

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.23441 OF 2022

Bhagaban Gauda

....

Petitioner

Mr.B.K.Behera, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
14.9.2022**

Order No.

01. 1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order of the Additional Tahasildar, Kanisi dated 14.8.2022 on the premises that in the Mutation Case involved, as desired by the Tahasildar, the report of the R.I. was called for and the report of the R.I. is also reflected in the order-sheet dated 11.7.2022 involving the same Mutation Case.
3. It is here taking to the recommendation of the R.I. reading together the dropping of the Mutation Case by order dated 14.8.2022, Mr.Behera, learned counsel for the Petitioner contended that once the R.I. recommended the case in favour of the Petitioner observing the Mutation Case to be allowed in favour of the

Petitioner, in absence of any material contradicting such recommendation, the Additional Tahasildar is duty bound to accept the recommendation of the R.I. It is in the circumstance, learned counsel for the Petitioner challenged the order dated 14.8.2022.

4. Mr.Mishra, learned ASC for the State however objected the entertainability of the Writ Petition on the premises of availability of statutory appeal. Mr. Mishra has, however, no objection to the contention of the learned counsel for the Petitioner involving the recommendation of the R.I. in favour of the Petitioner through the R.I.'s order dated 11.7.2022.

5. Considering the rival contentions of the Parties, this Court finds, the R.I. based on a direction by the Additional Tahasildar involving Mutation Case No.10188/2022 in its order dated 11.7.2022 recommended as follows :-

“This case is put up today for hearing after the stipulated objection period is over. Individual notices have been duly served and General Notice has been duly published in the locality and S.R. back. No objection has been received from any quarter during the stipulated period. The applicant is personally present. He/she submitted the Original Regd. Sale deed bearing No.10611205444/Dated 19.6.2012 and RSD no.4126/2007, 4127/2007, 1392/2007 GP no.730/2009 registered at the Sub-Registrar Office, Berhampur-I Verified the original document with the photocopy earlier submitted and found correct and the photocopy of the Registered Deed do form a part of the Case Record. On perusal of the Deed it is found that the applicant namely

Sri/Smt.Bhagban Gouda Father-Choudhury Gouda, PO-Panigrahipentho, PS-Badabajar has purchased the land schedule as mentioned below from the rightful persons namely Dandapani Mohapatra, Father-Ullas Mohapatra, Caste-Mali, Mouza-Nijagaon. I have personally conducted the filed enquiry and the field enquiry report do form a part of this Case Record. The report reveals the fact that the applicant has purchased the suit land from the rightful owners/successors of the R.T.(s) and possessing the land peacefully since the date of registration. The applicant deposited the required measurement fee amounting Rs.(Rupees) only vide RR No./Dated As per the report of my field enquiry report the applicant is in peaceful possession of the suit land since the date of registration. The Vendor/Recorded Tenant(s) is/are not from the S.C. or S.T. community. The suit land is not coming under the authority of Law (Devottar) Department. The suit land is not beyond the ceiling limit. The suit land is not a portion of 'Chaka' land. No objection has been filed from any quarter within the stipulated objection period. Hence, the mutation for the scheduled land as mentioned below is allowed in favour of the applicant(s) Bhagban Gouda Father-Choudhury Gouda, PO-Panigrahipentho, PS-Badabajar subject to the approval by the Addl. Tahasildar, Kanisi. The Case Record is submitted to the Addl. Tahasildar, Kanisi for approval."

6. Reading the above, this Court finds, there is no doubt that the R.I. has a clear recommendation in favour of the Petitioner that too a report submitted only on the direction of the Additional Tahasildar involved. It is in this view of the matter, this Court entering into the order challenged herein finds, there was no material contrary to the findings and the recommendation of the R.I. involved therein and accordingly, the Additional Tahasildar had no other option than to proceed in accordance with the recommendation of

the R.I. In the process, this Court finds, the dropping of the Mutation Proceeding in spite of a favourable report by the R.I. in favour of the Petitioner becomes illegal. It is in the above background of the case, this Court finds alternate remedy of Appeal may not be a justified demand and thus finds no force in the objection raised by the learned State Counsel.

7. This Court, therefore, interfering with the impugned order dated 14.8.2022 sets aside the same. Since a fresh order is required to be passed by the Additional Tahasildar, Kanisi in Mutation Case No.10188/2022, this matter is remitted to the Additional Tahasildar to give effect to the recommendation of the R.I. and dispose of the said Mutation Case accordingly by working it out within a period of one month from the date of communication of this order.

8. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout