

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1987 of 2007

The Roman Catholic at Betikola

Petitioner

Mr. S.K. Singh, Advocate

-versus-

Officer on Special Duty (Land Reforms), Balliguda and another

Opposite Parties

Mr. Debakanta Mohanty, A.G.A.

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
02.02.2022**

Order No.

04.

1. This matter is taken up by video conferencing mode.

2. This writ petition is by the Roman Catholic Church at Betikola, P.S.-G. Udayagiri, District-Kandhamal represented by its Parish Priest. The prayer in the writ petition is to quash an order dated 22nd December 2006 passed by the Additional District Magistrate (ADM), Kandhamal in RMA No.9 of 2005.

3. The background facts are that in village Betikola under G. Udayagiri P.S. under Khatian No.59, land measuring H.2.303R located in Plot Nos.288, 289 and 289/1301 (hereafter 'land in question') belonged to late Joseph Pradhan, who was a Roman Catholic Christian. He constructed a church on the land in question. To facilitate the functioning of the church, the Archbishop, Bhubaneswar appointed late Joseph Pradhan as the Parish Priest. He continued as such till his death. It is stated that late Joseph Pradhan was a bachelor. After his death, for the management of the church, the Archbishop used to appoint Parish Priests from time to time.

4. On 10th October 2001, one Govind Pradhan claiming himself to be the adopted son of late Joseph Pradhan filed RMC No.644 of 2001 under Section 3 (2) of the Orissa Scheduled Areas Transfer of Immovable Property Regulation 1956 (Regulation 2 of 1956) (hereafter 'Regulation') in the Court of the Officer on Special Duty (OSD), Balliguda praying for eviction of the church and restoration to him of the land belonging to late Joseph Pradhan.

5. The OSD passed an order on 17th December 2001 rejecting the plea of said Govind Pradhan on the ground that he had failed to produce any document in support of his claim.

6. Four years thereafter, the OSD initiated a suo motu proceeding under Section 3-A of the Regulation by issuing notice to the Petitioner to show cause why it should not be evicted from the land in question.

7. On 22nd September 2005, the OSD passed the final order holding that the land in question belong to a tribal and that the Parish Priest of the Petitioner-church had forcibly occupied the said land in contravention of Section 3-A of the Regulation. It was held that the land in question was required to be restored to the rightful legal heirs of late Joseph Pradhan.

8. Aggrieved by the above order, the Petitioner filed an appeal being RMA No.9 of 2005 under Section 3 (3) of the Regulations. Among the grounds on which the order dated 22nd September 2005 of the OSD was challenged was that it was based on the report of the Revenue Inspector (RI), Lingargarh, a copy of which was never

supplied to the Petitioner. Secondly, the Petitioner contended that they were not in unauthorized occupation of any immovable property of a member of the Scheduled Tribes (ST) nor had they trespassed or otherwise occupied the land belonging to the member of the ST. It was accordingly contended that Section 3-A of the Regulation was not attracted.

9. It was pointed out by the Petitioner that before the OSD, evidence was recorded on 29th July 2005 of the three sons of the brother of late Joseph Pradhan viz., Insencio Pradhan, Foustin Pradhan and Prasant Pradhan. They had obtained the legal heirship certificate after the death of late Joseph Pradhan stating that they belong to ST community and that their uncle late Joseph Pradhan had embraced Christianity as his religion. They categorically stated that the land in question belonged to their late uncle; he had constructed a church over the land for the purposes of worship. After his death, they had applied to the Tahasildar for issuance of a legal heirship certificate. They also confirmed that during his lifetime, late Joseph Pradhan had been appointed as Parish Priest of the church by the Archbishop, Bhubaneswar and after the death of Joseph Pradhan, the church was looking after the property. Each of these witnesses categorically stated that "it is false to say that the Catholic Church people have trespassed or are in illegal possession of the land". While dismissing the Petitioner's appeal, the ADM observed that the judgment of the Supreme Court in 2004 (II) OLR (SC)117 would apply.

10. While issuing notice in the present petition on 14th March 2007, this Court stayed the operation of the impugned order of the ADM.

11. This Court has heard the submissions of learned counsel for the parties. A short question that arises for consideration was whether there was any taking over of possession forcibly or otherwise by the Petitioner of land belonging to late Joseph Pradhan. There was a bar under the Regulations on the transfer of property belonging to a member of the ST community to a non-tribal. What was specifically prohibited according to the aforementioned decision of the Supreme Court is "any transaction or dealing with immovable property which would have the effect of extinguishing the title, possession or right to possess of such property in a tribal and vesting it in non-tribal". As the Court sees, there was no 'transfer' of any immovable property belonging to late Joseph Pradhan in favour of anyone else. In fact before this Court, it was not disputed that the record of rights in relation to the land in question still stands in the name of late Joseph Pradhan. There was also no occasion to conclude that Joseph Pradhan ever parted with the possession of the land in question in favour of the Petitioner. The Petitioner came into the picture only after construction of the church by late Joseph Pradhan over his own land. It was only for managing the affairs of the church that he was appointed as Parish Priest by the Archbishop. He performed that duty till his death. Therefore, there was no transaction as such wherein the immovable property belonging to late Joseph Pradhan ever stood transferred or possession thereof given to anyone else.

12. The ADM observed that he did not find any testamentary disposition of the property by the deceased Joseph Pradhan. It was nobody's case that there was any Will left by late Joseph Pradhan. On the contrary, the three sons of the brother of late Joseph Pradhan

clearly spoke about him having embraced in Christianity, having built the church on his own land and having discharged his role as Parish Priest after being appointed as such by the Archbishop of Bhubaneswar. The judgment of the Supreme Court would not apply in the facts and circumstances of the case since there was no transfer of immovable property belonging to a member of the ST to a non-tribal either by direct or indirect means.

13. For the aforementioned reasons, the impugned order of the ADM and the corresponding order of the OSD are hereby set aside. The writ petition is allowed in the above terms. But, in the circumstances, with no order as to costs.

14. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. No.514 and 515 dated 7th January, 2022.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin