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**(1990) 05 OHC CK 0020**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1396 of 1981**

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| Namabati Bhoi and Another  | Vs | APPELLANT  |
| State of Orissa and Others |    | RESPONDENT |

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**Date of Decision :** 09-05-1990

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Orissa Land Reforms Act, 1960 — Section 22, 39, 40B

**Citation :** (1990) 70 CLT 603

**Hon'ble Judges :** J.M. Mahapatra, J;D.P. Mohapatra, J

**Bench :** Division Bench

**Advocate :** R.K. Kar and R. Dash, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.P. Mohapatra, J.—The, short question, that falls for determination in this case is whether the lands sold by Ujala Dharua, father of Petitioner No. 1, in favour of Adhikari Badhai by registered sale deed dated 21-5-1971 are to be excluded while determining the extent of ceiling surplus land held by the Petitioner No. 1 under the provisions of Orissa Land Reforms Act, 1960 (hereinafter referred to as the "Act"), The statutory authorities have answered the question in the negative.

2. The Petitioner No. 1, Namabati Bhoi is the wife of Petitioner No. 2, Krushna Chandra. Bhoi. They have filed this application under, Articles 226 and 227 of the Constitution of India against the State of Orissa, represented by the Secretary in the Revenue Department, the Revenue Divisional Commissioner, Northern Range, the Addl. District, Magistrate, Sambalpur and the Addl. Tahasildar Cum-Revenue Officer, Bargarh with the prayer to quash the order passed by the opposite party No. 4. Addl. Tahasildar, Bargarh on 10-12-1976 in O. L. R. Case No. 2596 of 1976 (Annexure-I) which was confirmed in appeal by the order dated 10-2-1977 of the Addl. District Magistrate, Sambalpur, in O. L. R. Appeal No. 31 of 1977 (Annexure-2) and in the revision by order dated 21-3-1979 of the Revenue

Divisional Commissioner, Northern Range, in O. L. R. Revision No. 195 of 1977 (Annexure-3). The factual backdrop of the case about which there is no controversy is that the disputed land extending over an area of Ac.3.72 decimals covered by plot Nos. 2924, 2926, 2927, 2928; 2982 and 2988 appertaining to Khata No. 63 in Mouza Talandi belonged to Ujal Dharua, father of Petitioner No. 1. Ujala Dharua, a member of scheduled caste transferred the disputed land to Adhikari Badhai, not a member of the scheduled caste. On the application tiled by Ujala Dharua u/s 22 of the Act permission was accorded by the Sub-divisional Officer, Bargarh for the transfer; After obtaining such permission Ujala Dharua executed the registered sale deed on 21-5-1971 in favour of Adhikari Badhai transferring the disputed land. In O.L. R. Case No. 2596 of 1976, the Addl. Tahasildar; Bargarh while calculating the ceiling surplus land, if any, with the Petitioner No. 1, the question arose whether the disputed land (Ac.3.72 dec.) should be excluded from consideration or should be included in the lands held by the Petitioner No. 1. At that stage there was also some controversy about the right of the Petitioner No. 1 to exercise option for retaining the lands; that matter is no longer in controversy since, the appellate authority allowed the Petitioner No. 1 to exercise option regarding land to be retained by her. The case of the Petitioners is that the disputed land should be totally excluded while calculating the lands held by the Petitioner No. 1 since the transfer in favour of Adhikari Badhai was a valid transfer having been effected after getting due permission of the Sub-divisional Officer, Bargarh, u/s 22 of the Act. The Addl. Tahasildar however held that in view of the provisions in Section 39(b) and (bb) of the Act, the transfer of the disputed land is to be deemed to be void and the land so transferred is to be taken into account as if the transfer had not taken effect. This view was confirmed by the appellate authority as well as the Revisional Authority. The Petitioners have challenged the orders passed by the authorities mainly On the ground that they misinterpreted the provisions in Section 40-B." (bb) of the Act and the interpretation given by them practically renders the provision in Section 22 of- the Act nugatory.

No counter to the writ petition has been tiled on behalf of the opposite parties.

3. From the factual position stated in the preceding paragraphs the question as formulated earlier arises for consideration. The answer depends on interpretation of the provisions in Section 39(b) and (bb) of the Act. As such, it will be convenient to quote the said provisions:

39. (b) the transfer of any land by sale, gift or otherwise or the partition thereof by a person during the period beginning with the 26th day of September, 1970 and ending with the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (17 of 1973) shall, if such person was holding land on the said day in excess of the ceiling area, be deemed to be void, anything contained in any law or agreement or in any decree or order of any Court notwithstanding;

(bb) the lands so transferred or partitioned shall be taken" into account as if the transfer or partition had not taken effect and the Revenue Officer may, at his

discretion ignore the selection made by the person of lands to be retained in his possession.

From the provisions quoted above it is clear that Section 39(b) applies to transfer of any land by sale, gift or otherwise or the partition thereof during the period beginning with the 26th day of September, 1970 and ending with the commencement of the Orissa Land Reforms (Amendment) Act 1973 (17 of 1973), made by a person who was holding land in excess of the ceiling area on the date of transfer and such a transfer shall be deemed to be void, anything contained in any law or agreement or in any decree or order of any Court notwithstanding.

Clause (bb) of Section 39 provides the consequence of the declaration in Clause (b) to be that the lands so transferred or partitioned shall be taken into account as if the transfer or partition had not, taken effect and the Revenue Officer may, at his discretion ignore the selection made by the person of lands to be retained in his possession.

4. On perusal of the Section 39(b) and (bb) it is clear that these are special provisions applicable to a class of transfer/partitions taking place within the period specified in the Section. The legislative intent is clear from the plain and unambiguous language in the Section that notwithstanding anything contained in any law or agreement or in any decree or order of any Court, such transfer/partition effected by a person who was holding the land in excess of the ceiling area on the date of transfer/partition shall be taken to be void and the land so transferred/partitioned shall be taken into account as if the transfer or partition had not taken effect. It was not disputed before us that the condition precedent for application of Section 39(b) was satisfied in this case since the transferor Ujala Bhoi held lands in excess of the ceiling area on the date of transfer. It was urged on behalf of the Petitioners that in fact the transfer should be taken to have been effected on 1-9-1970 when possession of the land was delivered to Adhikari Badhai and that being prior to 26-9-1970 the transfer did not come within the mischief of Section 39(b). The statutory authorities rejected the plea and in our view rightly since by that date permission of the Sub-divisional Officer had not been obtained and the sale deed had not been executed and registered which was admittedly done on 21-5-1971 within the period specified in Section 39(b). Though the learned Counsel for the Petitioner raised the contention that accepting the interpretation given to the statutory provisions in the impugned order would mean practical, rendering the provision in Section 22 of the Act redundant so far as the transfers covered u/s 39(b) are concerned in view of the clear and unambiguous language used in the Section 39(b) and (bb) and the legislative intent expressed through the said provisions, we are not persuaded to hold that the consequence as aforesaid Section available to be taken into consideration in interpreting the statutory provisions.

5. There is, therefore, no merit in the writ application, which is accordingly dismissed. There will be no order for cost of this proceeding.

Writ application dismissed.