

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 29712 of 2011

Sadhabani Panda

.... Petitioner

Mr. Biswaranjan Maharatha, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(Opposite Party Nos. 1 to 3)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

10.02.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition assails the initiation of a proceeding under Section 3-B(i) of Odisha Scheduled Area Transfer of Immovable Property (By Scheduled Tribe) Amendment Regulations, 2000 in OSATIP Case No.3 of 2011 (Annexure-1).
3. Mr. Maharatha, learned counsel for the Petitioner submits that due to non-filing of return in Form-2 within the stipulated period, such proceeding has been initiated against the Petitioner. It is further submitted that initiation of proceeding under Section 3-B(i) of the Regulations, 2000 is also an abuse of process of Court in view of the ratio decided in W.P.(C) No.4987 of 2010 and a batch of writ petitions similar to the present case disposed of vide order dated 12.04.2019, as the transaction in question had taken place on 21st January, 1995 (Annexure-3) by virtue of RSD executed after due permission by the Tahasildar, Malkangiri on 23rd January, 1995 (Annexure-

5) in OSATIP Case No.49 of 1994 (Annexure-2). For ready reference, relevant portion of order dated 21st January, 1995 passed in W.P.(C) No.4987 of 2010 is quoted below:-

“11. In view of the decision of the Hon’ble Supreme Court referred hereinabove and the well settled principle of law that any amendment made to the Act, will have a prospective effect, unless it is expressly provided or by necessary implications, make it retrospective. On perusal of the amended Regulation, 2000, it appears that there is no express provision making it applicable retrospectively. On the other hand, the amending Regulation makes it clear that it will come into effect from the date of publication. Further, the language of the amending provision which empowers the authority to re-open all transactions right from 1956, even in absence of allegation of fraud, does not make it clear the object to be achieved by such amendment. If the amended provision is allowed to operate retrospectively, it would make the persons belonging to non-ST community to face unnecessary litigations putting their vested right over the property at stake and making it vulnerable. The same is never the intention of the impugned amendment and can’t be.

12. In that view of the matter, we are of the considered opinion that the amendment which is brought into as Section 3(B) of the Amendment Regulation, 2000, cannot have a retrospective effect and as such, the same will have a prospective effect. It will be applied to the transactions made on or after the date of publication i.e. 04.09.2002 and the transaction which took place prior thereto, will not be affected, in any manner by the provisions of Amendment Regulation, 2000.”

3.1 In view of the above, he prays for setting aside of the impugned order under Annexure-1.

4. Mr. Mishra, learned ASC, on the other hand, submits that contention of the Petitioner requires consideration by the Sub-Collector, Malkangiri and authorized under Regulations, 1956.

5. In view of the above, this writ petition is disposed of with a direction that in the event the Petitioner files return in Form-2 within a period of four weeks hence, the same shall be accepted by the Sub-Collector, Malkangiri. The Sub-Collector, Malkangiri, thereafter, proceed with the matter taking into consideration the ratio decided hereinabove (supra).

6. The writ petition is accordingly disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy