

ORISSA HIGH COURT, CUTTACK

O.J.C. No.16009 OF 2001
An application under Article 227
of the Constitution of India.

Ladi Chandrasekhar Rao & another.

..... Petitioners

-Versus-

Kondagiri Sukadev and others.

..... Opposite parties

For petitioners - Mr. Sidhartha Mishra.

For Opp.party - Mr. Gopal Krushna Mohanty
Nos.1 & 2

For Opp.party - Mr.K.K. Mishra, A.G.A.
Nos.3&4

PRESENT:-

THE HON'BLE SHRI JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 29.03.2018

Biswanath Rath, J. Heard Shri S.K. Mishra, learned counsel appearing for the petitioners and Shri K.K. Mishra, learned Addl. Government Advocate appearing for the opposite party nos.3 and 4-State. In spite of appearance of a set of counsel for the private opposite party nos.1 and 2, nobody is present in course of hearing.

2. Assailing the notice at Annexure-4 series and the order at Annexure-5, a review proceeding initiated by the competent authority, Shri Mishra, learned counsel appearing for the petitioners taking this Court to the provisions contained in Regulation (3-a)(i) of the O.S.A. Transfer of Immovable Property (by ST) Regulations, 1956 (for short "the Regulations, 1956"),

contended that for the permission under Annexure-1 having been granted on 19.04.1995 and the notice awaiting the review proceeding in exercise of power under Regulation (3-a)(i) of the Regulations, 1956 having been issued on 05.11.2001, undoubtedly beyond five years of the date of order. It is in the above circumstances, Shri Mishra, learned counsel appearing for the petitioner contended that the notice and consequential order passed thereof, both becomes illegal being contrary to the provisions contained in the aforesaid provision.

3. Shri K.K. Mishra, learned Addl. Government appearing for opposite party nos.3 and 4-State even though has no dispute with regard to the provisions contained in Regulation (3-a)(i) of the Regulations, 1956, particularly for initiation of the review proceeding within a period of five years from the date of order under review, but however taking this Court to the observations in the order at Annexure-5, submitted that for detail consideration of the case of a party and for the party in contest shall not adjudicate of the proceeding, such a contention after participating in the proceeding should not be accepted.

4. Considering the rival contentions of the parties and taking into consideration the provisions contained in Section (3-a)(i) of the Regulations, 1956), this Court finds, the provisions reads as hereunder :-

“(3-a)(i) Any order passed by the competent authority under Sub-sec. (1) or under Sub-sec.(2) may, within a period of five years from the date of such order, be revised, either on own motion or otherwise, by the Revenue Divisional Commissioner if the order was passed by the Collector and by the Collector if it was passed by any other competent authority, after giving the parties concerned a reasonable opportunity of being heard:

Provided that no order shall be revised under the sub-section if an appeal against such order has been entertained under Sub-sec.(3).”

It be taken note here that the provision as aforesaid was brought into force vide Orissa Gazettee Ext.No.391 dated 27.03.1997. Reading the provision, finding that the review proceeding should be initiated within a period of five years from the date of order and this Court finds the order involved (3-a) proceeding having been passed on 19.04.1995 and the notice at Annexure-4 series involving the dispute in exercise of above power having been issued on 05.11.2001 goes beyond the time stipulation provided in the Regulations taken note hereinabove. In the circumstances, this Court finds, notice at Annexure-4 series becomes bad in law being contrary to the provisions at Regulation (3-a)(i) of the Regulations, 1956. As a consequence, the consequential order at Annexure-5 also becomes bad.

5. As a result, this Court interfering in the notice as well as the impugned order at Annexures-4 series and 5 respectively, sets aside the same.

6. The writ petition succeeds. No order as to costs.

.....
Biswanath Rath, J.

