
(2015) 07 OHC CK 0067
In the Orissa High Court
Case No : Writ Petition (C) No. 10718 of 2015

Budhuram Bhoie and Others	Vs	APPELLANT
Tahasildar, Lakhanpur		RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 15, 25, 32

Citation : (2015) 2 ILR Ori 517

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : Ashok Mohanty, Senior Advocate, for the Appellant; S.P. Mishra, Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Akshaya Kumar Rath, J—In this writ petition, challenge is made to the order dated 15.4.2015, vide Annexure-4, passed by the Tahasildar, Lakhanpur, opposite party, in Misc. Case No. 1 of 2015, whereby and whereunder the opposite party corrected the record-of-right (hereinafter referred to as "the ROR") under Rule 34(e) of the Orissa Survey & Settlement Rules, 1962 (hereinafter referred to as "the Rules"). The case of the petitioners is that their forefathers were the recorded tenants of the land appertaining to Khata No. 137 of Mouza-Sashajbhal under Lakhanpur Tahasil of Jharsuguda District in the Hamid settlement. The petitioners are in possession of the said property. While the matter stood thus, the opposite party initiated a suo motu proceeding, which is registered as Misc. Case No. 1 of 2015 and issued notice to them and other co-sharers. In the notice, vide Annexure-2, it is stated that as per verification, Plot No. 752, Khata No. 137 has an area Ac. 1.090 dec, but in the ROR the area is mentioned as Ac. 0.040 dec. Similarly, Plot No. 753 appertaining to Khata No. 161 is a Government plot having area of Ac. 0.040 decimal as against Ac. 1.090 dec. As per ROR, Plot No. 753 is a pond, whereas Plot No. 752 is the cultivable land. On verification, it was found that Plot No. 752 is a pond and Plot No. 753 is

a cultivable land. Pursuant to issuance of notice, the co-sharers including the petitioners entered appearance and filed their objections, inter alia, challenging the maintainability of the proceeding. It is stated that the Settlement Commissioner has the jurisdiction to make any changes in the ROR and Map. Further, the proceeding was initiated to acquire the land appertaining to Plot No. 753 for establishment of industry. By order dated 15.4.2015 opposite party allowed the misc. case.

2. Heard Mr. Ashok Mohanty, learned Senior Advocate along with Mr. K.A. Guru, learned counsel for the petitioners and learned Advocate General for the opposite party.

3. The sole question, inter alia, hinges for consideration is as to whether after publication of ROR, the Tahasildar, Lakhanpur has the jurisdiction to correct the same under Rule 34(e) of the Rules?

4. Rule 34 of the Rules, which is the hub of the issue, is quoted below;

"34. Grounds on which correction of the record-of-rights and map is to be made- The Tahasildar may on application in that behalf of any person interested or on receipt of a report from any of his subordinate officers or on receipt of a notice from the Registrar or Sub-Registrar appointed under the Indian Registration Act, 1908, or from a Court or on his own motion, order any change of any entry in the record-of-rights according to the rules hereinafter prescribed on any one or more of the following grounds, namely;

(a) that all persons interested in any entry in the record-of-rights wish to have it changed;

(b) that by a decree in a civil suit, any entry therein has been declared to be erroneous;

c) that being founded on a decree or order of a Civil Court or on the order of any competent authority, the entry therein is not in accordance with such decree or order;

(d) that such decree or order has subsequently been varied on appeal, revision or review;

(e) that any entry therein has no relationship with the existing facts; and

(f) that by preparation of a survey record under Chapter II of the Act, any change is necessitated in the record-of-rights."

5. The subject-matter of dispute is no more res integra. An identical question came up for consideration before a Division Bench of this Court in the case of Ganesh Prasad Das Vs. Tahasildar and Others, (1997) 1 OLR 13 . The Bench, speaking through Justice P.K. Misra (as then he was), in paragraph-2 of the report came to hold that the provisions contained in Rule 34 (a) to (f) are self-explanatory and envisage various circumstances necessitating correction of ROR.

Rule 34(e) has been couched in wide terms. It was further held that in view of the nature of jurisdiction conferred under Section 16 of the Orissa Survey and Settlement Act, 1952 which relates to maintenance of record and other clauses contained in Rule 34, clause (e) is to be confined to matters arising after the publication of the ROR and not on the basis of facts which existed prior to the preparation of the ROR. Rule 34(e) can cover a case where the entry has become redundant in view of any fact arising after the preparation of the ROR and existing at the time of the application on consideration thereof. To construe otherwise would defeat the very purpose for which provision has been made for maintenance of ROR under Section 16 of the Act as well as Chapter-IV of the Rules and would ultimately vest with the Tahasildar unbridled power to change any entry in the ROR on the ground that there is no relationship with the existing facts, even though the said facts existed prior to the preparation of the ROR. The proceedings, which are undertaken pursuant to Rule 34 are popularly known as "mutation proceedings", which are undertaken to maintain and keep the record upto date.

6. The same view has been taken in the case of Harihar Mohapatra and Others Vs. Commissioner of Land Records and Settlement and Others, (1998) 2 OLR 495 . It was held that a conjoint reading of the provision makes it clear that correction of ROR and map to be made on the grounds enumerated in Rule 34 have to be based on cause of action which arose after preparation of ROR.

7. On the anvil of the decisions cited supra, the case of the petitioner is required to be examined.

8. The suo motu proceeding was initiated by the opposite party and notice was issued to the petitioners as well as other co-sharers. The notice dated 2.2.2015, vide Annexure-2, reveals that as per verification it is ascertained that Plot No. 752, Khata No. 137, area Ac. 0.040 dec. has been recorded as Ac. 1.090 dec. Similarly, Plot No. 753 appertaining to Khata No. 161, a Government plot, area Ac. 1.090 dec. has been recorded as Ac. 0.040 dec. in the major settlement ROR. Further, as per the ROR, Plot No. 753 is a pond whereas Plot No. 752 is a cultivable land. On verification, it was found that Plot No. 752 is a pond and Plot No. 753 is a cultivable land.

9. On a cursory perusal of the notice, vide Annexure-2, as well as the order dated 15.4.2015 passed by the opposite party in Misc. Case No. 1 of 2015, it is evident that the fact existed prior to the preparation of ROR. In view of the same, the opposite party has travelled beyond his jurisdiction in initiating the suo motu proceeding and issued direction to correct the ROR.

10. The logical sequitur of the analysis made in the preceding paragraph is that the order dated 15.4.2015, vide Annexure-4, passed by the Tahasildar, Lakhanpur, opposite party, in Misc. Case No. 1 of 2015 is not sustainable in the eye of law. Accordingly, the same is quashed.

11. The writ petition is allowed. Before parting with the case, this Court

observers that if any cause of action arose prior to the publication of the ROR and thereafter ROR is finally published, the aggrieved party may avail the remedy provided under Sections 15, 25 or 32 of the Orissa Survey & Settlement Act or by filing a civil suit.