

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7283 of 2010

Udaya Nath Sahu

....

Petitioner(s)

Mr. S.B. Jena,
Advocate

-versus-

Collector, Kandhamal & Ors.

....

Opposite Parties

Mr. S. Mishra,
Addl. Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
13.09.2022**

Order No.

04. 1. This Writ Petition involves a challenge to the impugned order under Annexure-6 passed in a proceeding undisputedly entertained under the amended provision at Section-3(B) of the Regulation (II).
2. The case of the Petitioner as advanced by the learned counsel for Petitioner is that since the amendment 2002 of the Regulation II of 1956 remains prospective and came by way of a notification in the year 2003, no proceeding involving any transaction taken place prior to such amendment between the Tribe and Non-Tribe could have been revived. The further limb of argument by the learned counsel for Petitioner is that the transaction involved was in between non-tribe to non-tribe. It is thus contended that there is no attraction of the provision at the amendment 2002 involving Regulation-II of 1956. Taking this Court to the discussion and the plea taken in the impugned order, an attempt is made to nullify the impugned order.

3. Mr. Mishra, learned State Counsel in his opposition taking this Court to the impugned order and discussion therein contended that the question raised by the Petitioner that the transaction involved between non-tribe and non-tribe has been taken care of and the discussion in the 2nd paragraph at page 34 of the brief appears to be rightly made holding the transaction involved was between Scheduled Tribe and Non-Tribe. Further so far as the allegation of the Petitioner on the effect of the Act is concerned; Mr. Mishra, learned State Counsel contends, for the nature of amendment involved therein, there is provision for reopening of the cases involving the transaction between tribe and non-tribes, particularly with a view to protect the land rights of the Scheduled Tribe persons. It is, in the process, Mr. Mishra, learned State Counsel opposes the contention of the learned counsel for the Petitioner and attempted to justify the impugned order.

4. Considering the rival contentions of the parties this Court taking into account the challenge made to the impugned order and the applicability of the provision at 2002 amendment, this Court observes, the amendment has been brought specifically keeping in view that no land rights of the S.T. gets affected without following the provision under the Regulation II. It is only keeping the provision at Section 3(B) in view, this Court finds, the provision makes it clear that while initiating such proceeding parties should be provided with opportunity to satisfy their case. As a consequence this Court finds, there has been initiation of the proceeding U/s.3(B) of the Regulation II of 1956 and in the process the Petitioner has been noticed to show cause vide Annexure-6. This Court further finds, there is no substance in the stand of the Petitioner on

applicability of the amended provision at Regulation, 2000. Entering into the other aspect that there is a transaction between non-tribe to non-tribe involved herein, this Court looking to the discussion and observation made in the impugned order finds, such a question being raised has been taken into consideration and for the S.T. order amendment Act, 1976, the owner of the land was noticed and the owner of the land therein belongs to “Sudra Saura” community, which caste is already find place in the constitution S.T. order 1950 read with Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002. It is, in this view of the matter, this Court finds, there is also no substance in the 2nd limb of argument of the Petitioner.

5. In the circumstance, this Court finds no infirmity in the impugned order requiring to be interfered with.

6. The Writ Petition is, accordingly, dismissed for having no merit.

(Biswanath Rath)
Judge