

(2013) 07 OHC CK 0036

In the Orissa High Court

Case No : Writ Petition (C) No. 22648 of 2010

Lala Sachikanta Chand

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 116 CLT 1026 : (2013) 2 OLR 314

Hon'ble Judges : R. Dash, J

Bench : Single Bench

Advocate : Susanta Kumar Dash, Ananga Kumar Otta, Mrs. Arunima Dhalsamanta and Biswa Prakash Dhal, for the Appellant; Sidharth S. Mohapatra, A.K. Sahoo and P.K. Hazary, for the Respondent

Judgement

R. Dash, J.—This writ petition is with a prayer to quash the order dated 12.7.2010 (Annexure-2 to the writ petition) passed by the learned Tahasildar, Sadar, Cuttack allowing mutation in favour of opposite party No. 3 in respect of the land appertaining to Plot No. 23 under Khata No. 219 in Mouza-Unit No. 5, Dakhina Tulsipur. Opposite party No. 3 made an application for mutation of Record of Right in respect of the aforesaid land. In the mutation proceeding registered as M.C. No. 4852 of 2009 general notice inviting objection was issued. The petitioner filed his objection (Annexure-3). Subsequent thereto, the Revenue Inspector, knowing that it was a contested case, put up note that the case be heard by the Tahasildar. The learned Tahasildar took up the matter on 12.7.2010 and without issuing notice to the objector and wrongly observing that no objection was filed by any person, passed the impugned order allowing the mutation, thereby violating the principles of natural justice.

2. In his counter opposite party No. 3 has contented that the learned Tahasildar has disposed of the Mutation Case in accordance with law, that the petitioner instead of approaching this Court ought to have availed alternative remedy available to him by way of appeal or review under the Orissa Mutation Manual, and that the petitioner having no right, title, interest over the case land had no

locus standi to raise any objection before the Tahasildar.

3. Learned counsel for the State admitting that the petitioner's objection vide Annexure-3 was not taken into consideration by the learned Tahasildar, submits that alternative remedy being available to the petitioner, the present writ petition is not maintainable.

4. It is not disputed that the petitioner in pursuance of the objections invited by the learned Tahasildar in the Mutation proceeding had filed his objection. It is also not in dispute that the learned Tahasildar while allowing the Mutation in favour of opposite party No. 3 has not taken into consideration the objection filed by the petitioner. Rather, the impugned order vide Annexure-2 reflects that there was total non-application of mind by the learned Tahasildar inasmuch as it was mentioned by him in his order that no objection was received even though the petitioner had filed one objection and the R.I. had noted it in the order sheet dated 2.1.2010 that the Mutation proceeding had become contested consequent upon filing of objection. While disposing of the Mutation proceeding, the Tahasildar ought to have considered the objection raised by the petitioner. Thus, there is non-compliance of the principles of natural justice and on that ground the writ of certiorari can be issued.

5. With regard to the objection on maintainability of the writ petition, it is not denied by the learned counsel for the petitioner that alternative remedy was available to the petitioner. But availability of alternative remedy is not an absolute bar to the maintainability of a writ petition. In this case it would be mere abuse of the procedural law if the petitioner is asked to avail the alternative remedy that too after lapse of about three years since the impugned order was passed which would also amount to multiplicity of proceedings. In the result, the writ petition is allowed. The impugned order passed by the learned Tahasildar on 12.7.2010 in the aforesaid Mutation Case is quashed. The learned Tahasildar-opposite party No. 2 is hereby directed to dispose of the Mutation Case on merit taking into consideration the objection filed by the petitioner. The Mutation Case shall be disposed of within a period of three months from the date any of the party produces a certified copy of this order before the learned Tahasildar.