

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.376 of 2010

Rajkishore Bag and others ***Appellants***
Mr. S. K. Mund, Advocate
-versus-
Om Prakash Agrawal and others ***Respondents***
Mr. P. K. Rath, Respondent No.1 and AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

ORDER
03.03.2022

Order No.

17. 1. This writ appeal is directed against an order dated 14th December, 2009 passed by the learned Single Judge in W.P.(C) No.9885 of 2009 filed by Respondent No.1.
2. While directing notice to issue in the present appeal on 3rd February, 2011, this Court stayed the operation of the impugned order.
3. The case of the Appellants is that the land in Khata No.56 of Mouza-Junagarh was originally recorded in the name of their grandfather late Radhakrushna Domb. Their case is that the land was 'Jagiri' land and was possessed by late Radhakrushna Domb for holding the office of 'Badyakar' i.e. a village office. Thereafter, according to them, the land vested in the Government of Orissa upon abolition of the village office. Subsequently, Sri Kartikeswar Bag, the father of the present Appellants and the son of late Radhakrushna Domb applied for settlement of the land in

his favour and in Maffi Misc. Case No.21 of 1969-70, the Tahasildar, Dharamgarh by an order dated 25th December, 1970 settled the land in favour of the late Kartikeswar Bag.

4. The case of Respondent No.1 i.e. the writ Petitioner was that he had purchased lands from the same Khata number from late Kartikeswar Bag by sale deeds dated 22nd February, 1965 and 16th December, 1969. During revenue collection in 1973, the Tahasildar found Respondent No.1 to be in possession of the aforementioned lands. Accordingly, he initiated a Mutation Case No.1095 of 1973 and by an order dated 20th August, 1973 allowed the Mutation Case. According to Respondent No.1, despite the Mutation Case being allowed, the Record of Rights (ROR) was not corrected. After the bifurcation of the Tahasil and formation of the Tahasil of Junagarh, the Tahasildar, Junagarh corrected the RoR in favour of Respondent No.1 on 14th July, 2008.

5. The further case of Respondent No.1 was that 35 years after the original mutation being allowed, the legal heirs of Kartikeswar Bag applied to the Tahasildar, Junagarh objecting the correction of the ROR. Upon this, the Tahasildar by an order dated 29th June, 2009 cancelled the correction of the ROR. Challenging the said order, W.P.(C) No.9885 of 2009 was filed by Respondent No.1 against the State Authorities without impleading the present Appellants as parties.

6. By the impugned order, the learned Single Judge allowed the writ petition and quashed the order dated 29th June, 2009 of the Tahasildar, Junagarh.

7. This Court has heard the submissions of Mr. S. K. Mund, learned counsel appearing for the Appellants and Mr. P. K. Rath, learned counsel appearing for the Respondent No.1.

8. The first ground urged by Mr. Mund was that the impugned order had been passed without impleading the present Appellants as parties although they were directly affected and it was on their application that the mutation was cancelled by the Tahasildar, Jhunagarh. He further pointed out the review petition filed by the present Appellants before the learned Single Judge was dismissed by an order dated 25th October, 2010 and, therefore, the present appeal was filed.

9. Relying on the observations of the Supreme Court of India in *Prabodh Verma v. State of Uttar Pradesh AIR 1985 SC 167*, it is submitted by Mr. Mund that the learned Single Judge ought not to have proceeded to hear the writ petition in question without impleading the present Appellants.

10. Mr. Rath, learned counsel appearing for Respondent No.1, on the other hand, submits that since the present Appellants were not made parties in the writ petition, they could not have maintained the review petition before the learned Single Judge. He submits that even the present appeal could have been filed only with the leave of the Court, which was not done. According to Mr. Rath, the only option available to the Appellants was for

them to have filed an application before the learned Single Judge seeking recall of the order dated 14th December, 2009 and for being impleaded in the writ petition.

11. The fact of the matter is that the order dated 29th June, 2009 passed by the Tahasildar in Mutation Case No.1095 of 1973 were as a result of the application filed by the present Appellants. They were therefore obviously necessary and proper parties to the writ petition. As observed by the Supreme Court in ***Prabodh Verma (supra)*** “A High Court ought not to hear and dispose of a writ petition under Art. 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.”

12. When the Appellants filed the review petition, the learned Single Judge could have easily treated it as an application for recall since the failure to hear them before passing the impugned order was clearly an error on the face of the record. The learned Single Judge was in error therefore in simply dismissing the review petition.

13. On the above short ground, without expressing any view whatsoever on the merits of the respective contentions of the parties, the Court is of the view that the present Appellants ought

to have been impleaded by the Respondent No.1 in W.P.(C) No.9885 of 2009. The impugned order dated 14th December, 2009 passed by the learned Single Judge without hearing the present Appellants is erroneous in law.

14. Consequently, the impugned order dated 14th December, 2009 of the learned Single Judge is hereby set aside and W.P.(C) No.9885 of 2009 is restored to the file of the learned Single Judge. The said petition will now be listed before the learned Single Judge on 18th April, 2022 on which date both the present Appellants, who stand impleaded under order of this Court as Opposite Parties 3 to 6 therein, will appear through their counsel ready with their para-wise reply to the writ petition after serving advance copy thereof on Respondent No.1, who is the Writ Petitioner. It would be open to Respondent No.1 to file his rejoinder thereto within the time granted to him for that purpose by the learned Single Judge.

15. Considering that the writ petition is over a decade old, the learned Single Judge is requested to endeavour to dispose it of within a period of six months.

16. Till disposal of the writ petition, the present Appellants as well as Respondent No.1 herein (the writ Petitioner) shall maintain status quo in respect of the lands in question.

17. Leaving all the contentions of the parties open to be urged before the learned Single Judge in accordance with law and directing the parties to extend full cooperation to the learned

Single Judge by not seeking unnecessary adjournment, the writ appeal is allowed in the above terms.

18. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda

