

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 514 of 2015

The Tahasildar, Lakhanpur ***Appellant***

Mr. Debakanta Mohanty
Additional Government Advocate

-versus-

Budhram Bhoie and another ***Respondents***

Mr. A.K. Mohanty, Advocate

CORAM:

**THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
20.12.2022**

Order No.

06. 1. The challenge in the present writ appeal by the State is to an order dated 31st July, 2015 passed by the learned Single Judge allowing the W.P.(C) No.10718 of 2015 filed by the Respondents and setting aside an order dated 15th April, 2015 passed by the Tahasildar, Lakhanpur in Misc. Case No.1 of 2015 which incidentally was a suo motu proceeding.

2. During the pendency of the present writ appeal, on 29th September, 2021 the following order was passed by this Court:

“1. There appears to be some confusion on whether what the Government wants to do is merely change the plot number or also change the extent of land.

2. The apprehension of Mr. K.A. Guru, learned counsel appearing for the Respondents is that even the extent of the plot recorded in favour of the Respondents is sought

to be changed from Ac.1.090 decimal to Ac.0.040 decimal.

3. Mr. M.S. Sahoo, learned Additional Government Advocate for the Appellant states that he will produce on the next date the original Record of Rights as it is at present.

4. List on 1st February, 2022.

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

3. Today, the Court has been shown photocopies of the original record as transmitted to Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) by the Tahasildar, Lakhanpur.

4. Having heard learned counsel for the parties, it appears to the Court that the question before the learned Single Judge revolved around the powers and jurisdiction of the Tahasildar under Rule-34(e) of the Orissa Survey & Settlement Rules, 1962 (Rules). Rule 34 reads as under:

“34. Grounds on which correction of the record-of-rights and map is to be made- The Tahasildar may on application in that behalf of any person interested or on receipt of a report from any of his subordinate officers or on receipt of a notice from the Registrar of Sub-Registrar appointed under the Indian Registration Act, 1908, or from a Court or on his own motion, order any change of any entry in the record-of-rights according to the rules hereinafter prescribed on any one or more of the following grounds, namely;

(a) that all persons interested in any entry in the record-of-rights wish to have it changed;

- (b) that by a decree in a civil suit, any entry therein has been declared to be erroneous;
- (c) that being founded on a decree or order of a Civil Court or on the order of any competent authority, the entry therein is not in accordance with such decree or order;
- (d) that such decree or order has subsequently been varied on appeal, revision or review;
- (e) that any entry therein has no relationship with the existing facts; and
- (f) that by preparation of a survey record under Chapter II of the Act, any change is necessitated in the record-of-rights.”

5. In ***Ganesh Prasad Das v. Tahasildar, Dhamnagar 1997 (I) OLR 13***, a Division Bench of this Court held that in view of the nature of jurisdiction conferred under Section 16 of the Orissa Survey and Settlement Act, 1952, the scope of the power under Rule 34(e) is to be confined to matters arising after publication of the RoR.

6. The learned Single Judge noted that by the impugned order which had been passed pursuant to a notice issued on 2nd February, 2015 by the Tahasildar, the extent of two plots, namely, Plot No.752, Khata No.137 and Plot No.753 appertaining to Khata No.161 the extent of the land as recorded in the Record of Rights (RoR) had changed. Further, in terms of the RoR, Plot No.753 was a pond and Plot No.752 was a cultivable land. The verification resulted in Plot No.752 being shown as a pond and Plot No.753 was a cultivable land.

7. The learned Single Judge has, following the aforementioned decision of the Division Bench, held that in the garb of exercising a suo motu power, the Tahasildar had in fact far exceeded the scope of his powers and jurisdiction and accordingly set aside the order dated 15th April, 2015 passed by him.

8. The learned Single Judge has clarified that as regards cause of action arising prior to the publication of the RoR, an aggrieved party may still avail remedy provided under the OSS Act or by filing a civil suit. In short, it was held that the suo motu powers cannot be exercised by the Tahasildar in the manner undertaken which resulted in the order dated 15th April, 2015 passed by him.

9. In view of the decision of the Division Bench of this Court in ***Harihar Mohapatra v. Commissioner of Land Records and Settlement, Orissa 1998 (II) OLR 495***, it is plain that correction of an RoR and the map has to be made only on the grounds enumerated in Rule 34 and on the basis of a cause of action that arises after the preparation of the RoR and not prior thereto.

10. The Court is unable to find any error having been committed by the learned Single Judge in going by the settled position in law explained by the Division Bench of this Court in two decisions, ***Ganesh Prasad Das v. Tahasildar, Dhamnagar*** (*supra*) and ***Harihar Mohapatra v. Commissioner of Land Records and Settlement, Orissa*** (*supra*).

11. No grounds have been made out for interference with the impugned order of the learned Single Judge. The appeal is dismissed.

12. The State will follow strictly the letter and spirit of the law in taking any further steps.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera

