

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5067 of 2021

Rajesh Edgu

.....

Petitioner

Miss Deepali Mahapatra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.05.2022

Order No.

9. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 13th January, 2021 (Annexure-7) passed by the Additional District Magistrate, Sambalpur in OLR Appeal Case No.3 of 2020, whereby he confirmed the order dated 8th January, 2020 (Annexure-6) passed by the Sub-Collector, Sambalpur in OLR Case No.48 of 2018 dismissing an application under Section 22 of the Odisha Land Reforms Act, 1960 (for short, 'OLR Act') filed by the Petitioner.
3. Miss Mahapatra, learned counsel for the Petitioner submits that due to urgent need of money for treatment of his mother, who was suffering from Chronic Renal Failure (CRF), the Petitioner applied for permission to sell Plot No.1767/8214 to an extent of Ac.0.070 decimal under M.S. Khata No.344/4480 situated in mouza Sambalpur town Unit-3, Sunapali under Sambalpur tahasil (for short, 'the case land') under Section 22 of the Act. The said application was rejected on a flimsy report of the CDMO, Sambalpur. Assailing the

same, the Petitioner filed OLR (Permission) Appeal No.03 of 2020, which was dismissed by the ADM, Sambalpur by reiterating the findings of the Sub-Collector, Sambalpur. Hence, this writ petition has been filed.

3.1 It is the contention of learned counsel for the Petitioner that in view of the notification published in Odisha Gazette dated 14th July, 1972 (Annexure-8) published under the provisions of the Orissa Town Planning and Improvement Trust Act, 1956 (Orissa Act 10 of 1957), mouza Sunapali comes (under Sl. No.32 of the said notification) comes under the urban area. Thus, it can be safely construed that mouza Sunapali is reserved for town planning as per Section 73(c) of the Act. The requirement of publication of notification in the official gazette as required under Section 73(c) of the Act has been satisfied by Gazette notification under Annexure-8. Thus, permission under Section 22 of the Act is not at all required for alienation of the property belonging to scheduled caste/tribe community at Sunapali. In support of her case, she also relied upon the ratio decided by this Court in the case of **Srimati Madanbati Lath Vs. S.D.O. and others**, reported in 1991 (I) OLR 46, wherein, it has been held as under:-

“5.Therefore, the holding i.e. the land contemplated by Section 22, shall either be land used or capable of being used for agricultural purposes or homestead or ordinarily used as house-site, ancillary or incidental to agriculture. Unless the disputed land comes within the definition of 'homestead' or 'land' as defined in Clauses (12) and (14), Section 22 would not be attracted.”

It is her submission that the aforesaid ratio is squarely applicable to the case at hand. This legal aspect was not

considered either by the Sub-Collector, Sambalpur or the ADM, Sambalpur while passing the orders under Annexures-6 and 7. She, therefore, prays for setting aside of the impugned order under Annexures-6 and 7 and remit the matter back to sub-Collector, Sambalpur to decide the matter afresh keeping in mind the aforesaid legal position.

4. Mr. Mishra, learned ASC refuting such submission, contends that the order under Annexure-7 is revisable one under Section 59(1) of the Act. Since efficacious statutory remedy has not been availed by the Petitioner the writ petition is not maintainable. He further submits that the land in question is recorded as ‘*Mala Sadharana*’, which is capable of being used for agricultural purpose. Further, no notification under Section 73 (c) of the Act has yet been made in respect of mouza Sunapali. Thus, provisions of the OLR Act is applicable to the area. Mr. Mishra, learned ASC also relied upon the ratio decided in the case of ***Om Prakash Agrawal and others–vrs.-Batara Behera*** reported in (1999) 3 SCC 231, wherein, it is held as follows;

“3. In view of the rival submissions at the Bar the first question that arises for consideration is whether the land as defined in Section 2(14) of the Act and which is either being used or capable of being used for agricultural purposes within the municipal area do come under the purview of Orissa Land Reforms Act. The Act, no doubt is a measure relating to agrarian reforms and land tenures and abolition of intermediary interest but there is no provision in the Act which excludes such agricultural lands merely because they are situated in an Urban Agglomerations. The Act applies to all land which is either used or capable of being used for agricultural purposes irrespective of whether it is situated within a municipal area or in villages. The very object of the legislation being an agrarian reform, the object will be

frustrated if agricultural lands within the municipal area are excluded from the purview of the Act. In this view of the matter we have no hesitation to come to the conclusion that the Act applies to all lands which is used or capable of being used for agricultural purposes irrespective of the fact wherever the said land is situated and the conclusion of the High Court on this score is unassailable....”

He, therefore, submits that the writ petition merits no consideration and is liable to be dismissed.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of record, it reveals that indeed the Petitioner has not filed any revision against order under Annexure-7. But, considering the submission of learned counsel for the Petitioner, this Court has issued notice in the writ petition. Further, keeping in mind the order proposed to be passed in this case, no fruitful purpose would be served by relegating the Petitioner to file revision under Section 59(1) of the Act. In that view of the matter, this Court proceeds to dispose of the matter finally.

6. Petitioner in this case had applied for permission under Section 22 of the Act to alienate the property for treatment of his mother, who is suffering from CRF. Both original as well as appellate authority rejected the plea of the Petitioner on the ground that the expenses for treatment of the mother of the Petitioner can be met from Red Cross fund as far as practicable. The authorities have also relied upon a communication of the RDC (ND), which has no application to the present case. Applicability of ratio in *Srimati Madanbati Lath (supra)* as well as *Om Prakash Agrawal (supra)* was neither raised nor taken into consideration by the authorities while adjudicating the matter. It is being a mixed question of fact and law can only

be effectively decided by the competent authority under the Act taking into consideration the materials on record and the law governing the field. Although learned counsel for the Petitioner submits that the case land is not capable of being used for agricultural purpose, Mr. Mishra, learned ASC refuting the same submits that the case land being recorded as '*Mala Sadharana*' can be used for agricultural purpose. These vital issues require consideration by the authority under the Act.

7. In that view of the matter, this Court feels that the matter requires fresh consideration. Hence, this Court, while setting aside the impugned orders under Annexures-6 and 7, remits the matter back to Sub-Collector, Sambalpur to adjudicate the OLR Case No. 48 of 2018 filed under Section 22 of the OLR Act afresh giving opportunity of hearing to the parties concerned keeping in mind the aforesaid ratio, i.e., ***Srimati Madanbati Lath (supra)*** as well as other case laws in the field.

8. Since the Court remits the matter back to decide the lis afresh both on the question of fact and law, parties are at liberty to lead further evidence in support of their respective case.

9. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge