

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7042 OF 2017

Ramesh Chandra Behera and another Petitioners

Mr. B.N. Muduli, Advocate

-versus-

Dandapani Behera and others Opp. Parties

Mr. Manoranjan Mishra, Advocate

(for Opp. Party No.1)

Mr. Swayambhu Mishra,

Additional Standing Counsel

(for Opp. Party Nos. 2 to 5)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.03.2022

Order No.

8. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 13th July, 2016 (Annexure-6) passed by the Joint Commissioner, Settlement and Consolidation, Cuttack in R.P. No.887 of 2014, whereby he allowed the revision filed by the Opposite Party No.1 under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short 'the Act') directing as under:

“Considering the claim of the Petitioner, I am inclined to direct the Tahasildar, Banki to correct the area as per purchase after making due field enquiry giving due opportunities to the parties, hal/sabik co-relation and verifying the Original documents if there is any discrepancy with following due procedure.”

3. It is submitted by Mr. Muduli, learned counsel for the Petitioners that the revision petition was filed 52 (fifty-two) years after the R.O.R. under Section 12-B of the Act was

published. The Petitioners had filed a suit for injunction as well as recovery of possession along with other relief in Civil Suit No.39 of 2008, which was decreed in favour of the Petitioners holding that the decree in Title Suit No.5 of 1991 rendered by learned Civil Judge (Junior Division), Banki has binding effects on the plaintiffs (Petitioners herein), the defendant has got right of easement over the suit land, i.e. Ac.0.01 decimals, for discharge of the rain water of his house over such portion of the land and he cannot make any construction over it and the said land is to be kept as a vacant land for discharge of rain water of both the parties and as passage depending upon their need. Further, the defendant was permanently enjoined to make any obstruction over the suit land. The Defendant was also directed by way of mandatory injunction to demolish the construction made by him over the suit land i.e. cement drain and a soak pit within two months hence and keep such suit land as a vacant land failing which the plaintiffs would be at liberty to get such construction demolished by the process of the Court. In spite of the same, the Commissioner entertained the revision and passed the aforesaid order. As such, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

4. Mr. Mishra, learned counsel for Opposite Party No.1 referring to the additional affidavit filed by Opposite Party No.1 submitted that pursuant to the direction under Annexure-6, the Tahasildar, Banki initiated Mutation Misc. Case No.34 of 2016 and upon hearing learned counsel for the parties, the Tahasildar complied with the direction under Annexure-6 vide his order dated 13th April, 2017. The Petitioners suppressing

such material facts have approached this Court. Hence, this writ petition is liable to be dismissed for suppression of fact. It is also his submission that since the impugned order under Annexure-6 has been complied with, it is no more available to be challenged in this writ petition.

5. Taking into consideration the rival contentions of the parties, this Court finds that the impugned order under Annexure-6 has already been complied with by the Tahasildar, Banki vide order dated 13th April, 2017 in Mutation Misc. Case No. 34 of 2016, which has been annexed to the additional affidavit as Annexure-A/1. The said order has also not been challenged yet.

6. Mr. Muduli, learned counsel for the Petitioners also does not object to the same.

7. In view of the above, the impugned order under Annexure-6 has already been spent its force, as it is complied with by the Tahasildar, Banki, vide order dated 13th April, 2017 passed in Mutation Misc. Case No.34 of 2016. It also transpires from the order sheet under Annexure-A/1 that the Petitioners herein have been given an opportunity of hearing and they had participated in the said proceeding. Thus, the impugned order under Annexure-6 is no more available to be challenged in this writ petition as it has spent its force.

8. Accordingly, this writ petition being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge