COURT OF THE SUB-COLLECTOR, ATHAMALLIK

Mutation Appeal No. 07 of 2024

(Against the order dated 16.11.2006 of the Tahasildar, Kishorenagar in Case No. 07/2006 under section 19(1)(c) of the OLR Act)

Sushila Behera … Appellant v. Legal heirs of Kanhei Biswal and Tahasildar, Kishorenagar … Respondents

Decided on 9 May 2025

Wrong remedy – Order under section 19(1)(c) of the OLR Act challenged in a mutation appeal – Limitation. An order passed under the Odisha Land Reforms Act, 1960 cannot be challenged by a mutation appeal under the survey and settlement rules, particularly 18 years later without an application for condonation. The appellant, who claims through a purchaser at a certificate (public demand) sale, may instead apply for mutation before the Tahasildar, who must decide it on title and possession.

Result: Appeal dismissed; liberty to file a mutation case before the Tahasildar.

ORDER

09.05.2025

1. Appellant Sushila Behera W/O- Purandar Behera, resident of Budulimunda, Handapa, Dist-Angul, filed this appeal petition on 24.10.2024. The land in dispute was recorded in Khata number 15, Mouza- Kandharamunda, measuring an area of 29.45 acres, recorded in the name of Kanhei Biswal and others.

2. In 1978, a certificate was initiated against this recorded tenant, Kanhei Biswal, vide certificate case no. 42 of 1978. Sri Dushashan Behera S/O- Madhab Behera, resident of village Lakchi, was declared the purchaser in the sale by public auction. Subsequently, the sale was confirmed on 29.05.1978 by the Certificate Officer and the Tahasildar Athmallik.

3. Since then, Sri Dushashan Behera S/O- Madhab Behera has been in peaceful possession of the suit land. On 24.07.1984, he executed a sale deed vide 667 of 1984 in favour of the present appellant. The appellant purchased the land. The land schedeule is plot number 137, area 1.21 acres(out of 1.74acres, kissam Sarad-II, Khata number 15 of Mouza- Kandharamunda under Kishorenagar Tahasil. The defendants were aware of this fact and never objected to the possession. However, they have partitioned the case land in their favour under section 19(1) c of the OLR Act, case number 07/2006.

4. The appellant has prayed to reopen mutation case number 07/2006 as it is bad in law, as opposed to the facts and circumstances of the case, and against the weight of the materials on record. The Tahasildar has not issued notices to the certificate holder. Hence, she prayed for setting aside the order passed by the learned Tahasildar of Kishorenagar in mutation case number 07/2006 by re-correcting the area in favour of the appellant.

LAND SCHEDULE

Original

Khata

Sale certificate details

After partitioned

Khata number

5. 15

6. 15

7. 33/44

8. 33/45

9. 33/46

Plot number

10. 137

11. 137

12. 137/987

13. 137

14. 137/988

Area

In acres

15. 1.74

16. 1.21

17. 0.50

18. 0.62

19. 0.62

20. Parawise comment of the Tahasildar Kishorenagar was perused. It has been admitted that the original land under holding no. 15 mouza Kandharamunda, measuring an area of 29.45 acres, was recorded in the name of Naya Biswal, Sanei Biswal, Kanhei Biswal, Danei Biswal, Rukuni Sahu, Jamuna Padhan, Puina Sahu, Jema Padhan, S/D/O of Sanri Biswal of the village Kandharamunda. Due procedure has been followed during disposal of the case as per the provision envisaged u/s 19(i) C of the OLR Act 1960. The mutation appeal filed by the appellant is illegal, arbitrary in the eyes of the law, and not borne by any record to substantiate her claim. Hence, the mutation appeal may kindly be dismissed following the provision of the law.

ANALYSIS

21. The Tahasildar Kishorenagar has mentioned that the due procedure has been followed during disposal of the case as per the provision envisaged u/s 19(i) C of the OLR Act 1960, but has erred in law. Once a sale certificate is issued, the certificate debtor loses its right over it. The holding is a

joint property. The Certificate case was confirmed against Kanhei Biswal, one of the co-sharers of the Khata. The disputed plot 137 is now recorded in the name of Chaturi Swain, Dayanidhi Biswal & Bishnu Biswal, who are S/O/D/O of Kanhei Biswal, the certificate debtor.

22. The case was allowed on 16.11.2006. The appeal was filed on 24.10.2024. The limitation period expired. The delay condonation was not submitted. The case has been allowed under the OLR Act/Rules, but an appeal was filed on the Mutation Rules. The appellant has not filed any application for mutation before the tahasildar of Kishorenagar. . Hence, I am not inclined to entertain this appeal.

23. The appeal is dismissed as the appellant applied for an appeal under the OSSA 1958 instead of under the OLR Act 1960. The appellant is allowed to file a mutation case before the Tahasildar of Kishorenagar. In the event that such a mutation application is received, the Tahasildar of Kishorenagar shall dispose of the Mutation after following all formalities, specifically to Possessio and Title.

24. Intimate the Appellant, defendants, and the Tahsildar of Kishorenagar.

Sd/-
Sub-Collector, Athamallik

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