

HIGH COURT OF ORISSA: CUTTACK

W.A. No.569 of 2011

The appeal arises out of order dated 08.11.2011 passed by the learned Single Judge in W.P.(C) No.27706 of 2011.

Durga Bai Sahu, aged about 28 years,
W/o. Nohar Chand Sahu,
At: Kadomeri, P.O. Bisora,
P.S. Jonk, Dist: Nuapada

... Appellant

-Versus-

State of Odisha and others

... Respondents

For Appellant : Mr. Kedar Ku. Dash &
Mr. Chandrakanta Nayak

For Respondent : Mr. R.K. Mohapatra,
Government Advocate

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgment :19.10.2012

B.N. Mahapatra, J. This writ appeal has been filed challenging the correctness of the order dated 08.11.2011 passed by learned Single Judge in W.P.(C) No. 27706 of 2011 with a prayer to allow W.P.(C) No.27706 of 2011 by setting aside the order of the learned Single Judge.

2. In the writ petition, the petitioner had prayed for quashing of notification dated 16.06.2011 issued under Section 8 of the Orissa Grama Panchayat Act along with revised copy of the list of reserved

constituencies in the ensuing Panchayat Election 2012 and to prepare a fresh list in consonance with amended provisions of Section 10(4) and (6) of the Odisha Grama Panchayat Act.

3. Petitioner's case is that the Commissioner-cum-Secretary to Government, Panchayati Raj Department vide letter No.17-SEC-18-9011/11285/PR dated 25.05.2011 issued letter directing all the Collectors to furnish the list of constituencies with their reservation status of Panchayati Raj Institutions (PRI) and also have issued the guidelines under letter No.17-SEC-18-9011/11282/PR dated 25.05.2011 to be followed for completing the process of reservation in the ensuing Panchayat Election 2012 to the office of the Members of Panchayat Raj Institutions. In the said guideline, it was stipulated that population percentage of SC and ST people in their respective Grama Panchayat/Block/District according to 2001 Census would be the determining factor for computation of number of seats/offices which would be reserved for SC or ST category in 3 tier Panchayati Raj Institutions. Secondly, 27% of the total seats will be kept reserved for citizens of backward class. In so far as the reservations in scheduled areas, the reservation of seats and offices of ST category will be made as per the provisions of PESA Act and relevant Panchayat Laws governing the field. In Para-IV of the guidelines the Panchayati Raj Department has stipulated the mode of reservations of seats in respect of SC, ST and BCC and women categories. As per the said guideline after reservation of seats

of SC, ST and BCC categories, reservation for women will be made after arranging the wards/constituencies in Odia alphabetical order and the reservation shall be made in the following sequences:-

- (a) 1st SC Reservation
- (b) 2nd ST Reservation
- (c) 3rd BCC Reservation
- (d) 4th Women Reservation

4. While determining the women reservation in each category, procedure of “1st and thereafter every second” shall be followed so as to make total reservation for not less than 50% of women. Pursuant to the said notification, the Collector, Nuapada published a notification in Form No.12 under Sections 8 and 10 of the Act and also made a notification specifying the number and extent of wards of Gram Panchayats and reservation of such wards for members of scheduled castes and scheduled tribes, backward classes of citizens and women by following the provisions of Section 10 of the Gram Panchayat Act. In the said notification, the lists of reservation of different Panchayats was given in Form No.15, in which SL.No.20, is shown to be reserved for scheduled caste. The reservation of the Petitioner’s constituencies was also placed at Sl.No.20 in the revised list dated 26.06.2011 after receiving the objections.

5. Mr. Chandrakanta Nayak, learned counsel appearing for the appellant submitted that the learned Single Judge has committed gross

error of facts and law in holding that after amendment of Clause (a) of Sub-Section (6) of Section 10 of the Grama Panchayat Act, the authorities are not duty bound to repeat the same reservation consecutively for two terms. In fact the same should be started from the year 2012. Thus, the learned Single Judge has failed to make correct interpretation of the amendment brought in Sub-Section (6) of Section 10 of the Act which came into force from 31st May, 2011. It is the trite law that the amendment of a statute must be read from the date of its enactment and as such the findings arrived by the learned Single Judge are devoid of merit and liable to be set aside.

It was submitted that the notification did not whisper anything about the implementation of the amended provision so far as sub-Section (6) of Section 10 of the Act is concerned. It is the settled law that the amendment of certain Act is to be followed in its entirety from the date of its Notification and not in piecemeal manner.

6. Mr. Nayak, further submitted that the tenure of the Panchayati Raj Election 2007 was still in force and the process of election for the ensuing Panchayati Raj Election 2012 is yet to begin. In view of the provisions of sub-Section (6) of Section 10 of the Act, the prevailing reservation to a particular seat should continue for another term provided the same is not repeated earlier i.e. during 2002 election. The learned Single Judge has failed to make the correct interpretation of the amended provision so far as Sub-Section (6) of Section 10 of the Act

is concerned. The concerned Authorities while preparing the revised list of reserved seats for different categories in respect of different Panchayats of Nuapada Block for the purpose of ensuing Gram Panchayat Elections have adhered to the amended provisions of Section 10(6) of the Act, which stipulates “every general election” being substituted by “after two terms of election”. This is deliberate omission of the provision of law on the part of the authorities. Opposite party no.2-Collector, Nuapada has acted in illegal exercise of his power in not implementing the order dated 09.08.2011 passed by this Court in its letter and spirit and acted beyond his jurisdiction in not following the provisions of amendment of Section 10 of the Act brought in by the Legislation vide Notification dated 30.05.2011. The opposite parties have issued the guideline so far as Sub-Section (4) of Section 10 of the Act is concerned, but the amendment to Sub-Section (6) of Section 10 of the Act has not been followed while issuing the guidelines for strict implementation of the same. In the instant case, the order passed by the Collector, Nuapada in pursuance of the order passed in W.P.(C) No.19090 of 2011 is not sustainable in the eye of law. The Notification dated 16.06.2011 and finally prepared reservation list dated 26.06.2011 are liable to be quashed in respect of Beltukuri Grama Panchayat placed at Sl.No.20 as the same has not been prepared in consonance with the amended provisions of Sub-Sections (4) and (6) of Section 10 of the Act.

7. It was further submitted that law is well settled that an elector or a citizen has locus standi to challenge the denial or debasement of his right of franchise and also such denial or debasement presents a justiceable cause of action. It is also settled law that one person one vote is the fundamental principle of the democratic system and an inflexible single constitutional rule which cannot be allowed to be abridged. The reservation of seats to the office of the different Grama Panchayats has been prepared without following the reservation policy enunciated under Rule 243-D of the Constitution, which stipulates that the reservation of seats in respect of Scheduled Castes and Scheduled Tribes in every Panchayats and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the scheduled caste in that Panchayat area or of the scheduled tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. In Beltukuri G.P. percentage of SC and ST population constitutes 43% of the total population. Opposite party no.2 should not have reserved the present constituency as scheduled caste constituency as during last general election the seat was reserved for BCC (Women) and the office of the Sarpanch is occupied till date by a women belonging to general category. In view of the amendment incorporated in sub-

section (6) of Section 10 of the Act, the authority can effect a change in the list of reservation after completion of two terms of general election.

8. Mr. R.K. Mohapatra, learned Government Advocate reiterating the stand taken in the counter affidavit filed by opposite party No.2 submitted that the writ appeal is not maintainable in absence of necessary parties. Paragraph-1 of the memorandum of appeal reveals that the legality of the final notification dated 26.06.2011 under Annexure-2 has been questioned. The final notification dated 26.06.2011 is in respect of 28 Grama Panchayat Sarpanch Constituencies in respect of whom reservation have been made and a right has accrued by virtue of the final notification dated 26.06.2011, but they have not been made parties either in the writ petition or in the writ appeal. Hence, on this ground alone, the writ appeal is liable to be dismissed. The writ appeal is also barred by delay and laches. Once the election process has been set into motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering and/or stalling with the election process. As per instruction of the Panchayati Raj Department, Government of Orissa vide Circular No.11282 dated 25.05.2011, the draft reservation status for the offices of the Sarpanches of Nuapada Block including Beltukuri Grama Panchayat was prepared in Form No.15 following the clarification of Panchayati Raj Department and the provisions of the Act. The draft notification was published on 16.06.2011 inviting objections and suggestions from the general public

by 23.06.2011 as required under Rule 3-A (2) of the Odisha Grama Panchayat Election Rules, 1965. Pursuant to the publication of the draft notification dated 16.06.2011, the appellant had never submitted her written objection. Hence, the appellant is estopped from assailing the final notification dated 26.06.2011, as the appellant has waived her right by not filing any written objection.

9. The Orissa Panchayat Laws (Amendment) Act, 2011 was published in the Orissa Gazette vide Notification No.4784-II/2011, Legis, dated 17.05.2011 of the Law Department. It is not a fact that the Amendment Act, 2011 was not published in the Orissa Gazette on 30.05.2011. In non-Scheduled areas, proportionate percentage of Scheduled Caste and Scheduled Tribe population in a Block will have to be taken into consideration for determining the number of Offices in the Block to be reserved for Scheduled Caste and Scheduled Tribe candidates for the Office of Sarpanch. The population percentage of Scheduled Caste and Scheduled Tribe people in respect of Grama Panchayat/Block/District according to 2001 Census would be the determining factor for computation of number of Seats/Offices to be reserved for Scheduled Caste and Scheduled Tribe Candidates in the three tier Panchayati Raj Institutions.

10. Mr. Mohapatra submitted that while preparing the reservation of the seats of Sarpanch, respondent No.2 has taken into account the Block population as per Paragraph-(i) and 2(a) of the

Circular dated 25.05.2011. Therefore, in order to reserve the Beltukuri Sarpanch Constituency, the population of Nuapada Block has been taken into consideration. In Nuapada Block, there are 28 Sarpanch Constituencies and total population of Nuapada Block is 1,19,759. The Scheduled Caste population in respect of Nuapada Block is 13,522 which is 11.28% of the total population of Nuapada Block. Hence, three seats out of total 28 seats have been allotted to Scheduled Caste category in Nuapada Block. The reservation of seats in respect of Beltukuri Grama Panchayat has been made in accordance with Paragraph-(i) and 2(a) of the Circular dated 25.05.2011. Therefore, the population of Beltukuri Grama Panchayat has not been taken into consideration for reservation of seat in respect of Beltukuri Sarpanch Constituency. The total SC and ST population of Beltukuri Grama Panchayat is not required at all for reservation of seat for Beltukuri Sarpanch Constituency. As per instructions communicated by the Government of Odisha in Panchayat Raj Department vide Letter No.11684 dated 31.05.2011, the reservation of seats/Offices of Sarpanches of Nuapada Block was made afresh and draft notice was published on 03.06.2011 inviting objections/suggestions from the public. Beltukuri Sarpanch Constituency was notified to be reserved for un-reserved candidate vide notification dated 03.06.2011. While the situation stood thus, the Government in Panchayati Raj Department vide letter No.12284, dated 09.06.2011 directed to follow the principle of rotation in descending

order taking into account the reservation status of last Grama Panchayat Elections held in the years 1997, 2002 and 2007. Accordingly, the earlier notification dated 03.06.2011 was cancelled. Beltukuri Sarpanch Constituency is now reserved for “Scheduled Caste” category for two terms i.e. 2012 and 2017 Grama Panchayat Elections. The reservation of seats of different Sarpanch Offices of Nuapada Block has been made as per provisions of Sub-Sections (5) and (6) of Section 10 of the Act and Orissa Panchayat Laws (Amendment) Act, 2011. In accordance with the amended provisions of Sub-Sections (4) and (6) of Section 10 of the Act which came into force w.e.f. 31.05.2011, reservation has been made for two terms of General Elections. After arranging all the 28 Sarpanch Constituencies in Nuapada Block in ODIA alphabetical order in S.C., S.T. and BCC Category, 50% women reservation has also been made following the principles of “which appear first and thereafter every second” constituency. Further care has also been taken to avoid immediate repetition of women reservation as per instruction of the Government in Panchayati Raj Department vide No.6615 dated 21.04.2006.

11. Mr. Mohapatra, learned Government Advocate further submitted that it is not correct on the part of the appellant to contend that respondent No.2 has acted illegally while exercising his power by not implementing the order dated 09.08.2011 passed by this Court and acted beyond his jurisdiction in not following the amended provisions of Section 10 of the Act. The appellant is also not correct to say that the

respondents have exceeded their jurisdiction while implementing the provisions of sub-Section (4) and (6) of Section 10 of the Act. The reservation of seats for 28 Sarpanch Offices of Nuapada Block has been prepared following the provisions laid down in the Act and Orissa Grama Panchayat Laws (Amendment) Act, 2011 and the guidelines communicated by the Government of Odisha in Panchayati Raj Department. As per the above provisions, at the first instance Scheduled Caste seats are to be reserved. Therefore, 28 Sarpanch Constituencies of Nuapada Block have been arranged according to the density of Scheduled Caste population of Nuapada Block as per 2001 Census from highest 01 (one) to lowest 28(twenty-eight) rank/serial in a descending order. It has already been reserved for “Scheduled Caste” category up to Sl.No.09 during 2007 General Election on rotation principle. Therefore, Respondent No.2 has reserved the next rank i.e. Sl.Nos. 10, 11 and 12 (three seats) for S.C. Candidates on rotation basis for 2012 General Election and the reservation will continue for two terms i.e. 2012 and 2017. Beltukuri Sarpanch Constituency comes at Sl.No.10 (ten) of SC Rank Card. Hence, Beltukuri Sarpanch Constituency has been reserved for “Scheduled Caste” category. Beltukuri Grama Panchayat population is not to be considered for reservation of Beltukuri Sarpanch Constituency in utter violation of Paragraph-2(a) of the Circular dated 25.05.2011 which provides that population percentage of SC and ST people in their respective Block according to 2001 Census would be the

determining factor for computation of number of Seats/Offices to be reserved for SC or ST category. Therefore, Respondent No.2 has rightly reserved the seat of Beltukuri Sarpanch Constituency for Scheduled Caste candidate. Reservations have been made by following the relevant provisions of the Act, Guidelines and in conformity with Article 243-D of the Constitution of India. In support of his contention, learned Government Advocate relied upon the judgments of the Hon'ble Supreme Court in the cases of *Shyam Sundar and others vs. Ram Kumar and another*, AIR 2001 SC 2472, *Sri Vijayalakshmi Rice Mills, New Contractors Co. v. State of A.P.*, AIR 1976 SC 1471 and *Boddula Krishnaiah and another vs. State Election Commissioner, A.P. and others*, (1996) 3 SCC 416.

Further, placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Vijayalakshmi Rice Mills, New Contractors Co. (supra)*, Mr. Moahpatra submitted that the amended provisions are not retrospective in operation.

12. On the rival contentions, the only question that falls for consideration by this Court is as to whether opposite party no.2-Collector, Nuapada is justified to reserve the Beltukuri Grama Panchayat in Nuapada Block for SC Category?

13. The undisputed facts are that in 2007 General Election Beltukuri Grama Panchayat has been reserved for BCC women. In the impugned final notification, the Beltukuri G.P. has been reserved for SC

candidates. Petitioner's contention is that since Panchayati Raj Institution Election 2007 was still in force and in view of the amended provisions of sub-Section (6) of the Act, the prevailing reservation to a particular seat should continue for another term provided the same is not repeated earlier i.e. during 2002 election.

Contention of opposite party-State is that the provisions of amended sub-Sections (4) and (6) of Section 10 of the Act came into force w.e.f. 31.05.2011 and the same has been given effect to in the ongoing three tier Panchayat Election, 2012. The amendment is prospective in nature and is applicable from the ongoing PRI Election 2012 and not prior to 2012.

The learned Single Judge has held that the amendment is always prospective in operation and the same should be started from the year 2012.

14. Challenging the reservation of seats to the office of Sarpanch in Beltukuri G.P. as notified by the Collector, the petitioner approached this Court in W.P.(C) No.19090 of 2011 which was disposed of by this Court vide order dated 09.08.2011 with a direction to opposite party No.2-to reconsider the question of reservation following the amended provisions of Orissa Grama Panchayat Act and the clarification thereto given by the Government of Odisha in Panchayati Raj Department within a period of four weeks as Respondent No.2 is the competent authority for reservation of seats of Sarpanch under Section 10 of the Act.

Accordingly, respondent No.2 reconsidered the matter of reservation and rejected the petition of the appellant vide order dated 30.09.2011 by a reasoned order.

15. Specific case of the respondent is that the reservation of seats for 28 Sarpanch Offices of Nuapada Block has been prepared following the provisions of the Act and the Orissa Panchayat Laws (Amendment) Act, 2011 and the guidelines communicated by the Government of Odisha in Panchayati Raj Department. As per the above provisions, at the first instance Scheduled Caste seats are to be reserved. Therefore, 28 Sarpanch Constituencies of Nuapada Block have been arranged according to the density of Scheduled Caste population of Nuapada Block as per 2001 Census from highest 01 (one) to lowest 28(twenty-eight) rank/serial in a descending order. It has already been reserved for "Scheduled Caste" category up to Sl.No.09 during 2007 General Election on rotation principle. Therefore, Respondent No.2 reserved the next rank i.e. Sl.Nos. 10, 11 and 12 (three seats) for S.C. Candidates on rotation basis for 2012 General Election and the reservation will continue for two terms i.e. 2012 and 2017. Beltukuri Sarpanch Constituency comes at Sl.No.10 (ten) of SC Rank Card. Hence, Beltukuri Sarpanch Constituency has been reserved for "Scheduled Caste" category. Beltukuri Grama Panchayat population is not to be considered for reservation of Beltukuri Sarpanch Constituency in utter violation of Paragraph-2(a) of the Circular dated 25.05.2011 which

provides that population percentage of SC and ST people in their respective Block according to 2001 Census would be the determining factor for computation of number of Seats/Offices to be reserved for SC or ST category. Respondent No.2 has rightly reserved the seat of Beltukuri Sarpanch Constituency for Scheduled Caste candidate.

16. Since sub-Sections (5) and (6) of Section 10 of the Act have been extracted in the impugned order by learned Single Judge, there is no need to produce the same here to avoid repetition. As per the amended provisions of sub-sections (6) of Section 10 of the Act a constituency is reserved for a particular category for two terms of General Elections. Earlier it was kept reserved for one General Election. In accordance with the amended provisions of sub-section (4) and (6) of Section 10 of the Act, which came into force w.e.f. 31.05.2011, reservation has to be made for two terms of General Elections.

17. It is not in dispute that sub-Sections (4) and (6) of Section 10 of the Act have been amended and the guideline issued by Respondent No.1 have been followed during reservation of seats for 28 Sarpanch Offices in Nuapada Block. As per the amended provisions, reservation has been made for two terms of General Election and women reservation has been made "1st and thereafter every second" after arranging all the 28 Sarpanch Constituencies in Nuapada Block in ODIA alphabetical order in S.C., S.T. category.

18. Article 243E of the Constitution of India as well as Section 12(2) of the Act provides that the election to a Panchayat shall be completed before expiry of its duration. Furthermore, in exercise of powers conferred by sub-section (2) of Section 1 of the Orissa Panchayat Laws (Amendment) Act, 2011, the State Government vide Gazette Notification dated 30.05.2011 has appointed the 31st May of 2011 as the date on which the provisions of the Orissa Panchayat Laws (Amendment) Act, 2011 have come into force. Thus, the provisions of the amended Act became effective from 31.05.2011 and as such the same is prospective in nature. Therefore, the prevailing reservation of a particular seat should not and cannot continue for another term. Hence, the final notification dated 26.06.2011 is legal and valid.

19. The Hon'ble Supreme Court in the case of *Shyam Sundar and others (supra)*, held :

“22. It was also argued that the amending Act being retrospective whatever the right the plaintiff possessed on the date of adjudication of suit, the same stood extinguished during pendency of appeal and therefore, the plaintiff suit must fail. Since both the arguments are overlapping we shall consider the effect of decision in *Lachmeshwar Prasad Shukul v. Keshwar Lal Choudhuri* (AIR 1941 FC 5) (*supra*) slightly later. Before that it is necessary to consider the effect of substituted S.15 introduced by the amending Act of 1995 on the substantive rights of the parties. We would now proceed to examine whether said provision of the amending Act is retrospective as urged by learned counsel for the appellant.

23. In Maxwell on the Interpretation of Statutes, 12th Edn. the statement of law in this regard is stated thus:

"Perhaps no rule of construction is more firmly established than thus - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary "

24. In Francis Bennion's Statutory Interpretation, 2nd Edn, the statement of law is stated as follows :

"The essential idea of legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex-post facto law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transaction carried on upon the faith of the then existing law."

25. In Garikapati Veeraya v. N. Subbiah Choudhry, 1957 SCR 488 : (AIR 1957 SC 540) this Court observed as thus : (Para 25 of AIR)

"The golden rule of construction is that, in the absence of anything in the enactment to show that it

is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

26. In *Smt. Dayawati v. Inderjit* (1966) 3 SCR 275 : (AIR 1966 SC 1423, Para 10), it is held thus :

"Now as a general proposition, it, may be admitted that ordinarily a Court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim - a new law ought to be prospective, not retrospective in its operation - is off-quoted, Courts have looked with dis-favour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance."

27. In *Hitendra Vishnu Thakur v. State of Maharashtra* (1994) 4 SCC 602 : (1994 AIR SCW 3699 : AIR 1994 SC 2623 : 1995 Cri LJ 517) this Court laid down the ambit and scope of an amending Act and its retrospective operation as follows :

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and

right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished:

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in Operation unless otherwise provided, either expressly or by necessary implication."

28. In *K. S. Paripoornan v. State of Kerala* (1994) 5 SCC 593 @ p. 636 : (1995 AIR SCW 1004 : AIR 1995 SC 1012), this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus : (Para 47 of AIR)

".....In the instant case we are concerned with the application of the provisions of Sub-sec. (1-A) of S.23 as introduced by the Amending Act to acquisition proceedings which were pending on the date of commencement of the Amending Act. In relation pending proceedings, the approach of the Courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the fiction was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn. Vol. 44, para 922)."

29. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a Court of appeal cannot take into consideration a new law brought into existence after the Judgment appealed

from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that, where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted S.15 brought in the parent Act by Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court. In *Shantidevi (Smt) v. Hukumchand* (1996) 5 SCC 768 : (1996 AIR SCW 3680 : AIR 1996 SC 3525) this Court had occasion to interpret the substituted S.15 with which we are concerned and held that on a plain reading of S.15 it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the Judgment and decree passed in the Suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted S.15 in the absence of anything in to show that it is retrospective, does effect the right of the parties which to them on the date of suit or on the date passing of the decree the Court instance. We are also of the view that present appeals are unaffected by change in law so far it related to determination of the substantive rights of the parties and the same are required to be decided in light of

law of pre-emption as it existed on the date of passing of the decree.”

20. In view of the above, we don't find any infirmity or illegality in the order passed by the learned Single Judge, which is perfectly legal and valid.

21. In the result, the writ appeal is dismissed.

.....
B.N. Mahapatra,J.

V.Gopala Gowda, C.J.

I agree.

.....
Chief Justice

Orissa High Court, Cuttack
The 19th October, 2012/ssd/ss/skj