

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.15048 OF 2005

Purusottam Sahu

....

Petitioner(s)
Mr. S.K.Mishra,
Advocate

-versus-

Sub-Collector, Jeypore

....

Opposite Party(s)
Mr.S.P.Panda,AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
12.12.2022

Order No.
06.

1. Heard learned counsel for the Parties.
2. This matter is freshly heard by virtue of the order passed in Writ Appeal. It appears, in the challenge of the Petitioner to the Single Bench judgment passed on 11.07.2017, notice of the Division Bench was brought to a Division Bench judgment dated 12.04.2019 reported in 2019 (II) OLR-94 seen light of the day much after disposal of Writ Petition in July, 2017, thereby holding the provision in the Amendment Regulation, 2000 would have prospective effect. It is keeping this in view the Division Bench appears to have set aside the Single Bench judgment and remitted the matter for fresh hearing and disposal.
3. There is clear direction by the Division Bench for re-consideration of the matter for the involvement of limited purpose as to whether initiation of a proceeding under the amended Regulation, 2000 remains prospective or retrospective.

4. This Court on perusal of judgment taken support in the case of ***Jani Ramesh and another Vrs. State of Odisha and others*** reported in 2019 (II) OLR- 94 finds, the Division Bench in paragraph-11 therein has observed as follows:-

“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 amending Regulation makes it clear that it will come into effect from the date of publication. Further, the language of the amending provision which empower 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 unnecessarily litigations putting their vested right over the property at stake and making it vulnerable right over the property at stake and making it vulnerable. The same is never the intention of the impugned amendment and can’t be.”

5. For clear observation of the Division Bench in the aforesaid para the question framed by the Division Bench in remitting the matter to Single Bench appears to have already been answered in favour of General Caste and against the Schedule Tribe member.

6. In the above legal position holding the application of amended regulation, 2000 remains prospective, this Court finds, proceeding

initiated involved herein becomes innocuous for being barred by the provision of law itself.

7. In this circumstance, this Court interfering in the impugned order at Annexure-5 set aside the same.

8. The Writ Petition is disposed of with the above order.

(Biswanath Rath)
Judge

Utkalika

