
(2013) 08 OHC CK 0075
In the Orissa High Court
Case No : Writ Petition (C) No. 30239 of 2011

Nanigopal Lenka

APPELLANT

Vs

Collector, Balasore

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0075

Hon'ble Judges : R. Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Dash, J.—This writ petition is for a direction for quashment of the order passed by the learned Tahasildar, Bhograi-O.P. No. 2 under Annexure-1 with a direction to allow the mutation in favour of the petitioner within a specific period in pursuance of a judgment passed by the learned Civil Judge (Junior Division), Jaleswar vide Annexure-2. Case of the petitioner is that during major settlement operation the land pertaining to Plot No. 778 measuring Ac. 0.05 decimals was wrongly recorded in the name of the State under Rakhit Khata No. 499 for which the petitioner after serving notice u/s 80 C.P.C. on the Collector, Balasore (O.P. No. 1) instituted Title Suit No. 330 of 1996 in the Court of the learned Civil Judge (Junior Division), Jaleswar for declaration of his right, title and interest over the said land. In the suit, the State of Orissa represented by the Collector did not file W.S. but participated in the proceeding through the learned A.G.P. The said suit was decreed on contest against the State of Orissa vide judgment dated 17.7.2007 and thereafter decree was sealed and signed on 25.7.2007. No appeal was preferred against the said judgment and decree. So when the decree reached its finality the petitioner filed application for mutation but the learned Tahasildar-O.P. No. 2 passed a cryptic order rejecting the same observing that the land in question is objectionable in nature and the petitioner is found to be not in possession of the land in question. The Tahasildar-O.P. No. 2 has filed counter wherein it is stated that on the petitioner's application that Mutation

Misc. Case No. 2916 of 2007 was registered and the R.I., Kakhada was directed to conduct field enquiry and submit report followed by spot verification conducted by the Tahasildar himself. On such enquiry, it was found that a portion of the case land has been converted into concrete road and rest of its area is being used as Nayanjori. Since the petitioner was not in possession of the case land, the impugned order was passed dropping the Mutation Proceeding. It is further contended that the case land stands recorded as "Gochar" which is highly objectionable in nature.

2. On behalf of the petitioner it is submitted that as per rules changes in any entry of the record-of-rights arising out of a decree of a Civil Court shall be registered in the Mutation Register as a separate case and the changes shall be carried out by the Tahasildar immediately on receipt of such decree and in such a case it is not necessary to commence a Mutation Proceeding for that purpose. In support of this contention attention of the Court is invited to Rule 35 of the Orissa Survey and Settlement Rules, 1962. Therefore, it is argued, the impugned order dropping the Mutation Proceeding is nothing but a colourable exercise of power contravening the rule of law.

3. On behalf of the O.Ps. it is forcefully submitted by the learned counsel for the State that the case land being objectionable in nature and the petitioner being found not to be in possession thereof, the learned Tahasildar has rightly dropped the Mutation Proceeding. In addition to this contention it is also argued that since alternative remedy by way of preferring appeal against the impugned order is available, the writ petition is not maintainable.

4. It is not in dispute that there was a civil suit in which the State of Orissa represented by the Collector contested the petitioner's claim of right, title and interest over the case land and ultimately a decree was passed in favour of the petitioner which has reached its finality, inasmuch as no appeal has been preferred against it. It is also not in dispute that the petitioner presented certified copy of the decree before the Tahasildar to get the land mutated in his name. The impugned order (Annexure-1) reflects that the learned Tahasildar took note of the decree but did not allow mutation solely on the ground that the land was highly objectionable in nature and at the time of spot enquiry it was found that the petitioner was not in peaceful possession over the land.

5. Rule 35 of the Orissa Survey and Settlement Rules, 1962 runs as follows:

35. Registration of proceedings-All proceedings commenced on a report, application or otherwise under this Chapter shall be registered as mutation cases and each such case shall be numbered and entered in register in Form No. 8 to be called the Mutation Register:

Provided that changes in any entry of the record-of-rights arising out of an order to decree of Revenue or a Civil Court or the order of a Tribunal constituted under any law for the time being in force shall be numbered and entered in the Register as separate cases and carried out by the Tahasildar immediately on receipt of

such order or decree, as the case may be, and it shall not be necessary to commence a Mutation Proceeding for that purpose.

The aforecited rule clearly lays down that changes in any entry of the record-of-rights arising out of a decree of a Civil Court shall be simply numbered and entered in the Mutation Register as a separate case and without commencing a Mutation Proceeding for the purpose of making such changes, the Tahasildar shall, immediately on receipt of such decree, carry out the changes in accordance with the decree. In the case at hand, the Tahasildar in contravention of the provisions of the said rules has commenced a Mutation Proceeding without carrying out the changes in the record-of-rights on the basis of the Civil Court decree. Not only the Mutation Proceeding was initiated in contravention of the said rules, the petitioner's prayer for carrying out the necessary change in the record-of-rights was also turned down by the learned Tahasildar even though he has no option but to carry out necessary changes immediately on receipt of a Civil Court decree. Thus, the learned Tahasildar has exceeded its authority and/or he has exercised the power without lawful authority.

6. So far the objection on the maintainability of the writ petition is concerned, it is not disputed that against the impugned order the petitioner could have preferred an appeal before the appellate authority, but in the case in hand, since O.P. No. 2 has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution. In the result, the writ petition is allowed and the impugned order vide Annexure-1 is quashed. The O.Ps. are directed to immediately carry out necessary changes in the entry of the record-of-rights arising out of the decree of the Civil Court vide Annexure-2.