IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21922 OF 2018

Sri Sri Bhagabat Basudev and others .... ***Petitioners***

Mr. Goutam Mukherji,
Senior Advocate being assisted
by Mr. Anam Ch. Panda, Advocate

-versus-

Member, Board of Revenue, Cuttack and others .... ***Opp. Parties***

Mr. G.C. Rout, Advocate
(For Opp. Party Nos.3 to 7)
Mr. Arun Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos. 1 & 2)
Miss Pratyusha Naidu, Advocate
(For Opp. Party No.8)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
05.04.2022

Order No.

9. 1. This matter is taken up through hybrid mode.

2. The Petitioners in this writ petition seek to assail the order dated 6th August, 2018 (Annexure-1) passed by the Member, Board of Revenue, Cuttack in OSS Case No. 1311 of 2018 (Revision Case No. 54 of 2014) filed by them under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (hereinafter referred to as 'the Act').

3. Mr. Mukherji, learned Senior Advocate submits that the Petitioners are Marfatdars of the Deity, Shree Shree Bhagabat Basudev Bije at Jagannath Prasad, Gadasahi. Assailing the correctness of the final R.O.R. published under Section 12-B of the Act in the name of Opposite Party Nos. 3 to 7, they filed the aforesaid revision case to correct the R.O.R. on the basis of the

Registered Sale Deed Nos. 4929 and 4932 dated 29th June, 1961 and Registered Sale Deed No. 2879 dated 12th November, 1974. During pendency of the revision petition, the Opposite Party Nos. 3 to 7 filed an application on 12th June, 2018 (Annexure-9) challenging the maintainability of the revision petition under Section 15(b) of the Act. The Petitioners also filed objection to the same on 26th June, 2018 (Annexure-10). The matter was taken up on 3rd July, 2018 for hearing on the question of maintainability and delivery of orders on the issue of maintainability was reserved. But, most surprisingly, learned Member, Board of Revenue, Cuttack vide order dated 6th November, 2018 passed an order on the merit of the revision petition and dismissed the same holding it to be not admissible. He further submits that the Petitioners had no occasion to produce materials including the original documents in support of their case. When the matter was posted for delivery of orders on the question of maintainability of the revision petition, learned Member, Board of Revenue, Cuttack before proceeding ahead to adjudicate the matter on merit should have passed order on the issue of maintainability of the revision petition. The Petitioners were not given reasonable opportunity of hearing in the revision case to place their case on merit. In that view of the matter, he prays for setting aside the impugned order under Annexure-1 and to remit the matter back to the learned Member, Board of Revenue, Cuttack to adjudicate the matter on merit giving opportunity of hearing to the parties concerned.

4. Mr. Rout, learned counsel for the Opposite Party Nos. 3 to 7 refuting such submission contended that the Petitioners at the time of filing of the revision petition ought to have filed

documents in support of their case to be considered by the revisional authority. The impugned order under Annexure-1 has been passed considering the rival contentions of the parties and the materials on record. The Petitioners before filing of the revision petition had also filed C.S. No. 2624 of 2016. Hence, the revision petition under Section 15(b) of the Act was not maintainable. It is further contended that at the time of hearing of the petition on the question of maintainability of the revision petition, learned counsel for the parties advanced their argument on merit of the revision petition and thus, the revisional court has committed no error in passing the impugned order under Annexure-1. Even if the Petitioners are given opportunity of hearing they cannot improve upon their case. As such, this writ petition merits no consideration and is liable to be dismissed.

5. Mr. Mishra, learned Additional Government Advocate submits that it is an *inter se* dispute between the Petitioners and Opposite Party Nos.3 to 7 and learned Member, Board of Revenue considering the rival contentions of the parties and the materials on record has passed the impugned order under Annexure-1, which needs no interference.

6. Taking into consideration the submissions of learned counsel for the parties and on perusal of the materials on record, it is apparent that the Opposite Party Nos.3 to 7, who were arrayed as Opposite Party Nos. 2 to 6 in the revision petition, had filed an application (Annexure-9) questioning the maintainability of the revision petition. It is also not disputed that the Petitioners had also filed objection to the said petition vide Annexure-10. Learned Member, Board of Revenue, Cuttack posted the matter to 3rd July,

2018 for hearing on the question of maintainability of the revision petition and reserved for delivery of orders on the issue of maintainability of the revision petition on that date. However, learned Member, Board of Revenue, Cuttack passed the order on 6th November, 2018 on merit of the revision petition, which is under challenge in this writ petition.

7. When the matter was posted for delivery of orders on the issue of maintainability of the revision petition, propriety demands that learned Member, Board of Revenue, Cuttack before proceeding to adjudicate the matter on merit ought to have delivered order on the issue of maintainability of the revision petition. The materials available on record do not disclose that learned Member, Board of Revenue, Cuttack had, in fact, passed the order on the issue of maintainability of the revision petition. It further appears that the revisional court observed that the Petitioners could not produce the original documents, i.e. Registered Sale Deed Nos. 4929 and 4932 dated 29th June, 1961 and Registered Sale Deed No. 2879 dated 12th November, 1974 as referred in the certified copy of Yadast. When the matter was not posted for hearing of the revision petition on merit, the Petitioners had no occasion to file original documents in support of their case. In that view of the matter, this Court is of the considered opinion that the order dated 6th November, 2018 is not sustainable in the eyes of law as the Petitioners were not given reasonable opportunity of hearing in the case.

8. Accordingly, the order dated 6th November, 2018 (Annexure-1) passed in OSS Case No. 1311 of 2018 (Revision Case No. 54 of 2014) is set aside and the matter is remitted back

to the learned Member, Board of Revenue, Cuttack for fresh adjudication affording opportunity to the parties concerned to produce documents in support of their case and also to participate in the hearing of the revision petition.

8. Learned counsel for both the parties submit that since the matter is of the year, 2014, a direction may be made to the Member, Board of Revenue, Cuttack to make an endeavour for early disposal of the revision petition.

9. In view of the above, parties are directed to appear before learned Member, Board of Revenue, Cuttack on 18th April, 2022 along with certified copy of this order to receive further instruction in the matter. On appearance of the parties, learned Member, Board of Revenue, Cuttack shall make an endeavour for early disposal of OSS Case No. 1311 of 2018 (Revision Case No. 54 of 2014) as expeditiously as possible preferably within a period of four months therefrom giving opportunity of hearing to the parties concerned.

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

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks