

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**O.J.C. No.5286 of 2001**

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

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**Narayan Debata** .... **Petitioner**

*Versus*

**The Collector, Cuttack & Anr. .... Opposite Parties**

For Petitioner ... Mr.G.K.Mishra, Advocate

For Opposite Parties ... Mr. S.Mishra, Additional  
Standing Counsel

**J U D G M E N T**

संक्षिप्त न्याय

**PRESENT:**

**THE HONOURABLE JUSTICE BISWANATH RATH**

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Date of Hearing and Judgment: 28.09.2022

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**Biswanath Rath, J.** There is sufficiency of notice on the Opposite Party No.5. The Writ Petition involves a challenge to the impugned orders passed by the competent authority under the Odisha Land Reforms Act vide Annexures- 2, 3 & 4 respectively.

2. Short question involved herein, a proceeding under Section 23 of the Act being initiated involving restoration of land in favour of the

tribe from the custody of the Petitioner a non-tribe attending to the initiation of proceeding, Petitioner brought objections in restoration involving three sale deeds i.e. 18.02.1969, 14.03.1973 and 20.05.1974. Even though on 18.02.1969, the first sale deed involved, there is no permission at the time of registration however there has been post facto permission and the sale deed so far as 14.03.1973 and 20.05.1974 are concerned, those are already involving valid permission of the competent authority. Considering controversy involved therein, the original authority disposed of the original proceeding vide Annexure-4 allowing in part thereby directing restoration of the land involving the sale deed dated 18.02.1969 whereas rejecting the claim vis-à-vis the other two sale deeds.

3. For the reason indicated therein, appeal being preferred the same has been dismissed in confirmation of the order of the original authority vide Annexures-2 & 3. A revision also preferred, which came to be dismissed on the same view vide Annexure-1. The Writ Petition involves only in respect of rejection of the proceeding involving the sale deed dated 18.02.1969 as the rest part of impugned order supporting the Petitioner herein. Mr. Mishra, learned counsel for the Petitioner taking this Court to the plea available all through the proceeding involved herein contended that even assuming the sale deed dated 18.02.1969 becomes illegal however by virtue of sale deed since possession of the property is delivered to the Petitioner at that point of time, there is permissive possession in favour of the Petitioner herein for over sixteen years by the time of initiation of proceeding creating property right in favour of the Petitioner. Thus Petitioner

otherwise had his title involving the disputed property which all the three authorities failed to appreciate.

4. It is in the circumstance, for the Petitioner are already twelve years of possession by the time of initiation of the proceeding vide Annexure-4 claims dismissal of proceeding under Section 23 of the Act and on 12.08.1986 as available for the Petitioner had already got more than twelve years possession. Bringing decision of this Court in the case of ***Srikar Bag vs. Revenue Officer, Titilagarh and others reported in 1993 (II) OLR 95***. Petitioner claims the benefit of the judgment to the case at hand.

5. Mr. Mishra, learned Additional Standing Counsel in his opposition while attempting to justify the impugned orders objected entertainability of the Writ Petition on the premises the Writ Petition involves concurrent finding of the fact by all the three Courts. There is however no dispute with regard to the proposition of law taken help herein by the Petitioner.

6. In spite of notice to the private parties and sufficiency thereof, nobody is appearing for private opposite parties.

7. This Court finds, no dispute in the rejection of the claim of the Petitioner vis-à-vis the sale deed dated 18.02.1969 since it did not have the permission at appropriate time but factual aspects makes it clear that involving the sale deed in 1969, there has been transfer of property in favour of the Petitioner by the actual owner even on receipt of required sale price in 1969 itself, the original proceeding got initiated on 12.08.1986. Undisputedly, there is seventeen years possession of the Petitioner involving the disputed land by the time of

institution of the proceeding. This Court here observes the plea of creating of right for long possession was not available for consideration right from beginning but however since this is a point of law, this Court is constrained to consider the same and the point raised is valid in law. In peculiar facts involved herein, this Court takes into account, the decision of this Court in the case of *Sikar Bag (supra)* paragraph-9 reads as follows:-

So far as the second point is concerned, it is seen that the same has been concluded by a Bench of this Court in *Butu Naik v. Anila Naikani and another*, \* 32(1990) OJD 416 (Civil). Therein, it has been held that the period of thirty years which is introduced in Art.65 of the Limitation Act, 1963 by amendment under Sub-sec. (2) has not application to a proceeding under Sec. 23-A. In such a case, the period of limitation is twelve years as provided under Art. 65. We respectfully agree with such view particularly when Sec. 23-B (2) of the Act clearly provides that the period of limitation prescribed therein will apply only to proceedings under Sec.23 of the said Act. So, we hold that the application for restoration under Sec. 23-A, if the Act was barred by time, because admittedly after the transfer the petitioner was possessed the land in question for more than twelve years.

8. In the circumstance this Court finds the decision has clear support to the case of the Petitioner, this Court finds application under Section 23 of the Act should ought to have been dismissed in respect of all the transaction involved therein as the Petitioner has already got right by way of long possession even on the institution of original proceeding even involving the property under the first sale deed.

9. In the circumstance this Court interferes in all the orders in respect of the first transaction and setting aside the finding of all the

authorities involving the transaction of 18.02.1969 reverse the order in dismissal of Section 23 of the OLR Act proceeding in involvement of all the three sale deeds. This Court records the submission of learned counsel for the Petitioner that he is still in possession of the Petitioner and such possession cannot be disturbed.

10. The Writ Petition succeeds but however there is no order as to cost.

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**BISWANATH RATH, J.**

*Orissa High Court, Cuttack.  
Dated the 28th day of September, 2022/Swarna, Junior Stenographer*

