

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

**WANos.139, 184, 185, 186, 187, 188, 189, 190, 191, 192,
193, 194, 195, 196, 197 and 198 of 2019**

WA No.139 of 2019

Sarojini Panda

....

Appellant

-versus-

***Revenue and Disaster Management
Department and Others***

...

Respondents

WA No.184 of 2019

Sailabala Sahu

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No.185 of 2019

Jyoshnamayee Das

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No. 186 of 2019

Bishnupriya Das

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No. 187 of 2019

Jyoshnamayee Das

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 188 of 2019

Reenarani Mallik

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 189 of 2019

Geetanjali Mishra

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 190 of 2019

Surendra Kumar Mahapatra

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 191 of 2019

Kanakalata Mallik

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 192 of 2019

Haraprasad Mishra

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 193 of 2019

Chandrasekhar Kar

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 194 of 2019

Haraprasad Mishra

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 195 of 2019

Jyotirmayee Das

....

Appellant

-versus-

State of Odisha and Others

Respondents

WA No. 196 of 2019

Jyoshnamayee Das and Another

....

Appellants

-versus-

State of Odisha and Others

Respondents

WA No. 197 of 2019

Hrudananda Kar

....

Appellant

-versus-

State of Odisha and Others

Respondents

AND

WA No. 198 of 2019

Sailabala Sahu

....

Appellant

-versus-

State of Odisha and Others

Respondents

Advocates, appeared in these cases:

For Appellant(s) : Ms. Deepali Mohapatra, Advocate

For Respondent(s) : Mr. Ishwar Mohanty
Addl. Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**JUDGMENT
17.11.2022**

Dr. S. Muralidhar, CJ.

1. All these writ appeals arise out of a common set of facts and are accordingly being disposed of by this common judgment.

2. W.A. No.139 of 2019 is directed against an order dated 25th February, 2019 passed by the learned Single Judge dismissing Writ Petition (Civil) No.926 of 2019 filed by the Appellant. The remaining writ appeals in this batch are directed against a common order dated 26th March, 2019 passed by the learned Single Judge in the corresponding writ petitions again dismissing them in the same terms as the order dated 25th February, 2019 in W.P.(C) No.926 of 2019.

3. In all the writ petitions, the challenge was to the orders passed by the Settlement Officer (SO), Cuttack in different appeal cases pursuant to an earlier order of the learned Single Judge in the first round of writ petitions.

4. The background facts are that each of the present Appellants purchased different plots of land in Mouza Gothapatna under Bhubaneswar Tahasil from vendors in whose favour apparently there were valid leases. The purchases took place under registered sale deeds. As a result of the settlement operation that commenced

in the area and the entries were made in the Records of Rights (RoR) in favour of the legal representatives of the original lessees. However, pursuant to *suo motu* cases initiated by the Asst. Settlement Officer, directions were issued on 30th July, 2013 to record the RoR in the name of the Government. The case of the Appellants is that this was done without notice to any of them.

5. This then led to be first round of writ petitions by these Appellants before this Court. In one such writ petitions i.e. W.P.(C) No.3515 of 2017 filed by the Appellant in W.A. No.139 of 2019 the following order was passed by the learned Single Judge on 2nd May, 2017:

“Heard learned counsel for the petitioner and learned Addl. Standing Counsel.

In this case, the petitioner, who has purchased land from the lease-holder, has assailed the order passed by the opposite party No.5 in Rent Case No.6276/2012 dated 30.07.2013 directing that the land measuring an area Ac 0.050 decimals, be recorded in the name of State Government. It is apparent that in this case lease were granted by the State Government in favour of different persons from whom the present petitioner has purchased the land in question through a valid registered sale deed upon passing of consolidation.

However, it is borne out that a single land case has been initiated with respect to all the land and different persons have been affected by such an order. In that rent case, neither the lease holders nor their purchasers have been made parties and in some cases, lease holders are dead. Without passing any order to implead their legal heirs,

order has been passed by the learned Assistant Settlement Officer, Bhubaneswar. In that view of the matter, this Court is of the opinion that the order passed by the learned Assistant Settlement Officer is not only illegal but also it violates the principles of natural justice. Since no notice has been issued to any of the persons affected, the order passed by the Assistant Settlement Officer is nullity. Hence, this Court has no hesitation to quash the order impugned in the case.

Accordingly, the writ petition is allowed. The order dated 30.07.2013 passed by the opposite party No.5 in Rent Case No.6276/2012 is hereby quashed. The Petitioner is directed to appear before the learned Settlement Officer, Cuttack (opposite party No.3) on 17.05.2017 to put forth her grievances and the learned Settlement Officer, if he so thinks it proper, may start a separate case on the land allegedly in possessing of each of the persons and after affording reasonable opportunity of hearing to the petitioner and adducing such evidence as may be desired by the petitioner, shall dispose of the case by reasoned order as expeditiously as possible.

The writ petitions are disposed of.”

6. Pursuant to the aforementioned order and similar orders passed in the writ petitions filed by the Appellants in the companion appeals, the matter once again went before the SO, Cuttack. On 19th September, 2018 identical orders were passed by the SO in each of the appeals of the present Appellants in which, after quoting the operative portion of the order dated 2nd May, 2017 of the learned Single Judge, the Settlement Officer recorded as under:

“The Petitioner is directed to appear before the learned Settlement Officer, Cuttack (opposite party No.3) on 17.05.2017 to put forth her grievances and the learned Settlement Officer, if he so thinks it proper, may start a separate case on the land allegedly in possession of each of the persons and after affording reasonable opportunity of hearing to the petitioner and adducing such evidence as may be desired by the petitioner, shall dispose of the case by reasoned order as expeditiously as possible.

In the present case, it is ascertained that the final publication of the village –Gothapatna has already been made. As such the Settlement Authority becomes “functus officio” once the R.O.R. including map of concerned village are finally published.

The Government pleader vide his letter dated 21.08.2017 has also offered his reasoned opinion in the matter stating that the Settlement Officer becomes “functus officio” to entertain any appeal after final publication of R.O.Rs

Therefore, the appeal case is not maintainable and hereby disallowed. It is open to appellant to seek relief in appropriate forum.

This order is pronounced on 19th September, 2018 in the Open Court today.”

7. It must be noted at this stage that the final RoR was, as pleaded in para 8 of the writ appeal i.e. W.A. No.139 of 2019 published on 30th December, 2013 in the name of the Government in respect of each of the plots in question. This averment has not been denied by the State despite notice having been issued in the present appeals on 17th May, 2019. Consequently, the Court proceeds on

the basis that the date of publication of final RoR in the present case was 30th December, 2013 which was long before the order of the learned Single Judge.

8. Considering that the order of the learned Single Judge was passed subsequently on 2nd May, 2017, the SO could not have declined to entertain the appeal on the ground of having become functus officio, as a result of the publication of the final RoR. This fact was accounted for when the learned Single Judge passed the order dated 2nd May, 2017 and it was, therefore, incumbent upon the SO to have considered the appeal notwithstanding that the final RoR may have been published. The implication of the order dated 2nd May, 2017 of the learned Single Judge was that even if a final RoR had been published showing the Government to be the owner of the land in question that was subject to the outcome of the appeal that was directed by the learned Single Judge to be heard afresh by the SO. Consequently, the order dated 19th September, 2018 of the SO, declining to entertain the appeals, was in the teeth of the order dated 2nd May, 2017 of the learned Single Judge and, therefore, unsustainable in law.

9. Consequently, the Court has no hesitation in setting aside the order dated 19th September, 2018 of the SO in each of the appeals filed by the present Appellants and remands all the appeals back to the SO for being heard afresh on merits pursuant to the remand order dated 2nd May, 2017 of the learned Single Judge in the corresponding writ petitions in the first round. As a result, the

impugned orders of the learned Single Judge in the writ petitions out of which the present writ appeals arise are also hereby set aside.

10. The appeals before the SO by the present Appellants will now be listed for directions before the SO on 9th January, 2023 on which date each of the Appellants will appear either in person or through counsel. The SO is then requested to proceed with the appeals on merits and dispose them of as expeditiously as possible. Till disposal of such appeals, status quo as of date shall be maintained.

11. The writ appeals are disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K.Jena/Secy.