

**(2005) 02 OHC CK 0035**

**In the Orissa High Court**

**Case No :** Writ Petition (Civil) No. 12237 of 2003

Smt. Sarojini Mallick

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

---

**Date of Decision :** 22-02-2005

**Acts Referred:**

Limitation Act, 1963 — Article 137

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(1) , 12(2), 12(3), 13, 7(1)

**Citation :** (2005) 1 OLR 666

**Hon'ble Judges :** Sujit Barman Roy, C.J;M.M. Das, J

**Bench :** Division Bench

**Advocate :** M.C. Jena, P.K. Tripathy, R.K. Sahoo, S. Das and M. Jena, for the Appellant; A.G.A., for the Respondent

---

## **Judgement**

M.M. Das, J.—The petitioner has filed this writ application challenging the order dated 23.5.2003 passed by the Addl. District Magistrate, Khandhamal-Phulbani in O.P.L.E. Revision Case No. 1 of 2003 rejecting the revision application of the petitioner by passing the following order :

"This is put up today, I have heard the learned Advocate for the petitioner. This is barred by limitation as it is filed after eleven months from the date of orders of the lower Court. There has been no application for condonation of delay. I am not inclined to admit the petition.

Pronounced in the open Court."

2. The said order has been annexed to the writ petition as Annexure-8.

3. Mr. Jena, learned counsel for the petitioner submits that the Addl. District Magistrate has committed an error apparent on the face of the order quoted above by rejecting the revision application on the ground of limitation as there was no accompanying application for condonation of delay. He submits that the power of revision under the O.P.L.E. Act, 1972 (hereinafter referred to as "the

Act") is provided u/s 12(2) of the said Act and Section 13 of the said Act provides a period of thirty days as prescribed period for preferring an appeal u/s 12(1) of the Act commencing from the date of decision or order complained of. But, however, no provision is made under the Act prescribing a period of limitation for preferring a revision u/s 12(2) of the Act. Mr. Jena therefore contends that since no period of limitation is prescribed under the Act, Article 137 of the Limitation Act which is the residuary article will be applicable to a revision u/s 12(2) of the Act which prescribes a period of three years as the specified period for filing an application for which no limitation is prescribed under the Limitation Act.

4. Mr. P. K. Mohanty, learned Addl. Government Advocate per contra submitted that Section 12(3) of the Act provides for a suo motu revision by the Revenue Divisional Commissioner and the power of revision to be exercised u/s 12(2) is similar to that which can be exercised u/s 12(3) of the Act. He further submits that in case of suo motu revision under the Orissa Land Reforms Act as well as under the Estate Abolition Act, where no period of limitation has been prescribed, this Court in various decided cases has held that such revision can only be entertained within a reasonable period from the date of the impugned order.

5. Section 12(2) and (3) and Section 13 of the Act are quoted below for reference :

"12. Appeal and revision- (1) xx xx xx

(2) The Collector may revise decision or order made by a Sub-divisional Officer under Sub-section (1) or u/s 7 or Section 8-A.

(3) The Revenue Divisional Commissioner having jurisdiction may call for and examine the records of any proceedings under this Act before any officer in which no appeal or revision lies and if such officer appears-

(a) to have exercised a jurisdiction not vested in him by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) while acting in the exercise of his jurisdiction, to have contravened some express provision of law affecting the decision on the merits, where such contravention has resulted in serious miscarriage of Justice, if may, after giving the parties concerned a reasonable opportunity of being heard, pass such order as it deems fit."

6. On a plain reading of Section 12(2) of the Act, we find that the revision referred to in the said section is in respect of a revision application filed by any party aggrieved by an appellate order made by the Sub-Divisional Officer under Subsection (1) or Section 7 or Section 8-A of the Act, whereas the suo motu revision provided under Sub-section (3) of Section 12 confers a suo motu power on the concerned Revenue Divisional Commissioner to call for and examine the records of any proceeding under the Act before any officer in which no appeal or

revision lies. A reading of Section 13 of the Act clearly goes to show that the period of limitation prescribed in Sub-section (2) thereof is only in relation to an appeal preferred u/s 12(2) of the Act.

7. We, therefore, find that the power of suo motu revision u/s 12(3) of the Act is completely different from the power of revision to be exercised u/s 12(2) of the Act. Therefore, the analogy advanced by the learned Addl. Government Advocate, according to us, is unsustainable.

8. We are of the view that since no period of limitation is prescribed for a revision u/s 12(2) of the Act, the only provision which can be made applicable for computing the period of limitation for filing of revision under the said provision would be the period as prescribed under residuary Article 137 of the Limitation Act which prescribes three years as the period of limitation for all applications for which no specific provision is made in the Limitation Act or in any Special Act.

9. In this view of the matter, the order dated 23.5.2003 impugned in this writ application suffers from error apparent on the face of it. We have, therefore, no hesitation to quash the said order dated 23.5.2003 passed by the Addl. District Magistrate, Kandhamal-Phulbani in O.P.L.E. Revision Case No. 1 of 2003 and we order accordingly.

10. The Addl. District Magistrate, Kandhamal-Phulbani is directed to take up the O.P.L.E. Revision Case No. 1 of 2003 afresh and decide the same on merit. The petitioner is also directed to appear before the Addl. District Magistrate, Kandhamal-Phulbani on 12.4.2005 and file a certified copy of this order before the said Revisional Authority for compliance of the direction given herein above. Till disposal of the said O.P.L.E. Revision Case No. 1 of 2003, the petitioner shall not be evicted from the property in question if not already evicted.

11. With the above observations and directions, the writ application is disposed of.

S.B. Roy, C.J.

12. I agree.