

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.946 OF 2021

M/s. G.M. Infratech Ltd **Appellant**

Mr. Pravash Chandra Jena, Advocate

-versus-

Hrudananda Behera & others **Respondents**

Respondent Nos. 1 & 2 None

Mr. L. Samantaray,

Addl. Government Advocate

(Respondent nos.3 to 9)

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S.SAHOO

ORDER

04.01.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. The appellant challenges the order dated 09.11.2021 passed by the learned Single Judge disposing of the writ petition, i.e., W.P.(C) No.21259 of 2020. The operative portion of the said order as at paragraph-7 is quoted herein :

“7. In view of the above, this Court has no hesitation to set aside the impugned order Annexure-2 and accordingly, so direct. This matter is remitted back to the Additional Tahasildar, Sadar, Cuttack-opposite party no.5 to consider and dispose of Mutation Case No.3293 of 2020 afresh giving opportunity of hearing to the parties concerned. In order to avoid further delay in disposal of the mutation case, parties are directed to appear before the Additional Tahasildar, Sadar, Cuttack-opposite party no.5 on 29th November,2021 along with certified copy of this order to receive further instruction in the

matter. In view of the fact that order under Annexure-2 is set aside, the consequential R.O.R. is also set aside.”

3. The present appellant was the opposite party no.8 in the writ petition. The order challenged in the writ petition was passed by the Tahasildar, Cuttack dated 25.07.2020, in Mutation Case No.3293 of 2020 filed by the present appellant-opposite party no.8 in the writ petition.

4. It is contended by Mr. Jena, learned counsel for the appellant that the order dated 09.11.2021 passed in W.P.(C) No.21259 of 2020, is liable to be interfered with in the present appeal, as there is a provision of appeal under Rule-42 of the Orissa Survey and Settlement Rules, 1962, therefore, the writ petition was not maintainable due to availability of alternative statutory remedy of Appeal.

5. The appellant in the Writ Appeal, does not dispute the findings in the order passed by the learned Single Judge that the first Mutation Case No.2491 of 2018, to record plot no.677, under khata no.420 to an extent of Ac.1.9400 decimals, in Mouza-Nayahata, under Cuttack Sadar Tahasil was dropped vide order dated 16th August, 2018 on the ground that C.S. No.346 of 2018 was pending.

Further, the second Mutation Case for the self same cause of action, was registered as Mutation

Case No.3293 of 2020. On 25.07.2020, the concerned Revenue Inspector, directed for issuance of individual notices, in Form No.10 to the vendor, vendee, recorded tenants, co-sharer with a direction to them to remain present on 25.07.2020. But the mutation case was allowed on 28.07.2020 in absence of the parties other than the petitioner, though the notices issued were not sufficient.

6. In *Whirlpool Corporation vrs. Registrar of Trade Marks, Mumbai and others* reported in *AIR 1999 SC 22: (1998) 8 SCC 1*, it has been laid down that availability of alternative remedy is not always a bar for a writ court to entertain a matter when certain conditions prevail. At paragraph-15 (pages 9 and 10 of SCC), it has been held :

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

7. In the case at hand, the fact remains that in the mutation proceedings, before the Tahasildar, no notice was served on the petitioners in the writ petition, who were the recorded tenants. The pendency of C.S. No.348 of 2018 at the instance of some of the parties is also not referred to. Therefore, in our considered opinion, in the facts and circumstances of the case, it is apparent that the *principles of natural justice* were not followed in the mutation proceeding, as has been held by the learned Single Judge and to prevent miscarriage of justice, the Writ Court, has remanded the matter to be decided afresh, giving opportunity of hearing to the parties concerned. Further, the present appellant can raise all his pleas in the said mutation case, i.e., Mutation Case No.3293 of 2020 which was directed to be decided in accordance with law.

8. Having heard learned counsel for the appellant regarding principal contention raised in the writ appeal that there being an alternative statutory remedy of Appeal under Rule-42 of the 1962 Rules, the writ petition was not maintainable, the contention has to be answered in the negative, in view of the facts and circumstances of the case.

9. In view of the above, the order dated 09.11.2021, passed in the W.P.(C) No.21259 of 2020, needs no interference and the Writ Appeal is dismissed being devoid of any merit.

10. The appellant shall appear before the concerned Tahasildar on 24th January, 2022, produce the certified copy of this order and the authority shall proceed in the matter afresh, in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

January 4th 2022
Cuttack

Dutta/Gs

