IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19247 of 2025

CNR No.ODHC010472652025

(An application under Article-226 & 227 of the Constitution of India and Regulation-2 of 1956 under provisions of the OSATIP Act)

Simanchal Majhi & Another ..... Petitioners

-Versus-

State of Odisha & Others ..... Opposite Parties

Advocate(s) appeared in this case through hybrid mode:

For Petitioners : Mr. S.K. Dash, Advocate

For Opposite Parties : Mr. G. Mohanty,
[Standing Counsel]
Mr. S. Ranjit, Advocate
[For O.P. Nos. 5, 7 & 8]

CORAM:
MR. JUSTICE SASHIKANTA MISHRA

JUDGMENT

13th November, 2026

SASHIKANTA MISHRA, J.

The petitioners have filed the present writ application challenging the order of the Additional District Magistrate, Gajapati, Paralakhemundi dated 21.01.2025 passed in

Regulation Appeal No.1 of 2022 whereby the order passed by the Officer on Special duty (L.R.) (OSD(LR)), Paralakhemundi (Opp. Party No.3) was set aside.

2. The facts of the case, briefly stated are as follows: -

The petitioners, who are the members of a Scheduled Tribe community claimed to have been wrongfully deprived of their ancestral properties, under Khata No.1, which covers 20 distinct plots of land in the Mouza-Dhepaguda, of Gajapati district. They filed several RMCs under the provisions of the Orissa Scheduled Areas Transfer of Immovable Property by Scheduled Tribes Regulation, 1956 (hereinafter called the OSATIP Regulation, 1956). Said cases were allowed by the OSD(LR), Paralakhemundi by order dated 26.04.1998 recognizing the petitioners' statutory rights and by ordering restoration of the suit lands in their favour. Consequently, the suit land was delivered to the petitioners on 30.05.1998 by the revenue authorities. However, after 24 years the present Opposite Party Nos.5 to 9 preferred appeal against such order before the A.D.M., Gajapati, who by order dated 21.01.2025, set aside the same in Regulation Appeal

No.1 of 2022. Said order is impugned in the present Writ Petition.

3. The Opposite Parties have filed a preliminary objection to the Writ Petition claiming that the suit land is their ancestral property and asserting that no lawful transfer was ever made to other parties nor the restoration was ever executed. The *suo motu* institution of the RMCs by the OSD (LR) and the consequent restoration order was without jurisdiction. They further claim that the State retained custody of the suit land until the A.D.M., Gajapati restored the lands in their favour.

4. Heard Mr. S.K. Dash, learned counsel for the Petitioners; Dr. S. Ranjit, learned counsel for the private Opposite Parties and Mr. G. Mohanty learned Standing Counsel for the State.

5. Mr. Dash would argue that the impugned order is illegal and without jurisdiction inasmuch as the Regulation Appeal was filed by the Opposite Parties 24 years after the passing of the original order. He further contends the Opposite Parties neither filed application for condonation of delay nor does the impugned order consider the limitation aspect at all. He further submits that since the petitioners' ownership and physical possession

were settled by the order of the OSD (LR) back in 1998 and the petitioners have possession for more than 24 years, the order must be treated as having attained finality.

6. Per Contra, Mr. Ranjit would argue that the petition is not maintainable as the petitioners have not exhausted their available alternative remedies provided under Section-3(3) of the Regulation, 1956 before filing the present petition. He further argues that as the original RMCs were instituted *suo moto* based only on a field enquiry report submitted by the R.I., Adava and WEO, Mohana, they lacked any valid authority. Thus, the consequent order of the OSD (LR) is void. He further submits that since the private Opposite Parties never parted with their rights on the suit lands, leaving only the State to hold temporary custody and collect revenue through public auctions until the passing of the impugned order, the petitioners never actually possessed any right with respect to the suit lands and therefore, lack locus standi with regard to the suit land.

7. Mr. Mohanty, argues on similar lines and submits that the appellate authority passed the impugned order after relying on the Yaddast and on the ground that the field enquiry report

basing on which the RMCs were instituted was not accompanied by caste certificate or any other documents showing that the suit lands belonged to the petitioners or their forefathers. Therefore, the impugned order passed by the appellate Court needs no interference.

8. Perusal of the objection filed by the petitioners before the appellate authority and the impugned order reveal that though the issue of delay in filing of the appeal was raised before the appellate authority, it was not considered at all. Section 3(3) of the OSATIP Regulation, 1956 prescribes limitation of 30 days for filing appeal but does not provide any specific provision for condonation of delay. In such situation, Section 29(2) of the Limitation Act attracts Section 5, enabling condonation of delay upon sufficient cause being shown.

9. Law is well settled that limitation goes to the root of the maintainability and not a mere procedural formality as held by the Supreme Court in the case of ***Noharlal Verma v. District Cooperative Central Bank Limited***[1]. The question of limitation

[1] **(2008) 14 SCC 445**

must therefore be decided first, more so where inordinate delay is apparent on the face of the record, in this case being 24 years.

10. In the present case, the appeal was filed beyond the prescribed period and the authority went straight to the merits and set aside the order of the OSD (LR). There is nothing on record or in the order-sheet to show that the parties were specifically heard on the question of limitation. That apart, as to when the delay was condoned and the case was admitted is also not forthcoming. The procedure so adopted is unknown to law and cannot be countenanced. The impugned order becomes vulnerable on such score alone.

11. Such being the position, ordinarily the matter would have been remitted to the appellate authority for fresh consideration of the question of limitation. However, a perusal of the appeal memorandum reveals that the opposite parties had not filed any application seeking condonation of delay before the appellate authority. More significantly, no explanation whatsoever has been forthcoming from the opposite parties, even before this Court, as to the circumstances which prevented them

from preferring the appeal within the prescribed period of limitation.

12. In the aforesaid circumstances, the appellate authority ought not to have entertained the time-barred appeal and proceeded to adjudicate the same on merits. The impugned order, therefore, cannot be sustained in law.

13. It is also relevant to mention that the OSATIP Regulation is a piece of beneficial legislation intended to safeguard the interests of Scheduled Tribes in the Scheduled Areas. In the present case, the petitioners belong to the Scheduled Tribe community, whereas the opposite parties belong to the SEBC community. In the absence of any explanation for the inordinate delay, remitting the matter merely to afford the opposite parties another opportunity to overcome the defect would serve no useful purpose. Such a course would also be inconsistent with the protective object underlying the Regulation. In the considered view of this Court, interests of justice would, therefore, be better served by bringing the proceedings to a close rather than permitting an unexplained, time-barred appeal to be revived.

14. Thus, from a conspectus of the analysis of facts, law and the contentions raised and the discussion made, this Court holds that the impugned order is unsustainable in the eye of law.

15. Resultantly, the Writ Petition is allowed. The impugned order passed by the A.D.M., Gajapati, Paralakhemundi dated 21.01.2025 is set aside.

(Sashikanta Mishra)
Judge

High Court of Orissa, Cuttack
13th November, 2026, Puspanjali Ghadai, Jr. Stenographer

Signature Not Verified
Digitally Signed
Signed by: PUSPANJALI GHADAI
Designation: JUNIOR STENOGRAPHER
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 13-Nov-2026 16:04:45