

(2019) 03 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (Civil) No.5024 Of 2019

Pradyumna Kumar Panda

APPELLANT

Vs

Tahasildar, Tangi-Choudwar & Another

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Orissa Survey And Settlement Act, 1958 — Section 15(b)

Citation : (2019) 03 OHC CK 0017

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : A.R Majhi, R.P. Mohapatra

Final Decision : Disposed Of

Judgement

DR. A.K.RATH, J

1. This petition challenges the order dated 23.6.2009, vide Annexure-3, passed by the Joint Commissioner, S&C, Cuttack, opposite party no.2, in R.P.

No.256 of 2008 whereby and whereunder opposite party no.2 remitted the matter back to the Tahasildar, Tangi-Choudwar, opposite party no.1, to

dispose of the case.

2. Father of the petitioner filed an application under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (in short, "OSS Act, 1958")

before the Joint Commissioner, S&C, Cuttack, opposite party no.2, for correction of record-of-right. By order dated 23.6.2009, opposite party no.2

remitted the matter back to the Tahasildar, Tangi-Choudwar for disposal after verifying the relevant documents and field enquiry.

3. The question does arise as to whether the Commissioner, Land Records and Settlement can remit the matter back to the Tahasildar, Tangi-

Choudwar for adjudication, instead of deciding the petition filed under Sec.15(b) of the OSS Act, 1958 on merit ?

4. An identical question came up for consideration before this Court in the case of Kampal Behera (since dead) through L.Rs v. Commissioner of

Consolidation & Settlement, Kendrapara and others (WPC No.22122 of 2014 disposed of on 26.02.2019). This Court held:

“7. The subject-matter of dispute is no more res integra. This Court in Sarat Chandra Sahu Vrs. Commissioner of Land Records and Settlement, Orissa, Cuttack and

others, 82 (1996) CLT 321, the Division Bench of this Court held:

“Under Section 15(b) the Commissioner has been given the authority to decide the grievance of the parties in relation to final publication of record-of-rights. A

statutory power by a statutory authority has to be exercised in a proper manner so that the litigants have a sense of satisfaction that their grievance, have been

appropriately dealt with. The Commissioner should have done well to address himself on the merits of the case. But instead of doing so he passed the order of

remand. While we are of the view that the operative portion of the impugned order relating to remand is absolutely unsustainable, yet we feel in the interest of justice

the claim of the revisionist should be considered by the revisional authority within the parameter of revisional jurisdiction.”

8. In Smt. Bijaya Chatterjee Vrs. Commissioner, Land Records and Settlement, Orissa and others, 2000 (II) OLR 349, this Court held that in subsequent decision it has

been clarified that though such remand is not contemplated, the Commissioner can call for a report from the Tahasildar.

9. In the instant case, the matter was finally disposed of by the Commissioner with a direction to the Tahasildar, Pattamundai to cause an enquiry. The Commissioner

de hors its power in remitting the matter back. The Commissioner is a creature of statute, namely, Orissa Survey and Settlement Act. He has been vested with power

to decide the matter finally. He cannot travel beyond the statute.”

5. In view of the authoritative pronouncement of this Court in the decision cited supra, order dated 23.6.2009, vide Annexure-3, passed by the Joint

Commissioner, S&C, Cuttack, opposite party no.2, in R.P. No.256 of 2008 is

quashed. The matter is remitted back to the opposite party no.2 for de
novo hearing. In order to avoid further delay, the petitioner shall appear before
the Joint Commissioner on 29th March, 2019, on which date, the Joint
Commissioner shall fix a date of hearing and dispose of the same within a period
of three months thereafter on merit. It is open to the Joint
Commissioner to call for the report from the Tahasildar.
The petition is disposed of.
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