

IN THE HIGH COURT OF ORISSA AT CUTTACK
AFR

O.J.C. No.4470 of 2001

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

Sabitri Rout @ Dei & Ors. Petitioners

Versus

**Prafulla Kumar Rout
since dead his L.Rs.
Soudamini Rout & Ors. ... Opposite Parties**

For Petitioners ... B.C.Swain, Advocate.

For Opposite Parties ... Mr. S.Ghose,
Additional Government Advocate

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 05.07.2022

Biswanath Rath, J. 1. Heard learned counsel for the Parties.

2. There is further no appearance on behalf of the private Opposite Parties in spite of notice. Writ Petition involves a challenge to the revisional order vide Annexure-1, taking this Court to the disclosure through the document Mr. Swain, learned counsel for the Petitioners more particularly taking this Court to the order at Annexure-5 passed

in Objection Case No. 3802 of 81 submits that this is a proceeding initiated under Section 9(3) of the O.C.H. & P.F.L. Act, 1972 finalizing partly allowed giving specific direction to work out the maintenance of record of rights as appearing at Page-22 of the brief. It is alleged in the event Party to the proceeding under Annexure-5 aggrieved for the statutory remedy of Appeal, an Appeal should have been preferred instead revision has been preferred and disposed of vide Annexure-1.

3. Mr.Swain, learned counsel for the Petitioners advancing the submission contends once the statutory remedy of Appeal is there unless the Appeal remedy is undertaken, no revision would have been entertained. Further submission is also advanced on the premises that the revision being filed after six years of the order under Annexure-5, it was otherwise also barred by limitation.

4. Mr.Swain, learned counsel for the Petitioners takes support of the decision of this Court on the second ground attacked to the impugned order in the case of *Chaitanya Das Vrs. Bibhuti Charan Das & Ors. Reported in 2017 (1) OLR 406.*

5. Mr.Ghose, learned Additional Government Advocate in his attempt to justify the impugned order submits that there is no reason either on the ground of revision on the grounds raised herein surprisingly, since not available for consideration of the Revisional Authority, the Writ Petition should not be entertained on such ground.

6. Taking to the observations of the Revisional Authority Mr. Ghose, learned Additional Government Advocate also attempted to justify the impugned order and thereby requests this Court for dismissing the Writ Petition as not entertainable.

7. Considering the rival contentions of the Parties, this Court finds undisputedly Section 9(3) of the O.C.H. & P.F.L. Act, 1972 proceeding vide Objection Case No.3802 of 81 came to be disposed of by the order of the Competent Authority, the Consolidation Officer on 20.08.82. The revision appears to have been filed undisputedly in 1988. Looking to the grounds of attack, this Court finds Section 12 of O.C.H. & P.F. L. Act, 1972 reads as follows:

“12. Appeal- Any person aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under Section 10 or 11 may, within thirty days from the date of the order file an appeal in the prescribed manner before the Director of Consolidation whose direction shall, except as otherwise provided by or under this Act, be final.”

Reading through the aforesaid Appeal provision together with Section 10 of the Act, this Court finds, there is no dispute that for Section 9 of the O.C.H. & P.F.L. Act, 1972 proceeding disposed of in exercise of power under Section 10 of the Act, there was statutory remedy of Appeal available under Section 12 of the Act.

8. In the circumstance, this Court finds, no revision would have been preferred by the Petitioners by-passing the statutory remedy of Appeal. Further looking to the provision at Section 37(1) of the O.C.H. & P.F.L. Act, 1972 provides power of the Consolidation Commissioner who may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself. Looking to the cause title under Annexure-1 involving the Revision Petition here, this Court finds, through the cause title, there should not be any doubt that revision though nomenclature under Section 37(1) would have been a revision Under Section 36 of the Act. Coming back to the provision at Section 36 of the Act, this Court finds Section 36 of the Act reads as follows:

“36. Revision- (1) The Consolidation Commissioner may, on an application by any person aggrieved by any decision of the Director of Consolidation within ninety days from the date of the decision, revise such decision and for the said purpose, he may call for and examine the records :

Provided that no such order shall be passed without giving the parties concerned a reasonable opportunity of being heard.

(2) All orders passed under this section shall be final and shall not be void in question in any Court of law.”

9. Even assuming the revision would have been entertained under Section 36 of the O.C.H. & P.F.L. Act, 1972 for clear provision under Section 36 of the Act enabling Consolidation Commissioner on an application by any person aggrieved to entertain a revision but such revision would have been preferred at least within a period of ninety days from such decision.

10. In the circumstance, this Court finds there was no possibility to entertain the revision under Section 36 of the Act even. Otherwise decision cited by Mr. Swain, learned counsel for the Petitioner through *2017 (1) OLR 406* (supra) also applies to the case at hand so far it relates to the ground of limitation. Further there was no scope for entertaining revision under Section 31(1) of the Act for it already involved a proceeding under Section 9 of the O.C.H. & P.F.L. Act. In entertaining such Writ Petition, on both the grounds, this Court finds, the impugned order under Annexure-1 suffers which is accordingly interfered with and sets aside.

11. Writ Petition succeeds. No order as to cost.

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BISWANATH RATH, J.