

ORISSA HIGH COURT: CUTTACK

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

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

Urmila Ray

... ..

Petitioner

-versus-

State of Orissa & others

... ..

Opp. Parties

For Petitioner

: M/s. G.Behera & S.K.Mohanty,

For Opp.Party

: M/s.S.Mohanty, D.Kumar and

P.K.Mishra. (O.P.Nos.6 and 7)

Mr.K.K.Mishra, Addl. Government
Advocate.

Date of Hearing: 24.10.2016

Date of Judgment: 01.11.2016

P R E S E N T:

THE HONOURABLE MR. JUSTICE BISWANATH RATH

Biswanath Rath,J. In filing the writ petition, the petitioner has sought for quashing the order dated 22.9.2010 passed by the Additional District Magistrate, Sundargarh in Revenue Appeal No.23 of 2002 and the order dated 12.4.2002 passed by the Sub-Collector, Bonai in Regulation Case No.1 of 1995 appearing at Annexures-12 and 9 respectively.

2. Short background involved in the case is that the father-in-law of the petitioner purchased a piece of land, particularly the disputed land, in the month of January, 1950 from one Sridhar Dalai, the ancestor of opposite party nos.6 and 7 herein. It is claimed that statutory authorities after due inquiry recorded the land in favour of the father-in-law of the petitioner by bringing out corrected record-of-right and after the death of the father-in-law, the land got recorded in the name of the petitioner. While the matter

stood thus, in the year 1977 a case under the provisions of Regulation-II of 1956 was initiated against the petitioner vide Regulation Case No.144 of 1977 and the proceeding was dropped after due inquiry. Said Regulation Case No.144 of 1977 was initiated by one Khaibu Dalai along with opposite party no.7 against the father-in-law of the petitioner. It is further submitted that when the petitioner and her family were in peaceful possession of the disputed land, it is at this state, opposite party nos.6 and 7 filed another case vide Regulation Case No.1 of 1995 under the provisions of Regulation-II of 1956 seeking eviction of the petitioner and restoration of possession of the land under the premises that there is no permission obtained in purchasing the disputed land. Petitioner appearing therein filed show cause contending inter alia that the suit land vide Sabik Plot No.203 corresponding to Hal Plot No.379 and Hal Plot No.380, Area Ac.0.09 decimals originally belonged to one Tima Dalai, father of Sudha Dalai and Sukuru Dalai, the ancestors of opposite party nos.6 and 7. The land to the extent of Ac.0.06 decimals was purchased from Sabik Plot No.203 on oral transaction in the year 1950 paying consideration money followed by delivery of possession. Hal settlement records were also prepared in the name of the father-in-law of the petitioner, Yadastt Report, Amin Report and Munsarims Mistake List all show that the father-in-law of the petitioner orally purchased the suit land on payment of consideration money in the month of January, 1950 appearing at Annexures-2, 3 and 4 respectively. Record-of-Right was also consequently prepared as appearing in Annexure-5. Father-in-law of the petitioner gifted away the property in favour of the petitioner in the year 1975 in Registered Gift Deed No.375 dated 28.1.1979 and since then the petitioner is possessing the suit land by paying rent regularly. Record-of-Right was also consequently prepared indicating the name of the petitioner. Sub-Collector, Bonai vide order dated 12.5.1987 passed order against the petitioner and directed for eviction of the petitioner from the suit land. Petitioner filed Revenue Appeal No.10 of 1987 before the Additional District Magistrate, Sundargarh, which though was allowed but remanded with an order for rehearing of the case afresh. The Sub-Collector in absence of consideration of the contentions raised by

the petitioner giving the history of the case again dismissed the matter upholding earlier order dated 12.5.1987 and again directed for fresh disposal of the Regulation Case No.1 of 1995 appearing at Annexure-9. Challenging the order, petitioner filed Revenue Appeal No.23 of 2002. This appeal was disposed of initially by an order dated 25.2.2004 against the petitioner observing no transfer of Tribal land would be permissible without permission from the competent authority. The said order being challenged in this Court in W.P.(C) No.4481 of 2004, the writ petition was disposed of with an order of remand by order dated 14.3.2007 to the appellate authority with a direction to re-hear the Revenue Appeal No.23 of 2002 giving opportunity to all parties and to find out as to whether the lands in question are situated in Merged States and whether the provisions of Merged States Law is applicable or not. It is alleged that after hearing of the matter on remand, the Additional District Magistrate without application of mind and considering the contentions raised therein regarding non-applicability of the provisions of Regulation-II of 1956, dismissed the appeal vide Annexure-12. Assailing the impugned order, learned counsel appearing for the petitioner contended that in view of the documents vide Annexures 1 to 3 clearly holding that the petitioner is possessing the land by way of purchase from a Scheduled Tribe person since 1950, it was established that the purchase was made prior to Orissa Merged States (Laws) Act, 1950 came into force in March 1950 and since the transaction was made in prior to the Orissa Merged States (Law) Act, 1950 came into force, provisions of Regulation-II Act, 1956 are not applicable, further, petitioner has also acquired right over the disputed property by way of adverse possession for his long possession over the disputed property and consequently it was alleged that the decisions in Annexures-9 and 12 runs contrary to the provisions of the Orissa Merged States (Law) Act, 1950 referred to hereinabove and the impugned orders therefore needs to be interfered with and set aside.

3. In his objection, Sri K.K. Mishra, learned Additional Government Advocate, on the other hand, looking to the materials available on record contended that there is no material available establishing the transaction

was made prior to Orissa Merged States (Law) Act, 1950 came into force. Further, in view of the clear condition contained in Orissa Merged States (Law) Act, 1950, even though the act was published on 3.3.1950 but for the Act coming into force with effect from 1st January, 1950, any transaction without the permission required under Section 7 (d) of the Act remains void and under the circumstances it is claimed that both the courts did no wrong in holding the case against the petitioner. Further, claim of the petitioner that his right also otherwise accrued by way of adverse possession for his long possession over the disputed property is not sustainable for the settled position of Law that claim over tribe's properties by way of adverse possession is no more maintainable. Learned Counsel appearing for opposite party no-6 and 7 toed the line of argument of the learned Addl. Government Advocate.

4. The admitted fact involved in the dispute is that originally the land was purchased by the father-in-law of the petitioner from the ancestor of opposite party nos.6 and 7 in the year 1950. Nanku Ray, the father-in-law of the petitioner subsequently gifted away the disputed property in favour of the petitioner vide Registered Gift Deed No.375 dated 28.1.1979 and that the petitioner is in possession of the disputed land since then by paying rent regularly. There is also no denial to the fact that in between the Record-of-Right was also at the first instance prepared in the name of father-in-law of the petitioner and in the second instance, the same stood corrected in the name of the present petitioner. The pleadings also bring that in the year 1977, a case was instituted against the petitioner vide Regulation Case No.144 of 1977 under the provisions of Regulation-II of 1956 and the said proceeding was dropped for having no merit and the present litigation is the second round of litigation remaining the original proceeding dropped and not-challenged in higher Forums. As appears the order passed in Regulation Case No. 144/77 remained final.

5. Be that as it may, what appears in the matter is the second round of litigation initiated under Section 3(2) of the Regulation-II of 1956 vide Regulation Case No.1 of 1995 involving the same persons seeking direction for eviction of the present petitioner on the premises of his

unauthorisedly possessing the disputed land again on the premises that the transaction whatever made between father-in-law of the petitioner and the opposite party nos.6 and 7 was not supported with necessary permission. The second round of litigation came up to the level of High Court and the matter was re-adjudicated by the appellate authority based on the remand order being passed by the High Court. Perusal of the pleadings in the second instance, this Court observes the petitioner herein all through contesting the proceeding on the premises that the second round of litigation is not maintainable on the premises that the first round of litigation under Regulation-II of 1956 was dropped after considering the rival contentions of the parties on merit and in existence of the order in favour of the petitioner and proceeding on self same issue was not maintainable. This apart, the petitioner also raised a contention in the second round of litigation that the properties having been purchased initially by the father-in-law of the petitioner in the year 1950, the provisions of the Orissa Merged States (Law) Act, 1950 being published in Orissa Gazette on 3.3.1950, the provisions contained by the Act restricting the transaction in absence of a valid permission was not applicable to the present case.

6. This Court, therefore, finds the following question required to be decided:

Whether the second successive petition involving the same parties involving the impugned orders after dropping of the first round litigation between the parties initiated under the provisions of Regulation-II of 1956 is maintainable or not?

Coming to the question framed herein above and looking to the observations already made hereinabove, this Court finds that the petitioner has a clear case all through that involving the transaction in the first round of litigation, the opposite parties initiated a proceeding vide Regulation Case No.144 of 1997 following the provisions under the Regulation-II of 1956. Admittedly, the said proceeding was dropped after considering the disputes involved therein and on merit involved therein. This being the admitted position and there being no material available that any challenge was made by the opposite party no-6 and 7 involving the order passed in Regulation case No.144/97 the order passed by the competent authority

under the Regulation II of 1956 involving the same property, the second successive proceeding under Regulation II of 1956 is not maintainable and as such the order involving Regulation Case No.1/1995 and thereafter in Appeal are all illegal. Consequently while allowing the writ petition this Court sets aside the impugned orders vide Annexure-9 and 12 respectively. Parties to bear their respective costs.

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Biswanath Rath,J..

Orissa High Court, Cuttack
The 1st day of November.2016/sks