

(2023) 02 OHC CK 0075

In the Orissa High Court

Case No : Writ Petition (C) No. 1203 Of 2023

Jyoshnarani Mishra

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Odisha Survey and Settlement Act, 1958 — Section 15, 43, 44
Odisha Survey and Settlement Rules, 1962 — Rule 34

Citation : (2023) 02 OHC CK 0075

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : S.B. Mohanty, G.N. Rout

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Petitioner has prayed for quashing of order dated 27th October, 2022 made by the Tahsildar in Mutation Case no.8390 of 2022 and direction for, in effect, causing mutation in the record.

2. Mr. Mohanty, learned advocate appearing on behalf of petitioner had obtained leave on earlier occasion to file additional affidavit. He files it with copy to Mr. Rout, learned advocate, Additional Standing Counsel appearing on behalf of State.

3. Impugned order dated 27th October, 2022 is reproduced below:

"27/10/2022

The case is taken up today. Perused the applicant's document and found that the case is referred to Assistant Settlement Officer vide W.P.C No.16975/2014 for information and necessary action. Hence the case is rejected as it is not related to the court of Tahsildar, Jatni."

4. Mr. Mohanty submits, his client had earlier filed writ petition WP(C) no.16975

of 2014. By order dated 6th April, 2018 there was direction for remitting the matter to Assistant Settlement Officer, to dispose of Objection Case no.3891/673 of 2013 in accordance with Odisha Survey and Settlement Act, 1958. The matter went to the Assistant Settlement Officer, who by order dated 30th November, 2021 had requested the Tahsildar to implement the order of the High Court. Hence, his client moved the Tahasildar. However, the Tahasildar, on impugned order, also refused to proceed. He seeks interference.

5. On query from Court Mr. Mohanty relies on rule 34 in Odisha Survey and Settlement Rules, 1962. Said rule provides for grounds on which correction of the Record of Rights and map is to be made. The Tahsildar is empowered thereby.

6. Mr. Rout relies on Section 15 to submit, it is only the Board of Revenue that can require revision of any Record of Right, where final record has been published.

7. Section 43 empowers the government to make rules for purpose of carrying out provisions in the Act. Section 44 requires the rules to be laid before the State Legislature. The rules were duly made and we have satisfaction that rule 34 allows for the Tahsildar to cause correction in the Record of Rights. Section 15 is power of revision by Board of Revenue, on direction made by it on its own motion or on application made to it. Here, petitioner had not applied to the Board of Revenue. Her cause for correction was adjudicated in her earlier said writ petition. There was clear direction for her contention for correction being dealt with. The direction was upon the Assistant Settlement Officer. Mr. Rout points out that petitioner could not produce lease sanction order of the Tahsildar, trace map nor lease confirmation order of the Additional District Magistrate, which is why there was request made by the officer to the Tahsildar.

8. There is no requirement for us to adjudicate contention raised on behalf of State that after final settlement, it is only the Board of Revenue, who can direct revision of the record. That contention ought to have been raised in petitioner's earlier writ petition. What transpires is that when there has been direction of coordinate Bench for dealing with the objection regarding requirement for correction of the record, the Tahsildar under rule 34 may do it. A public officer having a duty to do a thing is required to do it, when applied for by a citizen. This was law declared by the Supreme Court in L. Hirday Narain Vs. I.T.O., Bareilly, reported in AIR 1971 SC 33.

9. On above facts and circumstances we set aside and quash impugned order dated 27th October, 2022. The Tahsildar is directed to deal with petitioner's contention regarding correction of the record, in line with said order dated 6th April, 2018 in WP(C) no.16975 of 2014.

10. The writ petition is disposed of.

.....