

IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) NO.24716 OF 2022

Rabindra Nath Mohanty

....

Petitioner

Ms.D.Mahapatra, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
17.10.2022

Order No.

3. 1. Heard learned counsel for the Parties.
2. Learned counsel for the Petitioner taking this Court to the allowing of mutation by the Tahasildar in disposal of Mutation Case No.1270/93 and Page-33 of the Brief submitted that there is clear direction for recording of Plot No.677/721 in the manner indicated therein. Further taking to the preparation of Record of Rights, vide Annexure-7 and reading through Page-42 of the Brief, learned counsel for the Petitioner submitted, in the preparation of Record of Rights on the basis of Mutation Case No.1270/93, as clearly appearing at Page-41 of the Brief, there is serious mistake and the recording therein remains contrary to the decision, vide Mutation Case No.1270/93. Similar mistake also committed involving a direction, vide Mutation Case No.543/91 but in respect of another

piece of land. It is alleged, even though the Petitioner applied for necessary correction, the Tahasildar has illegally rejected such request of the Petitioner, vide Annexure-9.

3. Mr.Sahoo, learned Additional Standing Counsel for the State however taking this Court to Rule-43 of the O.S.S. Rules contended, for the prescription therein enabling a Party to move under the provision of the O.S.S. Rules read together with the Act, the Proceeding under Annexure-9 was otherwise not entertainable and thus sought for dismissal of the Writ Petition. Undisputedly, the decision, vide both Mutation Cases remains unaltered.

4. Considering the rival contentions of the Parties, this Court finds, undisputedly, the Petitioner undertook multiple exercises under the Mutation Manual, vide Mutation Case No.543/91 and Mutation Case No.1270/93 both came to be disposed of by the final order of the Competent Authority directing preparation of Record of Rights in particular manner and involved herein for joint preparation of Record of Rights.

5. It is here keeping in view the allegation and counter-submission of the respective Counsel on preparation of Record of Rights based on development through disposal of the above Mutation Cases, this Court finds, Annexure-7 is also undisputedly prepared on the basis of direction in Mutation Case Nos.1270/93 & 543/91, as

clearly disclosed from Page-41 of the Brief, but not in terms of direction in disposal of the above Mutation Cases. Perusal of the recording at Page-42 of the Brief, this Court finds, there is definite defect in indicting the Plot Numbers as well as Kism of land, which undisputedly appears to be contrary to the direction contained in Mutation Case Nos.543/91 & 1270/93 respectively.

6. It is here taking into consideration the challenge in the Writ Petition by the State on the basis of Rule-43 of the O.S.S. Rules, this Court finds, Rule-43 prescribes provision that if a Party is aggrieved by any order of the Tahasildar may apply under this provision. This Court finds, the Petitioner here is not aggrieved by any order of the Tahasildar rather aggrieved by the action of the Competent Authority in preparing the Record of Rights in terms of direction of the Competent Authority. In the circumstance, this Court finds, there is no application of the provision at Rule-43 of the O.S.S. Rules. Finding force in the submission of the learned counsel for the Petitioner and further as this Court observes, the working of the order at Annexure-7 is not in terms of the direction in Mutation Case Nos.543/91 & 1270/93, the Tahasildar, Bhograi in deciding the objection of the Petitioner at Annexure-8, vide Annexure-9 did not apply his legal exercise of mind.

7. In the circumstance and for mechanical disposal of Annexure-9, this Court interfering with the order at Annexure-9, sets aside the same and directs the Tahasildar, Bhograi, O.P.4 to prepare the Record of Rights based on request of the Petitioner but strictly in terms of the order passed in Mutation Case No.1270/93 as well as Mutation Case No.543/91 by working out within fifteen days from the date of receipt of copy of this order.

8. With the above order, the Writ Petition succeeds.

M.K.Rout



(Biswanath Rath)
Judge