

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO.41513 OF 2021

Sushant Kumar Mohapatra

.... ***Petitioner***
Miss Deepali Mahapatra,
Advocate

-versus-

State of Odisha and others

.... ***Opp. Parties***
Mr. D.K. Pani,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
03.03.2022

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition prays for a direction to set aside the order dated 15th July, 2013 (Annexure-7) passed by the Assistant Settlement Officer, Rental Colony, Bhubaneswar- Opposite Party No.6 in Suo Motu Rent Objection Case No. 7671/3615 of 2013.
 3. Miss Mahapatra, learned counsel for the Petitioner submits that one Gopal Charan Gadabad being a landless person had applied for lease of land for agricultural purpose to the Tahasildar, Bhubaneswar. Accordingly, Lease Case No.263 of 1966-67 was initiated on the file of Tahasildar, Bhubaneswar and complying with the provisions of law, said Gopal Charan Gadabad was settled with Sabik Khata No. 645/16, Plot No.2726, Kissam-Baje Fasal-3 measuring an area Ac.1.190 decimals out of the total area Ac.1.390 decimals in mouza Andharua under Bhubaneswar Tahasil in the district of Khurda. Accordingly, R.O.R. was issued under Annexure-2. After his death, his legal heirs for their legal

necessity alienated an area of Ac.0.056 decimals to the present Petitioner through their Power of Attorney, namely, Subash Chandra Samantray, vide RSD dated 25th May, 2005 under Annexure-4 and delivered possession. Since then, the Petitioner is in possession over the land in question. While the matter stood thus, the settlement operation started in the locality. During settlement operation, Yadasta was also prepared in the name of the Petitioner and draft R.O.R. was also issued in his name under Annexures-5 and 6 respectively. At this juncture, the Assistant Settlement Officer initiated Suo Motu Rent Objection Case No. 7671/3615 of 2013 in respect of the land in question and without serving any notice on the Petitioner in whose favour draft R.O.R. was issued directed to settle the land in the name of the Government under '*Abadajogya Anabadi*' status. The Petitioner being not served with any notice could not know about the impugned order under Annexure-7. After completion of the settlement operation, R.O.R. under Annexure-8 was also prepared in the name of the Government. Subsequently, the Petitioner came to know about the impugned order under Annexure-7 and finding no other alternative has filed this writ petition for the aforesaid relief.

4. This Court considering the submission of learned counsel for the Petitioner directed learned State Counsel to produce the case record in Suo Motu Rent Objection Case No. 7671/3615 of 2013, disposed of on 15th July, 2013. Pursuant to the said direction, Mr. Pani, learned Additional Standing Counsel produced the certified copy of the case record, which discloses that notice was issued to one Shusanta Kumar Mohapatra in a

postcard. However, there is no material on record to show that notice was ever served on the Petitioner.

5. Miss Mahapatra, learned counsel for the Petitioner also produced documents in support of her case, which are attached to the case record of W.P.(C) No.41507 of 2021 to be heard analogously to this writ petition.

6. Mr. Pani, learned Additional Standing Counsel could not produce any material to show that notice in Suo Motu Rent Objection Case No. 7671/3615 of 2013 was ever served on the Petitioner in whose favour draft R.O.R. was prepared under Annexure-6. He, however, submits that since final R.O.R. in respect of Andharua mouza has already been published under Section 12-B of the Orissa Survey and Settlement Act, 1958 (for short 'the Act'), the Petitioner has a remedy of revision under Section 15(b) of the Act to assail the correctness of the R.O.R. Hence, this writ petition is not maintainable.

7. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that the Assistant Settlement Officer has no jurisdiction to sit over the lease granted in favour of Gopal Charan Gadabad in view of the ratio decided in the case of ***Smt. Lily Nanda and two others –v- State of Odisha and others***, reported in 2018 (I) OLR 559. Although there is force in the submission of Mr. Pani, learned Additional Standing Counsel to the effect that appropriate remedy for the Petitioner after publication of final R.O.R. under Section 12-B of the Act will be by filing a petition under Section 15(b) of the Act, but in view of the observations made by a Division Bench of this Court in ***Smt. Lily Nanda*** (supra) and observation of this

Court in W.P.(C) No.516 of 2016, disposed of vide order dated 21st July, 2016, the order passed by the Assistant Settlement Officer under Annexure-7 is not sustainable being without jurisdiction and thus, the R.O.R. published pursuant to the same is also not sustainable.

8. Accordingly, the impugned order dated 15th July, 2013 under Annexure-7 is set aside. Consequently, the final R.O.R. published pursuant to the impugned order is also set aside and the matter is remitted back to the Assistant Settlement Officer, Rental Colony, Bhubaneswar (now functioning at Major Settlement Office, Jobra, Cuttack)-Opposite Party No.6 to consider the case afresh giving opportunity of hearing to the parties concerned.

9. In order to avoid further delay in the matter, the Petitioner is directed to appear before the Assistant Settlement Officer, Rental Colony, Bhubaneswar (now functioning at Major Settlement Office, Jobra, Cuttack)-Opposite Party No.6 on 21st March, 2022 along with certified copy of this order to receive further instruction in the matter.

10. 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

bks/ms