

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 39219 OF 2021

Bimala Prasanna Acharya

....

Petitioner

M/s. S. Roy, 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

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 22nd October, 2021 passed by the Additional Sub-Collector, Bhubaneswar in Misc. Case No.01 of 2017 whereby he rejected an application filed by the Petitioner under Section 41 of the Orissa Survey and Settlement Act, 1958(for short 'the Act') to correct clerical error in the entries made in the R.O.R. finally published under Section 12-B of the Act.
3. It is submitted that the Additional Sub Collector, Bhubaneswar without taking note of the observation made by this Court in W.P.(C) No.25185 of 2019 disposed of on 5th February, 2020, mechanically rejected the application under Section 41 of the Act without verifying the case record and the ratio decided in ***Gajendra Behera and another –vrs.- State of Orissa*** reported in ***2016 (II) OLR 399***. The Additional Sub-Collector, Bhubaneswar erroneously observed that since the final R.O.R. under Section 12-B of the Act has already been published, he has no jurisdiction to make any correction to

entry therein and observed that it is open to the Petitioner to seek relief under Section 15(b) of the Act.

4. Mr. Mishra, learned ASC although defended the impugned order under Annexure-10 but could not justify the reason for disallowing the prayer made by the Petitioner.

5. The Petitioner had earlier approached this Court in W.P.(C) No.25185 of 2019 with a prayer to set aside the order dated 9th August, 2019 passed by the Additional Sub-Collector, Bhubaneswar in Misc. Case No.01 of 2017, whereby he rejected the petition for correction in the name of the Petitioner as 'Bimala Prasanna Acharya' instead of 'Bimal Prasad Acharya' as recorded in the column-2 of the R.O.R finally published under Section 12-B of the Act.

6. This Court while disposing of the aforesaid writ Petition directed as under;

"Taking into consideration the submissions of learned counsel for the parties, it is apparent that the authority specially empowered by the Board of Revenue has power to correct any clerical or arithmetical mistake in any map, plan or in any record-of-rights or any error arising therein from any accidental slip or in omission. This aspect has not been taken into consideration by the Addl. Sub-Collector, Bhubaneswar while passing the impugned order.

In that view of the matter, the impugned order under Annexure-6 is set aside and the matter is remitted back to the Addl. Sub-Collector, Bhubaneswar-Opposite Party No.3 to examine the matter and pass necessary orders in accordance with law within a period

of six months from the date of production of certified copy of this order.”

7. On perusal of the impugned order, it appears that the Additional Sub-Collector, Bhubaneswar has mechanically proceeded with the matter and reiterated his earlier order dated 9th August, 2019 which was set aside on the selfsame ground. He has also not taken into consideration the ratio decided in the case of *Gajendra Behera (supra)*.

8. In that view of the matter, the impugned order is not sustainable. The Additional Sub-Collector, Bhubaneswar is directed to consider the application filed by the Petitioner under Section 41 of the Act on merit and pass a reasoned order thereon without reiterating the ground that he has no jurisdiction to entertain such application after final publication of R.O.R. under Section 12-B of the Act. The impugned order under Annexure-10 is, therefore set aside. The Additional Sub-Collector, Bhubaneswar shall re-adjudicate the matter in terms of the observation made herein above.

9. In order to avoid delay, the Petitioner is directed to appear before the Additional Sub-Collector, Bhubaneswar on 11th April, 2022 along with certified copy of this order to receive further instruction.

A free copy of this order shall be supplied to Mr. Mishra, learned ASC for information and communication.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge