

A.F.R

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.14551 of 2005

*An application under Articles 226 & 227 of
the Constitution of India, 1950*

Rabi Padhan : Petitioners
(Since dead through his legal heirs) & Ors.

-Versus-

State of Orissa & Ors. : Opposite Parties

For Petitioners : M/s. B. Routray, Sr. Adv.
D. Routray, S. Das,
S.P. Raju, S. Jena,
S.K. Samal, S.P. Nath,
S.D. Routray

For Opposite Party Nos.1 to 4 : Mr. S. Ghose,
Addl. Govt. Adv.

For Opposite Party Nos.5 & 6 : None

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 14.12.2022

1. Heard the submission of proxy counsel appearing on behalf of Mr. B. Routray, learned Senior Advocate appearing on behalf of the Petitioner. Learned State Counsel is also involved in the hearing process.

In spite of service of notice, nobody appears on behalf of the contesting private Opposite Parties.

2. This Writ Petition involves a challenge to the impugned orders at Annexures-4, 5 & 6 as well passed in exercise of power under the provisions of the OLR Act by the Opposite Party Nos.3, 2 & 1 respectively more particularly in a proceeding initiated under the provisions of Section 23(A) of the OLR Act.

3. Undisputedly the Petitioners are non-tribe private persons and private Opposite Parties are tribal people.

4. In advancing his submission on reiteration of the factual aspect involved herein the learned counsel appearing for the Petitioner raised two questions for determination of this Court. One, looking to the nature of claim and the objections being raised by the present Petitioners therein, if a proceeding U/s.23(A) of the OLR Act remains maintainable? Secondly, whether the concurrent finding of fact establishing the Petitioners' long possession over a tribal property creates right in favour of the Petitioners to hold on the property by way of adverse possession?

5. Taking this Court to the discussions by the original authority at the threshold of the proceeding U/s.23(A) of the OLR Act vide OLR Case No.11/87 and reading through the discussions at page 20 of the brief continuing till 22 page, further reading together with Khatian and the Yadast as appearing at Annexures-1 & 2 and also reading through the observation made therein and the date, month and year mentioned, an attempt is made by the learned counsel for Petitioners to establish that the Petitioners have long possession even prior to initiation of the proceeding U/s.23(A) of the OLR Act in the year 1987. It is under the factual disclosures and through the source of documents at Annexures-1 & 2 the

Petitioners attempted to satisfy their case by answering both the questions indicated hereinabove in their favour. To satisfy the case of the Petitioners, the learned Counsel while reading through the provision at Section 23(A) of the OLR Act, also relies on two decisions of this Court i.e. in the case of *Dama Meher Vs. Champeswar Bentkar & Ors.* as reported in **64(1987) CLT 516** and in the case of *Nilambar Satpathy Vs. Prema Ganda & Ors.* as reported in **1990 (I) OLR 581**. Learned counsel for the Petitioner attempted to satisfy this Court that both the decisions have direct application to the case at hand and thus requested this Court for allowing this writ petition in reversal of the impugned orders vide Annexures-4, 5 & 6.

6. Learned State Counsel taking this Court to the disclosures through the impugned orders involved herein attempted to block the writ petition on the premises that there is involvement of concurrent finding of fact by all the three forums on a factual aspect as well as legal aspect involved herein. For the limited role of the High Court in exercise of power under Article 227 of the Constitution of India, there appears, it is claimed that there is no scope for interfering in the impugned order. Further also there is settled position of law in the meantime thereby holding there is no possibility of declaration of title in favour of a non-tribe or non-caste even for their long possession over the tribe or caste property by way of adverse possession. Learned State Counsel also argues in his attempt to object the Writ Petition on the premises that in the event this Court entertains the Writ Petition, the purport of the OLR Act particularly the provision at Section 22 & 23 of the Act created for protection of the interest of the Tribe & caste people of the Society will be affected and the

situation will be disastrous, further the effect of the Act will also be taken away.

It is, in the above background of the matter, an attempt is made by the learned State Counsel to block the entertainability of the Writ Petition and thus a request is made for dismissal of the writ petition.

7. Considering the rival contentions of the parties and keeping in view the questions framed hereinabove, this Court first enters into the fact on the claim of the Petitioners for their long possession. Reading through the impugned orders and the inputs through Annexures-1 & 2 there remains no doubt that the Petitioners herein being non-tribe are in long possession over the disputed property in question, which facts have also been taken care of by all the three forums. In the given scenario the question here requires to be decided is; if there is possibility of declaration of title of a non-tribe or non-caste even in spite of their long possession and since the property involved undisputedly belongs to scheduled tribe person, this Court here takes into account the protection granted to such person in the provisions at Section 22 & 23 of the OLR Act, which reads as follows:-

“22. Restriction on alienation of land by Scheduled Tribes –

(1) Any transfer of a holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of –

(a) a person belonging to a Scheduled Tribe or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer : Provided that in case of a transfer by sale the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

(2) The State Government may having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification direct that the restrictions provided in subsection (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Registration Act, 1908 purports to effect transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe in favour of a person not belonging to a Scheduled Tribe, no registering officer appointed under that Act shall register any such document, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

(5) The provisions contained in sub-sections (1) to (4) shall apply, mutatis mutandis, to the transfer of a holding or part thereof of a raiyat belonging to the Scheduled Caste.

(6) Nothing in this section shall apply –

(a) to any sale in execution of a money decree passed, or to any transfer by way of mortgage executed, in favour of any scheduled bank or in favour of any bank to which the Orissa Co-operative Societies Act, 1962 applies; and

(b) to any transfer by a member of a Scheduled Tribe within a Scheduled Area.

23. Effect of transfer in contravention of Section 22 – (1) In the case of any transfer in contravention of the provisions of sub-section (1) of section 22 the Revenue Officer on his own information or on, the application of any person interested in the land may issue notice in the prescribed manner calling upon the transferor and transferee to show cause why the transfer should not be declared invalid.

(2) After holding such inquiry as the Revenue Officer deems fit and after hearing the persons interested, he may declare such transfer to be invalid and impose on the transferee a penalty of an amount not exceeding two hundred rupees per acre of the land so transferred for each year or any part thereof during which the possession is continued in pursuance of the transfer which has been declared to be invalid and may also order such portion of the penalty as he deems fit, to be paid to the transferor or his heir.

(3) On a declaration being made under sub-section (2) the Revenue Officer suo motu or on the application of any person interested cause restoration of the property to the transferor or his heirs and for the purpose may take such steps as may be necessary for compliance with the said order or preventing any breach of peace ; Provided that if the Revenue Officer is of the opinion that the restoration of the property is not reasonably practicable, he shall record his reasons therefor and shall, subject to the control of the Government, settle the said property with another member of a Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 1962.

Explanation - Restoration of the property means actual delivery of possession of the property to the transferor or his heir.

(4) Where any transfer is declared under this section to be invalid and the transferee or any other person in possession of the property has been evicted therefrom, the transferee shall not be entitled to the refund of any amount paid by- him to the transferor by way of consideration for the transfer.”

8. This Court here finds, there is clear attraction of a provision at Section 23-A of the OLR Act.

9. It is, at this stage of the matter, this Court also reading through the aforesaid provision finds, the mechanism through the OLR Act has been created involving the aforesaid provision to give protection to the scheduled tribe and scheduled caste persons from being dislocated from their properties in any manner. It is, at this stage of the matter, this Court finds, this position has been examined again and again and finally the Hon’ble Apex Court in the case of ***Amarendra Pratap Singh Vrs. Tej Bahadur Prajapati & Ors.*** as reported in AIR 2004 SC 3782 has made a threadbare discussion involving a case of one of the party a non-tribe therein claiming right through adverse possession for his long possession over the property. This Court finds, the Hon’ble Apex Court while keeping in view possibility of right created in favour of the non-tribe person by way of adverse possession, if any, taking into account the protection of right of tribes under paragraph no.7-D of the Regulations read with Article 65 & Section 27 of the Limitation Act, 1963, has come to clearly observe that a non-tribal can neither prescribe nor acquire title by way of adverse possession over the property belonging to a tribal, as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of power conferred in that regard by the Constitution of India. It is further held by the Hon’ble Apex Court that a general law cannot defeat the provision of a Special law to

the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogenous reading. The Hon'ble Apex Court has also further held that a wrongful possession of a non-tribe even involving a sale transaction has not ripened into acquisition of title by adverse possession. This Court finds, the judgments of all the three forums are well covered by the judgment of the Hon'ble apex Court in the case of ***Amarendra Pratap Singh (supra)***. It is for the application of the decision of the Hon'ble apex Court to the case at hand, this Court does not like to relay on the judgments of the Orissa High Court relied on by the Petitioners. Question No.2 framed hereinabove is answered against the Petitioners. Further there also involves a concurrent finding of fact by all the three forums thereby limiting the scope of interference in such orders in exercise of power under Article 227 of the Constitution of India. In the ultimate this Court finds no scope to interfere in the impugned order.

10. The Writ Petition stands dismissed. However, there is no order as to the costs.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
 The 14th day of December, 2022//
 Ayaskanta Jena, Senior Stenographer