

A.F.R.

ORISSA HIGH COURT : C U T T A C K

WP(C) NO.21099 OF 2022

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Dibyajyoti Behera

: *Petitioner*

-Versus-

State of Odisha & ors.

: *Opp.Parties*

For Petitioner

:

M/s.S.K.Dash, A.K.Otta, S.Das,
N.K.Das, A.Sahoo, E.Dash,
P.Das & C.K.Mohapatra

For O.Ps.1 to 4

:

Mr.S.P.Panda, AGA

For O.Ps.5 to 21

:

None

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 21.09.2022

1. The Writ Petition involves the following prayer :-

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased;

- i) To admit the writ application.
- ii) Call for the records from the Opposite Party Nos.2 and 3 and after hearing the parties, may be pleased to quash the impugned orders under Annexure-5 & Annexure-6 to the writ application, passed respectively by them.

- iii) And, may further be pleased to issue such other writ/order/direction(s), as it may be deemed fit and proper in the facts and circumstances of the case.”

2. Learned counsel for the Petitioner taking this Court to the pleading involving the allegation of the Petitioner and bringing in an Appeal by the Tahasildar against his own order contends such Appeal per se not maintainable. Further taking this Court to Annexure-5, learned counsel for the Petitioner contended that registration of Appeal on the basis of a letter by the Tahasildar is unknown to the Appeal Proceeding and further it remains contrary to the Appeal provision provided under Chapter-IV at Paragraph-92 therein. Taking this Court to the final order of the Tahasildar dated 19.11.2020 in demonstration of such order through the Brief, a further contention is also raised in the challenge of the initiation of Appeal Proceeding, learned counsel for the Petitioner contended that for the mutation order passed by the Tahasildar, Pallahara being the Competent Authority in passing order under the Mutation Manual in original side is not competent even asking for initiation of an appeal. It is also contended that even assuming the Tahasildar is the Custodian of Land Records if he finds a case to be preferred by the State involving the land involved therein, his letter could have been construed to be a request to the Competent Authority for initiation of Appeal and in no circumstance, such letter could have been entertained as an Appeal. Taking this Court to the provision at Paragraph-92 of Chapter-IV of the

Odisha Mutation Manual and reading through the same, learned counsel for the Petitioner contended, the Appeal initiated here is contrary to Paragraph-92, and therefore, the whole proceeding remains not maintainable.

3. Considering the submission at the stage of fresh admission, this Court entertaining the Writ Petition on 5.9.2022 directed the learned State Counsel for production of the Appeal Records to find if at all there is filing of any Appeal by the competent Authority and if there is no filing of Appeal to find the trace in the institution of the Appeal. In hearing of the matter today, Records of the Appellate Authority is produced by the Government Counsel Mr.S.P.Panda. Learned Additional Government Advocate through the Records made a fair statement that as reflected from Annexure-5, the foundation in institution of the Appeal appears to be a letter of the Tahasildar, Pallahara bearing No.1363 dated 9.4.2021. Mr.Panda however referring to Paragraph-92 of Chapter-IV of the Odisha Mutation Manual contended that once Appeal lies to the S.D.O. under Paragraph-92(a) and S.D.O. being the Competent Authority undertaking Appeal exercise and disposing of such Appeal, there may not be any illegality in the same. In the circumstance, there is an attempt for dismissing the Writ Petition for having no merit.

4. Considering the rival contentions of the Parties, this Court finds, the moot questions involved herein required to be considered are whether the Tahasildar's letter requesting for institution of an Appeal can be construed to be a Memorandum of Appeal ? and if the Appeal involved herein under any stretch of imagination can be termed as Appeal under the provision of Paragraph-92 of the Odisha Mutation Manual ?

5. Undisputed fact remains to be considering the application for mutation of the disputed land involved here, there has been initiation of Mutation Case No.221/2020 on the File of the Tahasildar, Pallahara. Annexure-3 series also involve the final outcome in Mutation Case No.221/2020, which clearly demonstrates the final order therein passed by the Tahasildar, Pallahara. This Court looking to the controversy involved herein takes note of the provision of the Appeal at Paragraph-92 under Chapter-IV of the Odisha Mutation Manual, which reads as follows :-

“92. Under rule 42, an appeal from any final order of the Tahasildar shall be-

- (a) To the SDO or RDO if the original was made by any officer below the rank of the SDO or RDO, and
- (b) To the Collector of the District if the original order was made by the SDO or the RDO.”

It is at this stage, this Court also attempted to find if any format prescribed for Appeal Memorandum. The Manual does not prescribe any

format except there is prescription of a format involving application form for mutation and whatever Appendixes are there, are all to facilitate the mutation proceeding except there is a provision at Appendix-6, i.e., the manner of registering the Appeal in mutation case. Even assuming there is no prescription of format for Appeal against the mutation orders, this Court observes, there may be mere filing of Appeal with clear intention involving the ground therein involving the impugned order.

6. Coming back to the question framed, reading together with the provision at Paragraph-92 of the Odisha Mutation Manual and looking to the background even assuming State is the owner of all properties in the State ultimately Collector of a district is to represent the State involving any land dispute in the district under his jurisdiction and thus the only competent person to bring an appeal in the Court of Appeal. The Tahasildar may be only the Custodian of such Records having additional power for correction of Records. Under no stretch of imagination, the Tahasildar can represent the State even. Thus letter involving a request of any Tahasildar cannot be construed to be an Appeal. This Court thus finds, the intimation of Appeal on the basis of a correspondence of the Tahasildar itself is bad. Further this Court since finds, the Tahasildar involves himself in the quasi-judicial side to decide proceeding involving Mutation Case No.221/2020. There may not be any impediment on the

Tahasildar in his administrative side to inform the custodian of the property for appropriate action involving such order. In the circumstance, this Court finds, the letter of the Tahasildar could have been maximum construed to be a request for undertaking an Appeal Proceeding involving the order involved herein and under no circumstance, such letter can be formed to be a Memorandum of Appeal under Paragraph-92 at Chapter-IV of the Odisha Mutation Manual. Both the questions framed by this Court are answered accordingly.

7. On perusal of the entire Case Records, this Court finds, there is no Appeal by the Appellate Authority except the Appeal is initiated keeping in view the request of the Tahasildar, vide his letter involved herein. In the circumstance, this Court finds, there is no filing of Appeal in the eye of law involving such order. Thus this Court holds, registration of Appeal and further proceeding in such an Appeal are all without any foundation. This Court thus declares, the entire Appeal Proceeding, vide Mutation Appeal Case No.8-2/2021 is bad in law and thus sets aside the Proceeding, vide Annexure-5. For setting aside the Proceeding, vide Annexure-5 itself, all consequential actions taking into account such order are also declared as bad.

8. This Court in course of hearing finds, there have been two decisions may be under different statutes, supporting above view. One

under the OPLE Act also dealing with the question as to whether the Tahasildar for his role therein is empowered to file Appeal through W.P.(C) No.6113 of 2004 decided on 14.12.2016 clearly observing that the Tahasildar cannot do so. In the further decision of this Court in W.P.(C) No.13164/2001 decided on 8.7.2019 under the provisions of the OHC & PFL Act also involving a question therein as to whether the Tahasildar is competent to file Appeal ? The Single Bench through the decision for the role of the Tahasildar under such Statute came to hold that no such Appeal filed by the Tahasildar is entertainable. This view of the Hon'ble court got confirmed in dismissal of W.A. No.364/2019 decided on 17.12.2020. This Court finds, the view of this Court finds support through both the above judgments.

9. The Writ Petition thus succeeds. However, there is no order as to costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 21st September, 2022/M.K.Rout, A.R.-cum-Sr.Secy.