

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P.(C). No.7834 of 2007

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

Smt.Basanta Kumari Das @ Dash & Ors. Petitioners

Versus

State of Odisha & Ors. Opposite Parties

For Petitioners ... Mr.G.N. Sahu.

For Opposite Parties ... M/s. S.P.Panda, Addl. Govt.
Advocate

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing & Judgement:15.07.2022

Biswanath Rath, J. Despite service of notice, there is no appearance of the private opposite parties. Since A.D. has not been returned, this Court treats service of notice on the private opposite parties is sufficient. The writ petition thus heard involving counsel for the petitioner, learned State counsel and on the basis of documents available.

2. This writ petition involves the following prayer:

“It is therefore prayed that the writ petition may be admitted, relevant records may be called for and after hearing the counsel for the petitioners the writ petition may be allowed and the impugned order under Anenxure-1 and 2 may be quashed;

And

It may be held and declared that the impugned proceeding U/s 3(A) of the Regulation-2/56 initiated in respect of the case land (non-Scheduled Tribes land) by opp. party Nos.2 and 3 is non-est in the eye of law and without jurisdiction;

And

It may be held and declared that the petitioners are the lawful owners with right, title and possession of the case land;

And/Or

Pass any other orders/orders as may be deemed just and proper in the facts and circumstances of the case;

And

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

3. Background involving the case is that way back the property involved was vested in the State. There appears, on some point of time, the Scheduled Tribe members were continuing as tenants over the State property. Finding the tenants not paying rent, undisputedly Jagiri Mamala Case No.85 of 1959 was initiated and undisputedly such proceeding was in the involvement of private opposite parties. For the private opposite parties, the tenants unable to pay the rent to the landlord the State, the proceeding involving realization of rent was concluded with direction for auctioning the property and it appears in the auction process, one Lingaraj Dash, the father of the petitioners became the successful bidder. On deposit of bid money, land has been transferred to the possession

of said Lingaraj Dash. After longtime it appears, in the year 2004 a proceeding was initiated under the provision of Section 3-A of Regulation-2 and registered as OSATIP Case No.60 of 2004 was decided with involvement of all the parties directing restoration of the land involved herein. An appeal being filed, it was registered as OSATIP Appeal Case No.5 of 2005. Appeal got dismissed in confirmation of the original order resulting filing the writ petition involve herein.

4. Taking this Court to the plea taken in the writ petition and the point available for the authorities for consideration, Mr.Sahoo, learned counsel appearing for the petitioner argues that there has been mechanical disposal of the proceedings by both the authorities. It is on the basis of recording the point available for consideration and further Lingaraj Dash, the father of the petitioner came to possess the disputed land by way of auction purchase in a litigation process, Mr.Sahoo, learned counsel for the petitioner claims there was no question of entertaining a proceeding under Section 3-A of Regulation-2 of 1956. It is in the above premises, Mr.Sahoo, learned counsel for the petitioner claims interference of this Court in the orders at Annexures-1 and 2 and allowing the writ petition.

5. Mr.Panda, learned Additional government Advocate though did not dispute the point available for consideration taken note by the appellate authority at running page-21 of the brief but, however taking this Court to the provisions of the Act seeking protection of the Scheduled Tribe Members contended that the authorities have taken right decision in restoration of the property. In the event petitioner found his possession through the Jagiri Mamala Case No.85 of 1959 is disturbed in the subsequent proceeding, nothing prevented the petitioner to go for damage against the State. It is in the process, Mr.Panda, learned Additional Government Advocate requested for dismissal of the writ petition.

6. Considering the rival contentions of the parties, this Court finds there is no dispute that a Jagiri Mamala was instituted for rent not being cleared by the private opposite parties and, therefore, proceeding was initiated vide Jagiri Mamala Case No.85 of 1959. Position of the parties through the Jagir Mamala case makes it clear that Private Opposite Parties herein were just tenant and since failed in clearing the land dues were rightly involved in the Jagir Mamala case. This at least clears the private Opposite Parties here were thrown out of the disputed property as a request of a duly constituted proceeding. From the pleadings, it appears both side

case made out on the following points for consideration and rightly taken note by the appellate authority, which reads as follows:

- “1. That the learned lower court has erred in law and findings are contrary to the provisions of OGLS Act.
2. That initiation of the proceeding against the appellants under OSATIP Regulation 2 of 1956 is contrary to the law.
3. The originally the case lands were service lands and no tax or cess is being paid by the enjoyer.
4. That after abolition of the estates, all those service lands were vested with Govt.
5. That thereafter, the enjoyer was asked by the Govt. to pay the salami for settlement of the suit land in his favour.
6. That since the enjoyer could not pay the salami, the govt. took over possession of the case land.
7. That since Govt. have taken over possession of the case land, the enjoyer has extinguished his all right over the said land.
8. That therefore Govt. has settled the case land in favour of late Lingaraj Das (the father of the appellants) on payment of requisite salami as fixed by the Govt.
9. That since then the lessee Lingaraj Das and thereafter his legal heirs (appellant) are in peaceful possession and enjoyment of the case land.
10. That after settlement of the land the lessee and after his death his legal heirs are being paid the land revenue to Govt.i.e. about 43 year.
11. That for cancellation of settled land, no proceeding U/s7(A) (3) of OGLS Act shall be initiated after completion of 14 years of the settlement as per the decision of Hon’ble High Court, Orissa reported in 2005-II-OLR -457 page in the case of Gopal Das Agarwal Vrs. State of Orissa and others.
12. That the order of the Lower Court is beyond the provisions envisaged under the OSATIP Regulation 2 of 1956 as well as barred by limitation under the provisions of OGLS Act.”

Above at least depicts there is removal of Scheduled Tribe person from tenancy and undisputedly petitioners continued to occupy the disputed land on the outcome in the Jagir Mamala, a duly constituted litigation.

7. It is taking into account the point raised available for consideration and the principle of law bringing a provision for eviction of unlawful occupants, to bring the possession of property

to the Scheduled Tribe fold in the regulation area, for the background of the case, claimed hereinabove, this Court finds the following question for determination in the case involved.

If the Section 3-A regulation proceeding can interfere in the fate of Jagiri Mamala Case No.85 of 1959 ? and further if the authorities under Regulation-2 were justified if entertaining a Section 3(A) proceeding at that point of time ?

8. Undisputed facts remain State being the owner of the property allowed the private opposite parties and their predecessors to be tenant in it. For the legal provision available at the relevant point of time, State was authorized to initiate the Jagiri Mamala Case for realization of rent from its tenant. Undisputedly, Jagiri Mamala Case No.85 of 1959 was initiated in the year 1959 and the private opposite parties remain unsuccessful. The petitioner in the process of auction involved also came to possess the disputed land long since in the year 1963. For finding relevancy, Section 3-A of the Odisha Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956, this Court records the provision as hereunder:

“3-A. Eviction of persons in unauthorized occupation of property-(1) Whereas a person is found to be in authorized occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise the competent authority may, either on

application by the owner or any person interest therein.[or on information received from the Grama Panchayat] or on his own motion, and after giving the parties concerned an opportunity to being heard, order rejectment of the person so found to be in unauthorized occupation and shall cause restoration of possession of such property to the said member of the scheduled Tribes or to his heirs.

(2)The provisions contained in Sub-secs. (2), (3) and (4) of section 3 shall mutatis mutandis, apply to the proceedings instituted or initiated under Sub-sec(1)]

[(3) In every case after finalization of the proceedings under Sub-sec.(1), the competent authority shall make a report to the concerned Grama Panchayat about the order of election passed in respect of any person in authorized occupation of any immovable property of a member of a Scheduled Tribe and the restoration of possession of the property to such member on his heirs and in case of failure of such restoration, the reasons for such failure .”

9. Reading the aforesaid legal provision, this Court here finds

Regulation-1956 gets support of the provision for eviction of persons/unauthorized occupants on property came by way of amendment in 1975. Sub-clause-2 therein also came by way of amendment in the year 2002. In consideration of the order of both the authorities, this Court finds both the authorities misapplied the provision came into force in 1975 and thereby declare the auction taken in 1959 as bad and directed restoration of possession in favour of the private opposite patties. For the incorporation of section 3-A of the Regulation, 1956 in 1975 not a retrospective one and the petitioners father came into possession of the property in disposal of a duly constituted proceeding initiated in 1959, this Court not only finds declaring Jagiri Mamala Case No.85 of 1959 as bad in such proceeding remains without the domen of the authorities under the Regualtion-1956 but again finds for the

development taken though the Jagiri Mamala Case in 1959, no Section 3-A proceeding was entertainable in the year 2004. Further for a valid order involving Jagiri Mamala Case No.85 of 1959 putting the property of actual owner in possession of auction purchaser, such order unless challenged in valid proceeding could not have been interfered by the authorities under Regulation, 1956. Both the authorities here also failed in appreciating that provision at Section 3-A came to picture much after disposal of Jagiri Mamala Case No.85 of 1959. In the process while answering the question taken note herein above in favour of the Petitioners herein, this Court finds both orders at Anexures-1 and 2 remain invalid. Thus setting aside both the order at Anexures-1 and 2, this Court allows the writ petition. There is however no order as to cost.

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Biswanath Rath, J.

*Orissa High Court, Cuttack.
Dated the 15th day of July, 2022/SKS*