

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

**W.P.(C) No.8423 of 2006**

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

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**Niasimani Giri and Anr. .... Petitioners**

*Versus*

**State of Orissa & Ors. .... Opposite Parties**

For Petitioners ... Mr.S.Mantry, Advocate

For Opposite Parties ... Mr. S.Ghose, Additional  
Government Advocate

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

**PRESENT:**

**THE HONOURABLE JUSTICE BISWANATH RATH**

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Date of Hearing and Judgment: 19.09.2022

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**Biswanath Rath, J.** Background involving the case is that Petitioner was a Zamindar in respect of case Plot No.263 Ac.0.88 dec, in his nijchas Khata No.25 comprising 1926 Record of Right. On 11.02.1943, the Zamindar granted permanent agricultural lease to Pranakrushna Giri accompanied by delivery of possession. As a consequence

Amalanama patta was granted appearing at Annexure-1. On 09.09.1945 the rent receipt was issued on Amalanama Patta in the name of Pranakrushna Giri vide Annexure-2. Zamindari interest in the case plot was vested in 1953-54. Zamindar submitted list of tenants which discloses entering of Pranakrushna Giri as tenants in the tenants' ledger.

2. In 1960 vide Annexure-3 series of rent receipts are also being issued in favour of Pranakrushna Giri. On 1987 Pranakrushna Giri exchanged the western side of Ac.0.16 dec, out of Hal Settlement Plot No.263 with Opposite Party No.6's, the Hal settlement Plot No.282 Ac.0.018 decimals from Khata No.66 by way of Panchayatnama. Brothers of Opposite Party No.6 filed O.L.R. Case registered as 59/86 and O.L.R Case No.60/86 under Section 4(9) of the O.L.R. Act which were rejected on the ground being misconceived and unwarranted. In 1988 final Record of Right (R.O.R) was published recording entire land as Rakhit Khata however with illegal note of possession of Pranakrushna Giri vide Annexure-4 series.

3. In the meantime Pranakrushna Giri filed C.S. No.402 of 1989 for declaration of right, title, interest and possession over the property and consequential correction of R.O.R. In the meantime Section 3(1) of the O.C.H. and P.F.L. Act, notification came into force. On objection of State and Opposite Party No.6, the suit got abated. As a consequence Pranakrushna Giri filed Objection Case No.1054 of 1996 which was heard and dismissed by the original authority on 25.09.1996. Consolidation Appeal being preferred in C.A. No. 8 of 1997 also dismissed observing there has been no appropriate stage

after vesting of the land vide Annexure-6. A revision was filed which also got dismissed on the same footing resulting filing of the writ application.

4. Taking this Court to the entire background discussed herein Mr. Mantry, learned counsel for the Petitioner submitted that there was no deem declaration of the Party as a tenant after the vesting taking place. Petitioner had no further objection of approaching the civil suit for declaration. Civil suit got abated for intervention of notification under Section 3(1) of the O.C.H. and P.F.L. Act. Mr. Mantry, learned counsel for the Petitioner therefore submitted that in the circumstance Petitioner had no other option than to approach under Section 9(3) of the Act being the only remedy available to him at the relevant point of time.

5. Taking this Court to the impugned order Mr. Mantry, learned counsel for the Petitioner contended that all the three forums in illegal exercise of power and inappropriate consideration of the case of the Petitioner have come to dismiss the proceeding. In the above circumstances Mr. Mantry, learned counsel for the Petitioner claimed that as the Petitioner had no other remedy and his valuable right involving the property involve getting affected and as such the Petitioner was compelled to approach through Consolidation proceeding and thus request this Court to interfere in the impugned orders and setting aside the same.

6. Mr.Ghose, learned Additional Government Advocate while attempting to support the impugned orders submitted there is definite lacking of the Petitioner in taking steps before O.E.A. authority in

appropriate time. He however has no dispute that Petitioner was compelled to move under provision of Consolidation Act after his suit got abated and thus an attempt made by Petitioner was the only course left with him. Mr. Ghose, learned Additional Government Advocate however submits that there is no infirmity in the impugned order and also submitted that for there is concurrent finding of fact by all the three forums, there is no scope for interference in such orders.

7. Considering the rival contentions of the parties this Court finds there is no dispute that the land got vested in the State for Abolition of Zamindari in 1954. This Court also finds there has been issuing of rent receipts in favour of Pranakrushna Giri, husband of the Petitioner No.1 that there has been subsequent preparation of R.O.R. though showing Petitioner No.1 is in occupation of the land. There is no dispute that the Petitioner had not taken appropriate steps under the provision of O.E.A Act at appropriate time for seeking necessary correction of R.O.R.

8. This Court finds Petitioner had the only option at that stage of the matter in proceeding in civil suit. This Court here finds the civil suit got abated for the operation of Consolidation proceeding in the locality. Once the civil suit is abated and consolidation operation taking place, for the opinion of this Court Petitioner had the clear opportunity to seek relief through the consolidation authority which cannot be prevented. It is here taking into consideration the order passed in Section 9 proceeding, this Court finds the competent authority, Consolidation Officer in the entire above background attempted to attract the provision under Section 67 of the O.L.R. Act.

Reading the provision at Section 67 of the O.L.R. Act, this Court finds the provision of O.L.R. Act has no room to play in the contingency available herein. In the circumstance this Court finds the Consolidation Officer misdirected him and rejected the claim of the Petitioner under Section 9 of the O.C.H. and P.F.L Act by applying the wrong provision of law. The lower Appellate Court and Revisional Court appears to be proceeded on the same footing. In the circumstance this Court finds even though there is concurrent finding by all the three forums but these proceedings got disposed of based on application of wrong law and thus cannot be substantiated.

9. In the circumstance this Court interferes in all the impugned orders vide Annexure 5 ,6 and 7 but as there is requirement of fresh adjudication of objection case from within the materials on record, this Court remits the matter back to the Consolidation Officer, Basta for fresh disposal of Section 9(3) proceeding. Petitioner is directed to appear before the Consolidation Officer for undertaking fresh exercise involving Objection case No.1054 of 1996, for disposal in presence of the Petitioner and opposite parties, and also involving the parties likely to be affected.

10. The Writ Petition succeeds. No costs.

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**BISWANATH RATH, J.**

*Orissa High Court, Cuttack.  
 Dated the 19th day of September, 2022/Swarna, Junior Stenographer*