

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13173 OF 2021

Subrat Kumar Mohanty

....

Petitioner

Mr. Amiya Kumar Behera,
Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

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

**ORDER
06.01.2022**

Order No.

04

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing the order dated 25th March, 2021 (Annexure-1) passed by the Additional Tahasildar, Bhubaneswar-Opposite Party No.7 in Mutation Case No.8752 of 2021.
3. Mr. Behera, learned counsel for the Petitioner submits that assailing recording of the suit land in Government Khata, one Nabakishore Ray had filed T.S. No.162 of 1993 for declaration of his right, title, interest and possession over the suit land as well as for permanent injunction against functionaries of the Government. The suit was decreed *ex parte* in the Lok Adalat vide judgment dated 25th October, 1998. Pursuant to the judgment passed in T.S. No.162 of 1993, said Nabakishore Ray had filed Mutation Case No. 949 of 2000 and R.O.R. was corrected accordingly in his name. Subsequently, said Nabakishore Ray through his Power of Attorney Holder M/s. Silver Stone Builders Pvt. Ltd. sold an area of Ac. 0.043

decimals of land out of Ac.1.300 decimals appertaining to Plot No.8/360 under Khata No.611/1281 to the father of the Petitioner vide Registered Sale Deed No.3188 dated 26th May, 2001 (Annexure-5 series) and put him in possession thereof. After purchase, the father of the Petitioner got the land mutated in his name. After death of his father, the Petitioner after obtaining approval from Bhubaneswar Development Authority dated 22nd July, 2010 (Annexure-6) and availing House Building Loan from Bank of Baroda, Patia Branch, Bhubaneswar has constructed a house over the suit land. While the matter stood thus, the Opposite Party No.4-Director, Estate-cum-Joint Secretary to Government of Odisha, Bhubaneswar filed an application under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree passed in T.S. No.162 of 1993, which was registered as CMA No.336 of 2003. However, said application was not accompanied by an application for condonation of delay. Although several transactions had taken place in the meantime, but the original tenant, namely, Nabakishore Ray, was only made a party to the said CMA, who contested the same. Learned Civil Judge although vide his order dated 4th February, 2008 (Annexure-8) held that in absence of any compromise or settlement arrived at between the parties, the matter could not have been decreed *ex parte* in the Lok Adalat and that judgment and decree passed in the Lok Adalata on 25th October, 1998 in T.S. No.162 of 1993 is *non est* in the eyes of law, but ultimately dismissed the CMA being not maintainable. Relying upon the said order, Director of Estates, G.A. Department-Opposite Party No.4 filed Mutation Case No.8752 of 2021. The Additional Tahasildar, Bhubaneswar, on the date of

initiation of the proceeding, i.e. 25th March, 2021, although asked for R.I. report, but proceeded to decide the mutation case on the very same day taking into consideration the observations made by learned Civil Judge (Senior Division), Bhubaneswar in CMA No. 336 of 2003.

4. It is submitted by Mr. Behera, learned counsel for the Petitioner that the Petitioner was not given an opportunity of hearing either in the CMA or in the mutation case itself. The Additional Tahasildar, Bhubaneswar without issuing notice to the Petitioner, who is admittedly in possession over the land in question, hurriedly disposed of the mutation case on the date of its initiation, i.e, 25th March, 2021. He further submits that the observations made by learned Civil Judge (Senior Division), Bhubaneswar in CMA No.336 of 2003 is not executable as the CMA was dismissed as not maintainable and there is no observation in the order that the *ex parte* decree passed against the State was set aside. Hence, he submits that the order under Annexure-1 is not sustainable being illegal and without jurisdiction.

5. When the matter was listed on 27th April, 2021, learned Additional Standing Counsel prayed for some time to take instruction in the matter, more particularly, with regard to the findings of learned Civil Judge (Senior Division), Bhubaneswar at paragraph-6 of the order passed in CMA No.336 of 2003. On instruction, he reiterated the observation made by the Additional Tahasildar, Bhubaneswar in the impugned order under Annexure-1 and contended that since learned Civil Judge has held the *ex parte* decree to be *non est* in the eyes of law, dismissal of CMA is immaterial. As such, the Additional

Tahasildar, Bhubaneswar has committed no error in allowing the mutation application by restoring the suit land to Government Khata. He further submits that the Petitioner has a remedy under Rule 42 of the Orissa Survey & Settlement Rules, 1962 to assail the impugned order. The original landlord, namely, Nabakishore Ray, although participated in CMA No.336 of 2003, had never challenged the order passed in CMA No.336 of 2003. As such, this writ petition is not maintainable.

6. Heard learned counsel for the parties and perused the materials available on record.

7. From the facts narrated above, it appears that Nabakishore Ray had filed T.S. No.162 of 1993, which was decreed *ex parte* in the Lok Adalat. The judgment and decree was passed on 25th October, 1998. Thereafter, said Nabakishore Ray through his Power of Attorney Holder M/s. Silver Stone Builders Pvt. Ltd. sold an area of Ac. 0.043 decimals of land out of Ac.1.300 decimals appertaining to Plot No.8/360 under Khata No.611/1281 to the father of the Petitioner vide Registered Sale Deed No.3188 dated 26th May, 2001 (Annexure-5) and put him in possession thereof and mutated the land in his favour. It is not in dispute that the land was mutated in the name of the father of the Petitioner. However, his possession over the same is not disputed. It further appears that when the matter stood thus, the Opposite Party No.4 filed an application under Order IX Rule 13 C.P.C. in CMA No.336 of 2003 before learned Civil Judge (Senior Division), Bhubaneswar impleading Nabakishore Ray as Opposite Party No.1. It further appears from the order dated 4th February, 2008 (Annexure-8) that Nabakishore Ray had appeared and filed his objection. Learned Civil Judge taking into

consideration the rival contentions of the parties came to the following findings:

“6. In the instant case, the original suit was posted in the Lok Adalat for ex parte judgment. The ex-parte judgment in question is not the outcome of compromise or settlement between the parties and as such in view of the decision of the Hon’ble Apex Court, the matter should not have been disposed of in the Lok Adalat. The ex parte judgment and decree passed by this court in the Lok Adalat on 25.10.1998 in T.S. No.162/1993 is non-est in the eye of law.

7. In the result, the petitioner U/o. Rule 13 C.P.C. is not maintainable. Hence, it is ordered.

ORDER

The Civil Misc. Application is dismissed as not maintainable.”

Thus, there is no dispute to the effect that although learned Civil Judge held that the *ex parte* decree passed in the Lok Adalat is *non est* in the eyes of law, but there is no finding to the effect that the impugned *ex parte* judgment was set aside. On the other hand, the CMA was dismissed as not maintainable. The Additional Tahasildar, Bhubaneswar, while adjudicating Mutation Case No.8752 of 2021 relying upon the observation made by learned Civil Judge in CMA No.336 of 2003, proceeded to issue direction to restore the land to Government Khata. Although the Petitioner was in possession over the suit land, he was neither made a party nor was served with any notice to defend his case. It further appears that the mutation case was disposed of on the date of its initiation, i.e. 25th March, 2021. Thus, there is a gross violation of principles of natural justice. The order also suffers from procedural irregularity. Although the land was mutated in the name of the father of the Petitioner, but he being in possession over the land in question by purchasing an area of Ac.0.043 decimals from Nabakishore Ray, the recorded tenant, through his Attorney Holder M/s. Silver Stone

Builders Pvt. Ltd. has a right to be heard. Thus, he has *locus standi* to file this writ petition as his valuable right has been affected by the order passed in mutation case. True it is that an appeal is provided under Rule 42 of the Orissa Survey & Settlement Rules, 1962 against the impugned order, but this Court is not precluded from entertaining the writ petition where the order passed is patently illegal without following due procedure of law and has been passed in violation of principles of natural justice.

8. The dispute involved in this writ petition is similar to W.P.(C) No.18564 of 2021, which was disposed of vide order dated 2nd July, 2021 setting aside the impugned order therein and remitting the matter to the Additional Tahasildar, Bhubaneswar for fresh adjudication. Thus, I do not find any reason to take a different view in this matter.

9. In that view of the matter, the impugned order dated 25th March, 2021 (Annexure-1) passed by the Additional Tahasildar, Bhubaneswar in Mutation Case No.8752 of 2021 is not sustainable and is set aside. The matter is remitted back to the Additional Tahasildar, Bhubaneswar-Opposite Party No.7 for fresh adjudication giving opportunity of hearing to the parties concerned including the Petitioner.

10. It is made clear that this Court has not expressed any opinion on the merits of the case.

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

(K.R.Mohapatra)
Judge