

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.13964 OF 2004

***Orissa Forest Development
Corporation Ltd., & Anr.***

.... ***Petitioner(s)***

Mr. S.K. Pattnaik,
Senior Advocate

-versus-

State of Odisha & Ors.

.... ***Opposite Party(s)***

Mr. S.P. Panda,
AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
28.06.2022

Order No.

09.

1. Heard learned counsel for the Parties.
2. For the submission of Mr. Pattnaik, learned Senior Counsel in the proceeding involving O.L.R. Case No. 52 of 1995 appearing together with the proceeding under Section 8 of the OLR Act. On its appearance, the Petitioners filed their objection, vide Annexure-7 and there has been finality of such proceeding, vide Annexure-9 finally directing eviction of the Petitioner from the land involved. Appeal being filed was rejected as not entertainable. The same is also the fate in the revision but at the instance of the Petitioner.
3. Taking this Court to the objection of the Petitioners at Annexure-7, further the ground taken in Annexure-16 also through the grounds in Writ Petition, the impugned order at Annexure-9 is challenged on the premises of initiation of such proceeding being barred under the provisions of Section 73 (b) (v) of the OLR Act. Further the impugned order is also challenged on the premises of non-consideration of the objection of the Petitioner in Annexure-7. It is in

the above premises and for the clear restrictions, vide Section 73 (b) (v) of OLR Act. Mr. Pattnaik, learned Senior Counsel opposes the order, vide Annexure-7 so also the orders of the Appellate Authority as well as the Revisional Authority vide Annexure-12 and 13 respectively and also an order involving provision of Section 8-A of the OLR Act vide Annexure-13. Further a consequential order of this Certificate Authority under OPDR Act, vide Annexure-14, Mr. Pattnaik, learned Senior Counsel brings to the notice of this Court to the further request of the Petitioner vide Annexure-15 submitted in any case, the Petitioners case deserves to be reconsidered by the Competent Authority.

4. Keeping in view the provision at Section 73 (b) (v) & (vi) of O.L.R. Act, Mr. Panda, learned Additional Government Advocate however, in his opposition made an attempt to justify the orders at Annexure-9 & 10 submitted. Taking to the nature of objection of the Petitioners vide Annexure-7, it is alleged that Petitioner is approaching this Court on the grounds not available for consideration of the Competent Authority. Mr. Panda, learned Additional Government Advocate thus contended that no Writ Petition should be entertained on surprising ground.

5. Mr. Panda, learned Additional Government Advocate further also submitted that there is no scope for interfering herein the orders at Annexure-9 & 10. Taking this Court to the Appeal and Revision provision appearing at Sections 58 and 59 of the O.L.R. Act 1960, Mr. Panda, learned Additional Government Advocate also attempted to justify the orders of the Appellate Authority as well as Revisional Authority as well. Mr. Panda, learned Additional Government Advocate also submitted that for the single Writ Petition involving several litigations cannot be inferred in nature of relief sought for by

the Petitioner involving orders of different authorities under different provisions of Act. It is in the above premises, Mr. Panda, learned Additional Government Advocate opposes the entertainability of the Writ Petition.

6. Considering the rival contentions of the Parties, looking to the nature of dispute involving Annexure-9 & 10, proceedings initiated under Section 8 (1) (C) and Section 14 (1) (B) of O.L.R. Act, this Court keeping into the provision at Section 8 of the Act finds, the provision reads as follows:

“8. Eviction of raiyats-

XXX XXX XXX

(1)(c) has used of the land for any purpose other agriculture.”

“14. Grounds of eviction of tenant- (1) (b) has failed to cultivate the land properly, or personally: or”

XXX XXX XXX

This Court here also taken note of provision at Section 73 (b) (v) & (vi) of Act involved which reads as here under:

73. Act not to apply to certain lands –

Nothing contained in this Act, shall apply-

(b) to land held by-

Xxx xxx xxx

(v) Any Government, Company as defined in the Companies Act, 1956 (1 of 1956),

(vi) Any Corporation established under any law in force.

Reading the provision at Section 8 of the Act, this Court finds that Mr. Pattnaik, learned Senior Counsel is justified in making an endeavour on behalf of the public authority on the entertainability of the proceeding under Section 8 of the Act by the Competent Authority involving a Public Authority. It is, however, at the stage, considering the rival contentions of the parties, this Court again finds from Annexure-7, there is no raising of such ground by the Public Authority, the Petitioner in the consideration process of proceeding involving

Annexure-9 & 10. Be that as it may, for a lawful restrictions in bringing in application under the provision of Section 8 of the Act involving public authority being an arm of the State Authority, it was necessary on the part of the Competent Authority while considering the petition under Section 8 also to examine the above aspects, particularly on the entertainability of such proceeding, if it involves the public authority, particularly keeping in view, the restrictions in the provision under Section 73 (b) (v) and (vi) of O.L.R. Act.

7. It is in the above view of the matter, this Court finds there is strength in the submission of Mr. Pattnaik, learned Senior Counsel and this Court thus observes, there is mechanical disposal of the Section 8 proceeding by the Competent Authority. In the process, this Court interfering with the orders at Annexure-9 & 10 as well, setting aside both the orders remands the proceeding to the Tahasildar-cum-Authorized Officer, Bisam- Cuttack, to re-dispose of the Section 8 of the proceeding involving the Petitioner, deciding the issue therein also keeping in view the provision at Section 8 as well as Section 73 of the O.L.R. Act. Since this Court finds, Petitioner filed the Writ Petition on surprising grounds, this Court finding strength in such grounds, permits the Petitioner to file a detailed objection to the proceeding under Section 8-A of O.L.R. Act by submitting the same to the Competent Authority within a period of three weeks along with copy of this order as undertaken. For the nature of order passed by this Court, this Court further directs, till there is disposal of O.L.R. Case No. 52 of 1995 at least within a period of four months, there shall be no coercive action involving the Petitioner involving the certificate proceeding vide demand notice Annexure-18, as ultimately fate in proceeding under Section 8 of O.L.R. Act shall be dependent on the ultimate outcome in the Section 8 of the proceeding.

8. While re-examining the aspect, the Authority shall also keep in view the observation of this Court in disposal of W.P.(C) No. 7925 of 2006 decided on 27.06.2017 certified copy of which order shall be provided by the Petitioners as undertaken.

9. The writ petition succeeds but however with an order of remand.

10. Issue urgent certified copy.

11. Free copy of this order be handed over to the learned State Counsel for necessary action at appropriate level.

Swarna/ Ayesha



(Biswanath Rath)
Judge