

(1996) 11 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4768 of 1996

Ganesh Prasad Das

APPELLANT

Vs

Tahasildar and Others

RESPONDENT

Date of Decision : 12-11-1996

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 11, 16, 18, 36
Orissa Survey and Settlement Rules, 1962 — Rule 32, 33, 34

Citation : (1997) 1 OLR 13

Hon'ble Judges : P.K. Misra, J; P. Ray, J

Bench : Division Bench

Advocate : A.K. Mishra, S.K. Mishra and M.R. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

P.K. Misra, J.—In this writ application, the petitioner challenges the correctness of the order dated 18-11-1995 passed by the Tahasildar, Dhamnagar, in Misc. Case No. 368/87 which had been initiated under Rule 34 (e) of the Orissa Survey and Settlement Rules, 1962 (hereinafter called the "Rules"). The Tahasildar refused to correct the record-of-rights in respect of plot Nos. 1944 and 1945 in M. S. Khata No. 1057 on the ground that the application strictly did not come within the purview of the Tahasildar under Rule 34 (e).

2. Rule 34 which is contained in Chapter-IV of the Rules relates to question of maintenance of record-of-rights and map. Chapter-IV of the Rules derive sustenance from Section 16 of the Orissa Survey and Settlement Act, 1958 (hereinafter called the "Act"). For convenience, Section 16 is extracted hereunder :

"16. Maintenance of record-

In order to keep the map and the record-of-rights up-to-date the same shall be maintained in accordance with such rules as may be prescribed in that behalf"

There is no dispute that the Rules contained in Chapter-IV of the Rules are the

prescribed statutory rules which have been framed to give effect to the provisions contained in Section 16 of the Act. "Records-of-Rights" are prepared in accordance with "chapter-III of the Act. Under the scheme of the provisions contained in Chapter-III of the Act, record-of-rights is finally published u/s 12-B of the Act and thereafter power has been vested in the Board of Revenue to correct any record-of-rights. The record-of-rights as prepared u/s 12-B or corrected u/s 15 is, of course, subject to the decision of the Civil Court provision for which has been made u/s 42 of the Act. Section 16 only envisages maintenance of records with a view to keep the map and the records-of-rights up-to-date. By the very nature of the jurisdiction conferred u/s 16, it is self-evident that the appropriate authority is to keep the record-of-rights up-to-date by taking note of changes occurring after the finalisation of the record-of-rights. Rule 32 of the Rules envisages that the record-of-rights and the copy of the map as finally published in accordance with the provisions of the Act should be maintained and kept up-to-date in accordance with the Rules provided in Chapter-IV of the Rules. Section 16 and the provisions of Chapter-IV of the Rules come into play only when settlement operations as envisaged in Chapter-III of the Act are not in progress. This is made clear by Rule 33 which provides for abatement and suspension of proceedings under Chapter-IV of the Rules when an order is made u/s 11, 18 or 36 of the Act. Rule 34 which is important for the purpose of this base envisages the grounds on which corrections of the record- of-rights and map is to be made and is quoted hereunder :

"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 an 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."

The provisions contained in Rule 34(a), (b), (c), (d) and (f) are self-explanatory and envisage various circumstances necessitating correction of record-of-rights. Rule 34(e) on the face of it appears to have been couched in wide terms, but keeping in view the nature of jurisdiction conferred u/s 16 and the other clauses contained in Rule 34, there cannot be any doubt that this Clause (e) is to be confined to matters arising after the publication of record-of-rights and not on the basis of facts which existed prior to the preparation of the record-of-rights. For example, if there is any transaction after the publication of the record-of-rights, such as transfer, application can be made for correction of record-of-rights on the basis of such transfer. Similarly, if the property recorded in the name of a person is Sub-sequently acquired by authorities under land acquisition proceeding it is necessary as well as the duty of the Tahasildar to correct such record-of-rights. These examples are only illustrative in nature and by no means exhaustive. Rule 34(e) can cover a case where the entry has become redundant in view of any fact arising after the preparation of the record-of-rights and existing at the time of the application or consideration thereof. To construe otherwise would defeat the very purpose for which provision has been made for maintenance of record-of-rights u/s 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 record-of-rights on the ground that there is no-relationship with the "existing facts", even though the said facts; existed prior to the preparation of the record-of-rights. The proceedings which are undertaken pursuant to Rule 34 are popularly known as "mutation proceedings" which are primarily undertaken to maintain and keep the record up-to-date. Executive instructions have been issued; by the State providing guidelines for such mutation proceedings. Such executive instructions have been issued for the purpose of facilitating disposal of mutation cases as per Chapter-IV of the Rules and cannot be in derogation of the powers conferred under Rule 34. If there is any conflict or inconsistency between the Rule and any administrative instruction, it is obvious that the Rule will prevail.

3. In the present case, the Tahasildar did not accede to the request of the petitioner for change of record-of-rights on the ground that all the persons interested in the entry had not consented to change the entry. This observation is evidently relatable to Rule 34(a). Since the allegations on the basis of which the application was made related to events much prior to the preparation of record-of-rights and the interested parties were not ad idem regarding the change to be effected and no order of any competent Court had been obtained, the Tahsildar refused to entertain the application in exercise of jurisdiction under Art. 227 of the Constitution, we are not persuaded to take a different view of the matter. It is, however, made clear that the order itself was subject to appeal under Rule 42. Even otherwise, it is open to the aggrieved party to pursue his remedy in appropriate Civil Court if so advised.

4. Before parting with the case, it is necessary to deal with a contention which had been raised by the learned Additional Standing Counsel on behalf of the

State. Referring to the Orissa Survey and Settlement Manual, 1984 Edition, published by the Cuttack Law Times, the learned Additional Standing Counsel contended that Rule 34(e) of the Rules has been deleted. Reference to the relevant page in the book published by the Cuttack Law Times indicated as if Rule 34(e) has been deleted by Notification No. 15878-8-38/80R, dated 11-3-1981. Since a doubt arose as to the correctness of such submission, the concerned Gazette Notification published in the Orissa Gazette. Extraordinary No. 329 dated March 18.1981, was verified and on verification it appears that such publication by the Cuttack Law Times indicating deletion of Clause (e) of Rule 34 does not appear to be correct. In fact, S. R. O. No. 229,81 dated 11th March, 1981, issued under letter No. 15878-533/80-R, published in the aforesaid Gazette, only relates to deletion of the words "or authorise any of the subordinate officers to order subject to his approval which was existing in the main part of Rule 34 prior to its deletion. The Cuttack Law Times is a premier publishing house of law books in Orissa for last sixty years or so and it was expected of the said institution to be more careful in the matter.

5. In the result, the writ application is disposed of subject to to the aforesaid observations, without any order as to costs.

Pradipta Ray, J.

6. I agree.