

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A Nos.295,296, 297, 298, 299,300,301,302,303 & 304 of 2017

RinkiMahakud
(WA No.295 of 2017)

Ashok Das
(WA No.296 of 2017)

Bharat Ch.Barik
(WA No.297 of 2017)

BaidharNaik
(WA No.298 of 2017)

GatikrushnaParida @
GatikrisnaParida
(WA No.299 of 2017)

BidulataBehera
(Was No.300 of 2017)

SaratCh.Naik @ Sarat Naik
(WA No.301 of 2017)

Prabhash Kumar Mahabhoi
(WA No.302 of 2017)

PradeepKu.Sahoo
(WA No.303 of 2017)

Makhan Singh Mahabhoi
(WA No.304 of 2017)
.....Appellants

Mr. R.C.Behera,Advocate

-versus-

State of Odisha and others

..... Respondents.
Mr. D.K.Mohanty,AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
17.10.2022**

Order No.

05. 1. These Writ appeals are directed against the common Order dated 26th July, 2017 passed by the learned Single Judge dismissing the Writ petition (Civil) Nos. 14202, 14204, 14205, 14207, 14208, 14206, 14209, 14210, 14214, & 14215 of 2017 filed by the present Appellants.
2. Before the learned Single Judge, the above writ petitions were the 3rd round of litigation in proceedings emanating from Orissa Public Land Encroachment Act (OPLE Act) involving lands in Kamakhyanagar stated to be in occupation of the present Appellants. Each of the present Appellants claimed that he was a poor and landless person belonging to the BPL category and had applied to the Tahasildar, Kamakhyanagar for settling the land on the basis of being in possession thereof for more than 50 years including the possession of their predecessor-in-interest.
3. The Tahasildar at the relevant point in time issued orders settling parcels of lands in favour of each of the Appellants. However, he did not issue the Record of Rights (ROR) in respect of such lands in their favour. This prompted the Appellants in the 1st round of litigation to file writ petitions in this Court. One such writ petition was W.P.(C) No. 12401 of 2012 which was

disposed of by Division Bench of this Court by order dated 30th July, 2012 directing the Tahasildar, Kamakhyanagar to record the ROR in favour of the concerned Petitioner within four weeks from the date of receipt of the order. Similar orders were passed in the writ petitions filed by other Appellants in the present batch.

4. Pursuant thereto, the then Tahasildar, Kamakhyanagar issued R.O.Rs in favour of the Appellants. It appears that thereafter, appeals were filed before the Sub- Collector, Kamakhyanagar by the Head Clerk in the office of the Tahasildar, Kamakhyanagar. The said Encroachment Appeals were admitted by the Sub-Collector and a show cause notice (SCN) was issued to each Appellant. One of the pleas taken by the present Appellants was that under Section 12 of the OPLE Act neither the Tahasildar nor his subordinate staff including the Head Clerk was authorized to initiate such appeals after a lapse of two years.

5. This prompted each of the Appellants to file a 2nd round of writ petitions in this Court. One such writ petition was W.P (C) No. 12253 of 2015. This Court disposed of the said writ petition on 15th September, 2016. The operative portion of the said order reads as under:

“8. Consequently while allowing all the Writ petitions, this Court observes that allowing of writ petitions shall not preclude the State Authority to file Appeal afresh. In the event fresh Appeals are filed, the same shall be considered and disposed of on its own merit and in accordance with law taking into consideration the question of delay and without being influenced by any observation made hereinabove.”

6. Pursuant to the above order, a fresh appeal came to be filed which was allowed by the Sub-Collector on 7th February, 2017 with a direction to the Tahasildar, Kamakhyanagar to restore the suit land to the Government khata immediately. As many as 17 types of irregularities were pointed out in the said order which purportedly made the settlement of land in favour of the writ petitioners unsustainable in law. One such ground was 'the purported forged signatures of the Tahasildar on the order sheet'. There is also a reference to a field enquiry undertaken by the Tahasildar, Kamakhyanagar.

7. It was the above order of the Sub-Collector dated 7th February, 2017 which was challenged by the present Appellants before the learned Single Judge in the 3rd round of writ petitions which were dismissed by the impugned order dated 26th July, 2017.

8. This Court has heard the submissions of the learned counsel for the parties. In para 3 of the writ appeal, it is submitted that the same Tahasildar who recorded the R.O.Rs in favour of the present Appellants was subsequently promoted as Sub-Collector and in that capacity the very same person passed the orders allowing the State's appeals on 7th February, 2017. In other words, the same person who recorded the R.O.Rs as Tahasildar subsequently exercising the appellate power as Sub-Collector cancelling the R.O.Rs thereby reversing his own orders.

9. This Court has perused the R.O.R which is enclosed as Annexure2 to the writ appeal. The signature of the Tahasildar, Kamakhyanagar on the said R.O.R is identical to the signature of the Sub-Collector, Kamakhyanagar in the appeal order dated 7th February 2017. Therefore, there is no manner of doubt that it is the same person who was not only issued the initial R.O.R pursuant to the order dated 30th July, 2012 of this Court in Writ Petition No.12401 of 2012 and batch but has subsequently sat in appeal and allowed the appeals of the state by reversing his own order recording the R.O.Rs. Added to this is the fact that the same person by a note dated 7th October, 2015 addressed to the Collector and District Magistrate, Dhenkanal sought permission to substitute the appellant as Additional Tahasildar instead of Head Clerk. In that note, he mentioned how he had himself conducted the subsequent enquiry in which he ascertained “the beneficiaries are not at all landless persons and the settled land is a valuable piece of govt. land”. This is one more reason why after having initially granted the R.O.Rs in favour of the Appellants, and then having conducted the subsequent enquiry as Tahasildar, ought not to have dealt with the appeals when he came to be promoted as Sub-Collector. The Court is now informed that the concerned person is no longer the Sub-Collector and has been further promoted as Additional District Magistrate (A.D.M).

10. It is seen that the learned Single Judge did not take into account the above facts while affirming the Order of the Sub-Collector in appeal.

11. In the above circumstances while setting aside the impugned judgment dated 26th July,2017 of the learned Single Judge and correspondingly the orders dated 7th February,2017 of the Sub-Collector, Kamakhyanagar, the Court remands the appeals to the file of the Sub-Collector, Kamakhyanagar for being decided afresh in accordance with law after hearing the parties.

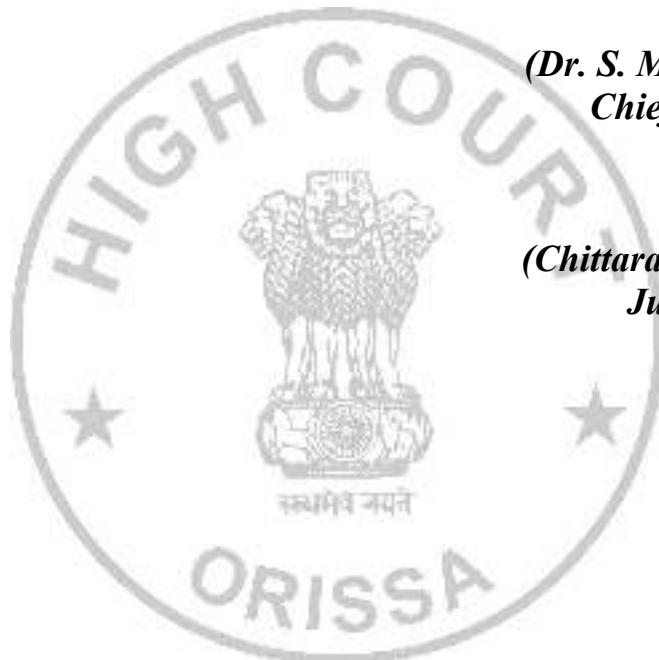
12. It is made clear that it will not be open to the present Appellants to raise the point regarding the maintainability of such appeals in view of express permission granted by this Court in its order dated 15th September,2016 in the 2nd round of litigation to the State to file such appeals. In other words it will not be open to the Appellants to contend that there is no authorization to file such appeals.

13. Considering that the matter is pending for long, it is directed that the said appeals now be listed before the Sub-Collector, Kamakhyanagar on 5th December,2022. Since each of the Appellants knows what the case against them is since it is set out in the order dated 7th February,2017 (which has been set aside by this Court today), it will be open to each of the Appellants to file their detailed written submissions in respect of the alleged irregularities before the Sub-Collector on or before 30th November,2022. It will be open to the State to file a note in reply thereto before 5th December,2022. No further time will be granted for that purpose. The Sub-Collector will

proceed to hear the appeals on merit and dispose of them in accordance with law within a period of two months thereafter.

14. For the above purpose, a down loaded copy of this Order will be produced by the Appellants before the Sub-Collector, Kamakhyanagar on 14th November,2022.

15. The writ appeals are disposed in the above terms.



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

B.C.Mohanty