

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.15131 OF 2008

Nrusingh Charan Mohanty ***Petitioner(s)***
Miss. M.Mishra,
Advocate

-versus-

State of Orissa and another ***Opposite Party(s)***
Mr. S.Ghose,
AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
25.07.2022

Order No.

13. 1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order at Annexure-1. Taking this Court to the pleading in the Writ Petition taken together with the development involving Misc. Case No. 21 of 1930-31, further there is some development through Annexure-4 in the matter of assessment of rent, Miss. Mishra, learned counsel for the Petitioner contended that even after all these developments, there is no change in the Record of Rights. After the Petitioner entering into the registered sale deed involving the vendor who after the development taken place under Annexures-2 and 4 approached, the Commissioner Land Records and Settlement under Section 15(b) of Odisha Survey and Settlement Act, 1958 for appropriate correction of Record of Right.
3. It is through the above, Miss. Mishra, learned counsel for the Petitioner contended that once there is validity in proceeding involving the vendor of the Petitioner and there has been already order to the competent authority vide Annexure-2 in re-classifying the land in view

of exchange equal proportionate of the land and in absence of any change to such orders of the competent authority, it is urged in the proceeding vide Annexure-1, there was no option with the Commissioner rather than to accept the development through Annexure-2. It is here taking to the other observations of the Commissioner vide Annexure-1 involving the Misc. Cases registered in 1967, Petitioner alleges in such event there ought to be scope provided to the Petitioner to have his submission involving such proceeding. It is not known on the basis of what there has been consideration of so many proceedings.

4. Miss. Mishra, learned counsel for the Petitioner ultimately claims that there has been no appropriate consideration of the case of the Petitioner involving 15(b) proceeding and illegal non-consideration of the competent authorities.

5. Mr. Ghose, learned AGA further giving much stress to the observations of the Commissioner in taking into account, some outcomes involving OEA Act therein and further on the premises that record of rights produced before the authority since still maintaining the status of the land as earlier to the development taking place in Misc. Case. 21 of 1930-31, Mr. Ghose, learned Additional Government Advocate contended that there is justification in the order passed by the Commissioner requiring no interference. There is however no denial to the allegation that while dealing with the matter, there is no discussion by the Commissioner dealing with the development vide Annexure-2 and for there is competent authority passing order at Annexure-2, same is binding. Further there is also no denial that there has been consideration of development through some other proceedings without opportunity to the Petitioner.

6. Considering the rival contentions of the Parties, this Court finds, Petitioner claims the change in the Record of Rights on the foundation at Annexure-2. Undisputedly, OEA Act did not exist at that point of time. Looking to the nature of the dispute involving Annexure-2, it appears that there has been some proceeding undertaken by the Collector, during the settlement at the relevant point of time and in the settlement process it appears taking into claim and rival claim involved therein, there is clear direction by the Collector de-classifying certain extent of Gochar land. After recording change in the status of such Gochar land, there was no existence of any such land, further such direction came with a rider, the conversion shall be on exchange of similar extent of land from another khata.

7. This Court for the nature of the proceeding involving Annexure-2 observes in the event, there was no change to the decision vide Annexure-2 only course left with the Revenue Authority at the relevant point of time to work out the direction of the Collector. Change of Record of Right on the basis of Annexure-2 taking place or not taking place cannot be burdened with the Petitioner or his vendor. Coming back to the discussion in the impugned order this Court finds, even though the Petitioner is a subsequent purchaser has staked claim on the basis of Annexure-2, the Commissioner failed in considering such development. Further from the discussion, it also appears the Commissioner has taken into account certain other case records without afford of opportunity to the Petitioner. This Court here records the statement of learned counsel appearing for the Petitioner that the Petitioner is surprise to know dealing with so many proceeding after receipt of the judgment only.

8. Keeping the above in view, this Court finds, there is mechanical disposal by the Commissioner involving Section 15(b)

proceeding. In the process and as there is requirement of fresh adjudication of the assessment involved therein, this Court interferes in the order at Annexure-1 and sets aside the same.

9. This Court accordingly remands the matter to the Commissioner Land Records and Settlement of Odisha for re-adjudication of RP Case No.7445 of 2000. Since the matter is decided in presence of the Petitioner, Petitioner is directed to produce copy of the order of this Court involving this Writ Petition before the Commissioner Land Records and Settlement at least within a period of ten days hence and the proceeding involved shall be re-adjudicated.

(Biswanath Rath)
Judge

Swarna

