submits that although the order dated 22nd March, 2013 passed in Revision Case No.285 of 2008 was not challenged, but the same is not sustainable in view of the ratio decided in the case of ***Smt. Bijaya Chatterjee Vs. Commissioner, Land Records and Settlement, Orissa and others***, reported in ***2000 (II) OLR 349***. It is his contention that the revisional Court, while exercising power under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short, 'the Act') cannot remit the matter to the Tahasildar to adjudicate the same in accordance with law. The Tahasildar has no jurisdiction to entertain the matter on merit after publication of the ROR under Section 12-B of the Act. The Commissioner was required to dispose of the matter on merit calling for a report from the Tahasildar, if necessary for proper adjudication of the revision. He, therefore, submits that the order passed in Revision Case No.285 of 2008 is not sustainable in the eyes of law and consequently proceeding before the Tahasildar, Mahakalapara in Misc. Case No.141 of 2014 is also not sustainable. He, therefore, submits that although a prayer for setting aside the order passed in Revision Case No.285 of 2008 is not made, but this Court can mould the relief by setting aside the said order by remitting the matter to the revisional Court for fresh adjudication in accordance with law giving opportunity of hearing to the parties concerned.

7. Mr. Bhuyan, learned counsel for Opposite Party Nos. 3 to 5 defending the order under Annexure-7 submits that the revision petition was filed by the Petitioners and accepting the

order passed in revision the petitioners participated in the proceeding before the Tahasildar, Mahakalapara. As such, the Petitioners at this stage cannot turnaround and take a different plea in the writ petition, which is also not the case of the Petitioners in the writ petition. Hence, he prays for dismissal of the writ petition.

8. Mr. Mishra, learned AGA submits that there is no quarrel over the ratio decided in the case of **Smt. Bijaya Chatterjee** (supra) and submits that the revisional Court had no jurisdiction to remit the matter back to Tahasildar, Mahakalapara for adjudication of the dispute in accordance with law.

9. Taking into consideration the rival contentions of learned counsel for the parties, this Court is of the considered opinion that although legality of the order under Annexure-7 is under challenge, but this Court cannot close its eyes to the illegalities committed by the revisional Court which renders the proceeding before the Tahasildar, Mahakalapara in Misc. Case No.141 of 2014 vitiated. This Court in the case of **Smt. Bijaya Chatterjee** (supra) held as under:-

“3. It has been held in the decisions reported in 82(1996) CLT 321 (Sarat Chandra Sahu v. Commissioner of Land Records and Settlement, Orissa, Cuttack and others) and 1998(II) OLR 495 (Harihar Mohapatra and others v. Commissioner of Land Records and Settlement, Orissa and others.) that the Commissioner while deciding a revision under the Orissa Survey and Settlement Act cannot remand the matter to the Tahsildar for final decision. However, in the subsequent decision it has been clarified that though such remand is not contemplated, the Commissioner can call for a report from the

Tahsildar. It appears that in the present case, the Commissioner has remanded the matter to the Tahsildar for fresh disposal and the Tahsildar without making any further inquiry has recorded the land in the names of present contesting opposite parties, merely on the basis of the observations made by the Commissioner. Since the procedure adopted by the Commissioner is contrary to the ratio of the two Division Bench decisions of this Court referred to above, which are otherwise binding on me and since the matter was disposed of ex parte by the Commissioner, I deem it just and proper in the interest of justice to quash the order passed by the Commissioner and the consequential order passed by the Tahsildar, and remand the matter to the Commissioner for fresh disposal.” (emphasis supplied)

10. In view of the above, there can be no iota of doubt with regard to the jurisdiction of the revisional Court while entertaining the revision under Section 15(b) of the Act. It is clearly laid down in **Smt. Bijaya Chatterjee** (supra) that the revisional Court if necessary, may call for a report from the concerned Tahasildar who after conducting necessary enquiry in presence of the parties, submit a report which can be taken into consideration by the revisional Court while considering a revision under Section 15(b) of the Act.

11. Although no prayer is made to set aside the order under Annexure-5, this Court finding it to be not sustainable and in view of the oral prayer made by Mr. Samal, learned counsel for the Petitioners, sets aside the order under Annexure-5 and remits the matter back to the Commissioner, Consolidation and Settlement, Odisha, Cuttack to adjudicate Revision Petition No.285 of 2008 afresh in accordance with

law giving opportunity of hearing to the parties concerned keeping in mind the position of law as stated above.

12. In consequence thereof, subsequent proceeding as well as the order under Annexure-7 are also not sustainable and are set aside accordingly.

13. In order to avoid further delay, parties are directed to appear before the Commissioner, Consolidation and Settlement, Odisha, Cuttack on 25th April, 2022 along with certified copy of this order to receive further instruction in the matter. The Commissioner, Consolidation and Settlement, Odisha, Cuttack shall make an endeavour for disposal of the revision Petition No.285 of 2008 as expeditiously as possible preferably within a period of six months from the date of their appearance.

14. With the aforesaid observation and direction, the writ petition is disposed of.

15. Case record of W.P. (C) No. 5895 of 2011 shall be returned to the concerned Section forthwith.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge