

**(2014) 12 OHC CK 0043**

**In the Orissa High Court**

**Case No : Writ Petition (Civil) No. 8624 of 2006**

Keshab Chandra Panda

APPELLANT

Vs

Kasturi Mahatam

RESPONDENT

**Date of Decision : 02-12-2014**

**Acts Referred:**

Orissa Survey and Settlement Act, 1958 — Section 13, 15(b), 32

**Citation :** (2015) 120 CLT 545 : (2015) 1 ILR 323

**Hon'ble Judges :** B.K. Nayak, J

**Bench :** Single Bench

## **Judgement**

B.K. Nayak, J.—Initially order dated 09.02.2006 passed by the Joint Commissioner Settlement and Consolidation, Sambalpur in Settlement R.P. Case No. 592 of 2005 (Annexure-5) was challenged in this writ petition. Subsequently by way of amendment order dated 03.08.2012 (Annexure-9) passed by the Member, Board of Revenue Orissa, Cuttack in OSS Case No. 726 of 2003 has also been challenged by the petitioner.

2. The dispute relates to Ac. 1.57 of land out of Ac. 9.36 of Hamid Settlement Plot No. 1018 of Khunti No. 114 corresponding to M.S. Khata No. 687 and Plot Nos. 6104, 6105, 6106, 6107, 6112, 6087/8279, 6088/8280 and 6108/8281, measuring total area of Ac. 1.570 in village-Golgunda is the subject matter of dispute.

3. The disputed Plot No. 1018 of the Hamid Settlement is said to be a rayati land of one Dukhi Gauntiani Mahatam. On 10.08.1963 Dukhi Gauntiani sold the disputed land measuring Ac. 1.57 decimals out of the said plot to one Nirod @ Narendra Kumar Bhattacharya by registered sale deed and delivered possession. After vesting the State of Orissa claimed part of the disputed plot for which Dukhi Gauntiani filed T.S. No. 4 of 1966 against the State of Orissa in the court of the learned Sub-Judge, Sambalpur in respect of the land claimed by the State. In the trace map attached to the plaint the subject matter of the suit plot was specified in "Red" colour as described in Schedule "B" of the plaint apart from some other

undisputed plots. The suit was decreed on 13.05.1967 on contest with the finding that since the disputed plot was the rayati land of Dukhi Gauntiani, it did not vest to the State and accordingly it was found that Dukhi Gauntiani had title in respect of the disputed Hamid Settlement Plot No. 1018. The decree has become final.

Mutation Case No. 526/1992 was started before the Tahasildar, Sadar for the disputed land purchased by Sri Bhattacharya from Dukhi Gauntiani on receipt of Form No. 3 from the office of D.S.R., Sambalpur. The mutation case was allowed on 10.04.1992 and separate R.O.R. was issued in favour of Sri Bhattacharya. The present opposite party Nos. 1 to 5, who are the successors of Dukhi Gauntiani, challenged the mutation order by filing Mutation Appeal No. 5 of 1993. The appeal was allowed by the Sub-Collector and the matter was remanded to the Tahasildar for re-disposal. On remand, the Tahasildar again by his order dated 30.05.1995 allowed mutation confirming his previous order dated 10.04.1992. Against the order dated 30.05.1995 of the Tahasildar, opposite party Nos. 1 to 5 filed Mutation Appeal No. 27 of 1997 before the Sub-Collector, Sambalpur against Sri Bhattacharya. It is stated by the petitioner that during pendency of the said appeal Sri N.K. Bhattacharya died on 18.11.1997, but the fact of his death was neither brought to the notice of the appellate court (Sub-Collector) nor steps were taken for substitution in his place. By his order dated 03.02.1998, the Sub-Collector again remanded the matter to the Tahasildar for fresh disposal with direction to verify if the disputed land was the subject matter of Title Suit No. 4 of 1966. Since N.K. Bhattacharya had already died prior to disposal of the appeal, it is stated that the said appellate order is a nullity being passed against the dead man and hence non-est in the eye of law. After such remand, no notice was issued to the legal representatives of Sri N.K. Bhattacharya, nor anybody contested on his behalf, but by his order dated 20.04.1998 (Annexure-3), the Tahasildar erroneously held that the disputed land was the subject matter of T.S. No. 4 of 1966 and hence he disallowed mutation. In the meantime, after the death of the N.K. Bhattacharya, his widow and sons sold the disputed land to the present petitioner by virtue of a registered sale deed dated 01.11.1999 (Annexure-8) and delivered possession to him. After his purchase, the petitioner having come to know about the order under Annexure-3, challenged the same by filing Mutation Appeal No. 10 of 2002 before the Sub-Collector, Sambalpur. By his order dated 28.10.2005 (Annexure-4), the Sub-Collector allowed the appeal with the finding that in the title suit filed by Dukhi Gauntiani, the Suit land, i.e., "B" schedule property was shown in "Red" colour, whereas the land sold to Sri Bhattacharya by Dukhi Gauntiani was shown in "Blue" colour, which was not the subject matter of the suit. It was held further that after remand the Tahasildar did not issue any public notice or individual notice and did not make any fresh enquiry though the Amin report and the spot visit report of the Tahasildar show that Sri Bhattacharya was the owner in possession of the disputed land. It was also held that the disputed land was the rayati land of Dukhi and immune from vesting. Accordingly, the mutation appeal was allowed in favour of the petitioner.

4. Challenging the appellate order under Annexure-4, opposite party Nos. 1 to 5 filed Settlement Revision No. 592 of 2005 under Section 15(b) of the Orissa Survey and Settlement Act against the present petitioner, which was heard by the Joint Commissioner, Consolidation and Settlement and disposed of by the impugned order under Annexure-5 holding that since Burla Town where the disputed land situates, is again under settlement operation vide Government Notification No. 62147 dated 21.12.1999 and settlement work is in progress, the revision under Section 15(b) of the Orissa Survey and Settlement Act was not maintainable. The Joint Commissioner, however, further held that it was not competent for the Sub-Collector to pass order in mutation appeal during progress of the settlement operation and, therefore, the appellate order was non-existent in the eye of law and cannot be acted upon. The Joint Commissioner left the parties to agitate the matter in competent forum under relevant provisions of law.

5. It further transpires that a revision under Section 32 of the Orissa Survey and Settlement Act read with paragraph-111 of Orissa Mutation Manual was filed in the year 2003 purportedly by N.K. Bhattacharya before the Board of Revenue, Orissa, Cuttack which was registered as OSS Case No. 726 of 2003 against an appellate order of the Sub-Collector, Sambalpur passed in Mutation Appeal No. 27 of 1997 remanding the mutation case to Tahasildar. It is stated by the petitioner that the revision under Section 32 of the OSS Act could not have been filed by N.K. Bhattacharya, who was already dead since 18.11.1997. It is stated that some local people including some lawyers, who had greedy eyes on the disputed land had fraudulently managed to file OSS Case No. 726 of 2003 in the name of Mr. N.K. Bhattacharya through a fictitious power of attorney holder.

By his order dated 03.08.2012 (Annexure-9) the Member, Board of Revenue set aside the order passed by the Sub-Collector in Mutation Appeal No. 27 of 1997 and the orders of the Tahasildar, Sambalpur dated 30.05.1995 and 20.04.1998 in Mutation Case No. 526 of 1992 and remanded the matter to the Tahasildar with a direction to examine all relevant records and give opportunity of hearing to all parties and dispose of the case as per law.

6. With respect to the death of N.K. Bhattacharya, the petitioner has filed his death certificate vide Annexure-7 which shows that N.K. Bhattacharya died on 18.11.1997.

7. A counter affidavit is filed by opposite party Nos. 1 to 5 which indicates that the disputed property is claimed by the opposite parties as successors of Dukhi Gauntiani. However, it is not denied that Dukhi Gauntiani sold the land to N.K. Bhattacharya and that the successors of N.K. Bhattacharya sold the land to the present petitioner. It is also not specifically denied that N.K. Bhattacharya died on 18.11.1997. The genuineness of the death certificate vide Annexure-7 has not been specifically denied.

8. It appears from the impugned order under Annexure-5 that in Settlement

Revision No. 592 of 2005 apart from challenging the appellate order passed by the Sub-Collector in Mutation Appeal No. 10 of 2002, opposite party Nos. 1 to 5 had also challenged the major settlement R.O.R. published in respect of the disputed land. It further appears from the certified copy of the plaint in T.S. No. 4 of 1966 (Annexure-6) that Dukhi Gauntiani claimed rayati right in respect of the entire Hamid Settlement Plot No. 1018 and specifically averred that she had sold Ac. 1.57 decimals out of the said plot in favour of Mr. Bhattacharya and, therefore, she claimed for declaration of her right, title and interest in respect of the rest portion of the said plot over which the State raised a claim. The judgment passed in the said suit (Annexure-1) reveals that Dukhi Gauntiani had rayati right over plot No. 1018, though the present disputed land was not the subject matter of the suit.

9. It further transpires that during the continuance of mutation proceedings in the original, appellate and revisional fora fresh settlement under the Orissa Survey and Settlement Act, which was initiated in the year 1999, has been finalized and the disputed land has been recorded in the name of the present petitioner under Khata No. 136 in rayati status. The said R.O.R. has been finally published on 31.10.2013.

10. Under Section 13 of the Orissa Survey and Settlement Act entries made in the R.O.R. are presumed to be correct unless and until they are proved to be incorrect. Record-of-rights are prepared by the settlement authorities on the prima facie satisfaction about right, title and interest over the land, but they have no power to decide disputed questions of title. Under the provision of sub section(3) of Section 13 of the Settlement Act if any entry in a record-of-rights is altered in a subsequent record-of-rights, the later entry shall be presumed to be correct until it is proved by evidence to be incorrect. Since the record-of-rights have been finally published in respect of the disputed land as recent as October, 2013, entries made therein must be presumed to be correct. Settlement having been over, question of consideration of any mutation matter originating long before the settlement operation started cannot be gone into. In such circumstances, I am of the view that the orders under Annexures-5 & 9 cannot stand and accordingly I quash the same. Parties are at liberty to approach the appropriate Civil Court to get disputes relating to title decided, if so advised. It is made clear that this Court has expressed no opinion with regard to right, title and interest of the parties over the disputed land.

The writ petition is accordingly disposed of.