

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.4349 of 2004

*An application under Articles 226 and 227 of
the Constitution of India*

Narayan Sumantaray @ Narayan & Ors. : Petitioners

-Versus-

State of Orissa & Ors. : Opposite Parties

For Petitioners

: M/s. S.D. Das, Sr. Adv.
H.S. Satpathy,
B.K. Sinha,
D.R. Bhokta,
D.K. Sundaray,
N. Bisoi, A.N. Sahu,
D. Mohanty,
D.P. Behera,
M. Panda

For Opposite Parties

: Mr. S. Ghose,
Addl. Govt. Adv.

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of hearing: 13.10.2022 :: Date of Judgment : 19.10.2022

1. This writ petition involves the following prayer:-

“The petitioners, therefore pray that this Hon’ble Court be
graciously pleased to issue a Rule Nisi calling upon the opposite

parties to show cause as to why a writ of certiorari or any other appropriate writ / writs shall not be issued;

- i) quashing the order as has been passed under ANNEXURE-5;
- ii) if the opposite parties failed to show cause or show in sufficient cause to make the said rule absolute; and
- iii) to pass such other order / orders or to issue such other writ / writs as would afford complete relief to the petitioners.

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

2. Factual background involved herein is that a suo motu ceiling surplus proceeding bearing O.L.R Case No.62 of 1974 was initiated by the Tahasildar in the name of one Subash Chandra Pradhan @ Samantaray, which was, however, dropped on the observation that on the basis of revised report of the R.I. it was found that the family held total extent of land 19.16 standard acre. The occupier was in Raiyat status, also remains one of the ground. While the matter stood thus O.L.R. Case No.59 of 1974 was instituted against the father of the Petitioner Nos.2 to 6, which also came to be dropped on 28.09.1974. It appears, there is also initiation of further ceiling proceeding against the father of the Petitioner No.1 and Petitioner No.1 bearing in O.L.R. Case Nos.60 of 1974 and 61 of 1974 respectively, which also came to be dropped on 28.09.1974. While the matter stood thus in 1986 vide Annexure-1 the Tahasildar-cum-Revenue Officer, Khallikote initiated O.L.R Case No.1 of 1986 against Dandapani Pradhan @ Samantaray, where Dandapani Pradhan @ Samantaray appeared and claimed on the basis of family partition dated 1.03.1956 as well as transfer of the land by gift and sale prior to 1970. The Tahasildar, however, rejected the contentions of Dandapani Pradhan resulting filing of the O.L.R Appeal No.4 of 1988 vide Annexure-2. Appeal appears to have been allowed on 31.08.1988 holding that the O.L.R (Ceiling) Case No.1 of 1986 is barred by principle of Res-judicata.

Challenging the aforesaid order undisputedly there is no revision U/s.59(I) of the OLR Act, 1960 read with Rule 44(2) of the OLR Rules, 1965. However after long gap of 19 years, in the year 1992 a proceeding U/s.59(2) of the OLR Act was initiated by the Collector, Ganjam being registered as OLR Revision Case No.6 of 1992 impugning the order dated 28.09.1974 passed in OLR Case No.59 of 1974 on the file of the Member, Board of Revenue, which appears to have been allowed vide Annexure-5, but with an order of remand to the Revenue Officer, Khallikote who was directed to proceed de novo with the case after clubbing of three Original Cases vide 59/74, 61/74 & 62/74 but involving the Opposite Party No.4 therein one Dandapani Pradhan. It appears, after the above remand order the Revenue Officer clubbed all the above three proceedings by re-registering the case as OLR Case No.1/86 and treating the same to be one ceiling case. Petitioner alleges that said OLR Case has been illegally decided contrary to materials available on record thereby directing the R.I. Sandhamula to take over the ceiling surplus land free from encumbrances after removing the crops raised over the disputed land vide Annexure-5 impugned herein.

3. Mr. Das, learned Sr. Advocate appearing on behalf of the Petitioner challenged the impugned order at Annexure-4 on the premises that the proceeding is grossly barred by time. Keeping in view the series of litigations concluded in the meantime Mr. Das, learned Sr. Advocate appearing on behalf of the Petitioner further also contended that in absence of challenge to the ceiling proceedings earlier initiated and ended in appeal vide Annexure-2 U/s.58(A) of the Act. The proceeding U/s.59(2) of the OLR Act was not entertainable. Mr. Das, learned Sr. Advocate further contended that undertaking of exercise U/s.59(2) of the OLR Act without resorting to Section 59(I) proceeding is *per se* not

maintainable. In order to satisfy his claim on question of belatedness entertainment of the proceeding U/s.59(2) of the OLR Act, Mr. Das, learned Sr. Advocate relied on the following decisions:-

- (1) In the case of ***Sri Laxman Kanda Vrs. State of Orissa & Ors.*** as reported in (1991) 72 CLT 49.
- (2) In the case of ***Labanyabati Devi & Ors. Vrs. Member, Board of Revenue and Ors.*** as reported in 1993(II) OLR 365.
- (3) In the case of ***Sarat Chandra Samal & Anr. Vrs. State of Odisha & Ors.*** as reported in 2017 (I) OLR 847.
- (4) In the case of ***Chaitanya Das (Since dead) through L.Rs. Smt. Aladmani Das & Ors. Vrs. Bibhuti Charan Das & Ors.*** as reported in 2017(I) OLR 406.

At the same time Mr. Das, learned Sr. Advocate also challenged the order at Annexure-5 being passed as a consequence of illegal entertainment of a proceeding and disposal of the same vide Annexure-4. Further so far as challenge to the order of the Revenue Officer vide Annexure-5 Mr. Das, learned Sr. Advocate contended that since the Section 59(2) proceeding was not maintainable both on account of merit as well as on the point of delay, institution of subsequent proceeding on the basis of such illegal order was also not maintainable and thus requested this Court for interfering in the order at Annexure-5 in terms of the prayer involving the writ petition.

4. Mr. Ghose, learned State Counsel through the writ petition contended that in the entire reading of the writ petition it nowhere discloses any challenge to the order at Annexure-4, writ petition rather involves a challenge to the order by the R.O. vide Annexure-5, which

remains appealable. Thus while objecting to the entertainability of the argument on the question of delay involving Annexure-4 also challenged entertainability of the writ against clear statutory remedy of appeal and thus opposed the writ.

Mr. Ghose, learned State Counsel taking this Court to the provision at Section 59(2) of the OLR Act contended that it may be wrong in arguing that the provision at Section 59(2) of the OLR Act does not prescribe a limitation period in bringing such application. Taking this Court to the provision at Section 59(2) of the OLR Act an attempt is made to satisfy that a revision under this provision can be brought within 25 years from the date of order based on an amendment of this provision brought in 1993 in the pendency of revision. Mr. Ghose, learned State Counsel also taking this Court to the reasons assigned in the order at Annexure-5 contended that for the findings made therein there is no infirmity in the order requiring to be interfered with.

5. It appears, in entertaining the Writ Petition, this Court by its order dated 21.05.2004 has passed on order of status quo to be maintained over the disputed property, which appears to be continuing as of now.

6. This Court in entire reading of the writ petition nowhere finds, there is challenge to the proceeding vide Annexure-4. The writ petition simply involves a challenge straightway to the order at Annexure-5 undisputedly as an outcome of direction vide Annexure-4. This Court though here finds, for the introduction of Section 59(2) vide Orissa Act 29/93 prescribing time for preferring revision within 25 years and pre-amendment did not prescribe any time limitation, however, no challenge involving Annexure-4 reserves the right, if the Section 59(2) proceeding

could have been brought in 1992 and leaves such aspect to be decided in appropriate case.

7. Be that as it may, for the Petitioner's finding a scope of fresh argument and looking to the direction in Annexure-4, further in absence of challenge to Annexure-4 and rather allowing the proceeding vide Annexure-5 to be disposed of on contest this Court finds no scope to entertain the writ in the challenge of the Petitioner to Annexure-4. Now coming to the consequential order at Annexure-5 following the direction of the revisional authority in Annexure-4, this Court finds, since the order is passed by the Original Authority, grounds raised herein could have been raised by way of statutory appeal under the provision of the OLR Act. Considering that there is availability of clear statutory remedy, this Court finds, entertainment of the Writ Petition may be bad. However for the nature of challenge, while keeping in view the direction of the Revisional Authority in deciding the matter de novo, this Court here examines, if there is appropriate exercise of mind in deciding the original proceeding vide OLR Case No.1 / 86 vide Annexure-5. This Court finds, majority of portion in the impugned order indicates either discussion on the history involving the case or import of the direction of the Revisional Authority except in last but 3rd para, the Original Authority discussed on opportunity provided to the party to contest then the original authority in two short paras straightway jumped to his own findings in observing the petitioner a ceiling surplus holder and issuing necessary direction. There is no discussion on the case of the parties, arguments advanced by party to contest, there is no consideration of the claim of contestants vis a vis evidence oral or material even. The original authority appears to have adopted a practice unknown to law that too a case involving loss of a valuable right of property of party involved.

8. In the above circumstance, this Court finds, the order vide Annexure-5 is not sustainable in the eye of law. Accordingly this Court sets aside the order vide Annexure-5 but for the reasons above directs for re-opening of the OLR Case No.1/86 and for fresh disposal of the original proceeding giving a reasoned order. Petitioner is directed to appear before the Revenue Officer along with a certified copy of this order on 4th November, 2022 and take the date of hearing.

9. The Writ Petition succeeds, but with an order of remand. There is, however, no order as to the costs.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 19th day of October, 2022//
Ayaskanta Jena,
Senior Stenographer

