

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 39215 of 2021

Sulata Mohapatra and another ***Petitioners***
Mr.Tusar Kumar Mishra, Advocate

-versus-

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

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
31.03.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition pray for a direction to Tahasildar, Cuttack Sadar-Opposite Party No.4 to dispose of Mutation Case bearing Misc. Case No.39 of 2017 at an early date.
3. Case of the Petitioners has a chequered career. Briefly stated, Petitioner No.2 was the purchaser of Hal Plot No.327 under Hal Khata No.244 to an extent of Ac.0.226 decimal, which is a part of CS Plot No.3492 under CS Khata No.614 of an area of Ac.1.00 decimal of Mouza Bahara Bisinabar under Cuttack Sadar tahasil in the district of Cuttack (for short 'the case land'). CS Khata No.614 was originally recorded in the name of one Keshab Mallick. Out of it, he sold an area Ac.0.240 decimal in favour of one Amal Kumar Banarjee, who in turn, sold the aforesaid area to Petitioner No.2, namely, Smt. Banalata Mohanty, vide RSD dated 28th November, 1967. During settlement operation, land in question was recorded in the name of Petitioner No.2 along with one Bishnupriya

Mohapatra at Khanapuri stage and subsequently draft ROR was issued in the name of Petitioner No.2. One Subrat Banarjee claiming to be heir of Amal Kumar Banarjee, filed Settlement Appeal No.157 of 1988, which was allowed and against that order, Petitioner No.2 filed Revision Case No.709 of 1989. However, the land was finally recorded in the name of State of Odisha and taking advantage of the same, her possession was interfered with by the government functionaries. Hence, said Banalata Mohanty filed TS No.246 of 1992 before learned Sub-Judge (1st Court), Cuttack impleading the Collector, Cuttack as well as Settlement Officer, Cuttack as defendants to the said suit praying for decree of title over Lot No.1 of schedule 'A' property (the case land) as occupancy tenant and for confirmation of her possession along with permanent injunction to restrain Defendant No.1-Collector, Cuttack therein to interfere with the possession.

3.1 Defendants, upon receipt of notice, did not appear and were set *ex parte*. Ultimately, *ex parte* judgment was passed on 28th September, 1993 with the following order:

"The suit is decreed ex parte against the defendants but considering the circumstances without costs. The right, title and interest of the plaintiff in respect of the suit schedule land is hereby declared and the possession of the plaintiff over the said land is hereby confirmed. The defendant No.1 is restrained from interfering with the peaceful possession of the plaintiff over the suit schedule land. As per the Survey and Settlement Act, the defendants are directed to correct the Record of Rights accordingly and to record that the suit schedule land in the name of the plaintiff."

3.2 Pursuant to the aforesaid judgment and decree, the Petitioner No.2 also filed Revision Case No.7706 of 2000

(1248/2003) under Section 15(b) of the Odisha Survey and Settlement Act, 1958 to correct the ROR in terms of the decree passed by learned Sub-Judge (1st Court), Cuttack in TS No.246 of 1992. The said Revision was allowed vide order dated 27th June, 2003 directing the Tahasildar, Sadar Cuttack to correct the ROR in the name of Petitioner No.2. Accordingly, the Petitioner No.2 approached the Tahasildar, Sadar Cuttack (Misc. Case No. 39 of 2017) to work out order dated 27th June, 2003 (Annexure-2) passed in Revision Case No.7706 of 2000.

3.3 Since the Tahasildar, Sadar Cuttack did not take any step to correct the ROR, Petitioner No.2 had to approach the Joint Commissioner, Land Records and Settlement, Odisha, Cuttack by filing Misc. Case No.140 of 2004 and the Joint Commissioner by his order dated 15th February, 2005 (Annexure-2 series) directed the Tahasildar, Cuttack Sadar to take necessary steps for disposal of the matter latest by 30th March, 2005. Even after the direction of the Joint Commissioner, the Tahasildar did not take any action for correcting ROR in the name of Petitioner No.2. Finding no other alternative, the Petitioner No.2 filed W.P.(C) No.2087 of 2009 before this Court, which was disposed of vide order dated 3rd March, 2009 with a direction to the Tahasildar, Sadar Cuttack to dispose of Remand Revision Case No.7706 of 2000 (1248 of 2003) pending before him within a period of six months from the date of communication of the said order. However, the Tahasildar, Sadar Cuttack, vide his order dated 21st December, 2017 passed in Misc. Case No.39 of 2017 (arising out of RP No.7706/2000-1248 of 2003), rejected both the cases.

3.4 Being aggrieved, the Petitioners preferred Mutation Appeal No.43 of 2018 before the Sub-Collector, Cuttack Sadar, who vide his order dated 3rd January, 2020, while setting aside the order, remanded the matter to Tahasildar, Sadar Cuttack for reconsideration. During pendency of the Mutation Case (Misc. Case No. 39 of 2017), although the Tahasildar called for the enquiry report and concerned Amin has submitted his report stating that the land in question has been alienated in the meantime in favour of Petitioner No.1, but the Tahasildar sat over the same and did not pass any order.

4. In the meantime, Collector, Cuttack and Settlement Officer, Cuttack, who were defendants in TS No.246 of 1992, filed an application in CMA No.552 of 2010 under Order IX Rule 13 read with Section 151 CPC to set aside *ex parte* judgment and decree dated 28th September, 1993 passed in the said Title Suit. The said application was dismissed vide order dated 29th January, 2013. However, the said order was not challenged before the higher forum within the statutory period.

5. Mr. Mishra, learned ASC, however, submits that assailing the said order dated 29th January, 2013 passed in CMA No.552 of 2010, the Collector, Cuttack as well as Settlement Officer, Cuttack has preferred FAO No.14 of 2017 along with a petition for condonation of delay, which is pending for adjudication before the Court of learned District Judge, Cuttack.

5.1 It is submitted by Mr. Mishra, learned counsel for the Petitioners that although the appeal has been preferred since 2017, but no step has yet been taken in the limitation matter for

condonation of delay. As such, there is no appeal in the eyes of law.

6. In the above backdrop of facts, Mr. Mishra, learned counsel for the Petitioners submits that a direction may be made to dispose of Mutation Case (Misc. Case No.39 of 2017) at an early date and to record the land in question in favour of Petitioner No.1 being the subsequent purchaser.

7. Mr. Mishra, learned ASC although does not dispute the aforesaid factual position, but submits that steps are being taken for disposal of FAO No.14 of 2017 pending before learned District Judge, Cuttack. Hence, the Tahasildar, Sadar Cuttack should await the decision of the learned District Judge, Cuttack to proceed with Mutation (Misc.) Case No.39 of 2017.

8. Taking into consideration the submissions made by learned counsel for the parties, this Court finds that CMA No.552 of 2010 was disposed of on 29th January, 2013. The said order although challenged after four years before the learned District Judge, Cuttack in FAO No.14 of 2017, but delay in filing such appeal has not yet been condoned. As such, there is no appeal in the eyes of law. Mutation is a fiscal measure to collect revenue and it does not confer any title. Thus, the Tahasildar, Sadar Cuttack should not wait for eternity to dispose of Mutation Case No.39 of 2017 without any justifiable cause. From the submissions made by learned counsel for the parties and on materials available on record, it appears that due to the inaction of the State authorities, a common citizen is made to suffer without any justifiable reason and is being deprived of enjoying the property independently.

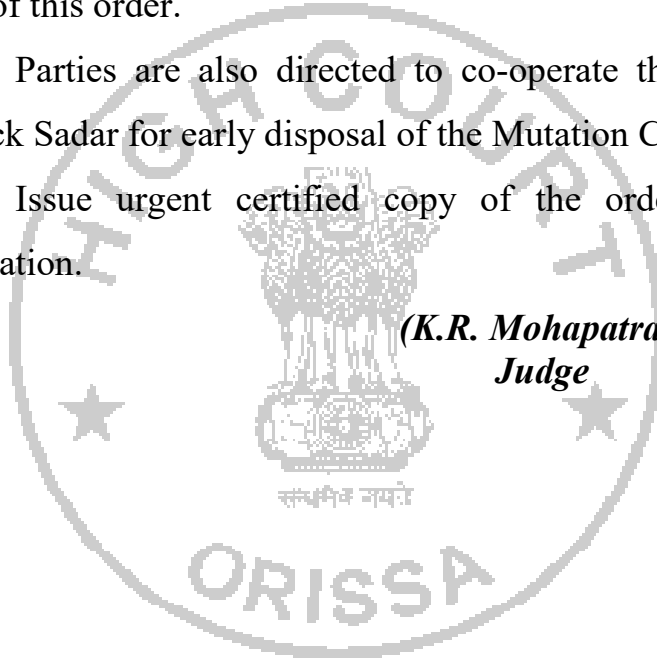
9. In that view of the matter, this Court feels that the Mutation (Misc.) Case No.39 of 2017 pending before the Tahasildar, Sadar Cuttack should be disposed of at an early date in accordance with law.

10. Accordingly, the writ petition is disposed of with a direction to the Tahasildar, Sadar Cuttack to make an endeavour for early disposal of Mutation Case No.39 of 2017 in accordance with law, as expeditiously as possible, preferably within a period of four months from production of certified copy of this order.

10.1 Parties are also directed to co-operate the Tahasildar, Cuttack Sadar for early disposal of the Mutation Case.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy