

ORISSA HIGH COURT : C U T T A C K

O.J.C. No.12094 of 2001

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

Ismaile Khan

: Petitioner

-Versus-

Bibili Mangoli

: Opposite Parties

For Petitioner

: Mr. D. Mohapatra,
Advocate

For Opposite Party No.1

: Mr. A.K. Nanda,
Mr. G.N. Sahu,
Advocates

For Opposite Party Nos.2 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 18.10.2022

1. This Writ Petition involves a challenge to the order passed in O.L.R. Revision Case No.10 of 2001.
2. Pleadings in the writ petition disclose that the Petitioner has purchased some property by virtue of a registered sale deed in the year 1959. Further development shows, there has also been mutation involving

the disputed property in favour of the Petitioner. It is after long passage of time a proceeding U/s.23(A) of the OLR Act was initiated involving the Petitioner and the private Opposite Party herein, which appears to have been disposed by the order vide Annexure-4 in favour of the private Opposite Party thereby directing ejectment of the present Petitioner from the case land. On an appeal being filed, the same was registered as OLR Appeal No.7/2001 and disposed of by the judgment dated 30.08.2001 vide Annexure-5. A revision was preferred by the private opposite party and the revision has been allowed vide Annexure-6.

3. Taking this Court to the discussions in the appeal order learned counsel for the Petitioner contended that the appellate authority taking into account the materials produced by both the side, has arrived in a justified order in allowing the appeal in favour of the Petitioner. It is alleged that the revisional authority did not take into account the documents already available on record and without going to the findings of the appellate authority has straightway jumped to his conclusion in allowing the revision. In the above background of the matter learned counsel for the Petitioner contested the order at Annexure-6 passed by the revisional authority and claimed for interference of this Court in the same.

4. Mr. Sahu, learned counsel for the private opposite party, however, taking this Court to the new materials taken support in the appeal proceeding contended that the Petitioner though was provided with fullest opportunity, but failed in providing any material in support of his case. Mr. Sahu, learned counsel submitted that in the worse if new material came to be considered in the appeal proceeding, in the interest of justice the appellate authority should have remanded the matter back to the

original authority for reconsideration of whole aspect and in no circumstance should have allowed the appeal. There is no denial to the decision in Annexure-6 passed basing on the materials produced by both side and without involvement of all the materials in the original proceeding.

5. Mr. Panda, learned State Counsel supports the stand of Mr. Sahu, learned counsel for the private opposite party and also claimed for dismissal of the writ petition.

6. Considering the rival contentions of the parties and on perusal of the order of the original authority vide Annexure-4, this Court finds, there is clear observation by the Original Authority about no production of any document / material to support the claim of the present Petitioner. This Court, however, from the discussions therein finds, the present Petitioner had pleadings on the aspect that he has come to possess the disputed land through the sale deed. It is here, this Court on perusal of the appeal order finds, it is in the appeal memorandum the Petitioner appears to have attempted to fill up the lacunas committed by him in the original proceeding. Be that as it may, since there is production of material to support the case of the Petitioner, it cannot be lost sight of. But however, looking to the settled principle of law, in the event there is detection of new materials, but relevant for the purpose of consideration of the case, in the interest of justice the matter should have been relegated back to the Original Authority. It is keeping this principle in view, this Court finds, the appellate authority is not justified in entering into the merits involving the new materials itself. In the circumstance, this Court finds, the appellate order is not sustainable in the eye of law. As a consequence this Court finds, the revisional authority has also committed mistake in

proceeding contrary to the analogy indicated hereinabove. As a consequence, this Court interfering in both the orders at Annexures-5 & 6, sets aside all the orders at Annexures-5 & 6 and as this Court finds, there should be retrial of the proceeding involving Annexure-4, this Court remits the matter to the competent authority for de novo trial of the proceeding U/s.23(A) of the Act, however, involving the Petitioner as well as the private Opposite Party herein. For the remand of the matter to the original stage, it will be open to the Petitioner to place his further plea with materials support, if any, on record at least by the date of appearance before the competent authority.

7. Petitioner and private Opposite Parties are directed to appear before the competent authority along with a copy of this order on 14th November, 2022. There shall be fresh adjudication of the proceeding U/s.23(A) of the OLR Act at least within a period of four months from the date of appearance of the parties. This Court records the undertaking of the private opposite through the counsel that they will make their appearance before the original proceeding also on 14th November, 2022.

8. The writ petition is disposed of, but with an order of remand.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 18th day of October, 2022//
Ayaskanta Jena, Senior Stenographer