



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19010 of 2010

(An application under Articles 226 and 227 of the Constitution of India)

Urmila Ray

..... Petitioner

-Versus-

State of Odisha & Others

.....Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. Samar Bahadur, Advocate

For Opp. Parties : Mr. S.N. Patnaik,
[Addl. Government Advocate]
Mr. Suraj Mohanty, Advocate
[For O.P. Nos.6 and 7]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

31st March, 2026

SASHIKANTA MISHRA, J.

In the present writ application, the petitioner questions the correctness of order dated 22.09.2010 passed



by the Additional District Magistrate (ADM), Sundargarh in Revenue Appeal No.23 of 2002.

2. The facts of the case are that one Nanku Ray, father-in-law of the original petitioner Urmila Ray, purchased the suit land from its recorded owner Sridhar Dalai, the ancestor of present Opposite Party Nos.6 and 7 in January, 1950. After due enquiry, the revenue authorities recorded the land in his name in the Record of Rights. After death of her father-in-law, the land was recorded in her name. The private Opposite Parties initiated a case against the petitioner being Regulation Case No.144 of 1977 under the provisions of Regulation-II of 1956 before the SDO, Bonai to evict the petitioner from the land. After due enquiry, said proceeding was dropped. The private Opposite Parties again filed an application under the provisions of Regulation-II vide Regulation Case No.1 of 1995 seeking eviction of the petitioner from the suit land and restoration of the land in their favour. Said case was filed on the ground that the private Opposite Parties belong to the Schedule Tribe Community and without permission of the authority the



land had been illegally transferred to the father-in-law of the petitioner. According to the petitioner, her father-in-law had purchased the land by way of oral purchase in the year 1950 by paying the consideration money and took delivery of possession. During Hal Settlement, the land was recorded in her father-in-law's name. In the year 1975, Nanku Ray gifted the suit land in favour of the petitioner vide Registered Gift Deed No.375 dated 28.01.1979 and since then, the petitioner is in his possession and paying rent regularly. Considering such facts and documents, the authorities recorded the name of the petitioner in the ROR.

The Sub-Collector, Bonai without granting opportunity of hearing to the petitioner passed an order for her eviction on 12.05.1987 against which the petitioner filed Revenue Appeal No.10 of 1987 before the A.D.M., Sundargarh. The appeal was allowed and the case was remanded for fresh hearing. The Sub-Collector, in his order dated 12.04.2002 upheld his earlier order of eviction, against which the petitioner preferred Revenue Appeal No.23 of 2002. By order dated 25.02.2004, the A.D.M



dismissed the appeal. The petitioner approached this Court in W.P.(C) No.448 of 2004. This Court, by order dated 14.03.2007 remanded the matter to the A.D.M for fresh hearing and to determine the question whether the land in question situates in Merged States and whether the provisions of the Merged State Laws are applicable. The A.D.M however, again dismissed the appeal upholding the order of eviction by order dated 22.09.2010. Said order is impugned in the present writ application.

According to the petitioner, the impugned order is contrary to the documentary evidence on record, such as Yadast Report of 1963, Amin's Report of 1967 and Munsarim's Mistake List countersigned by the Assistant Settlement Officer to show that the father-in-law of the petitioner after purchasing the land in 1950 was in possession thereof. The Record of Rights and rent receipts also prove the said fact. It is also contended that the petitioner's father-in-law having purchased the land in January, 1950, that is, before coming into force of the Merged State Laws, its provisions are not applicable. On



such facts, the petitioner prays for quashment of the impugned order.

3. The case of the State-Opposite Parties (O.P. Nos.2 and 3) as revealed from the counter affidavit filed by them is that the burden is on the petitioner to prove her stand with authentic documents showing the said transaction to have been made in the year 1950, which she could not discharge. Since the original transaction made prior to 1975 was illegal and the Settlement Authority had illegally mutated the land in the name of Nanku Ray, all subsequent transactions have to be treated as null and void. The impugned order is passed in conformity with the provisions of Odisha Merged State Laws Act, 1950 and Regulation-II of 1956.

The petitioner has relied upon the Yadast Report and Amin's Report etc. but the finding of the Settlement Authority, in the absence of actual sale deed are not binding on the Sub-Collector and A.D.M. Moreover, in the appeal petition, it was admitted that the land was purchased in the year 1951.



4. Though the private Opposite Party Nos.6 and 7 entered appearance and they did not file any counter.

5. Be it noted that the present writ application was heard and finally disposed of vide judgment dated 01.11.2016 by quashing the impugned order. Said order was challenged in intra-Court appeal being W.A. No.528 of 2016. By order dated 16.01.2023, a Division Bench set aside the order passed by the Single Judge and restored the writ application for hearing afresh.

6. Heard Mr. Samar Bahadur, learned counsel for the petitioner; Mr. S.N. Patnaik, learned Additional Government Advocate for the State and Mr. Suraj Mohanty, learned counsel appearing for Opposite Party Nos.6 and 7.

7. Mr. Bahadur assails the impugned order on the following grounds:-

- i.** The transaction in question is of the year 1950. As per Section 7-D of Odisha Regulation-II of 1956, any alienation of land by a Schedule Tribe to a member of the non-Schedule Tribe can be challenged within thirty years. The Regulation-II case having been filed in the



year 1995 is therefore, grossly barred by limitation. Mr. Bahadur has cited a judgment of this Court in the ***Laxmi Gouda V. Dandasi Goura***¹ in this context.

ii. An earlier case for restoration being Regulation Case No.144 of 1977 was initiated by the predecessor of the private Opposite Parties on the self-same facts, same parties and same land, which was dropped after due enquiry. Therefore, the subsequent regulation case is barred by res-judicata/constructive res-judicata. This aspect was never considered by the A.D.M.

iii. The land was recorded in the name of Nanku Ray as Rayati tenant by the settlement authorities in 1974 basing on the Yadast Report of 1963 wherein, the ancestor of the private Opposite Parties, Sridhar Dalai had endorsed his 'no objection'. The order passed by the settlement authorities was never challenged. This amounts to acquiescence for which the private Opposite Parties are estopped from challenging the same at this belated stage.

¹1990 SCC OnLineOri 43



iv. The petitioner and her predecessor-in-interest have been in continuous and peaceful possession for over seventy five years. Therefore, as a matter of equity no adverse orders should be passed against them at the instance of the private Opposite Parties, who have slept over the matter for as long as forty-five years.

8. Mr. S.N. Patnaik, learned Additional Government Advocate would submit that the petitioner never proved their claim of Nanku Ray having orally purchased the land from Sridhar Dalai in 1950. The provisions of Odisha Merged State Laws Act, 1950 and Regulation-II of 1956 shall prevail upon the order passed by the Settlement Officers if it is found that the transaction was *de-hors* the mandatory provisions. Since, there is no proof of any permission having been obtained by Sridhar Dalai before transferring the land in favour of Nanku Ray, the same is to be treated as null and void.

9. Mr. Suraj Mohanty also makes similar arguments as the State counsel and adds that the petitioner's claim that Nanku Ray had purchased the land in January, 1950 was



raised keeping in view the date of coming into force of the Odisha Merged State Laws Act, 1950 i.e., on 03.03.1950, the provisions of which also prohibited alienation of land of a member of the Schedule Tribe to a non-member without obtaining prior permission. The documents relied upon by the petitioner such as the Yadast Report, Amin's Report and Munsarim's Mistake List etc. cannot be relied upon as they have been obtained fraudulently. Mr. Mohanty further submits that the plea of *res-judicata* is not tenable as the earlier proceeding under Regulation-II was in respect of a different land.

10. From the facts projected by the parties and the contentions raised by them, this Court finds that the present case involves determination of the following issues:-

- I. Whether Regulation Case No.1 of 1995 was barred by limitation.
- II. Whether the said transaction in question is hit by the provisions of Odisha Merged State Laws Act, 1950 and Regulation-II of 1956.



III. Whether the documents relied upon by the petitioner relating to settlement operations can be accepted as proof of her claim.

Issue No. I

11. Admittedly, the regulation case was initiated in the year 1995. Section 7-D was introduced in the year 1975 amending Article 65 of the Limitation Act. In its application to the Scheduled Areas, the period of twelve years occurring in Article 65 was substituted by thirty years in relation to immovable properties belonging to the Schedule Tribes. The amendment was given retrospective effect from 2nd October, 1973.

The petitioners claim that the land was purchased by Nanku Ray in the year 1950. Thus, the Regulation case was filed after lapse of forty-five years. Be it noted that, the Odisha Merged State Laws Act, 1950 was repealed by Regulation-II of 1956, which came to force in the year 1956 but there being similar provision akin to that in the Regulation of 1956, in the Odisha Merged State Laws Act also prohibiting alienation of immovable property of a



Schedule Tribe, the period of limitation till coming into force of the amended Regulation-7-D must be held to be twelve years and thereafter, thirty years. In the case of **Laxmi Gouda (Supra)**, a Division Bench of this Court while examining the amended provisions of Section 7-D held as follows-

“Where vendor who belonged to Scheduled Tribes sold his property without taking permission of authorities as provided under Regn.3, in favour of a person who was not a member of Scheduled Tribe, such a sale deed would be void from the very inception and possession of such alienee would be deemed to be adverse. Consequently, where properties were purchased under the sale deed in the year 1959, the period of 12 years was complete by 2-10-1973 from which day Regn.7-D as introduced in 1975 was given retrospective effect and the period of 30 years for adverse possession as provided under amended Regn.7-D would not apply and the alienee would be held to have acquired valid title by adverse possession. However, in respect of other properties under sale deed in year 1961 as the date of sale deed was not disclosed by the alienee it could not be ascertained as to whether the period of 12 years was complete by 2-10-1973 from which day S.7-D was given retrospective effect, and it was held that the burden of proving that the alienee has acquired title by adverse possession being squarely on them, they were not able to prove that they have completed their possession for the requisite period by the aforesaid date and that the alienee did not acquire title by adverse possession.”



This Court therefore, holds that the regulation case was not maintainable being barred by limitation.

12. Having held so, it is not necessary to delve into other issues but considering the fact that the parties have been litigating in respect of the property at least since 1995, this Court deems it proper to also examine the other issues, for whatever they are worth.

Issue Nos. II & III

13. To answer the question as to applicability of the Odisha Merged State Laws Act, 1950 and subsequently, Regulation-II of 1956, the date of alienation of the land becomes relevant. In this context, it is claimed by the petitioner that Nanku Ray orally purchased the land from Sridhar Dalai in January, 1950. The Merged State Laws Act came into force on 03.03.1950. It has been vehemently argued by learned counsel appearing for the private Opposite Parties that there being no proof of any transaction having taken place in January, 1950, the transaction, if at all, must be held to be hit by the provisions of the Merged State Laws Act as well as



Regulation-II of 1956. As already stated, the petitioner claims that the transaction was by way of an oral sale for consideration of Rs.80/- followed by delivery of possession. Obviously, there would not be a written instrument signifying the transfer but then, the attending and surrounding circumstances and subsequent conduct of the parties can be looked into.

14. In this regard, it is seen that the petitioner relies upon a certified copy of the Yadast No.106, Amin's Report of local enquiry and Munsarim's Mistake List. Perusal of the said documents shows that the oral sale was acknowledged by the settlement authorities. Most importantly, it is mentioned that the recorded tenant endorsed his 'no objection' to the land being recorded in the name of Nanku Ray. In the Munsarim's Mistake List, it is significantly mentioned that in the absence of a registered instrument, the land ought not to be recorded in the name of the transferee but he being in possession for more than twelve years, the Assistant Settlement Officer recommended recording of the land in his favour.



15. It has been argued by the private Opposite Parties that these are fabricated documents. The State, in its counter has not said so but has tried to downplay the effect of these documents by stating that the same are not binding in the absence of actual sale deed.

16. It is significant to note that the Yadast was published in 1963, the Amin's report of local enquiry was submitted on 19.03.1967 and the Munsarim's Mistake List was submitted on 07.10.1966. What is more important to note is, the Hal ROR was published in favour of Nanku Ray in April, 1975. There are several rent receipts showing payment of rent by Nanku Ray.

17. This Court is unable to accept the contention that the said documents/records are fabricated. Moreover, a presumption of correctness is always attached to the settlement records.

In this context, it would be useful to refer to Section 13 of the Odisha Survey Settlement Act, which reads as follows:-

"13. Presumption as to final publication and correction of record-of-rights-[(1) Any record-of-rights



prepared and finally published under this Chapter or a certified copy thereof or extract therefrom shall be conclusive evidence of such publication.

(2) The Government may by notification declare with regard to land in any local area or village that record-of-rights has been finally published and such notification shall be conclusive evidence of such publication.]

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect:

Provided that, if any entry in a record-of-rights is altered in a subsequent record-of-rights, the later entry shall be presumed to be correct until it is proved by evidence to be incorrect, but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made."

18. As held by the Supreme Court in the case of **Partap Singh V. Shiv Ram**² and also by this Court in the case of **Dasarath Singh V. Manvoti Dei**³, unless the presumption of correctness is dispelled or rebutted by convincing evidence, the same would not be nullified. Merely by questioning the authenticity of the settlement entries and records without adducing any acceptable evidence to support the same, the settlement records cannot be ignored.

² (2020) 11 SCC 242

³ 2006 SCC OnLineOri 16



19. Now coming to the moot question as to the date of sale transaction, admittedly, there is no direct evidence of the transaction having taken place in January, 1950. The Odisha Merged State Laws Act, 1950 came into force on 03.03.1950. The Yadast, Amin's Report and Munsarim's Mistake Report and Hal ROR are documents prepared much after. It cannot be presumed that the concerned settlement authorities were ignorant of the provisions of the Act and the Regulation. On the contrary, having regard to the statutory presumption of correctness, it must be presumed that they were fully aware of the provisions and having found the transaction to be valid in the eye of law, they took necessary steps to record the land in favour of the petitioner. Moreover, the subsequent recording of the land in favour of the petitioner on the strength of the gift deed dated 21.08.1979 executed by Nanku Ray in 1994 also lends support to the above. Albeit indirectly, this also lends support to the view that the transaction took place prior to 03.03.1950 and therefore, the Odisha Merged State



Laws Act, 1950 as well as the Regulation-II of 1956 shall have no application to the facts of the case.

20. In view of the foregoing narration, this Court is satisfied that the Regulation case itself was not maintainable being barred by limitation and even otherwise, for non-applicability of the provisions of the Odisha Merged State Laws Act, 1950 and Regulation-II of 1956. Even alternatively, the private Opposite Parties not having set up their claim in respect of the land in question during the statutory period of thirty years are estopped to do so and consequently, the petitioners must also be deemed to have acquired title by way of adverse possession.

21. Reading of the impugned order reveals that the A.D.M has not considered these vital aspects of the matter at all and has proceeded on the premise that the provisions of Act, 1950 and Regulation-II of 1956 are applicable. The question of limitation was also not considered at all. For all these reasons, the impugned order is rendered unsustainable in the eye of law.



22. For the foregoing reasons therefore, the writ application is allowed. The impugned order is set aside.

.....
(Sashikanta Mishra),
Judge

High Court of Orissa, Cuttack
The 31st of March, 2026/Puspanjali Ghadai, Jr. Stenographer