

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.7877 of 2010

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Shashibhusan Rath

....

Petitioner

Versus

Bijay Kumar Mohapatra & Ors.

....

Opposite Parties

For Petitioner

...

Mr. M.Mohanty, Advocate,
Mr.S.Mohapatra, Advocate,
Mr.A.J.Mohanty, Advocate

For Opposite Parties

...

Mr. U.K.Sahoo, ASC
(O.P.Nos.7 to 9)
Mr.S.K.Nayak-2, Advocate,
Mr.B.K.Rout, Advocate,
Mr.A.Nayak, Advocate,
Mr.K.Jena, Advocate,
Mr. S.S.K.Nayak, Advocate
(O.P.No.6)

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 27.07.2022

Biswanath Rath, J. This writ petition involves the following prayer:-

“The petitioner humbly prays that your Lordships may kindly be pleased to admit the writ petition issued notice to the opp. Parties and form rule

NISI, calling upon them as to why the impugned orders under Annexure-8,9 & 11 shall not be quashed and if the opp. Parties fail to show cause or show insufficient cause made the said rule absolute.

And further be pleased to set aside the impugned order under Annexure-8,9 & 11 by issue of writ of certiorari.

And further be pleased to pass any other appropriate order and issue writ of mandamus to the opp. Party No.7 for correction of hal map of plot No.3441 under Khata No.1623 of Mouza-Gop within a time stipulated.

And for this act of kindness the petitioner as in duty bound, shall ever pray.”

2. Through Annexure-1 it is established that one Harihar Rath was the stitiban owner of the Plot No.3417 in Khata No.67 measuring area Ac.0.05 dec., vide Annexure-2. It has been stated that Petitioner purchased an area Ac.0.05 dec. relating to Plot No.3417 under Khata No.67 of mouza-Gop from Harihar Rath vide RSD dated 03.02.1975. Thereafter parcha in respect of part of above plot was published in the name of Harihar Rath vide Annexure-3 resulting initiation of the objection case under Section 9(3) of the O.C.H. & P.F.L Act, 1972 vide Objection Case No.3629 of 1981 by the Petitioner. It appears through Annexure-5, the objection case was allowed. Vide Annexure-6 series Petitioner was granted with consolidation Record of Rights in respect of above Khata No.1623, area Ac.0.05 dec. and Petitioner also on payment of rent obtained the rent receipt. A Revision was filed before the Director under the provision of Section 37(2) of the O.C.H. & P.F.L. Act, 1972 for correction of Hal map. On the disposal of the revision, matter was remanded to the Consolidation Officer for re-consideration of the aspect involved therein. It appears, after such direction the remand R.C. No.2279 of 1997 was finally dismissed on 25.01.2003 by the order of the competent authority vide Annexure-8 on the following grounds:-

(1) “The Petitioner has filed a petition for enhancement of area Ac.0.09 dec. and to enlarge the Map.

(2) It appears that the petitioner is occupying the land of others to the extent of Ac.0.04 dec.”

3. Challenging this order, Appeal being preferred before the Opposite Party No.8 was registered as Appeal No.23 of 2003 and the Appeal came to be dismissed in confirmation of the observation of the Consolidation Officer on 22.12.2005 vide Annexure-9. Revision being filed was registered as R.C. No.23 of 2006 under Section 36 of O.C.H. & P.F.L. Act, 1972. This revision again appears to have been dismissed in confirmation of the order of the Consolidation Officer, Gop as well as the Appellate Authority vide Annexure-11.

4. Mr.Mohanty, learned counsel for the Petitioner taking this Court to the plaint/application at Annexure-7 and reading through the fresh order passed by the Consolidation Officer, the order of the Appellate Authority and also the Revisional Court submitted that the Petitioner’s application was for whole Plot No.3441. It is contended that even though there is no disclosure of area, the sale deed relied on there clearly indicated sale involving Ac.0.05 decimal. It is on this background and the clear disclosure through the sale deed being the sole foundation in the application involved, learned counsel for the Petitioner submitted that all the three courts have failed in exercising their power and arrived at the conclusion contrary to the materials available on record and also contrary to the demand made by the Petitioner. In the process, a prayer is made for setting aside the orders at Annexures-8, 9 & 11.

5. To the contrary, learned State counsel, however, taking this Court to the observation and findings involving all the impugned

orders contended that there has been right consideration requiring no interference in the impugned orders. There is, however, no dispute to the claim of the Petitioner vide Annexure-7. Learned State Counsel also submitted that even though there is request vide Annexure-7 involving Plot No.3441, however, there is no mentioning of extent of land involved therein. There might be confusion for no area disclosure in Annexure-7 resulting the conclusion vide impugned order.

6. Mr. Nayak, learned counsel for the Opposite Parties supports the claim and contentions raised by the State Counsel and thus requests for dismissal of the Writ Petition.

7. Considering the rival contentions of the Parties, this Court going through the sale deed and reading together the request involving Section-9 proceeding initially made vide Annexure-7 finds, the request in Annexure-7, there cannot be involvement of request exceeding the extent of land in Annexure-2 while undisputedly the sale deed being the foundation in Annexure-7.

In the circumstance, this Court finds, there is no involvement of area Ac.0.09 dec. at any point of time and this conclusion of all the forums remain contrary to the materials available on record vide Annexure-2 and it is clearly established that all through the area involved therein was Ac.0.05 dec.

8. In the circumstance, this Court on perusal of the impugned orders finds, all the three forums have undertaken the exercise on the impression of claim involving enhanced area in the sale deed and therefore finding of all the three authorities appears to be contrary to the claim and also contrary to the exposure through the sale deed.

9. In the process, this Court allows the Writ Petition and interfering in all the impugned orders vide Annexures-8, 9 & 11, sets

aside all. For there is requirement of fresh adjudication of application under Section-9 of the O.C.H. & P.F.L. Act, this Court remits the matter back to the Consolidation Officer, Gop-Opposite Party No.7 to have fresh exercise involving the application of the Petitioner under Annexure-7 under the provision of 9(3) of the O.C.H. & P.F.L. Act and in exercise of power of the competent authority under Section-11 of the Act involved.

10. The entire exercise be completed at least within a period of three months from the date of communication of this order by the Petitioner.

11. Since the matter is decided on contest of all parties involved, they are directed to bring the notice of this judgment to the notice of Opposite Party No.7 on 10th August, 2022. Considering that Record of Right already prepared showing area Ac.0.05 dec. the fresh exercise shall involve only the correction in the map portion only.

12. The Writ Petition succeeds but in the circumstance no order as to cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 27th July, 2022/Swarna, Junior Stenographer*