

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19072 of 2019

Kamal Kishor Agarwal ***Petitioner***

Mr. Ashok Kumar Sarangi, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER
22.02.2022

Order No.

9. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for a direction to set aside the order dated 12th July, 2019 (annexure-1) passed by the Sub-Collector, Panposh-Opposite Party No.3 in Mutation Appeal No.1 of 2019, whereby he dismissed the Appeal and confirmed the order dated 21st November, 2018 passed by Tahasildar, Rourkela-Opposite Party No.2 in Mutation Case No.297 of 2018.
3. Mr. Sarangi, learned counsel for the Petitioner submits that Opposite parties, namely, the Tahasildar and Sub-Collector committed an error by refusing the prayer to mutate the land in question in favour of the Petitioner stating that the sale deed on the basis of which the Petitioner claimed recording of the land in question was executed prior to current settlement. The Petitioner had earlier filed Mutation Case No.1201 of 2006, which was disposed of by the Tahasildar, Rourkela on 27th September, 2006 (Annexure-5) holding that the transaction in question had undertaken prior to the current settlement. Thus,

the Petitioner filed CS No.135 of 2008 before the learned Civil Judge (Senior Division), Rourkela. On consideration of the materials in its proper perspective, learned Civil Judge, vide its judgment dated 19th May, 2010 declared the right, title and interest of the Petitioner over the land in question. Thus, pursuant to the said judgment and decree, the Petitioner intended to file Mutation Case for correction of the ROR in his name, which was not accepted. Hence, the Petitioner moved this Court in W.P.(C) No.9421 of 2017, which was disposed of on 15th May, 2018 directing the Tahasildar, Rourkela-Opposite Party No.2 to accept the mutation case. Accordingly, the application or mutation was accepted and registered as Mutation Case No.297 of 2018. However, the Tahasildar rejected the Mutation case on the self-same ground stating that the transaction in question had undertaken prior to the current settlement. Assailing the same, the Petitioner filed W.P.(C) No. 20872 of 2018, which was disposed of on 21st November, 2018 directing the parties to file appeal against the order passed in Mutation Case No.297 of 2018. Accordingly, the Petitioner filed Mutation Appeal No.1 of 2019 before Sub-Collector, Panposh, Rourkela-Opposite Party No.3 and the impugned order under Annexure-1 has been passed.

4. Mr. Sarangi, learned counsel for the Petitioner submits that since the Petitioner claims recording of the land in question on the basis of Civil Court's decree under Annexure-6, which was passed after the current settlement, the Tahasildar, Rourkela is under legal obligation to record the land in question in his name on the basis of the Civil Court's decree. It is his submission that the Civil Court's decree has not yet been varied

or modified by any competent Court. Thus, the Opposite Party Nos. 2 and 3 have committed error in not recording the land in question in favour of the Petitioner. Hence, he prays for setting aside the impugned orders under Annexures-1 and 2 and to issue direction to the Tahasildar, Rourkela to record the land in question in favour of the Petitioner.

5. Mr. Mishra, learned ASC referring to the counter affidavit supported the reasoning given by the Sub-Collector, Rourkela in the impugned order under Annexure-1 stating that the transaction in question basing upon which the Petitioner prays for recording of the land in question in his name had taken place prior to the current settlement. Thus, the Sub-Collector as well as the Tahasildar has committed no error in passing the impugned orders. It is his submission that since an *ex parte* decree was passed in CS No.135 of 2008, petition has been filed in CMA No.126 of 2021 to set aside said *ex parte* decree dated 19th May, 2010 (Annexure-3). He therefore submits that since the application under Order IX Rule 13 CPC is still pending for consideration, the prayer made in this writ petition should not be allowed to avoid multiplicity of litigation.

6. Taking into consideration the submissions of learned counsel for the parties, this Court is of the considered opinion that the impugned orders were passed on 12th July, 2019 and 21st November, 2018 under Annexures-1 and 2 respectively but no steps for setting aside the *ex parte* decree was taken immediately by the State-Opposite Parties. However, it is submitted by Mr. Mishra, learned ASC that an application in

CMA No.126 of 2021 under Order IX rule 13 CPC has been filed, which is pending for consideration.

7. Be that as it may, this Court is in seisin of the matter to test the legality and propriety of orders passed under Annexures-1 and 2 by the Sub-Collector, Panposh as well as Tahasildar, Rourkela taking into consideration the scope and ambit of Rule 34(c) of Odisha Survey and Settlement Rules, 1962. Rule 34(c) provides that the correction of ROR and map shall be taken up on the basis of a decree or order of the Civil Court or an order passed by the competent authority. Rule-44 of the said Rules also provides that the Tahasildar has to carry out the correction in the ROR as well as map so as to keep it in conformity with the changes carried out. Thus, the Tahasildar, Rourkela is under legal obligation to carry out the judgment and order of learned Civil Judge (Senior Division), Rourkela in CS No.135 of 2008. Very recently an application under Order IX Rule 13 CPC has been filed to set aside the *ex parte* decree in the aforesaid suit, but that cannot be a ground not to carry out the order of the Civil Court unless and until it is varied or set aside.

8. In that view of the matter, this Court has no hesitation to set aside the orders under Annexures-1 and 2 and so directs. The Tahasildar, Rourkela-Opposite Party No.2 is directed to correct the ROR in respect of land in question, i.e., Plot No.810 (part) under Khata No.309 to an extent of area Ac.0.10 decimal in mouza Rourkela town Unit-40 in the name of the Petitioner, which shall be subject to the outcome of application in CMA No.126 of 2021. The Tahasildar, Rourkela shall correct the

ROR in accordance with law, within a period of one month from the date of production of certified copy of this order.

9. The writ petition is disposed of with the observation and direction, as aforesaid.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy