

(2001) 11 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 12722 of 2001

Gati Krisna Misra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Survey and Settlement Act, 1958 — Section 14
Orissa Survey and Settlement Rules, 1962 — Rule 34

Citation : (2001) 92 CLT 801 : (2002) 1 OLR 69

Hon'ble Judges : R.K. Patra, Acting C.J.; B.P. Das, J

Bench : Division Bench

Advocate : M.C. Jena and M. Jena, for the Appellant; P.K. Mohanty, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, A.C.J.

1. The petitioner in this application under Articles 226 and 227 of the Constitution of India seeks quashing of the order dated 13-12-1999 of the Tahasildar, Dhenkanal at Annexure 3 and order dated 11-7-2001 of the Sub-Collector, Dhenkanal at Annexure-4. His further prayer is that the Tahasildar, Dhenkanal opp. party No. 4 should be directed to correct the Record-of-Right by recording his name as tenant in respect of the land admeasuring Ac.0.566 decimals appertaining to Plot Nos. 2994, 2995, 2996 and 2997 in Khata No. 2099 of Mouza-Dhenkanal town (hereinafter referred to as "the disputed land").

2. Briefly stated, the petitioner's case is that he is the owner of the disputed land. During Khanapuri operation the disputed land was recorded in his name, but during the attestation his name was deleted and the disputed land was recorded in the Abadajogya Anabadi Khata in Government holding with a note of possession in his favour since 1942-43. Being felt aggrieved by such erroneous and illegal noting, the petitioner filed Settlement Revision No. 1411 of 1967 u/s

14 of the Survey and Settlement Act, 1958 before the Member, Board of Revenue, Orissa. The State of Orissa represented by the Collector, Dhenkanal was the opposite party in the said revision. The learned Member, Board of Revenue by his order dated 6-11-1969 at Annexure-1 series allowed the revision with a direction to correct the R.O.R. The aforementioned order dated 6-11-1969 was duly communicated to the Collector, Dhenkanal by letter No. 666/LRS dated 22-1-1970 (Annexure-2) for taking necessary action. The Collector remained callous and did not comply the direction made by the learned Member, Board of Revenue in the aforesaid order dated 6-11-1969. It was the legal duty of the Collector and the Tahasildar to obey the said order passed by their superior and it was not necessary on the part of the petitioner to apply for mutation. The petitioner, however, by way of abundant caution filed Mutation Case No. 3618 of 1998 before the Tahasildar, Dhenkanal to correct the R.O.R. as per the direction of the learned Member. The Tahasildar without appreciating the legal position and in order to cover up his lapses, illegally rejected the mutation case by order dated 13-12-1999 at Annexure-3. This led to filing of appeal by the petitioner before the Sub-Collector, Dhenkanal (Mutation Appeal No. 2 of 2000), but the Sub-Collector failed to appreciate the grounds of challenge and illegally rejected the appeal by order dated 11-7-2001 at Annexure-4. The assertion of the petitioner is that he has been in peaceful possession of the disputed land and his title over it has not been extinguished.

3. We have heard Shri Jena for the petitioner and Shri Mohanty, learned Additional Government Advocate for the opposite parties.

4. There is no dispute that the learned Member, Board of Revenue passed an order in favour of the petitioner on 6-11-1969 in Settlement Revision No. 1411 of 1967. For the sake of relevancy, the order is quoted hereunder :--

"The State files a petition that they do not oppose.

Seen A. D. M."s letter. Correct R. O. R.

Record petitioner"s name as tenant and the disputed lands recorded in his name as gharabari.

Revision allowed.

Correct R. O. R."

The Collector, Dhenkanal was intimated about the said decision of the learned Member, Board of Revenue in letter No. 666/ L.R.S. dated 22-1-1970 at Annexure-2. In our constitutional system the central theme is the concept of the rule of law which mean in the present context that the lower authorities are bound to obey and comply the direction given by the competent higher authority. In the hierarchy of the revenue administration, the Board of Revenue is the highest authority, and as such its order is binding and effective proprio vigore for all practical purposes. The order of the learned Member, Board of Revenue dated 6-11-1969 is required to be complied with by the revenue authorities including

the settlement authorities. The Tahasildar and Sub-Collector cannot absolve themselves by merely observing in the impugned orders to the effect that "It is not known as to why it was not given effect to in course of settlement operation." On the facts and circumstances, no exception can be taken to the steps taken by the petitioner in invoking rule 34 of the Orissa Survey and Settlement Rules, 1962 to get the record-of-rights corrected in the line and in accordance with the direction of the learned Member, Board of Revenue made in his order dated 6-11-1969. The Tahasildar and the Sub-Collector in order to cover up the laches in not implementing the aforesaid direction of the learned Member, Board of Revenue clearly erred in rejecting the claim made by the petitioner.

5. For the reasons aforesaid, the impugned order dated 13-12-1999 of the Tahasildar, Dhenkanal at Annexure-3 and the order passed in appeal dated 11-7-2001 of the Sub-Collector, Dhenkanal at Annexure-4 are hereby quashed. The Tahasildar, Dhenkanal-opposite party No. 4 is hereby directed to make necessary correction of the R.O.R. by recording the petitioner's name as tenant in respect of the disputed land within one month of receipt of this order and report compliance to this Court.

The writ application is allowed. There shall be no order as to costs.

B.P. Das, J.

6. I agree.

7. Writ application allowed.