

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.A.No.550 of 2013**

***Mitrabhanu Behera***

.... ***Appellant***  
Mr. D. Mishra, Advocate

*-versus-*

***State of Odisha and others***

... ***Respondent***  
Mr. Ishwar Mohanty, ASC

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE CHITTARANJAN DASH**

**Order No.**

**ORDER**  
**07.09.2022**

**Misc. Case No.326 of 2014**

03. 1. For the reasons stated therein, this application for substitution vice deceased Respondent No.5 is allowed. The legal representatives (LRs) of the deceased Respondent No.5 are substituted in her place. The amended cause title of the writ appeal be filed in course of the day.

**W.A.No.550 of 2013 and Misc. Case No.62 of 2014**

2. The present appeal is directed against the order dated 6<sup>th</sup> August, 2013 passed by the learned Single Judge allowing W.P.(C) No.6097 of 2005 filed by Respondent No.5. In the said writ petition, the present Appellant was arraigned as Opposite Party No.5.

3. The said writ petition was filed questioning the order dated 29<sup>th</sup> September, 2004 passed by the Additional District Magistrate (ADM), Baripada, Mayurbhanj in OLR Appeal No.6 of 2003 and

order dated 18<sup>th</sup> March, 2005 passed by the Collector and District Magistrate, Mayurbhanj in OLR Revision No.2 of 2004.

4. According to Respondent No.5, she purchased a piece of land from Mohan Behera and Sanatan Behera, uncle and father respectively of the present Appellant under Registered Sale Deed dated 1<sup>st</sup> May, 1981.

5. In 2002, the Appellant instituted OLR Case No.3 of 2002 before the Sub-Collector, Panchipir, Karanjia claiming that the vendors of Respondent No.5 being 'keuta' by caste and in fact, scheduled caste (ST), therefore, the transaction in terms of Section 23 of the Orissa Land Reforms Act (OLR Act) was void.

6. The Sub-Collector dismissed the OLR Case No.3 of 2002 observing that the transaction was made in the year 1981 when Keuta caste was not included in the schedule of the Constitution (Scheduled Castes) Order, 1950.

7. As far as OLR Appeal No.6 of 2003 before the ADM, Baripada is concerned, it was allowed and the direction was to restore the land to the present Appellant. This was done by an order dated 29<sup>th</sup> September, 2004. It is noted in the said order that the Commissioner and Secretary, Government of Orissa by the letter dated 23<sup>rd</sup> April, 1982 clarified that the earlier Circular dated 20<sup>th</sup> July, 1981 regarding inclusion of Dhibara, Keuta and Kaibarta communities in the list of SCs for the State of Orissa would be effective from 5<sup>th</sup> November, 1979, the date of judgment in OJC No.247 of 1978 of this Court.

8. The Respondent No.5 challenged the said order in OLR Revision No.2 of 2004 before the Collector, Mayurbhanj, but on the same ground the revision petition was dismissed. It was the order that was challenged before the learned Single Judge in the aforementioned writ petition.

9. The learned Single Judge has taken note of the judgment of the Supreme Court of India in *Nityanand Sharma v. State of Bihar* (1996) 3 SCC 576, where it was held in para 15 as under:

“It is for Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste/tribe etc. It would thus be clear that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted (sic) under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe.”

10. The learned Single Judge noted that although the caste Keuta was included in the order concerning the schedule for the State of Orissa. Prior thereto it was not in the schedule as a schedule caste.

11. The learned Single Judge also noted that the appellate and the revisional authorities had accepted the case of Respondent No.5's vendor as a member of the SC solely on the basis of the Circular dated 20<sup>th</sup> July, 1981, which in turn based on a judgment of this

Court in OJC No.247 of 1978 in which it was held that Keuta and Kaibarta being synonymous to Dhibara should be taken as included in the term Dhibara. However, as a result of the judgment in *Nityanand Sharma (supra)*, Keuta and Kaibarta cannot be deemed to have been included in the Schedule.

12. In other words, there is no basis on which it could be said that the vendor of Respondent No.5 was members of the SC. Therefore, the sale deed was not in contravention of Section 23 of the OLR Act since by the time the transaction took place, Keuta was not included in the schedule of the Constitution (Scheduled Castes) Order, 1950.

13. Having heard learned counsel for the Parties, the Court is satisfied that no error has been committed by the learned Single Judge in coming to the above conclusion. Unless there is material to show that the vendor of Respondent No.5 belonged to SC, there was in fact no contravention of Section 23 of the OLR Act.

14. In the circumstances, the Court is not inclined to interfere with the impugned order. The appeal is dismissed.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**(Chittaranjan Dash)**  
**Judge**

*D. Aech*