

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 32448 of 2021

Prafulla Kumar Biswal and another ***Petitioners***
Mr. Sanatan Das, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
15.03.2022

7. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 31st January, 2020 (Annexure-14) passed in OSS Case No.1928 of 2016 filed by the Petitioners under Section 32 of the Odisha Survey and Settlement Act, 1958 (for short, 'the Act'), whereby learned Member, Board of Revenue, Odisha, Cuttack confirmed the order dated 29th August, 2015 passed by Sub-Collector, Athagarh in Mutation Appeal No.13 of 2014 and order dated 27th October, 2014 passed by Tahasildar, Baramba in RP Misc. Case No.64 of 1992 (arising out of RP Case No.922 of 1991).
3. The land in question appertains to Hal Khata No.289/20, Plot No.56/1413 to an extent of Ac.4.80 decimal and Hal Khata No.289/109, Plot No.09/1412 to an extent of Ac.4.97 decimal carved out of Hal Plot Nos.56 and 9 under Hal Khata No.296, which corresponds to Sabik Plot Nos.10 to an extent of Ac.0.80

decimal, 11 to an extent of Ac.0.80 decimal, 12 to an extent of Ac.0.37 decimal, 29 to an extent of Ac.0.74 decimal, 4 to an extent of Ac.0.36 decimal, 34 to an extent of Ac.0.72 decimal, 50 to an extent of Ac.0.46 decimal, 93 to an extent of Ac.0.02 decimal, 94 to an extent of Ac.0.10 decimal, 125 to an extent of Ac.0.50 decimal, 100 to an extent of Ac.0.10 decimal of Sabik Khata No.3 in mouza Barimula under Baramba tahasil in the district of Cuttack (for short, 'the case land').

3.1. It is submitted by Mr. Das, learned counsel for the Petitioners that the case land was originally recorded as reserve forest. By a notification of the Co-operation and Forestry Department of Government of Odisha published in the official gazette dated 24th June, 1966 (Annexure-1), an area of Ac.60.00 decimal of Baramba ex-estate including the case land ceased to be forest land and was handed over to the Revenue Department of Government of Odisha for settlement in favour of different eligible persons. One Akula Mohanty was in possession over the case land. Accordingly, Encroachment Case No.351 of 1967 was initiated against him and the case land was settled in his favour and ROR (Annexure-4) was also published fixing the rent. After the death of the recorded tenant, Petitioner No.1 purchased the case land from his son, namely, Mayadhar Mohanty of village Tulsipur by virtue of registered sale deed No.322 dated 11.02.1981 (Annexure-7). Likewise, Petitioner No.2 also purchased an area of Ac.1.97 decimal from another recorded tenant, namely, Gopinath Sahoo by virtue of RSD No. 1917 dated 8th September, 1989 and another Ac.3.00 decimal from legal heirs of another recorded tenant, namely, Chandra

Sekhar Satapathy. The Petitioners are in possession over the land they have purchased exercising their right, title and interest thereon. However, the case land was recorded in the name of the Government in Hal ROR for which the Petitioners filed RP Case No.922 of 1991 before the Commissioner, Land Records and Settlement, who vide his order dated 6th July, 1992 remanded the matter to Tahasildar, Baramba with the following observations.

“(1) The Tahasildar should ascertain the sabik Plot Number by a sabik hal co-relation and verify the sabik Kisam from the sabik R.O.R.;

(2) The Tahasildar should also verify the Encroachment Case No.351 of 1967 order dated 8.3.68;

(3) If the order of the Tahasildar in Encroachment Case No.351(sic) of 1967 is in accordance with Section 7(2) of the Prevention of Land Encroachment Act the order is valid otherwise it is without jurisdiction;

(4) Vender's title is not established no title will accrue to the petitioner. The original encroachment case order be verified and record be corrected accordingly if necessary after noticing the parties concerned.”

Accordingly, the Tahasildar, Baramba initiated RP Misc. Case No.64 of 1992 on his file. In course of adjudication, the Tahasildar, Baramba allowed the RP Misc. Case and directed to issue ROR in favour of the Petitioners in respect of Khata No.289/109 in mouza Barimula. Thereafter, some of the villagers filed W.P.(C) No.1290 of 2005 before this Court, in which the order passed by the Tahasildar, Baramba recording the land in favour of Petitioners was quashed and the Tahasildar

was directed to hear the matter afresh after giving opportunity of hearing to all the parties. The order passed in W.P.(C) No.12920 of 2005 was assailed in Writ Appeal No.84 of 2008, which was dismissed. Accordingly, the Tahasildar, Baramba took up R.P. Misc. Case No.64 of 1992 for fresh adjudication and disallowed the Mutation Case vide order dated 27th October, 2014 holding that the lease granted in favour of the venders of the Petitioners in Encroachment Case No.351 of 1967 was subsequently cancelled by R.D.C., Central Division, Odisha, Cuttack in Misc. Case No.48 of 1969 and directed to restore the properties to Government Khata. Petitioners being aggrieved, assailed the order of the Tahasildar, Baramba under Annexure-12 in Mutation Appeal No.13 of 2014, which was also dismissed vide order dated 29th August, 2015 (Annexure-13) passed by the Sub-Collector, Athagarh. Assailing the same, the Petitioners filed OSS No.1928 of 2016 and the impugned order under Annexure-14 has been passed.

4. It is submitted by Mr. Das, learned counsel for the Petitioners that the sole basis of rejection of the claim of the Petitioners is that the lease granted in favour of the venders of the Petitioners in Encroachment Case No.351 of 1967 was cancelled by the RDC, Central Division, Cuttack in Misc. Case No.48 of 1969. Drawing attention to Annexure-15, Mr. Das, learned counsel submits that although an application under the provisions of RTI Act was filed to obtain the order passed in Misc. Case No.48 of 1969, the PIO, vide his letter dated 6th April, 2015 (Annexure-15), informed the Petitioner No.1 that *'no such Misc. Case No.48 of 1969 relating to encroachment*

case No.351 of 1967 of Baramba Tahasil was instituted in O/o the RDC (CD), Cuttack'. Therefore, Mr. Das, learned counsel submits that all the authorities under the Act have proceeded under an impression that the lease granted in favour of vendors of the Petitioners was cancelled by Misc. Case No.48 of 1969, which has not seen the light of the day. As such, the impugned orders under Annexures-12, 13 and 14 are perverse and suffer from surmises and conjectures. He therefore prays for setting aside of the impugned orders and submits that necessary direction may be made to Tahasildar, Baramba to record the land in question in favour of the Petitioners.

5. Mr. Mishra, learned ASC submits that on perusal of record, it appears the land in question stated to have been settled in favour of the vendor/ predecessor of vendor of the Petitioners in Encroachment Case No.351 of 1967, were recorded as reserve forest. Thus, it is a matter of enquiry as to how the same could be settled in favour of private persons. It is also submitted that the villagers at whose instance the matter was reopened and ultimately impugned order under Annexure-14 was passed, were neither made parties in appeal nor in revision nor in this writ petition.

6. Since order passed in Misc. Case No. 48 of 1996 is the foundation basing upon which, the impugned orders under Annexures-12, 13 and 14 were passed, this Court in order to verify the same, directed learned State Counsel to take instruction on the same. Pursuant to the direction of this Court dated 27th October, 2021 and subsequent orders, Mr. Mishra, learned ASC produced the photocopy of the record in OSS

Case No.1928 of 2016. But, no such order passed in Misc. Case No.48 of 1969 is available in the case record. Learned ASC also does not refute the information provided to the Petitioner No.1 under Annexure-15. He, however, submits that the so-called settlement in favour of the vendor/predecessor of the vendor of the Petitioners is also available in the case record. It is his submission that when the foundation of grant of lease is not available, the edifice built on the same cannot survive. Hence, he prays for dismissal of the writ petition.

7. Taking into consideration the rival contentions of the parties, this Court finds that the case land was stated to have been recorded in favour of the vender/predecessor of the vendor of the Petitioners in Encroachment Case No.351 of 1967 and subsequently it was allegedly cancelled pursuant to the order passed in Revenue Misc. Case No.48 of 1969 by the R.D.C., Central Division, Cuttack. On verification of the photocopy of the case record in OSS Case No. 1928 of 2016, this Court could not find the order passed in Encroachment Case No.351 of 1967 or the order passed in Misc. Case no.48 of 1969, which formed the basis of the impugned orders under Annexures- 12, 13 and 14. The authorities proceeded on an impression and assumption that the land was settled in favour of the Petitioners and subsequently the same was cancelled. Such presumption has no basis and cannot be a ground to disallow the claim of the Petitioners. At the same time, Petitioners have to establish that their vendors had alienable right and that the Petitioners have acquired valid right, title and interest by virtue of deeds of transfer made in their favour. These vital aspects were not

examined by the authorities. It further appears that the revisional authority has not given any opportunity to the villagers at whose instance the order under Annexure-12 was passed by the Tahasildar, Baramba.

8. In that view of the matter, the impugned order under Annexure-14 is not sustainable and is set aside. The matter is remitted back to learned Member, Board of Revenue, Odisha, Cuttack-Opposite Party No.2 for adjudication of OSS Case No.1928 of 2016 afresh giving opportunity of hearing to the parties concerned. At the time of adjudication, learned Member Board of Revenue shall thoroughly scrutinize the case record including order, if any, passed in Encroachment Case No.351 of 1967 as well as order passed in Misc. Case No.48 of 1969 and pass a reasoned order.

9. To avoid further delay in disposal of the *lis*, the parties are directed to appear before the learned Member, Board of Revenue, Odisha, Cuttack on 18th April, 2022 along with certified copy of this order to receive further instruction and on their appearance, learned Member, Board of Revenue shall issue notice to the parties at whose instance the matter was reopened by the Tahasildar, Baramba and make an endeavour for early disposal of the case.

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

11. The photocopy of case record in OSS Case No.1928 of 2016 is returned to Mr. Mishra, learned Additional Standing Counsel.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge