

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.27638 OF 2022

Giridhari Agarwalla

....

Petitioner(s)
Mr.A.Pal, Adv.

-versus-

State of Odisha and others

....

Opposite Party(s)
Mr.S.Mishra,ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
28.10.2022

Order No.

03. 1. Heard learned counsel for the Parties.
2. The Writ Petition involves the following prayer:-

“It is therefore, most humbly prayed that taking into consideration the aforesaid facts and circumstances of the case, this Hon’ble Court may graciously be pleased to issue Rule Nisi in the nature of writ of Mandamus/Certiorari calling upon the opp. Parties to show cause as to why the impugned order dated 12.08.2022 passed by the opp. Party no.4 -Tahasildar, Boudh under Annexure-3 series shall not be quashed/set aside;

AND

Further, direct the opp. Party no.4 to restore the Mutation Case No.1294 of 2022 filed under Section 8(A) of the O.L.R. Act and convert the same as an application under Rule 34(e) of the O.S.S. Rules, 1962 and further direct the Tahasildar, Boudh to refer the said application for conversion of the land into “Gharabai” by the Collector, Boudh, who may be further directed to refer the matter to Jalasaya Committee constituted under the Chairmanship of R.D.C. Berhampur as per the standing instructions of the Government of Odisha;

AND

If the opp. Parties fail to show cause and/or show insufficient or false cause, make the said Rule Nisi absolute;

AND

Pass such other further order/orders as deems just and proper;

AND

Allow this writ petition with costs;

AND

And for which act of kindness, the petitioner, as in duty bound, shall ever pray.”

3. Taking this Court to the impugned order dated 12.08.2022 vide Annexure-3 series reading together with order dated 20.07.2022, learned counsel for the Petitioner submits even assuming the land falls in Jalasaya category, looking to the judgment of this Court in W.P.(C) No.8797 of 2004 disposed of along with O.J.C. No.6721 of 1999, it alleged instead of declining to entertain the request of the Petitioner for conversion under Section 8(A) of the OLR Act, the Tahasildar, Boudh could have sent the application of the Petitioner to the district Collector for his referring the matter to the Revenue Divisional Commissioner,(SD) for his decision in terms of above judgment. There is no dispute in Bar that Revenue Divisional Commissioner,(SD) has the competency involved such dispute.

4. Considering the rival contentions of the Parties and looking to the nature of direction in disposal of W.P.(C) No.8797 of 2004 along with O.J.C. No.6721 of 1999 disposed of on 11.10.2012, the matter should have sent to the Collector with request to refer to the matter to the Revenue Divisional Commissioner,(SD), Berhampur. Keeping the settled position of law in view, this Court finds the order dated 12.08.2022 should be interfered accordingly. Interfering in the order dated 12.08.2022, directs the Tahasildar, Boudh to transmit the case record to the Collector who in turn refer the matter to the Revenue Divisional Commissioner,(SD), Berhampur for his consideration in terms of the above judgments.

5. Petitioner while producing copy of the order to the Tahasildar, Boudh will also produce the copy of the judgment in O.J.C. No.6721 of 1999 along with W.P.(C) No.8797 of 2004 at least within a period of seven days. District Collector shall also work out his part within seven days of receipt form of the Tahasildar. Revenue Divisional Commissioner,(SD), Berhampur is also directed to take final call on the request of the Petitioner at least within a period of one and half months from the date of receipt of the reference from the Tahasildar after undertaking necessary inquiry and in terms of above judgment.

6. Free copy of this order be handed over to learned State Counsel.

Swarna



(Biswanath Rath)
Judge