



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33321 of 2022

(An application under Articles 226 and 227 of the Constitution of India)

AFR **Smt. Sailabala Panigrahi** **Petitioners**

-Versus-

State Of Odisha and Others **Opp. Parties**

Advocate(s) appeared in this case through virtual mode

For Petitioner : M/s. D. Mahapatra, J. Panigrahi,
Advocates

For Opp. Parties : Mrs. J. Sahoo,
Additional Standing Counsel

Mr. J. Tewari, Advocate
[for O.P. No.5]

Mr. J. Panda, Adv. for intervenor

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
5th May, 2026

SASHIKANTA MISHRA, J.

The petitioner seeks to assail the order dated 03.03.2022 passed by the Sub-Collector, Kandhamal, Phulbani in Mutation Appeal No.22 of 2021, whereby the appellate authority has set aside the order dated 05.04.2021



passed by the Tahasildar, Kandhamal in Mutation Case No.160 of 2021 under which the Record-of-Rights (ROR) had been prepared in favour of the petitioner.

2. The facts of the case are that the land appertaining to Plot No.1053/1326 under Khata No.238/347 measuring an area of Ac.0.015 decimals situated in Mouza-Phulbanisahi originally stood recorded in the name of one Kishore Chandra Padhi. Out of the said land, an extent of Ac.0.013 decimals was purchased by Opposite Party No.5 by means of a registered sale deed dated 06.12.2004 and possession thereof was delivered in her favour. Subsequently, the petitioner purchased the remaining extent of Ac.0.002 decimals from Kishore Chandra Padhi by a registered sale deed dated 26.03.2021 and came into possession of the same. Pursuant to purchase, the petitioner applied for mutation, and the Tahasildar, Kandhamal, upon due enquiry, allowed the mutation in Mutation Case No.160 of 2021 and issued the ROR in favour of the petitioner. Being aggrieved by the said order, Opposite Party No.5 preferred Mutation Appeal No.22 of 2021 before the Sub-Collector, Kandhamal, Phulbani



contending that the original vendor had already transferred the entire extent of land in her favour and had no subsisting right to execute the subsequent sale deed in favour of the petitioner. The appellate authority, upon consideration of the materials on record, allowed the appeal and set aside the order of mutation in favour of the petitioner by his order dated 03.03.2022. Said order is under challenge in the present writ petition.

3. Counter Affidavit has been filed by Opposite Party No. 5 stating that the original recorded tenant, Kishore Chandra Padhi had acquired the land measuring Ac.0.013 decimals (66 ft. × 21 ft.) by virtue of a registered sale deed in the year 1979 and had subsequently sold the entire land in her favour by means of a registered sale deed dated 06.12.2004. It is further stated that due to an erroneous entry during settlement operation the land was wrongly recorded as Ac.0.015 decimals instead of Ac.0.013 decimals and taking advantage of such incorrect entry, Kishore Chandra Padhi purportedly sold the excess land measuring Ac.0.002 decimals to the petitioner though no such land was



actually available. Therefore, it is stated by her that the sale deed executed in favour of the petitioner is void and the mutation granted in her favour was illegal for which it was rightly interfered in appeal.

4. Counter Affidavit has also been filed by the State (Opposite Party Nos. 3 & 4) stating that the original vendor, Kishore Chandra Padhi had acquired land measuring Ac.0.013 decimals and had subsequently sold the entire extent in favour of Opposite Party No.5 leaving no land available for further transfer. According to them, the recording of Ac.0.015 decimals during settlement operation was erroneous and did not confer any right upon the vendor. It is also stated that taking advantage of incorrect recording, the vendor executed a sale deed in favour of the petitioner in respect of Ac.0.002 decimals, though no such land was available in reality. It is, however, admitted that the Tahasildar had allowed the mutation in favour of the petitioner on the basis of the registered sale deed and in accordance with the prevailing Government instructions, without undertaking a detailed enquiry into the title.



5. Heard Ms. D. Mahapatra, learned counsel appearing for the Petitioner; Mr. J. Tewari, learned counsel appearing for the Opposite party no. 5; and Mrs. J. Sahoo, learned Additional Standing Counsel for the State (Opposite Party No. 3 and 4).

6. Ms. D. Mahapatra would submit that the impugned order passed by the Sub-Collector is without jurisdiction and is against the settled principles governing mutation proceedings. She submits that mutation neither creates nor extinguishes title and the authority is only required to ascertain possession on the basis of prima facie materials. She further submits that the petitioner having purchased Ac.0.002 decimals by a registered sale deed and being in possession thereof, the Tahasildar had allowed the mutation in her favour. She argues that the appellate authority has exceeded its jurisdiction in adjudicating disputed questions of title and in holding that the vendor had no saleable interest which could only be decided by a competent civil court. She also contends that the appeal preferred by Opposite Party No.5 was barred by limitation and



the same was entertained and disposed of on the same day without affording opportunity of hearing to the petitioner, thereby violating the principles of natural justice.

7. Mr. J. Tewari would submit that the original vendor, Kishore Chandra Padhi had acquired land measuring Ac.0.013 decimals (66 ft. × 21 ft.) by virtue of a registered sale deed in the year 1979 and had subsequently sold the entire extent of the land in favour of Opposite Party No.5 by registered sale deed dated 06.12.2004. He submits that once the entire land had been transferred no land remained with the vendor for further sale and therefore, the subsequent sale deed executed in favour of the petitioner in respect of Ac.0.002 decimals is void ab initio. He further argues that the recording of Ac.0.015 decimals during the settlement operation was erroneous and incorrect entry cannot confer any right upon the vendor to transfer non-existent land. He also submits that the Tahasildar without verifying the actual availability of land, simply allowed the mutation in favour of the petitioner on the basis of the registered sale deed and



therefore, the Sub-Collector, upon proper appreciation of the materials on record, has rightly set aside the mutation order.

8. Mrs. J. Sahoo would submit that the Tahasildar had allowed the mutation in favour of the petitioner on the basis of the registered sale deed and in compliance with the prevailing Government instructions without entering into the question of title. She submits that subsequently, on examination of the records and the earlier transactions, it was found that the original vendor had already alienated the entire land in favour of Opposite Party No.5 and, therefore, had no subsisting right to transfer any further extent of land to the petitioner. She argues that the Sub-Collector, while exercising appellate jurisdiction, has taken into consideration the relevant materials on record and has set aside the mutation order passed by the Tahasildar.

9. After hearing learned counsel for parties and upon perusal of the case records this Court finds that it is well settled that mutation proceedings are summary in nature and the records so created are meant only for fiscal purposes for recording possession and do not confer, create or



extinguish title as held in the case of **Balwant Singh v. Daulat Singh**¹ and followed in subsequent decisions.

10. It would be apt to refer to the recent judgement of Supreme Court in the case of **Jitendra Singh v. State of M.P.**,² wherein Supreme Court observed as follows-

“7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faquddin v. Tajuddin, (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

¹ (1997) 7 SCC 137

² 2021 SCC OnLine SC 802



11. In the present case, it is not in dispute that the petitioner purchased Ac.0.002 decimals of land by virtue of a registered sale deed dated 26.03.2021 and on the basis of the registered document, the Tahasildar allowed the mutation in her favour. It is also not in dispute that Opposite Party No.5 claims prior purchase of the entire extent of Ac.0.013 decimals from the same vendor in the year 2004.

12. The issue that arises is, whether in a mutation proceeding, the appellate authority was justified in examining the question as to if the vendor had any subsisting saleable interest. In this regard it would be useful to examine the powers conferred upon the mutation authority. Rule 34 of the OSS Rules being relevant, is reproduced below:

“34. Grounds on which correction of the record-of-rights and map is to be made - The Tahasildar may on application in that behalf of any person interested or on receipt of a report from any of his subordinate officers or on receipt of a notice from the Registrar or Sub-Registrar appointed under the Indian Registration Act, 1908, or from a Court or on his own motion, order any charge of any entry in the record-of-rights according to the rules hereinafter prescribed on any one or more of the following grounds, namely

(a) that all persons interested in any entry in the record-of-rights wish to have it changed;



(b) that by a decree in a civil suit, any entry therein has been declared to be erroneous,

(c) that being founded on a decree or order of a Civil Court or on the order of any competent authority, the entry therein is not accordance with such decree or order:

(d) that such decree or order has subsequently been varied on appeal, revision or review;

(e) that any entry therein has no relationship with the existing facts; and

(f) that by preparation of a survey record under Chapter II of the Act, any change is necessitated in the record-of-rights.”

Rule 35 being also relevant is reproduced below:

“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.”

[Emphasis added]

It is thus, evident that the correction of record of rights and map can be made only on the grounds enumerated in Rule 34.



13. In the considered view of this Court, Rule 34 lays down the boundary within which mutation authority is to exercise his functions. Further, Rule-41 expressly mentions that mutation application is to be heard in a summary manner. It is well settled that the appeal is a continuation of the original proceeding. Therefore, the powers of the appellate authority are also circumscribed by the powers expressly provided to the original authority. In other words, the appellate authority is to examine the order passed under Rule-41 but in doing so, it cannot exceed the boundaries prescribed under Rule-34. None of the provisions confer any power on the original authority or the appellate authority to go beyond the four corners of Rule-34 much less to decide other questions including that of title.

14. The question as to whether the vendor had already transferred the entire land in favour of Opposite Party No.5 and whether any land was available for subsequent sale to the petitioner are actually disputed questions and cannot therefore, be decided in mutation proceeding or appeal arising



therefrom. These can only be adjudicated by a competent Civil Court upon appreciation of evidence.

15. In the present case, the Sub-Collector while exercising appellate jurisdiction has gone into the question of correctness of the earlier transactions and has recorded a finding that no land was available with the vendor for sale to the petitioner. Such finding, in the considered view of this Court, amounts to adjudication of title, which is beyond the jurisdiction of the mutation authorities.

16. Certain other points were urged to challenge the impugned order but this Court having already held that the appellate authority exceeded his jurisdiction, the impugned order becomes unsustainable on such score alone. As such, it is felt unnecessary to go into such question.

17. For the foregoing reasons therefore, the writ application is allowed. The impugned order dated 03.03.2022 passed by the Sub-Collector, Kandhamal, Phulbani in Mutation Appeal No.22 of 2021 is hereby set aside.

18. It is, however, made clear that this Court has not expressed any opinion on the merits of the rival claims of the



parties with regard to the title over the land in question. The parties are at liberty to approach the competent civil court for adjudication of their respective rights, if so advised.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 5th May, 2026/ A.K. Rana, P.A.