

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.524 of 2017

Simanchal Patnaik

.... ***Appellant***
Mr. G.N. Sahu, Advocate

-versus-

Collector, Rayagada and others

.... ***Respondents***
Mr. D.K. Mohanty, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
19.10.2022**

Order No.

02.

1. The challenge in the present appeal is to an order dated 23rd November, 2017 passed by the learned Single Judge disposing of W.P.(C) No.5416 of 2003 filed by the present Appellant by setting aside the order dated 14th February, 2003 passed by the Collector, Rayagada in OSATIP Review Case No.135 of 2001 and remanding the matter to the Collector to take a fresh decision after giving an opportunity of hearing to all concerned and in the event of necessity of notice, to the sisters of the vendor of the present Appellant.

2. The backgrounds facts are that the vendor of the present Appellant belonged to a Scheduled Tribe (ST). He sold the land to the extent of Ac. 0.27 decimals to the Appellant pursuant to permission granted under the Orissa Scheduled Areas (Transfer of

Immovable Property) Regulation, 1956 ('Regulation II of 1956') on 5th December, 1997. A sale deed was also registered on that basis.

3. Subsequently, the Collector, Rayagada exercised suo-motu powers of revision under Regulation 3 of Regulation II of 1956 and declared the sale to be void for the reason that the three sisters of the vendor also had the equal rights over the land that was sold and they had not been involved in the process.

4. In the impugned order the learned Single Judge has observed that since there was no consent of the sisters for the sale the competent authority who granted permission should have first taken the consent of the sisters or afforded them an opportunity to be heard. It is in those circumstances, that the matter was remanded to the Collector.

5. Learned counsel sought to contend that under the customary law governing the Appellant's vendor, the three sisters of the vendor would have no right, title or interest in the land in question. However, it is seen that the Appellant has not been able to plead any such customary law at any stage of the proceedings.

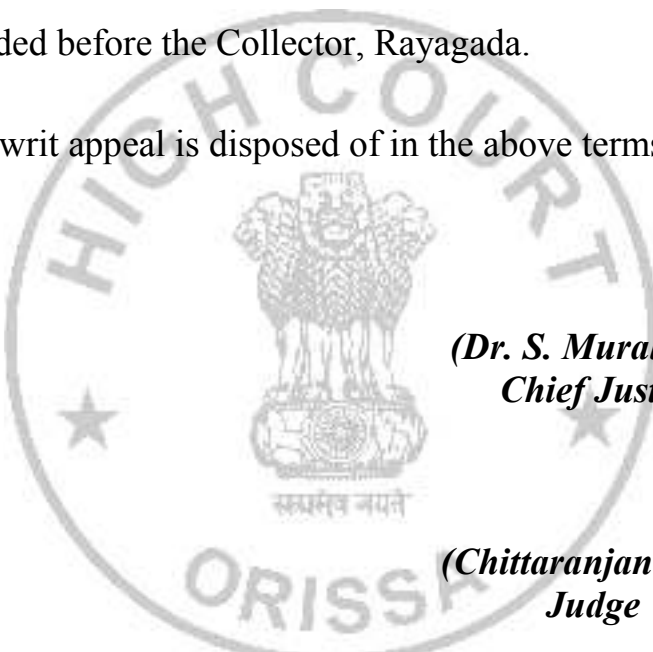
6. It is then submitted that in view of the observation of the learned Single Judge that the case of the Appellant in the remand proceedings before the Collector might be prejudicially affected.

7. It is clarified that it will be open to the Appellant in the remand proceeding before the Collector to plead that in terms of the

customary law governing the ST to which the Appellant's vendor belonged, the three sisters of the vendor would have no right, title or interest in the property in question. However, it is clarified that on the said issue this Court has expressed no opinion.

8. It must be noted that there is no stay granted in the impugned order of the learned Single Judge before this Court in the present appeal in the last five years. Therefore, the above directions and order would operate only if the remand proceeding is not already concluded before the Collector, Rayagada.

9. The writ appeal is disposed of in the above terms.

The seal of the Orissa High Court is a circular emblem. It features the State Emblem of India at the top center, which is a four-lion capital of an abacus. Below the emblem is the motto 'सत्यमेव जयते' in Devanagari script. The words 'HIGH COURT' are written in a semi-circle at the top, and 'ORISSA' is written in a semi-circle at the bottom. Two stars are positioned on either side of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge