

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.11163 of 2003

Babaji Charan Sahoo & Ors.

....

Petitioner(s)

Mr.P.K.Routray,
Advocate

-versus-

*Commissioner, Consolidation &
Ors.*

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
06.07.2022**

Order No.

10.

1. Heard learned counsel appearing for the Parties.
2. This writ petition involves the following prayer:

“The petitioner, therefore, prays, that this Hon’ble Court may be graciously pleased to admit the writ application, issue a Rule Nisi calling upon the Opp. Parties to show cause as to why the orders as given in Annexures- 2 & 3 shall not be quashed and if the Opp. Parties fail to show cause or show insufficient cause then the said Rule be made absolute quashing Annexures-2 & 3 passed by Opp. Parties 2 & 1 respectively and allow the writ application.

And for this act of kindness, the petitioners shall, as in duty bound, ever pray”

3. In his challenge to Annexure-3, the order passed by the Commissioner, Consolidation in disposal of R.C. No.866 of 2000, Mr. Routray, learned counsel appearing for the petitioners taking to the background involving the case submitted that for the sikimi tenant not making arrangement of Dhuli Bhag required to be paid to the owner of the property went for realization of Dhuli Bhag otherwise known as Rent. As a consequence, it is only at the instance of the petitioners, a Rent Case No. 135 of 1955-56 was filed for recovery of Dhuli Bhag, the land revenue involved therein. For the nature of transaction between the parties and taking into account the death of the tenant in the meantime

considering the date of death, Mr. Routray, learned counsel takes a claim that once there is death of sikimi tenant, for the provision available at the relevant point of time, the property involved there to get back to the ownership of the actual owner. It is on this background Mr. Routray, learned counsel for the petitioners taking this Court to the specific plea in the review at Paragraph-6 contended the review authority in the above background should have considered the pleading of the petitioners involving the claim therein vide Paragraphs-6 and the writ petition. Taking this Court to the discussion in the review order Mr. Routray, learned counsel contended that in fact, there was no consideration on such aspect.

4. In his opposition Mr. Sahoo, learned Additional Standing Counsel appearing for the State in support of the impugned order contended that petitioners failed in their attempt for the nature of submission in their claim in the review application. It is further contended that once a rent case was initiated at the instance of the actual owner, the present petitioners and there is attending to finality involving in such rent case involving auction of the property involve. For there is creation of third party interest over the disputed property, the property is no more available to be put back to the custody of the actual owner-the petitioner. It is in the above background, Mr. Sahoo, learned Additional Standing Counsel contended that there is no substance in the submission of Mr. Routray requiring interference in the impugned order.

5. Considering the rival contentions of the parties, this Court finds undisputedly sikimi tenant died in the year 1955. It is for non-payment of Dhuli Bhag, the land revenue by the sikimi tenant for the year 1943 to 1955, it is only at the instance of the petitioner, the actual land owner, a Rent Case No.135 of 1955-56 was initiated for recovery of the land revenue involved therein. There is material disclosure that this rent case initiated at the instance of the actual owner, the petitioner, has attended finality and in execution of the decree therein involving Execution Case No.257 of 1956-57, the property involved is put to auction and in the

auction process opposite party Keshab Chandra Mekap remain the auction purchaser, who in the process remain in possession of the disputed property. In the circumstance, this Court observes petitioner is responsible for initiation of rent case. Even assuming that there was no requirement of initiation of rent case, recovery of Dhuli Bhag, the land revenue, could have been recovered by any other source available, auctioning of the disputed land should have been avoided. Surprisingly, the rent case was initiated by the petitioner himself. More surprisingly, it further reveals in the finality of the rent case, the petitioner even went for execution of such decree and as appears, the Court put the property involved therein to auction for execution of the decree in rent case No.135/1955-56 admittedly at the instance of the petitioner. Property being auctioned and after Keshab Chandra Mekap being the auction purchaser, the land has been settled to the possession of said Keshab Chandra Mekap on 20.01.1958. In the circumstance, there is no availability of any such land in the custody of the tenant to get back to the petitioner

. In the above circumstance, this Court declines to entertain the writ petition and interfere in the impugned order. The writ petition thus dismissed.

(Biswanath Rath)
Judge