
(2014) 01 OHC CK 0010
In the Orissa High Court
Case No : W.P. (C) No. 25195 of 2012

Jhadeswar Rajak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Citation : (2014) 118 CLT 81 : (2014) 1 OLR 454

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

C.R. Dash, J.—Though this matter has been listed under the heading of "Fresh Admission", the same is taken up for final disposal with the consent by learned counsels for the parties.

2. Heard learned counsel for the petitioner and learned Additional Government Advocate.

3. Petitioner purchased the land in question from Kamala Majhi (Opp. party No. 4), who is a person belonging to the Scheduled Tribe Community. Said Kamala Majhi had taken permission from the competent authority to sell the land vide O.S.A.T.I.P. Case No. 98 of 1993. After obtaining necessary permission, the land was sold to the petitioner and the petitioner is in peaceful possession over the said land since the date of purchase. Behind the back of the petitioner, O.S.A.T.I.P. Case No. 537 of 2011 was initiated and the order vide Annexure-4 has been passed for restoration of the land to opposite party No. 4.

4. Learned counsel for the petitioner submits that the petitioner had no occasion to know about the fact that he should have filed return in Form No. II under Regulation 2 of 1956. Due to his ignorance, the petitioner could not file return in Form No. II by the prescribed date. Without taking into consideration the claim of the petitioner, O.S.A.T.I.P. Case No. 537 of 2011 has come to be disposed of.

5. A Division Bench of this Court in Nayan Kumar Dey v. State of Orissa and others in W.P. (C) No. 11562 of 2009 disposed of on 09.05.2011 has formulated the following principles:

It is open to the authorities to initiate to suo motu proceeding and in most cases they should call for a show-cause notice and the show-cause notice should have been considered in view of the Regulation 3-B in toto. If the authority is satisfied that the delay is explained properly such as immediately after their knowledge about the amendment, they have taken step to file return, or compliance of principle of natural justice.

This being the position, we direct the Sub-Collector, Koraput, O.P. 3, to condone the delay, consider the return of the petitioner and dispose of the same in accordance with law.

Till consideration of the return filed by the petitioner under Regulation 3-B of the Orissa Regulation 2 of 1956, status quo in respect of the land in question shall be maintained by both the parties. However, O.P. 3 shall act upon production of certified copy of this order.

6. In view of the Division Bench decision of this Court, this writ petition is disposed of with an observation that in case the petitioner files return in respect of the purchased land in question along with a petition for condonation of delay before the Addl. Sub-Collector, Nabarangpur (opposite party No. 2) within a period of four weeks from today, the said opposite party shall consider the same under Regulation 3-B of the Regulation 2 of 1956 as per the aforesaid principles decided in W.P.(C) No. 11562 of 2009. Till consideration of the return filed by the petitioner under Regulation 3-B of Regulation 2 of 1956, status quo as on date in respect of the land in question shall be maintained by the parties.

7. In view of the aforesaid observation, the impugned order vide Annexure-4 is set aside and the petitioner be given an opportunity of being heard and file return in the proceeding.

8. The writ petition is accordingly disposed of.