

ORISSA HIGH COURT, CUTTACK.

O.J.C. No.958 of 1996

*An application under Articles 226 & 227
of the Constitution of India.*

**Dhadaka Laba
(Since dead through his legal heirs)**

... **Petitioners**

**The Collector, Koraput
and others**

... **Opposite Parties**

For Petitioners

:M/s. Manoj Mishr, (Sr. Adv.)
U.C. Pattnaik, P.K. Das
B. Mishra, P.K. Mohanty.

For Opp. Party nos.1 to 3

:Mr. S.N. Mishra,
Additional Government Advocate

For Opp. Party no.4

:M/s. MissU.Panda,
R.K. Pradhan

PRESENT :

THE HONOURABLE MR. JUSTICE BISWANATH RATH

Date of hearing & Judgment :30.08.2019

Biswanath Rath, J. This Writ Petition has been filed challenging the order dated 7.10.1995 passed by the Collector, Koraput in O.L.R. Revision No.1, 2 & 3 of 1995, thereby setting aside the order dated 6.04.1995 passed by the Additional District Magistrate, Koraput in O.L.R. Appeal No.6 of 1994 preferred by the petitioners against the order dated 29.05.1993 passed by the learned Sub-Divisional Officer-cum-Revenue Officer, Koraput in O.L.R. Case No.10 of 1983.

2. Short background involved in the case is that upon initiation of a proceeding U/s.23-A of the O.L.R. Act, 1960 the Sub-Collector, Koraput disposing the matter ex parte vide Annexure-5 directed for resumption of the land in favour of the petitioner in exercise of power U/s.23-A of the Act, 1960. It appears from the pleadings and the submissions of the parties that the application was moved by the party suffering for the ex parte order and a fresh order has been passed by the Sub-Collector himself again in exercise of power U/s.23-A of the Act, 1960 by reversing the order vide Annexure-6 thereby recalling the order vide Annexure-5 and pursuant to which, the proceeding U/s.23-A of the Act, 1960 was taken up afresh and was disposed of by order vide Annexure-7. In appeal by the party aggrieved, the appellate authority set aside the order of the original authority vide Annexure-8 resulting filing of the revision. The revision has been disposed of with an order reversing the order of the appellate authority vide Annexure-9 thereby restoring the order of the original authority vide Annexure-7.

3. Challenging the order of the revisional authority as well as the original authority, learned counsel for the petitioner taking this Court to the provision at Section 23 of the Act, 1960 submitted that the Statute is absolutely silent with regard to Sub-Collector being the original authority having the power of review.

Learned counsel for the petitioner thus contended that the power of review having not been there, the only scope to the party aggrieved was to avail the appeal provision U/s.58 of the Act, 1960. It is, in this view of the matter learned counsel for the petitioner submitted that the authority has rightly decided the matter observing that the original authority has no review power and as such the order of the revisional authority remains contrary to the provision of law and therefore, the impugned order vide Annexures-6, 7 & 9 should be interfered with and set aside.

4. Even though there is appearance of a set of counsel on behalf of the opposite party no.4 none appears on behalf of the opposite party no.4 at the time of hearing of the matter. Therefore, this matter is decided only hearing the learned counsel for the petitioner and the learned State Counsel.

5. Shri S.N. Mishra, learned Additional Government Advocate appearing on behalf of the State-opposite parties, on the other hand, taking this Court to the provision at Order 41 Rule 19 of C.P.C. submitted that for the applicability of the provision of the C.P.C. to the proceeding under the O.L.R. Act, the original authority rightly interfered with the order vide Annexure-5 in exercise of power of review and the revisional authority went right in affirming the order of the original authority thereby upholding the power of review exercised by the original authority. Thus, Shri S.N. Mishra, learned Additional Government Advocate supported the order of the revisional authority.

6. Taking into account the submission of the respective parties and going through the provision at Section 23 of the Act, this court finds, the provision at Section 23-A of the Act, 1960 reads as follows:

"23-A. Eviction of person in unauthorized occupation of property –

Where any person is found to be in unauthorized occupation of the whole or part of a holding of a raiyat belonging to a Scheduled Caste or of a raiyat belonging to a Scheduled Tribe within any part of the State other than a Scheduled Area, by way of trespass or otherwise, the Revenue Officer may either on application by the owner or any person interested therein, or on his own motion and after giving the parties concerned an opportunity of being heard, order eviction of the person so found to be in unauthorized occupation and shall cause restoration of the property to the said raiyat or to his heir in accordance with the provisions of sub-section (3) of Section 23.

7. Reading the above provision, this Court nowhere finds any provision of review with the original authority except there is provision U/s.58 to appeal involving any order under the provisions therein inclusive of Section 23-A of the Act, 1960. Taking into account the submission of learned State Counsel on the application of provisions of C.P.C. to the case at hand, considering the rival contentions of the parties and taking into account the pleadings of the parties involved herein, this Court observes, application of provision of C.P.C. to the proceeding under the O.L.R. Act does not stretch to have the application of all the provisions of the C.P.C. but however, procedures inasmuch as notice, summons, calling for records and to some extent receiving of evidence shall be applicable to the proceedings under the O.L.R. Act. In such view of the matter, this Court finds, both the original authority as well as the revisional authority went wrong in appreciating the glaring difference involving the issue and have passed order contrary to the legal provisions. In the process, this Court holds, the order vide Annexure-6 being contrary to the provision contained in the O.L.R. Act, becomes invalid. As a consequence, this Court finds, the order vide Annexure-7 and order vide Annexure-9 are all also bad. As a consequence, this Court allowing the writ petition sets aside the orders vide Annexures-6, 7 & 9.

The Writ Petition succeeds. However, there is no order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 30th day of August, 2019/**A. Jena, Sr. Steno.**