

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18557 of 2018

Biraja Prasad Singh and others ***Petitioners***
Miss Deepali Mahapatra, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel
(Opposite Party Nos. 1 to 5)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
10.02.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Heard Miss Mahapatra, learned counsel for the
 Petitioners and Mr. Mishra, learned ASC.
3. This writ petition has been filed assailing the order dated
 3rd December, 2010 (Annexure-4) passed by the Revenue
 Officer, Mahanga- Opposite Party No.4 in OLR Case No.52 of
 2006, whereby the allowed an application under Section 60 of
 the OLR Act, 1960 for review of order dated 22nd February,
 2008 passed in said OLR Case.
4. Miss Mahapatra, learned counsel for the Petitioners
 submits that the father of Opposite Party Nos. 6 to 8, namely,
 late Giridhari Prasad Ray along with Deity- Sri Hanuman Jew
 Thakur installed at Paramanpur had filed TS No.94/3 of
 1968/72 against the father of the present Petitioners, namely,
 late Padma Charan Singh as well as Brundaban Singh (sons of
 late Chakradhar Singh) for declaration of right, title, interest
 and possession over the land in question. While deciding the

suit, learned Additional Munsif, Cuttack categorically held that the father of the present Petitioners had acquired occupancy right over the land in question. However, the suit was decreed in part declaring the right and title of the Plaintiff No.2, namely, Giridhari Prasad Ray, therein. It was also observed that the possession of the Defendants over the suit land is confirmed. While answering Issue No.4, i.e., “*Whether the plaintiffs are entitled to any of the reliefs claimed?*”, learned Munsif held that the Plaintiffs therein could move the OLR authorities for recovery of possession. However, pursuant to the finding arrived at Issue No.3 to the effect that the Defendants therein have acquired occupancy right over the land in question, the father of the Petitioners filed OLR Case No.52 of 2006 for correction of ROR by deleting the name of Giridhari Prasad Ray from the ROR and to fix fair rent. The said application was allowed vide order dated 22nd February, 2008. The corrected ROR was also issued in the name of father of the Petitioners, namely, late Padma Charan Singh under Annexure-3. Subsequently, the Opposite Party No.6 to 8, filed a petition under Section 60 of the OLR Act for review of the said order and the impugned order under Annexure-4 has been passed. It is contended by Miss Mahapatra, learned counsel for the Petitioner that no notice whatsoever of the review petition was served on the Petitioners. They were not given any opportunity of hearing. It is her submission that the review petition itself is not maintainable as it does not come within the scope and ambit of Section 60 of the OLR Act. However, the Revenue Officer lost sight of the same and reviewed the order dated 22nd February, 2008 passed in OLR Case No.52 of 2006 and

directed to restore the ROR to pre-correction stage. Further, no notice of review petition was also served on the father of the Petitioners at any time.

4.1 It is her contention that the opening words of Section 60 of the OLR Act (*Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order or his successor in office....*) makes it clear that petition for review can be entertained only after notice to the person interested. In the instant case, Petitioners being persons interested ought to have been noticed in the matter. There is also no clerical mistake or error in the impugned order. Thus, the petition under Section 60 of the OLR Act is not maintainable. She, therefore, prays for setting aside the impugned order and to remit the matter back to the Revenue Officer for entertaining the petition under 60 of the OLR Act on merit and decide the same afresh giving opportunity of hearing to the parties concerned.

5. None appears for Opposite Party Nos. 6 to 8 on repeated call, although they are represented through learned Advocate. But the Opposite Party Nos. 6 to 8 have filed counter affidavit which can be taken into consideration. The contentions of those Opposite Parties are more fully described in paragraph 7 and 8 of the counter affidavit filed by them, which are extracted hereunder for ready reference and consideration.

“7. That being aggrieved by the order dated 22.02.2008, the opp. Parties have filed review petition u/s 60 of the OLR Act before the Revenue Officer, Mahanga. The opp. Party Nos. 6 to 8 have challenged the aforesaid order basically on the ground of error in the course of the proceeding. After hearing the revenue officer allowed the review petition on the ground that Addl. Munsif Court Cuttack in TS No.94/2003 of 1968/72 passed the order on 30.03.1972 declaring the title over the case land as per sabik record. The OLR

Case No.52/2006 allowed on 22.02.2008 by the Tahasildar, Mahanga passing an order to settle the above land in favour of Padma Charan Singh, S/o Chakradhar Singh by preparing new khata No.334/57 without enquiry and report either from RI or Amin and without notice also. Since there were irregularities and errors crept in the course of proceeding and procedural irregularities for which the revenue Officer, Mahanga allowed the review petition in favour of the opp. parties after settling and recording ROR in favour of the opp. party No.6 to 8.

8. *That as regards paragraph No.10 to 13 are all developing stories and having no relevancy to the aforesaid case."*

It is, therefore, averred in the counter affidavit that the writ petition deserves no merit and hence liable to be dismissed.

6. Mr. Mishra, learned ASC submits that although there is no material on record to show that the Petitioners were served with notice in the petition under Section 60 of the OLR Act, but the contention of Miss Mahapatra, learned counsel for the Petitioners with regard to maintainability of the review petition requires consideration. Thus, the Revenue Officer should reconsider the matter on merit giving opportunity of hearing to the parties concerned.

7. Upon hearing learned counsel for the parties present and on perusal of materials on record, it appears that the Petitioners were not served with any notice in the proceeding under Section 60 of the OLR Act arising out of OLR Case No.52 of 2006. Counter affidavit filed by Opposite Party Nos. 6 to 8 also does not disclose that the notice of the review petition was served on the Petitioners. Perusal of the impugned order dated 3rd December, 2010 (Annexure-4) does not also reveal that notice of the review petition was ever served on the Petitioners.

8. In that view of the matter, this Court has no hesitation to set aside the order impugned herein passed under Section 60 of the OLR Act in OLR Case No.52 of 2006.

9. Accordingly, the impugned order under Annexure-4 is set aside and the matter is remanded back to the Revenue Officer, Mahanga-Opposite Party No.4 for fresh consideration giving opportunity of hearing to the parties concerned. In order to avoid further delay, learned counsel for the Petitioners undertakes that she will intimate the Petitioners to appear before Tahasildar, Mahanga on 28th February, 2022 along with certified copy of this order to receive further instruction in the matter.

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

11. Interim order 1st December, 2018 passed in Ia No.15713 of 2018 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge