

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15458 of 2019

Bijay Kumar Bhuyan

....

Petitioner

Mr. Aurovinda Mohanty, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. S.N. Mishra,
Additional Government Advocate
(For Opposite Party Nos.1 to 3)

Mr. Dillip Kumar Mohanty, Advocate
(For Opposite Party No.4)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

18.04.2022

Order No.

8. 1. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 18th June, 2019 (Annexure-4)passed in Mutation Appeal No.14 of 2018, whereby the Sub-Collector, Jagatsinghpur condoned the delay of more than two years in filing the appeal without assigning any reason and directed the Tahasildar, Biridi to make an enquiry with regard to legal heirs of the deceased recorded tenant, namely, Birokishore Bhuyan.
3. It is submitted by learned counsel for the Petitioner that assailing the order dated 6th November, 2015 passed in Mutation Case No.529 of 2015, the Opposite Party No.4 preferred Mutation Appeal No.14 of 2018 along with a petition for condonation of delay. Referring to order sheet of the

Mutation Appeal, learned counsel for the Petitioner submitted that the case was never posted on 18th June, 2019 for consideration of petition for condonation of delay. It is further submitted that Sub-Collector, Jagatsinghpur by tampering the order sheet, has passed the impugned order to which the case was never posted. It is his submission that Opposite Party No.4 has filed the appeal claiming to be the son of late Bira Kishore Bhuyan. However, before filing of the Mutation Appeal, Opposite Party No.4 has filed CS No.57 of 2018 for declaration that he is the son of late Bira Kishore Bhuyan and Tanulata Bhuyan claiming 50% share in the property along with other reliefs. By directing the Revenue Inspector to conduct an enquiry with regard to legal heir status of the deceased recorded tenant, the Sub-Collector, Jagatsinghpur has exceeded his jurisdiction. In that view of the matter, he prays for setting aside the impugned order and to remit the matter back to the Sub-Collector, Jagatsinghpur for fresh adjudication of the matter giving an opportunity of hearing to the Petitioner to participate in the hearing of the application for condonation of delay in filing the appeal.

4. Learned counsel for Opposite Party No.4 refuting the above submission strenuously argued that although Opposite Party No.4 has been shown to be the son of one Bhramarbara Bhuyan in the admission register of the School, several other official documents including the voter list disclose that he is one of the sons of late Bira Kishore Bhuyan. Late Bira Kishore Bhuyan has also one daughter, namely, Manorama. Suppressing the above fact, the Petitioner in order to grab the paternal property recorded in the name of their father, namely, late Bira

Kishore Bhuyan had filed the Mutation Case without impleading them as parties. The mutation case was allowed basing upon the RI report, which was obtained without making proper enquiry with regard to legal heir status of late Bira Kishore Bhuyan. When the ROR was issued in the name of the Petitioner pursuant to the order passed in the mutation case, the Opposite Party No.4 came to know about the same. The Opposite Party No.4 had no occasion to know the same earlier as he was staying out of the village due to his employment. It is his submission that when there is suppression of material fact in the mutation case, the Sub-Collector, Jagatsinghpur has committed no error in condoning the delay and directing the RI to conduct a fresh enquiry with regard to legal heir status of the recorded tenant. In that view of the matter, he submits that the writ petition merits no consideration and hence the same is liable to be dismissed.

5. Mr. Mishra, learned AGA submits that upon receipt of the appeal memo, Sub-Collector, Jagatsinghpur has only directed the RI to conduct an enquiry and submit the report with regard to legal heir status of late Bira Kishore Bhuyan. Correctness of the same can only be verified during hearing of the appeal. Petitioner, without participating in the hearing of the appeal is only trying to drag the litigation to harass the Opposite Party No.4.

6. Taking into consideration the submission of learned counsel for the parties and on perusal of record, this Court finds that Mutation Case No.529 of 2015 was filed by the present Petitioner to record the land in his name after death of his father late Bira Kishore Bhuyan. He had, of course, described himself

as the only son of late Bira Kishore Bhuyan before the Tahasildar, Biridi. It further appears that although the Mutation Case was allowed vide order dated 6th November, 2015, the appeal was filed on 19th February, 2018, i.e., after more than two years from the date of the impugned order. There also appears some over-writings in the order sheets. It further appears that delay of two years was condoned by Sub-Collector, Jagatsinghpur in a single sentence. It also reveals that the Petitioner was not given opportunity of hearing in the petition filed under Section 5 of the Limitation Act.

7. In that view of the matter, this Court has no hesitation to set aside the impugned order dated 18th June, 2019 passed in Mutation Appeal No.14 of 2018 under Annexure-4 and remit the matter back to Sub-Collector, Jagatsinghpur to proceed with the matter afresh from the stage of consideration of the petition under 5 of the Limitation Act filed for condonation of delay in filing the Mutation Appeal No.14 of 2018, giving opportunity of hearing to the parties concerned.

8. In order to avoid further delay, the Petitioner and Opposite Party No.4 are directed to appear before the Sub-Collector, Jagatsinghpur on 9th May, 2022 along with certified copy of this order to receive further instruction in the matter.

9. The writ petition is allowed to the aforesaid extent.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge