

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 38803 of 2021

Debasish Lenka

.... Petitioner

Mr. Biswa Prakash Dhal, Advocate

-versus-

***The Joint Commissioner,
Consolidation and Settlement, Cuttack
& others***

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
10.01.2022**

Order No.

1. This matter is taken up through Videoconferencing mode.
2. Petitioner in this writ petition seeks to assail order dated 20th September, 2017 (Annexure-9) passed by Joint Commissioner, Consolidation and Settlement, Odisha, Cuttack- Opposite Party No.1 in RP Case No.589 of 2016.
3. Mr. Dhal, learned counsel for the Petitioner submits that CS No.513 of 2015 is pending before learned Civil Judge (Senior Division), 1st Court Cuttack and an order of injunction has been passed. Opposite Party No.3 suppressing the same filed the aforesaid Revision under Section 15(b) of the Odisha Survey and Settlement Act, 1958. The revisional Court, without serving any notice on the Petitioner, disposed of the Revision on 20th September, 2017 directing the Tahasildar, Sadar Cuttack to correct the ROR on the basis of decree passed in FA No.32 of 1968 giving due opportunity to the parties concerned. Mr. Dhal submits that the Petitioner is seriously prejudiced as he was not afforded with opportunity of hearing in the Revision

Petition. Hence, he prays for setting aside of the impugned order under Annexure-9.

4. Mr. Mishra, learned ASC submits that there is nothing on record to show that the Petitioner was not given any opportunity of hearing. Further, it appears that the impugned order has been passed on the basis of the decree passed in FA No.32 of 1968. However, the allegation made by the Petitioner needs factual adjudication. In that view of the matter, he prays for dismissal of the writ petition.

5. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that before filing the writ petition the Petitioner ought to have filed an application for recall of the order under Annexure-9 in view of ratio decided in *Alekh Chandra Rath and another Vs. Commissioner of Land Records and Settlement, Odisha and others*, reported in 1989 (II) OLR 135.

6. This writ petition is accordingly disposed of with a direction that in the event the Petitioner files an application for recall of the order dated 20th September, 2017 (Annexure-9) explaining the delay as well as dealing with other grounds within a period of two weeks hence along with an authenticated copy of this order as per instruction given below before Joint Commissioner, Consolidation and Settlement, Odisha, Cuttack, he shall do well to take a decision on the same on its own merit giving opportunity of hearing to the parties concerned, as expeditiously as possible preferably within a period of three months from the date when notice becomes sufficient on the parties.

7. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 modified by Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(K.R. Mohapatra)
Judge



s.s.satapathy