

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19590 of 2016

Tulasi Swain

.....

Petitioner

Mr. Susanta Kumar Dash, Advocate

-versus-

State of Odisha and another

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.03.2022

Order No.

10. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to challenge the order dated 17th September, 2016 (Annexure-4) passed in Mutation Case No.3691 of 2012, whereby Tahasildar, Tangi-Choudwar-Opposite Party No.2 dropped the mutation case filed by the Petitioner under Rule 34 of the Odisha Survey and Settlement Rules, 1962 (for short, 'the Rules').
3. Mr. Dash, learned counsel submits that Sabik Khata No.112 under Tangi-Choudwar tahasil in mouza Haripur of Cuttack district is a vast land stood recorded in Govt. Khata and was kept reserved for being settled in favour of Jawans. Out of said Sabik Khata No.112, Ac.5.00 decimal was settled in favour of one Amritlal Jee Jachak, son of late Chunilal Jee Jachak, who is an ex-serviceman in Lease Case No.1527 of 1978. Subsequently, he got the land in question recorded in his name and R.O.R. in respect of Plot No.1/448/497 under Khata No.106/49 in mouza Haripur was prepared in his name under

Annexure-1. The Petitioner purchased the land in question from said Amritlal vide RSD dated 3rd June, 2005 and was delivered with possession. Thereafter, the Petitioner went on paying rent in respect of the land in question. After purchase, the Petitioner filed Mutation Case No.3691 of 2012 to record the land in question in his name. As no step was taken by the Tahasildar, Tangi-Choudwar to dispose of the said mutation case, the Petitioner filed W.P. (C) No.11242 of 2014, which was disposed of by this Court vide order dated 1st July, 2014 directing the Tahasildar, Tangi-Choudwar to hear and dispose of the mutation case within a period of three months from the date of production of certified copy of the said order. In spite of the said direction, no step was taken for disposal of the Mutation Case within the stipulated period, for which the Petitioner moved this Court in CONTC No.1257 of 2016. On receipt of notice in the Contempt Application, the Tahasildar, Tangi-Choudwar in a haste posted the matter to 17th September, 2016 for hearing and passed the impugned order under Annexure-4.

3.1 It is his submission that on receipt of notice from this Court in the Contempt Application, Tahasildar did not offer any opportunity to the Petitioner. He did not also verify the records available with him, which contained the copy of the rent receipts paid in respect of the land in question by the Petitioner as well as other relevant records. It is his submission that the Tahasildar, Tangi-Choudwar, while adjudicating the matter, made an attempt to sit over the lease granted in favour of the vender of the Petitioner, which is not permissible in law. On a plain reading of the impugned order, it will be apparent that the

Tahasildar has not applied its mind and has not verified the case record while passing the impugned order under Annexure-4. In that view of the matter, he prays for setting aside the impugned order and to remit the matter back to the Tahasildar, Tangi-Choudwar for fresh adjudication giving opportunity of hearing to the parties concerned.

4. Mr. Mishra, learned ASC, relying upon the counter affidavit filed by the Tahasildar, Tangi-Choudwar-Opposite Party No.2 submits that the order impugned herein is an appealable one under Rule 42 of the Rules. He further submits that the ROR in respect of the land in question has been prepared in the name of the vender of the Petitioner on 21st June, 2005. But, the land in question was sold to the Petitioner prior to that date, i.e. on 3rd June, 2005. Thus, the vendor of the Petitioner did not have any alienable right on the date of sale in favour of the Petitioner. Further, the land in question has been recorded as 'sala jungle' in the R.O.R. under Annexure-1. Thus, it could not have been settled with any private person for which Lease Appeal No.7 of 2018 has been filed before the Sub-Collector, Sadar Cuttack to set aside the lease granted in favour of vender of the Petitioner. It is his submission that on field verification, the Amin found that neither the Petitioner nor his vender is in possession of the land in question. Hence, the Tahasildar, Tangi-Choudwar has committed no error in refusing to mutate the land in question in favour of the Petitioner.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of record, it appears that the Petitioner has paid the rent in respect of the land in question at least till 2014. As is submitted by Mr. Dash,

learned counsel for the Petitioner that Sabik Khata No. 112 is a vast plot and the vender of the Petitioner is settled with a portion of the same. After the land was mutated in favour of the vender of the Petitioner under Annexure-1, neither the Petitioner nor his vender could have paid the rent in respect of Sabik Khata No.112, as observed by the Tahasildar, Tangi-Choudwar. They can only pay rent in respect of Khata No.106/49 in respect of which the vendor of the Petitioner has been recorded. Since the Petitioner is paying rent in respect of the land recorded under Annexure-1, a reasonable presumption can be drawn that he is in possession over the land in question. The report of Amin does not contain the signature of either the Petitioner or his vender. Hence, the same cannot be relied upon while adjudicating the mutation case. Be that as it may, on a bare perusal of the impugned order itself, it appears that Tahasildar, Tangi-Choudwar has neither applied his mind nor has verified the record while adjudicating the matter. He ought to have given opportunity to the Petitioner to produce documents to establish his claim.

5.1 It is true that, the impugned order under Annexure-4 is appealable one under Rule 42 of the Rules, but this Court finds a *prima facie* case in favour of the Petitioner. Further, this Court vide order dated 2nd December, 2016 issued notice to the Opposite Parties and counter affidavit has already been filed by the Tahasildar, Tangi-Choudwar-Opposite Party No.2. In view of the above, no fruitful purpose will be served by relegating the Petitioner to prefer appeal under Rule 42 of the Rules.

6. In view of the discussions made in foregoing paragraphs, this Court is of the considered opinion that the

impugned order under Annexure-4 is not sustainable in the eyes of law and is accordingly set aside. The matter is remitted back to the Tahasildar, Tangi-Choudwar-Opposite Party No.2 for fresh adjudication in accordance with law giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation and direction, the writ petition is disposed of.

8. In order to avoid further delay, parties are directed to appear before the Tahasildar, Tangi-Choudwar-Opposite Party No.2 on 18th April, 2022 along with certified copy of this order to receive further instruction in the matter.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

