

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14368 of 2022

Bibhuti Bhusan Pati & Ors.

....

Petitioner(s)

Mr. S. Rath,
Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr. S. Mishra,
Addl. Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
29.07.2022**

Order No.

04.

1.

This writ petition involves the following prayer:-

“The petitioners humbly pray that this Hon’ble Court may graciously be pleased to issue *RULE NISI* calling upon the Opp. Parties to show cause as to why the opp. parties shall not be directed to change the classification of the land from ‘Jalasaya’ to ‘Sarad’;

AND

As to why direction shall not be issued to the opposite party No.4 to carry out the order dated 03.08.2010 passed in R.P. Case No.268 of 2010 (Annexure-3).

AND

As to why the order dated 13.08.2015 passed by the Opposite Party No.4 under Annexure-7 shall not be quashed.

AND

If the Opp. Parties fails show cause or show insufficient cause, the *RULE* may please be made absolute;

AND

To pass any other order(s)/direction(s)/writ(s) as the Hon'ble Court deem fit and proper;"

2. Initially there remained a doubt; if the Petitioners' land comes under the list of Jalasaya; directed to be maintained as it is following the judgment of this Court in W.P.(C) No.8797 of 2004 also disposed of with O.J.C. No.6721 of 1999, but however, with a rider of relaxation in particular contingency as prescribed in para 14 therein.

3. Before proceeding to take a call on the issue involved, this Court first takes into account the restricts / conditions in dealing with the Land previously in Jalasaya status and here finds, this Court in disposal of W.P.(C) No.8797 of 2004 & O.J.C. No.6721 of 1999 vide its judgment dated 11.10.2012 through paragraph no.14 and conditions 3 & 4 came to direct as follows:-

"14. Considering the facts and circumstances of the case, for preservation and conservation of tanks/water-bodies in Cuttack City, and to deal with such tanks/water-bodies, we direct as follows:

(1) The State Govt. shall act upon the report dated 31.08.2007 submitted by the R.D.C. (C.D.), Cuttack and the affidavit dated 18.5.2010 filed by the Principal Secretary to Govt., H. & U.D. Department, and shall ensure that the steps indicated therein are taken within a period of two years from today.

(2) The R.D.C. (C.D.), Cuttack, under his chairmanship shall form a Committee not exceeding seven members including the Vice-Chairman, C.D.A, Municipal Commissioner, CMC, Cuttack, and an Environmentalist of the State Pollution Control Board, Odisha. Needless to say, the other members of the Committee shall be nominated by the R.D.C. The Committee shall deal with the protection, preservation and conservation of water-bodies in the city and shall take decisions accordingly.

(3) The applications for change of classification/kissam of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decision of the Collector shall be placed before the Committee as constituted above for approval . Only after approval of the Committee, change of classification/kissam of the land shall be allowed. The Committee shall record the reasons for allowing change of classification/ kissam of such lands. However, if the Committee is of the opinion that the lands, which have lost

their character as Jalasaya, and those, which are actually not Jalasayas or swampy lands but have been recorded as Jalasaya, change of classification of such lands may be allowed. This shall be effective from the date of judgment.

(4) The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasayas has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 8.4.2005 in O.J.C. No.6721/1999. In case it is found that the classification has been changed during continuance of the order of status quo, the same shall be treated as non est in the eye of law.

4. The case at hand visited several proceedings in the revenue side and there has been repeated observations at different level even involving field visit clearly observing that the land of the Petitioners does not come within the restrictions imposed by this Court in the disposal of W.P.(C) No.8797 of 2004 and O.J.C No.6721 of 2019. For clarity this Court takes note of the observations available on land of the Petitioners at various level; which reads as follows:-

(A) Petitioners undertook an exercise under Section 15(b) of the OSS Act vide R.P. No.268 of 2010, where the Addl. Commissioner, Consolidation and Settlement, Orissa in his direction dated 3.08.2010 came to observe as follows:-

“However, to meet the ends of justice the case is admitted and directed to the Tahasildar, Cuttack Sadar to change the classification as sarad in place of Jalasaya in respect of remaining area of the suit hal plot No.511, 512, 513, 514 and 524 of the impugned hal R.O.R. No.78. Hence, in the light of above observations the revision petition is allowed.”

(B) It appears, pursuant to the above direction the Tahasildar, Sadar undertook an exercise and through his order dated 29.10.2010 the Tahasildar came to observe as follows:-

“The case record is put up today. Notice duly served, S.R. back & attached herewith. The petitioner Bibhuti Bhusan Pati is present and filed Hazira without any document. Heard him. Perused the orders of the learned Addl. Commissioner, Settlement & Consolidation, Cuttack. The claim of the Petitioners is to change the classification of the suit Plot No.511, Ac.0.124, Plot No.513, Ac.0.301, Plot No.512

Ac.0.137, Plot No.524, Ac.0.379 of Khata No.78 of unit No.06 uttar Deula Sahi, P.S.-Bidanasi, Dist.-Cuttack from Jalasaya to Sarada. The learned Addl. Commissioner, Settlement & Consolidation, Cuttack has admitted and directed Tahasildar Sadar, Cuttack to change the classification as Sarad in place of Jalasaya of the suit plot. But in O.J.C. No.6721 / 99, the Hon'ble High Court has directed that status quo as on date in respect of tanks recorded as such in the Record of Right shall be maintained. In view of the status quo orders of the Hon'ble High Court, the case is kept pending till the status quo order of the Hon'ble High Court passed on dated 8.4.2005 is vacated.

This Court here finds, the Tahasildar has exceeded his jurisdiction by attempting to overreach the direction by not only higher authority but also a competent authority, further in absence of challenge to such order even by the State.

(C) Finding no respite the Petitioners approached this Court in W.P.(C) No.20405 of 2011. A Single Bench of this Court taking into account the development taken place hereinabove even including the direction in the above noted two disposed of writ petitions, in para-6 gave the following direction:-

“In view of the submissions made and keeping in view the fact that OJC No.6721 of 1999 has already been disposed of during pendency of the present writ petition, it is directed that the writ petitioner on bringing to the notice of the Tahsildar, Sadar, Cuttack, the final order of this Court passed in OJC No.6721 of 1999, the Tahasildar shall dispose of the matter in accordance with the said judgment expeditiously, preferably within a period of three months from the date the motion is made by the petitioner before him”

The above direction was given on 3.09.2014. Here it appears, the High Court in disposal of above writ petition only involved to find-out; if there is any impediment in exercise of responsibility by the Tahasildar for the restrictions flown through disposal of O.J.C. No.6721 of 1999. For the opinion of this Court and for the clear materials available, the land of the Petitioners could not have been

affected for the reasons indicated in O.J.C. No.6721 of 1999 disposed of together with W.P.(C) No.8797 of 2004.

(D) The Court here again finds, taking into account all the above developments the Tahasildar, Cuttack Sadar called for a report from the concerned Revenue Supervisor on spot visit. The Revenue Supervisor on his spot visit submitted a report to the Tahasildar, Sadar, Cuttack giving the following clear observations:-

“From spot inquiry it is found that a Pucca building is standing over an area of 1054 sq.ft. with electric connection, PHD water connection and landline telephone connection. Besides the rest part of area under this Khata are laying vacant. In these plots there are no existence of water logging. Now these plots have lost the character of “Jalasaya”. The applicants has produced the telephone bills, C.M.C holding tax, C.D.A approval of 1054 sq.ft. and PHD bills.”

For a clear report of the Collector, it made it clear that there was no obstruction on the part of the Tahasildar to himself effect the necessary correction.

(E) After the above report, this Court finds, the Tahasildar, Sadar, Cuttack vide his order dated 13.08.2015 passed the following:-

“The Case record is taken-up today. I visited the suit land alongwith R.S. on dt.22.06.2015. My filed visit Memorandum and show-cause filed by the applicant are enclosed herewith the Case record which do form part of the Case record.

Send the Case record to the Collector, Cuttack through Sub-Collector, Sadar, Cuttack for further action as per the orders of the Hon’ble High Court in W.P.(C) No.8797 of 2004 to place the matter before the Competent Authority for necessary orders.”

For the observation of this Court as against the disclosures at para ‘C’ and ‘D’, there was no reason for the Tahasildar in referring the matter to the Sub-Collector.

(F) After above direction the file was placed before the Sub-Collector, Sadar, Cuttack, who again in proceeding dated 18.08.2018 observed as follows:-

“Case record is put up today.

Tahasildar Cuttack Sadar has recommended for consideration of conversion of the following Jalasaya Kisam of land of Sri Bibhuti Bhusand Pati, S/o. Sadhu Charan Pati of Mouza- Cuttack Sahar Unit No.6, Uttara Deulasahi, P.S.- Bidanasi, Dist.- Cuttack.

Schedule of land

Mouza – Unit No.3, Dakhina Deulasahi, Dist.-Cuttack

Tahasildar, Cuttack has specified the observations in the order sheet dtd. 24.07.2018. In the field verification memorandum of Tahasildar Cuttack Sadar has mentioned details of land as being used. These documents as specified do form part of the case record. It has also been specified regarding the loss of characteristics of Jalasaya prior to the stipulated date as per observation of Hon’ble High Court of Odisha in W P (C) No.8797 of 2004 and supporting documents are attached.

In view of the proposal of Tahasildar, Cuttack Sadar, this case record is submitted to Collector, Cuttack for needful consideration and onward transmission for approval by the Committee under Chairmanship of RDC (CD) Cuttack.”

5. This Court here for the clarity involving the dispute reiterates the whole direction of this Court in para 14 in disposal of W.P.(C) No.8797 of 2004 alongwith O.J.C. No.6721 of 1999, which is again quoted herein below:-

“14. Considering the facts and circumstances of the case, for preservation and conservation of tanks/water-bodies in Cuttack City, and to deal with such tanks/water-bodies, we direct as follows:

(1) The State Govt. shall act upon the report dated 31.08.2007 submitted by the R.D.C. (C.D.), Cuttack and the affidavit dated 18.5.2010 filed by the Principal Secretary to Govt., H. & U.D. Department, and shall ensure that the steps indicated therein are taken within a period of two years from today.

(2) The R.D.C. (C.D.), Cuttack, under his chairmanship shall form a Committee not exceeding seven members including the Vice-Chairman, C.D.A, Municipal Commissioner, CMC, Cuttack, and an Environmentalist of the State Pollution Control

Board, Odisha. Needless to say, the other members of the Committee shall be nominated by the R.D.C. The Committee shall deal with the protection, preservation and conservation of water-bodies in the city and shall take decisions accordingly.

(3) The applications for change of classification/kissam of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decision of the Collector shall be placed before the Committee as constituted above for approval. Only after approval of the Committee, change of classification/kissam of the land shall be allowed. The Committee shall record the reasons for allowing change of classification/ kissam of such lands. However, if the Committee is of the opinion that the lands, which have lost their character as Jalasaya, and those, which are actually not Jalasayas or swampy lands but have been recorded as Jalasaya, change of classification of such lands may be allowed. This shall be effective from the date of judgment.

(4) The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasayas has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 8.4.2005 in O.J.C. No.6721/1999. In case it is found that the classification has been changed during continuance of the order of status quo, the same shall be treated as non est in the eye of law.”

6. This Court from the discussions on the issue therein in above writ petition finds, there has already been an exercise to trace out the Jalayasa and in the discussion in para-7 the Court has come to clearly observe that the H. & U.D. Department vide affidavit dated 11.12.2008 in compliance of this Court’s direction formulates a list of 66 big tanks (Jalayasa).

7. Keeping in view the recordings in para 7 and direction in para-14 therein, it becomes clear on the identification of the particular Jalasayas required to be maintained even with a rider for permission for conversion in certain conditions as laid down in sub-para 3 of para-14.

8. This Court here records the statement of both the Counsels involved that the Petitioners’ land doesn’t come within the listed Jalasaya. This Court here also takes note of an R.T.I information dated 20.05.2022; which reads as follows:-

“To

The Public Information Officer,
Sadar, Tahasil, Cuttack

Sub: Information under RTI Act-2005

Ref: Your Letter No.2520 dt.-4.5.2020

Madam,

As per the information required in RTI application no-54/2022, it is to say that the said plots i.e.-511, 512, 513, 514 and 524 of khata no.-78 of Mouza-Unit-6 are not in the list of jalasaya submitted to the Hon'ble High Court of Orissa in WP(C) no-8797/2004.

This is for favour of your information.

Yours Faithfully,
Sasmita Swain (JRA)
DA, J alas..
20/5/22”

9. In the whole background narrated hereinabove, this Court finds, there is first of all no doubt that the Petitioners' land does not come within the list of J alasaya so prepared. Thus there was no application of conditions imposed by this Court in W.P.(C) No.8797 of 2004 and O.J.C. No.6721 of 1999 to the case of the Petitioners. Repeated orders and even including report of Revenue Supervisor even assuming the disputed land at some point of time remained J alasaya but it has lost its J alasaya character long long ago. There is even no application of the direction in the disposal of W.P.(C) No.8797 of 2004 alongwith O.J.C. No.6721 of 1999 to the case at hand. Thus this Court finds, there has been wrong application of mind in consideration of the case of the Petitioners under the guideline at two different stages indicated hereinabove and the decision of the Tahasildar as well as the Sub-Collector remained contrary to the direction of this Court in the above two writ petitions and there is unnecessary harassment to the Petitioners involved in sending their case to the Sub-Collector and then to the Collector. When there is no obstruction the Tahasildar should

have worked out on the issue by effecting necessary corrections in the Record of Rights involved by himself. This Court accordingly declaring the reference of the Tahasildar to the Sub-Collector for sending it to the appropriate authority and Sub-Collector referring the matter to the Collector vide Annexures-7 & 8 are bad, directs the Tahasildar, Sadaar to enter necessary corrections in the Record of Rights involved herein within a period of 15 days of receipt of a copy of this direction either from the State Counsel or a certified copy from the Petitioners and consequently also supply corrected Record of Rights to the Petitioners within a period of seven days thereafter.

10. Copy of this direction will be forwarded to the Sub-Collector, Collector and the R.D.C involved as a future guidance and to prevent abuse of power and unnecessary harassment to the citizens who are undoubtedly not affected by the disposal of W.P.(C) No.8797 of 2004 & O.J.C. No.6721 of 1999, but at the cost of the Petitioners within a period three days of this order. Learned State Counsel is also directed to communicate the direction of this Court to all the above authorities.

11. The writ petition succeeds to the extent indicated hereinabove.

(Biswanath Rath)
Judge