IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.15986 of 2017

Ramesh Mallik .... **Petitioner**

Mr. Bijay Kumar Behera-1, Advocate

-Versus-

Rebati Mallik & others .... **Opposite parties**

Mr. P.K.Ray, AGA

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
16.12.2024

Order No.
07. 1. Heard Mr. Behera, learned counsel for the petitioner and Mr. Ray, learned AGA for the State.

2. Instant writ petition is filed by the petitioner challenging the impugned order dated 31st December, 2010 passed in connection with OCH & PFL Misc. Case No. 3 of 2009 by opposite party No.4 on the grounds stated.

3. This Court, by order dated 22nd November, 2024, had allowed time for the State to respond to the contention of Mr. Behera, learned counsel for the petitioner regarding applicability of Section 36A of OCH & PFL (Amendment) Act, 2023 and today, Mr. Ray, learned AGA would submit that the same applies prospectively and not to the case at hand.

4. In reply and response to the above, Mr. Behera, learned counsel for the petitioner refers to the following orders in **Urmila Sahoo Vrs. Collector & District Magistrate, Khurda & another** in W.P.(C) No. 28511 of 2019 dated 8th May, 2024 and **Sudastna Sabat**

Vrs. The State of Odisha & others in W.P.(C) No. 31595 of 2023 disposed of on 1st August, 2024 to contend that the transaction in question stands validated in view of Section 36A of the Amendment Act.

5. A copy of the Notification dated 29th December, 2023 with regard to the Amendment Act is produced in Court today.

6. Under the heading of validation of the transactions, the amendment has been brought in to the OCH & PFL Act by way of Section 36A which is reproduced herein below.

> "36A. Any transfer or partition of agricultural land in a locality creating fragmentation made under the Principal Act before the commencement of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land (Amendment) Act, 2023, shall be treated as valid."

7. The above provision stipulates that any such transfer or participation of agricultural land with a fragmentation under the Principal Act is to be treated as valid if the same has taken place before the commencement of the Amendment Act, 2023.

8. The Court has accepted a similar plea and passed orders as referred to herein before by Mr. Behera, learned counsel appearing for the petitioner. In the present case, the petitioner is the purchaser of the schedule land under a validly executed sale deed dated 10th January, 2007 and is in possession of the same. Since such sale led to the fragmentation of Chaka, Section 34 & 35 of the OCH & PFL Act was sought to be invoked to invalidate it. However, Mr. Behera learned counsel for the petitioner submits that the same is saved in

view of Section 36A of the Amendment Act which is to apply retrospectively.

9. Considering the facts pleaded on record and submissions of learned counsel for the respective parties and taking judicial notice of Section 36A of the OCH & PFL (Amendment) Act, 2023 and earlier views expressed by this Court, the conclusion is that the impugned order i.e. Annexure-1 is liable to be set aside.

10. Accordingly, it is ordered.

11. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order under Annexure-1 in OCH & PFL Misc. Case No. 3 of 2009 under Annexure-1 by opposite party No.4 is hereby set aside.

12. A certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

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Signature Not Verified
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Signed by: KABITARANI MAJHI
Reason: Authentication
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