

A.F.R.

ORISSA HIGH COURT : C U T T A C K

O.J.C. NO.3 OF 1995

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Minaketan Behera

: Petitioner

-Versus-

State of Orissa & ors.

: Opp.Parties

For Petitioner

:

M/s.S.D.Das, Sr.Adv,
A.K.Nayak, A.K.Choudhury,
S.K.Samantray & B.N.Udgata

For O.Ps.1 to 5

:

Mr.S.Ghosh, AGA

For O.Ps.6 to 32

:

None

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 26.09.2022

1. The Writ Petition involves a challenge to the impugned order at Annexure-2.

2. Background involving the case is the property of the Petitioner involved a ceiling surplus proceeding under the OLR Act. In the first round of litigation, a draft Notification finding the Petitioner as a Ceiling Surplus Holder was confirmed by the order of the Tahasildar, Sambalpur passed on 17.1.1976 involving OLR Ceiling Case No.11/ 1975. It is being

aggrieved by such confirmation order being passed by the Tahasildar, Sambalpur, it appears, the land owner suffering on account of such determination by the Tahasildar, preferred an Appeal bearing OLR Appeal No.166/1976. This Appeal, vide Annexure-1 got disposed of with an order on acceptance of the plea of the Petitioner but however with an order of remand asking the Tahasildar to review entering into fresh enquiry to re-ascertain as to whether the Petitioner is a Ceiling Surplus Holder or not ? also undertaking such exercise including the responsible village R.I., local level committee in the process of other examination. After the remand direction, the Tahasildar re-opened the OLR Ceiling Case No.11/1975. Even though there is a clear report of the Revenue Officer and in spite of clear observation of the Thasildar, the Petitioner has been found not a Ceiling Surplus Land Holder in respect of the land disclosed therein, however in the final disposal of the remand proceeding, vide OLR Ceiling Case No.11/1975 requested for restoration of land involved appears to have been rejected on the simple ground that there has been creation of third party right, further in absence of the allottees in the process of distribution not impleaded as party to the case even thereby declaring the High Court judgment to be inoperative by the Tahasildar.

3. Taking this Court to the observation in the remand proceeding, Mr.S.D.Das, learned senior counsel appearing for the Petitioner claims,

once there is ascertainment of right and the proceeding gets a conclusive finding of the Competent Authority that the Petitioner is a not a Ceiling Surplus Holder following two decisions of this Court in ***Smt. Arda Mahalaxmi & anor vrs. District Magistrate & Collector & ors*** : AIR 1986 Orissa 20 and ***Harihar Panda & two others vrs. State of Orissa & ors*** : (1985) 59 CLT 537, on the premises that the position in the specific contingency since settled observing the property right since is well protected under Article 300 A of the Constitution of India, the Revenue Officer still possesses the power of restitution of property distributed as ancillary to an order to the finding that the distribution of the land as a nullity, Mr.Das, learned senior counsel claims for allowing the Writ Petition with a direction for immediate restoration of disputed land. Mr Das, learned senior counsel through a memo also submitted that the land involved is being used for agriculture purpose by the allottees, who are also involved here as private Opposite Parties.

4. Mr.S.Ghosh, learned Additional Government Advocate for the State, however, taking this Court to the development taken place inasmuch as in the allotment of the ceiling surplus land found in the earlier adjudication process of the Tahasildar and for the observation of the Tahasildar undertaking the remand exercise that the land is no more available with the State to be restored to the Petitioner and for there is

long lapse of time contended, there is no scope for restoration of the land presently. In the process, Mr.Ghosh attempted to justify the action of the Tahasildar in the remand proceeding showing his inability to restore back the land of the Petitioner even in spite of the finding that there is no ceiling surplus land. Mr. Ghose, however, has resistance on the applicability of decisions cited by Mr. Das, learned senior counsel for the Petitioner touching the core issue involved herein.

5. Undisputed fact remains to be in the final rectification of statement, there has been determination on Petitioner being the Ceiling Surplus Land Holder. In OLR Appeal No.116/76, the Appellate Court taking into consideration the whole gamut came to observe as follows :-

“.....Hence, I would allow the prayer for review and remand the case for fresh enquiry regarding the separation of Minaketan Behera from his father otherwise than partition. Responsible villagers including R.I. level local committee members may be examined and if it is found true the area of 8.06 acres of land claimed by him to be in his possession should be excluded from the final statement. Since the land has not been distributed so far, there would be no difficulty in making a fresh enquiry and rectifying the final statement accordingly. The prayer for review is allowed and case remanded.

Pronounced in the open court this day the 28th of Marcy, 1977.”

Reading the aforesaid direction of the Additional District Magistrate being the Appellate Authority, this Court finds, there is clear observation of the Appellate Authority that since the land has not been distributed so

far, there would be no difficulty in making fresh enquiry and rectifying the final statement accordingly. It is in the above background, it be stated that the appellate order was passed on 28.3.1977, the further proceeding in OLR Ceiling Case No.11/1975 appears to have re-commenced immediately and got finally disposed of on 18.12.1978. In the remand proceeding the Tahasildar has the following clear observations :-

“In accordance with the observation of the appellate court and the findings made by the local committee and on the result of the re-enquiry, it is amply established that Minaketan Behera is a legally adopted son of Dinabandhu who was major married and separated from his father otherwise than partition prior to 26.9.70 and thus under section 37(b) he is entitled to be treated as a separate family unit. Accordingly, I allow Minaketan Behera to be treated as a separate family unit and the extent of lands of 8.06 acres which forms his share and is under his cultivable possession on the date of institution of the case be assigned as his ceiling unit for the purpose of computation of the ceiling in the present case. The court amin has prepared revised statement accordingly.

The entire lands is thus stands distributed as follows :

1. Minaketan Behera, S/o.Dinabandhu Behera of Bhikampur.

His cultivable share of land is 8.06 acres under Khunti No.154 of Bhikampur which is equivalent to 8.06 standard acres. His family consists of five members, so he is entitled to retain the entire lands. Thus no surplus land is assessable from his ceiling unit.

2. Dinabandhu Behera S/o.Jogi Behera of Bhikampur.

After allowing a separate ceiling unit to Minaketan Behera, Dinabandhu Behera owns the following lands.

<u>Mousa.</u>	<u>Khunti No.</u>	<u>Area</u>
Bhikampur.	154	Ac.10.85
	155	Ac. 0.82

	159	Ac. 1.61
	160	Ac. 0.23
Haripali.	2	Ac. 2.25
	3	Ac. 8.06
	Total :	Ac. 23.82

The above lands of 23.19 acres, on conversion is equivalent to 23.19 standard acres. The family of Dinabandhu consists of 10 members. Thus he can retain the maximum of 18 standard acres. Hence, after allowing him the maximum retainable ceiling unit of 18 standard acres an area of 5.19 standard acres equivalent to 5.82 physical acres as described in the schedule below is found surplus which would therefore, vest with Government, immediately after the appeal period is over. The final statement is amended accordingly.

In the previous impugned order of my predecessor in office an area of 9.92 acres of class I lands under Khunti No.154 was vested to Govt. which along with other Class II and Class IV lands under the said khata and khata No.155, 159 and 160 was vested to Government and were distributed to 24 landless persons. In view of the present amendment of the final statement in accordance with the orders of the appellate court out of the above surplus land the following lands have been allowed to be retrained in the ceiling unit granted in favour of Minaketan Behera.

<u>Khunti No.</u>	<u>Plot No.</u>	<u>Area</u>
154	879	2.94
	884	1.60
	893	0.60
	1062	0.13
	1269	0.52
	1272	0.89
	1275	1.09
	3726	0.29
		Ac.8.06

Besides the above land 0.59 in plot no.1581 and 1.02 in plot no.1596 under khunti no.159 which was declared surplus and was distributed, have now been allowed to be retained in the share of the

father Dinabandhu Behera because he is entitled to retain 18.00 standard acres.

Hence the above lands of 9.17 acres which are now included in the retainable ceiling unit of Minaketan Behera and his father Dinabandhu Behera have to be excluded from the surplus lands previously declared. The surplus lands as per the present revised final statement is appended in the schedule below. Hence the above lands which are now to be removed from the surplus list but has already been allotted in 24 allotment cases need amendment in view of the changed position. The said cases to the extent of the lands which are nor removed from the list of surplus lands, be reviewed accordingly and put up;

<u>Schedule</u>				
Village	Khunti No.	Plot No.	Area in Physical acres.	Area in standard Acs
Bhikampur.	154	<u>Class I</u>		
		1274	0.46	
		1278	2.16	
		2079	1.05	
		878(p)	0.62	

		Ac.4.29		4.29
		<u>Class II</u>		
		2210	0.87	0.58
		<u>Class IV</u>		
	886	0.43	0.09	
	<u>Class I</u>			
	160	2061	0.23	0.23

		Grand total :	5.82	5.19

Put up on 19.5.79”

It is further observed, in finality of the proceeding on 16.9.1985, the Tahasildar being the Original Authority came to observe as follows :-

“...Now it is seen from the records that the above lands have already been distributed to 24 landless persons of the said village. Now the allottees of the ceiling surplus lands are in cultivating

possession of the land since the date of distribution. It is not desirable to take away the lands from the poor beneficiaries at this stage. Third party rights have already been created and these allottees of the ceiling surplus land were not impleaded as parties to the case. Hence as per the decision of the Hon'ble High Court in O.J.C. No.867/76, this order would be inoperative.”

The only reason of the Original Authority in denying restoration of land appears to be the surplus land has already been distributed among 24 landless persons of the said village and the allottees are in cultivating possession of the land and thus no more available to be restored back to the Petitioner involved herein.

6. This Court here finds and as taken note herein above, the clear observation of the Appellate Authority that by the time of remand of the proceeding on 28.3.1977, there was no distribution of the land. Though it is not known when the land got distributed but the remand proceeding appears to be disposed of on 18.12.1978. However, there is final order on 16.9.1985. There is no reason forthcoming as to when there is determination holding the Petitioner is not a ceiling surplus holder by order of the Competent Authority on 18.12.78 as to why the land involved could not be restored back to the Petitioner and taken up in 1985 only to find the order of the Tahasildar remains impracticable. Once the Tahasildar has come to know that the proceeding has been remanded for its re-consideration and the land involved was not distributed by that

point of time, it was necessary on the part of the Tahasildar not to allow the distribution of land at least till the remand proceeding is finally over. It is not known under what circumstance and what competency, the Tahasildar has distributed the land even in pendency of the ceiling surplus proceeding. It is for the Administrative Authority to look into such aspect and to find if there is any clandestine attempt in the distribution to landless people here or not ? and may undertake appropriate exercise against such officer(s). As already observed, this Court finds, the Tahasildar in the remand proceeding has already come to observe that the Petitioner is not a Ceiling Surplus Land Holder. In the contingency that the land is already distributed reading together with the observation of the Tahasildar that the Petitioner is not a Ceiling Surplus Land Holder to find concrete result to the issue, this Court looking to the decision relied on by the learned senior counsel for the Petitioner, vide *Amt.Arda Mahalaxmi (supra)* finds, the observation of the Division Bench in Paragraphs-7 & 8 has come to observe as follows :-

“7. Under Art. 300A of the Constitution, no person shall be deprived of his property without authority of law. Provisions of statute are to be interpreted in a manner by which this salutary constitutional provision is given due effect than is violated. In case we accept the submission of the learned Additional Government Advocate that there is no provision in the Act giving power to the Revenue Officer to cause restitution of the property which has been distributed without jurisdiction, it would have the effect of depriving the petitioners of their property without authority of law. Therefore, the interpretation that the Revenue Officer possesses the power of restitution of property distributed as ancillary to an order to the finding that the distribution of the land as a nullity is in furtherance of Art. 300A of the Constitution.

8. In view of our discussions as above, we direct the opposite party Nos. 3 to 10 not to enter upon the lands of the petitioners any further and we also direct the Revenue Officer to take possession of those lands and deliver possession of the same to the petitioners.”

Reading the aforesaid observations and findings of the Division Bench, this Court finds, this decision also involved a case of distribution of land in the pendency of the proceedings and requiring to be restored to the Petitioner. Thus in Paragraphs-7 & 8, the Division Bench directed the private Opposite Parties therein not to enter into upon the land of the Petitioner. There is further direction to the Revenue Officer to take possession of those lands and deliver possession of the same to the Petitioner.

7. This issue again decided in another litigation in Harihar Panda & two others (supra). In the similar situation again in Paragraphs-8 & 9 of the said decision, this Court in a Division Bench has come to observe as follows :-

“8. In course of hearing, it has been brought to our notice by an affidavit that the order of the Revenue Officer dated 27-11-1976 finding that there is no ceiling surplus land, is now the subject-matter of revision before the Board of Revenue on being moved by the Collector under section 59(2) of the Act. The learned Government Advocate therefore, prays that this Court should not give any direction until disposal of the revision in the Board of Revenue. Such a contention if accepted would keep the petitioners out of their possession of the property which, at present, they are entitled to possess and of which they have been deprived without authority of law. Hence, the petitioners are entitled to restoration of the property. In the event of the Board of Revenue coming to a conclusion after hearing the parties that the petitioners have lands in excess of the ceiling area, section 45 of the Act would come into play and then only after service of the order as required

under section 45, the petitioners can be forcibly dispossessed unless they deliver possession in compliance with such order.

9. Opposite party Nos. 4 to 14 do not acquire any right, title or interest on the lands distributed to them. Accordingly, we direct the opposite party nos. 4 to 14 not to enter upon the lands of the petitioners any further and we also direct the Revenue Officer to take possession of those lands and deliver the same to the petitioners.

This decision has gone in a step ahead in the same contingency declaring therein that the private Opposite Parties for involvement of illegal delivery of possession do not acquire any right, title and interest even though they are in enjoyment of the disputed property. The Bench also directed the private Parties not to enter upon the land of the Petitioner any further and further directed the Revenue Officer involved to take possession of those lands and deliver the same to the Petitioners.

8. Finding concrete support of both the decisions to the case of the Petitioner and two decisions of the Division Bench, this Court finds, the order dated 16.9.1985 of the Original Authority in OLR Case No.11/1975 becomes bad in law and this Court sets aside the order dated 16.9.1985 declining restoration of the land to the Petitioner.

9. For the direction in the above two decisions, this Court in allowing the Writ Petition holds, Opposite Parties 6 to 32 including the L.Rs. of some private Opposite Parties, who have not responded to the notice of this Court have no right, title and interest over the disputed property. The

property disclosed through the balance part of the order of the Competent Authority, vide Annexure-2 shall be taken into possession by the Revenue Officer concerned and to deliver the same to the Petitioner at least within a fortnight of service of copy of this judgment. This Court here finds Opposite Parties 6 to 32 (in the inclusion of L.Rs) were distributed with the surplus land may be clandestinely in the year 1977-78 and in the meantime almost 45 years have passed. In working out the above direction in restoration of excess land in favour of the Petitioner involved herein, this Court to prevent injustice, if any, to Opposite Parties 6 to 32 also including the L.Rs of some of the Opposite Parties deserve some relief.

10. This Court here finds, during pendency of the remand proceeding, even after the Appellate Court observes, surplus land was still available with the State, there is clandestine attempt by the Tahasildar along with the District Administration in the locality in distributing the land resulting therein illegal distribution of the land in favour of the poor and landless persons. Number of such persons appears to be very large. It is not known what is the financial condition of these persons. There is also no fault lies with these persons, the private Opposite Parties in coming over such land, as they are all distributed with such land by the Competent Authority with clear promise ultimately to run their life from out of the income from

such land becomes the lifeline of these poor persons over four decades. This Court in addition to the direction in Paragraphs-8 & 9, further directs, in the process of restoration of the land in favour of the Petitioner, all attempts will be made by the S.D.O. of the locality in the first making assessment of the property including plantation, if any, of these persons standing over the land and after such assessment only at least within seven days of communication of this judgment in the involvement of Parties likely to be affected, direction of this Court will be given effect to. If in the process of assessment, it is observed, if any such Party is residing over such agriculture land by temporary construction, such Occupiers will be shifted to a temporary make shift place for their temporary habitation for a period of one month, within which period they shall relocate themselves on their own arrangements. It is made clear, since there is distribution of agricultural land, there is no question of entitlement, if any, on any permanent construction. After fifteen days of service of this order, all these private Parties shall have no right to go over the land involved. Further as all these persons will become landless once again, the Local Administration to find equivalent agriculture land to provide means of survival to all such Parties enjoying by virtue of distribution and allot such land in their favour by undertaking such exercise within a period of four months. Till such re-allotment, since the Opposite Parties

including their Legal Heirs as some of the private O.Ps. have died in the meantime, dependent on their predecessors will be deprived of their livelihood for their facing immediate ouster, all such allottees and/or their survivor will be entitled to at least a sum of Rs.3,000/- (rupees three thousand) per month per allottee, which will be transferred to the allottee or his survivor's bank account.

11. The Writ Petition succeeds but in the circumstance, no order as to cost. Copy of this judgment be supplied to the learned State Counsel for immediate communication and appropriate action.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.

The 26th September, 2022/M.K.Rout, A.R.-cum-Sr.Secy.