COURT OF THE SUB-COLLECTOR, ATHAMALLIK

Mutation Appeal No. 04 of 2024

(Against the order dated 17.08.2023 of the Tahasildar, Athamallik in Mutation Case No. 154/2023)

Basanti Danga … Appellant v. Purusottam Pradhan and others … Respondents

Decided on 15 April 2025

Mutation – Case dropped for non-production of documents – Reasonable opportunity. A mutation case cannot be dropped after giving the applicant a single day's notice, or on an R.I. report claiming service of notice when no served notices are on record. The appellate authority under Rule 42 of the Orissa Survey and Settlement Rules, 1962 may set aside such an order and direct fresh disposal. Delay in filing the appeal condoned.

Result: Appeal allowed. Order dropping the mutation case set aside; Tahasildar directed to restore the case and decide it afresh after hearing all parties.

ORDER

1. 15.04.2025 The case was taken up today for final hearing and order. Petitioner’s Advocate present on call. She said that the appellant had purchased an area measuring 0.08 acres out of .55 acres of land from Khata Number 6, Plot Number 33 of Mouza- Bjrakote under Athamalli Tahasil, which is recorded in the name of Purusottam Pradhan and others. The RT is the father of the vendee and the appellant, Basanti Danga. Since the transaction, the appellant has been in peaceful possession of the case land. Thereafter, she had filed a Mutation case vide MC No 154/2023 with the Tahasildar Athamallik, but the Tahasildar, without considering the facts and circumstances, acted illegally against the principle of mutation law in the mutation. The Tahasildar cum Mutation Officer Athamalik erred in law in holding that the appellant could not filed the relevant documents though the appellant filed the RSD No 44/2001 and the ROR of Khata Number 6 of Mouza Bajrakote was in possession at that time. The Advocate thereafter prayed to consider the above facts and circumstances and after hearing set aside the order of the Mutation Officer and allow the mutation case number 154/2023 and pass and order with a direction to the Mutation officer cum Tahasildar Athamallik to record the purchased land in the name of the appellant.

Statement of the Tahasildar Athamallik

2. The Tahasildar Athamallik vide his letter number 349 dated 13.02.2025 has denied the averments. The Para-wise comment discloses that the appellant remained silent for years, though she purchased the case land in 2001. Notice was duly served on her, but she preferred not to be present. On 15.05.2023, the case was taken up after serving notices to all parties interested with an instruction to appear along with relevant documents before his court on 18/05/2023. On 18/05/2023, the case was taken up for hearing, but it was dropped due to the appellant's non-appearance as the relevant documents could not be verified.

Observation chronology of events is as follows

The case was started on 06.02.2023

3. It was received by the RI Kaintaragarh on 09.02.2023. The case was posted for hearing on 16.02.2023. On 10.03.2023, the RI returned the case to the Tahasildar, citing “This case is put up

today for hearing after the stipulated objection period is over. Individual notices have been duly served, and the General Notice has been duly published in the locality and the SR back. No objection has been received from any quarter during the stipulated period. The applicant fails to produce relevant documents within the stipulated period. Hence case may be dropped.

4. On 15.05.2023, the case was taken by the Tahasildar then directed all the legal heirs of Rt to attend his court on 18.05.2023 at 11 AM along with all relevant documents.

5. On 17.08.2023, the case was again taken up and dropped. The order read as " The case is taken up today. Gone through this case record. The applicants have not submitted the relief document in time. Hence, the case is dropped".

Findings

Service of Notice

6. The statement of the RI Kaintaragarh does not appear to be true. No such duly served notices were available in this case record.

7. The Tahasildar Athamallik has issued notices on 16.08.2023 and asked the applicant to appear before his court on 18.05.2023, which was available in the C/R. Though signatures of the legal heirs of RT are available on the back part of the notice, it is presumed that it was obtained after 16.08. 2023. Surprisingly, the case dropped after giving an opportunity period of one day, which violates the settled principle of giving a reasonable opportunity before taking any decision.

8. It is observed that Rule 42 of the Orissa Survey and Settlement Rules, 1962, an appeal against any final order rendered by the Tahasildar in a mutation proceeding properly lies before the Sub-Collector.

9. To address issues of procedural delay, while the initial limitation period for filing such an appeal was thirty (30) days, as delineated in paragraph 95 of the Orissa Mutation Manual (referencing Rule 42 of the Orissa Survey and Settlement Rules, 1962), the Odisha Survey and Settlement (Amendment) Rules, 2020, has amended Rule 42(2) to extend the appeal period to one hundred eighty (180) days. The order was passed on 17.08.2023, but the appeal was filed on 05.03.2024, which is beyond the limitation period. However, petitioners advocate prayer for delay, condolence, and it was accepted.

10. Inherent in the Sub-Collector's appellate jurisdiction is the power ad colligendum et inspiciendum the records of the case from the Tahasildar, ad audiendum et examinandum the parties involved, including the appellant and any other interested persons, ad examinandum de jure et de facto the legality and propriety of the Tahasildar's order in dropping the case, and ad ordinandum setting aside the Tahasildar's order.

11. If the Sub-Collector determines ex facie that the Tahasildar's decision to drop the case was not justified in lege et in facto, or that a procedural irregularity exists, the Sub-Collector is vested with the authority to overturn that order and to issue consequential orders.

12. In view of the above discussions, this court believes that the Tahasildar Athamallik has not followed the due process of law in disposing of the Mutation Case No. 154/2023. Hence, the order

dated 17.08.2023 passed by the Tahasildar Athamallik in Mutation Case No. 154/2023 is hereby set aside. The Tahasildar Athamallik is directed to ad re-integrandum Mutation Case No. 154/2023 to its original file and dispose of the same afresh in Secundum legem after giving due opportunity to all the parties concerned. The appeal is accordingly disposed of.

Sd/-
Sub-Collector, Athamallik

Odisha Revenue Laws · Revenue Court Orders. Reported for the reference of revenue officers. The order applies to its own facts; check the current law before relying on it.