

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 41340 OF 2021

Tapaswini Panda

.... Petitioner

Mr. Yeeshan Mohanty, Senior Advocate
being assisted by
Mr. P.C. Biswal, Advocate

-versus-

***Additional Commissioner,
Consolidation and Settlement,
Sambalpur and others***

.... Opp. Parties

Mr. Dillip Kumar Mishra
Additional Government Advocate
Mr. Amitav Tripathy
on behalf of
Mr. B. Sahoo, Advocate
(for Opp. Party Nos. 3 and 5)

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

**ORDER
21.03.2022**

Order No.

3.
 1. This matter is taken up through hybrid mode.
 2. As per the report of the S.R., notice on the Opposite Parties is treated to be sufficient.
 3. The Petitioner in this writ petition seeks to assail the order dated 17th June, 2021(Annexure-4) passed in R.P. No.2097 of 2015 filed by Opposite Party Nos. 10 to 14 under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short 'the Act'), which was disposed of on compromise without impleading the present petitioner who is the legal heir of late Achutananda Mishra, as party to the said revision.
 4. Mr. Biswal, learned counsel for the Petitioner submits that admittedly the Petitioner is the daughter of late Achutananda Mishra, whose name has been recorded in the R.O.R. in respect of the land in question along with his brothers, namely, Balamukund

Mishra and Sachitananda Mishra (Annexure-1). Although there was a prior partition between Balamukund Mishra, Sachitananda Mishra and Achutananda Mishra, but the R.O.R. was published jointly. Hence, a revision petition under Section 15(b) of the Act was filed for separate recording of the land in respect of three branches. Opposite Party Nos. 10 to 14 only impleading the sons of late Achutananda Mishra, namely, Lambodar Mishra and Damodara Mishra and one daughter, namely, Kamalini Mishra as parties to the revision filed revision petition under Section 15(b) of the Act.

5. During pendency of the revision petition, Opposite Party Nos. 10 to 14 along with Lambodar, Damodara, Lokanath, Dayanidhi and one Debajani Mishra who is Opposite Party No. 5 to this writ petition, entered into compromise and the impugned order has been passed directing separate recording of land in the name of Opposite Party Nos. 10 to 14 ignoring the claim of the Petitioner. Hence, this writ petition has been filed.

6. Mr. Tripathy, learned counsel for the Opposite Party Nos. 3 and 5 submits that the impugned order may be set aside and the matter may be remitted back to the Additional Commissioner, Consolidation and Settlement, Sambalpur for fresh adjudication giving opportunity of hearing to the parties concerned including the present Petitioner.

7. Mr. Mishra, learned Additional Government Advocate submits that since it is an *inter se* dispute between the private parties, the contentions of learned counsel appearing on their behalf may be considered accordingly.

8. Taking into consideration the submissions made by the learned counsel for the parties, it prima facie appears that the Petitioner is the daughter of late Achutananda Mishra as

described in the R.O.R. annexed to the writ petition as Annexure-6. The Petitioner has also filed H.S.C. Certificate issued by the Board of Secondary Education, Odisha, Cuttack which discloses that she is the daughter of late Achutanada Mishra.

9. In view of the above, this Court finds that the Petitioner who is a necessary party to the revision petition, has not been impleaded as party along with his sisters, who are daughters of late Achutananada Mishra.

10. Accordingly, this Court sets aside the order under Annexure-4 and remits the matter back to the Additional Commissioner, Settlement and Consolidation, Sambalpur for fresh adjudication of the revision petition filed under Section 15(b) of the Act giving opportunity of hearing to the legal heirs of Balamukund Mishra, Sachitananda Mishra and Achutananda Mishra, who were the original recorded tenants in respect of the land in question under Annexure-1.

11. In the consequence of setting aside the order under Annexure-4, the R.O.R. published under Annexure-5 in the name of Lambodar Mishra, Damodara Mishra and Debajani Mishra in respect of Khata No.559/6773 under Sambalpur town, Unit-15, Ainthapalli is also set aside.

12. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge