

ORISSA HIGH COURT : C U T T A C K

O.J.C. NO.6360 OF 2000

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

***Smt.Mukta Devi Dash since dead,
Her legal heir, Janmajaya Das since dead,
His legal heirs, Suren Kumar Das & ors. : Petitioners***

-Versus-

***Land Reforms Commissioner, Orissa,
Cuttack & ors. : Opp.Parties***

For Petitioners : M/s.N.Patra, B.N.Shadangi,
R.Sarangi & A.K.Patra

For O.Ps.1 to 4 : Mr.U.K.Sahoo, ASC

For O.Ps.5 to 21(a) : None

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 27.09.2022

1. There is sufficiency of notice on the O.Ps.10(a), 10(b), 12(a), 13(a), 16(a), 17(a) to 17(c), 19(a) & 21(a). After elapse of ten days of the date of appearance, nobody is showing interest on behalf of the said O.Ps.

2. Undisputed fact remains to be after restriction on holding ceiling surplus land brought into force, proceeding under Section 42 of the O.L.R. Act was initiated. It appears, vide Annexure-1 the proceeding got

concluded in the involvement of the Petitioners even holding the Petitioners had all total 55.94 acres of land. On Conversion, the area remains to be 33.40 standard acres and for the provision made in law, the Petitioners herein, the O.Ps. therein were entitled to retain 10 standard acres of land and remaining area 23.40 standard acre of land vested in Government. Pleading further goes to confirm that even though the Petitioners had scope for raising objection under Section 43(2) of the OLR Act herein after the draft publication is made, there has been no raising of objection. It is only after nine years of the order holding the Petitioners to be ceiling surplus land holders, the Petitioners came to raise a protest to the Competent Authority under Section 59(2) of the O.L.R. Act with clear allegation that there has been inclusion of certain properties already sold in 1966-67, i.e, much prior to the provision came into force in the allotment of 10 standard acres of land in favour of the Petitioners.

3. There is clear admission by Mr. Patra, learned counsel for the Petitioners that the Revision involved only the above aspect requesting exclusion of property sold prior to restriction comes to force. Taking this Court to the objection raised in the purported application under Section 59(2) of the O.L.R. Act, Mr.Patra, learned counsel for the Petitioners contended that once such objection came into existence and further the

Petitioners are still in possession of the land, nothing prevented the Revisional Authority to at least direct to re-enquire into the matter for taking appropriate decision. In the circumstance, learned counsel for the Petitioner opposed the impugned order at Annexure-3. There has been filing of a Review Petition at Annexure-4 reviewing the order at Annexure-3. There has been also decisions involving the Review Petition but taking a new ground other than the grounds required to consider the Review Petition. Mr.Patra thus contended, once a Review was having a specific ground, there was no need for the Reviewing Authority to reiterate its earlier order involved in the Review without taking into consideration the grounds and the materials support there.

4. Mr.U.K.Sahoo, learned Additional Standing Counsel appearing for O.Ps.1 to 4, however, taking this Court to the observation of the Revisional Authority at Page-32 of the Brief contended, the Petitioners in spite of bringing a Revision after so many years and provided opportunity of hearing, were unable to lead evidence to support their claim on the sale already effected even prior to coming into force of the restriction. Further taking into consideration the reason in the Revisional order, Mr.Sahoo claimed, there was no infirmity in the impugned order to be interfered with.

5. There is, however, no dispute that the Revision Petition contained the claim of the Petitioners on the basis of material particulars, which the Petitioners failed in taking support in the Revision Proceeding.

6. Considering the rival contentions of the Parties, this Court finds, there is clear recording by the Revisional Authority that the Petitioners even though appended a list of property already sold prior to the restriction came into force did not bring the materials to support their such contention. However, there appears, there is a Review Petition decided involving the Revisional order. Perusal of the Revision Petition, this Court finds, there is an attempt of the Petitioners to fill up the lacunae in the hearing of the Revision in bringing back the documents to establish their claim in the Revision. Going through the order passed in Misc. Case No.70/98 at Annexure-5, this Court finds, the Review has been dismissed only on the ground that the Revision was preferred after eight years of time involving the order passed eight years back. For the opinion of this Court, once a Review Petition is entertained requiring review of a revisional order, the Reviewing Authority has the only scope to get into the ground in Review and determine as to whether the order involved therein is reviewable in the availability of cogent material. Further for the nature of dispute, a valuable piece of land is likely to be taken away from the possession of the Petitioners even though they are the owners of the

land but by virtue of restriction came subsequently debarring a person to hold the land beyond certain limit. This Court finds, here the Petitioners place reliance on some documents filed with the Review Petition to support their stand with 10 standard acres of land allotted in favour of the Petitioners included some land already sold to third parties even prior to the restriction came into play. In the circumstance, this Court also finds, the Review Petition not decided in accordance with law, as a result such order remains unsustainable. This Court sets aside the order at Annexure-5 but since the Review Petition requires re-adjudication based on fresh material, this Court remits the matter to the Land Reforms Commissioner for fresh disposal.

7. While remitting Misc. Case No.70/98 to the Land Reforms Commissioner, Cuttack for fresh disposal, this Court directs the Review Authority to provide opportunity of hearing to the Petitioners on the materials taken support therein and give his findings in genuiness of such documents only after the Reviewing Authority shall consider whether allotment of 10 standard acres of land as per the statement at Annexure-1 vis-à-vis the land retained with the Petitioners, vide Page-19 and take a lawful decision.

8. This Court records the statement of the learned counsel for the Petitioners that even though there has been distribution of the additional

land in favour of the landless persons, beneficiaries are only in possession of Patta and the Petitioners are still in possession of the property. It is made clear that in the event the Authority comes to hold the Petitioners are to get back the additional property for their involvement of property already sold prior to the restriction came into picture, decision, as appropriate, shall be taken following the decision of this Court in O.J.C. No.3/1995 disposed of on 26.9.2022.

9. The Writ Petition stands disposed of accordingly.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.

The 27th September, 2022/M.K.Rout, A.R.-cum-Sr.Secy.