

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 18333 OF 2022

Baidyanath Mishra

.... Petitioner

Mr. Soumya Mishra, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Perused the kind minutes of the Hon'ble the Chief Justice dated 17th November, 2022 (Flag-D).
3. The Petitioner in this writ petition seeks to assail the order dated 31st March, 2022 (Annexure-8) passed by the Additional Commissioner-cum-Additional Revisional Court, Bhubaneswar in R.P. Case No.489 of 2015 rejecting an application filed under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short 'the Act') filed by him for correction of R.O.R. in respect of Plot No.325/10086 to an extent of Ac.0.040 decimals under Khata No. 4689 of mouza Gadakana under Bhubaneswar Tahasil in the district of Khurda (for short 'the case land').
4. Mr. Mishra, learned counsel for the Petitioner submits that the land in Plot No.4613 to an extent of Ac.2.300 decimals under Khata No.1076 of mouza Gadakana under Bhubaneswar Tahasil in the district of Khurda was settled in the name of Keshab Chandra Mohapatra by the O.E.A. Collector, Cuttack under Sections 6 and

7 of the Odisha Estates Abolition Act, 1951 in O.E.A. Case No. 13 of 1959-60. After the land in question was settled, Nityananda Jena, Kailash Chandra Jena and Shyamsundar Jena purchased the said land from Keshab Chandra Mohapatra by virtue of a registered sale deed. However, in 1974 Settlement, the land in question was recorded in Government Khata. Being aggrieved, said Nityananda Jena, Kailash Chandra Jena and Shyamsundar filed R.P. Case No. 3248 of 1975 under Section 15(b) of the Act. The Commissioner, Land Reforms, Odisha, Bhubaneswar vide order dated 30th January, 1978 (Annexure-1) passed the following order:

“The petitioners have prayed that the Scheduled properties in Hal Khata No.1076, Plot No.4613 in village Gadakan, P.S. Capital, Dist. Puri should be recorded in their names and the name of the present R.T. should be deleted. The petitioners produce documents to the effect that the disputed land was settled with Keshab Ch. Mohapatra by the O.E.A. Collector U/s. 6 & 7 of the O.E.A. Act (in Case No.13 of 1959-60 of the O.E.A. Collector, Cuttack). Out of the lands which were thus settled the above disputed plot was transferred by Keshab Ch. Mohapatra by a registered sale deed to the petitioners. This was also pointed out before the Settlement authorities, but a perusal of the report of the Charge Officer shows that though at all stages the petitioners’ case has found favour and has not been disputed, yet the Asst. Settlement Officer for some reasons best known to him decided to record the disputed land as ‘Government land’. The representatives or the Settlement Officer is not available in this Court to explain.

I think the petitioner has a case. The prayer of the petitioner is allowed. The names of the petitioners should replace the name of the R.Ts. The Petition is allowed.”

5. Accordingly, R.O.R. was corrected in the name of Nityananda Jena, Kailash Chandra Jena and Shyamsundar Jena

as at Annexure-2. Subsequently, there was an amicable partition between them and the case land fell to the share of Shyamsundar Jena. In the year, 2001, the Petitioner purchased the case land from the legal heirs of Nityananda Jena. However, in the Hal Settlement, the case land stood recorded in the name of G.A. Department, Government of Odisha. Hence, the Petitioner filed a revision petition under Section 15(b) of the Act in R.P. Case No.489 of 2015. The Revisional Court after discussing the factual position jumped to the conclusion that the Petitioner failed to produce any relevant documents through which the Government land from Sabik Khata No.1076 got recorded in the name of a private individual(s). Accordingly, the revision petition filed by the Petitioner has been dismissed.

6. Mr. Mishra, learned counsel for the Petitioner further submits that the records were available with the concerned Tahasildar. He should have produced the same for adjudication of the revision. However, if the Petitioner is given an opportunity, he can also produce the documents in support of his case. The Revisional Court without affording any opportunity to the Petitioner has passed the impugned order. Hence, the impugned order under Annexure-8 is not sustainable in law and is liable to be set aside.

7. Mr. Mishra, learned Additional Standing Counsel though at the first instance sought for an adjournment to take instruction in the matter, but submits that interest of justice will be best served, if the Petitioner is given an opportunity to produce the documents in support of his case.

8. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the materials on record including the impugned order under Annexure-8, this Court is of the considered opinion that the Petitioner should be given an opportunity to file documents/materials in support of his case before the Revisional Court.

9. Accordingly, the impugned order under Annexure-8 is set aside and the matter is remitted back to the Revisional Court for fresh adjudication giving opportunity of hearing to the parties concerned. In the event the Petitioner appears before the Revisional Court on 12th December, 2022 along with certified copy of this order and files documents/materials in support of his case, he shall do well to consider the same and pass a reasoned order in accordance with law expeditiously, giving opportunity of hearing to the parties concerned.

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

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

(K.R. Mohapatra)
Judge

bks