
(2025) 10 OH CK 0032

Orissa HC

Case No: Writ Petition (C) No. 28180 Of 2025

Sudam Charan Behera

APPELLANT

Vs

State Of Odisha And
Others

RESPONDENT

Date of Decision: Oct. 27, 2025

Acts Referred:

- Constitution Of India, 1950 — Article 226, 227

Hon'ble Judges: A.C.Behera, J

Bench: Single Bench

Advocate: N.R. Mohanty, Tej Kumar

Final Decision: Disposed Of

Judgement

A.C. Behera, J

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner praying for quashing the impugned order dated 23.06.2025(Annexure-2) passed in Mutation Case No.5714 of 2025 by the Tahasildar, Salipur(Opposite Party No.2) in the district of Cuttack on the ground of non-compliance of the principles of natural justice, because, said Mutation Case No.5714 of 2025 of the petitioner has been disposed of by the Tahasildar, Salipur(Opposite Party No.2) as per impugned order dated 23.06.2025 vide Annexure-2 without giving any opportunity of being heard to the petitioner assigning the reasons that,

“the petitioner has purchased the case land from one of the co-sharers of his vendor without taking the consent of his other co-sharers.”

2. Heard from the learned counsel for the petitioner and learned Additional Standing Counsel for the State.

3. During the course of hearing of this writ petition, learned Additional Standing Counsel for the State contended that, when, there is a statutory appellate forum to challenge the impugned order passed by the Tahasildar, Salipur(Opposite Party No.2) in Mutation Case No.5714 of 2025, by preferring an appeal before the Sub-collector, Cuttack, then, this writ petition filed by the petitioner is not entertainable under law.

The law concerning the maintainability of a writ petition under Articles 226 and 227 of the Constitution of India, 1950 despite availability of an alternative remedy has already been clarified by the Apex Court in the

ratio of the following decisions:-

(i) In a case between Whirlpool Corporation vrs. Registrar of Trade Marks : reported in (1998) 8 SCC-1 that, Despite availability of an alternative remedy, a writ petition under Articles 226 and 227 of the Constitution of India, 1950 can be entertained in the following cases:-

(a) Where principles of natural justice are breached.

(b) Where fundamental rights are sought to be enforced or breach thereof is complained of

(c) Where the impugned order is passed by an authority without justification.

(d) Where the Constitutionability of any provision is called in question.

(ii) In a case between The Assistant Commissioner of State Tax and others vrs. M/s. Commercial Steel Limited : reported in (2022) 16 SCC-447 that, Despite availability of an alternative remedy, a writ petition under Articles 226 and 227 of the Constitution of India, 1950 can be entertained in the following cases :-

(i) An access of jurisdiction.

(ii) A breach of fundamental rights.

(iii) A violation of the principles of natural justice.

(iv) A challenge to the vires of the statute or delegated legislation.

Here in this matter at hand, when the petitioner has challenged the impugned order dated 23.06.2025(Annexure-2) passed by the Tahasildar, Salipur(Opposite Party No.2) in Mutation Case No.5715 of 2024 by filing this writ petition under Articles 226 and 227 of the Constitution of India, 1950 on the ground for non-compliance of the principles of natural justice, then at this juncture, in view of the principles of law enunciated by the Apex Court in the ratio of the above decisions, it cannot be held that, this writ petition filed by the petitioner is not entertainable under law.

4. So far as the sustainability of the impugned order of rejection to the Mutation Case No.5714 of 2025 of the petitioner on dated 23.06.2025(Annexure-2) by the Tahasildar, Salipur(Opposite Party No.2) on the ground of non-taking of the consent of the co-sharers of the vendor of the petitioner in the sale deed executed in his favour in respect of the case land is concerned,

On this aspect, the propositions of law has already been clarified in the cases between Sudam Das vrs. Krushna Mahakur : reported in JBR Vol.XVII(1982) Part-II Page-43 and Maheswar Lenka vrs Kinei Swain : reported in JBR Vol-XI(1975) Part-II Page-130 that,

“when one of the co-sharers sells his share, the purchaser will become the co-sharer in place of the seller. No particular plot of land can be mutated in his name, unless other co-shares consent to it or a decree from the Civil Court is obtained indicating his share, before that, partition is premature.”

5. So, by applying the principles of law enunciated in the ratio of the aforesaid decisions to this matter at hand, it is held that, when the petitioner has purchased the case land from his vendor, i.e., one of the co-sharers of the case land without the consent of the other co-sharers of his vendor, then, as per law, he(petitioner-purchaser) has become the co-sharer of the case land with the vendor of his co-sharers in place of his vendor.

For which, the Mutation Case No.5714 of 2025 filed by the petitioner should not have been dismissed by the Tahasildar, Salipur(Opposite Party No.2). Because, as per law, the petitioner(purchaser) has become the co-sharer in place of his seller/vendor. For which, his name is required to be indicated through mutation in place of his seller/vendor along with the co-sharers of his seller/vendor.

6. Therefore, the dismissal of the Mutation Case No.5714 of 2025 of the petitioner by the Tahasildar, Salipur(Opposite Party No.2) through the impugned order dated 23.06.2025 cannot be sustainable under law. For which, the same is liable to be quashed.

7. As such, there is some merit in the writ petition filed by the petitioner. The same is to be allowed in part.

8. In result, the writ petition filed by the petitioner is allowed in part.

The impugned order dated 23.06.2025 vide Annexure-2 passed in Mutation Case No.5714 of 2025 by the Tahasildar, Salipur(Opposite Party No.2) is quashed.

The matter, i.e., Mutation Case No.5714 of 2025 is remitted back to the Tahasildar, Salipur(Opposite Party No.2) to decide the same afresh as per law on the basis of the observations made in this judgment after giving opportunity of being heard to the petitioner, his vendor, co-sharers of his vendor and others, if any, as expeditiously as possible preferably within a period of two months from the date of filing of the certified copy of this judgment by the parties before the Tahasildar, Salipur(Opposite Party No.2) in Mutation Case No.5714 of 2025.

9. As such, this writ petition filed by the petitioner is disposed of finally.