

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 79 OF 2019

Bhagirathi Behera and another* *Petitioners

Mr. D.P. Mohanty, Advocate

-versus-

Mayadhar Mallik and others* *Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(for Opp. Party No.6)

Mr. Soumya Mishra, Advocate
(for Opp. Party Nos.1 to 5)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.03.2022**

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition seek to assail the order dated 26th April, 2018 (Annexure-7) passed by Additional Commissioner, Settlement and Consolidation, Balasore - Opposite Party No.6 in Settlement Revision Petition Case No.396 of 2015 filed by the Petitioners under Section 15(b) of the Orissa Survey and Settlement Act, 1958 (for short 'the Act'), thereby dismissing the revision.
 3. Mr. Mohanty, learned counsel for the Petitioners submits that C.S. Plot No.587 under C.S. Khata No.69 to an extent of Ac.0.56 decimals stood recorded in the names of Markanda Mallik and Nabei Mallik sons of late Gobinda Mallik. Markanda Mallik died leaving behind his son Budhi Mallik and Nabei Mallik died issueless. After the death of Markanda Mallik and Nabei Mallik, Budhi Mallik became the

absolute owner of the property left by Markanda and Nabei. Budhi Mallik died leaving behind his sons Sambhu Mallik and Bhaju Mallik. Sambhu Mallik died leaving behind his son Sankar Mallik and Bhaju Mallik died leaving behind his son Gobinda Mallik. There was a partition between said Sambhu Mallik and Sankar Mallik as one part and Bhaju Mallik and Gobinda Mallik on the other vide Registered Partition Deed No.1988 dated 29th March, 1956. Out of the aforesaid C.S. Plot No.587 an extent of Ac.0.28 decimals was allotted to the name of Sambhu and Sankar. After the death of Sambhu, Sankar became the absolute owner of the land in question i.e. Plot No.587 to an extent of Ac.0.28 decimals. Sankar Mallik sold the said plot allotted in his favour along with other property to Adikanda Dwibedy son of Bhagirathi Dwibedi vide R.S.D. No.8157 dated 30th July, 1964 and delivered possession. Said Adikanda in turn sold the land in question to Smt. Sankari Dei wife of Biswanath Behera vide R.S.D. No.2213 dated 13th March, 1965 and delivered possession. Said Sankari Dei is the mother of the present Petitioners. During settlement operation steps could not be taken to record the name of Sankari Dei in respect of the land she has purchased. Accordingly, the R.O.R. was published in the name of Sankar Mallik son of Sambhu Mallik under Annexure-5. Thus, the Petitioners finding no other alternative filed the aforesaid revision under Section 15(b) of the Act to correct the R.O.R. in their name.

4. It is the submission of Mr. Mohanty, learned counsel that the Petitioners are in possession over the land exercising their right, title and interest thereon. The Additional Commissioner, Settlement and Consolidation on a

misconception that permission was required under Section 22(1) of the Orissa Land Reforms Act, 1960 for transfer of the land in question, i.e., sale of land by Sankar Mallik to Adikanda Dwibedy, held that in absence of such permission by the Competent Authority for sale of land, the sale was void. Thus, the Petitioners cannot derive any title over the land in question.

5. Mr. Mohanty, learned counsel for the Petitioner submits that Section 22 of the O.L.R. Act came into force by notification No.63382 dated 25th September, 1965 issued by the Revenue Department. Since the sale by Sankar to Adikanda was prior to the said date, no permission under Section 22(1) of the O.L.R. Act was necessary. He further relied upon the case of **Chandramani Patel-vs- Collector, Bolangir & Ors.** reported in 1989 (II) OLR 38 and submitted that the rigors to Section 22 will not be applicable to the case at hand. It is his submission that same view was also taken in a subsequent decision in case of **Lingaraj @ Linga Nayak and Anr.-vs- Abhimanyu Bhoi** reported in 2019 (I) CLR 104.

6. In that view of the matter, he prays for setting aside the impugned order and issuance of a direction to record the land in question in favour of the Petitioners.

7. Mr. Mishra, learned counsel appearing for the Opposite Party Nos.1 to 5 submits that there is no quarrel over the legal position with regard to applicability of Section 22(1) of the O.L.R. Act, as submitted by Mr. Mohanty, learned counsel for the Petitioners. But there are restrictions under Orissa Tenancy Act with regard to the transaction by way of sale or otherwise by tenure holder. That aspect was not brought to the notice of the Additional Commissioner, at the time of adjudication of the

matter. Hence, the same requires consideration. He, therefore, submits that the Additional Commissioner, Settlement and Consolidation, Balasore should re-examine the matter in accordance with law giving opportunity of hearing to the parties concerned and pass a reasoned order.

8. Mr. Mishra, learned Additional Government Advocate appearing for Opposite Party No. 6, however, submits that since it is an *inter se* dispute between the private parties, the Additional Commissioner should re-examine the matter giving opportunity of hearing to them.

9. Taking into consideration the rival contentions of the parties and the case law cited by Mr. Mohanty, learned counsel for the Petitioners, this Court is of the considered opinion that the rigors of Section 22(1) of the O.L.R. Act is not applicable to the transaction made by Sankar son of Sambhu in favour of Adinanda Dwibedy son of Bhagirathi Dwibedy vide R.S.D. No.8157 dated 30th July, 1964. As such, finding arrived at by the Additional Commissioner is not sustainable in the eyes of law. However, the submission of Mr. Mishra, learned counsel for Opposite Party Nos. 1 to 5 requires consideration. Since sufficient materials are not available, this Court is not in a position to examine the applicability of restrictions of the Odisha Tenancy Act to the aforesaid transaction.

10. In view of the above, the impugned order under Annexure-7 is set aside. The matter is remitted back to the Additional Commissioner, Settlement and Consolidation, Balasore, to consider the revision petition afresh in accordance with law giving opportunity of hearing to the parties concerned keeping in mind the observation made above.

11. In order to avoid further delay in the matter, parties are directed to appear before the Additional Commissioner, Settlement and Consolidation, Balasore on 25th April, 2022 along with certified copy of this order to receive further instruction in the matter.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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