

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.9392 OF 2008

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

A F R

Kalyani Behera

: *Petitioner*

-Versus-

Collector, Bolangir & ors.

: *Opp.Parties*

For Petitioner

:

M/s.D.P.Dhal, Sr.Adv.,
Mr.S.K.Dash, B.S.Das Parida
& S.Mohapatra

For O.Ps.

:

Mr.S.Ghosh, AGA

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 24.11.2022

1. The Writ Petition involves a challenge to the order impugned herein dated 24.3.2008, vide Annexure-4. Petitioner through the Writ Petition has prayed for a direction to restore the Petitioner's land, more particularly two plots bearing nos.116 & 117 of holding no.177, besides challenging the direction of the Competent Authority in bringing the beneficiaries in the distribution of land as Parties to contest the revision proceeding.

2. Background involving the case is that while the Petitioner claiming to have been gifted properties under plot nos.116 & 117 by her father

during her marriage in 1954 and as a consequence she was in possession of the property. In the meantime in Rent Case No.1834/75, the Settlement Authority allowed the land to be recorded in the name of the Petitioner. While the matter stood thus, OLR Case No.50/74 was initiated against the land-holder, Madhusudan Babu of village-Ranikata, the father of the Petitioner on a return being filed by him under Section 40(a) of the OLR Act, 1960. On coming to know the initiation of OLR Case No.50/74, the Petitioner filed an objection for exclusion of the land involved plot nos.116 & 117 of village-Ranikata. The ceiling surplus proceeding having come to an end negating the claim of the Parties, an Appeal was preferred and registered as OLR Appeal No.7/92. This Appeal came to be disposed of, however with a remand order to the Original Authority to pass fresh order after conducting a fresh enquiry and keeping in view the resistance. Field enquiry was conducted. There appears, there is further enquiry also involving the claim of the Objector. It is alleged, in spite of observation in the enquiry that the Petitioner is in possession of the properties under plot nos.116 & 117 and there is valid gift, the original proceeding again got to be dismissed, vide Annexure-1. The Petitioner preferred an Appeal bearing OLR Appeal No.1/98, which got dismissed on 30.10.1999. A Revision bearing OLR Revision No.11/99 was preferred but with delay. In the Revision there has been attempt for addition of Parties. The said Revision was ultimately dismissed on

5.6.2000. on the ground of limitation. The Petitioner preferring W.P.(C) No.5928/2002, this Writ Petition was finally disposed of by this Court vide order dated 21.4.2003 by directing for direction for restoration of the Revision for fresh hearing. It is in the further re-opening of the Revision, it appears, the Revisional Authority considering that there has been distribution of land in the pendency of the Appeal, vide order dated 24.3.2008 directed the Petitioner to include the Parties in favour of whom, the ceiling surplus land has been distributed resulting in filing the present Writ Petition.

3. Moot challenge to the Writ Petition is the ceiling surplus case confined to the Parties' right, title and interest and in possession and may involve any valid distribution of any part of such properties by the time the ceiling proceeding was initiated and for the Parties in subsequent possession of the ceiling surplus land being the beneficiaries as an outcome of distribution of ceiling surplus land by way of unilateral decision of the State Authority and in particular even exercise of statutory Appeal being pending may not be required to be added as Party as there is no purpose in hearing all such Parties.

4. Taking this Court to some decisions of this Court in ***Jagannath Kar vs. The Sub-divisional Officer, Cuttack*** : 60(1985) CLT 46, ***Harihar Panda & two others vs. State of Orissa & ors*** : (1985) 59 CLT

537, *Smt. Arda Mahalaxmi & anr. Vrs. District Magistrate & Collector & ors* : AIR 1986 Orissa 20 and *Minaketan Behera vrs. State of Orissa & ors* (OJC No.3 of 1995 decided on 26.9.2022, learned senior counsel for the Petitioner attempted to substantiate his submission in the aspect that there is no requirement of bringing the beneficiaries as Parties, as a matter of outcome in disposal of ceiling surplus proceeding and during pendency of Appeal.

5. Mr.Ghosh, learned Additional Government Advocate for the O.Ps. in an attempt to oppose the move of the Petitioner objected the contentions raised herein on the premises that in the ultimate decision of the Revision in the event the Revision is going to be allowed, the beneficiaries since are in occupation of the property, unless involved there will be prejudice to such Parties and thus supports on the observation of the Revisional Authority in its order dated 24.3.2008. Mr.Ghosh also submitted, if the Parties in possession are brought to the case fold, it becomes easier to evict such persons in the ultimate success in the ceiling surplus proceeding. There is, however, no opposition to the decisions taken support by the learned senior counsel for the Petitioner and as referred to herein above.

6. Considering the rival contentions of the Parties and keeping in view the moot question required to be decided herein involving the

impugned order dated 24.3.2008 as to in the context of the matter, this Court finds, there is no necessity to hear the Parties in possession as an outcome of the benefit flowing from disposal of the ceiling surplus proceeding, that too distribution taking place even during pendency of the Appeal. This Court further finds, the original proceeding involved the land owner. For the provision in the Act and looking to the nature of the proceeding, this Court finds, this is a matter simply between the alleged ceiling surplus holder and the State. It is also noted here that there is even distribution of surplus land based on the disposal of ceiling surplus proceeding further even during pendency of the Appeal. Matter of eviction, if arose, first of all such dispute remains between the State and such beneficiaries and the land owners no way have any role. The settled position of law in the circumstance appears to be in the event of initiation of any proceeding, looking to the context involved therein, necessary Parties in the case of ceiling surplus proceeding appear to be the State being the owner of the property ultimately and the Party likely to be losing such right. Here the benefits by virtue of an outcome in the ceiling surplus proceeding and in enjoyment of ceiling surplus land have no right over such properties. Further the direction of the Revisional Authority also appears to be absurd for the reason neither the ceiling proceeding nor the Appeal ever involves such Parties. Distribution, if any, during pendency of Appeal is only at the risk of the State Authority. Further

Party in loss has the scope of Appeal and Revision. There should not be distribution, if any, at least till disposal of the Revision. As such, there is no justification in directing the Petitioner to bring the beneficiaries.

7. This Court here also takes into account the decisions referred to herein above and relied upon by the learned senior counsel for the Petitioner and finds, these decisions while dealing with the case of recovery of possession of land even after distribution of such land made in favour of the third party have in one tone observes, Parties being the beneficiaries, outcome of a litigation process as third party have no right over such land and have to be evicted in the event final proceeding goes in favour of the land owner, as it is almost in the trap of automatic restitution in favour of actual land owner.

8. This Court here likes to take note of the observations in the case of Smt. Arda Mahalaxmi (supra) in Paragraphs-7 & 8, which read as follows :-

“7. Under Art. 300A of the Constitution, no person shall be deprived of his property without authority of law. Provisions of statute are to be interpreted in a manner by which this salutary constitutional provision is given due effect than is violated. In case we accept the submission of the learned Additional Government Advocate that there is no provision in the Act giving power to the Revenue Officer to cause restitution of the property which has been distributed without jurisdiction, it would have the effect of depriving the petitioners of their property without authority of law. Therefore, the interpretation that the Revenue Officer possesses the power of restitution of property distributed as ancillary to an order to the finding that the distribution of the land as a nullity is in furtherance of Art. 300A of the Constitution.

8. In view of our discussions as above, we direct the opposite party Nos. 3 to 10 not to enter upon the lands of the petitioners any further and we also direct the Revenue Officer to take possession of those lands and deliver possession of the same to the petitioners.”

Further through the decision in Harihar Panda (supra) in Paragraphs-8 & 9, this Court has observed as follows :-

“8. In course of hearing, it has been brought to our notice by an affidavit that the order of the Revenue Officer dated 27-11-1976 finding that there is no ceiling surplus land, is now the subject-matter of revision before the Board of Revenue on being moved by the Collector under section 59(2) of the Act. The learned Government Advocate therefore, prays that this Court should not give any direction until disposal of the revision in the Board of Revenue. Such a contention if accepted would keep the petitioners out of their possession of the property which, at present, they are entitled to possess and of which they have been deprived without authority of law. Hence, the petitioners are entitled to restoration of the property. In the event of the Board of Revenue coming to a conclusion after hearing the parties that the petitioners have lands in excess of the ceiling area, section 45 of the Act would come into play and then only after service of the order as required under section 45, the petitioners can be forcibly dispossessed unless they deliver possession in compliance with such order.

9. Opposite party Nos. 4 to 14 do not acquire any right, title or interest on the lands distributed to them. Accordingly, we direct the opposite party nos. 4 to 14 not to enter upon the lands of the petitioners any further and we also direct the Revenue Officer to take possession of those lands and deliver the same to the petitioners.

9. This Court here again finds, through the decision in *Nares Chandra Tripathy vrs. Revenue Officer-cum-Additional Tahasildar, Angul & ors* : I.L.R. (1977) 2 Cuttack 334 at Pages-339 and 340, it has been held as follows :-

“.....until the revision had been disposed of, the statement could not be made final and would not become conclusive and there would be no vesting of surplus land in Government. As the lands would not vest in government, the Revenue Officer would have no jurisdiction to deal with the propertyOn the date the lands are said to have been distributed, the petitioner was still the owner and there had been no extinguishment of his title, there had been no vesting of the property in Government and the

Revenue Officer, therefore, had no jurisdiction at all to proceed to settle the property in terms of Section 51 of the Act

Paragraph 7 at Pae-342 of the aforesaid decision, while dealing with the preliminary objection that the persons to whom the land has been distributed are to be made parties and to be heard, it was held :

“.....there cannot be any universal rule that in every case parties having inchoate rights or no rights at all, (as in the instant case where the settlement is a nullity) should be given a hearing.”

In the above legal position, this Court finds, all the above decisions also support the case of the Petitioner.

10. In the above settled principle of law, this Court observes, for a right to restitution possibility there, further there is no right accrued in favour of the beneficiaries being benefited by an interim exercise of the State not even being owner of such property and benefited before revision right still not completed, the beneficiaries not only become not necessary party but even in their inclusion, their cause of action since not germane to the dispute pending, their grievance, if any, cannot be even considered in such proceeding. Loss and suffering, if any, of such Party since is on account of misdirected action of the State Authority will be a subject in between the State and such sufferers and will be completely outside the purview of ceiling surplus proceeding.

11. Keeping in view the settled position of law and the findings given herein above, this Court finds, the impugned order remains contrary to the legal position operating in the field and an impracticable one. In the

process, this Court interferes with the impugned order dated 24.3.2008 at Annexure-4 and sets aside the same. However, considering the Revision Proceeding is still pending and needs a lawful disposal, this Court remanding the Proceeding to the Revisional Authority for fresh adjudication of OLR Revision No.11/37 directs continuance of the proceeding from the stage prior to 24.3.2008. This Court looking to the nature of grievance involved herein and considering the Act providing provision for initiation of ceiling surplus proceeding came into force since 1960 directs the Revisional Authority to consider if property under plot nos.116 & 117 of khata no.177 since gifted in the year 1954 needs to be included in the ceiling surplus proceeding. Further in taking decision in the Revision, the Revisional Authority is further directed to take into consideration the decisions referred to by this Court in O.J.C. No.3 of 1995 disposed of on 26.9.2022 on a copy being supplied by the Petitioner on his appearance pursuant to this direction.

12. The Writ Petition succeeds. No order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.

The 24th November, 2022/M.K.Rout, A.R.-cum-Sr.Secy.